For General Release

REPORT TO: CABINET – 8th July 2008

AGENDA ITEM: 7

SUBJECT: Housing Special Purpose Vehicle

LEAD OFFICER: Director of Housing

CABINET MEMBER: Councillor Dudley Mead, Deputy Leader (Finance) and Cabinet Member for Housing

WARDS: All

CORPORATE PRIORITY/POLICY CONTEXT: The setting up of a Housing Special Purpose Vehicle will deliver new affordable housing for the Council. This supports the achievement of the following corporate themes of promoting economic growth and prosperity and improving the environment.

FINANCIAL SUMMARY: The setting up of this Vehicle is incurring expenditure on consultant, legal and other project management related costs.

A capital budget of £200k has been allocated in the Housing capital programme for 2008/9.

FORWARD PLAN KEY DECISION REFERENCE NO.: 768 This is a Key Decision as defined in the Council’s Constitution. The decision may be implemented from 1300 hours on the 5th working day after it is made, unless the decision is referred to the Scrutiny & Overview Committee by the requisite number of Councillors. In accordance with the Council's Constitution, the Chair of the Scrutiny & Overview has been informed of this item.

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1. RECOMMENDATIONS

The Cabinet is recommended to:

1.1 Agree the joint vehicle structure for the setting up of a Housing Special Purpose Vehicle as detailed in para. 3 of the report to deliver new affordable housing for the Council.

1.2 Agree that the Director of Housing in consultation with the Cabinet Member for Housing and the Council Solicitor and Monitoring Officer, be given delegated authority to take such further steps as may be necessary to establish the Borrowing Vehicle and the Operating Vehicle for the Housing Special Purpose Vehicle and obtain any registrations, consents or take any other steps in this respect that may be necessary.

1.3 Note that decisions on the selection of the financial institution following the OJEU procurement and the agreement of terms for the transfer of land will be made through the usual routes and in accordance with the Constitution.
2. EXECUTIVE SUMMARY

2.1 At its meeting on 11th February 2008 Cabinet considered various options for the setting up of a Housing Special Purpose Vehicle to deliver new affordable housing for the Council and agreed a joint vehicle structure as the preferred option (Minute A21/08).

2.2 The Council is currently building 32 family houses funded by supported capital borrowing from the Greater London Authority (GLA) and borrowing within the Housing Revenue Account (HRA). It is unlikely that further funding will be made available through this route in the near future. In order to continue this programme of building the setting up of a Housing Special Purpose Vehicle has been identified to enable access to mainstream funding. This is in line with proposals for the setting up of Local Housing Companies as set out in the Government’s Green Paper on Homes for the Future published in July 2007.

2.3 Since then, officers have been exploring the detailed elements of the joint vehicle in consultation with its external advisors and this report seeks agreement to proceeding it’s establishment.

3. DETAIL

3.1 The Council is in the process of building 32 family houses on four sites across the borough. Construction on the first site, Sumner Gardens has started and two other sites will start in the next couple of months with the remaining site following later in the year. The Council was successful in securing £3.2 m from the GLA for these schemes but it is unlikely that any further funding opportunities will be on offer in the near future.

3.2 In order to continue with a building programme Tribal Consulting were appointed to produce a report advising on the various funding options and potential vehicles available to the Council. Cabinet on 11th February 2008 agreed that the joint vehicle structure was the preferred option for the setting up of a Housing Special Purpose Vehicle.

3.3 The joint vehicle (Housing Special Purpose Vehicle - SPV)

A joint vehicle consists of a borrowing vehicle supported by a financial institution which undertakes the actual development and a charitable operating vehicle (operating vehicle) which takes the properties on a long lease from the borrowing vehicle as a subsidiary of the Council.

3.4 A borrowing vehicle will be set up with all or the majority shareholding owned by a financial institution and a possible minority shareholding held by the Council sufficient for it not to be a controlled vehicle. There will be built into the constitution of the borrowing vehicle controls to ensure that the principal objective and business of the borrowing vehicle could not be altered without the consent of the minority shareholders. The borrowing vehicle board representation would also have a minority from the Council. The financial institution will be selected following an OJEU procurement process.
3.5 The land, with restrictions designed to ensure that it is used for the intended purposes, will transfer from the Council to the borrowing vehicle by way of a long lease for a nominal consideration for development funded by finance provided by the majority shareholder. The land will be transferred. When construction is completed, a lease agreement will be entered into with the operating vehicle with a ground rent equal to the net rent required to service the debt structure. Grant would be received by the operating vehicle and used, as a lease premium, to pay off part of the working capital element of the debt. This operating vehicle will be registered with the Housing Corporation in order to receive social housing grant and manage the properties. The borrowing vehicle will be responsible for any sales necessary to generate the required cross-subsidy.

