Cheshire East Council

Financial and business advice in setting up a Development Vehicle

[Draft Report]

26 April 2013

Draft for discussion

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April 2013

Dear Sirs

High level option appraisal in relation to setting up a Development Vehicle

We have pleasure in enclosing the results of our work in assisting Cheshire East Council ("the Council") to consider a high level option relating to the above. If you have any questions, require any clarifications or would like to discuss this in person please contact me on 0161 455 6484 or Craig Jones on 0121 695 5029.

Yours faithfully

Simon Bedford
for
Deloitte LLP

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Executive Summary

- **Background:** Cheshire East Council ("the Council") has ambitious growth plans with the Local Plan setting out the delivery of major new infrastructure, at least 20,000 jobs and 27,000 new homes by 2030. In response to the growth agenda, the Council is seeking to accelerate the development of Council owned assets and to boost the delivery of developer-led strategic sites and is considering the creation of a new dedicated Development Vehicle for this purpose. In March 2013, the Council commissioned Deloitte to support the financial aspects of a high level appraisal on a range of options for the Development Vehicle and to provide some specific advice and commentary on the proposed preferred option. The purpose of this report is to document the findings of our high level review. The Council has significantly shortened the timetable for this high level review. This report therefore comments on the work to date and further work and clarification is required to address a number of points raised in this report.

- **Option appraisal and preferred option:** The Council in conjunction with its legal advisers (Bevan Brittan) and Deloitte have development a shortlist of potential delivery options. A qualitative options appraisal has been scored by a project team consisting of Council officers, Deloitte and Bevan Brittan has identified the preferred option to be Option 3b*: Delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the assets* ("the Company"). Under Option 3b, the proposed scope of the Company is to:

- To accelerate growth in terms of housing completion and jobs investment on Council owned assets;
- To provide dedicated delivery arrangements and property and commercial expertise;
- To secure additional private and Government investment into the Borough through increased focus on delivery;
- To potentially provide a mechanism to deliver schemes to the Cheshire & Warrington LEP as well as the Council;
- To create profitable and transparent relationships with developers and investors to deliver financial and regeneration benefits;
- To capture any financial benefits and tax efficiencies of a dedicated delivery vehicle which is Council controlled.

- **Council Assets** the proposed preferred option does not envisage the transfer of Council assets to the Company. The ownership and management of the Council assets will be retained by the Council and the financial transactions associated with the financing, maintaining and disposing of capital assets are expected to follow existing arrangements. The Council and Company will need to consider how the current arrangements regarding the management of the Council assets are impacted as a result of the newly formed Company in order to provide the management arrangements for the proper control, management and stewardship of Council assets.

- **Capital financing**: the Council has envisaged some form of "revolving fund" to facilitate asset acquisition. Given capital financing transactions will be retained in the Council, it may be that the benefits of the revolving fund could be achieved through the use of an "earmarked reserve" rather than a separate fund, subject to the impact on the Council's corporate financial management and capital financing plans and clarification of governance arrangements.

Executive Summary (continued)

- **Governance arrangements**: The Council preferred option is the delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the asset. We understand the Council has given some early consideration to the governance arrangements for the Company although at this point in time proposed governance arrangements are still being considered by the Council and arrangements are not yet finalised.
- **Board representation and managing conflicts**: the Board should be constituted with a relatively small number of individuals to provide the appropriate balance of focus, skills and resource to lead the strategic direction of the Company. Larger numbers of individuals may result in reduced focus and strategic direction. The Council needs to manage potential conflicts (real and perceived) and consider the appropriateness of Councillors and lead officers acting within the Council on any matter which has a significant impact on the Company.
- **Decision making structures**: The Council will need to agree the parameters of the Company's decision making and how the management of the Company and key decisions will interface with existing Council decision making and approval structures. For example, will certain decisions require Cabinet approval, delegated approval from the relevant portfolio holder, approval from the relevant chief officer?
- **Company accountability and scrutiny**: we are informed by the Council that the activities of the Company would fall within the remit of the Portfolio Holder for Prosperity & Economic Regeneration and would be subject to the normal scrutiny arrangements of the Council. The Council needs to finalise these reporting lines to ensure appropriate arrangements are in place to manage the performance of the Company.
- **Accounting / reporting:** Company directors will be responsible for operation and management of the Company and for accounting records which are sufficient to show and explain the company's transactions and to enable them to ensure that any accounts required be prepared to comply with the requirements of the Companies Act (386 of the Companies Act 2006). Option 3b may qualify as a small company exemption although this will require further analysis and confirmation.
- **Employment model**: We understand from the Council that the estimated staffing and operating costs would be in the region of £0.5 million per annum and that most of the staff are likely to be Council employees. The Council is considering a secondment model (ie seconding of Council staff to the Company) at least in the first instance. In finalising the employment model the Council will need to be mindful of TUPE Regulations and these have been considered in the Bevan Brittan's Advice Note.
- **Financial skills**: the Company will require access to appropriate financial skills. Dependent on the finally agreed scope of the Company, it is likely that certain skills (eg accounts preparation) could be available on a call off arrangement from the Council. It may that expertise in commercial and financial structuring could be provided by the newly appointed Development Executives, through advisory support or through external recruitment.

Executive Summary (continued)

- **Corporate Tax**: under Option 3b, assuming the vehicle is established for EU procurement reasons as a 'not-for-profit' cost-sharing vehicle, the risk of corporation tax leakage should be minimised on the basis either (i) that the vehicle is not carrying on a commercial trading business for tax purposes so does not generate taxable surpluses or (ii) that it is a mutual trader (broadly, a service provider controlled by its members and funded by members' contributions). Option 3b should also avoid any additional SDLT risk as no property transfers between CEC and the delivery vehicle would be contemplated. If the delivery vehicle were to undertake property transactions directly (as under Option 3a or Option 5), or (under Option 3b) provide commercial services with a view to a profit, the use of a "tax transparent" limited liability partnership (LLP) structure may be beneficial from a corporation tax perspective as it would enable the Council to benefit from corporation tax exemption on its share of profits accruing within the LLP. Use of an LLP would, however, be subject to the Council obtaining legal advice that the particular commercial activities are capable under the Localism Act of being undertaken using a partnership rather than a limited company. An LLP would also not generally be a suitable vehicle for a cost-sharing activity which is not undertaken on a commercial basis, as its presupposes that the LLP is carrying some form of business.

- **VAT**: the Council enjoys a beneficial VAT partial exemption regime allowing it to recover input VAT on its costs in full, provided the VAT incurred on costs relating to exempt supplies (which would include certain sales of land and property) is less than 5% of the total VAT incurred by the Council. We have not reviewed the Council's partial exemption status as part of this exercise, but the possible impact of future property transactions on the Council's VAT partial exemption position generally should be kept under review in case there is any risk of the 5% threshold being breached. Under Option 3b, the delivery vehicle is likely to be required to register for VAT and account for VAT on supplies made to the Council. For partial exemption reasons, we would recommend that it is separately VAT registered and is not included within a VAT group registration with the Council. As the vehicle would not itself be entering into property transactions, it should be fully taxable for VAT purposes enabling it to recover input VAT incurred on its costs, so the overall VAT position should be neutral.

- **Future scope expansion**: Going forward, we understand that the Council may wish to consider broadening the scope of the Company to operate outside of the Council's geographic boundaries and also to potentially widen the scope of the Company to provide additional trading activities to other sectors. In exploring either or both of these scenarios, the Council would need to undertake the appropriate market sounding to provide a level of assurance on the demand for services; consider any potential tax issues; and develop the commercial and pricing mechanisms for such arrangements.

1. Introduction

Background

- Cheshire East Council (“the Council”) has ambitious growth plans with the Local Plan setting out the delivery of major new infrastructure, at least 20,000 jobs and 27,000 new homes by 2030.
- As a newly created unitary authority the Council has ambitious plans to create a strong growing economy though job creation and enhancing the regions attractiveness to investors. In addition, the Council’s strategic direction reflects a growing appetite for flexibility, agility, freedom from bureaucracy, and for the creation of other forms of operational decision making and delivery vehicles.
- In response to the growth agenda, the Council is seeking to accelerate the development of Council owned assets and to boost the delivery of developer-led strategic sites and is considering the development of a new Delivery Vehicle.
- Deloitte has been commissioned by the Council to support the financial aspects of a high level appraisal on a range of potential delivery options and to identify a preferred solution which best achieves the Council’s objectives and to provide some specific advice and commentary on the proposed preferred option. The scope of our work is set out in our engagement letter.
- Bevan Brittan has been commissioned by the Council to support on the governance and vires aspects of a high level appraisal on a range of delivery options and to identify the governance aspects and risk mitigation aspects of the preferred option which best achieves the Council's objectives. Bevan Brittan has provided an Advice Note to the Council ("Bevan Brittan Advice Note"). Our report contains some cross references to the Bevan Brittan Advice Note.

Council objectives for a Delivery Vehicle and key criteria for the option appraisal

•To accelerate growth in terms of housing completion and jobs investment on Council owned assets;

•To maximise development and minimise risk to the Council by providing dedicated delivery arrangements and property and commercial expertise;

•To secure additional private and Government investment into the Borough through creating the focus on delivery and providing a mechanism to deliver schemes to the Cheshire & Warrington LEP as well as the Council;

•Create profitable and transparent relationships with developers and investors which deliver financial and regeneration benefits;

•To capture any financial benefits and tax efficiencies of a dedicated delivery vehicle which is Council controlled but can benefit from agile operating arrangements and can be reviewed at a later date.

1. Introduction (continued)

Options

•**1**: Status quo - continuing with self-delivery using the current programme with existing team capacity and capability

•**2**: Self delivery - strengthening and redirecting current team capacity and capability and making new provisions/alterations to current working practices and the Council's constitution

•**3a**: Delivery through wholly-owned and controlled arms' length company where the **Council transfers ownership** of the asset

•**3b**: As 3a but where **Council retains ownership** of the asset

•**4a**: Delivery through wholly-owned but not controlled arms' length company where the **Council transfers ownership** of the assets

•**4b**: As 4a but **Council retains ownership** of the assets

•**5**: A public/private joint venture where the **Council transfers ownership** of the asset to the JV.

Role of the Delivery Vehicle

•The Council has given some early consideration to the proposed role and responsibilities for the Development Vehicle. These include:

•To lead on strategic land acquisitions to enable the delivery of the development programme;

•To promote the Council owned assets for development through the Local Plan and planning process and to undertake masterplanning to bring sites forward for development;

•To identify property related strategic opportunities for the Council;

•To provide commercial property expertise and to potentially act in an advisory capacity for the LEP;

•To undertake development appraisals to inform future investment opportunities; and

•To develop relationships with developers and investors and bring forward partnering and contract opportunities to benefit the Council and the community.

1. Introduction (continued)

Process

•**Property strategy and key sites** – we have discussed with the Council the key sites for development and collated a summary schedule of these sites containing relevant information and the Council's estimated value and timing of bringing these to market.

•**Option appraisal** – building on an initial paper circulated by Bevan Brittan and further discussion with the Council we have developed a short list of options and sought to define and describe the key attributes of each of the shortlisted options.

•**Qualitative evaluation** – we have structured an evaluation criteria and weighting which reflects the Council's stated objectives for the delivery vehicle. The qualitative evaluation scores have been subject to moderation across the project team.

•**Tax implications** – based on the information we have received we have provided high level commentary on the tax implications for VAT, Stamp Duty Land Tax and Corporation Tax for each shortlisted option.

•**Commentary on the recommended option** – we have commented on the specific aspects of the preferred option which the Council included in the brief.

•**Proposed next steps and implementation** – we have set out our view of proposed next steps the Council should consider in the implementation of revised arrangements.

Summary of key development sites

- For the purposes of providing context for the analysis of the proposed Development Vehicle, the Council provided outline details on the proposed key development sites which would be managed through the Development Vehicle. The Council has also provided some illustrative values. These values have been provided by the Council as high level estimates in a short timescale and have not been subject to a formal or detailed valuation exercise. Recognising the confidential nature of such information this information has not been included in this report.

