RISK TABLE

Risk	Mitigation	Likelihood	Impact
A) <u>Financial</u> <u>Investment Policy</u> The current Treasury Management strategy approved by Full Council does not allow SCC to place funds on deposit with any financial institution for a period of more than 1 year. In addition, our current policy (in line with recommendations from our Treasury Advisors) is that deposits with Lloyds are limited to a maximum of 3 months	The Treasury Management Strategy approved for 2012/13 to 2014/15 does not allow the council to place money on deposit with any financial institution for a period of more than 1 year, and within that policy the current view of inherent risk.is that deposits with Lloyds as an approved counterparty are currently limited to three months (which reflects our advisors view of the risks with Lloyds as an institution). On that basis, to place £1M on deposit with Lloyds for the minimum period of 5 years would be contrary to the current policy. A recommendation will therefore be put to Council on the 16 May 2012 to agree to act outside of the current Treasury Management policy for the specific purpose of enabling a LAMS scheme to proceed. On that basis, with specific Council approval, the £1M required deposit could be placed on deposit with Lloyds for the minimum period of 5 years.	H	H
<u>Budget</u> SCC does not have a £1m budget to fund the scheme	The obligation to place £1m on deposit with Lloyds will be met from internal cash flow, as part of managing the Council's overall cash balances. The outcome is that £1m of cash balance will be tied up with Lloyds for the minimum 5 year deposit period.	H	H
<u>Claims Coverage</u> There is no revenue cost built into budgets to cover any claims against the indemnity.	There are no revenue budgets to pay for any claims on the indemnity. The 70 bps above normal interest rates will provide £7,000 per annum to pay any claims so over the 5 year period of the scheme £35,000 is available. This would be enough for 1 or 2 defaults. Anything above this level would show up as an adverse variance against revenue budgets.	M	H
B) <u>Commercial risks</u> <u>General economic risks</u> Risk of loss if Lloyds TSB Bank (or any assignee) went into liquidation/became insolvent.	None – this is totally outside of the control of the council.	L	H

Borrower default	Nationally, latest Council for Mortgage Lenders figures show 0.3%, of first time buyer's default on their mortgages in the early years. There are no specific local figures available. A £1M facility would assist a minimum of 40 purchasers. Potentially this means the numbers of defaults on a scheme of this size would be very low and unlikely to be more than 1 during the duration of the scheme. The cost of a default depends of the way property values change. Increasing property values would lead to a very low (if any) guarantee payment as the purchasers equity would increase. However, if property prices fall rather this is the scenario where guarantee payments would arise. The extent of the payment is capped at the maximum value of the guarantee for each property.	M	H
Repossessions increase nationally	There is little data available that can predict the number of repossessions that will occur over the next 1-7 years. However based on current data available- the number of properties taken into possession by mortgage lenders in the 3rd quarter of 2011 was 9,200 according to data from the CML The number of repossessions in the quarter equated to 0.08% of all mortgages. In the first 3 quarters of 2011, a total of 27,500 properties were taken into possession - 4% fewer than in the equivalent period the previous year. There was a slight fall in the number of households in arrears with their mortgage across all categories at the end of September 2011. The total number of mortgages with arrears of 2.5% or more of the outstanding balance fell to 161,600 (1.44% of all loans), 8% lower than the 175,100 cases (1.55% of all loans) at the end of September 2010.	M	H
Repossessions run higher in Southampton than nationally	Based on data from the Ministry of Justice, total number of possession orders granted in Southampton in the year to September 2011 was 185. This was 65 down on the previous 12 months. This represents 1.89 per 1,000 population. In the whole of England orders were down 4% and were 2.42 per 1,000 population. Effectively then, Southampton has been operating at a lower level or possession orders than the national average and has been since at least 2008.	L	M

Significant changes to general economic outlook leading to greater number or repossessions and falling house prices	No-one can predict with any confidence where the economy and housing market will go in the next 1- 7 years Any increase in the level of unemployment could have an affect on the scheme as it could affect an individual's ability to meet mortgage payments. Changes to the housing market and the economy could affect the risks of the scheme e.g. if prices dropped, and other prevailing economics meant borrowers were more likely to default than currently. The risk to the council is if a property is repossessed and then sold at a loss the Bank will call upon the council to cover the loss, up to the maximum guarantee payment. In a market where house prices are falling a Borrower could initiate a voluntary sale to gain release from negative equity. The borrower would cover the initial part of the loss from the 5% deposit with the council covering all or a substantial part of any residual loss. There is also a risk that the Borrower could do a voluntary sale for less that the full market price, which the Bank could agree to knowing that any losses would be covered by the council Land Registry figures confirm that local house prices since 1997 dropped a little after 2007 and are now pretty stagnant but are still significantly higher (our housing Needs Survey says 140% increase in house prices since 1999) than 13 years previous.	M	H
c) Risk due to the terms and conditions The deeds and documents are drafted generally very much in favour of the bank, and there is no opportunity to amend the provisions as this is a national scheme.	None- this is a feature of the scheme.	M	H
One of the contemplated lenders in the scheme is "Lloyds Scotland". There may be Scottish law implications in the sense that certain mortgages under the Scheme may be subject to Scottish law.	None – this is a feature of the scheme but may make it more expensive if legal action was ever contemplated	L	H

