

Forward Plan reference number: FP/692/01/20

Report title: Optimisation of Essex Housing – creation of Limited Liability Partnerships (LLP)	
Report to: Cabinet	
Report author: Paul Crick, Director, Performance, Investment and Delivery	
Date: 21 July 2020	For: Decision
Enquiries to: Gwyn Owen, Head of Essex Housing. Telephone 03330 136 120 email gwyn.owen@essex.gov.uk)	
County Divisions affected: All Essex	

Confidential Appendix

This report has a confidential appendix which is not for publication as it includes exempt information falling within paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972, as amended.

1. Purpose of Report

- 1.1 Essex Housing is ECC's in-house development arm which works with public sector partners across Essex. It was established in 2016 to identify and bring forward surplus land in order to help address general, specialist and affordable housing need, generate capital receipts and deliver revenue benefits.
- 1.2 Essex Housing has successfully delivered a number of housing schemes. Based on learning to date it is believed there is an opportunity to deliver even greater benefits more efficiently through improving Essex Housing's operating arrangements and operating part of Essex Housing through a Limited Liability Partnership (LLP) structure. This report seeks approval to establish the LLP structure as well as establishing new governance and operational processes to increase pace, scale and efficiency.

2. Recommendations

- 2.1 Agree to:
 - the establishment of a limited liability partnership, Essex Housing Development LLP; and
 - delegate to the Leader, in consultation with the Cabinet Members for Economic Development and Finance, the Section 151 Officer and the Monitoring Officer authority to establish a further LLP to own, rent and manage housing.
- 2.2 Agree that ECC becomes a member and designated member of the LLPs outlined at 2.1, with a 99% interest.

- 2.3 Agree on behalf of the Council and as the 100% shareholder of Seax Trading Limited that Seax Trading Limited becomes a member and designated member of each LLP outlined at 2.1, with a 1% interest.
- 2.4 Agree that the management board of the LLPs outlined at 2.1 will be established as set out in 4.2.6 and 4.2.7 of the report.
- 2.5 Agree that ECC will enter into service level agreements with the LLPs set out in 2.1 for the provision of services by ECC to the LLP so that the LLP can purchase staff services in order to offer its services.
- 2.6 Agree that the Director, Performance, Investment and Delivery may:
 - agree the terms of the constitution of each LLP which will be set out in the LLP Agreements between Essex County Council, Seax Trading Limited and each individual LLP; and
 - adopt and implement each LLP's delivery planafter consulting the Section 151 Officer and the Monitoring Officer.
- 2.7 Agree, on behalf of the Council, the Essex Housing Five Year Business Plan at Appendix A.
- 2.8 Agree the Essex Housing Annual Delivery Plan 2020/21 contained in the Confidential Appendix.

3. Summary of issue

- 3.1 Essex Housing is an internal development arm of ECC which works with public sector partners across Essex. It was established in 2016 to identify and bring forward surplus land for development for the benefit of Essex, specifically in order to help address general, specialist and affordable housing need. As a by-product it also generates capital receipts and delivers revenue benefits.
- 3.2 Essex Housing is a key enabler of all ECC's Strategic Aims as set out in the Council's Organisation Strategy. In particular, Essex Housing contributes to the following priorities:
 - enable more vulnerable adults to live independent of social care
 - help to secure stronger, safer and more neighbourly communities
 - help secure sustainable development and protect the environment
 - facilitate growing communities and new homes
 - limit cost and drive growth in revenue
- 3.3 The Essex Housing model is now well established. It has completed a number of successful developments, worked with a range of partners including local authorities, NHS, Essex Police and Essex County Fire and Rescue Service. Essex Housing has been recognised nationally as best practice through a number of publications and has been shortlisted for awards for both the

operating model and completed developments. Essex Housing's innovative model will continue to explore new opportunities, including modern methods of construction, zero carbon construction and a range of opportunities to make schemes increasingly energy efficient such as heat pumps, solar panels and electric car charging points.

