

Bath & North East Somerset Council

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| MEETING | Full Council | |
| MEETING | 24 March 2022 | |
| TITLE: | Aequus Group – Governance, Structure & Business Plan | |
| <p>List of attachments to this report:</p> <p>Appendix 1 – Current Company Structure</p> <p>Appendix 2 – Proposed New Company Structure</p> <p>Appendix 3 – Amended Reserved Matters Schedule</p> <p>Appendix 4 – Aequus Accounts for 2021/22</p> <p>Appendix 5 - Aequus Business Plan 2021/22 to 2023/24 Exempt by virtue of Local Government Act 1972 (amended Schedule 12A) Paragraph 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p> <p>Appendix 6 – Aequus Overview 2021</p> | | |
| All WARDS | | |

1 THE ISSUE

This report sets out proposals for changes to the Governance and Structure of the Council's wholly owned housing and development companies (Aequus Developments Ltd and Aequus Construction Ltd) to improve the efficiency and effectiveness of the arrangements based on actual experience since establishment of the companies over the past four years. The report also presents the Aequus Accounts for 2021/22 together with the Business Plan for 2021/22 to 2023/24.

2 RECOMMENDATION

The Council is asked to;

- 2.1 Approve the amendments to the Reserved Matters Schedule in the Shareholder Agreement within the Councils'. Protocol for Governance Arrangements of Local Authority Trading companies (Appendix 3).
- 2.2 Approve the changes to the Company Structure set out in Para 7, including the transfer within the corporate group of ADL and ACL, and the establishment of the holding company.
- 2.3 Delegate to the Council's Section 151 Officer the authority to confirm the final documentation required to complete the changes set out in Para 7 below and to determine the timing and implementation of the new company structure proposed. This will include authority for the Council's Section 151 Officer to provide shareholders approval for all legal, financial and corporate filing documentation to implement the new structure.
- 2.4 Note the ADL & ACL 2020/21 year end audited accounts (Appendix 4)
- 2.5 Approve the Aequus Business Plan 2021/22 to 2023/24 as attached at (Appendix 5.)

3 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 3.1 Section 7 of the Aequus Business Plan sets out the Company's financial assumptions and projections, including delivery against the Council's Medium Term Financial plan target of £1M of revenue returns each year.
- 3.2 Section 10 of the Aequus Business Plan sets out the resourcing arrangements of the company. All staff are now directly employed by Aequus Developments Ltd following the TUPE transfer of staff in February 2020. All such related costs are met directly by the company.

4 AEQUUS STATUTORY ACCOUNTS 2020/21

ADL Statutory Accounts 2020/21

- 4.1 The ADL Gross Profit before taxation for the year is £391,433. When you exclude the impact of the annual revaluation of the property portfolio and unrealised pension costs as a result of the international accounting standards the gross profit is £112,256. It should be noted that revaluations of the property portfolio do not create distributable profits. The assets are returned at nil cost to the Council at the end of their 50-year lease ensuring all capital appreciation is ultimately retained by the Council.
- 4.2 A total of £389k in capital payments were made to the Council during the year for refurbishment works carried out on 4 of the properties previously transferred. A total of £124K in revenue payments was also made for commercial interest on loan payments.

- 4.3 The year also saw the submission of the Phase 1 Commercial Estate repurposing proposals to the Council for consideration.
- 4.4 Full details of the company performance for the year are covered in the Directors Report on pages 2 to 4 of the ADL accounts (Appendix 4).

ACL Statutory Accounts 2020/21

- 4.5 The ACL Gross Profit before taxation for the year is just under £3.7m with Sales Income of £15.1m from Riverside View apartment sales completed during the financial year. Turnover reached over £15.7m including support to develop planning applications for sites for South Gloucestershire Council.
- 4.6 The profits were generated from the completion of 62 apartments at Riverside View as at 31 March 2021 in addition to a relevant margin on all other activities.
- 4.7 Revenue returns of £417K were provided to the Council predominantly from commercial interest payments on development loans. Approval for dividend payments will be sought following the changes to the company structure (see paragraph 2.2 above) and indicatively this will be a further £460K.
- 4.8 There were no new development sites transferred from the Council to ACL during the year however, work continued on the market acquired site at Sladebrook Road, Bath and the transfer of the site at 117 Newbridge Hill, Bath was approved.
- 4.9 Full Details of the company performance for the year are covered in the Directors Report on pages 2 and 3 of the ACL accounts (Appendix 4).