2. Summary of shortlisted options

- Option 1: Status quo continuing with self-delivery using the current programme with existing team capacity and capability
- Option 2: Self delivery strengthening and redirecting current team capacity and capability and making new provisions/alterations to current working practices and the Council's constitution
- Option 3a: Delivery through wholly-owned and controlled (as defined below) arms' length company where the **Council transfers** ownership of the asset
- Option 3b: Delivery through wholly-owned and controlled (as defined below) arms' length company where the **Council retains** ownership of the asset
- Option 4a: Delivery through wholly-owned but not controlled (as defined below) arms' length company where the **Council transfers** ownership of the assets
- Option 4b: Delivery through wholly-owned but not controlled (as defined below) arms' length company where the **Council retains** ownership of the assets
- Option 5: A public/private joint venture where the **Council transfers** ownership of the asset to the JV

In this Report, references to "control" (as in an arm's length *controlled* company), as set out by Bevan Britton, should be read in the context of the EU case known as "Teckal" (*C-107/98 Teckal Srl v Comune di Viano (Reggio Emilia [1999 ECR I - 8121]*). In that case, the EC court concluded that:

- the contracting authority must exercise over the proposed contractor a control which is similar to that which it exercises over its own departments. the contracting authority (in this case, the Council) must have the power of decisive influence over both the strategic objectives and the significant decisions of the contractor (i.e. the company). The Council would need to have that power of decisive influence at a constitutional as well as an actual operational level (i.e. it actually exercises its powers). From a commercial standpoint the company will need to function as an entity and be able to make decisions about its everyday activity (as internal departments at the Council would be able to do) without having to refer back to the Council for every small decision. The Teckal exemption would not require *all* decisions to be unanimously approved by the Council.; and
- simultaneously, the proposed contractor to which a contract would be awarded must carry out the essential part of its activates with the contracting authority or authorities. For these purposes that the business undertaken by the company for any organisation or entity *other* than the Council would be of marginal significance only.

3. Key Attributes of shortlisted options

Option 1: Status quo continuing with self-delivery using the current programme with existing team capacity and capability

The Council continues with disposing, maintaining or developing assets utilising its existing team (including the newly appointed Development Executive) and governance arrangements.

Asset Ownership: the Council continue to retain control of the assets.

Governance: the Council continues to ratify decisions in accordance with its current working practices and constitution.

Strategy: the Council continues to develop its asset strategy in accordance with current working practices and constitution.

Risk: the Council continues to be exposure to development risks.

Financing: the Council continues to finance its asset strategy in accordance with rules governing local authority finance.

Tax/Accounting: the Council continues to treat its assets in accordance with local authority accounting guidance and account for tax in accordance with local authority finance regulations.

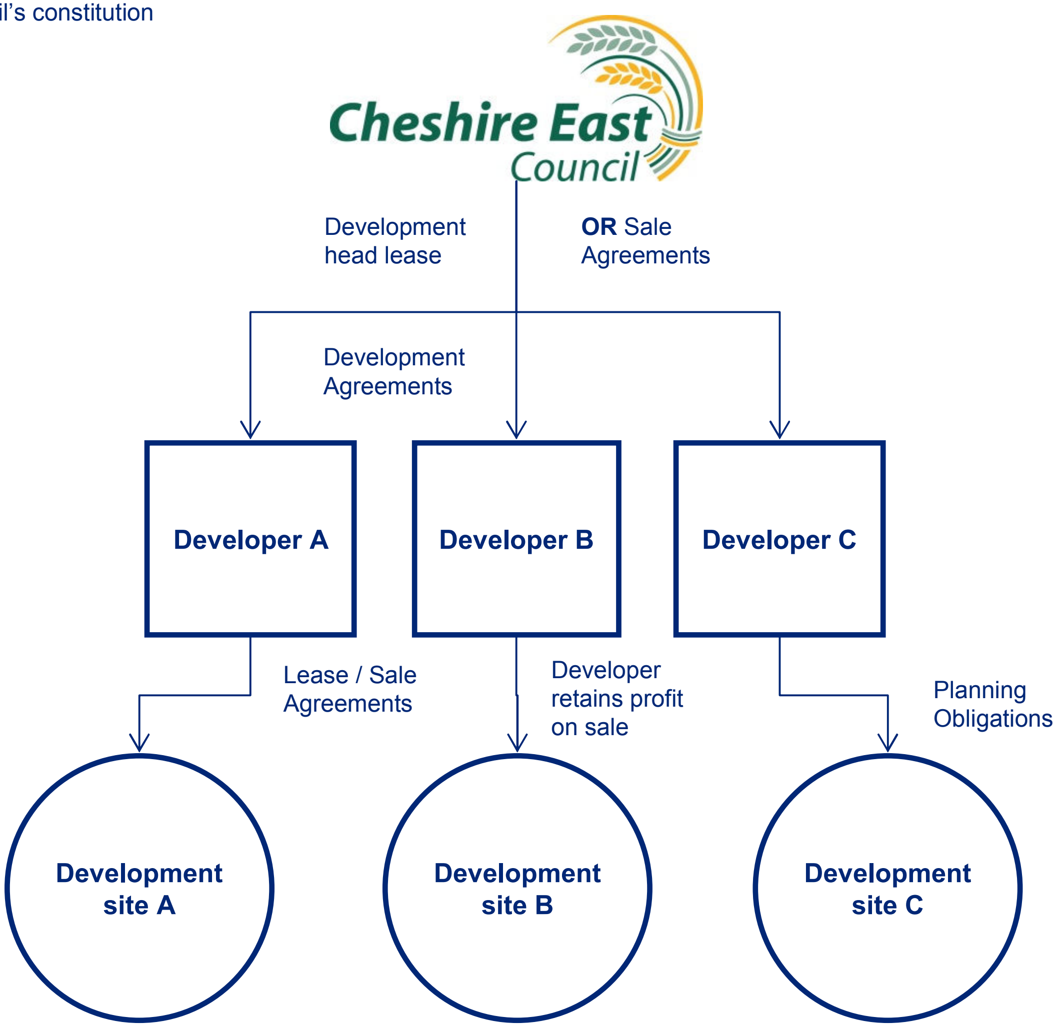
Option 2: Self delivery strengthening and redirecting current team capacity and capability and making new provisions/alterations to current working practices and the Council's constitution

As per Option 1 the Council continues with disposing, maintaining or developing assets utilising its existing team (including the newly appointed Development Executive) and governance arrangements. This Option would seek to further increase the capacity in terms of resource and skills of the current team. Under this Option, the Council would use the current team as a starting point, strengthening where necessary through external hires and internal movement of Council employees. The Council will also undertake to amend its working practice and/or constitution.

3. Key Attributes of shortlisted options

Option 1: Status quo continuing with self-delivery using the current programme with existing team capacity and capability

Option 2: Self delivery strengthening and redirecting current team capacity and capability and making new provisions/alterations to current working practices and the Council's constitution



The Council:
- retains direct control of the assets/property portfolio
- competitively appoints a developer for each site
- puts in place all the necessary contractual elements: Development agreement, guarantees, collateral warranties etc.
- funds the development directly
- benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds
- provides requires the capacity and expertise

The developer retains the profit on sale of the head lease.

3. Key Attributes of shortlisted options

Option 3a: Delivery through wholly-owned and controlled arms' length company where the Council transfers ownership of the asset

The Council establishes a limited company over which it exercises a level of control which is similar to that which it exercises over its own departments and which carries out the essential part of its activity with the Council.

Principal Activity: to invest in Cheshire East with a view to acting as a catalyst in promoting economic development through property development and job creation. Activities include leading land deals, promoting Cheshire East, masterplanning and pre-development, strategic acquisitions, provision of professional property expertise including development appraisals and relationship development with key investors/private sector parties and other stakeholders.

Asset Ownership: the Council transfers ownership of the assets/property portfolio to the company for a consideration e.g. capital funded by the Council or equity in the company.

Governance: the company is incorporated with members and operates as an autonomous body with a separate management board made up expertise (Councillors and/or Officers) with delegated authority to act and make decisions within the remit of the company's function/objectives in accordance with its articles and memorandum of association. Conflicts of interest must be managed appropriately. See Bevan Brittan Advice Note in this respect. Where the Council is disposing of assets to the company, it will need to secure best consideration or, where it wishes to sell at an undervalue, comply with its general Disposal Order to sell below best consideration only where there are economic, social and environmental considerations for doing so (Section 123 of the Local Government Act 1972). In addition, the Council will need to be mindful to ensure it is not falling foul of State Aid and where there may be any doubt, that it seeks clearance.

Strategy: the company will develop its strategy in line with its own strategic objectives. However, given the Council controls the company, the Council would have a significant influence in this.

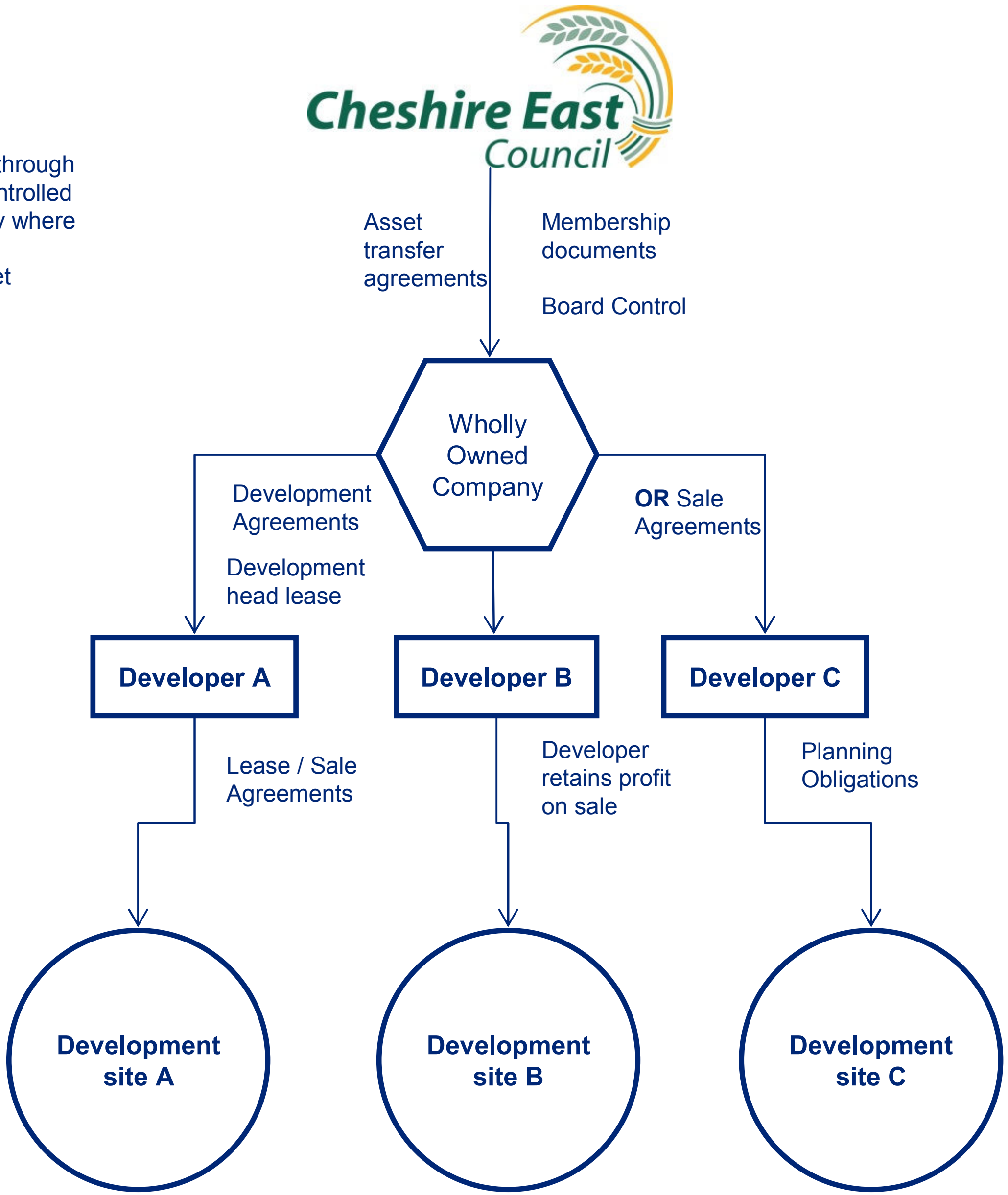
Risk: the Council is exposed to the risks associated with the transfer of assets. The company is exposed to the risks of a commercial body, but in the ordinary course of business the Council's exposure to these risks is limited by the nature of the vehicle (i.e. liability limited to the value of its shares, guarantee or capital interest, depending on the type of corporate vehicle chosen). We understand from Bevan Brittan that where members or officers of the Council are acting for the company, the Statutory Indemnity that they receive from the Council will not apply. Therefore, a fresh indemnity would be required by them. See Bevan Brittan Advice Note on the risks around members/officers acting for the company.