- 3.4 To date, ECC has approved funding to bring forward 895 homes (41% of which are specialist or affordable). Of these:
- 64 have been built and either sold or are currently being marketed
 - 194 have planning permission in place
 - 163 are awaiting determination
 - The remaining schemes are currently being designed and prepared prior to planning applications being made
- 3.5 Given the relative maturity of the operating model and the need for continuous improvement, ECC has undertaken a comprehensive review of the existing operation.
- 3.6 The review identified that whilst the existing operation has been successful, there are several changes that could further improve efficiency and deliver even greater benefits to ECC and residents. These include:
- adopting an agile approach for decision making by delegating decisions to the Essex Housing LLP Board and Cabinet Member for Economic Development, although it should be noted that the overall number of formal decisions will increase.
 - establishing an LLP structure to enable ECC to have the flexibility to use any Essex Housing surpluses to fund capital or revenue expenditure, which it is currently unable to do under the existing structure, to continue delivering and investing in services for Essex residents
 - establishing a brand to reflect Essex Housing's distinct identity within the market and provide consistency across developments.
- 3.7 ECC has thoroughly explored six options as listed below. Operations can be optimised to increase pace, scale and benefits to ECC and residents of Essex. The exploration of options has included externally facilitated workshops, a number of key workstreams overseen by a steering group and obtaining specialist financial, legal and tax advice.

4. Options

4.1 Option 1 – optimise in-house model (recommended in conjunction with Option 2)

- 4.1.1 Essex Housing would continue to remain an in-house function of Essex County Council.
- 4.1.2 Essex Housing would adopt an agile approach for decision making. This would include:

- a delivery plan to be published annually that sets out an indicative capital expenditure and development plan of forthcoming sites.
- establishment of an Essex Housing Board
- delegation of responsibility to the Cabinet Member for Economic Development to approve funding for the development of the sites in line with the annual delivery plan, in consultation with the Monitoring Officer and S151 Officer.

4.1.3 This option will enable ECC to retain complete control over how each site is brought forward whilst ensuring Essex Housing continues to support the delivery of ECC's Independent Living Programme which delivers housing and care for vulnerable people in the County. Essex Housing staff will remain in-house and will not be subject to TUPE. The adoption of an agile approach to decision making will enable Essex Housing to operate at a greater pace and scale. Remaining in-house will enable partnership work with other public sector bodies to continue.

4.1.4 It is proposed that an informal internal group will be formed, to be known as the Essex Housing Board. The Essex Housing Board will provide input in developing a plan for Essex Housing's activities. It is proposed that the members of this board will include:

- Cabinet Member (Chair and casting vote) to be appointed by the Leader
- Director of Finance
- Director of Strategic Commissioning and Policy (delegated from the Executive Director for Adult Social Care)
- Head of Essex Housing
- An independent board member that the board will appoint in order to bring additional experience and expertise to the LLPs

4.1.5 This option would be complimented by the introduction of a distinct brand for Essex Housing that would enable it to build upon its reputation in the market. This option is being recommended in conjunction with option 2, without this supplementary option, there are financial benefits that will not be realised. These are explained at 4.2.

4.2 Option 2 – establish Essex Housing LLP (recommended in conjunction with Option 1)

4.2.1 Under this option ECC would set up an Essex Housing Development LLP in furtherance of its Strategic Aims set out in paragraph 3.2 in order to deliver new housing and economic growth for the benefit of the area or persons resident or present in its area. ECC under the Localism Act 2011 has a power to do anything that individuals generally may do, subject to certain exceptions (this is known as the general power of competence). The LLP will be set up under the general power of competence and other relevant statutory provisions.

Essex Housing Development LLP (the Development LLP)

- 4.2.2 The Development LLP will be used to undertake all development activity. The Development LLP will prepare an annual delivery plan that ECC will be asked to consider and approve, in line with the ECC budget timetable. The Development LLP will then submit a report to ECC for each scheme for approval and bring forward schemes in accordance with these delivery plans. The Development LLP will then develop the sites in accordance with the delivery plan. Surpluses generated from the Development LLP activities will be returned to LLP members (Essex County Council and Seax Trading Limited), as outlined in the financial implications section.
- 4.2.3 It is not proposed that the LLP will directly employ any staff. Instead, ECC will make available professional and support staff to enable the LLPs to deliver the projects. In return, the LLP will pay ECC an agreed fee reflecting both the salary costs of the individual and overheads such as IT, accommodation, pensions as part of a formal Service Level Agreement.

