By:	Kevin Lynes, Cabinet Member for Adult Services Oliver Mills, Managing Director, Adult Services
To:	Cabinet – 15 January 2007
Subject:	BETTER HOMES: ACTIVE LIVES – KENT HOUSING PFI
Classification:	Unrestricted

Summary:

In 2004 a report (22/11/2004) recommending the approval of the Outline Business Case for the Better Homes Active Lives project and the progression of its procurement was approved by Cabinet.

This report updates Cabinet on the Kent Better Homes Active Lives Housing PFI project. The project is being procured in partnership with 10 District Council authorities and will result in the provision of up to 352 new homes for vulnerable people in Kent.

This report requests Cabinet to approve:

- Delegated Authority to the Managing Director for Adult Services, in consultation with the Cabinet Member for Adult Services, to approve the signing the contract documentation including the Project Agreement to enable it to become operational;
- Delegated Authority to the Managing Director for Adult Services, in consultation with the Cabinet Member for Adult Services, to approve the signing of the Back to Back Agreement to share the risks and benefits of the project with our District Council partners;
- Approval for the use of the designated sites for the project.

1. Introduction

1.1 In May 2005 Kent County Council and 10 District Council Partners received approval for an Outline Business Case for £72 million PFI credits from the Office of the Deputy Prime Minister (ODPM) now the Department for Communities and Local Government and Local Government (DCLG), to deliver the Better Homes Active Lives project – Kent's Additional Social Housing PFI.

1.2 The project will develop up to 352 apartments of additional social housing across Kent including 280 extra care apartments for older people, 65 supported apartments for people with learning disabilities, and seven apartments for people with mental health problems in Thanet.

1.3 The Project is being procured by Kent County Council on behalf of itself and 10 District Councils..

1.4 In order for the project to become operational the County must sign a Project Agreement with the PFI Contractor. The risks and benefits from this Agreement will then be shared with the Districts through a Back to Back Agreement. The Project is currently affordable with the capital cost being covered entirely by PFI credits. No further contribution from the local authorities is anticipated through the contract.

1.5 This report presents the strategic, financial and legal context for the project and recommends that the Cabinet approves the delegation for the signature of the Project Agreement and Back to Back Agreement and to confirm permission to use the designated sites for the project.

2. Strategic Background

2.1 In 2004 a report (22/11/2004) recommending the approval of the Outline Business Case for the project and the progression of its procurement was approved by Cabinet. The report cited the following documents as the strategic context for the project:

- the Vision for Kent theme for promoting independence and preventative social care;
- the Next Four Years target for additional sheltered housing and;
- Adult Services' strategic vision Active Lives.

2.2 The project will also deliver against the County's current strategic objectives to modernise adult services by providing innovative housing schemes which support people to live independently in their own homes with care delivered in a flexible way, as and when individuals need it. The project also fits with the aims of Outcome 18 of the Kent Agreement, to promote independent living for all, by increasing the numbers of vulnerable older people who will be able to live in their own homes, and reducing the numbers of vulnerable adults who have to go into residential care placements by providing appropriate new housing in which individuals can be supported to live independently.

2.3 Appendix 1 shows how the accommodation being delivered through the project will be distributed across the County. This is a key part of a range of care services available and residential care will itself be provided for people who need it.

3. Need for the Project

3.1. Extra care housing for Older People – 280 new apartments

3.1.1 The Better Homes Active Lives Project will develop extra care housing in Ashford, Dover, Maidstone, Shepway, Canterbury, Thanet, Dartford and Sevenoaks.

3.1.2 Kent's Ageing Population

Kent County Council is the largest local authority in the UK in terms of the population it serves. It is therefore not surprising that the proportion of Older Persons alone is enormous. For example, there are currently 237,800 retired people in the County and among the very elderly population (aged 85 and over), we have 25,500 people aged 85+.[1]

3.1.3 In proportional terms, the retired age group makes up 17.3% of the total population (nearly 2% if those aged 85 and over). In growth terms, we can expect

[1] Figures from the Performance, Policy & Planning Unit, KCC Adult Services Directorate

over 6,000 additional retired people per annum over the next 10 years across the county. Over 700 of that annual increase will be very elderly (aged 85+). [2]

3.1.4 At present many older people are supported at home through domiciliary care, home adaptations and housing related support. Sometimes there comes a point where this is no longer possible as homes are unsuited to further adaptation, or because it is difficult to provide a continuing level of personal care that an individual may need. Consequently, people move into a residential care because they, or their relatives, no longer feel they are safe at home.

