

Agenda Item No:

Report No:

Report Title: Lewes District Property Portfolio

Report To: Cabinet

Date: 29 September 2014

Cabinet Member: Cllr. Rob Blackman

Ward(s) Affected: All

Report By: Jenny Rowlands, Chief Executive

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Purpose of Report:

- 1 To inform Cabinet of an offer proposed for development of a range of Council-owned sites to provide community benefit, regeneration and a financial return; to indicate those outstanding matters requiring negotiation and resolution; to seek authority for the Chief Executive, in consultation with the Leader and Leader of the Opposition Group to conclude negotiations and proceed to contract award.

Officers Recommendation(s):

- 1 That Cabinet notes and endorses the progress of negotiations to date.
- 2 That, subject to 3 and 5 below, Cabinet authorises the Chief Executive, in consultation with the Leader and Leader of the Opposition Group, to conclude negotiations and award the contract.
- 3 That prior to any binding contract being signed the Council's statutory officers, having taken specialist advice from appropriate valuation experts, shall have confirmed that the commercial deal as a whole is in accord with the provisions in section 123 of the Local Government Act 1972 relating to "best consideration"
- 4 That Cabinet notes that any proposal to dispose of land consisting of or forming part of an open space must be advertised in accordance with provisions set out in section 123 of the Local Government Act 1972.
- 5 That the Assistant Director of Corporate Services be authorised to draw up appropriate contract documentation to reflect such commercial proposition as is signed off.

1. Reasons for Recommendations

- 1.1. To enable the Council to enter into a development agreement with a property developer which will enable it to achieve the following:
 - Increase the value of Council owned properties prior to financially beneficial disposal
 - Make best use of assets to stimulate regeneration and realise community benefits
 - Dispose of the maintenance liability of underperforming assets
- 1.2. The Council may dispose of land which it owns in any manner it wishes. However, in doing so there are certain statutory requirements with which it must comply. These are more fully explained in the Legal Implications.

2. Information

- 2.1. On 30 May 2012 Cabinet approved a report seeking authority to enter into a partnership arrangement with a private sector development partner to bring forward a range of Council owned sites for development.
- 2.2. A portfolio of sites was identified. It was envisaged that the Council would enter into agreements requiring the private sector partner to secure planning permissions, market the sites, secure sales and achieve build out of development either themselves or through a third party, e.g. perhaps a housing association.
- 2.3. The Council advertised for a development partner in accordance with the European Union procurement regime. The Council stated that it wished to achieve the following key objectives (in priority order):
 - Community benefit
 - Regeneration
 - Risk mitigation
 - Financial return
- 2.4. The advertisement stated: “The Council is seeking to work in partnership with a creative and innovative partner. The ability to deliver high quality development solutions which meet the aspirations of the local community and a mechanism which ensures that all sites are either built out or disposed of will be critical”.
- 2.5. Two bidders satisfied the pre-qualification questionnaire and were invited to submit an Outline Proposal. These Proposals were evaluated after which one

bidder was selected to work up its proposal in negotiation with the Council and to submit its Best & Final Offer.

- 2.6. Details of the Council's preferred bidder and the offer now submitted by that bidder are set out in exempt Appendix 1.
- 2.7. In the course of negotiation the commercial deal has evolved and the Council and preferred bidder have together worked up a number of commercial possibilities which have needed to be modelled and tested.
- 2.8. Negotiations have progressed well and a substantive set of Heads of Terms has been worked up. There are some commercial issues which have still to be agreed and details of these are similarly set out in the exempt Appendix 1.

3. Financial Implications

- 3.1. The detailed financial implications will be provided to the Chief Executive, the Leader and Leader of the Opposition Group following conclusion of the negotiations but prior to consideration of the contract award.
- 3.2. The contract will generate both revenue and capital resources for the Council.
- 3.3. The final negotiations will help establish the shape and size of the contract. The overall package is required to have the capacity to deliver a return to the Council after all costs have been taken into account. Such costs could include discharge of covenants, tenant relocation and relocation of Council facilities.
- 3.4. Deliverability will be determined by the planning process and the financial model for this contract will be continually updated to reflect planning decisions and site viability appraisals.

