

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	13 September 2018	:
TITLE:	Establishment of Joint Venture Partnerships	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report:		
Appendix 1 – Illustration of proposed Joint Venture Structure		

## **1 THE ISSUE**

- 1.1 *To agree the establishment of Joint Venture Partnership(s) with other public bodies for the purpose of delivering local housing developments subject to specific business cases for each Joint Venture.*

## **2 RECOMMENDATION**

The Council is asked to;

- 2.1 Agree the principle of the establishment of Joint Venture Partnership(s) with other public bodies for the delivery of local housing developments both inside and outside the Council's area.
- 2.2 Delegate to the Leader of the Council, in consultation with the Chief Executive, S151 Officer and Monitoring Officer authority to enter into Joint Venture Partnerships subject to business case and establishment of appropriate governance arrangements in line with those agreed for Council companies.
- 2.3 Delegate to the Commercial Director all such matters as are necessary to set up, operate, manage and monitor approved Joint Ventures in line with the Council's approved governance arrangements for Council companies.
- 2.4 Agree the allocation of up to £10K from the Transformation Revenue Reserve to meet Council legal costs for the setup of the JV.

### **3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)**

- 3.1 The Council has agreed income generation targets within its Medium Term Service and Resource Plan of £650,000 per annum to be generated by its local authority housing development company (ADL). This target cannot be achieved and sustained without the establishment of medium term land supply and development opportunities for the company.
- 3.2 The establishment of Joint Venture Partnership(s) will provide a share of profits from such joint venture developments to this Council helping to provide a more diversified and sustainable source of income.
- 3.3 In addition to a profit share, the Council will receive a commercial management fee for the services it provides into the joint venture (via a sub-contact with ADL).
- 3.4 The joint venture in the form of a Limited Liability Partnership would ensure risks are ringfenced within the JV and the Council's liability would not exceed its initial very limited investment.
- 3.5 It is proposed to make available up to £10K from the Council's Transformation Reserve for set up legal costs of the Joint Venture Partnership(s) and contracts for service(s).

### **4 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL**

- 4.1 The basis for the proposal set out in this report, seeks to establish a Joint Venture Limited Liability Partnership(s) in line with the power of the Council to provide professional and technical services to another public body pursuant to S.1(1) of the Local Authorities (Goods & Services) Act 1970. The Council will need to ensure arrangements are in place for suitable governance of the LLP including all relevant company statutory and accounting requirements.

### **5 THE REPORT**

#### Local Authority Housing Development Companies

- 5.1 Over the past few years, local authorities have increasingly been setting up their own companies to develop private sector housing. The drivers to do so have predominantly been around delivering commercial returns to support the increasingly challenging financial position, but other factors like delivery, control over development, sustainability and affordable housing have all come into play.
- 5.2 In December 2015 the Cabinet approved the establishment of a B&NES owned company (Aequus Developments Ltd) to *“develop, deliver, own and manage property as well as new development on a case by case basis”*. This company has been operating for just over two years and its first large development via its construction subsidiary (ACL) will deliver 95 Units at Riverside View, Keynsham. This will provide significant capital and revenue financial returns to the Council as well as helping to regenerate this area of Keynsham.

- 5.3 Other neighbouring councils have previously established, or are considering the establishment of, LA Housing Development Companies although none of these have progressed to actual delivery and they face a number of challenges to do so, including governance, capacity and expertise.

#### Aequus Developments Ltd (ADL)

- 5.4 ADL and its subsidiary (Aequus Construction Ltd) are wholly owned by the Council as set out in Para 5.2 above. The focus of their activity has been twofold:
- I. ADL focusing on the refurbishment and private rental sector letting of vacant properties above the Council commercial estate.
  - II. ACL focussing on new development sites initially on land owned by the Council which may be suitable for development but also more recently the acquisition of sites with planning permission in place.
- 5.5 ADL and ACL are overseen by a Board of experienced professionals to run the Company as Executive and Non-Executive directors bringing a wide range of commercial, development, financial and management expertise. The Board runs the day to day affairs of the companies and are accountable to the shareholder B&NES, which sets the policy and provides overview and scrutiny of all its activities
- 5.6 This development of this expertise in governance and operation of these construction and developments companies within a local authority setting provides an opportunity to support other public bodies to deliver similar projects through appropriate partnership arrangements.

#### Joint Ventures

- 5.7 Historically councils have traditionally sold any surplus land they hold to developers (with or without planning permission). This simple route would normally ensure a best value capital receipt, with risk and control of the land and development passing to the purchasing developer.
- 5.8 This approach has increasingly identified a number of challenges for local councils, most notably the increasing shortage of housing delivery with developers incentivised to manage supply to maximise shareholder returns. This issue, together with the potential to provide further financial returns and control over development sites has led to an increase in the number of local authorities seeking to set-up their own housing development companies or joint ventures.
- 5.9 There is a considerable amount of process, governance and early development work required when establishing a new local authority company, together with a requirement for one-off investment to put this in place. One way to potentially reduce this burden and speed up the delivery is to set up a joint venture with an established partner.
- 5.10 There are three key components in considering any joint venture for housing development:
- i. Availability of suitable development land,

- ii. Availability of funding,
  - iii. Capacity, expertise and skills to manage and deliver the development.
- 5.11 A joint venture would bring together partners with these key elements to facilitate development to the respective and proportionate benefit of all parties within the joint venture.

