Appendix 1

ESTABLISHING THE SPECIAL PURPOSE VEHICLE – PROPOSED OPERATING MODEL

Preliminary Agreement

A preliminary legal agreement covering the establishment of the Special Purpose Vehicle will be established following Council approval. This will set out details on:

- Responsibility for the setup of SPV
- Terms for the transfer the Property into the SPV
- Agreement to re-transfer the Property back to MVH in event of project failure
- Terms on which funding will be made available to the SPV
- Terms of the lease to be granted by the SPV to the co-operative
- Responsibility for the setup of co-operative
- Terms for standard occupancy arrangements of tenants
- Distribution of costs

A Project Steering Group will be formally established to oversee development and delivery of the preliminary agreement towards implementation of the overall project.

Special Purpose Vehicle

A Special Purpose Vehicle (SPV) will be set up as a Company Limited by Guarantee (CLG), registered simultaneously by MVH and MTCBC. A CLG is usually used for not for profit ventures, does not have a share capital and its members are guarantors rather than shareholders. The members' liability is limited to the amount they agree to contribute to the company's assets if it is wound up (this is usually a nominal amount, of around £5).

CLG's have members/shareholders and a Board. In this instance the members/shareholders would be MVH and MTCBC. The Board is accountable to the members/shareholders who may or may not be the same people as the Board. The members have a number of fundamental powers: in particular, the power to dismiss the board and to change the constitution.

The rules of the company will be contained in the Articles of Association, which like those of any other company will be registered with Companies House. The Articles set out the internal management structure and procedures, such as roles of members and directors, procedures for appointment and removal, conduct of meetings etc. It is anticipated that the board of the SPV would be made up of an equal number of nominees of each of MTCBC and MVH, with equal voting rights. The Articles would also set out how other, "independent" directors could be appointed.

In addition to the articles of the CLG there would be an operational agreement for the SPV. This is a document agreed between MVH and MTCBC that is not registered at Companies House but sets out the funding arrangements for the SPV including how the SPV operates in accordance with a jointly agreed business plan. The agreement will also include other key provisions such as the duration of the agreement, circumstances of termination (e.g. breach, insolvency, for convenience) and the consequences of termination. There would also be standard agreements on mediation and dispute resolution.

The basis on which the Property is transferred from MVH to the SPV will have been agreed in the preliminary agreement, and will include MVH's freehold interest in the property to be sold. Standard rights and reservations may be required over the remainder of MVH's Estate for the provision of services and roads. There will need to be a restriction on disposal, permitting only the lease to Co-operative and pre-emption rights in favour of MVH will need to be granted in the event of failure of the project.

Loan Agreement between Merthyr Tydfil County Borough Council

It is intended that this will be in the form of an agreement for a term loan facility to the SPV (the "Loan Agreement"). It is expected that the Loan Agreement will contain standard terms and conditions including:

- term of the loan;
- security comprising of legal charges on the properties transferred to the SPV;
- Covenants relating specifically to the charged properties including insurance related ones and restrictions against charging of the properties to any other parties or undertaking any disposals without MTCBC's consent. This will need to allow for the proposed lease of the properties from the SPV to the Co-operative;
- financial covenants including adequate asset cover so that the value of the charged properties must be a certain percentage as against the lending;
- dealing with defaults which will entitle MTCBC to enforce its security including non-payment, breach of the terms of the Loan Agreement and insolvency related ones;
- various conditions which will need to be satisfied before the loan will be made available.

MTCBC will have a certificate of title addressed to it from the SPV's lawyers, which will detail the title of the properties to be secured including a report on the terms of the lease and the occupancy arrangements with the individual Co-operative member.

Establishing the Leasehold Co-Operative

The leasehold housing co-op will be an Industrial and Provident Society (IPS) i.e. where members have bought a leasehold interest in their home and the freehold is owned by a landlord (in this case the SPV). The Financial Services Authority ("FSA") is the registering authority for IPS.

Leases from the SPV to the Co-Operative

The principle terms of the lease, which will have been set out in the preliminary agreement, will include:

- term of the lease - likely to be for a minimum of 60 years
- rent levels; it is proposed that the rents are set to recover the SPV’s debt repayment to MTCBC and other expenditure for which the SPV is responsible, including:
- mechanisms to ensure the sinking fund money is used for major capital provision. This would include a provision for the SPV to approve a three yearly plan of investment
- rent review mechanisms and whether rent is reduced when the MTCBC debt is repaid in full
- covenants
- insurance; it is possible the insurance will be taken out by the SPV rather than the co-operative
- controls on assignment
- subletting restrictions; no subletting should be permitted except for tenancy to members
- restrictions on carrying out alterations or structural works out without consent
- the SPV’s right to have re-entry and forfeiture for beach of covenant or insolvency

Occupancy Agreement between Tenants and the Co-Operative

Further to the initial legal advice received from Morgan Cole, it is proposed that periodic tenancies will be offered. Any tenancy would be supplemented by a set of policies which dealt with its termination. The terms of the occupancy agreement would otherwise follow standard social housing assured tenancy agreements. The rent under each occupancy agreement will be no more than 90% of market rent, and will cover:

- Proportion of rent under head lease and service charge
- Day to day repairs
- Management costs
- Voids and bad debts

It is proposed that any surplus will be distributed to members of the co-operative, but would be payable only:

- on leaving after 10 years as a 50% cash payment
- after two years of continuous rent payment
- where there are no void or bad debts outstanding
- where there are no outstanding tenant repair obligations in the property

In terms of management standards the co-operative would have a number of standard documents agreed by the members similar to any Registered Social Landlord.

<u>Gellideg Co-Operative Business Plan</u>

Within the proposed model for the Cooperative at Gellideg, the monthly charge is anticipated to be 90% of market rent. This would cover:

- Debt repayment costs to the SPV – in the model this is set at slightly above the PLWB rate
- Sinking fund for future capital repairs – in the model this is set at a £1000 per annum. This is relatively low as co-operative members would be expected to return the flat at the same standard as they rented it.
- Day to day repairs – again this is set at a very low level as other than gas servicing and major external repairs members would be expected to do works to reduce the repair costs of the c-op.
- Management costs –again these are low as co-operative members are incentivised to do more work for themselves.
- Voids and bad debts – there is a low provision for voids and bad debts. Co-operative members have a dividend that is payable on exit and any disrepair recharges or bad debt against individual properties would be offset against the dividend.
- Dividend - the value of the dividend is set after all the other outgoings.

The model is set over a 25 year plan and inflates rental and other costs at the same inflation rate as Merthyr Valleys Homes Business Plan.