

<b>CABINET</b>	<b>AGENDA ITEM No. 6</b>
<b>25 JULY 2016</b>	<b>PUBLIC REPORT</b>

Cabinet Member(s) responsible:	Peter Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development.	
Contact Officer(s):	Simon Machen, Corporate Director of Growth and Regeneration	Tel. 453475

**CREATING A HOUSING DELIVERY COMPANY AND THE RE-ALLOCATION OF CORPORATE AFFORDABLE HOUSING FUNDS**

R E C O M M E N D A T I O N S	
<b>FROM :</b> Peter Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development	<b>Deadline date :</b> N/A
<ol style="list-style-type: none"> <li>1. Cabinet to approve the establishment of a JV Limited Liability Partnership (“LLP”) with Cross Keys Homes Development Ltd (“Cross Keys”).</li> <li>2. The Director of Growth and Regeneration in consultation with the Leader of the Council, the Director of Governance and Corporate Director: Resources to exercise delegated authority to finalise and agree all necessary legal agreements with Cross Keys and the LLP to establish the JV’s structure and operation.</li> <li>3. For the Council to invest £100,000 into the Joint Venture for operating capital</li> <li>4. To approve the withdrawal of the existing Affordable Housing Capital Funding Policy</li> <li>5. To agree that future grants from Section 106 Planning Receipts will be approved by the Corporate Director – Growth and Regeneration, except where they are intended to be given to the Housing Joint Venture in which case they will be approved by the Head of Service - Sustainable Growth Strategy</li> <li>6. For Cabinet to note the allocation of the Right to Buy receipts for the Housing Joint Venture in line with the Council’s approved Budget for 2016/17.</li> <li>7. Cabinet is requested to recommend to Council amendments to the Constitution ‘Appointments to external organisations’ to include the joint venture company once established within the key partnerships category to enable to the Leader to make appointments to the Housing Joint Venture board.</li> </ol>	

**1. ORIGIN OF REPORT**

- 1.1 This report is submitted to Cabinet following a request from Councillor Peter Hiller, Cabinet Member for Growth, Planning, Housing and Economic Development.

**2. PURPOSE AND REASON FOR REPORT**

- 2.1 The purpose of this report is for Cabinet to consider the creation of a Housing Joint Venture partnership between the Council and Cross Keys, in line with the Council’s approved Budget and the recommendations of a cross party task and finish group that considered changes to the Council’s strategy with regards housing in Peterborough.
- 2.2 This report is for Cabinet to consider under its Terms of Reference Part 3, Section 3.2 paragraph 3.2.6 To lead the delivery of Business Transformation within the Council.

**3. TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	No	If Yes, date for relevant Cabinet Meeting	N/A
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#### 4. A NEW HOUSING JOINT VENTURE

##### 4.1 A Growth City

- 4.1.1 Peterborough continues to be a successful growth city. It is the third fastest growing city in the UK by population (1.5% annual growth) and has the fourth highest housing stock growth (at 1.1% annually) with over 2,000 new homes built in the last 2 years. Housing demand is buoyant and it is likely this demand will continue. The population is projected to increase by 28% between 2013 and 2031 (from about 185,700 to about 237,700), and the 2015 Strategic Housing Market Area Assessment showed a need for an extra 4,000 homes to be built between 2026 and 2036 *on top of* the existing 25,500 allocated to 2026 in the current adopted Local Plan. These new homes are required to support Peterborough's economic growth and the Council has an opportunity to play a much greater role in future delivery.
- 4.1.2 On 15 April 2015, Full Council approved the creation of a cross-party task and finish working group to assess the Council's strategy for housing, recognising the changes to the city and its economy over the years since the Council's stock transferred to Cross Keys Homes in 2004. This group considered how the Council's involvement in housing delivery might change and submitted an interim report to Scrutiny on the 25 January 2016.
- 4.1.3 The report's recommendations were wide-ranging, and included that the Council should "finance and build new homes to meet specific needs", and that it should "finance more building of affordable rented housing by supporting housing associations with access to finance". Such pro-active steps – with the Council moving from an 'enabler' to a direct developer of housing – would further cement the Council's increasingly commercial and delivery-focussed agenda.
- 4.1.4 With the Council's first development joint venture – the Peterborough Investment Partnership (PIP), established in January 2015 – the Council has demonstrated just what is possible with direct engagement in development delivery. In less than a year, a site that had languished for years (obtained planning permission for a landmark regeneration scheme. Six months on and the PIP has announced well-respected and capable developers for delivering the main office and waterfront residential components, with construction expected to begin towards the end of 2016.
- 4.1.5. Throughout, the Council has played a critical role in the PIP, jointly making decisions on scheme makeup and design alongside its private sector partner. It is a model that has worked well on Fletton Quays, is one the Council and its legal and financial advisors are familiar and comfortable with and it remains readily deployable to work in other circumstances.
- 4.1.6 It is by design not a model where the Council 'sits back' and lets a dominant partner drive delivery; it is one that invites and benefits from the active engagement, from joint decision making and the day-to-day shaping of schemes and ideas. Peterborough has developed an enviable reputation as a Council that takes such an active role; a reputation for going beyond its critically important function in shaping policy to also putting this into practice, through to delivery on the ground.
- 4.1.7 As part of the budget setting process for 2016/17, Full Council approved the allocation of corporate resources to support the creation of a Housing Delivery Company and specifically for facilitation of the delivery of affordable housing in Peterborough. Since that time, Officers have been working to add 'meat to the bones' of that decision, and the rest of this paper outlines how a new housing delivery company would work, subject to Cabinet approval and final legal negotiations and details.