Revenue

- 3.5. The delivery of each housing unit will generate new homes bonus funding. The Council's medium term financial strategy to 2020 includes an income stream generated from 200 band D equivalent properties each year. The modelling assumption is that each unit of housing from this contract will help meet that target, rather than add to it.
- 3.6. The sites transferred into the contract will relieve the Council of some low level revenue costs such as maintenance, non domestic rates and insurance. These reductions are welcomed, but will not be significant in relation to the Council's overall budget position.

Capital

- 3.7. The contractor is incentivised to maximise delivery of affordable and market housing. The scale of housing delivery will determine the size of the Council's net capital receipt after payment of costs.
- 3.8. The expectation is that the contract will deliver a capital receipt of several million pounds for the Council. This receipt would be reinvested into provision of more affordable homes within the contractual arrangement.

3.9. Where provision of homes is an addition to the Council's own Housing Revenue Account (HRA) stock, any borrowing required will be limited by the Council's HRA Borrowing cap. The contract is being structured to enable the delivery of homes in a phased manner to match the Council's available borrowing headroom (the difference between the HRA Borrowing cap and existing HRA borrowing at any given time). The Council will only commit to acquiring homes where it has sufficient headroom or availability of capital receipts.

3.10. Cash Flows

3.11. The contract spans a number of years. This facilitates the phased delivery of affordable housing into the Council's HRA stock to match borrowing headroom and to take advantage of any future bidding opportunities to secure additional borrowing headroom from the Department for Communities and Local Government and grants from the Homes and Community Agency.

4. Legal Implications

4.1. The Legal Services Department has made the following comments:

Once the commercial proposal has been agreed a final version of the Heads of Terms can be produced and agreed by the parties. These Heads of Terms will form the basis for the drafting of detailed contract documentation, including a Development Agreement, which will be negotiated between the solicitors acting for the parties.

The proposals envisage a disposal of Council-owned land. Section 123 of the Local Government Act 1972 requires local authorities to dispose of property at the "best consideration" unless there is ministerial consent allowing for disposal at an undervalue. Similar provisions apply in relation to land which is held for Housing Act 1985 purposes. Our commercial advisors, DTZ, have been engaged to advise whether the proposal as a whole represents best consideration. This assessment is essential and is required by the Council's statutory section 151 and Monitoring Officers.

Title checks on the key sites have been carried out by the council's legal section to check for any legal encumbrances affecting the sites and details of these have been provided to the consortium partners.

Depending on the outcome of the best consideration assessment it may be necessary to make use of the power in section 122 of the Local Government Act 1972 to "appropriate" land from one statutory purpose to another prior to disposal. This would effectively mean transferring land between the General Fund and Housing Revenue Account. This is not an impediment and can be built into the process if necessary.

Any intended appropriation or disposal of open space land must be advertised in accordance with provisions set out in sections 122 and 123 of the Local Government Act 1972.

Our external legal and commercial advisors (Bevan Brittan and DTZ respectively) have confirmed that the current proposals fall within the

parameters of our original OJEU advertisement. We will need to keep testing this as final proposals emerge and contract documentation will need to provide for an open book approach to costs and values.

5. Sustainability Implications

- 5.1. I have not completed the Sustainability Implications Questionnaire as this Report is exempt from the requirement because it is a progress report.

6. Risk Management Implications

7. As part of the delegation, officers will use the Council risk management methodology.

8. Equality Screening

- 8.1. A decision as to whether an Equality Impact Assessment is necessary will be made on a site by site basis. However, it is anticipated that the overall outcome of the project is to use sites to deliver LDC's objectives therefore it is anticipated that there will be a positive equality impact.

9. Appendices

- Appendix 1 – Confidential summary of draft Heads of Terms (exempt)
- Appendix 2 – Confidential diagrams of proposed Phase 1a and Phase 1b (exempt)