



# LEWES DISTRICT COUNCIL

NEW HOMES PROJECT GOVERNANCE ARRANGEMENTS REVIEW

Audit for the year ended 31 March 2016 - report issued 28 July 2016

## PURPOSE AND USE OF THIS REPORT

We have reviewed the Council's governance processes for the new homes project, which we identified as a significant risk to our value for money conclusion for the year ended 31 March 2016. This report sets out a draft action plan for agreement with management. Our conclusions and recommendations will be included in our report to the Audit and Standards Committee in September 2016.

The contents of this report relate only to those matters which came to our attention during the conduct of our normal audit procedures which are designed primarily for the purpose of expressing our opinion on the financial statements and providing a value for money conclusion. As the purpose of the audit is for us to express an opinion on the financial statements and provide a value for money conclusion, you will appreciate that our audit cannot necessarily be expected to disclose all matters that may be of interest to you and, as a result, the matters reported may not be the only ones which exist.

This report has been prepared solely for the use of management and should not be shown to any other person without our express permission in writing. In preparing this report we do not accept or assume responsibility for any other purpose or to any other person.

We would like to thank officers for their co-operation and assistance during our review.

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## SIGNIFICANT USE OF RESOURCES RISK

### SIGNIFICANT USE OF RESOURCES RISK

We assessed the governance arrangements in respect of the new homes project as a significant audit risk, as reported in our audit plan to the Audit and Standards Committee in March 2016. We set out below how we have addressed this risk and the outcomes of our procedures.

| ISSUE             | RISK  | HOW THE RISK WAS ADDRESSED BY OUR AUDIT   | CONCLUSION AND RECOMMENDATIONS   |
|-------------------|---|---|--|
| NEW HOMES PROJECT | <p>In July 2015 the Council signed a Conditional Sale Agreement and Profit Share and Project Management Agreement with a private sector consortium, in respect of a project to raise funds to build a number of new Council homes across the district, and to bring regenerative benefits to a number of sites.</p> <p>This was meant to have been a significant project involving the sale of a number of the Council's surplus land assets, and substantial investment from both the Council and the consortium.</p> <p>In February 2016 a decision was taken by Cabinet to terminate this agreement as a result of the non-satisfaction of title and ground conditions in respect of key sites within the project.</p> <p>Given the scale of the project, there is a risk to our use of resources opinion if due process was not followed by the Council in entering into the contract and terminating the contract.</p> | <p>We have reviewed the governance and decision making processes followed by the Council in entering into the Conditional Sale Agreement, and subsequently terminating the agreement. The aim was to determine whether the Council's own internal processes were followed and whether these were sufficient to ensure that appropriately informed decisions were made. This involved a review of relevant documents and Cabinet minutes, and discussions with management.</p> | <p>Overall the Council followed its own internal processes in making decisions about this project, and legal advice was sought on key decisions made.</p> <p>However, we have identified scope for improvement in arrangements underpinning the project and have agreed an action plan with officers for lessons learnt from this project to be applied to future projects of this size and nature.</p> <p>Recommendations have been raised in respect of :</p> <ul style="list-style-type: none"> <li>• Earlier disclosure of potential development sites</li> <li>• Public consultation in preliminary stages</li> <li>• Updating the Property Strategy and Asset Management Plan</li> <li>• More structured approach to carrying out due diligence checks.</li> </ul> <p>The actions relate largely to good practice that could be implemented rather than significant weaknesses in processes.</p> |

# ACTION PLAN

## Deficiencies and observations

| AREA                            | OBSERVATION  | IMPLICATION  | RECOMMENDATION   | MANAGEMENT RESPONSE  |
|---------------------------------|--|--|--|--|
| Disclosure of development sites | <p>An exempt list of potential development sites was presented to Cabinet in May 2012 and all district councillors who held office at the time received a copy of the Cabinet report and the exempt list.</p> <p>The list was kept exempt as it contained commercially sensitive information and listed all potential, rather than proposed, development sites. Once a preferred bidder was selected and negotiations begun, the Council was also required to keep the details of the negotiation confidential.</p> <p>The site list was therefore only made available to the public after the contract was awarded, in May 2015.</p> <p>The Council's approach was set out in the May 2012 Cabinet report as it stated that all affected parties would be informed about the Council's plans once the detail of the promotion agreement was agreed and the list of sites agreed as part of the contract.</p> <p>However, given the significant public interest in this project and in the interests of transparency, we believe that management should have considered ways of making the list of potential development sites publically available before contact negotiations began.</p> | Non-disclosure of the site list for three years is likely to raise public concern. | Each significant project should have a detailed public engagement plan, specific to the project, setting out the nature and timing of information to be released into the public domain. This should be approved by Cabinet at the outset. | <p>Agreed. The Head of Business Strategy and Performance will update the Council's project management guidance, to take into account the changes required to the treatment of significant projects, and ensure that senior officers and Cabinet councillors are made aware of them. By end of October 2016.</p> <p>Training on the Council's revised project methodology to be provided to all Heads of Service and Corporate Management Team. By end of January 2017.</p> |