Management of the LLPs

- 4.2.4 LLPs must have at least 2 members and 2 designated members (which can be the same body corporate). ECC will be a member and designated member, with a 99% interest in each LLP, and Seax Trading will be a member and designated member with a 1% interest. The Member acts as the LLP's agent and is only liable to the amount they have contributed to the LLP, unless the member agrees to contribute to the LLP's assets on its winding up. A designated member is a statutory role and has responsibilities and functions that are similar to those that a company director/secretary is required to do under company law.
- 4.2.5 The rights and duties of the members of the LLPs as between themselves and as between the members and the LLP will be governed by express agreement in the form of an LLP Agreement. The LLP Agreement will set out the management structure of the LLPs, as set out in Appendix C, including a Management Board.
- 4.2.6 The governance structure for the LLP will be framed by the Council's role and rights as a member of the LLP, even if this is indirectly through a separate entity. The board will be charged with management of the LLP.
- 4.2.6 The day-to-day running of the LLP will be managed by the management board. It is proposed that the management board will consist of five people and decisions will be taken unanimously except where ECC has specified otherwise. In addition, the Director, Performance, Investment and Delivery will attend as with observer status ECC's Shareholder Lead as well as the Cabinet Member for Economic Development. The board membership will provide political, legal and financial oversight and accountability as well as operational experience. The management board will consist of:
- Cabinet Member (Chair and casting vote) to be appointed by the Leader
 - Director of Finance
 - Director of Strategic Commissioning and Policy, Children and Families (delegated from the Executive Director for Adult Social Care)

- Head of Essex Housing
- An independent board member that the board will appoint in order to bring additional experience and expertise to each LLP.

4.2.7 The management board will act in accordance with the specific powers and responsibilities delegated to it under the LLP Agreement. To ensure proper controls over the LLP, the members of the partnership will retain strategic control over the operation of the vehicle through the right to approve, and monitor delivery of, a delivery plan and the requirement that certain listed decisions, referred to as "reserved matters", must be referred back to the members (ie ECC and Seax Trading Limited) rather than being within the discretion of the board. These reserved matters are to be in line with ECC's controls over its other companies, as set out in more detail in Appendix D, ECC's approval will be required for things like approving business plans; approving the LLPs' funding or investment plans; and entering into any contract with a value of over £2m.

4.2.8 The principle is that the partners approve the delivery plan and the board then have the remit and discretion to implement it subject to the reserved matters. The level of discretion given to the board depends on the framing of the report– i.e. how prescriptive or flexible it is – and what the reserved matters are.

Progressing a scheme

4.2.9 A five-year business plan will be taken to Cabinet to be approved to outline the LLP's long-term objectives. Each year, an annual plan setting out indicative capital expenditure and development plan of forthcoming sites for the LLP over the upcoming year will be put forward to ECC for approval so that the LLP can adopt this delivery plan. To progress a scheme identified in the annual delivery plan, the following steps will be undertaken:

- the LLP will consider each scheme based on a set of criteria established by ECC set out in the annual plan;
- a report will then be drafted and submitted to the LLP Board to consider and make a recommendation to ECC regarding viability of a scheme;
- a report will then be submitted to the Cabinet Member for Economic Development with S151 and MO approval requesting approval to proceed with the recommended site including authority to undertake planning and procure a contractor, and obtain the funding needed to do so;
- a second report will be submitted to the LLP Board and the Cabinet Member for Economic Development in consultation with the Cabinet Member for Finance with S151 and Monitoring Officer approval requesting approval to dispose of the land from ECC to the LLP and approval of financing arrangement for the LLPs to proceed with construction.

4.2.10 Current assumptions in the delivery plan assume ECC will act as the primary lender to the LLP, this will drive revenue benefits for ECC dependent on annual the borrowing rates and extent of capital requirement. Financing opportunities, both local authority funding and private sector funding, will be

reviewed on an ongoing basis to determine optimum terms for the 'group' (ECC and LLPs combined).

