

Bath & North East Somerset Council		
MEETING:	Council	
MEETING DATE:	11 July 2019	
TITLE:	Update report on Establishing Joint Venture Partnerships	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: None		

## **1 THE ISSUE**

- 1.1 An update report on the establishment of joint venture (JV) LLP partnerships with other local authorities for the purpose of delivering local housing developments and maintaining a pipeline of sites for development by the Council's housing development company, Aequus Developments Limited (ADL).

## **2 RECOMMENDATION**

The Council is asked to;

- 2.1 Note the latest legal advice and
- 2.2 Approve the proposed change to the original JV partnerships arrangements to clarify both the legal power being used and its purpose for entering into JV LLP arrangements with neighbouring councils.

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

- 3.1 The Council has set income generation targets within its Medium Term Service and Resource Plan of £730,000 per annum and rising to £1 Million per annum from next year to be generated by its local authority housing development company (ADL). These targets 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 LLP Partnership(s) is a mechanism to provide development sites for the company that are additional to those sites provided by B&NES Council within its own geographical area.
- 3.3 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 Joint ventures in the form of Limited Liability Partnerships will ensure risks are ring-fenced within the JV and the Council's liability would not exceed its initial very limited investment.
- 3.5 £10K from the Council's Transformation Reserve has previously been approved for the set up legal costs of Joint Venture Partnership(s).

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

- 4.1 This report focuses on the legal power that the Council intends to use in creating a joint Venture partnership with a neighbouring local authority where the development is to take place in that authority's area and explains the Council's purpose in doing this through a LLP Partnership.

#### **5 THE REPORT**

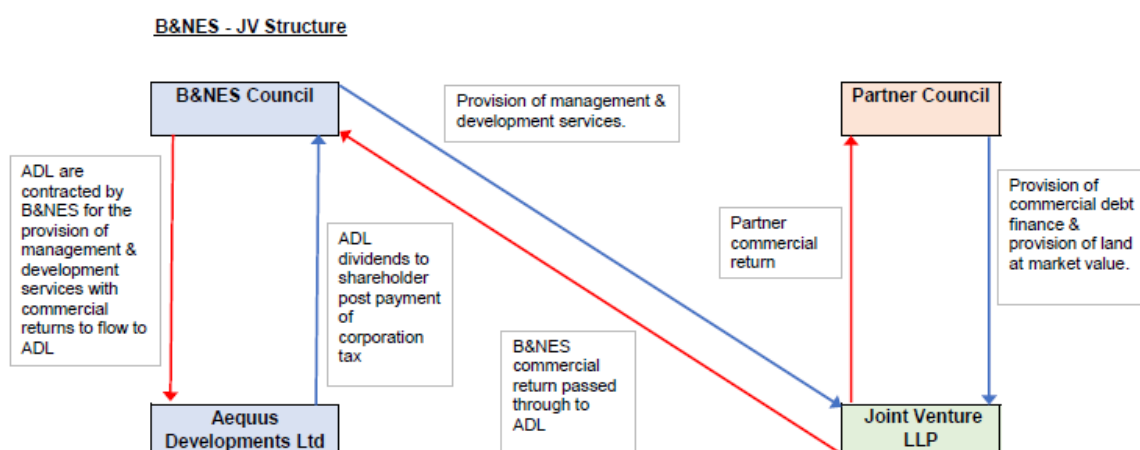
- 5.1 On 13 September 2018 Council approved in principle the creation of Joint Ventures with other local authorities for the purpose of delivering local housing developments subject to specific business cases for each Joint Venture. One aspect of that report focused on the commercial returns to the Council in entering into JVs
- 5.2 Following receipt of further legal advice the Council has clarified its legal powers to enter into joint venture arrangements through an LLP partnership structure. This report seeks approval for the reformulated arrangements. This report also ensures that the Council's purpose in entering into the proposed JV through LLP arrangements is clarified.
- 5.3 Legal advice has clarified that the Council cannot enter into a Joint Venture arrangement if its dominant purpose is a commercial purpose unless it does so through a company limited by shares. The rationale for this is that a Council does not pay corporation tax and entering into a Joint Venture through an LLP structure would provide the Council with an unfair advantage when competing with the private sector.
- 5.4 The preferred structure for a Joint Venture has focussed on a Limited Liability Partnership (LLP's) due to these being tax efficient for local authorities.
- 5.5 Entering into joint venture partnerships provides a number of benefits to both B&NES and its partner council particularly in supporting neighbouring councils to bring forward and deliver housing. This was a key element in the recent Homes England Strategic Plan 2018/19 to 2022/23 which highlights the important role of Local Authorities in accelerating the supply of new homes and, states "*we ... encourage you to work with one another to share best practice and, where appropriate, partner for delivery*".

5.6 The legal basis for an LLP is straightforward for the partner council where housing is being delivered in its area because it will utilise housing and regeneration powers to enter into the LLP. For B&NES this is not an option as the housing is outside of its boundaries and it must therefore rely on other powers for providing the key delivery support to the partnership.

5.7 Legal advice received recommends that B&NES rely on the General Power of Competence for this even though it is likely that a commercial return is going to be generated.

5.8 The Council's purpose for entering into an LLP is to secure a pipeline of development sites for its housing development company ADL. Consequently, it would not be entering into the joint venture for a commercial purpose. In addition, in order to demonstrate this, the Council will pass any commercial return to ADL which will be contracted by B&NES to deliver the development. Structured in this way the Council ensures that any commercial return is appropriately treated for corporation tax before any dividend is passed from ADL to the Council. This structure is the optimum solution for the partner council by maximising returns from the development because it does not pay corporation tax on those returns.

5.9 The chart below illustrates this structure:



## 6 RATIONALE

6.1 B&NES Council needs to be clear about its purpose for entering into any joint arrangement with a partner council.

6.2 B&NES Council together with its neighbouring Council's must find sites within their areas to support the increasing need for housing as outlined in the draft Joint Spatial Plan (JSP) for the four West of England authorities. Neighbouring Councils are considering developing housing sites within their areas themselves but lack the necessary skills to progress these alone.

6.3 B&NES Council has a housing company ADL that can help neighbouring Council's deliver these sites whilst providing a guaranteed supply of development sites for ADL. Such land supply means that the fixed costs of running ADL are distributed over a greater number of projects rather than being held against a smaller number of "B&NES-only" projects. The partner council maximises its return through an LLP and B&NES council makes a modest return through its

administration of the contract with ADL but crucially any commercial return will not be received by it but by ADL

6.4 B&NES council may ultimately receive a financial return through payment of dividends by ADL, after payment of corporation tax, if these development sites are successful but that is not its primary purpose.

6.5 Any financial risk to B&NES Council is minimised through an LLP structure.

## **7 CLIMATE CHANGE**

7.1 B&NES Council objectives will be primarily to ensure a pipeline of development sites for ADL but ADL and the Council will seek to advise our partners on how any developments could achieve improvements to its carbon emissions.

## **8 OTHER OPTIONS CONSIDERED**

8.1 The creation of a JV through other means such as through a JV company Limited by Shares or a straight forward partnership but these approaches do not maximise returns for the partner Council or involve the assumption of risk both of which the JV LLP structure avoids

## **9 CONSULTATION**

9.1 The Group Leaders, Chief Executive, the Monitoring officer and s.151 Officer have all been consulted on this report.

## **10 RISK MANAGEMENT**

10.1A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.

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<b>Background papers</b>	Report to Council 13 September 2018
<b>Please contact the report author if you need to access this report in an alternative format</b>	