3.1.5 Extra care housing will provide specially designed homes and support enabling people to remain in local communities and will provide an alternative to institutional care. The Outline Business Case for the project showed that there is a lack of extra care housing in Kent.

3.1.6 The Better Homes Active Lives project will provide up to 280 self contained new apartments of extra care housing across Kent. The apartments will be designed and operated to cope with a range of dependencies including people with dementia. The schemes will include communal facilities such as a restaurant, gym and café. The schemes will have a 24 hour on site dedicated care team and all apartments will be equipped to take assistive technology (telecare and telehealth equipment).

3.2 Supported Housing for People with Learning Disabilities

3.2.1 The Better Homes Active Lives project will also deliver housing for people with learning disabilities in Ashford, Dover, Dartford, Canterbury, Maidstone, Swale Shepway, Tonbridge & Malling and Thanet.

3.2.2 Kent's Learning Disability Partnership Board (representing Social Services, District Housing representatives, Health, the voluntary sector, carers' organisations, Health and users of services) has commissioned a Kent-wide Learning Disability Housing Strategy.

3.2.3 The Strategy highlights the fact that there is a lack of appropriate housing for people with learning disabilities in Kent. Individuals' aspirations are growing, and more people would like to live independently rather than in institutional care.

3.2.4 The Better Homes Active Lives project will provide small clusters of self contained single apartments for people with learning disabilities in 9 districts in Kent. Each block of apartments will include the equivalent space for one flat to be used by support staff and for group activities. The accommodation will enable individuals to choose to move on from residential provision.

3.3 Housing for People with Mental Health Problems in Thanet

3.3.1 There is currently no appropriate accommodation for people with mental health problems in Thanet.

3.3.2 The East Kent Review and Redesign of Inpatient Services Project are developing 33 units of accommodation across East Kent. These units will be supported by a comprehensive range of housing related support and specialist community mental health services.

[2] Figures from the Performance, Policy & Planning Unit, KCC Adult Services Directorate

3.3.3 New provision for people with mental health problems in Thanet will be provided through the Better Homes Active Lives project and will linked to the East Kent Review and Redesign of Inpatient Services for the provision of support and care services. The new housing will be in the form of 7 one bed apartments with the equivalent space for one flat to be used by support staff or communal and community use.

4. Procurement Process

4.1 The £72 million PFI credits for the project were approved by the Treasury and ODPM (now DCLG), in May 2005. Since then the project has undergone an extensive procurement process in accordance with EU regulations and guidance from the Treasury and DCLG.

4.2 The project is directed by a Project Board which comprises of 6 Heads of Housing from District Authorities and is chaired by Caroline Highwood, Director of Resources for KCC Adult Services. RSM Robson Rhodes have advised the project on finance, Addleshaw Goddard on legal, AON on insurance and Philip Pank Partnership on technical matters.

4.3 The project was advertised in the Official Journal of the European Union in May 2005. The procurement was structured as a three stage competitive tender process to select a Preferred Bidder with whom the Project Team are currently negotiating the project.

4.4 Housing 21, a specialist Registered Social Landlord, were appointed as Preferred Bidder to the project in July 2006 following approvals from the Project Board. Before proceeding to appoint Housing 21 information from their bid was assessed by Partnerships UK on behalf of the Treasury & DCLG.

5. Scope of PFI Contract

5.1 The scope of the contract is to design, build, finance and operate the housing over a 30 year period. It is financed through the Private Finance Initiative.

5.2 To deliver the contract Housing 21 have formed a Special Purpose Vehicle – 'Kent Community Partnership', which will be responsible for constructing, maintaining and providing housing management for all of the assets over the course of the contract.

6. Financing & Affordability

6.1 KCC has been awarded a PFI credit of £72m from the DCLG. This credit will be paid to KCC in the form of a revenue grant. It will be paid in equal amounts each year following the date the first facility is open and available for use. PFI credits are intended to cover the costs associated with building the facilities. The majority of running costs, such as energy, communal cleaning and catering are recovered by the contractor through the Service Charges to the tenants.