5 STATUTORY CONSIDERATIONS AND BASIS FOR PROPOSAL

- 5.1 Aequus is a wholly owned B&NES group of companies, established by the Executive in accordance with the powers set out under S1 of the Localism Act 2011(the general power of competence). The Council approved a Transfer Agreement with Aequus in January 2020 which provides for the transfer of development sites from the Council to the Company, to support the delivery of the Shareholder objectives and subject to Shareholder approval of development business cases.
- 5.2 Haines Watts (financial advisers) and Ashfords (Legal advisers) are jointly instructed to advise the Aequus group of companies and the Council on the transactions proposed within this report on the basis that there is no conflict of interest.

6 AEQUUS GOVERNANCE ARRANGEMENTS

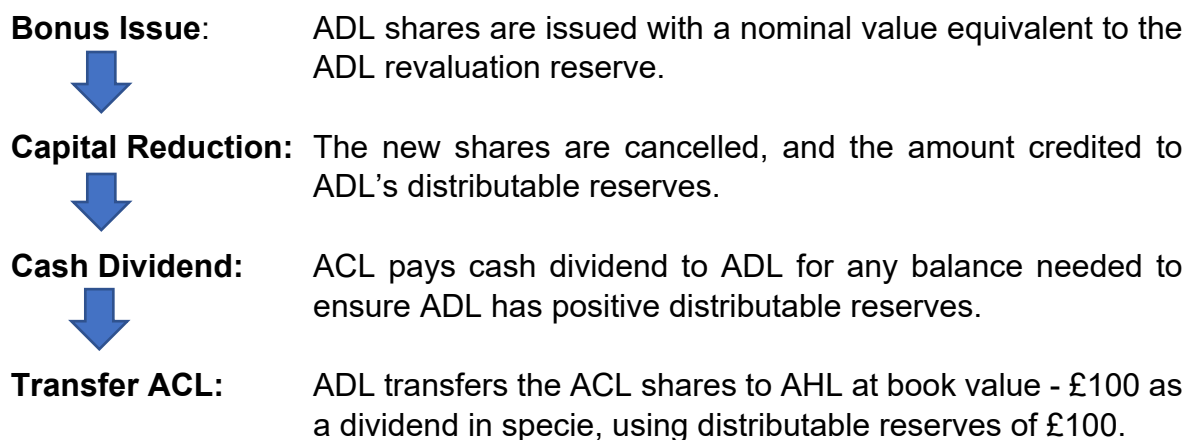
- 6.1 To remain consistent with the Councils accounts it is recommended that the Aequus annual accounts are reviewed by the Corporate Audit Committee with a timetable that is closely aligned with the preparation of the Councils accounts. The Shareholder Agreement already requires the Aequus Group to report 6 monthly to the Corporate Policy Development and Scrutiny Committee.

- 6.2 The changes proposed to the Reserved Matters schedule in the Shareholder Agreement simplify the shareholder approval requirements and avoid duplicate approval requirements where these have previously been approved as part of the approval of the annual business plan or in year amendments to it.

7 AEQUUS GROUP STRUCTURE

- 7.1 The current Aequus Group company structure set out at **Appendix 1** was established several years ago and, as the company has matured in terms of activity and finances, the current corporate structure gives rise to a number of issues as follows:
- i. ADL is effectively the current group holding company for ACL as well as operating as the staff employer and asset holding and rental company.
 - ii. ADL holds the LGPS accounting pension liabilities for transferred staff.
 - iii. ADL holds both accounting realised property asset losses and un-realised property gains.
 - iv. ADL will be the key vehicle for future Commercial estate repurposing activities and related risks.
 - v. ACL is the prime generator of dividend returns to the Council.
- 7.2 The current ADL role as holding company, its operational activities and risks, are not aligned to provide an efficient and effective corporate structure for the Shareholder. This also clouds the dividend line between ACL and the ultimate Shareholder – B&NES Council because, dividends cannot be paid directly from ACL to the Shareholder and must be paid by ACL to ADL, and by ADL to the Council, subject to both companies having sufficient distributable reserves.
- 7.3 Following discussions with legal and financial advisers, a simple change to the Company Structure is proposed to address the issues set out above. The new corporate structure proposal for Aequus is set out at **Appendix 2** and addresses the issues above whilst also providing more flexibility for the future should the company continue to develop its activities. It also importantly retains the existing Shareholder control and Teckal compliant structure.
- 7.4 All aspects of the governance and operations for the companies will remain unchanged with the current ADL Board also taking on the Board roles for AHL and ACL under the control of the Council. AHL will be a newly incorporated company with nominal share capital and its sole shareholder will be B&NES Council. AHL will be purely an investment holding company, holding the shares of both ACL and ADL. The only transactions through AHL will be dividends received from ACL (and also dividends from ADL when it has appropriate distributable reserves) which will then be paid on to the Council (subject to approval). If any costs are incurred these will be minimal and covered by the dividends received.
- 7.5 In order to implement this new structure, it is proposed to deliver this by transferring the shares of ACL from ADL to AHL at the nominal value of the ADL shares, and then transferring the shares of ACL from ADL to AHL by way of a “dividend in specie”. To do this it will be necessary for ADL to create in ADL a positive distributable reserve.

