

## **Report to Executive Director for Place Services**

### **SUMMARY FOR SCRUTINY**

**March 2021**

Award of Contract: Joint Venture Partnership for County Council Property Development

### **Report by Director of Property and Assets**

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#### **Summary**

This report provides background and context to the proposal that the Executive Director Place Services confirms the appointment of the organisation with which the County Council is to enter into a Joint Venture Partnership Agreement in accordance with Cabinet Member decision FR05 19-20 28/06/2019 (Procurement - Property Development Enterprise).

The organisation will become the partnering company in the joint venture with the Council and will provide property development funding, resources and services in order to bring forward for development areas of land in which the Council has an interest, subject to assessment of commercial viability and value, in accordance with a partnership agreement. The report explains the mechanisms for decisions of the partnership and joint venture governance. A separate report contains information, currently confidential, relating to the procurement of the partner and the output of the procurement in relation to the achievement of the aims of the original decision.

#### **Recommendations (for the main report)**

That the Executive Director Place Services in consultation with the Cabinet Member for Finance: -

- (1) Approves the appointment of the preferred bidder from the procurement process.
- (2) Proceeds to complete the Partnership Agreement with the selected partner and in accordance with decision FR05 19-20 (Procurement - Property Development Enterprise).
- (3) Proceeds jointly with the Director of Law and Assurance to implement the governance arrangements for the operation of the partnership as set out in this report to meet the requirements of the joint venture arrangement.

#### **Proposal**

##### **1 Background and context**

- 1.1 The Cabinet Member Key Decision FR05-19-20, in July 2019, approved a procurement process to select a commercial enterprise to act as a joint venture partner with the County Council for the commercial development of surplus

Council land for shared financial returns. The selection of the initial tranche of sites of Council land, declared surplus and suitable for development, to form part of the joint venture and for inclusion in the procurement exercise was delegated to the Executive Director for Place Services. Bidders were invited to share the development of those sites and the opportunity to do so on future sites which may be approved to come forward.

- 1.2 The decision delegated approval to appoint the preferred bidder to the Executive Director Place Services, in consultation with the Cabinet Member for Finance. In addition, delegation was granted to the Director of Law and Assurance to set up a Limited Liability Company, a wholly owned company (WOC), with all shares held by the Council, which will serve as the partner with the preferred bidder.

## **2 Proposal details**

- 2.1 The procurement process has been completed and the Council has identified a successful bidder. This follows an independently evaluated and moderated process. The next step will be to inform the bidders and proceed to complete the partnership agreement and to establish the mechanisms through which the joint venture will operate. Progress can then be made on the sites which were included in the procurement exercise.
- 2.2 The selected partner will enter a partnership agreement, with the Council's wholly owned company (WOC). The partnership will be a contractual agreement in the form of a limited liability partnership (LLP). The Council will appoint directors to the WOC and, through the WOC, the Council will receive annual company reports, oversee the articles of association and monitor the partnership. The Cabinet Member for finance will retain oversight from the Council and will retain executive authority for key decisions relating to land surplus to Council requirements and their selection for development which will be subject to scrutiny in the normal way.
- 2.3 Decisions on the arrangements for declaring Council land surplus to service needs and for considering options for the land – including whether to pass them to the joint venture for development, will remain within the democratic and open processes of the Council, as Cabinet Member decisions subject to scrutiny and public decision-making.
- 2.4 The initial phase of the project encompasses the ten identified sites set out in the tendering documentation in accordance with the decision in July 2019. They will become subject to the options agreement which requires the partnering company to carry out further work and produce business cases to demonstrate viability and value before proceeding.
- 2.5 Once the partnership is in place the partnering company will be required to commence pre-construction work on each of the 10 sites by moving towards obtaining suitable planning consents and preparing full business cases. It will be required to meet market standard commercial viability tests and open sale land value, which will be independently verified by advisers to the Council, in particular verifying that the construction and land value being proposed is the best consideration.
- 2.6 The partnership agreement requires the partnering company to not only provide but also fund the resources required to manage the joint venture.