6.2 This project also includes not only building the facilities but operating and maintaining the facilities and it also includes the provision of housing management. The contractor has factored inflation and the cost of borrowing to build the facilities into the financial model and the unitary charge includes this. (The Unitary Charge is the charge which is paid to the Contractor by KCC.)

The contractor will receive reimbursement for the costs of the project from the following sources:

- Rent and service charges - collected from tenants by the contractor;
- Third party income (e.g from the hire of communal facilities/gym);
- The Unitary charge to KCC.

The PFI credit will be paid quarterly in arrears. The unitary charge will be paid monthly in arrears. The affordability of the project is based on an assessment of affordability over the life of the contract. It will be necessary to establish an equalisation reserve with interest to address the timing difference of the credit and the unitary charge and to use the surplus from the credit in the beginning of the contract to fund the shortfall in later years. Any surplus in this reserve will be used as a first call on additional costs before KCC and the partners need to contribute.

RSM Robson Rhodes are the project's financial advisors and Appendix 2 is a brief report from them confirming the current affordability position of the project. Robson Rhodes are also advising on the FRS5 analysis which will confirm that the project is off-balance sheet. This will also be cleared with the Council's external auditors before the contract is signed.

6.3 There is provision in the contract to benchmark some of the services at five yearly intervals. These services include cleaning, catering, grounds maintenance and utilities. If the benchmarking exercise indicates that these costs need to increase, this will impact on the service charges.

6.4 It is intended that at the point of financial close there should be no affordability gap and the net unitary charge will be met from the PFI credit with no additional financial contribution from the partners. The indication at this stage is that this is achievable. The cost of the project may change over the negotiations in the coming months, however, the Project Board have agreed that the Project Agreement should not be signed unless, at the point of signature, the partners' contribution to the unitary charge is nil.

6.5 In signing the contract Kent Community Partnership will have agreed to a set of standards to which they must perform. A payment mechanism will be in place to ensure deductions are made to the unitary charge if the performance falls below the acceptable standard set out in a detailed output specification, or if the units or some of the communal areas are unavailable for use. These deductions will increase if the performance continues to fail.

6.6 Although the project will only be signed if there is no affordability gap there is always the possibility that additional costs will arise in future years. The risks of this have been explored so that they are well understood, and control mechanisms are in place to ensure that they are remote. However, over the life of the contract no absolute guarantee can be given that no difficulties will arise.

7. Land Contribution

7.1 The partner authorities are providing land for the developments under the contract. Of the 13 sites being used for the project, KCC is contributing nine of the sites. The other four are being contributed by some District Councils. Most of the sites which KCC are contributing, were previously being used for the provision of residential care, which is being replaced by new extra care or learning disability housing. The new housing will promote independent living and provide an improved service for residents and an environment in which the provision of care should be more cost effective than residential care.

7.2 It is proposed that land is put into the project on a 99 year lease. For the duration of the 30 year ‘contract period’ the land must be used for the purposes outlined in the PFI contract. During the contract period the Authorities, including KCC, have 100% nomination rights and nominations will be made from the local District Council housing list through a joint referral procedure which local housing and Adult Services officers control.

7.3 Following the contract period, the Contractor retains the assets and the sites for the purpose of delivering social housing. Allowing the contractor to do this has enabled the contractor to give the Authorities a reduction in the unitary charge for the project and therefore ensure that it is affordable. The Authorities retain 80% of the nomination rights to the properties for the first five years of the post contract period.

7.4 Those authorities that are contributing land will receive a ‘peppercorn’ ground rent during the 30 year contract period. For the remaining 69 years after the contract period this is raised to a peppercorn plus level of 32p per square metre (subject to inflation). The benefit of the peppercorn plus ground rent is that it secures a lower and affordable unitary charge to the Authority covered by the PFI credits.

7.5 The contribution of land by some of the authorities has been factored into the mechanism for sharing any costs which may arise under the Back to Back Agreement (appendix 3).

8. Project Agreement & Back to Back Agreement

8.1 Kent County Council is procuring the contract on behalf of itself and the 10 District Councils. KCC will therefore enter into the PFI Agreement with the Contractor (Kent Community Partnership) for the provision of services over the next 30 years. The target for contract signature is the first quarter of 2007/2008.