Financing: the Council finances the company to cover the costs of operation. As the company becomes established operating income generated through the provision of professional service may mitigate the Council's exposure. Profits on disposal of the assets are retained by the Company for future investment and/or returned to the Council. The Council will need to consider the cost of service with reference to the Company's Teckal exemption (please refer to the Bevan Brittan Advice Note).

Tax/Accounting: the company prepares accounts and tax returns in accordance with UKGAAP/IFRS and relevant legislation.

3. Key Attributes of shortlisted options

Option 3a – Delivery through wholly-owned and controlled arms' length company where the Council transfers ownership of the asset



The Council:
•Controls the WOC
•transfers ownership of the assets/property portfolio
•funds the operating costs of the WOC
•benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds
The WOC:
•competitively appoints a developer for site regeneration
•conducts the sale of sites ear-marked for disposal
•puts in place all the necessary contractual elements: Sales/Development agreement, guarantees, collateral warranties etc.
•retains the proceeds of sales
•provides the capacity and expertise appointed from the market
The developer retains the profit on sale of the head lease or future sales proceeds of redeveloped asset.

3. Key Attributes of shortlisted options

Option 3b: Delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the asset

As per Option 3a the Council establishes a limited company over which it exercises a level of control which is similar to that which it exercises over its own departments and which carries out the essential part of its activity with the Council. However, in this Option 3b the Council retains the ownership of the assets/property portfolio.

Principal Activity: to invest in Cheshire East with a view to acting as a catalyst in promoting economic development through property development and job creation. Activities include leading land deals, promoting Cheshire East, masterplanning and pre-development, strategic acquisitions, provision of professional property expertise including development appraisals and relationship development with key investors/private sector parties and other stakeholders.

***Asset Ownership**: the Council retains ownership of the assets/property portfolio working with the company on the asset/disposal strategy. This is a significant difference from Option 3a, it is envisage that the company provides a pure professional service thereby excluding [asset handling/transaction activities].*

Governance: the company is incorporated with members and operates as an autonomous body with a separate management board made up expertise (Councillors and/or Officers) with delegated authority to act and make decisions within the remit of the company's function/objectives in accordance with its articles and memorandum of association. Conflicts of interest must be managed appropriately. See Bevan Brittan Advice Note in this respect. Where the Council is disposing of assets to the company, it will need to secure best consideration or, where it wishes to sell at an undervalue, comply with its general Disposal Order to sell below best consideration only where there are economic, social and environmental considerations for doing so (Section 123 of the Local Government Act 1972). In addition, the Council will need to be mindful to ensure it is not falling foul of State Aid and where there may be any doubt, that it seeks clearance.

Strategy: the company will develop its strategy in line with its own strategic objectives. However, given the Council controls the company, the Council would have a significant influence in this.

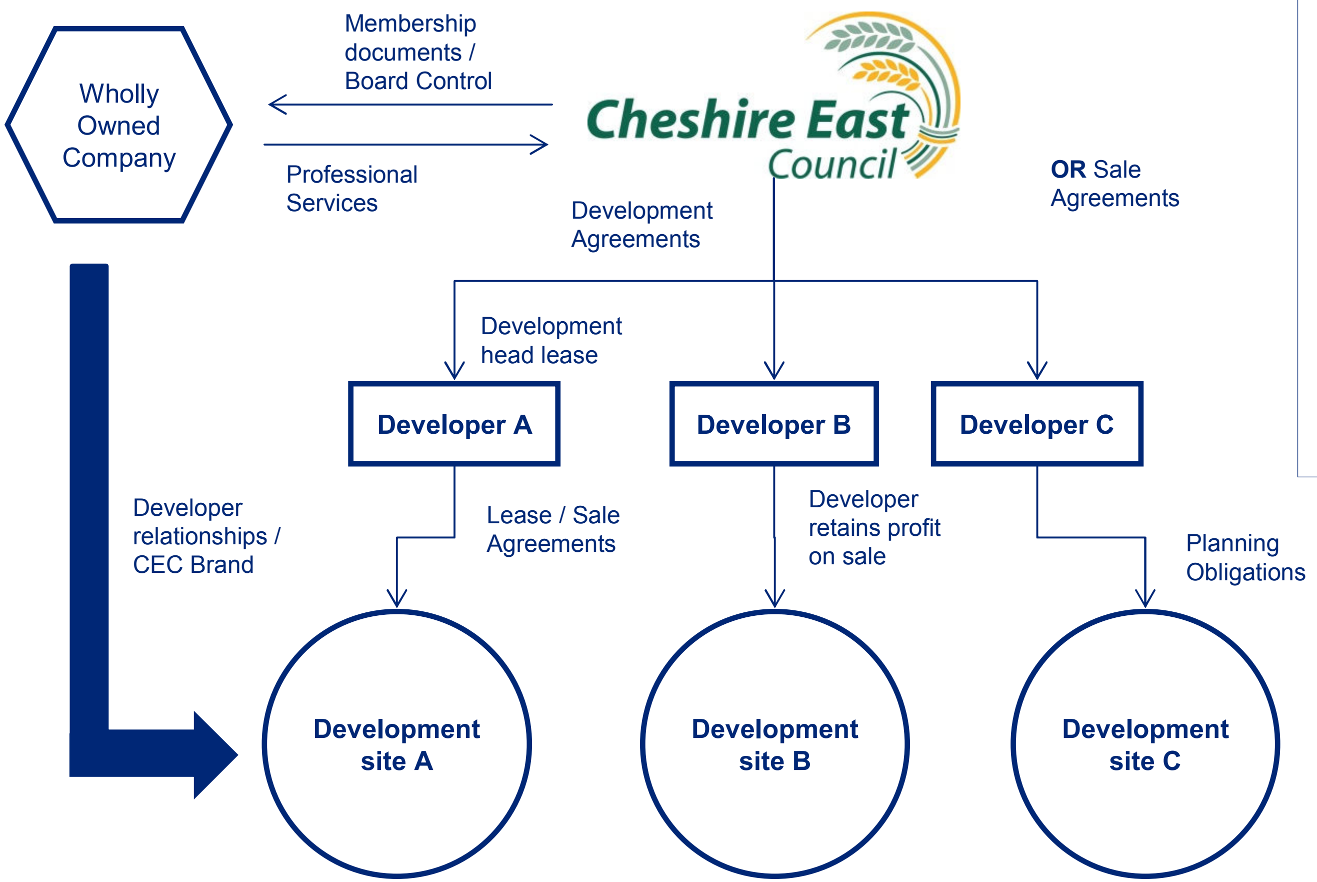
Risk: the company is exposed to the risks of a commercial body, but in the ordinary course of business the Council's exposure to these risks is limited by the nature of the vehicle (i.e. liability limited to the value of its shares, guarantee or capital interest, depending on the type of corporate vehicle chosen). We understand from Bevan Brittan that where members or officers of the Council are acting for the company, the Statutory Indemnity that they receive from the Council will not apply. Therefore, a fresh indemnity would be required by them. Please see the Bevan Brittan Advice Note on the risks around members/officers acting for the company.

***Financing**: costs of operation are recharged to the Council. As the company becomes established operating income generated through the provision of professional service to other Authorities/LEP may mitigate the Council's exposure. Profits on disposal of assets are retained by the Council. The Council may consider implementing a defined/ring-fenced reserve in which to manage disposal proceeds for use in future economic development activities. The Council will need to consider the cost of service with reference to the Company's Teckal exemption (please refer to the Bevan Brittan Advice Note).*

Tax/Accounting: the company prepares accounts and tax returns in accordance with UKGAAP/IFRS and relevant legislation.

3. Key Attributes of shortlisted options

Option 3b – Delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the asset.



The Council:
•Controls the WOC
•retains ownership of the assets/property portfolio
•funds the operating costs of the WOC
•benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds
•Retains the proceeds of sale.
The WOC:
•provides professional services in relation to the sale and/or development of the assets
•conducts the sale of sites ear-marked for disposal
•puts in place all the necessary contractual elements: Sales/Development agreement, guarantees, collateral warranties etc.
•provides the capacity and expertise appointed from the market
The developer retains the profit on sale of the head lease or future sales proceeds of redeveloped asset.

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3. Key Attributes of shortlisted options

Option 4a: Delivery through wholly-owned but not controlled arms' length company where the *Council transfers* ownership of the assets

The Council establishes a limited company over which it exercises a level of influence over the activity of the company.

Principal Activity: to invest in Cheshire East with a view to acting as a catalyst in promoting economic development through property development and job creation. Activities include leading land deals, promoting Cheshire East, masterplanning and pre-development, strategic acquisitions, provision of professional property expertise including development appraisals and relationship development with key investors/private sector parties and other stakeholders.

Asset Ownership: the Council transfers ownership of the assets/property portfolio to the company for a consideration e.g. capital funded by the Council or equity in the company.

Governance: the company is incorporated with the Council having 100% ownership but operates as an autonomous body with a separate management board comprising Councillors, officers and other parties (but without the Council having control at board level) with authority to act and make decisions within the remit of the company's function/objectives in accordance with its articles and memorandum of association.

Where the Council is disposing of assets to the company, it will need to secure best consideration or, where it wishes to sell at an undervalue, comply with its general Disposal Order to sell below best consideration only where there are economic, social and environmental considerations for doing so (Section 123 of the Local Government Act 1972). In addition, the Council will need to be mindful to ensure it is not falling foul of State Aid and where there may be any doubt, that it seeks clearance.

Strategy: the company will be taking its own decisions - not under Council direct control. The company will develop its strategy in line with its own strategic objectives. However, the Council would have some (but not necessarily significant) influence in this.

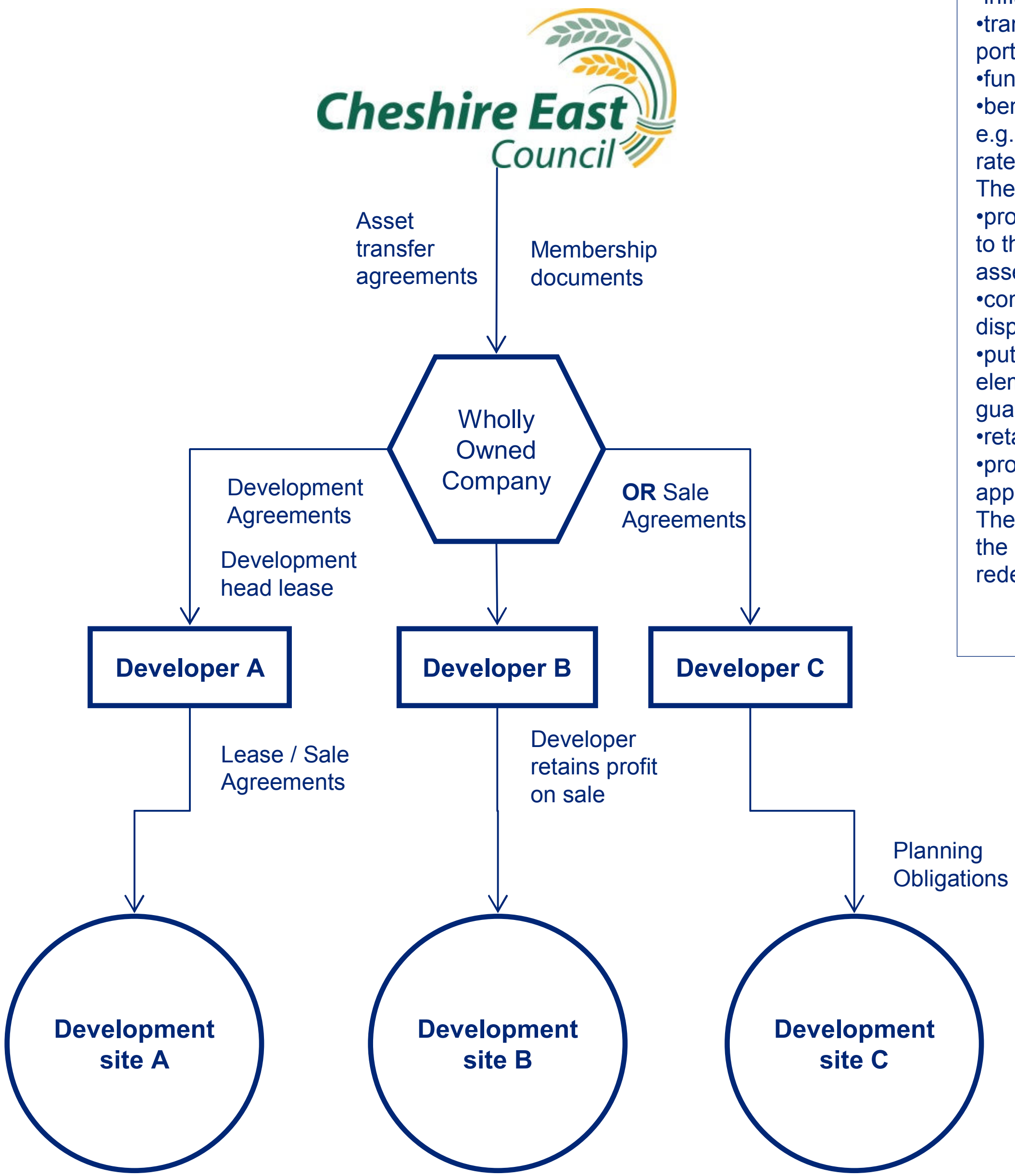
Risk: the Council is exposed to the risks associated with the transfer of assets. The company is exposed to the risks of a commercial body, but in the ordinary course of business the Council's exposure to these risks is limited by the nature of the vehicle (i.e. liability limited to the value of its shares, guarantee or capital interest, depending on the type of corporate vehicle chosen). We understand from Bevan Brittan that where members or officers of the Council are acting for the company, the Statutory Indemnity that they receive from the Council will not apply. Therefore, a fresh indemnity would be required by them. See Bevan Brittan Advice Note on the risks around members/officers acting for the company.