4.2.11 This option is complimentary to Option 1 which addresses the optimisation of the existing model.

4.2.12 The advantages of adopting an LLP structure include:

- being able to offer assured short hold tenancies which will enable ECC to offer units for rent to help meet a range of needs throughout the county
- LLP's are tax "transparent" for income profit and capital gains, where members are taxed directly in accordance with their tax status;
- ECC is not liable to pay corporation tax and therefore will not incur tax on any surpluses returned however Seax Trading Ltd, will incur Corporation Tax on their share of surplus returned.
- it has the flexibility of a traditional partnership, but members have the benefit of limited liability.

4.2.13 Whilst there are time and cost implications of complying with regulatory and administrative requirements (e.g. filing of annual accounts, confirmation statement and an auditor's report), ECC undertakes this practice regularly and with limited costs. The benefits of adopting an LLP structure outweigh the time and cost implications.

4.2.14 Without implementing both Options 1 and 2 it is not possible to achieve all the benefits set out in this paper.

4.3 Option 3 – establish Essex Housing as a company structure – companies limited by shares

4.3.1 This option would be similar to Option 2 and involve setting up separate limited companies, limited by shares, for the purposes of development, consultancy and rental. This option includes delivers the same benefits set out at option 2 and enables ECC to use surpluses generated by Essex Housing flexibly across revenue and capital expenditure as well as providing opportunities to deliver revenue benefits for the council.

4.3.2 Unlike an LLP structure this option would enable Essex Housing to develop outside of the ECC administrative boundary. This is because LLP's are restricted to operating within the same administrative area as the relevant local authority. In contrast, companies are able to operate beyond such boundaries.

4.3.3 However, adopting a company structure would result in greater tax implications for ECC. The purpose of Essex Housing is to help address specialist, affordable and open market housing needs within the County as opposed to developing anywhere in the pursuit of profit. As a result, Option 2 is recommended over Option 3.

4.4 Option 4 - establish Essex Housing as a 'full carve out' LLP

4.4.1 This option would be similar to Option 2, except it would require the current employees attached to Essex Housing to transfer to the LLP and it is likely to need its own financial director etc.

4.4.2 Undertaking a full carve out of the Essex Housing team would result in a far longer, more costly (TUPE of staff and purchasing new operating systems) and more complicated implementation period than both Options 2 and 3 as well as setting up pension arrangements for employees. Furthermore, establishing a shell structure rather than a full carve out will also enable ECC to continue to manage risk and exercise direct control with staff remaining in house.

4.5 Option 5 - establishing Essex Housing as a company structure (a full carve out) – companies limited by shares

4.5.1 This option would be similar to Option 3, except it would require the company to have its own employees and systems to use.

4.5.2 Undertaking a full carve out of the Essex Housing team would result in a far longer, more costly (TUPE of staff and purchasing new operating systems) and more complicated implementation period than both Options 2 and 3. Furthermore, establishing a shell structure rather than a full carve out will also enable ECC to continue to manage risk and exercise direct control with staff remaining in house.

4.6 Option 6 – do nothing

4.6.1 This option would not maximise the potential benefits of the Essex Housing model with regards to operating at greater pace. Furthermore, MTRS revenue benefits would not be realised as the financial flexibility an LLP structure would offer would not be achieved. Essex Housing would be unable to offer assured shorthold tenancies or offer units to rent in-line with private rented sector practices. The opportunity to create a distinct Essex Housing brand across all developments which would help develop brand recognition and support future marketing of sites would also be missed.

Recommendation

4.7 The recommended approach is to implement both Options 1 and 2; optimising the current in-house model, complimented with the establishment of a Limited Liability Partnership shell structure. This approach will provide the most suitable conditions for Essex Housing to operate at optimum efficiency whilst at the same time ensuring ECC retains direct control but also benefits from greater financial flexibility.

5. Issues for consideration

5.1 Financial Implications

5.1.1 As a result of implementing Option 2 (recommended in line with Option 1) it is estimated there will be surpluses available for distribution from the LLP, the

Essex Housing Development LLP forecast financial performance is shown in 5.1.2.

