



CAMBRIDGESHIRE AND PETERBOROUGH COMBINED AUTHORITY BOARD	AGENDA ITEM No: 4.1
27th MARCH 2019	PUBLIC REPORT <i>This report has a confidential appendix at item x.x of the Agenda (Delete if not applic) – See Appendix 3 for guidance</i>

HOUSING DEVELOPMENT COMPANY

1. PURPOSE

- 1.1. The Combined Authority received a commitment from central government for the receipt of £170m to bring forward 2,500 homes by March 2022. To deliver this there are effectively two sub-programmes running; £70m is allocated to Cambridge City to deliver 500 additional homes and the balance of £100m is allocated to the rest of the Combined Authority area to deliver an additional 2,000 affordable homes.
- 1.2. On 26 September 2018 (Agenda Item 2.1) the Combined Authority Board approved the Housing Strategy.
- 1.3. The Housing Strategy seeks to address current and potential future housing challenges facing the area, both in the next few years and the longer term through a selection of different development tools in addition to traditional grant funding.
- 1.4. The Housing Strategy recommended the Combined Authority accelerate housing delivery by establishing a wholly owned company to enable direct intervention in the housing market, which would enable the development of new homes and affordable homes in the region.
- 1.5. Creating the structure for a trading company with a housing development company now will enable us to quickly action when project specific opportunities to engage in housing delivery are identified and reported.
- 1.6. Responsibility and control of the use of the £170m of monies provided under the Devo deal to support the delivery of 2,500 affordable housing units in the CPCA area will remain under the direct control of the CPCA Board. If the proposed CATC or DevCo have a housing delivery opportunity that is seeking

funding from that money, a paper will need to be presented to the CPCA board for consideration.

<u>DECISION REQUIRED</u>	
Lead Member:	Cllr Roberts (housing portfolio)
Lead Officer:	Roger Thompson, Director of Housing
Forward Plan Ref: Insert ref no on FP	Key Decision: No/Yes
<p>The Combined Authority Board is recommended to:</p> <ul style="list-style-type: none"> (a) Approve the Business Case for establishing a Combined Authority Trading Company (CATC) as detailed in Appendix 1; (b) Approve the Combined Authority Trading Company Business Plan and as detailed in Appendix 2; (c) Approve the Housing Development Company (DevCo) business plan as detailed in Appendix 3 (d) Approve the funding strategy for the Housing Development Company (paragraph 6); (e) Approve the composition of the CATC Board as set out in Appendix 2 (ref: P8 para 4.1.1 and P9 para 4.1.2); <p>Furthermore, in order to implement a)-c), authorise and approve:</p>	<p>Voting arrangements</p> <p>Simple majority of all Members</p>

(f) The Chief Executive to enter into a loan agreement with CATC as detailed in paragraph 6;	
(g) The Chief Executive and the Corporate Services Director to complete the necessary legal documentation to implement the above.	

2. BACKGROUND

2.1. To address current and future housing challenges the Combined Authority has an aspiration to deliver 100,000 new homes, including 40,000 affordable homes over the next 20 years. In order to do this the Combined Authority established key objectives and principles when creating the Housing Strategy:

- a) To accelerate housing delivery to support economic growth
- b) To create prosperous places where people want to live
- c) To expand housing choices and opportunity through promotion of steps to promote home ownership using alternative structures, potential starter homes and more shared ownership scheme
- d) Promoting all housing (not just affordable housing) that is in addition to the existing development pipeline and encourage accelerated delivery within adopted local plans
- e) Be creative, in using a range of financial delivery mechanisms that have not traditionally been a method through which the public sector; organisations have supported and delivered housing. This aims to create a revolving fund that will outlast the £170m programme that will help to meet the longer-term target of an additional 100,000 homes by 2037
- f) An ambition to deliver 40,000 affordable homes within the same time period, to help address the affordability of housing, particularly for key workers, first time buyers and those in low and medium paid employment who cannot easily access the home ownership market without family or other third-party support. This will support more sustainable communities

- g) To support the spread of Community Land Trusts (CLTs) which support their local communities;
- h) Ensuring that housing supports the most vulnerable by offering increased choice and affordability for those requiring specialist care
- i) Supporting infrastructure to enable new housing schemes through a co-ordinated approach, particularly regarding transport by making strong links across strategies and projects within the Combined Authority
- j) Encouraging best use of all property assets, bringing homes that are currently excluded from the market back into market use and supporting the creation of new homes from existing built assets not currently in residential use.
- k) To consider using the Combined Authorities borrowing powers to help to accelerate schemes using financial mechanisms, over and above the money available in the revolving fund.