Financing: the Council finances the company to cover the costs of operation. [The Council provides the capital to the company in order for it to purchase the assets for development./ The Council accounts for the debtor upon transfer of the assets / assets are invested in return for equity.]. As the company becomes established operating income generated through the provision of professional service may mitigate the Council’s exposure. Profits on disposal of the assets are retained by the Company for future investment and/or returned to the Council.

Tax/Accounting: the company prepares accounts and tax returns in accordance with UKGAAP/IFRS and relevant legislation.

3. Key Attributes of shortlisted options

Option 4a: Delivery through wholly-owned but not controlled arms' length company where the Council transfers ownership of the assets



The Council:
•influences the WOC
•transfers ownership of the assets/property portfolio
•funds the operating costs of the WOC
•benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds

The WOC:
•provides professional services in relation to the sale and/or development of the assets
•conducts the sale of sites ear-marked for disposal
•puts in place all the necessary contractual elements: Sales/Development agreement, guarantees, collateral warranties etc.
•retains the proceeds of sales
•provides the capacity and expertise appointed from the market

The developer retains the profit on sale of the head lease or future sales proceeds of redeveloped asset.

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3. Key Attributes of shortlisted options

Option 4b: Delivery through wholly-owned but not controlled arms' length company where the Council retains ownership of the assets

As per Option 4a the Council establishes a limited company over which it exercises a level of influence over the activity of the company. However, in this Option 4b the Council retains the ownership of the assets/property portfolio.

Principal Activity: to invest in Cheshire East with a view to acting as a catalyst in promoting economic development through property development and job creation. Activities include leading land deals, promoting Cheshire East, masterplanning and pre-development, strategic acquisitions, provision of professional property expertise including development appraisals and relationship development with key investors/private sector parties and other stakeholders.

Asset Ownership*: the Council retains ownership of the assets/property portfolio working with the company on the asset/disposal strategy. This is a significant difference from Option 4a, it is envisage that the company provides a pure professional service thereby excluding [asset handling/transaction activities].*

Governance: the company is incorporated with the Council having 100% ownership but operates as an autonomous body with a separate management board comprising Councillors, officers and other parties (but without the Council having control at board level) with authority to act and make decisions within the remit of the company's function/objectives in accordance with its articles and memorandum of association.

Where the Council is disposing of assets to the company, it will need to secure best consideration or, where it wishes to sell at an undervalue, comply with its general Disposal Order to sell below best consideration only where there are economic, social and environmental considerations for doing so (Section 123 of the Local Government Act 1972). In addition, the Council will need to be mindful to ensure it is not falling foul of State Aid and where there may be any doubt, that it seeks clearance.

Strategy: the company will be taking its own decisions - not under Council direct control. The company will develop its strategy in line with its own strategic objectives. However, the Council would have some (but not necessarily significant) influence in this.

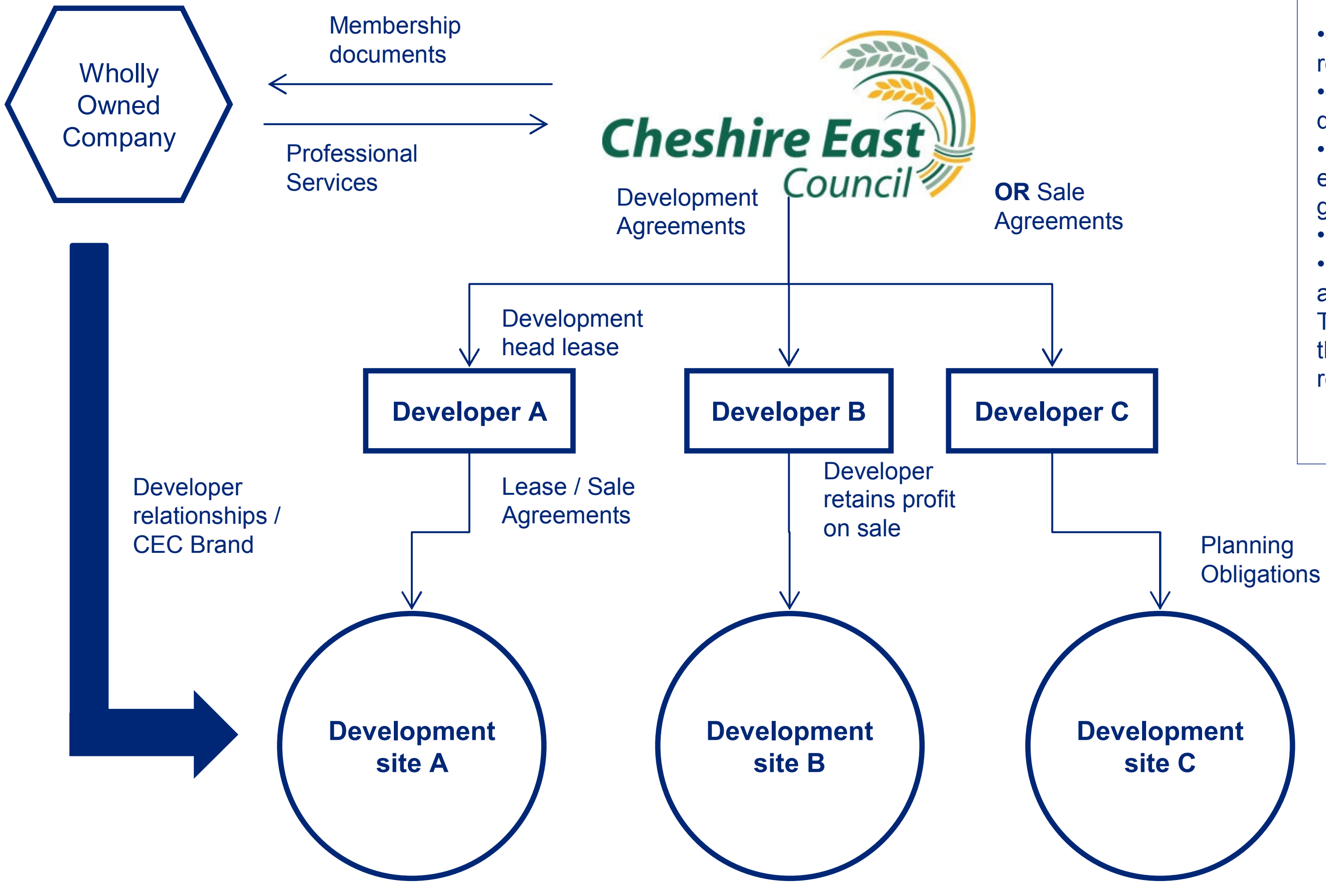
Risk: the company is exposed to the risks of a commercial body, but in the ordinary course of business the Council's exposure to these risks is limited by the nature of the vehicle (i.e. liability limited to the value of its shares, guarantee or capital interest, depending on the type of corporate vehicle chosen). We understand from Bevan Brittan that where members or officers of the Council are acting for the company, the Statutory Indemnity that they receive from the Council will not apply. Therefore, a fresh indemnity would be required by them. Please see the Bevan Brittan Advice Note on the risks around members/officers acting for the company

Financing*: costs of operation are recharged to the Council. As the company becomes established operating income generated through the provision of professional service may mitigate the Council's exposure. Profits on disposal of assets are retained by the Council in a defined/ring-fenced reserve for use in future economic development activities.*

Tax/Accounting: the company prepares accounts and tax returns in accordance with UKGAAP/IFRS and relevant tax legislation.

3. Key Attributes of shortlisted options

Option 4b: Delivery through wholly-owned but not controlled arms' length company where the Council retains ownership of the assets



The Council:
•influences the WOC
•retains ownership of the assets/property portfolio
•funds the operating costs of the WOC
•benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds
The WOC:

•competitively appoints a developer for site regeneration
•conducts the sale of sites ear-marked for disposal
•puts in place all the necessary contractual elements: Sales/Development agreement, guarantees, collateral warranties etc.
•retains the proceeds of sales
•provides the capacity and expertise appointed from the market
The developer retains the profit on sale of the head lease or future sales proceeds of redeveloped asset.

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3. Key Attributes of shortlisted options

Option 5: Public/Private Corporate JV

The Council undertakes a competitive process to appoint a private sector partner with whom it will create a corporate joint venture. The purpose of the joint venture is to undertake the development of the sites for disposal rather than act as an agent for disposal purposes only. For the purpose of the options appraisal the it is assumed the Council transfers the ownership of the assets/property portfolio to the Joint Venture and the Private sector partner contributes an equivalent equity amount.

Principal Activity: to invest in Cheshire East with a view to acting as a catalyst in promoting economic development through property development and job creation. Activities include leading land deals, promoting Cheshire East, masterplanning and pre-development, strategic acquisitions, provision of professional property expertise including development appraisals and relationship development with key investors/private sector parties and other stakeholders.

Asset Ownership: the Council transfers ownership of the assets/property portfolio which the joint venture undertakes to redevelop.

Governance: the company is incorporated with members and operates as an autonomous body with a separate management board made up expertise (Councillors and/or Officers) with delegated authority to act and make decisions within the remit of the company's function/objectives in accordance with its articles and memorandum of association. Conflicts of interest must be managed appropriately. See Bevan Brittan Advice Note in this respect. Where the Council is disposing of assets to the company, it will need to secure best consideration or, where it wishes to sell at an undervalue, comply with its general Disposal Order to sell below best consideration only where there are economic, social and environmental considerations for doing so (Section 123 of the Local Government Act 1972). In addition, the Council will need to be mindful to ensure it is not falling foul of State Aid and where there may be any doubt, that it seeks clearance.

Strategy: the company will be developing its own strategy. The Council will have an influence on the initial strategic aims, and thereafter will need to agree these with its partner on an on-going basis.

Risk: the Council is exposed to the risks associated with the transfer of assets. The company is exposed to the risks of a commercial body, but in the ordinary course of business the Council's exposure to these risks is limited by the nature of the vehicle (i.e. liability limited to the value of its shares, guarantee or capital interest, depending on the type of corporate vehicle chosen). We understand from Bevan Brittan that where members or officers of the Council are acting for the company, the Statutory Indemnity that they receive from the Council will not apply. Therefore, a fresh indemnity would be required by them. See Bevan Brittan Advice Note on the risks around members/officers acting for the company.