3.6 It is intended that the ground rent payable by the operating vehicle will matched by the net rent produced by the social housing properties. If, for any reason, the net rent received is lower than the ground rent payable then:

- the Council will have the ability to make a payment to the operating vehicle; or if not
- the borrowing vehicle will have the ability to sell properties to the private market thus reducing the amount payable by the operating vehicle under the lease agreement.

3.7 The ability to be flexible and finance other types of development would be available because, it is considered that, the borrowing vehicle is outside the local authority controlled borrowing regulations and, where appropriate, risk could be ring fenced within the vehicle. The constitutional arrangements put in place will ensure that the purposes of the vehicle are set and any future financial advantage has to be used for social and affordable housing in the borough. Such a vehicle will also allow participation of other parties such as Registered Social Landlords (RSLs), developers and charitable trusts without regulatory restraint.
3.8 A structure diagram showing how the vehicles will operate is shown below:

- Financial Institution
  - Mortgage loans
  - Properties for sale & building
- Council
  - Sale of land (value restricted by covenants and planning requirements)
- Borrowing Vehicle
  - Homes on lease with ground rents
- Development Partner (contractor)
- Operating Vehicle
  - Management agreement
  - Nominations
- Housing Corporation
- Council

NB: Lease ground rents = mortgage servicing
3.9 The control of the vehicles is shown in the following diagram:

3.10 Shareholdings and Board Membership - Borrowing Vehicle

<table>
<thead>
<tr>
<th>Shareholding</th>
<th>Board Membership</th>
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<tbody>
<tr>
<td>100% Financial Institution</td>
<td>Financial Institution - 3 Directors</td>
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<tr>
<td>Council golden share or</td>
<td></td>
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<tr>
<td>equivalent</td>
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The constitution of the Borrowing vehicle would ensure that its principle objectives and business could not be altered without the consent of the Council, thereby securing the future use of the land transferred except by specific agreement with the Council. Also, any changes in the company’s constitution which would affect the control of the land use would have to be agreed with the Council. However, this type of control would only be applied where the interests of the Council were at risk.

3.11 It is anticipated that the required comfort for the Council may also be achieved using a Shareholders Agreement or by including restraints on use for other business within the Land Sale Transfer Agreement.
3.12 The Council will not be able to nominate directors to the Borrowing Vehicle but will be able to veto those nominated by the Financial Institution.

3.13 The development risk would remain with the Borrowing Vehicle. The Council would not be under any legal obligation to rescue the vehicle if it was failing but could step in if it wished.

3.14 **Shareholdings and Board Membership - Operating Vehicle**

<table>
<thead>
<tr>
<th>Shareholding</th>
<th>Board Membership</th>
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</thead>
<tbody>
<tr>
<td>100% Council</td>
<td>Council - 3 Members</td>
</tr>
<tr>
<td></td>
<td>Independent – 3 Members</td>
</tr>
<tr>
<td></td>
<td>Tenant – 1 Member</td>
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The Operating Vehicle, for tax benefit purposes, will be set up as a charitable Industrial and Provident Society and be registered with the Housing Corporation.

3.15 **Accounting Treatment**

**Impact on Borrowing Vehicle**

The accounts for the Borrowing Vehicle would be assembled observing the relevant accounting standards for a private company.

3.16 The land will be transferred from the Council to the Borrowing Vehicle and will then be developed as set out initially in a submission which will be made to the Housing Corporation for grant funding from the 2008 – 2011 allocation. The submission could include social rented, shared ownership, private sale and community buildings. This new development will be funded by:

- a lease premium paid by the Operating Vehicle on handover of the social housing properties under a lease agreement. This lease premium will be equivalent to the grant received by the Operating Vehicle.
- a long-term loan from the financial institution with a shareholding in the Borrowing Vehicle.
- sales proceeds from the private sale and shared ownership properties.
- the Housing Capital Programme.

3.17 The social housing properties, (social rented and shared ownership), will be leased to the Operating Vehicle for which an annual lease rent would be paid. The long-term loan repayments of the Borrowing Vehicle will be covered by the annual lease rent received.

3.18 **Impact on London Borough of Croydon**

It is considered that the full accounts of the Borrowing Vehicle would not be included within the Council’s group accounts as the Council is a minority shareholder and so it is not a local authority controlled company. It is unlikely that the Council will have access to direct benefits from participation in the
Borrowing Vehicle. Any surplus achieved within that vehicle will be linked to the land contracts and either be gift-aided to the Operating Vehicle or used to increase the social housing developed by changing private sale properties into social housing.

4. CONSULTATION

4.1 This proposal has been discussed at the Place Making Sub-Board and the Members Regeneration Board and was reviewed by the Scrutiny and Overview Committee on 4th March 2008.

