1. RECOMMENDATIONS

1.1 It is recommended that the Council:-

i) Notes that the Scottish Government has indicated its intention to proceed with a second phase of the National Housing Trust (NHT 2) and that Angus Council has expressed an interest but has not committed to any details of house numbers or any level of financial commitment as set out in section 2 of the report;

ii) Notes the updated position regarding the matters of concern relating to NHT, in the specific Angus context, as set out in this report;

iii) Notes that the timescales for inclusion and involvement are challenging and not yet finalised by the Scottish Government;

iv) Agrees that the NHT initiative has merit and will suit the circumstances of a number of Councils but is not adopted by Angus Council at this time;

v) Agrees that Angus Council continues to focus on the development and delivery of the initial Angus Affordable Housing Fund and secures a longer-term future for the initiative;

2. BACKGROUND

2.1 Report 716/10 to the Neighbourhood Services Committee on 7 October 2010 set out the Council's position in relation to the NHT initiative and the Scottish Government has been advised of that position as Angus Council's official stance on the initiative.

2.2 A letter received by Angus Council from the Minister for Housing and Communities, Alex Neil MSP, on 15 December 2010 set out the reduced Affordable Housing Investment Budget in Scotland at the national level and highlighted that further cuts would follow over the period to 2014/15, and sought the Council's position in relation to NHT for the next phase of the initiative.

2.3 The timescale for response to this letter was 7th January 2011. As that timescale fell outwith the committee cycle of the Neighbourhood Services Committee, Angus Council, and other relevant Committees, a holding reply based on Report 716/10 has been sent to the Minister and his Officials.

2.4 In order to progress inclusion in the second phase of the NHT Initiative, the Council has been asked by the Minister:

1. to consider how much the Council is willing to borrow,
2. to advise how many new affordable houses the Council would like,
3. to look at the online paperwork, and
4. to think how the Council would get internal agreement in time to be able to sign a Participation Agreement by mid-February 2011.

2.5 Since report 716/10 was considered, Angus Council has, in report 894/10, approved the establishment of a one off funding pot (Angus Affordable Housing Fund, AAHF) of development monies worth £3.2 million (in capital terms) aimed at developing new and innovative ideas from developers, builders, housing providers and the wider housing industry. The approach to utilising this funding resource will be based on new open book partnerships with a capped maximum grant level of £40,000 per unit.

2.6 Angus Council is currently consulting with the Builders’ Federation and Dundee Institute of Architects on the details of the scheme and has issued a Prior Information Notice (PIN) to the Official Journal of the European Union to enable open discussions to be held with interested parties and potential partners. Angus Council has also opened discussions with the Angus Tenant's movement to investigate methods of using enhanced rental income to create a sustainable development fund using the recent Scottish Government research, “A Study Into the Capacity of Registered Social Landlords and Local Authorities to Build Housing Across Scotland” as a foundation for those discussions with tenants and in this context Members are asked to note that NHT is not the only option for Angus.

2.7 Members are asked to note that there has been strong interest in the AAHF following on from publication of the PIN, and the interest has been considerably greater than the original interest in the first round of the NHT. Members are also asked to note that discussions with trade representatives and the Angus Housing Partnership have provided a strong message that the development industry is minded to support longer leasing and partnership arrangements, rather than shorter timescales, as this provides a more manageable risk position. Council officials have also made contact with those who expressed interest in the first phase of NHT and whilst there is a willingness not to close the door on NHT there is also strong support for the development of the local response as set out in the Angus Affordable Housing Fund.

2.8 General NHT Concerns

- The most significant issue was one of the timescales for signing up to the project and the lack of adequate time to review key legal and procurement documentation prior to requiring formal commitment to the project. The documents which were signed in phase 1 have been made available and have been considered and some of the issues which caused concern previously have been resolved to some extent.

- In an effort to provide flexibility and more time for the legal documentation to be fully finalised, Council Officers sought to have an opt-out clause added to the participation agreement that could have allowed us to sign up for NHT Phase 1 in principle, but not proceed with the procurement at a later stage if we still felt uncomfortable with how it was going to work. This opt-out provision was not agreed by Scottish Futures Trust (SFT). The position in the final phase 1 legal documents is that if the Council does sign up to the participation agreement for phase 2, the Council will be committed to going out to tender to seek a development partner or partners to enter into a framework agreement. The Council would then carry out a mini-competition between the developers on the framework to take forward a specific project. The documentation now provided by SFT states that SFT and the Council “may” take forward a mini competition. Therefore, there appears to be no obligation on the Council to progress beyond the framework agreement stage and bidders will also be aware that there is no guarantee of any partnership or development work, even if they are appointed to the framework. However, it is considered that from the point of view of developers who are willing to participate in the tendering exercise, it would not be reasonable of the Council to proceed to join Phase 2 if there is no real commitment to the project. However, if it did transpire at a later date that the Council decided not to procure any projects through NHT then the Council would not be obliged to do so.