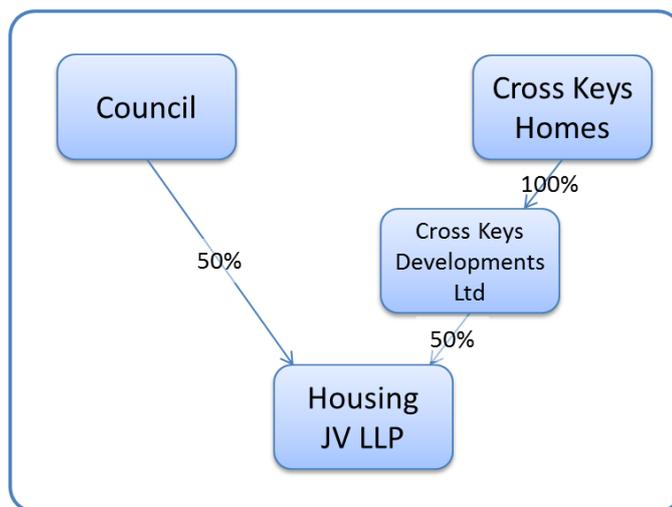
## 4.2 The Housing Joint Venture

### 4.2.1 Structure Overview

4.2.1.1 Whilst the Council could set up a housing company on its own, this is neither the fastest method for delivering on the ground nor plays to the Council's strengths in terms of what it can contribute to delivery. With the Large Scale Voluntary Transfer in 2003 of housing stock to Cross Keys Home, the Council no longer has in-house skills in housing management and development. The Peterborough Investment Partnership demonstrated what is possible when the Council takes part and plays to its strengths in a joint venture, and this made the joint venture model – which the Council is now familiar with – a strong option for a housing development company.

4.2.1.2 Cross Keys Homes was equally a logical choice for partner, as the largest residential social landlord in Peterborough and a strategic partner the Council works with extensively already (and indeed has board membership representation). They have increasingly sought a direct role in development that mirrors the Council's own appetite for being involved in direct delivery and they share Council goals of meeting housing demand and ensuring provision of housing to meet local needs.

4.2.1.3 The proposed structure is as per the diagram below, and is deliberately very similar to that of the Peterborough Investment Partnership. A new housing joint venture (a limited liability partnership) would be formed. The Council would own 50% of the JV partnership (just as with the PIP), and Cross Keys (through their wholly-owned development company) would own the other 50%.



4.2.1.4 In broad terms, the objective of the company would be to deliver new housing of all types and tenures (including affordable rent, starter homes, shared equity, market sale, private rented, student accommodation and housing solutions for vulnerable groups including the elderly, disabled and ex-armed forces personnel). at a range of scales as circumstances dictate. It would be able to operate outside of as well as within Peterborough, but initial projects would be within the unitary area. Aligned to both the Council's and Cross Keys Homes' ambitions, schemes will be about meeting the varied housing needs of the community, and many will have a focus on 'affordable' elements as well as market. Registered providers such as Cross Keys already subsidise affordable housing through profit on market sale.