8.2 Risks and benefits from the Project Agreement will be shared with the District Council partners through a Back to Back Agreement. The Back to Back Agreement will be signed with the 10 District Councils prior to KCC signing the Project Agreement and will tie the District Councils as though they had been signatories to the main PFI contract. The relationship has been carefully negotiated to provide an agreed risk sharing arrangement and through the Back to Back the costs associated with any risks that occur under the PFI Agreement will be shared between the partners.

8.3 Addleshaw Goddard the external legal advisors to the project, have advised the partners with regard to the Project Agreement. A report from Addleshaw Goddard and the Project Team outlining the key risks in the Project Agreement and Back to Back Agreement is included at appendix 5.

8.4 The Back to Back Agreement has been negotiated by partner authorities lawyers. The Back to Back Agreement covers project governance, nomination rights, risk sharing and contract management requirements for the project. It operates on a number of key principles:

- If a risk occurs under the contract as a consequence of the actions of one party, that party should be responsible for the cost;

- If a risk occurs under the contract which is the result of a choice made by all of the partners or is the fault of no partner then a mechanism should be applied to share those costs (appendix 3 & examples in appendix 4). KCC would take 25% of the cost with the remainder being shared between the District Councils;
- Any decisions under the Back to Back which may result in an increase of risk or cost to any of the partners must be taken as unanimous decisions between all the partners through the Project Board (which will have one representative per partner).

9. Project Governance & Project Administration

9.1 The Back to Back dictates the ongoing governance arrangements for the Project. The Project will be governed by a Project Board, on which partner authorities will have equal representation. Any decisions which could result in an increase in costs or risk to any of the partners must be made unanimously by the Project Board.

9.2 The administration of the contract will therefore be borne by KCC but costs will be shared through the project reserve and the Contract Manager will report to, and take instruction from, the Project Board.

10. Project Review & Approval by DCLG & Treasury

10.1 In July 2006 the project was reviewed by Partnerships UK on behalf of the DCLG and the Treasury in terms of its affordability and compliance with standard contract guidance for PFI (SOPC3).

10.2 The review concluded that *"The bid from the prospective preferred bidder appears to be affordable and contains no unacceptable derogations from SOPC3 provisions"*.

10.3 The Project will be reviewed again with regard to affordability and to ensure appropriate risk transfer to the private sector before the PFI contract can be signed.

11. Recommendations

11.1 Cabinet is asked to APPROVE:

(a) Delegated Authority to the Managing Director for Adult Services, in consultation with the Cabinet Member for Adult Services, to approve the signing of the Project Agreement and the Back to Back Agreement on behalf of the County Council and appoint an officer to do this.

(b) The contribution of land to the Project as a long lease for the purposes outlined in this report as listed in appendix 1.

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Background documents: None

APPENDIX 1

Distribution of proposed provision across the County:

Apartments	Location
Extra care housing apartments for Older People	
▪ 40 apartments	Ashford (Hopkins Field, Eastern Ave)
▪ 40 apartments	Canterbury (King Edward Court, Herne Bay)
▪ 40 apartments	Thanet (Appleton Lodge) *
• 40 apartments	Dover (Roly Eckhoff House, Roosevelt Rd)
• 40 apartments	Maidstone (Tovil Green, Tovil) *
• 40 apartments	Shepway (Whitegates, Hythe) *
• 40 apartments (combined scheme between Dartford/Sevenoaks Councils)	Dartford (Stanley Morgan, Wilmington) *
Total: 280 new apartments PFI funded	

Supported living apartments for people with Learning Disabilities	
▪ 7 apartments	Ashford (Westchurch House, Eastern Ave) *
▪ 7 apartments	Canterbury (King Edward Court, Herne Bay)
▪ 9 apartments	Dartford (Stanley Morgan, Wilmington) *
▪ 7 apartments	Dover (Roly Eckhoff House, Roosevelt Rd)
▪ 7 apartments	Maidstone (Tovil Green, Tovil) *
▪ 7 apartments	Shepway (Whitegates, Hythe) *
▪ 7 apartments	Swale (Kiln Court, Faversham) *
▪ 7 apartments	Thanet (Crispe House, Birchington) *
▪ 7 apartments	Tonbridge & Malling (Millstream, ex school site) *
Each cluster of apartments will also have an additional office / communal space – equivalent to one apartment in space. **Total: 65 new apartments PFI funded**	

Supported living apartments for people with Mental Health Needs	
▪ 7 apartments	Thanet (Westbrook House, Margate) *
The cluster of apartments will also have an additional office / communal space – equivalent to one apartment. **Total: 7 new apartments PFI funded**	

Total number of apartments to be delivered across the whole project: 352

* KCC sites.

