

**Agenda Item No:** 9.7 **Report No:** 95/17  
**Report Title:** North Street Quarter – Consideration of Delivery Options  
**Report To:** Cabinet **Date:** 26<sup>th</sup> June 2017  
**Cabinet Member:** Councillor Andy Smith  
**Ward(s) Affected:** All Lewes Wards  
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## 1.0 Purpose of Report:

This report seeks authority to: progress work on a revised delivery route for Phase 1 of the NSQ scheme which would involve Santon North Street's (SNS) own development company Artisan as the development partner; to revise the scope and content of the Land Collaboration (joint venture) Agreement (LCA) to ensure that it contains the mechanisms necessary to protect the Council's interests, and to identify the assets (land and buildings) that the Council would wish to secure from the NSQ scheme. Cabinet approval for the recommendations resulting from this work will be sought at a future meeting (anticipated to be the meeting of 27<sup>th</sup> September 2017).

This report has been tabled at a meeting of the North Street Quarter Members' Oversight Board.

## 2.0 Officer Recommendations:

1. To delegate authority to the Director of Regeneration and Planning, in consultation with the Deputy Chief Executive and the Leader of the Council, to carry out due diligence in respect of the risks identified in Appendix 1.
2. Pending satisfactory resolution of the identified risk issues, to delegate authority to the Director of Regeneration and Planning, in consultation with the Leader of the Council, to negotiate revisions to the approved Heads of Terms of the LCA to enable SNS to appoint Artisan as Phase 1 developer, having particular regard to the securities and guarantees required by the

Council and the roles and accountabilities of all parties. Such amendments to be agreed at a future meeting of the Council's Cabinet.

3. To delegate authority to the Deputy Chief Executive, in consultation with the Leader of the Council and Cabinet Member for Finance, to investigate the potential of the Council as lender of construction finance to the development partner, and the opportunities and risks associated with this role.  
Recommendations to be made to a future meeting of the Council's Cabinet.
4. To delegate authority to the Director of Service Delivery, in consultation with the Deputy Chief Executive, Leader of the Council and Cabinet Member for Housing, to carry out soft market testing of the affordable housing with Registered Providers.
5. To delegate authority to the Director of Regeneration and Planning, in consultation with the Deputy Chief Executive, Leader of the Council and Cabinet Member for Finance, to identify the income generating assets that Lewes District Council (LDC) would wish to secure from the NSQ scheme in order to establish an on-going revenue stream from the development.  
Recommendations to be made to a future meeting of the Council's Cabinet.

### **3.0 Reasons for Recommendations**

1. To progress delivery of the strategically significant North Street Quarter (NSQ) development in Lewes. The NSQ is a £180m mixed use brownfield site that will deliver the following regeneration benefits to the area:
  - 416 new homes, of which 40% will be affordable,
  - 140,000 sq. ft. of new commercial space, including subsidised creative workspace,
  - 475 full time jobs,
  - 100 full time construction jobs,
  - a new modern health centre serving in excess of 26,000 patients,
  - strategically important flood defences, completing the defence of Lewes,
  - a new riverside promenade, new footbridge, extensive new cycle paths and footpaths, and
  - a public square hosting contemporary eateries and riverside dining.
2. To ensure that the Council maximises return on its investment into the NSQ scheme, while at the same time minimising any risks involved in delivery and potential financing.

### **4.0 Background information**

#### **The North Street Quarter development**

- 4.1 On 1<sup>st</sup> October 2012, Cabinet resolved to explore the possible disposal of its land interests in the North Street area to facilitate a comprehensive development scheme with landowner Santon North Street (SNS). Following approval on 30<sup>th</sup> September 2013 to enter into a joint agreement with SNS

(subject to satisfactory Heads of Terms and the securing of planning permission), Cabinet endorsed a masterplan for the site on 24<sup>th</sup> April 2014. At the same meeting, Cabinet also agreed the Council's priorities (as landowner) which are:

Essential:

- Achievement of 40% affordable housing
- Maximisation of a return on the Council's investment through a recurring revenue stream.