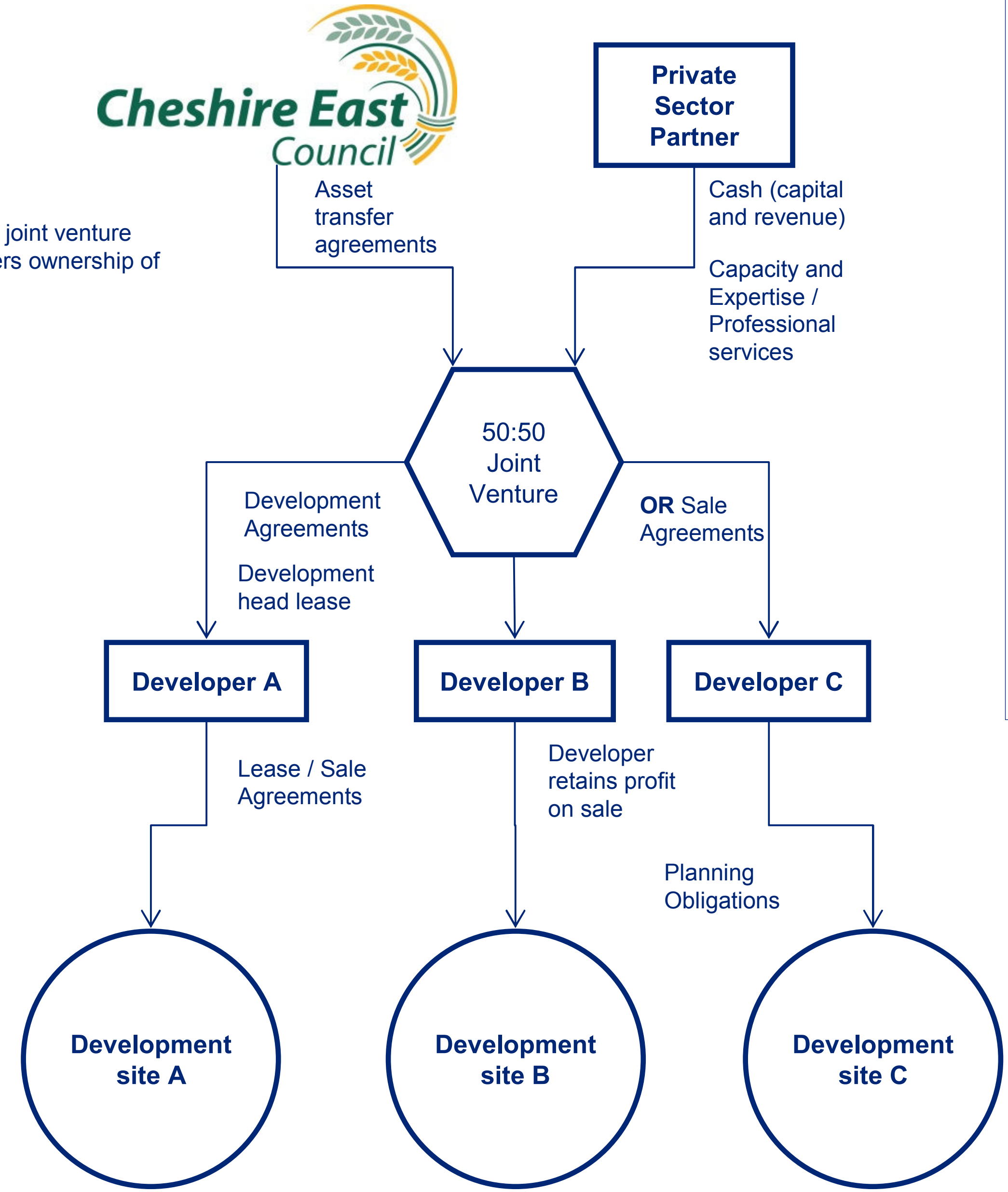
Financing: costs of operation, including revenue (staff/overheads etc) and capital (redevelopment) costs, are met by the joint venture partners in accordance with the JV agreement.

Tax/Accounting: the company prepares accounts and tax returns in accordance with UKGAAP/IFRS and relevant tax legislation.

A **LABV** is a limited liability special purpose vehicle owned 50/50 by the public and private sectors with the specific purpose of carrying out regeneration and/or renewal of development and/or operational assets. The public sector invests property assets into the vehicle which are then "value matched" by cash from the private sector. The JV may then use these assets as security to raise finance to bring forward further development. The public and private sector are equal equity holders and share profits equally.

3. Key Attributes of shortlisted options

Option 5: A public/private joint venture where the Council transfers ownership of the asset to the JV



The Council:
•transfers assets to the JV in return for equity
•benefits from the economic regeneration e.g. new more valuable asset, increase rates / CIL etc or sales proceeds
The private sector partner:
•invests cash to the equivalent value of the Council's assets
•Provides capacity and expertise to undertake property related activity
•Benefits from a share in the profits of the JV
The Joint Venture:
•competitively appoints a developer for site regeneration or acts as the developer
•conducts the sale of sites ear-marked for disposal
•puts in place all the necessary contractual elements: Sales/Development agreement, guarantees, collateral warranties etc.
•retains the proceeds of sales
The developer retains the profit on sale of the head lease or future sales proceeds of redeveloped asset.

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4. Evaluation Scoring Matrix

The shortlisted options has been scored against the evaluation criteria in accordance the following scoring criteria;

SCORE	CATEGORY	DEFINITION
0	Does not meet expected standard	The Option scores a 0 where it fails to meet the objectives of the Council in all cases in delivering its agenda for regeneration and economic development.
1	Unacceptable	The Option scores a 1 where it fails to meet the objectives of the Council in the majority of cases in delivering its agenda for regeneration and economic development.
2	Less than acceptable	The Option scores a 2 where it fails to meet the objectives of the Council in some cases in delivering its agenda for regeneration and economic development.
3	Acceptable	The Option scores a 3 where it meets the objectives of the Council in delivering its agenda for regeneration and economic development.
4	Good	The Option scores a 4 where it meets most, and exceeds in some objectives of the Council in delivering its agenda for regeneration and economic development.
5	Excellent	The Option scores a 5 where it exceeds in all objectives of the Council in delivering its agenda for regeneration and economic development.

5. Evaluation Criteria and weightings

The shortlisted options has been scored against the weighted evaluation criteria set out below. A detailed evaluation scoring and rationale is contained in Appendices A and B.

Criteria	Weighting
Is the Option an enabler to housing growth on Cheshire East owned assets?	10
Is the Option an enabler to jobs investment on Cheshire East owned assets?	10
Does the Option enable the Council to maximise development value to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	10
Does the Option enable the Council to minimise risks by providing dedicated delivery arrangements and additional property and commercial expertise?	10
Does the Option have the potential to act as a delivery vehicle to the Cheshire & Warrington LEP as well as Cheshire East Council?	10
Does the Option have the potential to secure private and Government investment into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	10
Does the Option enable the Council to create profitable and transparent relationships with developers and investors which benefits the local communities – potentially utilising the Developer Panel Framework currently being scoped in more detail with a view to procuring during 2013/14?	5
Does the Option enable the Council to maximise any financial benefits through a dedicated delivery vehicle?	10
Does the Option enable the Council to minimise tax exposure of a dedicated delivery vehicle?	10
Does the Option enable the Council to benefit from agile operating arrangements of the delivery vehicle but still retain control?	10
Is the Option flexible to allow the Council to make changes to its structure in the future to meet changing landscapes/priorities?	5

6. Summary of Evaluation Scores

	Option 1		Option 2		Option 3a		Option 3b		Option 4a		Option 4b		Option 5	
	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score
Total	14	125	38	340	37	330	43	390	27	240	34	310	30	280
Ranking	**7**		**2**		**3**		**1**		**6**		**4**		**5**	

Commentary:

- Option 1 lacks the capacity and focus to deliver the Council strategic economic and regeneration objectives.
- Option 2 has the potential to deliver increased capacity and expertise but still lacks focus on key sites i.e. it is likely that the team will retain responsibility for a broader range of Council objectives.
- Option 3a benefits from increased capacity, expertise and focus on key sites but exposes the Council in significant risk both financially and operationally through the transfer of assets which crystallises Stamp Duty Land Tax.
- Option 3b benefits from increased capacity, expertise and focus, minimises the Council's risk exposure and mitigates the impact of Stamp Duty Land Tax.
- Option 4a although similar to Option 3 in terms of capacity, expertise and focus exposes the Council to increase operational risk and complexity through a lack of control and therefore agility in operations and flexibility to change with the Council to meet future objectives. It also exposes the Council to Stamp Duty Land Tax on the transfer of assets
- Option 4b has the same benefits as Option 3a without the exposure to Stamp Duty Land Tax. However, it is unlikely to be accepted as a delivery vehicle for the wider Cheshire and Warrington LEP thereby restricting its use as a commercial entity.
- Option 5 benefits from the increased participation of the private sector potentially providing useful skills, capacity and economies of scale. However, it is likely to require the Council to commit significant capital resources thereby relinquishing control, it is unlikely to be flexible to meet a changing local government landscape and if exclusive may be perceived as the Council favouring one particular private sector entity and compromising transparency. In addition the private sector partner will direct benefits away from local society.

Conclusion:

- Option 3b is considered by the Council to best meet its objectives.

7. High level tax analysis and commentary on shortlisted options

We have issued to the Council separately a High Level Tax Considerations Paper. The main points applicable to the options under consideration are summarised below. Further commentary on the preferred option is set out later in this report.

Corporation tax

•The Council does not pay corporation tax on its own income or surpluses as it benefits from the blanket tax exemption for local authorities. If a separate corporate entity is established as a delivery vehicle (i.e. a company limited by shares/guarantee or a Community Interest Company) this entity would be within the charge to corporation tax on any profits it makes, resulting (for example under Option 3a) in potential tax leakage. Corporation tax (at a standard rate of 21% from April 2014 falling to 20% from April 2015) could then be payable on the entity's net rental income, trading profits from property development and capital gains on realisation of investment properties.

•The risk of corporation tax at the level of the delivery vehicle could be mitigated, for example under Option 3a, through the use of a limited liability partnership (LLP) structure; with the Council being the principal member and a 100% Council-controlled entity as a nominee. There would also be a corporation tax benefit for the Council in using an LLP structure for a public/private joint venture (Option 5). As an LLP is generally tax transparent, its taxable profits would then be deemed to accrue to the Council enabling it to be benefit from the local authorities' general corporation tax exemption. Use of an LLP structure, though, would be subject to obtaining legal advice to ensure it is within the Council's vires to operate in this way. Under the Localism Act, councils are required to undertake certain commercial activities through limited companies rather than LLPs.

•It should also be noted that an LLP would not generally be a suitable vehicle for a "not-for-profit" non-business activities. An LLP loses its tax transparent status if it does not carry on a business, with the result that it reverts to being treated as a company for tax purposes thus removing any tax benefit for the Council.

•If the delivery vehicle is established as a limited company but solely undertakes support functions for the local authority, its costs being recharged to the Council at cost without a view to profit (e.g. under Option 3b), the company's activities should arguably lack sufficient commerciality to constitute a trade for tax purposes. If it were considered to be trading, another possibility would be for the vehicle to be classified as a mutual trader provided its function is to provide services to its members with, broadly, any surpluses being returned to members through a refund of contributions. Under either of these options, tax leakage at the level of the delivery vehicle should then be minimal (as it would then only be taxed on any investment income or chargeable gains). .

7. High level tax analysis and commentary on shortlisted options

VAT

•The Council operates under a more beneficial VAT regime, in that is able to recover VAT incurred on costs which relate to exempt supplies (such as certain land/property disposals), so long as that VAT is, in total, less than 5% of the total VAT incurred by the Council. This 5% threshold is known as the 'de-minimis' threshold. So long as the Council does not breach this de-minimis, it can recover all of the VAT which it incurs and which relates to its own business and non-business activities. Whilst this presents some potential additional benefits to maintaining the status quo, we have not reviewed the Council's current partial exemption position, and as such have relied upon a potential benefit arising. In fact, depending on the partial exemption position of the Council, there may be a disincentive to the Council incurring VAT in relation to VAT exempt disposals, such that if the Council did breach its de-minimis threshold, it could lose all of its VAT on costs which relate to VAT exempt business activities.

Stamp Duty Land Tax (SDLT)

•Under any of the options where land interests would be transferred from CEC to the delivery vehicle (i.e. Options 3a, 4a and 5), SDLT charges could potentially be triggered. In particular circumstances, SDLT may be capable of mitigation through use of a tax transparent vehicle (LLP or partnership) or SDLT group relief (which can apply to property transfers between companies in a 75% group relationship as defined under the legislation).

