

# CHESHIRE EAST COUNCIL

## Cabinet

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<b>Date of Meeting:</b>	4 February 2013
<b>Report of:</b>	Head of Development
<b>Subject/Title:</b>	East Cheshire Engine of the North – New Development Company Model
<b>Portfolio Holder:</b>	Cllr Jamie Macrae

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### 1.0 Report Summary

- 1.1 Cheshire East is a local authority committed to growth, with ambitious plans to deliver major new infrastructure, at least 20,000 jobs and 27,000 new homes by 2030.
- 1.2 The Council is responding to the growth agenda through a range of interventions:
  - Accelerated development of Council owned assets.
  - Boosting delivery of developer led strategic sites.
- 1.3 The Council is exploring a range of models to accelerate delivery. This paper sets out the strategic case for the establishment of a dedicated delivery vehicle for physical development and regeneration utilising strategic land assets of the Council to deliver growth.

### 2.0 Decision Requested

To authorise the Interim Chief Executive or his identified nominee, in consultation with the Cabinet Member for Prosperity & Economic Regeneration, and subject to consideration by the Monitoring Officer and the Chief Financial Officer that:

- Up to £100,000 is invested, from existing Economic Development & Regeneration Earmarked Reserves, in independent legal and financial advice to review detailed options and ascertain the most appropriate and beneficial formal structure for the new Delivery Vehicle.
- A Shadow Board is established immediately to oversee the delivery of the Development Programme in the short-term, and drive forward the new vehicle arrangements.

### 3.0 Reasons for Recommendations

- 3.1 This proposal is a priority for the council. It will support the sustainable growth of the Borough and create an attractive proposition for securing

greater private sector investment and development expertise into the area to ensure an even stronger focus on generating more jobs, more homes and more prosperity.

- 3.2 It is important for Cheshire East to be at the forefront of the government's growth agenda and that the delivery model selected will deliver best value for money to the tax payer.

#### **4.0 Wards Affected**

- 4.1 All

#### **5.0 Local Ward Members**

- 5.1 All

#### **6.0 Policy Implications including - Carbon reduction - Health**

- 6.1 Not directly applicable.

#### **7.0 Financial Implications (Authorised by the Director of Finance and Business Services)**

- 7.1 With regard to options for company model and determination of a recommended approach, external advice will be necessary on financial issues such as tax, stamp duty land tax and VAT, with the aim of clarifying implications and minimising costs, where permissible. The legal obligations of the company, acting on behalf of the Council, will also need to be specified in relation to land transactions and ensuring "best consideration" requirements are satisfied.

- 7.2 The strategic, operational and financial relationships between the Council and the delivery vehicle will need to be clearly determined. This will include matters relating to whether or not assets for development are actually transferred from the Council to the company; how cash and profits flow from receipts (income from sales, or rental streams) are utilised; and in what form(s) the company can be supported by the Council (e.g. capital or revenue resources).

- 7.3 With external advice, a medium term financial and business plan will be prepared to articulate the budgetary requirements and resourcing of a company model, including:

- Company set-up and day-to-day operation
- Indicative development activity (project investments, asset disposals, etc.)
- Outputs to be achieved

7.4 Insurance arrangements will need to be reviewed, with appropriate officers and members indemnity cover put in place in respect of the company.

7.5 It is anticipated the company will require a project accountant resource, with expertise in appraisal of development opportunities and ability to provide advice and support in a commercial, project and delivery-focussed environment.

## **8.0 Legal Implications (Authorised by the Borough Solicitor)**

8.1 Independent advice is required on the options for formal structure of the delivery vehicle and recommendations in that regard will inform considerations on the nature and scope of the company model and associated financial considerations. The independent advice should inform a wider discussion in relation to other company structures under consideration and explore the potential for a 'holding company' model under which a range of trading and company structure can sit within.

8.2 Such advice will include matters relating to governance and how the desired freedoms and flexibilities required of company operations can be enabled and fit within the Council's Constitution. In addition to delivering on behalf of Cheshire East, as noted in the report there could be potential for the company to act as advisor and delivery vehicle for the Cheshire & Warrington LEP but this requires further advice to explore further.

8.3 In addition, specialist legal advice is required to establish further how Local Authority Powers to establish and invest in a trading company can be utilised to deliver the objectives of the Council. Specific issues to be addressed are:

- Tax Efficiency
- Administrative, accounting and other regulatory matters
- Potential partnering
- Potential Funding sources
- State Aid
- Procurement
- Directors duties and conflicts of interest
- Competition
- Public accountability & audit requirements
- Protection of the Council's reputation

8.4 The constitutional committee will need to consider this advice. A suitably qualified company auditor will need to be appointed as appropriate.