2.2. The Housing Strategy provides a flexible multi toolkit approach that will assist the Combined Authority to deliver on its ambition to build 100,000 new homes (including 40,000 affordable homes) Tools included Direct Development allowing for direct intervention and development in the housing market, a Strategic Land and value capture mechanism, office to residential conversions, infrastructure enabling/recovery, community land trusts, repayable loan agreements, joint ventures, provision of housing grant to registered providers and guarantees.

2.3. In order to progress the Housing Strategy a number of actions are recommended. One such action is for the Combined Authority to establish a wholly owned company to undertake the development and management of new homes in the region.

3. ESTABLISHING A COMBINED AUTHORITY TRADING COMPANY

3.1. The purpose for developing a housing delivery structure is to have a vehicle that enables the Combined Authority to take direct action and intervention, to create additional or accelerated affordable housing. This might be potentially combined and cross subsidised with market housing or other uses, to generate revenue and capital to support additional housing schemes in the CPCA area. The CPCA is seeking to undertake the development of housing, through both direct delivery (joint ventures/independently) and potentially in the longer term through land value capture (acquiring strategic land and obtaining planning permission that enhances its value).

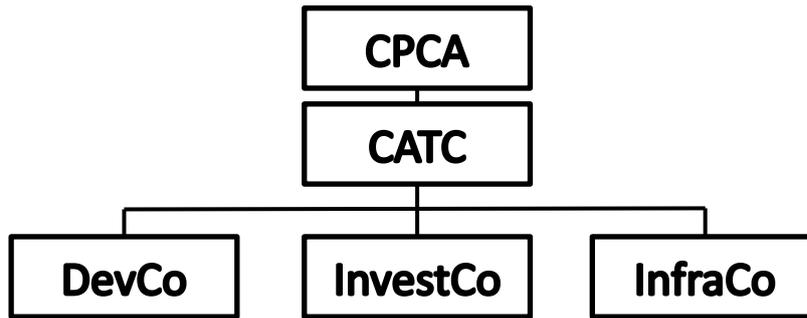
3.2. The business case for establishing the Combined Authority Trading Company is provided at Appendix 1.

3.3. Reasons for establishing a wholly owned company

- a) Single focused vehicles: The vehicles would have a single focus on delivering additional residential development and would be less likely to be distracted by extraneous activities.
- b) More attractive to potential joint venture partners: Potential partners may be more inclined to partner with an independent entity vehicle which is separate from the CPCA itself and is able to act in a commercial manner in terms of decision making.
- c) Ring-fencing risk: The vehicles would be able to (subject to how future deals and agreements were drafted) insulate the CPCA from development risk, for each scheme to be 'isolated' in terms of risk. Each different development opportunity could be undertaken in a separate 'special vehicle', so in case an individual scheme runs into difficulty, that issue would be 'contained'.
- d) Independent Directors: The vehicles would be able to recruit directors with specific development, and other skills that may be required.
- e) Streamlining governance: The proposed structure (set out below) includes a number of different vehicles including a holding company (Trading Co) and a development company (Dev Co) to be immediately set up. Potentially in future an investment company (Invest Co) and an infrastructure company (Infra Co) could be added. By using different vehicles for each type of activity the CPCA has the ability to streamline its governance of each separate vehicle and introduce any bespoke requirements.
- f) Ability to sell for profit in the future: Having separate vehicles means that the CPCA has the flexibility to sell its ownership (wholly or partly), of any vehicle to a third party, hopefully for a profit, if it no longer wishes to engage in the activities or just realise the value that has been created within a vehicle.

4. STRUCTURE AND GOVERNANCE

- 4.1. Under the Localism Act 2011, where the CPCA seeks to do something for a commercial purpose, it must do so through a company.
- 4.2. The Combined Authority Trading Company (CATC) will be 100% owned by the CPCA, so Limited Liability Partnership and Joint Venture models are not appropriate. Given that a partial objective of the CATC is to generate a return, to create and add value to the company and if appropriate, produce dividend returns to the CPCA, the Company Limited by Guarantee is also not a viable option.
- 4.3. The recommended form is a Company Limited by Shares with the CPCA as the sole shareholder.