Desirable:

- Up to 40,000 sq ft of commercial floor space including cultural quarter, retail and a health facility
- Extra care housing units, and
- Improved public realm and connectivity with the town

- 4.2 Following the decision to grant planning permission for the NSQ scheme at the 10<sup>th</sup> December 2015 meeting of the South Downs National Park (SDNP) Planning Committee, Cabinet approved a report covering a number of commercial and legal matters relating to the NSQ development. These matters included agreement of the Heads of Terms of the joint venture (LCA), the procurement approach for land disposals and the exploration of CPO powers to ensure site assembly for the scheme. Cabinet also agreed the necessary expenditure to buy back leasehold interests on Council owned land in the area.
- 4.3 Council officers continue to progress the acquisition of the outstanding land interests. SNS have also begun the process of discharging pre-commencement conditions that form part of the conditional planning permission granted by SDNP.
- 4.4 In March 2017, the Council completed the purchase of the Springman House site on North Street to enable the relocation of the existing fire station which currently sits within the area of the permitted NSQ scheme. The Council was successful in securing a £2 million capital grant from the Coast to Coast LEP towards the site purchase costs. The design and development of the new fire station is the subject of a separate report to Cabinet which is on the agenda of this current meeting (26<sup>th</sup> June 2017).
- 4.5 Also in March 2017, the Council appointed a dedicated project manager for the NSQ scheme.

## **5.0 Delivery of Phase 1**

- 5.1 The approved Heads of Terms (and draft full agreement) of the LCA are predicated on the basis of it being an agreement between two neighbouring landowners. A developer(s) was to be procured by SNS via a competitive tender process, overseen by a Joint Venture Board comprising equal representation from SNS and LDC. SNS was also to appoint a development manager.

- 5.2 SNS has recently expressed a desire to appoint their own development company Artisan as the development partner for Phase 1 of the NSQ scheme.
- 5.3 The Council has commissioned a briefing from its financial advisor GVA (attached as Appendix 1) to identify the potential risks and opportunities (to the Council) associated with this approach. While GVA has noted that this delivery route may be acceptable to the Council, and could be financially rewarding, it also notes that additional due diligence work must be undertaken in order to address the identified risks and to protect the Council's interests.

### **Due diligence**

- 5.4 Appendix 1 identifies a number of risks associated with progressing SNS' own development company Artisan to deliver Phase 1. Cabinet approval is sought to carry out additional due diligence in respect these identified risks which include the need to establish Artisan's capability and financial standing as development partner, the standing of SNS as potential guarantor in the event of any default by Artisan, the implications of any securities that will be required from LDC and the means by which the Council can ensure the capability and experience of the build contractor. Coupled with this is the need to ensure that the overall returns to SNS and the Council fairly reflect their respective exposure to risk and investment in the project.

### **Joint Venture – Land Collaboration Agreement (LCA)**

- 5.5 Appendix 1 identifies that the current approved Heads of Terms of the LCA would still be relevant in the context of the revised delivery approach, however, a number of additional items would need to be included in order to protect the Council's interests. Pending satisfactory completion of due diligence in respect of the risks identified, the Heads of Terms will be reviewed and revised in order to provide SNS with the ability to appoint Artisan as the Phase1 development partner. Revisions will have regard to the securities and guarantees required by the Council in progressing this approach, and to the roles and responsibilities of all parties. A Development Agreement between the landowners (SNS and LDC) and developer (Artisan) would also be needed. The Council will need to consider the appointment of an independent project manager / client's agent (rather than relying on SNS) to monitor and enforce the performance of Artisan. SNS should also be 'conflicted out' of decisions to enforce the terms of the Artisan contract, with the Council taking the lead on any element where the performance of Artisan is at issue. Approval of the new Heads of Terms and Development Agreement will be sought at a future meeting of the Council's Cabinet.
- 5.6 Consideration will also be given to the potential role of the Council as lender of construction finance, and to the opportunities and risks that may be involved.

## **Affordable housing**

- 5.7 165 units of affordable housing will be delivered as part of the NSQ scheme (including Extra Care units), the majority of these being in Phase 1 of the development. In order to inform the most appropriate delivery route for the affordable housing (which meets strategic housing needs in the area and maximises the Council's return from its investment in the NSQ scheme), officers will carry out soft market testing with Registered Providers (RPs).

## **Income generating assets**

- 5.8 One of the Council's priorities in taking forward the NSQ development is to maximise a return on its investment through a recurring revenue stream. There are a number of potential income generating elements within the scheme, including commercial space, the health hub and car park. It is intended that the Council will agree to offset some of its capital receipt to instead take some of these income generating elements at their market value. As part of the work to revise the Heads of Terms of the LCA, officers will also identify which assets the Council should seek to acquire from the NSQ scheme, and the process by which they will be secured.