4.2.1.5 The company would achieve this through a range of activities, including:

- a) The acquisition of strategic land interests and their promotion through the planning process
- b) Site development to planning permission and unit delivery, including consented-site sales before and after infrastructure works are complete
- c) Site acquisitions and strategic site assembly

- d) Facilitating the sale of completed accommodation units
- e) Holding stock and leasing as appropriate

4.2.1.6 There are clear – and deliberate – parallels in the above to how the Peterborough Investment Partnership operates. Just like the PIP, the housing joint venture would choose the best way of working on a scheme on a project by project basis, and on some schemes it might (for example) develop a site out fully itself whilst on others it might sell on parcels with planning consent, or serviced plots.

#### 4.2.2 Governance, Control and Operation

4.2.2.1 As with the PIP, the new housing joint venture would be controlled by a small board, delegating most operational decisions to a project / working team. The JV board and the project team would be run on a decision making by consensus approach, requiring both parties to agree to something before it can be enacted. This has worked well within the PIP and is now a proven model for the Council

4.2.2.2 The board would be made up of up to four representatives, up to two from the Council and up to two from Cross Keys. The board would approve strategic matters and decisions (such as related to an annual operating budget, the projects to take forward and so on). Operational matters would be dealt with by a project team, for which both parties can nominate up to three individuals.

4.2.2.3 In broad terms, the process for project development and delivery within the joint venture is:

- a) Project team develop a 'concept' for the project, which is essentially a document that will frame an idea and request board approval to investigate if it is worth pursuing more fully. The level of detail for which will vary depending on circumstances and project but would normally include matters such as context, commercial expectations, key risks and assumptions, outline timeline and headline costs for developing a full business case.
- b) Once agreed within the project team, the joint venture board then need to approve it. The board can, of course, decide not to proceed, and because all decision making would be by consensus this would also apply if either the Council or Cross Keys were unfavourable towards it.
- c) Once the concept has board approval, the project team work to develop a full business case. The business case will vary in scope and detail (as would be expected) depending on the project, but would involve how a scheme would proceed (including planning application approach etc.), how physical delivery (including infrastructure) would take place, the 'exit' options, a commercial appraisal, risk assessments, costs and cash-flow forecasts, and financing options.

As will be discussed later in section 4.3, it is important to note that neither the Council nor Cross Keys would be obligated to finance any project (either because of this Cabinet Report, or a decision by its representatives within the JV). Both parties simply have the option to do so, subject to usual governance within the respective organisations, executed in the usual ways.

- d) As in step B above, approvals are needed for the final project plan by the project team and board before it is progressed.
- e) Work commences and depending on the scheme, this is likely to involve a planning application, potential land acquisitions, construction contracts for infrastructure and housing and so forth. The board would receive regular updates on progress.
- f) What happens at the end of a scheme will vary. In a simple case where a scheme is a mix of market housing and affordable, the affordable would be managed by Cross Keys under contract to the housing JV and the market housing sold off. Any profit that the housing JV makes would be then split and returned to the partners, likely on a *pari passu* basis. It is important to note that whilst all schemes must work financially – when all income and expenditure for a scheme is considered – it is

possible that they may not return more than an incidental profit, given the costs involved in providing mixed tenure housing schemes. This would be clear, however, on a scheme by scheme basis, and be taken into account in any investment case (see 4.3 for more detail).

### 4.2.3 Initial Projects

4.2.3.1 Like the Peterborough Investment Partnership, the Housing Joint Venture will not be constrained to a set of projects agreed at the outset; rather, the intention is to develop projects throughout the open-ended length of the joint venture, taking advantage of opportunities that arise and in response to particular needs. However, again as with the Peterborough Investment Partnership, there are projects that the Housing Joint Venture will begin its work with examining, and it is appropriate to outline these here.

- a) Scheme 1: redevelopment of a brownfield site in Peterborough for around 200 new homes. The property mix is likely favour two bedroom houses and flats for rent and two or three bedroom houses for shared ownership
- b) Scheme 2: a redevelopment of brownfield site in Peterborough that could deliver up to 80 homes, with a focus on affordable. The property mix is likely to be two bedroom houses with a smaller number of three bedroom houses. This site also offers the opportunity to examine the inclusion of some bungalows for older or physically disabled people and some supported housing flats for vulnerable clients with low support needs.