- 4.4. The establishment of a holding company (CATC) with a group of subsidiaries (DevCo, and potentially in future InvestCo & InfraCo) will facilitate strategically-focused decision making appropriate to the subsidiary trading arms. This approach mitigates risks associated with one company carrying out a broad range of activities which may not fall within the expertise of the directors. Liability arising in one trading company will not impact on the remaining trading arms and, subject to further specialised tax advice, any losses may be able to offset against tax payable on profits elsewhere.
- 4.5. The CATC Board of Directors will be responsible for the strategic direction and success of the company. The CATC Board will be required to manage the CATC and must be mindful of commercial and market forces. At all times they must act in the best interest of the CATC for the benefit of the CPCA as the sole shareholder.
- 4.6. It is proposed that the CATC Board will comprise the Mayor and one of the Deputy Mayors of the CPCA, the Managing Director, Corporate Services Director of the CATC, (those positions to be held by the Chief Executive and Corporate Services Director of the CPCA) and an Independent Chairman (to be recruited). Each of the five board members will have one vote each and the Chairman will not have a casting vote.
- 4.7. The CPCA Board will appoint the first Chairman of the CATC.
- 4.8. **Conflicts of interest**
- 4.9. Members or officers of the CPCA who are appointed directors of a company have a fiduciary duty to the company, **not to** the authority. They have the powers and duties of company directors while they are appointed directors, and as directors, they are answerable to the membership of the company in accordance with the company's articles of association. However any member elected as a director is still bound by relevant local authority codes of conduct, in so far as these codes do not conflict with their legal obligations under company law.
- 4.10. The interests of the company must align with the shareholder and therefore this will limit the conflict that will arise for those directors who act on the Board. However a conflicts of interest policy will be developed to assist members and officers to conduct their roles as directors. This will enable

them to identify any conflicts of interest and take action to avoid acting to the detriment of the company or the CPCA. For example, should any member of the CPCA think that their obligations to the public and their obligations as company director conflict, the guidance will provide advice on removing themselves from the company board meeting without undermining the ability of the company to proceed with its business.

4.11. Shareholder Agreement

4.12. The relationship between the Combined Authority and the CATC is regulated through a shareholder agreement. The purpose of the shareholder agreement is to regulate the boundaries within which the CATC operates. Other than where legislation and/or articles reserve decisions for shareholders, the Board of Directors of a company is its main decision-making body and is to act as it thinks is in the best interest of that company. Ordinarily this would, for instance, include issuing shares to third parties (which the CPCA would not want to control) or borrowing (which would impact on the CPCA's own prudential borrowing limit).

4.13. In this context, a shareholders agreement between the CPCA and CATC (which would then be applied to each subsidiary through a deed of adherence) must be agreed. This would consider that each business's Board of Directors is responsible for running the relevant company. The agreement will provide the CPCA with a number of reserved rights:

- a) Matters relating to the control of shares
- b) Amendments to Articles of Association
- c) Matters relating to the payment of a dividend
- d) Matters relating to the company structure of CATC
- e) Matters relating to the cessation of CATC
- f) Matters relating to the business if it is not considered to be ancillary or incidental to the approved business
- g) Any decisions that require funding from the CPCA, for example funding for a housing scheme from the £100m affordable fund
- h) Appointment/removal of a Director
- i) Remuneration of any Director
- j) Entering into service contract, terms of appointment or other agreement with a Director
- k) Remuneration of any CATC (or subsidiary company) employee exceeding £100,000
- l) Establishing or amending any profit-sharing, share option, bonus or other incentives of any nature for Directors and employees
- m) Making any bonus payment to any Director or key employee
- n) Changing the name or registered office
- o) A limit on external borrowing
- p) Approval of the annual business plan.

4.14 The shareholder agreement will be subject to further agreement by the Combined Authority at a future meeting.

5. BUSINESS PLAN

- 5.1. A high level business plan has been developed to provide a framework for the strategic operations of both the proposed CATC and DevCo, specifically:
 - a) Benefits and advantage of the CATC
 - b) Recommended governance structure
 - c) Board and management structures
 - d) Financial review of the CATC's forecast performance
 - e) Risk assessment
- 5.2. The Business Plans are attached as Appendix 2 and Appendix 3 for approval.
- 5.3. From the 27 March 2019 CPCA Board until the formal establishment of the CATC and DevCo, there will be a requirement to authorise specific officers to implement the decisions of the CPCA Board. These include the Shareholder Agreement, the Articles of Association and Service Level Agreements. There will also be a requirement to amend the Constitution during this period.