APPENDIX 2

Kent County Council

Better Homes – Active Lives

Affordability position
September 2006

RSM Robson Rhodes

Affordability of the Housing 21 bid

Introduction

Since the selection of Housing 21 as preferred bidder no revised models have been required or received. The affordability position remains as per their BAFO submission. We recognise that further discussions have been held on the potential to re-scope some of the project requirements to further enhance the affordability of the project.

Affordability & VFM

Overall the Housing 21 bid is affordable to the Council and its partners on the agreed PFI credit and no requirement for revenue funding. It is within the affordability envelope, and presently carries a surplus on the funding arrangement. In summary the position of Housing 21 is:

	Base Unitary Charge £m
Housing 21	4.3

The re-scoping suggested indicates the following reductions in the annual unitary charge (indicative at this point as no financial model has been rerun).

A shower to be fitted in each apartment that can be changed to a bath if the tenant prefers. Assume that baths will be fitted into 40% of flats.	**£3,000**
Remove the requirement for an ATM.	**£2,000**
Remove the requirement for a communal space (the size of 1 apartment) in each of the learning disabilities facilities and add one additional apartment for each facility to be used for housing tenants. Please include the benefit of any additional rental and service charge income in your figures.	**£40,000**
Remove the provisional sum requirement for additional fitting out and equipment in all facilities.	**£81,000**
Remove the requirements to have windows facing the corridors.	**£6,000**

The key factors moving towards close that can affect the affordability position are the long-term interest rates and changes resulting from planning or design requirements. The funding will be based on a 28-year loan, with a rate fixed at financial close. Rates have been steadily increasing over the past few months, and whilst no major rises are predicted it is the one area other than significant planning issues that can change the affordability position. This will be kept under review, and should rates increase sufficiently towards loosing the current surplus buffer, action will be taken to bring the project back within affordability limits.

In terms of VFM, all bids have been compared in NPV terms, discounted at the Treasury discount rate of 3.5%, to the start of operations.

	NPV of Unitary Charge £m
BAFO	
Housing 21	57.4

APPENDIX 3

Cost Share Percentages Post Financial Close.

The only ongoing costs which partners could be liable for under the project are those which may arise due to either a change that partners agree they want in the project or through the occurrence of one of the risks which are set out in the Project Agreement and Back to Back Agreement. Although these risks are of low likelyhood, or are in the control of partners, it is necessary to agree a mechanism which will be used to apportion any costs associated with those risks.

It is envisaged that having the risk sharing mechanism will work in the interest of the project as a whole and will encourage partners to be risk averse in their actions, because all partners take a share in the risks and benefits associated with it.

The cost shares were agreed by the Housing Managers and the Director of Resources (Adult services) for KCC. They were subsequently reviewed by the Finance Directors. The factors which were taken into consideration in apportioning the shares were as follows:

1. Number of units which an Authority will receive through the project / Benefit to the Authority

The shares are based on the number of units each district will gain from the project with a percentage share set for KCC. KCC's share was set following discussion between housing representatives and the Director of Resources for Adult Services regarding the benefit to KCC of the project.

2. Contribution of land to the Project

An adjustment was made to the risk shares to reflect the contribution that some districts are making by giving land to the project. This reduction is based on the residual value and capital expenditure in the bid, which reflects the value of the site. This has been converted to a percentage on the basis of £1m = 0.75%. It was agreed that the KCC share would not be part of this adjustment, on the basis that KCC should make some savings on care costs through the project.

