

## Bath & North East Somerset Council

DECISION MAKER:	<b>Cabinet</b>	
DECISION DATE:	<b>16 January 2020</b>	EXECUTIVE FORWARD PLAN REFERENCE:
		<b>E 3149</b>
TITLE:	<b>Decision to complete Transfer Agreement with Aequus Companies</b>	
WARD:	All	
<b>AN OPEN PUBLIC ITEM with EXEMPT APPENDIX</b>		
<b>List of attachments to this report:</b>		
<b>Exemption Certificate</b> - Information Compliance Ref: LGA 1902/19		
<b>EXEMPT APPENDIX</b> - Transfer Agreement (Exempt by virtue of Para 3 SCHEDULE 12A Local Government Act 1972 - information relating to the financial or business affairs of any particular person)		

### 1 THE ISSUE

1.1 To approve the agreement to transfer staff and resources to the Council's housing development companies and provide a pension guarantee.

### 2 RECOMMENDATION

The Cabinet is requested to;

2.1 Authorise the Council entering into the Transfer Agreement with the Council's housing companies.

2.2 Delegate to the Director of Finance in consultation with the Corporate Director, Director of Legal and Democratic Services, and the Cabinet Member for Resources authority to make minor amendments to the Transfer Agreement, if required, and do all acts necessary to effect the transfer of staff and resources

and complete the pensions guarantee in accordance with the terms of the Transfer Agreement.

### **3 THE REPORT**

- 3.1 The proposal to set up a local authority wholly owned company to develop, deliver, own and manage property as well as new development on a case by case basis, was approved by the Cabinet on 2 December 2015
- 3.2 In approving the establishment of Aequus, the Cabinet agreed a number of objectives which are captured in the legal agreements for the company. These objectives recognise the potential financial, housing supply, affordable housing provision, sustainability and market differentiation of the company as follows-
  - 3.2.1 To generate revenue income and maximise revenues for the Council;
  - 3.2.2 To deliver approved property developments;
  - 3.2.3 To acquire and sell private market property;
  - 3.2.4 To hold, manage and operate high quality private lettings;
  - 3.2.5 To be fully policy compliant in terms of Affordable Housing;
  - 3.2.6 To support the Council's ambition to help create an ongoing supply of modern energy efficient and sustainable homes;
  - 3.2.7 To stimulate and accelerate property and development delivery for the Council;
  - 3.2.8 To improve supply, quality and quantity of private rented housing;
  - 3.2.9 To act as a responsible and equitable landlord;
  - 3.2.10 To deliver long term capital appreciation;
  - 3.2.11 To support the Council's strategic vision and objectives.
- 3.3 Following the decision, Aequus Developments Ltd was formed in March 2016 to focus on the management of the properties for the Private Rented Sector above the commercial estate
- 3.4 Aequus Construction Ltd was subsequently formed in June 2017 following the approval by both the Shareholder and the Company Board (the "double lock" approval process) to the business case for the development of the old Riverside Office Building in Keynsham.
- 3.5 The Council's Medium Term Financial Plans include significant (and sustained) revenue income from Aequus which, with the support of the Council, the companies will be able to achieve and potentially significantly exceed if the appropriate development pipeline is maintained.
- 3.6 The Council as Shareholder approved the 2019/20 to 2021/22 Business Plan for Aequus group of companies and the Remuneration policy for its directors and

employees on the 24 July 2019 which was based on a Transfer Agreement being in place from 1<sup>st</sup> September 2019.