- 2.7 Approvals of future surplus land and developments remain as key decisions to be made by the Cabinet Member. The decision to declare land surplus to operational requirements will also contain an outline business case prepared by the partnering company which will set out the development potential. The future sites will only continue progressing if the return amounts set out in the decision remain as stated in the full business case. The returns in all business cases will be verified by advisers acting for the Council.
- 2.8 After initial consideration by the Joint Venture partnership the proposal will be considered by the WOC for confirmation that the development proposal remains within the tolerances agreed in the key decision to make the land available. Following this confirmation the business cases are referred by the WOC to the Cabinet Member to provide assurance of continued performance in line with the key decision.
- 2.9 The governance and process of operating the joint venture are outlined in the appendix. The governance requires that significant items for approval within the partnership are treated as 'reserved' matters, requiring Council approval, together with confirmation of business cases.
- 2.10 The overall oversight of the progress of the joint venture partnership and the achievement of its aims for the Council will be addressed on an annual basis through reports to the Cabinet and to Performance and Finance Scrutiny Committee. More frequent reports may be required as advised.

### **3 Other options considered (and reasons for not proposing)**

- 3.1 The alternative option now is not proceeding with the Joint Venture. The Council would therefore look to dispose of the sites through alternative means. This approach would not maximise the returns from disposal, would take time and mean abandoning the costs incurred to date.

### **4 Finance**

- 4.1 The Cabinet Member Key Decision FR05-19-20 set out a proposed budget of £700,000 in fees for advisers to the Council in the procurement process. The anticipated spend to complete the procurement is £676,000.
- 4.2 The financial details for the joint venture plans are set out in a separate report due to their dependence upon the procurement exercise. In essence the projects should deliver development profit out of sales paid as dividends to the Council through its wholly owned company. The Council provides the land to be developed, at open market sales value and receives the full value of that land. The Council has the option to request early payment, in full or part value, for the land from the partnering company at the time of the development commencing. The alternative is for the Council to receive interest on the land value, payable from development profits, up to the time of development completion.
- 4.3 The partnering company is required to fund the pre-construction, construction and sales costs up to the equal value of the Council land. Any additional funding required above the agreed land value can be supplied by the partnering company or as a commercial loan from the market.

- 4.4 Independent advisers will act for the Council to provide assurance of value, market and risk management at all stages and provide final verification at the point of the option on the land being exercised to develop. This independent inspection is overseen by a Joint Venture Supervisor who will also advise the partners on matters of disagreement.
- 4.5 The Council is not under an obligation to continue offering land to the partnership should it not be satisfied with the returns or market. The Council's share of the financial returns can be selected by the Council to be either Capital or Revenue.

### **Human Resources, IT and Assets Impact**

- 4.6 This decision will not impact the Council in terms of Human Resources and IT. The arrangement offers the potential of strategic assessment of the property assets held by the Council and thereby innovative management of the estate informed by a partner developer to identify opportunities for improved returns.

## **5 Risk implications and mitigations**

- 5.1 The Partnership Agreement is a legal contract to operate the joint venture under shared interest of financial return. Each site has to demonstrate financial viability and market timing/suitability before progressing to development. The Council is not under an obligation to provide sites. The partnering company provides expertise, skilled delivery resources and funding. The Council provides the land. Independent expert advisers will confirm and monitor delivery and the process is overseen by the Joint Venture Supervisor, an independent adviser. Risks associated with the procurement are addressed in a separate report.

## **6 Policy alignment and compliance**

### **Legal Implications**

- 6.1 To facilitate operation of the joint venture, the Director of Law and Assurance is required to incorporate a new trading company (the WOC) as a statutory limited liability company, with its shares wholly owned by the Council.
- 6.2 The wholly owned company (WOC) will be overseen by a Shareholder Group. The Shareholder Group is likely to comprise the Council Leader, Cabinet Member(s), Chief Executive Officer, Executive Director(s), and Directors of Law and Assurance and Finance and Support Services. These details will be addressed in a future decision report.
- 6.3 Its function will be receiving the annual reports and financial statements, considering any changes to the constitution and articles, appointing directors and providing overall direction.
- 6.4 The WOC will be formally registered at Companies House. It will partner with the partnering company on a 50/50 basis in a contract, a limited liability partnership (LLP). This is a contractual arrangement between the WOC and LLP and its operation is governed by the Partnership Agreement.

## **7. Equality duty and human rights assessment, Climate Change, Crime and disorder, Public health and Social value**

7.1 The tendering documentation required bidders to address these headings and the responses were evaluated.

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## **Appendices**

Appendix 1 – Outline of governance to run the joint venture