5.1.2

Development LLP Performance	2020/21 (£'000)	2021/22 (£'000)	2022/23 (£'000)	2023/24 (£'000)	2024/25 (£'000)	Total
Sales	0	9,081	83,643	52,284	49,651	194,659
Total Costs	(645)	(8,314)	(68,819)	(42,054)	(41,409)	(161,241)
Borrowing Costs	(495)	(3,699)	(5,673)	(3,123)	(2,792)	(15,782)
Net Profit	(1,140)	(2,932)	9,150	7,107	5,451	17,636
Net Surplus Available For Distribution To ECC	-	-	5,028	7,036	5,396	17,460
Net Surplus Available For Distribution To Seax Trading Ltd	-	-	51	71	55	176
Corporation Tax Payable by Seax Trading Ltd	-	-	(9)	(13)	(10)	(32)
Total Surplus Available For Distribution (loss)/surplus	-	-	5,069	7,094	5,441	17,604

5.1.3 The Development LLP is expected to make a loss in the first two financial years as the LLP will incur overheads and borrowing costs each year, however the sales are estimated to start from September 2021.

5.1.4 All surpluses generated from the LLP, as per 5.1.2, will be available for distribution annually to both members of the LLP, once a cumulative profit position is achieved. Members will be responsible for their own tax returns and declarations. These surpluses are included in the table in 5.1.6 below as these will be available for distribution back to ECC, treated as income, which can be flexibly used to fund revenue or capital.

5.1.5 The Development LLP losses, as per 5.1.2, will appear in Essex County Council's consolidated group accounts, but are not reflected in the council's single accounts, as a result such losses do not impact the council's financial sustainability or general fund. The council would reflect such losses in the event it was concluded by the council that the LLP was not sustainable.

5.1.6 The revenue implications for Essex County Council as a result of implementing option 2 are shown below:

Revenue Implications Not in MTRS	2020/21 (£'000)	2021/22 (£'000)	2022/23 (£'000)	2023/24 (£'000)	2024/25 (£'000)	Total (£'000)
Available Surplus For Distribution from LLP*	-	-	5,069	7,094	5,441	17,604
ECC Income From Financing	-	1,836	3,183	1,596	1,891	8,506
ECC Increased Capital Borrowing Requirement	(28)	(487)	(586)	(734)	(1,015)	(2,852)
Total Revenue Implications Not in MTRS (loss)/surplus	(28)	1,349	7,666	£7,956	£6,316	23,258

Revenue Implications in MTRS						
2020/21 Savings Shortfall	(477)	-	-	-	-	(477)
ECC Income From Financing (already in MTRS)	600	600	600	600		2,400
Essex Housing Revenue Budget	400	400	400	400	400	2,000
Total Revenue Implications in MTRS (loss)/surplus	523	1,000	1,000	1,000	400	3,923
Total ECC Revenue Implications	495	2,349	£8,666	£8,956	£6,716	27,181

5.1.7 Essex Housing team will not require an Essex County Council revenue budget, as illustrated in table 5.1.6. This saving has already been reflected in the Medium Term Resource Strategy (MTRS).

5.1.8 Table 5.1.6 is based upon Essex County Council providing capital financing to the development LLP at an effective market rate, with all loan terms in accordance with State Aid rules. This would provide a revenue income for Essex County Council (ECC Income from Financing), of which £600,000 is already included in the MTRS.

5.1.9 As a result of 5.1.6 and 5.1.7 it is expected that Option 2 will deliver revenue benefits for the council from 2020/21.

5.1.10 Original savings in the MTRS assumed a 'go-live' date of April 2020, a delay to September 2020, has resulted in a saving shortfall of £500,000 in 2020/21. Mitigation plans are currently under review by the service area.

5.1.11 The LLP will require a working capital loan across the first two financial years from set up, with the loan being repaid in full in Year 2. Terms agreed will be in accordance with State Aid rules and will be funded through ECC's own cash balances. This would have no revenue implications assuming the full balance is repaid on time. In the event that the LLP was unable to repay the balance to the council, it would be necessary for the council to write the debt balance off to revenue at that point.