#### Joint Ventures Partnership(s) With Other Public Bodies

- 5.12 The Council has become aware of a number of our neighbouring councils (Mendip District Council, North Somerset Council and South Gloucestershire Council) who are interested in establishing a joint venture with this Council for the purposes of local housing delivery. The basis of this interest recognises their ability to provide both land and funding to a housing joint venture partnership but are lacking the immediate capacity and expertise to deliver. This Council has the ability through its housing and development company (ADL) to meet this need.
- 5.13 Discussions have taken place with these neighbouring councils and some initial work has been undertaken by our external legal and financial advisors to identify the potential approach, and form, such a Joint Venture Partnership might take. The advisors explored several options but have concluded that a Limited Liability Partnership (LLP) provides the best option to deliver a Joint Venture for the purposes intended. The advantages of the LLP approach are as follows:
- It will provide a limited liability structure to ensure the risks of the local housing developments are ring-fenced within the joint venture. The Councils liabilities will be limited to their minimal initial investment.
  - It is a relatively simple structure to establish.
  - It facilitates the simple transfer of land /funding and management/expertise between the respective partners through the joint venture.
  - Any profits are distributed in agreed proportions (recognising the respective contributions) to the partners before taxation wherein, the local authority exemption from corporation tax would apply.
  - The structure is Teckal compliant meaning, contractual arrangements between the LA partners and the joint venture are not subject to procurement. All contracts let by the joint venture would be subject to public procurement rules in the usual way.
- 5.14 In summary the proposed Joint Venture Partnership would therefore take the form of an LLP with the partner council (or other public body) providing both land and funding and B&NES providing management and delivery expertise for the LLP using its company, ADL. The diagram at Appendix 1 provides a pictorial representation of the proposed Joint Venture Partnership.

#### Governance and Process

- 5.15 The Joint Venture would be subject to appropriate governance including relevant company documentation to clearly set out the basis of the partnership

and the operating framework for the Joint Venture, including any reserved matters considered appropriate by the partners.

- 5.16 The Council has already agreed the basis of its future company governance arrangements and the new Joint Ventures would be subject to meeting these requirements working with the relevant local authority partner. We would also make use of the extensive legal and financial arrangements we have already set in place for our own company ADL.
- 5.17 The key stage in establishing any Joint Venture Partnership will be the consideration and approval of the associated Development Business Case. It is proposed that all such Business Cases will be subject to the “double lock” approval process already established for ADL. In this case, the Business Case will require the Approval of both Partners to the joint venture, taking whatever further advice and guidance they feel appropriate, before a Joint Venture may proceed.
- 5.18 It is proposed that the specific details for the establishment of suitable governance arrangements together with the approval of business cases for the establishment of any joint venture partnership(s) is delegated to the Leader of the Council, in consultation with the Chief Executive, S151 Officer and Monitoring Officer.
- 5.19 The day to day oversight of such Joint Venture Partnership(s) are proposed to fall within the remit of the Council’s new Commercial Director with the statutory officers fulfilling their normal roles in this regard.

## **6 RATIONALE**

- 6.1 The proposed Joint Venture LLP(s) will enable the Council to sustain its medium term financial plan targets for this activity and support neighbouring councils in partnership working arrangements.
- 6.2 The arrangements are based on external legal and financial advice seeking to minimise risk whilst delivering maximum benefit for the partners.

## **7 OTHER OPTIONS CONSIDERED**

- 7.1 A range of options have been considered for potential joint venture arrangements including company limited by share, company limited by guarantee, contractual joint venture and community interest company. External legal and professional advice was taken in arriving at the preferred option for the reasons set out in para 5.13 above.
- 7.2 Each of the potential partner councils have considered alternative arrangements including setting up their own housing and development companies. These could still be progressed for some sites by each of them, however the benefits of moving forward quickly to deliver, has identified a joint venture with this Council as a priority option for some of them.

## **8 CONSULTATION**

- 8.1 Informal discussions have taken place with the potential Joint Venture Partners in arriving at the proposals set out in this Report. The Council’s Statutory Officers have been consulted together with the Council Leader.

- 8.2 Meetings have also taken place with the West of England Combined Authority and Homes England.

## 9 RISK MANAGEMENT

- 9.1 All business cases for proposed developments will include a full risk assessment and be subject to the “double lock” approval process as set out in para 5.17.
- 9.2 The Limited Liability Partnership approach is recommended as this ring-fences the specific development risks within the joint venture. The Council’s liability is capped at the minimal level of its initial investment into the joint venture partnership.

<b>Contact person</b>	<i>Tim Richens, Commercial Director – Tel 01225 394367</i>
<b>Background papers</b>	<i>List here any background papers not included with this report, and where/how they are available for inspection.</i>
<b>Please contact the report author if you need to access this report in an alternative format</b>	