

Agenda Item No: 6 **Report No:** 158/17
Report Title: Review of North Street Quarter Due Diligence
Report To: Scrutiny Committee **Date:** 9 November 2017
Cabinet Member: Councillor Andy Smith
Ward(s) Affected: All Lewes Wards
Report By: Ben Bix, Committee Services Lead
Contact Officer(s)-

Name(s): Ben Bix
Post Title(s): Committee Services Lead
E-mail(s): ben.bix@lewes-eastbourne.gov.uk
Tel No(s): 01323 415702

Purpose of Report:

- 1 This report proposes the method for the Scrutiny Committee to conduct the review of the North Street Quarter (NSQ) due diligence undertaken by the Council to date, in an open, transparent and efficient way with regard to the timeline set out in section 14 of this report.

Officers Recommendation:

- 2 That the Scrutiny Committee review the due diligence undertaken by the Council to date, and report back to the Director of Planning and Regeneration and the North Street Quarter Members' Oversight Board.
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Reasons for Recommendations

- 3 To discharge Cabinet resolution 22.2 of 27 September 2017, that the Scrutiny Committee be invited to conduct a review of the due diligence to date of the North Street Quarter Development Partner.

Background and Due Diligence

- 4 Cabinet received a report entitled North Street Quarter – Delivery Route at its meeting on 27 September 2017. That report and appendices set out the proposed delivery route, draft timeline and proposed that the Land Collaboration Agreement would include an 'option' for NSQ Ltd to appoint Artisan as the Phase 1 Development Partner on terms approved by Lewes District Council. Appendix 4 identifies the information that NSQ Ltd must provide to the council by 31 December 2017 in order for the Council to consider the appointment of Artisan.

- 5** Any decision to appoint a Development Partner for Phase 1 will have regard to the Council's due diligence.

Scope of Due Diligence

- 6** The scope of due diligence includes financial and legal checks in respect of the following companies:
- a) North Street Quarter Limited (NSQ Ltd), incorporated in the Isle of Man British. The owner of part of the proposed development site.
 - b) MAS Real Estate Incorporated (MAS REI), incorporated in the British Virgin Isles. The ultimate owner of North Street Quarter Limited (see below for further details).
 - c) Artisan Real Estate Incorporated (Artisan) incorporated in the Isle of Man. A potential Development Partner in respect of Phase 1.
- 7** The extent of due diligence carried out at any particular point in time depends on the stage reached in the project. Due diligence is always based on a snapshot in time and may have to be updated depending on circumstances and timing of events.
- 8** The matters covered in a legal opinion vary depending on the stage reached in the particular transaction. If a proposed agreement has been finalised a full opinion will be commissioned, including an opinion as to whether the company has the necessary corporate powers and corporate authorisations to enter into the particular agreement. Sometimes an initial opinion is sought where the documentation has not been settled and the foreign lawyer is being asked to opine on whether the company has the legal capacity and power to enter into certain types of documentation, such as an English law governed guarantee.
- 9** The meeting will be limited to the scope of due diligence **to date** by the Chair.

Financial and legal due diligence

- 10** Appendix 2 sets out an overview of legal due diligence for transactions where companies are not incorporated in England and Wales. The three companies referred to above are not incorporated in England and Wales.
- 11** In January 2016 Cabinet authorised the negotiation and execution of a Land Collaboration Agreement (LCA) between the Council and North Street Quarter Ltd. The LCA will be an agreement between the two landowners: Lewes District Council and NSQ Ltd. It will set out the framework within which the two partners will work together to deliver all three phases of the North Street Quarter development. This framework includes governance arrangements, the duties and mutual obligations of the landowners and a framework for agreeing such matters as disposals, sales proceeds and equalisation.