2.9 Procurement Issues
• The evaluation methodology for phase 2 has not been seen but it is hoped that this has been developed from phase 1 and will be passed to Council officers for approval.

2.10 Affordable Housing

• Section 75 issues remained unresolved. It is not clear whether additional affordable housing will be available at these developments or whether the housing to be provided would have met the Council’s affordable housing criteria.

2.11 Borrowing consent

• The Government were asking the Council to accept the risk of interest rate movements between the point of contract signature and the provision of the funding for the purchase of the houses. In an environment of interest rates being likely to rise into the future this could represent a significant risk. Government officials previously indicated that their view was that the Council could manage this risk within its normal Treasury Management practices. This is correct up to a point but requires certain specific consents to be in place.

In this regard, the Scottish Ministers require to regulate to provide borrowing powers, particularly for onward lending purposes, to allow the Council to secure its funding. A borrowing consent letter is now included with the phase 1 legal documentation, however the terms do not allow the Council to manage the interest rate risk as noted above. The consent letter only allows the Council to borrow at the point of purchase of the houses, thus removing the flexibility in timing of borrowing that would be required in order to manage interest rate risk through normal treasury activities.

Given that the NHT projects are likely to be taken forward, in a time of rising interest rates, the Head of Finance views this risk as being a potentially significant one which Angus Council would have to bear unless suitable changes could be made to the consent letter.

2.12 Financial Guarantee

• The phase 1 legal documentation is clear that the Government’s financial guarantee does not cover the interest rate movement risk identified above and which arises through setting the borrowing rate in advance of the date upon which the development vehicle acquires the buildings (possibly up to two years before).

• The phase 1 legal documents have also clarified the position as what is covered by the Government’s guarantee and the Head of Finance is now more comfortable that with the exception of the interest rate movement risk, the guarantee adequately covers any potential shortfall in interest or loan redemption payments due. This also now includes any breakage costs which may be associated with any early loan redemption.

2.13 Viability of the Model

• In addition to the above, the general financial issues surrounding the NHT remain an area for concern. Angus retains high average house prices (£143,528), especially in relation to average earnings of £21,000 pa*. This has resulted in the Council having to stretch the financial model (i.e. reduce the initial entry house price for NHT) to fit with the current model.

• At the time of drafting this report the Council was seeking an update from the SFT on the financial viability of Angus’s participation given the Public Works Loan Board (PWLB) interest rates moved upward by 1% following the Chancellor’s budget speech on 20 October 2010. Currently the applicable PWLB borrowing rate (as at 28 January 2011) is 4.81%. This is significant as any upward movement in the interest rate reduces the affordable house price and increases risk for all parties.

• The NHT model is designed to be at its optimal performance when interest rates are around 4%, reflecting the rate prior to the PWLB rate rise. Members are asked to note that this
element remains one of the key concerns for the Head of Finance, and the Council. In addition the short-term borrowing requirement from private developers is also noted and a known risk, especially given the low levels of market liquidity currently being faced by the development sector.

2.14 Housing Issues

- These issues concern the implications relating to the type and delivery of the housing to be developed under the scheme and the effects that this may have. These issues still exist. Members will recall that the issues were as follows:-

- The creation of some 50 new tenancies, based on the short assured tenancy, creates a potential that during the life of the lease, the security of tenure afforded to tenants is considerably less than the Scottish Secure Tenancy Model, especially given the fact that the management and maintenance agreements have yet to be finalised. Not only does this weaken the strength of the tenancy agreement from the tenants' point of view, but also creates a potential liability for the Council as at the very minimum the Council has, in certain circumstances, a duty to provide temporary accommodation whilst a housing and support assessment is carried out, should homelessness be threatened or occur.

- There is a risk that a robust approach to management of issues, such as rent payment or behavioural issues, could lead to the situation where the special purpose vehicle (SPV) (which will include the Council as a partner) running the management agreement, takes both swift and robust management actions that effectively create a burden on the Council through the creation of homelessness.

- Whilst it is hoped that the sitting tenants will exercise their option to purchase the property at the end of the scheme, it is just as possible that this does not happen and there is the potential for a block of applicants looking to the Council to provide advice, assistance and both temporary and permanent accommodation. Whilst this risk can be managed through the entry process to the scheme nevertheless, with the various housing and homelessness acts the position remains that the Council is always seen by both clients and the Scottish Courts as the provider of last resort and regardless of the legal duties, the impression is that the Council will be there to offer assistance. This is potentially an important reputational issue.

