

## **CABINET**

**10 APRIL 2018**

### **JOINT VENTURE WITH NORSE PROPERTY SERVICES – ESTABLISHMENT OF A HOUSING COMPANY**

Portfolio Holder: Councillor Alan Jarrett, Leader  
Councillor Howard Doe, Deputy Leader and Portfolio Holder for Housing and Community Services  
Councillor Adrian Gulvin, Portfolio Holder for Resources

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#### **Summary**

This report sets out proposals to establish a housing company jointly with Norse Property Services (NPS) to develop property within Medway and in the first instance to enable the development of a Council owned site. The report includes a proposal from NPS which addresses key financial issues for consideration and proposes appropriate next steps.

#### **1. Budget and Policy Framework**

- 1.1 The responsibility for managing the Council's land is a matter for Cabinet as is the provision and management of housing.
- 1.2 The responsibility for agreeing budgetary provision and additions to the Capital Programme is for Council.

#### **2. Background**

- 2.1 The Council has a five year old relationship with Norse Commercial Services which started with considerations about a joint venture company Medway Norse to delivery of Facilities Management. Over time additional services have been added to the joint venture including the delivery of parks and greenspaces services, Special Educational Needs transport and recently the transfer of Household Waste Recycling Centres and the Council's waste collection and cleansing contract from October 2019.

- 2.2 Norse Commercial Services has a property subsidiary Norse Property Services (NPS) which has completed an award winning small residential development scheme in a joint venture with Broadland District Council called "Broadland Growth."
- 2.4 NPS have approached the Council with a view to exploring a similar joint venture with the Council and have prepared a proposal for a small residential scheme on an under-utilised car park in Rainham.

### **3. Options**

#### **3.1 Option 1: Do nothing**

- 3.1.1 This is not recommended. Cabinet has the option to do nothing in response to the approach from NPS. This would leave the Council with an under performing car park and would not translate into any new housing or any additional income to the Council.

#### **3.2 Option 2: To develop the site through the Medway Development Company Limited (MDC)**

- 3.2.1 This is not recommended. Cabinet has already set up a housing company. It therefore has an option of "self-delivery" for the initial site identified and the future proposed sites. In the short term and on balance, Officers advise that capacity to deliver in different areas of Medway concurrently through MDC could compromise its early performance. The proposal for a separate joint venture company to be involved allows the Council to spread its risk and enable two sets of activity without any compromises.

#### **3.3 Option 3: To sell the site on the open market to a developer**

- 3.3.1 This is not recommended. The capital value of the site would not be as great as the proposed profit share amount.

#### **3.4 Option 4: Joint Venture with Norse Property Services**

- 3.4.1 This is the recommended option.

#### **3.4.2 Company structure**

A summary of the company structure is:

- The company will be limited by shares with the Council as joint shareholder
- The company is a separate legal entity
- There should be an appropriate balance for day to day company operation between control and independence
- Initial start up costs should be kept as low as possible to aid commercial sustainability
- There are means to make the company tax efficient

- An appropriate code of corporate governance should be adopted

### 3.4.3 Programme management

- In the first instance a small team could deliver projects
- There are “tools” that will enable efficient delivery such as financial modelling packages, design guides
- There will be a need to consider appropriate branding, financial, legal and procurement resource
- This can be dealt with through the secondment of council staff or by service level agreements back to relevant council teams, which must be at commercial rates to the company.
- An initial operating budget will be needed.

### 3.4.4 Risks

- There will be planning risks on the specific site which is shared 50:50
- There are market risks that will need to be considered
- There may be risks about commissioning appropriate contractors
- There may be site specific risks which create abnormal costs

### 3.4.5 Analysis

- There is a potentially viable scheme identified which could commence this year.
- These would create around 10 units.
- This could generate a significant profit with a favourable land value.
- It could additionally involve an on lending benefit
- It could deliver capital growth for further sites to be considered.
- The car park is operating inefficiently at 20%.
- The proposal represents a 70:30 profit share in favour of the Council.

## 4. Advice and analysis

- 4.1 If Cabinet is minded to agree the Business Case and the formation of the Company the following governance considerations will be relevant. The Roles and the Responsibilities of the Cabinet, the Board of Directors and the Management Board and employees of the company will be:
- 4.2 **Cabinet (representing the Council Shareholder)** – Responsible for holding the Board of Directors to account for company performance via an Annual General Meeting (AGM); calling any Extraordinary Meetings if required. Responsible for:

- To receive and review the company's Business Plan
- To receive any proposed variations to the Business Plan
- To receive periodic reports on performance

4.3 **Executive Board of Directors** – Oversight of the company's trading activities, including signing off the company Business Plan will be conducted by the Executive Board. It will be responsible for reporting to the Shareholder on say a six-monthly basis on company performance and overseeing activities of the Management Board. Two Cabinet Members will be appointed as Directors.

4.4 **Other appointments** – the company will need to appoint a Company Secretary, Company accountants, Company Auditors and insurers. In the first instance these roles will be undertaken by seconding relevant Council officers in return for a service level agreement at commercial rates.