Cost Share Proportions - Calculation

Partners	Units	KCC % & district units	Land value adjustment	**Final share**
	No.	%	%	**%**
Kent County Council		25.0	0.0	**25.0**
Ashford	*46*	10.1	-2.6	**7.5**
Canterbury	*46*	10.1	-3.5	**6.6**
Dartford	*28*	6.1	1.3	**7.4**
Dover	*46*	10.1	-3.3	**6.8**
Maidstone	*46*	10.1	2.1	**12.2**
Sevenoaks	*20*	4.4	0.9	**5.3**
Shepway	*46*	10.1	2.1	**12.2**
Swale	*6*	1.3	0.3	**1.6**
Thanet	*52*	11.4	2.4	**13.8**
Tonbridge and Malling	*6*	1.3	0.3	**1.6**
	342	100.0	0.0	**100.0**

APPENDIX 4

Examples of risks in the Project Agreement (and back to back)

ANNUAL INSURANCE PREMIUM

This is probably one of the most difficult costs for the contractor to predict. The bid includes the insurance premium inflated over the life of the contract. The increases below are over the amounts already allowed for. The contractor is committed to taking an increase of +30% above that already allowed for in the bid. If the premium increases beyond this level then the partners may need to make a contribution. The following table illustrates the impact of this:

£000

The impact of an increase in insurance premium of:		+30%	+35%	+40%	+50%
Contractor's share	% cost share	71.0	72.8	74.6	78.2
Kent County Council		-	2.5	5.2	10.2
Ashford	25.0	-	0.8	1.5	3.1
Canterbury	7.5	-	0.7	1.3	2.7
Dartford	6.6	-	0.8	1.5	3.0
Dover	7.4	-	0.7	1.4	2.8
Maidstone	6.8	-	1.2	2.5	5.0
Sevenoaks	12.2	-	0.5	1.1	2.2
Shepway	5.3	-	1.2	2.5	5.0
Swale	12.2	-	0.2	0.3	0.6
Thanet	1.6	-	1.4	2.8	5.6
Tonbridge & Malling	13.8	-	0.2	0.3	0.6
	1.6				
		71.0	**83.0**	**95.0**	**119.0**

The contractor takes the impact of the first 30% increase. Any further increase is shared between the contractor and authorities in the proportion 15%:85%.

EARLY TERMINATION OF THE CONTRACT

The early termination of the contract is extremely unlikely. In the case of termination by the partners this is completely within their control and it is extremely doutful they would wish to choose this option and pay compensation such as that set out below.

In the unlikely event of contractor default there is a mechansim for retendering in the market which would determine the value to be paid to the new contrator for the work. No compensation would be paid by the partners.

In the case of force majeure which is narrowly defined in the contract (e.g war, civil war, terrorism) a situation might arise where the services are not being fully provided by the contractor as a consequence of the force majeure event. The contractor will incur performance deductions and after six months the contractor might issue a notice of termination to KCC. The partners would have the option of issuing a notice to the contractor to continue to provide the services. If this was the case the PFI credits would continue to be used to pay the unitary charge but without deductions (like an extended relief event) in this way the partners would avoid the need to pay compensation.

Should the contract be terminated by either the contractor or the Authority, the partners could be liable for some of the associated costs. These costs could potentially be quite substantial, however, over the 10 years that PFI has been in existence there is no example of a PFI contract being terminated and there are a range of measures which could be taken to mitigate the impact for the partners. If it did occur KCC would approach the DCLG for assistance.

Under the Back to Back Agreement to terminate the contract voluntarily all partners would need to agree to this in the knowledge that they would be liable to compensate the contractor. This scenario is therefore extremely unlikely and within the control of each authority.

The Project Agreement contains a range of mechanisms to ensure that contractor default does not occur and that steps are taken at an early stage if the contractor fails to perform. One such measure is the provision for the contractor's lender to step in and rectify problems in the contractors performance to bring standards up to an acceptable level and therefore prevent termination through their default.

Two examples of potential termination scenarios are given below at year 10 and year 20 of the contract.

£m

Indicative liability for early termination.	% cost share	Contractor default		Force majeure	
		Year 10	Year20	Year 10	Year 20
Kent County Council	25.0	14.250	13.750	16.500	12.250
Ashford	7.5	4.275	4.125	4.950	3.675
Canterbury	6.6	3.762	3.630	4.356	3.234
Dartford	7.4	4.218	4.070	4.884	3.626
Dover	6.8	3.876	3.740	4.488	3.332
Maidstone	12.2	6.954	6.710	8.052	5.978
Sevenoaks	5.3	3.021	2.915	3.498	2.597
Shepway	12.2	6.954	6.710	8.052	5.978
Swale	1.6	0.912	0.880	1.056	0.784
Thanet	13.8	7.866	7.590	9.108	6.762
Tonbridge & Malling	1.6	0.912	0.880	1.056	0.784
		57.000	55.000	66.000	49.000

The figures are based on the assumption that the partners would take the units back. If the units were not taken back by the partners this would reduce the costs by approximately 40%. The figures are estimates and do not include potential redundancy costs or breakage costs.

