

Report to: Cabinet

Date: 10 December 2020

Title: North Street Quarter (NSQ) - scheme delivery

Report of: Ian Fitzpatrick, Director of Regeneration and Planning & Deputy Chief Executive

Cabinet member: Councillor Zoe Nicholson, Cabinet member for finance and assets

Ward(s): Lewes Bridge, Lewes Castle and Lewes Priory

Purpose of report: This report provides an update on progress with securing a developer for the NSQ scheme. It seeks Cabinet approval of Heads of Terms (HoTs) of a legal agreement with a prospective third party purchaser – Human Nature. It also seeks delegated authority for the Council to enter into a legal agreement, based on these HoTs, with this party.

Decision type: Key

Officer recommendation(s):

- (1) To agree the HoTs of the proposed sale and purchase agreement for the Council’s part of the NSQ site, as set out in exempt Appendix 1.
- (2) To delegate authority to the Director of Regeneration and Planning, in consultation with the Leader of the Council and Head of Legal Services, to complete negotiations with Human Nature and enter into a sale and purchase agreement with this party, and all ancillary documents, based on the agreed HoTs set out in Appendix 1.

Reasons for recommendations: (1) & (2) To progress redevelopment of the strategically significant North Street Quarter (NSQ) site in Lewes.

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1 Background

- 1.1 At a meeting of Cabinet on 30th September 2013, it was resolved that the Council would enter into a joint agreement with the majority landowner at the North Street Quarter (NSQ) – Santon North Street (now North Street Quarter Ltd (NSQL)), subject to agreeing Heads of Terms (HoTs) and securing planning permission. This joint Land Collaboration Agreement (LCA) would, in accordance with planning policy, facilitate the comprehensive redevelopment and regeneration of the NSQ site.
- 1.2 HoTs of the LCA were approved by Cabinet on 7th January 2016, along with the procurement route for the development. The HOTS proposed that NSQL, as majority landowner and the Council's joint venture partner, would have exclusive rights to undertake the development and appoint the developer. In these circumstances the Public Contracts Regulations 2015 allow a direct award of the contract to be made without prior competition.
- 1.3 The two landowners (NSQL and Lewes District Council (LDC)) continued to negotiate the content of the LCA, and in line with the previously agreed procurement route whereby NSQL would appoint the developer, NSQL began marketing the NSQ development opportunity on 22nd June 2019. The marketing exercise for a developer concluded on 9th December 2019 and bids were assessed.
- 1.4 On 2nd April 2020, the Leader of the Council gave delegated authority for the Council to enter into an Exclusivity (Lockout) Agreement with NSQL's preferred developer.

2 Proposal

- 2.1 In a change to the anticipated route to delivery of the NSQ scheme, NSQL has confirmed that it has accepted an offer from Human Nature to purchase all of the NSQL land and interests in the NSQ site. As a consequence, Human Nature will become the majority landowner and NSQL will no longer maintain any interest in the site or be involved in the delivery of the NSQ scheme.
- 2.2 This means that NSQL is not appointing a developer for the NSQ site. In addition, Human Nature will not be recruited to act as the developer for LDC because it will not be entering into a LCA in the place of NSQL. Human Nature's status is therefore that of a simple purchaser, though one who intends to develop the NSQ site without assuming an obligation to the Council to carry out the development. In the procurement context the mere disposal of land, as opposed to the appointment of a developer, does not engage the public procurement regime.

- 2.3 As a result of this deal, the procurement route and HoTs of the LCA which were agreed by Cabinet are no longer relevant as they do not reflect the current proposals of both NSQL and Human Nature.
- 2.4 The land holdings at the NSQ cannot be developed in isolation from each other. Planning policy requires the comprehensive development of the site including the comprehensive flood defences needed to mitigate against flood risk. NSQL's agreement to sell its land to Human Nature is, therefore, dependent on this third party agreeing sale and purchase terms with the Council. At the same time, the Council's deal with Human Nature is dependent on this purchaser reaching an agreement with NSQL.
- 2.5 Cabinet is asked to agree new HoTs of a sale and purchase of the Council's land, as set out in exempt Appendix 1. Cabinet is also asked to grant delegated authority to the Director of Regeneration and Planning, in consultation with the Leader of the Council and Head of Legal Services, to complete negotiations with Human Nature and enter into the sale and purchase agreement and all ancillary documents, based on the HoTs set out in Appendix 1.
- 2.6 Alongside negotiations on the sale and purchase agreement, the Council may also enter into a Lockout (Exclusivity) Agreement with Human Nature as agreed by the Leader on 2nd April 2020. This agreement would, for a limited period, prohibit the Council from dealing with its land at the NSQ site in any way that would prevent Human Nature from entering into a sale and purchase contract with the Council and will provide Human Nature with an opportunity to:
- carry out its own due diligence (i.e. detailed investigations into the title and property) at the NSQ site, and
 - negotiate contractual arrangements with the Council, and commit to a proposed contract, without competition from third parties.
- 2.7 Officers have worked closely with the Council's legal and commercial advisors in drafting the HoTs which are nearing agreement by Human Nature. The HoTs remain commercially sensitive at this time. In accordance with the Council's Corporate Procurement Rules and S123 of the Local Government Act (1972), any final agreement between the Council and Human Nature will be dependent on the Council receiving best consideration for its land and interests at the NSQ site.
- 2.8 Once negotiations on the sale and purchase agreement are in progress, the Council will be in a position to better understand Human Nature's proposed development timescales for the NSQ site.