•A transfer of property from CEC to an LLP which is wholly controlled by the Council (e.g. under Option 3a) should not occasion any SDLT charges. However, if the LLP's business was not mainly that of construction but was primarily dealing in land/property investment, it may be treated as a Property Investment Partnership (PIP). If the LLP were classified as a PIP, SDLT may arise in certain circumstances in the future if external investors were to be introduced into the LLP (Option 5) and/or capital ie proceeds from disposals, were returned to the Council within three years of the original transfer).

•A transfer of property from CEC to a company limited by shares (e.g. under Option 3a or 4a) should be eligible for SDLT relief provided the Council's shareholding interest in the vehicle is 75% or more. SDLT group relief could be withdrawn if CEC's shareholding interest in the vehicle were to fall below 75% in the future (broadly, within three years following the original property transfer).

•By contrast, a property transfer from CEC to a company limited by guarantee would be fully chargeable to SDLT as the delivery vehicle (not having issued share capital) would not qualify for group relief.

7. High level tax analysis and commentary on shortlisted options (cont)

Tax Commentary	Option 1	Option 2	Option 3a	Option 3b	Option 4a	Option 4b	Option 5
Corporation Tax (CT)	Neutral – CEC exempt from CT	As Option 1	CT payable on taxable surpluses within delivery vehicle unless structured as a tax transparent Limited Liability Partnership (LLP).	Risk of CT leakage minimised if vehicle is not trading commercially or is structured as LLP (as in Option 3a).	As Option 3a	As Option 3b	As Option 3a – although use of a Limited Partnership or Limited Liability Partnership should maintain neutrality for the Council's share of the surplus
Stamp Duty Land Tax	Neutral – SDLT generally payable on land/ property acquisitions.	As Option 1	Adverse SDLT position if delivery vehicle is company limited by guarantee, otherwise SDLT neutral on land transfers from CEC to LLP or company limited by shares.	SDLT neutral as in Option 1 (Land interests remain in CEC, so no SDLT issues on formation of delivery vehicle)	As Option 3a, provided CEC holds 75% or more of limited company shares. Complex SDLT partnership rules to be considered (under LLP route).	As Option 3b	As Option 4a
Value Added Tax	Neutral - depending on CEC's de-minimis position	As Option 1	Dependent on specific transactions, should be capable of VAT neutral treatment	As Option 3a	As Option 3a	As Option 3a	As Option 3a

8. Analysis and commentary on preferred option (Option 3b)

- Option 3b is considered by the Council to best meet its objectives.
- As set out in the Council's brief, commentary and analysis is required on the preferred option. As set out earlier in this report the preferred option from the qualitative options has been to be Option 3b: *Delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the asset.*
- Deloitte has commented on the following areas as set out in section 2 of the Council's project brief. The areas the Council required commentary in are set out below;
- Governance and Scope;
- Financing of the Vehicle and Corporate Financial Strategy;
- Financial and Accounting Matters;
- Risk Management.
- As set out earlier in the report the timetable for this work has been significantly reduced. Consequently at this interim point some aspects of the required brief have not yet been completed. Where this is the case, we have stated the additional work which is required.

8. Preferred Option: *Governance and Scope*

Governance

•The Council preferred option (3b) is the delivery through wholly-owned and controlled arms' length company where the Council retains ownership of the asset (hereafter referred to as "the Company"). We understand the Council has given some early consideration to the governance arrangements for the Company although at this point in time proposed governance arrangements were still being considered by the Council and arrangements were not yet finalised.

•**Board representation**: our view is that the Board should be constituted with a relatively small number of individuals. In our experience perhaps a maximum of six (containing a mixture of senior officers and Members) would provide the appropriate balance of focus, skills and resource to lead the strategic direction of the Company. Larger numbers of individuals may result in reduced focus and strategic direction.

•**Potential conflicts of interest:** the Council needs to consider the perception of conflicts even if no actual conflict exists. (ie Council officers or elected Members making decisions at Council and Company Board level). To manage conflicts (real or perceived) the Council would need to consider the appropriateness of Councillors acting within the Council on any matter which has a significant impact on the Company. This issue is considered in detail in Bevan Brittan's Advice Note.

•**Council assets**: the preferred option does not anticipate the transfer of Council assets to the Company. The ownership and management of the Council assets will therefore be retained by the Council. The Council and Company will need to consider how the current arrangements regarding the management of the Council assets are impacted as a result of the newly formed Company in order to provide the management arrangements for the proper controls, management and stewardship of Council assets.

•**Decision making structures**: decision making structures in the new Company would need to be agreed, approved and formalised. The Council will need to agree the parameters of the Company decision making. The Council will need to consider how the decision and recommendations and general business of the running the Company interface with existing Council decision making and approval structures. For example, which decisions require Cabinet approval or delegated approval from the relevant portfolio holder, chief officer etc.

•**Company accountability and scrutiny**: we are informed by the Council that the activities of the Company would fall within the remit of the Portfolio Holder for Prosperity & Economic Regeneration and would be subject to the normal scrutiny arrangements of the Council. The Council needs to finalise these reporting lines to ensure appropriate arrangements are in place to manage the performance of the Company.

8. Preferred Option: *Governance and Scope (2)*

Scope

•Under Option 3b, the scope of the Company would be'

•To accelerate growth in terms of housing completion and jobs investment on Council owned assets;

•To provide dedicated delivery arrangements and property and commercial expertise;

•To secure additional private and Government investment into the Borough through creating the focus on delivery and providing a mechanism to deliver schemes to the Cheshire & Warrington LEP as well as the Council;

•Create profitable and transparent relationships with developers and investors which deliver financial and regeneration benefits;

•To maximise any financial benefits and tax efficiencies of a dedicated delivery vehicle which is Council controlled but can benefit from agile operating arrangements and can be reviewed at a later date.

•**Expansion to Cheshire & Warrington Local Enterprise Partnership (LEP).** We understand that going forward the Council may wish to consider broadening the scope of the Company to operate outside of the Council's geographic boundaries potentially providing advisory and operational delivery services to the local LEP. The basis for this broadening of scope has not been considered at this point. Depending on the scale of business provided for other organisations this could impact the Council's tax position. In addition, the Council would need to develop the arrangements in terms of the services provided; the scale of resources needed and the commercial arrangements between the Council and other Councils in the LEP area.

•**Expansion to other Council services:** The Council may also be interested in the future widening of the Company to provide additional trading activities in other sectors. At this point, the Council does not have specific services in mind and this will need to be considered at a future point. Dependent on the nature and scale of services to be provided, the Council will need to consider the vires and also any VAT implications and potential impacts on any Teckal exemption.

Further work

•**Council constitution:** We understand the Council is in the early stages of considering how the implementation of this Company will impact on the Council's current constitution. We have not reviewed the Council's current constitution but would recommend that the Council establish the impact on the current constitution prior to the implementation of the new Company.

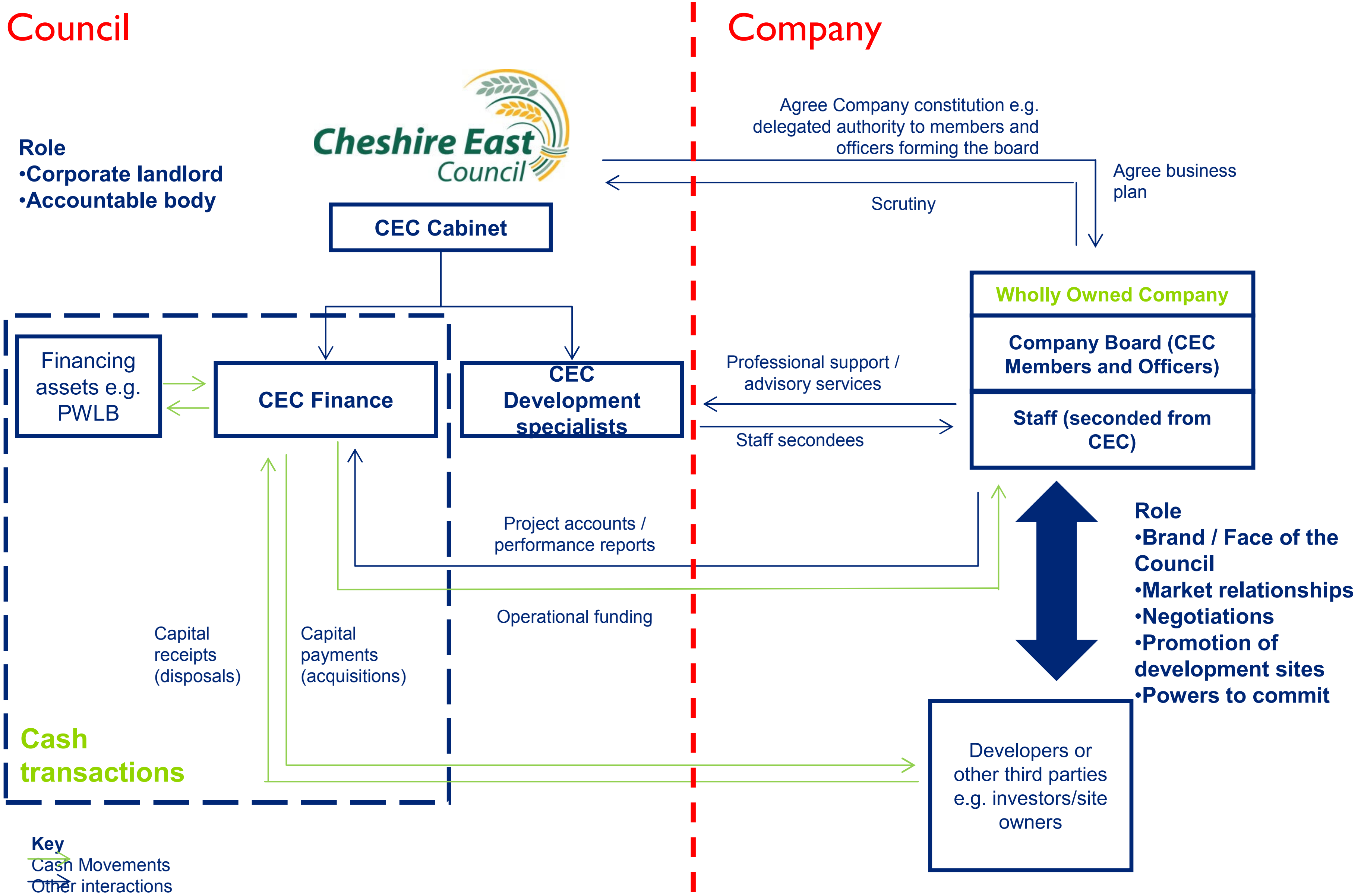
8. Preferred Option: *Financing of the Vehicle and Corporate Financial Strategy (1)*

- **Asset Ownership**: as stated earlier in this report, the preferred option does not anticipate the transfer of Council assets to the Company. Therefore the financial transaction associated with the financing, maintaining and disposing of capital assets are expected to follow existing arrangements.
- **Asset recognition**: it is anticipated that Council assets will continue to be recognised on the Council's balance sheet. If specific assets are acquired, the Council will need to continue to consider the appropriate accounting treatment for each asset, recognising the nature of the asset and its intended use.
- **Asset disposal**: it is anticipated that capital receipts arising from the disposal of Council owned assets will continue to be accounted for in line with current arrangements.
- **Financing of asset acquisition:** it is anticipated that the financing of asset acquisition will continue to be in line with current arrangements. Where assets are funded from borrowing, such borrowing is expected to be Council borrowing funded through the normal routes eg Public Works Loan Board.
- **Earmarked Reserve / Revolving Fund**: the Council has envisaged some form of "revolving fund" to facilitate asset acquisition. Given capital financing transactions will be retained in the Council, it may be that the benefits of the revolving fund could be achieved through the use of an earmarked reserve (ie the capital receipts arising from the disposal of certain Council owned assets being ringfenced to finance strategic acquisition of key sites). The Council would need to consider
    - Which assets form part of such an arrangement?
    - The governance for such an arrangement and the decision making regarding use of specific reserve?
    - The potential impact on the financial management of Council where significant capital receipts may be earmarked for specific purposes.
    - The impact on the Council's constitution.
- **Treasury management:** where the Council wish to consider the separation of the financial resources to acquire strategic land assets, the treasury management arrangements will need to be agreed. At this stage it is not envisaged that separate investment and treasury management arrangements are put in place to specifically manage the ringfenced resources. However, depending on scale, there may be some specific sites where the Council may wish to isolate disposal proceeds in a specific investment or account. If such an arrangement is considered necessary then the Council's treasury management policy will be needed to be clarified and amended accordingly.