- 3.7 Entering into the transfer Agreement with ADL and ACL (the Company) will enable staff to transfer from the council to ADL and will provide a mechanism for the transfer of properties to ADL and development sites to ACL in order to ensure that the staff transferred remain actively engaged in order to deliver on the significant and sustained revenue income targets set for them whilst also supporting the Council's strategic vision and objectives.
- 3.8 By entering into the Transfer Agreement the Council will transfer the 8 staff (schedule 11) to the Company to be directly employed by it on the same terms and conditions at present but with a remuneration policy that provides a limited bonus linked to the success of the business. The Service presently provided by the seconded staff will also transfer to ADL for a period of 10 years with a provision of 5 years rolling renewal.
- 3.9 The Council will ensure that the pension liabilities for the staff transferred are fully funded at the date of transfer. The Company will then be responsible for the payment of employer's pension contributions. The Council will also provide a guarantee to the Avon Pension Fund regarding any shortfall at the date of termination of the contract but will also benefit from any excess. This enables the Company to maximise the payment of dividends but also enables it to borrow from the market in the event this is required and approved by the Council as shareholder.
- 3.10 The Council intends to transfer on licence the Development Sites (Site) listed in Schedule 4 and the Residential Units (RU) listed in Schedule 5, as and when these are returned by the residential social landlords, to the Company for a period of 1 year (extendable by agreement) during which ADL will undertake site investigations and work up a business case to be approved by the Cabinet/Cabinet member. The business case will provide for the transfer of a site at market value but provision is made for disposal at less than market value in the event the disposal meets the requirements of the General Disposal consent i.e. up to £2 million less than market value where the Council is satisfied that Economic, Social or Environmental purposes are being met.
- 3.11 A business case is approved by the Council as shareholder but also by the Council as landowner and lender. The Transfer Agreement provides a mechanism, via a development agreement (DA), to enable the Council to specify the type of housing constructed and contractually ensures this is delivered. ADL/ACL is entitled to gross profits of up to 20% of the costs of development (the actual figure being negotiated on each individual site) and reflected in the DA with any overage being paid to the Council. Company net profits are also ultimately paid as dividends to the Shareholder to meet the revenue targets set by the Council.
- 3.12 The Agreement provides for Future development sites to be identified by the Council and offered to the Company and the transfer of such sites will follow the same process as for the existing Sites.
- 3.13 Any dispute between the parties is resolved through a dispute resolution process but ultimately the decision of the Council's Chief Executive is final.

## **4 STATUTORY CONSIDERATIONS**

4.1 Under the transfer agreement staff currently seconded to ADL by the council ( 8 people) will transfer to ADL for a period of 10 years and their transfer will take effect by operation of law pursuant to the Transfer of Undertaking & Protection of Employment Act (TUPE). Their employment rights will be protected and a pension guarantee will be provided by the council.

4.2 In order for TUPE to take effect the Council must transfer an Undertaking. In this case that is the development pipeline to enable the staff transferred to be actively engaged during the contract period. The transfer includes a mechanism to enable the properties and development sites to be transferred to ADL and ACL respectively. The mechanism replicates the processes required to effect transfers at present. In particular, the parties must agree a business case together with the consideration to be paid for the property or site to be transferred and in respect of sites a site specific development agreement that specifies what is to be built on the site transferred.

4.3 This decision is exempt from call in by virtue of Part 4. D-1 Rule 5 of the Constitution. i.e. the effect of the call-in alone would be to cause the Council to miss, or fail to comply with or fulfil, a deadline or duty. The Council committed to the Board of ADL the transfer of assets and staff on the 1 February 2020 and also has a duty of care to its staff to meet the deadline.

## **5 RISK MANAGEMENT**

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

## **6 CLIMATE CHANGE**

6.1 The objectives for the company are set by the Shareholder. The Council is the sole shareholder in ADL and therefore its wholly owned subsidiary ACL. The Business Plan for the Aequus group of companies commits to reviewing the objectives of the company in line with the council's commitment to become carbon neutral. The site specific business case for the Sladebrook Road development has already been modified, with Council support, to provide an exemplar site for all developers by inclusion of 2 affordable homes which is beyond current Council Policy requirements for the site and the 9 homes constructed will be low energy homes. Business Cases for Future development sites will build in the lessons learned from the exemplar site.

## **7 OTHER OPTIONS CONSIDERED**

7.1 None. The transfer of staff and assets will be the culmination of all the previous steps taken to create a Council owned housing company that generates significant revenue for the Council and adheres to the objectives set by the Council as sole shareholder.

## 8 CONSULTATION

8.1 The Chief Executive, s.151 Officer, Monitoring Officer, Staff to be transferred.

<b>Contact person</b>	Martin Shields, Corporate Director Place, tel (01225) 396888
<b>Background papers</b>	None
<b>Please contact the report author if you need to access this report in an alternative format</b>	