3 Outcome expected and performance management

- 3.1 The Council continues to work with the majority NSQ landowner and Human Nature to progress delivery of the NSQ development in the context of the proposed sale and purchase agreements. The NSQ project is monitored via the

Council's corporate project monitoring programme, with additional oversight carried out by a dedicated NSQ Members' Board.

4 Consultation

- 4.1 Public consultation on proposals for the NSQ has taken place during the planning application stages of the permitted scheme, and at subsequent points during the current scheme's development. The views of local residents and community groups have also been represented through the North Street Quarter Sounding Board, Landscape & Play Working Group and Design Working Group. Changes to the permitted scheme that require a new planning application will, in line with planning policy requirements, involve the developer in detailed engagement and consultation with local residents.

5 Corporate plan and council policies

- 5.1 Redevelopment of the NSQ site in accordance with planning policy will meet objectives of the Council's Corporate Plan 2020-2024 including the delivery of new flood defences, affordable housing and local employment opportunities. Policy SP3 of the Lewes District Local Plan: Part 1 Joint Core Strategy 2010-2030 calls for the comprehensive regeneration of the North Street site - an important gateway to the town. The NSQ site is a strategic allocation in the Council's Joint Core Strategy and constitutes a significant proportion of its housing target.

6 Financial appraisal

- 6.1 Since January 2016, Cabinet has approved total capital expenditure of £6.15m for the NSQ scheme. Prior to the current, proposed deal, the Council had incurred £1.3m of recoverable project costs in relation to the NSQ scheme.

Staffing and any other costs associated within the report's recommendations will be capitalised. The Council's expenditure on the project will be recovered from the purchase price for its land at the NSQ.

Should the NSQ scheme not go ahead, then the area will remain at significant risk of flooding. Piecemeal development of land in the area (including Council owned land) will not be supported by the Planning Authority. In addition, the town would not benefit from the new homes, community benefits (including a Health Hub) and employment opportunities.

- 6.2 The financial implications of the Council's agreement with Human Nature are set out in the HoTs in exempt Appendix 1.

Staffing and any other costs associated within the report's recommendations will be capitalised.

7 Legal implications

7.1 The legal implications are set out in the body of this report and the appendices. In particular:

- NSQL is not appointing a developer for the NSQ site. Human Nature will not be recruited to act as the developer for LDC, because it will not be entering into a LCA in the place of NSQL. Human Nature's status has therefore changed to that of a simple purchaser, though one who intends to develop the NSQ site without assuming an obligation to the Council to carry out the development.
- In the procurement context the mere disposal of land, as opposed to the appointment of a developer, does not engage the public procurement regime.

It will be important to ensure that the sale and purchase agreement and ancillary documents ("SPA") do not move outside of a land sale and include a works contract that is subject to the procurement regime.

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8 Risk management implications

8.1 The financial implications of the draft HoTs are included in Appendix 1. The Council continues to work with partners to deliver the NSQ development. Officers continue to engage with the Council's legal, commercial and financial advisors to minimise the risks to the Council at this stage of the project. The draft HoTs establish the basis on which the Council will proceed.

9 Equality analysis

9.1 An Equality and Fairness Analysis for the NSQ scheme was undertaken and subsequently updated when potential impacts of the scheme changed. There are no new equality impacts arising from this report. A copy of the analysis is available on request from the report author. Any future changes to the permitted scheme must be in accordance with local (South Downs National Park Authority) and national planning policy and legislation. In the event of a new planning application, further engagement and consultation with local residents and groups would be needed.

10 Sustainability implications

10.1 Development of the NSQ site will meet objectives in the Council's Sustainability Policy 2018 specifically by delivering development (in accordance with planning policy): in a sustainable location (brownfield site), reducing the risk to local communities of flood events, delivering energy efficient new homes, including affordable homes in line with housing need, and improving biodiversity.