8. Preferred Option: *Financing of the Vehicle and Corporate Financial Strategy (2)*

- **Set up and operating costs**: the ownership and management of the Council assets will be retained by the Council. The Council and Company will need to consider how the current arrangements regarding the management of the Council assets are impacted as a result of the newly formed Company in order to continue to the proper controls, management and stewardship of Council assets.
- **Company set up costs**: the Company would naturally incur some set up costs and these would need to be recovered from the changes for its services. The precise amount of the set up costs has not been estimated although may include company formation, costs associated with revised branding and literature and one off costs associated with premises etc. The Company would need to agree with the Council the arrangements to recover such costs.
- **Operating costs**: the primary operating costs are expected to be staff costs. At this point, the Council estimates that the that the staffing of the Company would be approximately £500,000 per annum. We have not seen the analysis underpinning this amount. As the intended role and scope of the Company is developed, the Council will need to satisfy that this amount is reasonable and includes any staff overheads and support services costs etc. Consideration would need to be given to how these costs are accounted for and the Company would need to agree with the Council the arrangements to recover such costs.
- **Proposed structure**: for discussion we have set out overleaf a proposed structure for the interface between the Council and Company. Final arrangements will be subject to clarification on a range of matters, for example, governance arrangements.

8. Preferred Option: *Financing of the Vehicle and Corporate Financial Strategy (3)*



8. Preferred Option: *Financial and Accounting Matters*

VAT

- Option 3b requires the creation of a separate legal entity from the Council which, it is envisaged, will enter into service level agreements with the Council in order to achieve its aims and objectives. The separate vehicle is likely to be making supplies which will fall within the scope of VAT. As such, it is expected that the chosen vehicle will be required to register separately for VAT, charge and account for VAT on the taxable (likely standard rated) supplies which it makes, and submit periodic VAT returns.
- VAT registration of the chosen vehicle will allow it to recover VAT which it incurs on its costs, and which relate to the taxable supplies which it makes. This will be necessary regardless of type of entity which is chosen for the vehicle. If a Limited Liability Partnership is selected, it will be required to register as a corporate body.
- It may be possible for the chosen vehicle and the Council to set up a VAT Group, which would mean that supplies between it and the Council would be disregarded for VAT purposes, and a single periodic VAT return could be submitted. However, whilst this is possible, HMRC do not allow a Local Authority member of a VAT Group to benefit from the "Section 33" partial exemption de minimis provisions (which apply only to specified bodies), which would mean that the Council would potentially no longer be able to recover VAT which it incurs and which relates to VAT exempt supplies. For this reason we do not recommend that a VAT Group registration is pursued without careful consideration of this potentially detrimental issue.
- As Option 3b does not contemplate the transfer of land and property assets to the chosen vehicle, it appears unlikely at this time that the chosen vehicle will make VAT exempt supplies, which should mean that it shouldn't suffer any restriction on the recovery of VAT incurred on its costs. This is in contrast to the options which do envisage the transfer of land and property assets to the chosen vehicle (such as Option 3a) where there would be an increased risk of irrecoverable VAT arising in the chosen vehicle. If land and property assets were transferred and those assets were developed for onward sale to residential developers or Housing Associations, for example, there is a significant risk that any onward disposal of those assets would be exempt from VAT – leading to a corresponding restriction in the chosen vehicle's ability to recover VAT incurred on its costs – this may include VAT which the Council has to charge the chosen vehicle, as a result of any options to tax which the Council may have made in respect of the specific land and property assets.
- Keeping the assets in the hands of the Council removes this risk from the chosen vehicle, although not entirely as the Council may be the entity which makes VAT exempt supplies of the land and property assets. However, as the Council benefits from the "Section 33" partial exemption de minimis provisions, the impact of making VAT exempt supplies may be limited. We have not considered the Council's partial exemption position, as it is outside of the scope of this report.

8. Preferred Option: *Financial and Accounting Matters*

Corporate Tax

- If under Option 3b, the vehicle is designed from a public procurement perspective to fall within the *Teckal* exemption, we would anticipate that any corporation tax leakage within the delivery vehicle (assuming it is established as a limited company) should be minimal (i.e. corporation tax being limited to any investment income or chargeable gains). This is on the basis that the company's function would be to undertake an essential part of the Council's activities with its costs being recharged to the Council without a commercial profit motive. An LLP structure would generally be incompatible with a non-business cost centre activity of this nature. But, in principle, under this scenario, the vehicle should not be viewed as carrying on a commercial trading activity so would not be expected to generate taxable surpluses for corporation tax purposes. As a fall-back position, if it were deemed to be trading for tax purposes, the company might alternatively qualify for mutual trader status assuming it exists to provide services to its members and its constitution meets certain conditions derived from case law. The tax effect of mutual status should be similar to the company being a non-trader for tax purposes (the company not being taxed on surpluses from trading with its members).
- On balance, it may be easier to support the company's not-for-profit or mutual status for tax purposes if it was established as a company limited by guarantee rather than shares. However, if a company limited by shares is preferred for legal flexibility reasons, it should be feasible to achieve the same status provided suitable wording is included within the constitution. We would recommend that the company's constitution and the contractual documentation should be carefully reviewed from a tax viewpoint prior to implementation to assist this tax filing tax position and a prior ruling is sought from HMRC on the company's "non-trading" tax status
- Alternatively, if the vehicle under Option 3b is established with a view to generating commercial profits on an arm's length basis from third parties as well as the Council, an LLP structure would be beneficial than a limited company from a corporation tax perspective (as in Option 3a) as it should allow the Council to shelter its share of income within the LLP from corporation tax under the local authority tax exemption. This would be subject to the Council having the legal vires to operate through the medium of an LLP in these circumstances.

Stamp Duty Land Tax (SDLT)

- Option 3b should be neutral from an SDLT perspective as there would be no transfers of property between CEC and the delivery vehicle.

8. Preferred Option: *Financial and Accounting Matters*

Accounting, audit and financial reporting

•We have assumed the use of a private limited company.

•Company directors are responsible for operation and management of the company and must keep accounting records which are sufficient to show and explain the company's transactions and to enable them to ensure that any accounts required be prepared to comply with the requirements of the Companies Act (386 of the Companies Act 2006).

•Company directors are responsible for ensuring that the company prepares and delivers annual accounts unless the company is dormant and it is the subsidiary of an EEA parent who agrees to guarantee the company's liabilities (section 448A). These accounts must be audited unless the company meets the small company exemption criteria contained within section 477 of the Companies Act.

•To qualify as small, the company must meet two of the following conditions: turnover equal to or less than £6,500,000, balance sheet total equal to or less than £3,260,000 (asset side only) and employees equal to or less than 50. If the company is part of a group, the group must meet those criteria given above (section 383). A company which is unable to claim audit exemption on the basis of qualifying as small or dormant, might still be exempt from audit if it is a subsidiary of an EEA parent and the parent guarantees its outstanding liabilities (section 479C).

•A company is not entitled to the exemption if it was at any point part of an ineligible group (listed plc, certain financial institutions etc – sections 384 and 478). The deadline for the submission of the accounts for a private limited company is nine months from the accounting reference date (albeit slightly different rules for first periods of more than 12 months where the filing deadline is 21 months from incorporation).

•In addition to the submission of annual accounts, the company must also prepare an annual return which is essentially a snapshot of the company at that given time. It must be filed within 28 days of its made up to date. Any changes to the following must also be filed with Companies House:
•Share capital (allotment, reduction etc.)
•Officers
•Constitution
•Registered office

8. Preferred Option: *Financial and Accounting Matters*

Financial skills:

•The Company will need access to appropriate financial skills. Dependent on the finally agreed scope of the Company, it is likely that the Company would require the following financial skills:

•Appropriate commercial acumen with experience the financial structuring of innovative transactions to achieve the Council's objectives around growth; maximisation of asset value and financial benefits to the Council;

•Expertise in the preparation of required financial statements of the Company;

•An understanding of the local government accounting requirements (depending on the finally agreed governance arrangements).

•Skills relating to accounts preparation and local government finance skills may be available on a call off arrangement from the Council. It may that the commercial acumen and financial structuring skills can be provided by the newly appointed Development Executives, could be available through advisory support or could be provided by a separate experienced hires as the Company moves forward.

Employment model:

•We understand from the Council that the estimated staffing and operating costs would be in the region of £0.5m per annum and that most of the staff are likely to be Council employees, or Council-contracted staff. Under Option 3b there may be a transfer of existing Council staff under TUPE to the separate corporate vehicle. Where this is the case, the Council would need to comply with TUPE Regulations. This issue is considered in detail in Bevan Brittan's Advice Note.

•Looking forward, the Council also needs to be mindful that it will need to provide for any potential transfer of staff should the Company expire or be terminated.

•Given the timescales envisaged for the implementation of this proposed Company, the Council may therefore wish to consider a secondment model of staff to the Company at least in the first instance.

8. Preferred Option: *Risk Management*

Risk	Impact	Mitigation
Inadequate resourcing of the company	The Company delivers a poor service and fails to meet its objectives. Further costs would be required to increase the capacity of the team.	The Council will need to carefully plan the operating functions of the Company to better understand its resource requirements.
Fails to meet business needs / deliver the Council's primary objective i.e. growth in housing and jobs	The Company delivers a poor service and fails to meet its objectives. Further scrutiny/control required on the operational aspects of the Company. Further costs may therefore be incurred e.g. in sourcing the appropriately skilled resource.	The Council will need to clearly define the Company's operating parameters within the Company's constitution and business plan such that it is focuses on targeting the Council's primary objectives. It will also need to ensure the Company is provided with appropriate resources and skills.
Integration with the Council	The Company fails to operate cohesively with the in-house/retained team causing possible duplication of work or inefficient working practices. Further costs may be incurred	The Council will need to ensure there are clear operating boundaries and protocols/procedures such that any interface between the Council and the Company is efficient. It is therefore essential that staff of both the Council and the Company clearly understand their respective roles and responsibilities.
Unclear constitution/role/responsibilities/authority	The Company operates outside its anticipated boundaries further increasing the Council's exposure to operational/reputational risk.	The Council will need to ensure the Company's constitution and business plan is clear and the Company understands its roles and responsibilities and how much delegated authority it has.
Company lacks flexibility to respond to future changes	The Council is unable to utilise the Company to meet potential future objectives. Further costs may be incurred in enabling the flexibility or creating an alternate tool.	The Council will need to give careful consideration to the level of flexibility it allows the Company through its constitution. A careful balance of control and risk will need to be understood.

8. Preferred Option: *Risk Management*

Risk	Impact	Mitigation
Company lacks agility to deliver it primary function	The Council fails to meet its objectives with a potential financial and reputational risk.	The Council will need to give careful consideration to the level of flexibility it allows the Company through its constitution. A careful balance of control and risk will need to be understood.
The Council does not have the required resource to effectively control/manage the Company	The Council lacks the visibility required to maintain scrutiny over the Company with a potential impact on its reputation.	The Council will need to ensure it clearly understands its role as the accountable body and therefore the level of resource required to maintain appropriate scrutiny levels of scrutiny without impacting on the Company's ability to remain agile and flexible.
The Council exerts control inhibiting the Company's ability to be agile and flexible	The Company fails to perform efficiently in meeting its primary objective which will have a financial impact.	The Council will need to ensure it clearly defines its own operating parameters ensuring it gets the right balance of control and risk.
The Company fails to develop beneficial relationships with developers	The Company fails to perform and deliver its primary objective. Further resources and cost may be required to develop beneficial relationships.	The Council will need to ensure the Company is staffed with individuals with the correct skills to enable the Company to operate efficiently.
The Company operates outside of its defined parameters	The Company exposes the Council to additional financial and reputational risk. Further costs may be required to support operations not authorised.	The Council will need to ensure the Company's constitution and business plan is clear and the Company understands its roles and responsibilities and how much delegated authority it has.
The Company acts without delegated authority	The Company exposes the Council to additional financial and reputational risk. Further costs may be required to support operations not authorised.	The Council will need to ensure the Company's constitution and business plan is clear and the Company understands its roles and responsibilities and how much delegated authority it has.