- 12 At its meeting in June 2017, Cabinet approved work on a delivery route for Phase 1 of the scheme which involved carrying out due diligence on Artisan as potential Development Partner for Phase 1.
- 13 In September 2017 Cabinet considered a report proposing that the LCA include an 'option' for NSQ Ltd. to appoint Artisan as the Phase 1 Development Partner on terms approved by the Council. The report identified the information that NSQ Ltd should provide by 31 December 2017 in order for the Council to consider the appointment of Artisan. Cabinet gave delegated authority to the Director of Regeneration and Planning (in consultation with the North Street Quarter Members Oversight Board) to appoint Artisan as Phase 1 Development Partner, having regard to Scrutiny Committee's feedback on due diligence.
- 14 In order to satisfy the timeline to 31 December 2017, the North Street Quarter Members Oversight Board would need to convene to receive the findings of the Scrutiny Committee, as made to the Director of Planning and Regeneration, in the week commencing 4 December.
- 15 The project documentation will include the following:

a) The Land Collaboration Agreement

When the LCA agreement has been finalised the Council will require a full foreign legal opinion in respect of NSQ Ltd before entering into the agreement.

Publicly available records show no negative financial factors relating to NSQ Ltd. A further review will be carried out prior to entering into the agreement, including checking audited accounts.

b) The Development Agreement (Phase 1)

If Artisan is to be appointed as Phase 1 Development Partner the Council must first be satisfied that Artisan is capable of delivering the project. A decision will be based on the information that NSQ Ltd must provide by 31 December 2017.

If a decision is taken to appoint Artisan it will still be necessary for a foreign legal opinion to be obtained unless the Council is satisfied that this has been covered in the information to be provided by NSQ Ltd.

Publicly available records, including 3 years audited accounts, show no negative financial factors relating to Artisan. It is anticipated that detailed financial information including the most recently audited accounts will be covered in the information to be provided by NSQ Ltd.

If Artisan is not appointed it will be necessary to go through the normal due diligence process when appointing the Development Partner, covering capability and capacity to deliver the project and legal and financial due diligence to the extent not already covered in that process.

c) A Guarantee

A guarantee will be sought in connection with the Phase 1 Development Agreement. If Artisan is appointed as Phase 1 Development Partner the Council will look to MAS REI to provide the guarantee. An initial foreign legal opinion has been obtained in respect of MAS REI, showing that it is capable of providing an English law governed guarantee. A full foreign legal opinion will be required in respect of the actual guarantee agreement. Publicly available records show no negative financial factors relating to MAS REI. The records include MAS REI's Integrated Annual Report 2017.

Appendix 3 contains tables showing legal and financial due diligence carried out to date and what officers expect to do as the project moves forward. This builds on and summarises the information set out above.

Group structure and ownership

- 16 MAS REI owns 100% of the shares in MAS (BVI) Holdings Ltd, which owns 100% of the shares in MAS (Isle of Man Holdings Ltd), which owns 100% of the shares in NSQ Ltd.
- 17 MAS REI's Integrated Annual Report 2017 states that there is no ultimate controlling party and that the group is controlled by its ordinary shareholders in aggregate. The Integrated Annual Report goes on to say that Artisan is a real estate management company over which directors of MAS REI were able to exert significant influence.

Involvement of MAS REI / NSQ Ltd

- 18 The proposed development relates to adjoining lands owned by the Council and NSQ Ltd. This is not a conventional procurement exercise, in that NSQ Ltd owns a major part of the site and will not agree to anyone else carrying out the development. In public procurement terms the "exclusive right" to undertake the whole of the development can fall to NSQ Ltd.
- 19 MAS REI is the ultimate owner of NSQ Ltd. MAS REI has substantial experience in major regeneration schemes across Europe. Established in 2008, the company has assembled, through acquisition and development, a high quality portfolio of retail, office, industrial logistics and hotel properties across Europe. There are examples in the UK that demonstrates MAS REI's experience and success in delivering major regeneration schemes.
 - New Waverley is a large scale £180 million mixed-use regeneration project in the historic heart of Edinburgh in the former industrial areas off the Royal Mile. The scheme was purchased in 2011 and with planning subsequently secured. The project is set to create 2,000 jobs for the city and will create 732,000sq ft of new space. Two of the three new hotels have been completed and leases have been concluded with major hotel operators. 28 new retail and leisure units have also been completed.