- It is understood that housing benefit caps are being considered and that these are particularly targeted at those in private sector accommodation. Whilst the final format and financial levels, the Government are going to settle on for rental levels remains unknown there is a potential that clients could be signing up to a model that may be structurally unaffordable in the long term. Whilst this model, primarily aimed at those in lower paid employment, it does not rule out those not in employment, especially given the tight timescales anticipated for void property control and this represents a potential financial risk for the Special Purpose Vehicle who will be responsible for managing the properties.

2.15 Finally, Members are asked to note that the local landscape has moved on considerably since report 716/10. The Council have now set out a complementary locally funded Angus Affordable Housing Fund and is seeking to progress discussions to develop a longer-term approach to Council and Council sponsored developments in partnership with its tenants. The funding levels, for 2011/12 at £3.2 million, are equivalent to the necessary borrowing levels for NHT.

2.16 Suggested Course of Action

Given the history of NHT, and Members concerns and deliberations, it is clear that some doubts about the pace and outstanding concerns remain unanswered from 2010. Perhaps the biggest concerns early in 2011 are the uncertainty surrounding the long-term financial viability; the volatility of the lending market; the applicability of the scheme in an Angus context; the willingness of developers to take on the known risks associated with this project; and the ability of individuals to purchase the properties at the end of the lease period. Indeed given the overall financial outlook it is unknown whether or not registered social landlords or the Council would
have the financial resources to purchase the properties in 5 to 10 years time should individual tenants not exercise their option to purchase.

There is still a considerable amount of work to be done by officers in connection with approving the documentation which requires to be signed in connection with NHT. In the context of these concerns and issues, Taking all these factors into account and in particular point a) below it is recommended that the Council not proceed with participation in NHT 2 at this time but continue to keep a watching brief on future developments.

a) We have our own local initiative on affordable housing in partnership with local developers which we feel better meets the needs and conditions within Angus;
b) There are a number of housing related issues and concerns as set out in paragraph 2.14 of the report which cannot be overcome with the NHT model;
c) There are concerns over the financial viability of the NHT model in the current interest rate environment and this is a position which will become more difficult if, as expected, interest rates start to rise;
d) There is a material financial risk for the Council caused by rising interest rates for the gap period between the point of contract signature and the provision of the funding for the purchase of the houses.

3. FINANCIAL IMPLICATIONS

3.1 There are no direct financial implications at this time as a result of the recommendations of this report. Members are asked to note that no costs other than Officer time, have been incurred in seeking to progress this scheme and these have, therefore, been contained within existing Council resources.

3.2 Members are however also asked to note that should members wish to pursue both NHT 2 and the Angus Affordable Housing Fund, there may be insufficient resources (both financial and non-financial) to take forward both delivery models at the same time. In this event, a further report will be brought before members setting out the implications of seeking to deliver both approaches.

4. HUMAN RIGHTS IMPLICATIONS

4.1 There are no human rights implications for the Council arising directly from the information contained within this report.

5. SINGLE OUTCOME AGREEMENT

5.1 This report contributes to the following local outcomes contained within the Single Outcome Agreement for Angus:

- Good quality housing is available throughout Angus.

6. CONSULTATION

6.1 The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of the report.

7. EQUALITIES IMPLICATIONS

7.1 The issues dealt within this report have been subject of consideration from the equalities perspective. An equalities impact assessment is not required.

8. CONCLUSIONS

8.1 Notwithstanding the timing issues and clarification and assurances sought, Angus Council remains supportive of the drive to secure additional investment in affordable housing. The Council is in the fortunate position of having a long history of prudent financial management and
investment in its own housing stock. Whilst there may be the financial capacity to invest in the NHT, there is also an exciting local alternative which has the potential to be tailored to local needs whilst still delivering similar levels of investment. As a result, are asked to support the development of the local AAHF initiative whilst the exact nature of NHT 2 is clarified by Scottish Ministers.

RON ASHTON
DIRECTOR OF NEIGHBOURHOOD SERVICES

Note: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report.

- Report 716/10 - National Housing Trust - Updated Position
- Report 894/10 - Survive and Thrive - Further Housing Contribution
- Scottish Government Social Research 2010 - A Study into the Capacity of Registered Social Landlords and Local Authorities to Build Housing Across Scotland - (http://www.scotland.gov.uk/Publications/2010/11/11115938/0)

Hsg/NS/RA/AMcK