<u>The deposit</u> £1m remains on deposit – any indemnity payments have to be made separately during the term of the agreement.	The rate of interest paid on the £1m is the standard 5 year commercial fixed rate plus an additional 70 base points to cover the cost of the indemnity. In the short term SCC could have to make payments during the course of the agreement, 5-7 years. The council can seek recovery of the £1m back at the end of the agreement,	H	H
The council is obliged to open a new deposit account with the bank; with the money left on deposit for at least 5 years (possibly 7) and the council cannot withdraw any of the money during the term of the agreement.	None- this is a feature of the scheme	H	L
<u>Change to lending criteria</u> Bank has wide discretion to change its` lending criteria and lending terms and conditions at any time during operation of the scheme without notice to the council. SCC still remains liable even if the Bank imposed harsher / more penal terms which might result in increasing defaults	The bank operates to FSA regulation. The bank cannot apply any criteria to this scheme that it would not to any other. Less prudent lending would have an impact on bank too.	L	M
<u>The indemnity</u> The council must pay immediately on demand any shortfall or the bank can take the money direct from the money held on deposit. It is not clear from the Deed about the level of indemnity and it is possible that it is not limited to £1 million. It is potentially unlimited.	None- this is a feature of the scheme	L	H
SCC liable as "principal debtor" to indemnify the Bank immediately on demand, against any Sale Shortfall, ie where the "Indemnified Obligations" exceed "Sale Proceeds". NB "Indemnified Obligations" means all moneys owing by the Borrower to the Bank (in a standard form Legal Charge this could include overdrafts, personal loans etc)	It would not be anticipated that there would be many circumstances where a borrower voluntarily sells after a breech and there is a shortfall, although there are examples of this occurring, for example during the 1980-1990 recession period.	L	M

The Bank can require SCC to pay up in respect of any breach of the Borrower`s Legal Charge provisions. SCC is liable for a Sale Shortfall not just on sale by mortgagee in possession – but also to a <u>sale by the Borrower</u> – this could be contrived by Borrowers so as to enable them to sell for less than full value – knowing the council will bear the loss, but making it easier / more convenient for the Borrower to move home quickly if it wished			
The bank has the sole discretion to determine sale price once the property has been repossessed, this could result in a reduced price being accepted for the bank's expediency with the council bearing the loss	Legislation imposes an obligation to obtain a reasonable market price, but not the best price.	L	H
The penalty interest provisions are 3% above the Bank's base rate and would apply to any late payment. The bank also has set-off rights enabling it simply to take from any moneys on deposit if, the council doesn't pay promptly	These risks can be mitigated by the council ensuring any requests for payment are met in a timely manner although there is no revenue costs built into the annual budget.	L	M
The council effectively waives any right it may otherwise have had at any stage to resist payment on the ground that the bank has acted irresponsibly.	This can be partially mitigated through FSA regulation, but ultimately is a risk of the scheme.	L	M
<u>Assignment of loans</u> The council has to agree that the Indemnity Deed provisions are applicable not only to obligations arising under any agreement currently being entered into between the Bank and the Borrower but also to any future variation, extension or addition to any such agreement. This may be a greater concern when coupled with the provision for the	Any successor will be FSA regulated and have to apply similar or the same standards of treatment to borrowers – this is covered by the terms and conditions of the bank's mortgages and is part of the regulatory regime. Although the Banks have sole discretion to alter there lending criteria and lending terms and conditions	L	H