5.1.12 It is proposed that the LLP would have no direct staff, with all services contracted in from the partners as necessary. There is an indicative allowance for corporate and financial services within the financial model. ECC will be the provider of these services and will ensure that full costs are recovered, this will be subject to a final schedule of service to be agreed with the LLP. Any alternative provision is subject to S151 and Monitoring Officer approval.

5.1.13 All professional fees required to support the set up of the LLP will be funded from existing operational budgets.

5.1.14 The capital implications for Essex County Council as a result of implementing option 2 are shown below. The revenue implications of the reduction in capital is reflected in table:

Capital Implications Not in MTRS	2020/21 (£'000)	2021/22 (£'000)	2022/23 (£'000)	2023/24 (£'000)	2024/25 (£'000)	Total (£'000)
---	------------------------	------------------------	------------------------	------------------------	------------------------	----------------------

Gross Capital Receipts Reduction (Per Budget)	(7,578)	(19,370)	(49,598)	(57,753)	0	(134,298)
Capital Expenditure Reduction (Per Budget)	12,863	36,964	27,764	16,283	0	93,874
Capital Financing Increase – Development Loan agreement with LLP ^(5.1.16)	(7,089)	(48,392)	(17,051)	(5,965)	(9,856)	(88,352)
Loan Balance Repaid To ECC ^(5.1.16, 5.1.17, 5.1.18)	-	5,413	56,864	22,791	20,091	105,158
Total Capital Implications	(1,805)	(25,385)	17,980	(24,644)	10,235	(23,619)

5.1.15 Essex Housing capital receipts and expenditure, currently included in the capital programme, will not be received or incurred directly by ECC and will be recognised under the LLP's company accounts.

5.1.16 The Council will enter into loan agreements with the LLP, to provide development financing for each project, which will be added to the council's capital financing requirement. This loan balance is estimated to be repaid as per table 5.1.14.

5.1.17 The balance of Essex Housing work in progress, i.e. historic spend relating to ongoing projects, will be transferred to the LLP upon set up. A loan facility equal to this value, with terms in line with State Aid, will be agreed to allow the LLP to pay for the asset over time. This loan balance is estimated to be repaid as per table 5.1.14.

5.1.18 The LLP may acquire land owned by Essex County Council, when this occurs land will be transferred to the LLP, at a residual land value. A loan facility equal to this value, with terms in line with State Aid, will be agreed to allow the LLP to pay for the asset over time. This loan balance is estimated to be repaid as per table 5.1.14.

5.1.19 There will be a small opportunity cost associated with setting up and monitoring the LLP. All administrative costs associated with financial returns such as audit, tax, VAT and also insurance costs, will be paid for by the LLP and are included in the relevant business plan.

5.1.20 The LLP will procure an 'off-the-shelf' accounting package as an interim solution to maintain accounts. Essex Housing is part of the pre-advisory questionnaire with regards to Essex County Council's new Corporate System, which would allow for the LLP to be included under the same corporate structure.

5.1.21 Each development will have its own viability model and will only proceed if it is consistent with the approved overarching Business Plan and meets required hurdle rates, where applicable.

5.1.22 The company finances will continue to be overseen by Essex County Council finance officers, who will continue to provide financial advisory services. Any alternative financial services not provided by ECC will require S151 approval.

5.1.23 Professional advice has been sought from PWC, Link Asset & Essex Legal Services on the accounting, financing, tax and legal implications as well as guidance from ECC's own finance team.

5.2 Tax Implications

5.2.1 ECC could receive payment or income in three forms in relation to the proposed arrangements. All three types of income can be received tax free by the Council. In addition, the receipt of loan principal repayments and returns of membership capital can also be received free of tax by the Council:

- payment for services provided
- interest income on loans provided to an LLP
- drawings (profit extraction from an LLP)

5.2.2 The LLP is not taxable in its own right on the profits that it generates, unlike a company, instead, the profits of each LLP are allocated to the individual members (partners) who are responsible for reporting their share of profits to HMRC in their individual tax returns, and for calculating their tax liabilities.