4.2.3.2 It is important to note that one of the first tasks of the joint venture will be to assess these two sites, though the process above, and formally determine what, if any, project to take forward on them. The scheme descriptions above are therefore subject to change. Alongside this work, the Housing JV will need to develop a pipeline of 'concepts' and projects to take forward, working through the process 4.2.2.3 above. All such decisions would be made jointly with Cross Keys' representatives inside the new housing joint venture.

## 4.3 **Financial arrangements and inputs**

### 4.3.1 Financing overview

4.3.1.1 It is essential to be clear what the Council is being asked to commit to financially, and at what point. The Joint Venture is a development company, separate from the Council and will operate accordingly. It has two main kinds of finance need: firstly, operating finance, and secondly, project finance.

4.3.1.2 The JV's board will be responsible for the approval of the JV's operating budget (which will be one of the first tasks of the JV's project team to develop, and then be undertaken annually thereafter). This budget covers the necessary corporate costs of any company or partnership, and also is intended to cover the costs of taking project concepts through to approval of a business case stage. After this, costs would be project costs and be dealt with separately.

4.3.1.2 Project costs are those for taking the scheme from its business case to conclusion. Given this will often involve land acquisitions or planning applications or dwelling and infrastructure construction these costs will be much greater than the initial business case development.

### 4.3.2 Operating finance

4.3.2.1 This is primarily intended to cover two types of cost; so-called 'corporate costs', which are those to be expected for operating a company (accounts, audit, accommodation, telephony, incidentals and so on), and 'concept development' costs, which are those elements of

expenditure necessary to develop full scheme business cases suitable for investment and 'go / no-go' decisions by the Board.

4.3.2.2 The intention is that the majority if not all of these costs would be recharged and recovered from individual projects once these have received Board approval and obtained finance to proceed. It is also likely the JV board would make a reserve from any scheme profits (such as occurred) prior to any distribution.

#### 4.3.3 Project finance

4.3.3.1 The scale and source of project finance will, necessarily, vary according to the scheme. Neither Cross Keys nor the Council are committing at this stage to any finance for schemes, and this report does not ask for a decision around this accordingly. Rather, both parties will retain the option to finance projects as they are developed by the JV, subject to assessment of risk and return at the time.

4.3.3.2 This choice is deliberate. Until a scheme is developed, it is very hard for either the Council or Cross Keys to know exactly the finance level required, the risk profile, the potential returns and so on that are all necessary for an informed decision. Investment by the Council or Cross Keys is therefore reserved for each scheme on a case-by-case basis, using each party's governance in the usual way at that time.

4.3.3.3 At its meeting of 13<sup>th</sup> July 2016, Council approved an increase in the 'invest to save' capital budget, including an initial allocation of £20m for the Housing JV. To be clear, this simply provides an allocation of potential funding. Any actual investment in the JV using this funding would be subject to the Council's decision making process in the usual way, most likely via executive decision.

4.3.3.4 The same Council report also added the JV to the list of bodies that the Council can undertake secured capital investment in. This is essentially a form of loan finance, similar to that the Council has already been undertaking in two areas:

- with Axiom Housing Association, supporting housing in Peterborough
- With Empower, supporting delivery of solar panels on residential properties

4.3.3.5 In each of those cases, due diligence has been undertaken on the proposals. This will need to have occurred before any loan investment in the Housing JV could be considered.

4.3.3.6 The issues the Council may face will depend on the type of project, and will need to be dealt with on a case by case basis. The general approach to development of the projects, and the type of projects initially to be considered, are covered in sections 4.2.2 and 4.2.3 above. The Council will receive returns in two ways:

- From rental properties as an annual income over the life of the scheme
- For market sale, as a lump sum return

#### 4.3.4 The Affordable Housing Capital Fund

4.3.4.1 Since 2004 the 'Right to Buy' (RTB) capital receipt funds have been reserved to deliver affordable housing in Peterborough through third parties. These funds have served as the main funding stream in the council's affordable housing capital fund. The other funding stream has been accumulated from affordable housing commuted sum payments received from developers via Section 106 planning obligations in lieu of on-site affordable housing provision. These funds are also available to enable delivery of affordable homes in Peterborough through a third party.