Bank to assign its` interests - for example, an assignee other than the Bank, could take a very different approach to lending, resulting in terms of agreements with Borrowers being fundamentally altered - meaning that the prospect or likelihood of default could be much increased. That in turn could increase the likelihood of the council being called to indemnify			
<u>Recovering loss</u> Any sale shortfall enables the bank to enforce its` rights against the council rather than first pursuing other means for recovery against Borrowers, who may. have other assets / means to pay.	If the borrower has got into difficulties with their mortgage it is unlikely they would have any other assets. These mortgages will follow the banks normal collections and recoveries processes. There are legal protocols for repossessions which require the bank to make efforts to consider other options in a residential mortgage recovery action	M	M
The council cannot, under the agreement, seek to recover any loss direct from the Borrower even after the agreement with the bank falls away because the council has no contractual link with the borrower.	None- this is a feature of the scheme, however as previously noted, it is unlikely the borrower will have any assets to recover	M	M
<u>The end of the agreement</u> The initial deposit of £1m is tied up for a period of 5 years irrespective of the level of take up on the scheme. After 5 years the deposit is moved to a corporate deposit account and any money not required to indemnify mortgages can be withdrawn. Enough money to indemnify all outstanding liabilities must be held on deposit for the indemnity period.	None – this is a feature of the scheme. However it is in the bank's interest to actively market the scheme as soon as the agreement is signed and it is likely take-up will be good. After the initial 5 year period the council is entitled to withdraw any money not required to indemnify mortgages and in extreme circumstance some funds may need to be held on deposit for up to 7 years after the initial 5 year period of the scheme	L	L
<u>The bank not lending</u> The Bank is under no obligation to make any loans under this scheme, so theoretically the council could deposit money and none is lent by the bank.	In practice the bank would still be liable to pay the premium on the monies deposited by the council to cover the cost of the Indemnity, and therefore it would make little commercial sense not to lend. Plus the bank has made significant investment to launch the scheme and it is in their interest too to support first time buyers	L	H

<u>Disputes & Costs</u> The council would be liable for all and any costs of the Bank for enforcing the provisions of the deed. If there was a dispute about terms the council could end up paying the Bank's costs even if the dispute was ultimately resolved in the council's favour.	None- this is a feature of the scheme	L	H
Any certificate or determination of the bank as to the amount for which the council is liable in any given case is "conclusive evidence". There is no entitlement for the council to query or challenge the figures or means of calculation used in any given case, unless it is obviously apparent that a manifest error has occurred which would be difficult.	None- this is a feature of the scheme	L	H
<u>Information and PR</u> The council will receive very little information from the bank (via Sector) about the scheme, just depersonalised lending statistics. We will not be able to monitor the impact of the scheme with any detail. Any publicity can only be with the banks' consent	This is a feature of the scheme- the relationship is between the bank and the borrower, so SCC will only get depersonalised overview information. The less information we have however, the less chance of Data Protection issues arising It is unlikely that the bank will refuse any publicity but clearly will want to veto any PR	M	L
<u>Data Protection/Freedom of Information Issues</u> The Deed imposes obligations on SCC which may or may not be consistent / compatible with SCC's general obligations on Data Protection There does not appear to be any clause dealing with SCC's obligations under FOIA and how we might require the Lender and other partners to assist in complying with our duties.	The council will not be holding any information on individuals, so there is unlikely to be many areas that would fall under DPA.	M	M

<u>D) Opinion letter and Indemnity Deed</u> The Monitoring Office (Mark Heath) has to sign an Opinion Letter and Indemnity Deed to the bank. This is a Mandatory requirement by the Scheme. This imposes personal liability on the Monitoring Officer who will need to be satisfied about all aspects of the scheme before signing the documents. The Opinion Letter is drafted so as to be a representation by the signatory that the council had power to enter into Deed and related documents, and as to other related matters The council also have to agree to an Indemnity to Lloyds TSB. The terms of the Opinion Letter potentially sets up the signatory – and through the Indemnity, the council – for a claim based on negligent misstatement, misrepresentation, breach of warranty etc.	This is a risk of the scheme.	H	H
C) <u>State Aid</u> Art 107 of the European Treaty states that any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the internal market. It is arguable that, notwithstanding what the council regards as the social purposes of the Scheme, the indemnity would amount to state aid.	Legal Services will submit an application for the UK Government to file a formal notification to the European Commission via BIS, if directed to by the council	M	H

Blackpool City Council and Lloyds Bank made an informal notification to BIS. BIS representatives in Brussels discussed the scheme with European Officials and an email was then sent from BIS to Lloyds and Blackpool. The email though makes it clear that this was a preliminary view only based on the information they had received and if legal certainty is required then BIS advised that a formal notification was required to obtain an official Commission position. The email suggested that the Commission's opinion was that this scheme could be considered as not constituting aid within the meaning of Article 107(1) TFEU, provided certain following criteria were met. If this scheme amounts to unlawful state aid there are serious consequences. The EU can impose penalties and it could lead to claims being made against the council by national and Local competitors e.g. other Banks and Building Societies.			
D) <u>Procurement</u> There is a possibility that the Indemnity in the Deed falls inside the scope of the Public Contracts Regulations 2006 and Directive 2004/18	There is insufficient information at present to advise fully on this aspect.	Cannot assess yet	Cannot assess yet