4.6 The Council will create a process overseen by the Chief Legal Officer in consultation with the Leader to sense check proposals. These might support wider regeneration or economic development aspirations.

## 5. Risk management

Risk	Description	Action to avoid or mitigate risk
Schemes pursued by the Company are built out but not sold or rented	Financial risk to the Council as a potential lender, lack of income and increased borrowing costs	Proposal includes Marketing expertise to be sought to promote sites. Joint venture minimises risk
The Medway market becomes saturated by available units thereby causing capital values to decrease	Financial risk to the Council as a potential lender, lack of income and increased borrowing costs	Market research is carried out plus expertise sought to promote sites. Consideration of a joint venture in the right circumstances.

There is a crash in the housing market such that capital values reduce significantly	Financial risk to the Council as a potential lender, lack of income and increased borrowing costs	Market research is carried out plus expertise sought to promote sites. Consideration of a joint venture in the right circumstances.
Tenants exercise their right to buy of General Fund properties or LATCO properties (if extended to Local Authority Housing Companies as predicted)	Financial risk to the Council as a potential lender, lack of income and increased borrowing costs	Proposal includes units for private sale only.
The housing company's ethos is contrary to Council Policy.	Reputational risk to the Council.	Two cabinet members on the board. Initial financial funding is from the Council.
Planning risks. Proposed company schemes are seen as unsuitable.	Reputational risk to the council. Financial risk to the council as a potential lender, lack of income and increased borrowing costs.	The Chief Finance Officer will test individual schemes for financial viability
Company failure. Exit strategy.	Reputational risk to the council. Financial risk to the council as a potential lender, lack of income and increased borrowing costs.	The Chief Finance Officer will test individual schemes for financial viability. Company structure ring-fences risk. Insolvency proceedings would protect the council.

## 6. Consultation

- 6.1 The creation of a joint venture company has been the subject of consultation with Cabinet Members and local Rainham Members.

## **7. Financial Implications**

- 7.1 Under the preferred option 4 the Council will be required to provide the land and lend the joint venture company £1.352 million. The funds required for this loan will be met from borrowing. As this represents a capital investment, the Council's capital financing requirement (CFR) will increase accordingly. There is no requirement to fund a minimum revenue provision and the interest charge to the joint venture will have to be at market rate, giving the Council a modest revenue benefit.
- 7.2 A detailed financial appraisal of each site as it comes forward will enable the Council to assess the risks and rewards for sites before any investment.

## **8. Legal Implications**

- 8.1 The Council has a power to create joint venture companies under the Localism Act 2011 section 3.
- 8.2 The Public Contract Regulations 2015 codify the so-called "Teckal Exemption" at regulation 12 allowing public to public contracts without procurement where three criteria are met:
1. The contracting authority exercises over the body control which is similar to that which it exercises over its own departments.
  2. More than 80% of the activities of the body are carried out in the performance of the tasks entrusted to it by the controlling contracting authority.
  3. There is no direct private capital participation in the controlled body.
- 8.3 Criteria 1 is met as the proposal is the Council will appoint Directors to the Board of Medway Growth. Criteria 2 is met since Medway Growth will carry out 80%+ of its activities for Medway Council. Criteria 3 is met as the capital funding will be from the Council and Norse Property Services.

## **9. Recommendations**

- 9.1 Cabinet is asked to approve the setting up of a joint venture company (option 4) based on the proposal set out in the exempt appendix.
- 9.2 Cabinet is asked to agree the company will be called Medway Growth.
- 9.3 Cabinet is asked to agree to exercise the role of shareholder.
- 9.4 Cabinet is asked to delegate authority to the Chief Legal Officer in consultation with the Leader to agree the Memorandum of Association and the Articles of Association.

- 9.5 Cabinet is asked to note the amounts required to be provided for in the Capital Programme and to ask Council to approve the addition to the capital programme of £1.352 million, to be funded from borrowing, in order to make a loan to the joint venture company at the prevailing market interest rate.
- 9.6 Cabinet is asked to agree to delegate authority to the Chief Finance Officer in consultation with the Leader to release funding to the Company for each agreed scheme in the Company's Business Plan subject to financial due diligence.
- 9.7 Cabinet is asked to delegate authority to the Chief Legal Officer in consultation with the Leader to identify, declare surplus and dispose of assets at commercial rates to the company in line with its Business Plan.
- 9.8 Cabinet is asked to delegate authority to the Chief Legal Officer in consultation with the Leader to execute the final legal agreements, contracts and all other ancillary documentation that may be needed prior to the setting up of a company setting out the arrangements between the Council and the Company.
- 9.9 The Cabinet is asked to delegate authority to the Chief Executive to make the necessary appointments to the Executive Board of Directors, as set out in paragraph 4.3 of the report, in consultation with the Leader.

## **10. Suggested Reasons for Decision**

- 10.1 To enable the generation of new and alternative revenue income streams for the Council and to deliver housing units principally in Medway.

### **Appendices:**

Exempt Appendix

### **Background Papers:**

None

### **Lead officer contact:**

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