5. FINANCIAL AND RISK ASSESSMENT CONSIDERATIONS

5.1 Capital consequences of report recommendations

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<tbody>
<tr>
<td>Housing Capital Budget</td>
<td></td>
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<td></td>
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<tr>
<td>Current Budget</td>
<td>200</td>
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<td>0</td>
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<tr>
<td>Effect of Decision</td>
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5.2 The effect of the decision

The costs of setting up the borrowing and operating vehicle are estimated at £107k for consultancy fees and £93k for legal costs. Any arrangement fees for the setting up of the borrowing vehicle will be capitalised as part of the overall loan.

A budget of £200k has been allocated within the Housing capital programme to cover this expenditure.

5.3 Risks

There is a risk that the financial institution could foreclose or that there are changes to the legislation but these can be mitigated by borrowing in tranches. It is considered that there is a low risk of this happening.

5.4 Options

There is currently no other suitable funding option for the Council to deliver new affordable housing. There may be future alternative options if the Government makes changes in the legislation. If this option is not pursued the Council will be unable to continue with its new build programme.

5.5 Savings/future efficiencies

There are likely to be some efficiencies in costs for future borrowing tranches. Any profits arising in the operating vehicle would be available to support further affordable housing.

(Approved by Peter Brown, Divisional Director of Housing (Finance and Investment))
6. COMMENTS OF THE COUNCIL SECRETARY AND SOLICITOR AND MONITORING OFFICER COUNCIL

6.1 The Solicitor to the Council comments that it will be necessary to seek the Secretary of States consent under s.32 of the Housing Act 1985 and to establish the structure of the vehicles forming the SPV such that they are not Council controlled. However, beyond that the principle of the Council establishing and SPV is supported by a variety of powers under the Housing and Local Government Acts.

6.2 As noted in body of the report the legal and financial structure of both vehicles is complex and specialist external legal advice is being sought in this respect particularly to ensure that the Council’s interests are properly protected within the SPV structures and that any liabilities for VAT or SDLT are limited.

6.3 In transferring land to the Borrowing Vehicle for nominal consideration, the Council will still need to ensure that it obtains best consideration through the other transfer terms e.g. covenants relating to future use and meet the requirements of s.123 Local Government Act 1972. However, the restrictions on future use of individual dwellings would still be subject to the Right to Buy.

(Approved by: Gabriel MacGregor, Deputy Council Solicitor (Corporate) on behalf of the Council Secretary & Solicitor and Monitoring Officer)

7. HUMAN RESOURCES IMPACT

7.1 There are no staffing considerations arising from this report.

(Approved by: Robert Laban, Head of HR Consultancy, on behalf of the Divisional Director, Human Resources & Organisational Development)

8. CUSTOMER IMPACT

8.1 This vehicle will deliver new affordable housing for the Council which will help to address the acute housing need in the borough.

9. EQUALITIES IMPACT ASSESSMENT (EIA)

9.1 An equality impact assessment of Croydon’s Housing Strategy 2006-10 was undertaken and consulted upon in 2006. As a result, a programme of actions and schedule of equality targets have been established, a number of which relate specifically to the capital programme, for example in relation to the number of new-build homes suitable for people with disabilities, the number of new smaller homes suitable for a range of clients with support needs or who are vulnerable, and the number of larger homes suitable for larger families and which is likely to have a beneficial impact on people from black and ethnic minority communities.
This vehicle will help to meet these targets by delivering a range of new affordable housing in the borough.

10. ENVIRONMENTAL AND DESIGN IMPACT

10.1 The housing delivered through this vehicle will be built in accordance with the Lifetimes Homes Standards and the Housing Corporation’s Design and Quality Standards, with the intention of making properties easier to live in for older people, the disabled, and families with children.

10.2 The new houses and sites will be designed to achieve the Code for Sustainability level 4. Provision will be made for on-site renewable energy facilities, such as solar panels and mini-wind turbines and collectors for rainwater recycling. Standards of heat and sound insulation will also be high.

11. CRIME AND DISORDER REDUCTION IMPACT

11.1 The housing will be designed to achieve “Secure by Design” standards.

12. HUMAN RIGHTS IMPACT

12.1 There is no human rights impact arising from this report.

13. FREEDOM OF INFORMATION/DATA PROTECTION CONSIDERATIONS

13.1 There are no Data Protection considerations arising directly out of this report. Information requested under the Freedom of Information Act about the Special Purpose Vehicle and any associated agreements held internally or supplied by external organisations, will be accessible subject to legal advice as to its commercial confidentiality, or other applicable exemption, and whether or not it is in the public interest to do so.

Contact Officer: Peter Brown, Divisional Director of Housing (Finance and Investment) Ext 65474

Background Documents: None