4.3.4.2 As part of budget approval decision by Full Council for 2016/17 that agreed to the creation of a housing company, it was also agreed that the funds accumulated from capital receipts received from Cross Keys Homes from income generated from qualifying RTB sales would be directed to the housing company to build new affordable homes in Peterborough.

4.3.4.3 In 2013, Cabinet agreed to suspend any new spend from the RTB capital receipts funding stream element of the council's affordable housing capital fund (but still allow granting from the Section 106 element). The decision was taken in response to the fact that grant uptake had been relatively low, perhaps as a result of the constrained bidding criteria within the funding policy, and recognition that as the Council's finances became tighter, there was need to review whether best value was being achieved from this policy.

4.3.4.4 Despite the fact that the Section 106 commuted sums funding stream has remained available for allocation through the policy since this decision, only one bid for funding has been received in the ensuing three year period. This drop in bids for funding has coincided with major changes in the nature of the Government's funding regime for affordable housing. There has been a dramatic reduction in grant rates paid to registered providers and shifts in the tenure types that are eligible for funding. Affordable housing providers have responded to this by changing their approach to financing new development. They have become less reliant on grant and more creative with how they cross-subsidise their schemes. Consequently, this has had the knock on effect of significantly reducing the demand for our own capital funding from local providers.

4.3.4.5 This change in climate for affordable housing funding financing and delivery models has clearly highlighted that the existing funding policy is unable to accommodate these changes and that it is no longer serving its original purpose; to support and invest in the provision of affordable housing in Peterborough.

4.3.4.6 One of this report's recommendations, therefore, is that the policy is withdrawn and that a more flexible approach is taken to the future allocation of the Section 106 commuted sums funding stream. This money will still be reserved for affordable housing provision in Peterborough as required by Section 106 planning obligations, but will no longer be confined by the terms of the existing policy which restricts the ability to respond to ongoing changes in the nature of affordable housing provision.

4.3.4.7 This would enable bids for funding to be considered on a case by case basis and allow the Council to exercise more discretion – for example to decide whether a loan or another mechanism may be more appropriate than a grant in certain instances. This approach would mean that the Council can continue to support affordable housing delivery, but at the same time ensure that we maximise use of these finite funds.

#### 4.3.5 Partner inputs

4.3.4.1 The initial commitments that the Council and Cross Keys will make to the housing JV are:

- a) An initial investment to the housing joint venture for operating capital of £100,000 by both parties, to be used as explained above. This will be funded from the Council's capacity building reserve.
- b) Any land for initial schemes that Cross Keys put in to the JV will be at 'market value'
- c) The Council will make available the Right to Buy receipts (£14.6m) although these will remain in the Council until an investment decision is made for a scheme that delivers suitable affordable housing within Peterborough is put forward
- d) Both parties will commit staff resource to the JV to work inside the project team developing the schemes that make the JV a success, the costs of which will be recharged by the Council and Cross Keys to the JV (or a project subsidiary, as appropriate).
- e) Both parties will incur set-up costs in establishing the JV. It is intended to recover these from the JV when it is established

4.3.4.2 Future commitments, to be decided at the appropriate time and subject to separate decisions as appropriate, might include:

- a) The Council making available land to the JV at market value and with full compliance to its Section 123 statutory obligations

- b) Cross Keys making additional land available at market value
- c) Finance for projects, subject to separate decisions at the time

## **5. CONSULTATION**

- 5.1 These proposals have been developed through internal consultation with officers from finance and legal services, including the Service Director Financial Services and the Assistant Director of Legal Services, both of whom have been involved in developing and refining the proposals. The Leader of the Council has been consulted throughout.

## **6. ANTICIPATED OUTCOMES**

- 6.1 The creation of a housing joint venture partnership between the Council and Cross Keys.

## **7. REASONS FOR RECOMMENDATIONS**

- 7.1 The recommendations above allow the housing delivery company approved by Full Council in the 2016/17 budget to be put into place, creating a mechanism for implementing recommendations from the cross-party task and finish group previously mentioned in this paper. This new joint venture will also allow a more active, targeted use of the Right to Buy receipts, facilitating greater delivery of affordable housing. It will also help the Council to directly act to ensure the Local Plan's five-year supply requirements continue to be met, which will assist in fending off unwanted, speculative development and the range of detrimental consequences such development can potentially have.