- Langley Park in Chippenham is a 48 acre site which was bought for £32 million in December 2014. Planning permission was recently achieved for 19 acres of residential redevelopment for 280 homes alongside a supermarket and hotel with ground floor retail. The 69 room hotel has been pre-let to Travelodge and the 1,741 sq. m. food retailer space has been pre-sold to Aldi.

Review Method

20 Scrutiny Procedure Rule 19 (b) sets out three principles for how scrutiny reviews will be undertaken. These are summarised as follows:

- i) that the review be conducted fairly and all members of the Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- ii) that those assisting the committee by giving evidence (witnesses) be treated with respect and courtesy; and
- iii) that the review be conducted so as to maximise the efficiency of the review.

Witnesses

21 Four witnesses have been invited to attend the committee:

- Nazeya Hussain, Director of Regeneration and Planning, Lewes and Eastbourne Councils
- Jonathan Knight, Chief Investment Officer, MAS Real Estate Investors
- Mark Reynard, Senior Lawyer, Lewes and Eastbourne Councils
- Steve Jump, Head of Finance, Lewes and Eastbourne Councils

22 The Chair will conduct the meeting with regard to the principles set out at 4 above as follows:

- (a) The Chair will welcome the witnesses and introduce the scope of the review (as set out in 6 above)
- (b) Relevant written questions submitted under agenda item 4 will be heard first and responded to by the witnesses
- (c) The Chair shall then call each Member indicating their intention to ask a question, to each ask their question in turn, and a response will be provided by the witnesses
- (d) One supplementary question from the Member that put the original question will be permitted by the Chair, the supplementary question must arise directly out of the original question or the reply
- (e) Once all questions have been disposed of, the Chair will sum up the review and move a recommendation to the Director of Planning and Regeneration and the North Street Quarter Members' Oversight Board
- (f) The Chair will seek a seconder for the recommendation and seek the agreement of the Committee
- (g) The Director of Planning and Regeneration and the North Street Quarter Members' Oversight Board will receive and consider the

recommendation of the Scrutiny Committee at its next meeting according to the timeline set out at 13 above

- 23 Section 9FA of the Localism Act 2011 limits the scope of questions insofar as a witness would not be obliged to answer any question which the person would be entitled to refuse to answer in or for the purposes of proceedings in a court in England and Wales.

Financial Appraisal

- 24 There are no financial implications arising from this report. The Scrutiny function is budgeted for and any recommendations made by the Committee would be subject to a financial appraisal by the decision maker to which the recommendations were made. A comprehensive summary of the financial due diligence undertaken to date has been provided in Appendix 3.

Legal Implications

- 25 This report refers to normal due diligence procedures in respect of transactions where companies are not incorporated in England and Wales. The extent of due diligence carried out at any particular point in time depends on the stage reached in the project. Due diligence has been carried out to date and appropriate further due diligence will be completed as the project moves forward.
- 26 Cabinet resolution 22.2 of 27 September 2017, delegated the making of the decision to appoint the Phase 1 development partner to the Director of Planning and Regeneration. The Director of Planning and Regeneration is therefore the executive decision maker for the purposes of the Scrutiny Procedure Rules.

Risk Management Implications

- 27 The Strategic Risk Register 2016/17, reported to Cabinet, includes the project, and a comprehensive project risk register is maintained which includes risks and mitigations relating to planning, scheme delivery, project management and governance, and communications.

Equality Screening

- 28 Equality screening has been carried out for previous North Street Quarter reports to Cabinet. This report raises no new equality issues.

Background Papers

- 29 [Cabinet Report number 4/16 - 7 January 2016](#)

[Cabinet Report number 95/17 - 26 June 2017](#)

[Cabinet Report number 128/17 - 27 September 2017](#)

Appendices

28 Appendix 1 – NSQ Development Delivery Route: draft timeline

Appendix 2 - Overview of legal Due Diligence

Appendix 3 - Due Diligence Table

Appendix 4 – Clause 8 of the Land Collaboration Agreement: Appointing Artisan as Development Partner