APPENDIX B (1)

ADVICE NOTE TO CHESHIRE EAST COUNCIL

TO SUPPORT ITS OPTIONS APPRAISAL ON DEVELOPMENT ARRANGEMENTS

1 Introduction and Executive Summary

1.1 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.

1.2 As a newly created unitary authority, the Council has ambitious plans to create a strong growing economy though job creation and enhancing the region's 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.

1.3 In response to the growth agenda, the Council is 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.

1.4 Bevan Brittan LLP has been commissioned by the Council to support on the legal and governance aspects of a high level appraisal on a range of delivery options available to the Council and to assist on mitigating the risks on the Council's preferred option which best achieves the Council's objectives.

1.5 Deloitte has been commissioned by the Council to support on the financial and tax aspects of this high level appraisal and on the Council's preferred option which best achieves the Council's objectives. Deloitte has also facilitated and recorded the quantitative assessment of options in its report to the Council ("**Deloitte Report**").

1.6 Following the Council's options appraisal and having received advice and assistance from both Deloitte and Bevan Brittan LLP, the Council's preferred option is Option 3b (Delivery through wholly-owned and controlled arm's length company (a "Teckal company") where the Council retains ownership of the assets. The Council considers that the principal advantage of this Option, over all others, is that it allows the Council to focus its delivery through the separate arm's length company, without distracting the company's management and personnel with the Council's other day to day operational requirements. The Company can also better promote the Council's assets for development through the local plan and planning process. In addition, the company can be used flexibly by the Council as an agent without tying the Council down to a single delivery model (as would a LABV or transfer of assets). In addition, the Council believes that this vehicle may be regarded as more attractive by the Cheshire and Warrington LEP and possibly other public sector bodies as a delivery vehicle for their purposes, than direct contract with the Council or a non-wholly controlled Council company/joint venture. The type of vehicle will be a company limited by shares, due to the limited profit available and given the legal considerations highlighted in this Advice Note. Next steps and key risk mitigation is set out at section 6 and the Conclusion.

APPENDIX B (2)

CONCLUSION AND NEXT STEPS

1.7 Given the Council's Core Aim and objectives set out in section 2 above, the Council's preferred option is **Option 3b**, i.e. delivery through wholly-owned (or jointly-owned with a neighbouring authority) and controlled arm's length company (a "Teckal company") where the Council retains ownership of the assets. The Council considers that the principal advantage of this Option, over all others, is that it allows the Council to focus its delivery through the separate arm's length company, without distracting the company's management and personnel with the Council's other day to day operational requirements. The company can also better promote the Council's assets for development through the local plan and planning process. In addition, the company can be used flexibly by the Council as an agent without tying the Council down to a single delivery model (as would a LABV or transfer of assets). In addition, the Council believes that this vehicle may be regarded as more attractive by the Cheshire and Warrington LEP and possibly other public sector bodies as a delivery vehicle for their purposes, than direct contract with the Council or a non-wholly controlled Council company/joint venture.

1.8 In terms of the type of corporate vehicle to be used, the preferred option is a **company limited by shares**. A company limited by shares is a "tried and tested" corporate vehicle used widely within the public and private sectors, with a separation of risks between shareholder and company and a clear decision-making forum for the formulation of business strategy (the board). The Company would be able to distribute any profits made (albeit the company is not expected to make significant profit), and is more readily capable of being transferred to another party if required in the future.

1.9 Whilst there are some tax benefits to the use of a limited liability partnership over a company limited by shares or guarantee, we understand that profit generation and distribution will be limited; hence an LLP structure is not critical (see the Deloitte Report for details). In addition to this, there is a legal consideration for discounting the LLP model. Using a company structure rather than an LLP structure avoids any later issues under section 4(2) of the Localism Act 2011.

1.10 Section 6 above sets out mitigation strategies in relation to the risks identified with Option 3b. It is important for the Council to:

- Identify the scope of the agency role and arrangements with the company
- Consider who will be a board director and how such a role is to be reconciled with any role within the Council, taking into account actual and perceived conflicts of interest and bias
- Consider the necessary constitutional and administrative processes which the Council has, to ensure that the company can be used effectively and efficiently to improve delivery timescales
- Consider the effective drafting of the memorandum and articles of association of the company to give the Council the necessary degree of control (e.g. the Council would approve any business plan (i.e. the overarching "envelope" of the company's activities), scrutinise the company's performance and Board activities (directing the Board where necessary to act or not act in a certain way) and exercise a veto at Board level on all or key, strategic decisions affecting the company)
- Consider the clearly defined funding model for the company; Consider the clearly defined staffing role for the company.