APPENDIX 5

This report is based on the most up-to-date version of the Project Agreement which is still under negotiation, however no significant changes to the risk positions are anticipated.

BETTER HOMES ACTIVE LIVES

HOUSING PFI

Report to members on Project Agreement risks

Issue	Key risk areas	Likelihood of risk occurring and ways to manage risk
Ground Condition	The Project Agreement provides for the Contractor to take the risk for site condition on the basis that detailed investigations and surveys have been carried out prior to financial close. The area of risk that remains with KCC is as follows: Where there are existing buildings which require demolition, to the extent that there are problems with ground condition beneath such buildings which could not reasonably have been discovered from the surveys carried out this risk falls to KCC. Where one of the Districts has provided the land for the Project it makes sense that this risk should be retained by the District providing the land.	In relation to site condition under existing buildings the risk can be mitigated by ensuring that ground investigations very close to the existing building are carried out. The bidder has already carried out surveys on all of the sites and will be instructed to undertake further surveys prior to financial close. This will enable the bidder to take most of this risk and therefore leave the partners less exposed. It is likely that only one site which is in KCC ownership will be left affected.
Maintenance Surveys	KCC has the right to carry out maintenance surveys every two years if it reasonably believes that the Contractor is in breach of its maintenance obligations. In the event that a survey is undertaken and KCC finds that the Contractor is not in breach of its maintenance obligations then the cost of the survey falls to KCC.	The risk in connection with this clause is within the control of the partners as decisions to carry out maintenance surveys will need approval by the project board.

Specific Change in Law	Specific Change in Law is a change in law relating specifically to the Care Services. The cost of a Specific Change in Law falls to KCC under the Project Agreement. Housing change of law risk has been accepted by Housing 21 and is the first example of this being achieved in Housing PFI projects.	It is likely that, where a Project runs for 25 years, there will be specific changes in law which directly affect the Services being provided under the Agreement. Changes in Law can be monitored but not controlled. Costs associated with Specific Change in Law which relates to the provision of care services will be borne by the relevant statutory authority It is unlikely that this risk will arise without prior warning and if they occur they will also affect other care projects in the same way.
Emergencies	KCC will be responsible for ensuring that the Contractor is in a no better no worse position as the result of the authority needing to take over or use the facilities being contracted in an Emergency. Where the Contractor is required to provide additional services these must be paid for.	It is possible that some form of emergency will occur and such events are difficult to foresee. However, it would be an authority decision to undertake this action. It is unlikely that the cost impact would be excessively high in the event of an emergency.
Employee Default:	KCC's responsibility for provision of the Care Services means that it is liable for the acts or omissions of Care Providers acting in the course of their duties.	KCC is capable of mitigating such a risk as staff may be vetted, trained and supervised accordingly. KCC has the right to remove unsuitable staff from site.
Employee Default:	Any staff visiting the accommodation causing damage or preventing the contractor from carrying out their duties will be the responsibility of either KCC or the relevant District.	Both KCC and each DC will be responsible for its own staff and any damage they may cause. Therefore it is the responsibility of KCC and each DC to train and supervise staff accordingly. District Councils may have occasional visiting staff to the sites but will not have on site staff.

Contractor requests changes to the works and/or services	Where the Contractor requests changes to the works and or services KCC and the Districts may agree to such changes which may have an impact on pricing.	Note: This is to include Small Works Changes. This is manageable because the partners can reject the contractors request for changes to the works and services provided they are not required pursuant to a change of law.
KCC or DC requires changes to works and/or services	Where KCC or a DC requests changes to the works and or Services these may attract an increase in price which must be covered by KCC and the DCs.	If a party wishes to propose a change to the works then that party must support the cost. If however, the change has a wider application where all councils will benefit then all those benefiting will agree on the proportions to be paid by each partner.
Disputes	Where there is a dispute costs of pursuing a dispute are to be shared by all parties involved in such dispute.	Costs can be mitigated through endeavouring to resolve any dispute through early ADR measures.
Insurance claim made where KCC acts as insurer of last resort	Where a risk becomes uninsurable through no fault of the Contractor the cost falls to KCC.	The likelihood of significant changes in the insurance market is difficult to predict. However, a sudden change that renders areas of a Housing PFI Project uninsurable is relatively unlikely. KCC and the DCs are only required to cover a share of this risk in the event that a risk that has become Uninsurable through no act or omission of the Contractor and this limits the likelihood of costs falling to KCC and the DCs in this regard. It is intended that these costs will be funded through the project account.