## **8. ALTERNATIVE OPTIONS CONSIDERED**

### **8.1 Do nothing**

- 8.1.1 The Council could choose not to work to develop housing itself. This was rejected because it contradicts the recommendations of the task and finish review group mentioned in 4.1.2 of this report's. It would also be inconsistent with the Council's increasingly proactive approach to delivery.

### **8.2 Develop housing directly through a wholly-owned company or under contract**

- 8.2.1 The Council could choose to work alone rather than with a partner (either through a subsidiary company owned 100% by the Council, or by placing development contracts). This option was rejected because the Council has limited internal development experience, and building such experience both takes time and introduces risk until it is embedded.

### **8.3 Use the Peterborough Investment Partnership**

- 8.3.1 The PIP's progress of the Fletton Quays scheme has been an unarguable success. It was therefore considered early on as to whether an arrangement that included the PIP would be possible for the delivery of housing. Whilst the PIP is clearly capable of developing housing schemes, this option was rejected because the Housing Joint Venture's (at least initial) focus on facilitating affordable homes (including their retention and management) was felt to work better with a partner whose primary focus was that, for which Cross Keys would be a better fit.

## **9. IMPLICATIONS**

### **9.1 Legal Implications**

- 9.1.1 Legal opinion on the structure of the Housing Joint Venture has been provided separately by Pinsent Masons LLP. The advice concludes that the Council has the power to utilise a Limited Liability Partnership for the Housing Joint Venture and also that on balance the Housing Joint Venture will not be subject to the Procurement Regulations 2015.

- 9.1.2 The key legal risks are enshrined in the ability: (a) of the Council to utilise a Limited Liability Partnership (akin to the structure utilised by the PIP); and (b) to demonstrate that the Housing Joint Venture is established as a "market facing" vehicle with freedom to operate commercially (and on an equal footing to market competitors where appropriate). Pinsent Masons LLP has advised that (given the socio-economic nature of the Initial Projects (a focus on affordable housing and meeting needs of the community for new housing and related development)) the Council can enter into a LLP structure, as opposed to a company limited by shares given that the primary purpose of the Housing Joint Venture for the Council is not a commercial purpose.
- 9.1.3 There is a clear socio-economic purpose which PCC may look to in order to have vires, recognising that the Housing Joint Venture may utilise elements of third party sales/commercial activity to underpin the broader purpose and deliver the primary objectives. As such, it can be demonstrated that the Housing Joint Venture is not acting with a primary commercial purpose to trade and so the Council can enter into an LLP arrangement as proposed.
- 9.1.4 It is recommended that corporate structure of the Housing Joint Venture is kept under review should the primary purpose of the JV change and it becomes commercial.
- 9.1.5 It should be noted that the Council already operates a LLP property structure (established post Localism Act 2014), the PIP, which was established on a similar basis to the proposed Housing Joint Venture. This provides a helpful precedent allow the Council to enter into an LLP structure for the Housing Joint Venture.
- 9.1.6 Whilst the primary purpose of the Housing Joint Venture may be enshrined in socio-economic purpose, the methodology and establishment of the Housing Joint Venture is focused on adopting a market focused/commercial approach (deliberately established in such terms to reflect a more realistic approach to the marketplace).
- 9.1.7 From a public procurement perspective Pinsent Masons LLP has advised that the Housing Joint Venture will not be subject to the public procurement rules as a 'body governed by public law'. This is on the basis that the Housing Joint Venture, whilst 'meeting needs in the general interest' (i.e. provision of housing and associated benefits within the Peterborough area, initially at least), will operate on a commercial basis, compete alongside other affordable housing providers and developers on the market, seek to make a profit in order to deliver on these objectives and bear the risks of its own activities. These aspects will be reflected in the incorporation and operational documentation associated with the Housing Joint Venture, should the recommendations of this report be approved.

## **9.2 Financial Implications**

- 9.1.2 These are considered in section 4.3 above.

## **10. BACKGROUND DOCUMENTS**

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985)

None.

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