5.2.3 As a result, to the extent that the Council is appointed as a full legal member of the LLP, any surpluses or gains attributed to the Council would be exempt from corporation tax, because of the Council's absolute exemption from corporation tax.

5.2.4 Seax Trading Limited, owning 1% of the LLP, will be liable to Corporation Tax, at 18% for 2020/21, on its share of the surpluses returned, although clearly this may be able to be offset against any trading losses incurred by the LLP.

5.2.5 In relation to loan funding by the Council into the Partnership, the Council can receive interest from the LLP free of any withholding of 20% income tax. The obligation to withhold income tax on payments of yearly interest by the LLP is disapplied where the interest is payable to a local authority.

5.2.6 Special Stamp Duty Land Tax (SDLT) provisions apply to the transfer of land into a partnership by one of its partners, however per the advice sought from PWC, the expectation is that Group Relief will apply and therefore no SDLT will be payable in relation to the land transaction.

5.2.7 Appropriate administrative steps, as recommended by PWC, will need to be implemented on an annual basis to ensure that all tax implications stated above are effectively managed.

5.3 Legal implications

5.3.1 The recommendation in this report is that ECC sets up an LLP, which is a body corporate and a legal entity separate from its members and governed by the Limited Liability Partnerships Act 2000. ECC has various powers to purchase, hold and sell land, for regeneration, environmental and other purposes. For example, the Local Authorities (Land) Act 1963 allows ECC to

carry out development to improve its area. The general power of competence set out in the Localism Act 2011 allows ECC to do anything that individuals generally may do subject to any restrictions; this enabling power allows ECC to set up an LLP if its main purpose is for the benefit of the authority, its area or persons resident or present in its area. As set out in the report, the primary purpose of the LLP is for the benefit of people in its area.

- 5.3.2 ECC is not a local housing authority so it does not have the specific statutory powers possessed by local authorities. However, ECC does have the power to develop land as set out above and it does have the power to set up and own rented housing under various other statutory powers, including the general power of competence. If ECC rents out housing stock directly it is subject to regulation under the Housing Act 1985 and subsequent legislation, including the right to buy. If a LLP rents out housing it is considered to be a private sector landlord, even if it is owned by a local authority. Many local authorities have set up homes for rent owned by companies. There is a clearly a regulatory risk that the law is changed so that tenants of local authority owned LLPs are treated in the same way as LA tenants. ECC can set up a body to undertake these activities.
- 5.3.3 Both ECC and Seax Trading Limited are permitted to be members of the LLP. LLP members have limited liability in that, generally, they do not need to meet the LLP's liabilities. An LLP agreement between ECC and each LLP will need to be put into place to outline the internal workings of the LLPs including the matters that are reserved to ECC as a member – this will be drafted by ELS. ELS will, also, draft the agreements between the LLPs and ECC for the supply of services by ECC.
- 5.3.4 It is important to note that if ECC is transferring land to the LLP or offering loans or guarantees then it will need to comply with the rules on state aid.
- 5.3.5 It is also important to note that each development transaction will need to be the subject of decisions both under ECC's constitution and under the relevant LLP's constitution.

6 Equality and Diversity implications

- 6.1 The Public Sector Equality Duty applies to the Council when it makes decisions. The duty requires us to have regard to the need to:
 - (a) Eliminate unlawful discrimination, harassment and victimisation and other behaviour prohibited by the Act. In summary, the Act makes discrimination etc. on the grounds of a protected characteristic unlawful
 - (b) Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - (c) Foster good relations between people who share a protected characteristic and those who do not including tackling prejudice and promoting understanding.
- 6.2 The protected characteristics are age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, gender, and sexual orientation. The Act states that 'marriage and civil

partnership' is not a relevant protected characteristic for (b) or (c) although it is relevant for (a).

- 6.3 The equality impact assessment indicates that the proposals in this report will not have a disproportionately adverse impact on any people with a particular characteristic.

7 List of appendices

A - Essex Housing LLP's Five Year Business Plan

B - Confidential Appendix – Essex Housing Development LLP's Annual Delivery Plan 2020/21

C - Management Structure of the LLP Group

D - Reserved Matters

E - Equality Impact Assessment.

8 List of Background papers

None.