Appendices

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Appendix A – Evaluation scoring for shortlisted option

	Criteria	Weighting	Option 1		Option 2		Option 3a		Option 3b		Option 4a		Option 4b		Option 5	
			Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score
1	Is the Option an enabler to housing growth in Cheshire East?	10	1	10	2	20	3	30	3	30	3	30	3	30	3	30
2	Is the Option an enabler to jobs investment on Cheshire East owned assets?	10	1	10	4	20	5	50	5	50	2	20	3	30	2	20
3	Does the Option enable the Council to maximise development value to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	10	0	0	3	30	4	40	4	40	4	40	4	40	4	40
4	Does the Option enable the Council to minimise risks by providing dedicated delivery arrangements and additional property and commercial expertise?	10	0	0	3	30	1	10	3	30	1	10	3	30	4	40
5	Does the Option have the potential to act as a delivery vehicle to the Cheshire & Warrington LEP as well as Cheshire East Council?	10	0	0	2	20	4	40	4	40	2	20	2	20	1	10
6	Does the Option have the potential to secure private and Government investment into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	10	1	10	3	30	5	50	5	50	4	40	4	40	3	30
7	Does the Option enable the Council to create profitable and transparent relationships with developers and investors which benefits the local communities – potentially utilising the Developer Panel Framework currently being scoped in more detail with a view to procuring during 2013/14?	5	1	5	3	15	4	20	4	20	3	15	3	15	2	10

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Appendix A – Evaluation scoring for shortlisted option

	Criteria	Weighting	Option 1		Option 2		Option 3a		Option 3b		Option 4a		Option 4b		Option 5	
			Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score	Score	Weighted score
8	Does the Option enable the Council to maximise any financial benefits through a dedicated delivery vehicle?	10	2	20	4	40	3	30	4	40	3	30	4	40	3	30
9	Does the Option enable the Council to minimise tax exposure of a dedicated delivery vehicle?	10	5	50	5	50	0	0	3	30	0	0	3	30	3	30
10	Does the Option enable the Council to benefit from agile operating arrangements of the delivery vehicle but still retain control?	10	1	10	4	40	4	40	4	40	2	20	2	20	3	30
11	Is the Option flexible to allow the Council to make changes to its structure in the future to meet changing landscapes/priorities?	5	2	10	5	25	4	20	4	20	3	15	3	15	2	10
	Total [maximum score 500]		14	125	36	320	37	330	43	390	27	240	34	310	30	280

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Appendix B – Evaluation rationale – Option 1

Criteria	Option 1
Is the Option an enabler to **housing growth** in Cheshire East?	- lack of clarity over roles and responsibilities - potential conflict of interest
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the scale and nature of the current developments sites is not likely to accelerate job creation beyond current levels.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- Development Executive is a short term post. - lack of capacity and focus on key sites
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- the Council retains all risks and does not have the capacity to manage, anticipate and mitigate potential risks.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- the Council does not have the capacity to perform this function in addition to realising its economic and regeneration ambitions.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- potentially lacks capacity, focus and innovation to secure additional competitive funding sources
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- there is a current lack of control over development as a result of the transaction being mainly land deals.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- current arrangements lack the focus and dedicate resource to maximise financial benefits.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- the Council benefits from public sector tax exemptions.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- the current arrangements does not include the capacity or tools to deliver the agility required.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- the current arrangements do not include the capacity or tools to deliver the agility required.

Appendix B – Evaluation rationale – Option 2

Criteria	Option 2
Is the Option an enabler to **housing growth** in Cheshire East?	- lack of clarity over roles and responsibilities - potential conflict of interest
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- depending on the nature of the increased capability and capacity this option has the potential to improve on Option 1 but is not likely to deliver significantly improved focus.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- as an internal option there still may be a lack of focus as a result of operational distraction with other Council priorities.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- the Council retains all the risk however it recruits additional expertise to manage, anticipate and mitigate risks.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- with increased capacity it may offer the flexibility. However, it is unlikely to delivery excess capacity as a result of external recruitment to meet the additional delivery needs of other local authorities
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- provides additionality and may demonstrate an increased desire/focus to deliver economic and thereby meeting central government funding criteria.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- with the increased capacity, skill and focus there is a potential to increase the ability to create profitable, transparent relationships. - profits are retained by the Council.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- increasing capacity and expertise has the potential to allow the Council to focus on delivering financial benefits. - it also does not incur the costs of formation of the company or other associated overheads such as additional statutory Companies Act requirements e.g. statutory filings.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- the Council benefits from public sector tax exemptions.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- increasing the capacity of the team and changing the teams operating procedures has the potential to deliver agility with council retaining a great deal of control.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- increasing the capacity of the team and changing the teams operating procedures has the potential to deliver future change. The most flexible option as companies and JVs can still be selected for sites.

Appendix B – Evaluation rationale – Option 3a

Criteria	Option 3a
Is the Option an enabler to **housing growth** in Cheshire East?	- Company has a clear delineation of responsibility from the Council. - the Company has the ability to lobby on behalf of the Council with the perception of separability.
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the creation of a dedicated delivery vehicle is likely to deliver significant increased focus on the strategic sites and act as an enabler for job creation.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- As a separable entity there is an increased in focus through a dedicated delivery team made up of property and commercial expertise.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- although there is a focus on mitigating risks through the recruitment of expertise transferring the assets introduces significant risk exposure to the Council.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- a wholly owned company controlled by the Council is potentially an acceptable option to other local authorities.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- the wholly owned company offers an increased focus to development. - it also demonstrates an innovative approach to economic growth. - also demonstrates control over how the funds are used.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- an arms length vehicle is perceived to increase the ability of the Council to develop profitable relationships. - with it being a public owned company transparency is inherent in its formation. - profits are also retained by the Council.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- - increasing the capacity to focus on maximising financial benefits - however transferring the assets exposes the Council to increased risks for example in a company failure scenario - costs incurred on set up and associated overheads.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- as well as incurring typical trading entity taxes transferring the assets may crystallise SDLT.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- the company has the potential to deliver an agile solution depending on its terms of reference. Additionally the Council retains control of option 3.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- a wholly owned company has the ability to change. - the Council controls the company and can therefore implement change.

Appendix B – Evaluation rationale – Option 3b

Criteria	Option 3b
Is the Option an enabler to **housing growth** in Cheshire East?	- Company has a clear delineation of responsibility from the Council. - the Company has the ability to lobby on behalf of the Council with the perception of separability.
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the creation of a dedicated delivery vehicle is likely to deliver significant increased focus on the strategic sites and act as an enabler for job creation.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- As a separable entity there is an increased in focus through a dedicated delivery team made up of property and commercial expertise.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- although wholly owned and therefore the Council still retains the risk in this option it transfers the management and mitigation of the risk to a dedicated team not distracted by alternate activity.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- a wholly owned company controlled by the Council is potentially an acceptable option to other local authorities.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- the wholly owned company offers an increased focus to development. - it also demonstrates an innovative approach to economic growth. - also demonstrates control over how the funds are used.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- an arms length vehicle is perceived to increase the ability of the Council to develop profitable relationships. - with it being a public owned company transparency is inherent in its formation. - profits are also retained by the Council.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- increasing the capacity to focus on maximising financial benefits without the risk of transferring significant capital resources - costs incurred on set up and associated overheads.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- the company incurs typical taxes associated with a trading entity which will need to be managed/mitigated.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- the company has the potential to deliver an agile solution depending on its terms of reference. Additionally the Council retains control of option 3.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- a wholly owned company has the ability to change. - the Council controls the company and can therefore implement change.

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Appendix B – Evaluation rationale – Option 4a

Criteria	Option 4a
Is the Option an enabler to **housing growth** in Cheshire East?	- Company has a clear delineation of responsibility from the Council. - the Company has the ability to lobby on behalf of the Council with the perception of separability.
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the loss of direct Council control and the transfer of assets may not provide the necessary focus on local job creation.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- As a separable entity there is an increased in focus through a dedicated delivery team made up of property and commercial expertise.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- although there is a focus on mitigating risks through the recruitment of expertise transferring the assets introduces significant risk exposure to the Council.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- a wholly owned company not controlled by the Council is potentially a less acceptable option to other local authorities.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- the wholly owned company offers an increased focus to development. - it also demonstrates an innovative approach to economic growth. - lacks the control over how the funds are used.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- the decrease in control over the company may be perceived as a loss in control over the profits and transparency of the company.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- increasing the capacity to focus on maximising financial benefits - however transferring the assets exposes the Council to increased risks for example in a company failure scenario - costs incurred on set up and associated overheads.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- as well as incurring typical trading entity taxes transferring the assets may crystallise SDLT.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- the company has the potential to deliver an agile solution depending on its terms of reference. However, the Council loses control of option 4.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- a wholly owned company has the ability to change. - the Council lacks control and therefore change the terms of reference could be more complicated.

Appendix B – Evaluation rationale – Option 4b

Criteria	Option 4b
Is the Option an enabler to **housing growth** in Cheshire East?	- Company has a clear delineation of responsibility from the Council. - the Company has the ability to lobby on behalf of the Council with the perception of separability.
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the loss of direct Council control may not provide the necessary focus on local job creation.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- As a separable entity there is an increased in focus through a dedicated delivery team made up of property and commercial expertise.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- although wholly owned and therefore the Council still retains the risk in this option it transfers the management and mitigation of the risk to a dedicated team not distracted by alternate activity.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- a wholly owned company not controlled by the Council is potentially a less acceptable option to other local authorities.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- the wholly owned company offers an increased focus to development. - it also demonstrates an innovative approach to economic growth. - lacks the control over how the funds are used.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- the decrease in control over the company may be perceived as a loss in control over the profits and transparency of the company.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- increasing the capacity to focus on maximising financial benefits without the risk of transferring significant capital resources - costs incurred on set up and associated overheads.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- the company incurs typical taxes associated with a trading entity which will need to be managed/mitigated.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- the company has the potential to deliver an agile solution depending on its terms of reference. However, the Council loses control under option 4.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- a wholly owned company has the ability to change. - the Council lacks control and therefore change the terms of reference could be more complicated.

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Appendix B – Evaluation rationale – Option 5

Criteria	Option 5
Is the Option an enabler to **housing growth** in Cheshire East?	- Company has a clear delineation of responsibility from the Council. - the Company has the ability to lobby on behalf of the Council with the perception of separability.
Is the Option an enabler to **jobs** investment on Cheshire East owned assets?	- the creation of a joint venture may reduce the focus on local job creation.
Does the Option enable the Council to **maximise development value** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- As a separable entity there is an increased in focus through a dedicated delivery team made up of property and commercial expertise.
Does the Option enable the Council **minimise risks** to the Council by providing dedicated delivery arrangements and additional property and commercial expertise?	- a JV provides the opportunity to transfer the risk to the private sector who is then contractually incentivised to minimise and manage it.
Does the Option have the potential to act as a delivery vehicle to the **Cheshire & Warrington LEP** as well as Cheshire East Council?	- it is unlikely that a JV will be an acceptable delivery vehicle for other local authorities.
Does the Option have the potential to **secure private and Government investment** into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes?	- although the JV is potentially demonstrating innovation and creates a dedicated "brand" to delivering economic growth it may restrict access to further private sector investment beyond that of the private sector partner.
Does the Option enable the Council to create **profitable and transparent relationships** with developers and investors which benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14?	- there is a perceived lack of transparency - with some benefit being shared with the private sector there is potentially a reduction in the benefit being retained by local communities.
Does the Option enable the Council **to maximise any financial benefits** a dedicated delivery vehicle?	- as a JV the financial benefits are split between the public and private sector. - however, with access to private sector expertise, economies of scales and finance financial benefits have the potential to be maximised - costs incurred on set up and associated overheads.
Does the Option enable the Council to **minimise tax exposure** of a dedicated delivery vehicle?	- the company incurs typical taxes associated with a trading entity. - the exposure is shared with the private sector.
Does the Option enable the Council to benefit from **agile operating arrangements** of the delivery vehicle but still retain control?	- a JV has the ability to be agile depending on the company's terms of reference. However, it is likely that the Council loses some control to the private sector partner.
Is the Option **flexible** to allow the Council to make changes to its structure to in the future to meet changing landscapes/priorities?	- the JV is established around a set of terms with the private sector assumed to be competitively procured. Changes to scope and commercial position may result in competition issues and extensive negotiations. - also the private sector has equal control of the shape of the company which may hinder the Council to make changes.