## ACTION PLAN

### Deficiencies and observations (continued)

| AREA                | OBSERVATION  | IMPLICATION   | RECOMMENDATION   | MANAGEMENT RESPONSE  |
|---------------------|--|---|--|--|
| Public consultation | <p>No public consultation on the site list was carried out before the contract was awarded, and only shortly before the contract was signed on 30 July 2015.</p> <p>We are informed that the aim of the consultation events was to discuss proposals and answer questions about how the development would proceed, and gain information about any potential limitations, rather than what was included in the site list.</p> <p>Whilst earlier consultation was not required by the Council's policies, it would have been good practice for the Council to have carried out preliminary targeted consultation before entering into the procurement stage.</p> | <p>The absence of public consultation in the early stages of a project limits the public's ability to provide useful input into matters affecting them.</p> | <p>Each significant project should have a detailed public engagement plan, setting out the purpose and timing of public consultation events. In developing this plan for each project, management should consider the benefits of carrying out preliminary targeted consultation before entering into the procurement stage.</p> | <p>Agreed. The Head of Business Strategy and Performance will update the Council's project management guidance, to take into account the changes required to the treatment of significant projects, and ensure that senior officers and Cabinet councillors are made aware of them. By end of October 2016.</p> <p>Training on the Council's revised project methodology to be provided to all Heads of Service and Corporate Management Team. By end of January 2017.</p> |

# ACTION PLAN

## Deficiencies and observations (continued)

| AREA   | OBSERVATION  | IMPLICATION   | RECOMMENDATION  | MANAGEMENT RESPONSE   |
|--|--|---|---|---|
| <p>Property Strategy and Asset Management Plan</p> | <p>Cabinet approved a Property Strategy in May 2012, which recognised that the environment in which the Council was operating had changed significantly over the preceding two years, which resulted in the need to refresh the Council's approach to the utilisation of its assets. The report stated that it superseded any previous capital and property strategies. It did not specifically mention superseding the Council's 2009 Asset Management Plan.</p> <p>We understand that a new Asset Management Plan is being developed as one of the work streams from the 2012 Property Strategy.</p> <p>The 2012 Property Strategy requires a series of interviews with key stakeholder across the Council to collate information. Officers have stated that this means internal stakeholders.</p> | <p>The absence of an up to date asset management plan to underpin the Council's Property Strategy may result in due process not being followed.</p> | <p>The Council should complete the update of its previous Asset Management Plan, to underpin its Property Strategy.</p> <p>The Property Strategy should be updated to remove any references to out of date policies and to more clearly indicate what is meant by stakeholders.</p> | <p>Agreed. The Head of Property and Facilities will update the Council's Asset Management Plan. This will take account of the requirements of the Council's Property Strategy. By end of December 2016.</p> <p>Agreed. The Head of Property and Facilities will update the Council's Property Strategy to reflect current policies and clearly specify the meaning of stakeholders.</p> <p>By end of December 2016.</p> |

## ACTION PLAN

### Deficiencies and observations (continued)

| AREA               | OBSERVATION  | IMPLICATION  | RECOMMENDATION  | MANAGEMENT RESPONSE   |
|--------------------|--|--|---|---|
| Feasibility checks | <p>The Council entered into a Conditional Sale Agreement and Profit Share and Project Management Agreement for the new homes project, which required that detailed due diligence checks were carried out by all the partners within a 5 month period following signing of the agreements.</p> <p>In February 2016 Cabinet approved a decision to serve notice on the other partners to terminate the contractual agreements because of the non-satisfaction of the title and ground conditions on key sites, which became apparent during the course of due diligence.</p> <p>The Council incurred preliminary costs in the region of £0.6 million associated with the development of sites included within this project. This included initial design fees, ground surveys, transport and environmental studies and public consultation.</p> <p>The contract documents identified two particular sites - the Buckle and Normansel Park Avenue - as being “key” sites within the project because they would yield the highest capital receipts, and it was clear that the project would not remain viable if both of these sites failed the due diligence checks.</p> <p>High level reports on title had been undertaken by the Council on these two sites, and all other project sites, prior to the agreement being signed and the results shared with the other parties. However, detailed investigation of the covenants on the two key sites, including the commissioning of counsel’s opinion, was not undertaken until after the Conditional Sale Agreement and Profit Share and Project Management Agreement were concluded.</p> <p>Whilst some of the £0.6 million preliminary expenditure may benefit feasibility studies on future projects of this nature, preliminary costs on this particular project would have been lower if the parties had focused their detailed due diligence checks on these two key sites at an earlier stage.</p> | <p>Unnecessary costs may be incurred if due diligence checks are not carried out in order of priority.</p> | <p>The Council’s project methodology should require a more structured approach to due diligence work, so that the most critical issues are identified and covered in order of priority.</p> | <p>Agreed. The Head of Business Strategy and Performance will update the Council’s project management guidance, to take into account the changes required to the treatment of significant projects, and ensure that senior officers and Cabinet councillors are made aware of them. By end of October 2016.</p> <p>Training on the Councils revised project methodology to be provided to all Heads of Service and Corporate Management Team. By end of January 2017.</p> |



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