## **6.0 Timeframe / programme of work**

- 6.1 The culmination of the work outlined above will be a report to the Council's Cabinet (anticipated to be the 27<sup>th</sup> September 2017 meeting) setting out a number of recommendations in respect of the delivery of Phase 1. The report will be accompanied by substantive information and guidance from the Council's financial and legal advisors to the NSQ scheme.
- 6.2 In terms of the NSQ programme moving forward, there are a number of workstreams being progressed by the Council, its partners and specialist advisors. These are:
- Scheme delivery – following approval of the recommendations contained in this report, officers will be working with the Council's financial (GVA) and legal (Gowling WLG) advisors to carry out due diligence in respect of the proposed delivery route and to revise the Heads of Terms of the LCA. GVA will also be asked to support the identification of income generating assets that the Council would seek to acquire from the scheme, and the preparation of a Section 123 report confirming that the Council is receiving best consideration.
  - Health Hub - work is progressing with prospective occupants in terms of the model of integrated service delivery, support for their business planning needs and fit-out specifications.
  - Affordable housing – officers will work to develop a type and tenure mix and carry out soft market testing with RPs in order to identify a preferred funding / delivery route for both the affordable housing and Extra Care units.
  - Planning conditions - SNS and its consultants, with support from council officers, continue to work to discharge the pre-commencement planning

conditions. This includes ongoing community involvement and public consultation on detailed elements of the scheme. Both SNS and LDC continue with land assembly across the NSQ development site.

## **7.0 Financial Appraisal**

- 7.1 This report recommends that authority be delegated to officers to negotiate revised Heads of Terms to the LCA, carry out due diligence checks and undertake further research including soft-market testing. As such, there are no significant direct financial implications associated with the recommendations, with costs to be met from existing budgets.
- 7.2 When the due diligence checks and further analysis has been completed, a future Cabinet meeting will be asked to consider a number of proposals in respect of progressing this development. A full financial appraisal will be given at that time.

## **8.0 Legal Implications**

- 8.1 Cabinet is asked to note the earlier advice given at the meeting held on 7 January 2016 in the context of the risk of procurement challenge given the proposal to contract directly with SNS. Similar considerations apply to any direct contract with Artisan and the justification/defence would be the same as for SNS. The Council can reduce the risk of a claim to have the contract set aside after it has entered into the contract by issuing a notice in OJEU in advance (a Voluntary Ex Ante Transparency Notice "VEAT"). At its meeting on 7 January 2016 Cabinet resolved to issue a VEAT.
- 8.2 As would be the case with any third party developer, the Council will ensure that the appropriate legal protections (guarantees, rights of step in etc) are contained in the documentation. The Council will also need to ensure that the deferral of any financial 'upside' to future phases 2 and 3 is adequately protected.
- 8.3 Where the Council advances funding to the project (the potential for which is highlighted at paragraph 5.6) the Council will ensure that this is on arms-length market terms so as to meet the requirements of the Market Economy Investor Principle and not fall foul of state aid law.
- 8.4 The Council will obtain advice on its statutory duty to secure best consideration.

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## **9.0 Risk Management Implications**

- 9.1 The following risks will arise if the recommendations relating to the delivery of Phase 1 of the NSQ scheme are not implemented:
- Phase 1 includes a high infrastructure requirement and the majority of the affordable housing. If SNS are unable to use their own developer to deliver

Phase 1, there may be difficulties in securing a third party developer to deliver this phase in isolation. This will impact upon the delivery of the wider scheme and the regeneration benefits it will deliver. In the event that a third party developer could be secured to deliver Phase 1 as a 'stand-alone' phase, the Council may be unable to achieve a satisfactory financial return on its land interests.

9.2 The following risks will arise if the recommendations are implemented, and we propose to mitigate these risks in the following ways:

- The main risks of the proposed delivery approach to Phase 1 are set out in Appendix 1.
- Work will be undertaken to carry out due diligence on the risk issues identified in order to protect the Council's position.

## **10.0 Equality Screening**

10.1 Equality screening has been carried out for previous NSQ reports. This report raises no new equalities issues.

## **11.0 Appendices**

Appendix 1: North Street Quarter, Lewes - Delivery Options Review. GVA