Insurance Premium Risk Sharing	This mechanism ensures that both the benefit and burden of significant fluctuations within the insurance market are shared between the Contractor and KCC. To the extent that follow a review of actual insurance costs against the base insurance costs there is a cost increase of more than 30% for a period, 85% of such cost shall be covered by KCC (and the DCs in accordance with the agreed Back to Back sharing mechanisms).	It is difficult to manage the risk in relation to an increase in insurance costs which is so significant that a share of the increase is required to be covered by KCC and DCs. Although the insurance market has settled down recently fluctuations in the cost of insurance can occur at any time and over the term of the Project it is possible that certain insurances could rise or fall significantly. KCC could take comfort from the fact that the Contractor takes the first 30% of the risk of the burden. It is intended that these costs will be funded through the project account.
Voluntary Termination	Where KCC needs to terminate the agreement on a voluntary basis there is a significant cost implication.	This is completely within the control of KCC and the DCs who must agree unanimously pursuant to clause 11 of the Back to Back Agreement to Voluntary Termination.
Termination on Authority Default	Termination for Authority Default can only occur in very specific circumstances for example non-payment of a specific sum etc. which can all be managed and avoided by KCC and the DCs. In the event that this head of termination occurs there is a significant cost implication for KCC (and the DCs).	This is within the control of KCC and the DCs because providing they comply with their obligations this should not occur.

Termination on Force Majeure	Termination in the event of Force Majeure would lead to significant cost implications for KCC and the DCs.	The occurrence of a Force Majeure even is not within anyone's control. However, it is reasonably unlikely to occur.
Authority Step In	KCC may step into the place of the Contractor under the Contract in the event that it is required to discharge a statutory function or there is a serious risk to health or safety of persons or property or to the environment. Where there is a step in but the Contractor is not in breach of its obligations KCC must indemnify the Contractor against losses incurred as a result of this.	KCC has a right to step in under the contract which may need to happen very quickly. The need to step in would be agreed unanimously by the project board and the costs would be shared in accordance with the mechanism in the back to back agreement.
Residual Value	Where KCC elects on Expiry or Termination to purchase the Facilities from the Contractor to the extent that the market value of the Facilities exceeds the Residual Value Sum in the model KCC will be responsible for the difference in the price. For example if the sum in the model is 12 million and the market value is 16 million KCC would have to pay the Contractor an additional 4 million in order to acquire the Properties.	This is completely within the control of KCC and the DCs and only occurs on their election to acquire the Facilities at the end of the Project.
Termination on Contractor Default or for corrupt gifts and breach of the refinancing provisions	KCC may terminate the agreement for default by the Contractor in specific defined circumstances and if the Contractor is found to have given a corrupt gift to a Council officer or breaches the contractual requirements with regards to refinancing its funding for the project. In the event that this head of termination occurs: a) for termination due to Contrator Default the project is retendered if there is a liquid market available. The new tenderer pays to the outgoing Contractor the sum bid for the contract by way of compensation (this may be zero). If there is no liquid market an	The default of the Contrator is outside of KCC's and the DCs control. There is a direct agreement between KCC, the Contractor and the bank which allows the bank to step in if the Contractor is underperforming and likely to be in default to rescue the project by running it itself or finding another contractor to run it.

	expert determines the value of the contract and this value is paid by KCC as compensation to the Contractor. Given the nature of the facilities (Social Supported Housing) it is highly likely that that a Liquid Market will be available. The test of the availability of a liquid market is only 2 bidders able and willing to bid. Therefore in this case no compensation will need to be paid to the contractor. b) on termination for corrupt gifts and breach of the refinancing provisions all outstanding debt is paid as compensation by the KCC. However by KCC choosing not to terminate the agreement and by solving issues by other means this will ensure that no compensation for contractor default is payable by partners.	