- 7.6 This is achieved by capitalising the current property revaluation reserve surplus of ADL by way of a bonus issue and capital reduction together with a small (circa £140K) cash dividend from ACL to ADL. The following flow chart sets out how this will work:



- 7.7 There are no direct costs to the Council arising from this exercise and, as soon as it is completed, ACL will be free to pay dividends to its direct shareholder AHL, which AHL can in turn pass on by way of dividend to its Shareholder (the Council), subject to both companies having sufficient distributable reserves at the relevant times, to ensure the Council achieves the total financial return target of £1M per annum.
- 7.8 The bonus issue, capital reduction and dividend will be documented by Board minutes, shareholder resolutions, and other ancillary documents and company secretarial steps. The Council will need to sign stock transfer forms for shares in ADL, and it may be advisable for it to sign a resolution approving the transaction as a whole. Other documents will need to be signed by the directors of the various companies.
- 7.9 Crucially, all directors of ADL would need to sign a solvency statement as part of the capital reduction. Accounts and other relevant information should be available to enable the directors to assess ADL's solvency over the next year. A solvency statement made without reasonable grounds carries criminal sanctions. The Councils Transfer Agreement dated 1st February 2020 with Aequus, will provide assurance to support this statement, together with the Aequus Business Plan included as a separate item with this report. Management accounts of ACL and ADL will also be used in connection with the dividends.
- 7.10 The Council is asked to agree this the approach set out in Para 7.1 to 7.9 above, with the detailed implementation and timing arrangements for this to be delegated to the S151 Officer. The implementation will be supported by the Aequus Managing Director and jointly appointed financial and legal advisers – Haines Watts and Ashfords.

8 AEQUUS BUSINESS PLAN 2021/22 TO 2023/24

- 8.1 Following consultation with the Shareholder and Council Officers aimed at ensuring the Draft Business Plan was developed to meet the Shareholder's current objectives and expectations for the Company, the proposed Aequus

Business Plan for 2021/22 to 2023/24 was approved by the Aequus Board on 9th December for recommendation to the Council/Shareholder for approval.

- 8.2 The Business Plan is a key document setting out the achievements of the companies together with “what” and “how” they will meet the specific aims and objectives set by the Shareholder going forwards.
- 8.3 The Shareholder appointed independent Board, uses this document to oversee the performance, activity and operations of the companies. Once approved by the Shareholder, the Board only need to come back for the Shareholder to seek approvals where the actions are not covered by the Business Plan or for certain important key decisions set out in the Shareholder Agreement (See Section 5 above).
- 8.4 Reflecting on the consultation responses received from the Shareholder and Council officers, the following key elements have been specifically included in the proposed Business Plan attached:
- A continued focus on commercial financial returns for the Council/Shareholder.
 - Supporting the Council in repurposing of its void commercial and corporate estate.
 - Supporting the Council in the delivery of affordable housing on Council owned and acquired land.
 - Supporting the Council to help deliver against the Climate Emergency through exemplar housing development sites.
 - Partnership working with South Gloucestershire Council via a Sales and Overage approach.
 - Recognising the key market delivery sites for B&NES in the medium term as being BWR East and Midland Road.
- 8.5 The Business Plan is constructed on the basis of ensuring a sustainable company to deliver the Shareholder objectives. The document has also reflected the approach to deliver the Company restructure set out in Section 6 above and delivering the £1M per annum of revenue financial returns to the Council/Shareholder.
- 8.6 The Council is asked to review and approve the Aequus Business Plan 2021/22 to 2023/24.

9 RATIONALE

- 9.1 The recommendation set out in Para 2.2 of this report will support the delivery and development of Aequus to enable it to best meet the Shareholder objectives set for the Company. The changes relating to governance and structure are supported by independent governance, financial and legal advice.

10 CLIMATE CHANGE

10.1 The Company aims set out by the Council Shareholder include the requirement to support the Council to meet its climate emergency objectives and best practice for property development. Section 6 of the Business Plan addresses how the company will do this in detail, including the use of the AECB Building Standard as the benchmark for all new Aequus housing developments.

11 CONSULTATION

11.1 Consultation has taken place with the Statutory Officers and Cabinet Members.

12 RISK MANAGEMENT

12.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision-making risk management guidance. The key dependencies in respect of the Business Plan are set out in Section 8 of the document.

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| Contact person | <i>Simon Martin, Director Housing & Regeneration</i> |
| Background papers | |
| Please contact the report author if you need to access this report in an alternative format | |