6. FINANCIAL IMPLICATIONS

- 6.1. The CATC and DevCo will require a loan of £600,000 with a drawdown facility as cash flow requirements dictate to cover its initial set up and operating costs for its first 2 years of operation. Devco staff costs are a cost to the company from day one in order to comply with EU competition law requirements. Please note that the Devco staff and a majority of the other costs within the operating costs will be incurred by the CPCA in any event, whether or not CATC and DevCo are set up. Those costs are effectively being allocated away from the CPCA overhead and into CATC as a cost. The borrowing requirement for the CATC is to provide sufficient cashflow to cover CATC/Dev Co's first 2 years of trading. Any loan requirements beyond this will be reported to the CPCA Board as part of an annual business planning exercise that will include future commitments and projections, for the Trading Company activities beyond Year 1.
- 6.2. Repayment of the loan shall commence after the first three years of trading. The CPCA shall enter into a loan agreement with the CATC, such agreement shall stipulate that borrowing will only be for the purpose stated in the business plan and set out the terms and conditions of borrowing, including interest payment.
- 6.3. The CPCA is required to charge a commercial interest rate for the loan, so as to not contravene State Aid regulations. The final agreed rate will depend on the prevailing interest rates at the time. This interest will be payable on the loan outstanding on an annual basis and will reduce as the CATC and DevCo repays the loan.
- 6.4. There will be initial set up costs, which will be incurred between the CPCA Board meeting on 27 March 2019 and the date when the CATC commences trading. It is proposed that the CPCA funds the work which includes but may

not be limited to Incorporation (£1,300), Article of Association for HoldCo and DevCo (£7,000), Shareholder Agreement for Hold Co and Dev Co (£10,250) and report on duties of directors, indemnity agreements and presentation to the directors (1,500). This totals appx £20,050.

- 6.5. Any CPCA funding required to deliver specific DevCo projects will be reported and requested from the CPCA board in the usual way.

7. LEGAL IMPLICATIONS

- 7.1. By virtue of Section 1 Local Government Act 1999 a Combined Authority is a best value authority. Best value authorities are permitted to trade, through a company, to carry out their functions for a commercial purpose. The creation of the company structure permits the Combined Authority to make a profit.
- 7.2. The creation of a wholly owned company means that certain regulatory requirements must be adhered to in creating the company, namely:
- a) A business case must be approved by the Combined Authority
 - b) A business plan must be approved by the Combined Authority
 - c) The company is subject to capital expenditure controls: Prudential Code for capital finance in local authorities
 - d) It is subject to limits on borrowing imposed by Government on the Combined Authority
- 7.3. Combined Authority employees may be seconded into the company to provide expertise where it is required. Employees will be protected by a secondment agreement with the DevCo which will ensure that the employees' rights are preserved during and after their secondment.
- 7.4. The Combined Authority may provide assistance to the companies within this structure subject to appropriate financial compensation being given by the company to the authority.
- 7.5. This proposal for a company to provide direct interventions into the housing market aligns with the Housing Strategy approved by the Board in 2018 and the Housing Business case agreed with MHCLG (approved by the Board in March 2017) which both recommended the use of Combined Authority funds to create a sustainable investment fund which could recycle investment into future schemes.

8. GOVERNANCE AND CONTROL

- 8.1. As set out in paragraph 4 of this report.

9. EQUALITIES AND HEALTH AND SAFETY IMPLICATIONS

- 9.1. Any equalities or health and safety implications will be addressed as they arise in the implementation of the strategy.

10. APPENDICES

10.1. Appendix 1- Business Case for establishing the Combined Authority Trading Company.

10.2. Appendix 2 - Combined Authority Trading Company Business Plan.

10.3. Appendix 3 - Development Company Business Plan.

10.4. Appendix 4 – Questions and Answers

<u>Source Documents</u>	<u>Location</u>
<p>List background papers: List here details of any supporting or background documents which have been relied upon to a material extent when preparing the report which are not confidential. If no supporting or background documents were used insert the word None and delete any text in the location column.</p> <p>Source documents are open for inspection by the public and must be retained for a period of 4 years (by the report author's records section) from the date of the meeting.</p> <p>Do not include published works or those which disclose exempt or confidential information and in respect of Mayoral reports, the advice of a political advisor</p>	<p>List location of background papers This should identify where these documents are held should anyone want to look at them. This will usually be the report author's location – e.g.</p> <p>Room XXX, Cambridgeshire and Peterborough Combined Authority, The Grange, Nutholt Lane, Ely CB7 4EE</p> <p>Where the document is held electronically, please provide a web link(s) if appropriate.</p>