## **9.0 Risk Management**

- 9.1 Advice about how the new vehicle operates and the governance is required in order to ensure that Council continues to function lawfully, transparently and in accordance with the Council's Constitutional Framework. Notwithstanding that, for the foreseen benefits of establishing a new Delivery Vehicle also needs to benefit from maximum freedoms and flexibilities as part of formal governance arrangements.
- 9.2 There is currently insufficient clarity that the new Delivery Vehicle will be able to create resource, freedoms, flexibility and agility over and above what an in-house operation can achieve via perhaps Constitutional changes along with an increase in capacity and a more appropriate skill set. There are a number of other Councils with experience in this field (e.g. Milton Keynes, Northumberland & Cornwall) that we will share expertise with.
- 9.3 There is some uncertainty that the expected levels of freedom from 'bureaucracy' (e.g. EU procurement rules) and the Council's constitution and Finance & Contract Regulations can be achieved through a wholly owned company.
- 9.4 The Council's need to explore new delivery models and find new ways of working is not unique to this work area and vehicles of the type being proposed here are likely to be established by a number of services. Consideration needs to be given to maximising efficiencies and sharing best practice approaches, potentially using a holding company model.
- 9.5 It is important that the savings from the new vehicle are substantial and the new ways of working so transformational that the cost of planning, due diligence advice and setting up the vehicle are outweighed.
- 9.6 Further consideration and advice will be required regarding the arrangements for asset transfer into any Delivery Vehicle and for the recycling of capital receipts.

## **10.0 Background and Options**

- 10.1 Cheshire East has ambitious growth plans. We have just approved the next stage of our Local Plan, and will deliver major new infrastructure, at least 20,000 jobs and 27,000 new homes by 2030. We are aiming for at least 7,000 new homes in the next five years.
- 10.2 It is vital that the Council responds to the growth agenda through a range of interventions:
- Accelerated development of Council-owned assets, both strategic sites identified in the Development Strategy and smaller sites which can deliver regeneration benefits and contribute to housing supply.

- Boosting delivery of developer-led strategic sites identified in the Development Strategy to fast track planning decisions to be cleared within the statutory planning period.

10.3 The purpose of this new Delivery Vehicle is to speed up the development of our own assets to bring about new housing, economic growth and capital receipts.

10.4 The overall objectives of the new Delivery Vehicle are:

- To accelerate growth in terms of housing completions and jobs investment on Cheshire East owned assets.
- To maximise development value and minimise risks to the Council by providing dedicated delivery arrangements and additional property and commercial expertise.
- To secure additional private and Government investment into the Borough through creating the focus on delivery and providing the mechanism to deliver capital schemes and potentially act as a delivery vehicle to the Cheshire & Warrington LEP as well as Cheshire East Council.
- To create profitable and transparent relationships with developers and investors which deliver financial benefits to the Council, and regeneration benefits to local communities – potentially utilising the Developer Panel Framework currently being scoped in a more detail with a view to procuring during 2013/14.
- To maximise any financial benefits and tax efficiencies of a dedicated delivery vehicle which is controlled by the Council but can benefit from agile operating arrangements to be reviewed and agreed at a later stage.

10.5 The responsibilities of the Delivery Vehicle could include the following:

- To lead on strategic land acquisitions and land deals which enable delivery of the Development Programme.
- To promote Cheshire East – owned land for development through the Local Plan and planning process.
- To undertake all aspects of masterplanning and pre-development work associated with the Development Programme to bring sites forward for development.
- To identify property-related strategic opportunities for the Council and generating new projects for inclusion in the Development Programme.

- To provide commercial property expertise to advise as required on all aspects of property work for the Council, and potentially to act in an advisory capacity for the LEP.
- To undertake development appraisals in line with RICS/Government Treasury Guidelines to ensure the Council can make informed decisions about future investment opportunities in relation to property and development.
- To develop relationships with developers and private sector investors and bring forward partnering and contract opportunities which benefit the Council and/or local communities – working within agreed parameters as set by the Annual Business Plan and the Council Constitution.

10.6 The governance and constitution of the new Delivery Vehicle will require significant further work as there are a number of technical, legal and procedural issues however the initial proposal is that it is governed via a Board comprising senior members and officers.

10.7 The functional responsibility within the Council would sit initially within the Development Service but form part of the wider review of management responsibilities in due course.

10.8 This paper sets out the strategic case for the establishment of a dedicated Delivery Vehicle for physical development and regeneration utilising strategic assets of the Council to deliver growth. Following this report, there needs to be a thorough exploration of the range of models available which may include:

- In-house

Resource an in-house Development Team with appropriate skills mix and budget. Skills in development finance, appraisal, property law, planning, programme and project management and development surveying will be required.

- Development Company

Establish a wholly owned Council company to deliver the development programme. There would be various options as to whether the company owns or draws down assets. The company may have increased flexibility and responsiveness not achievable as an in-house function.

- Joint Venture

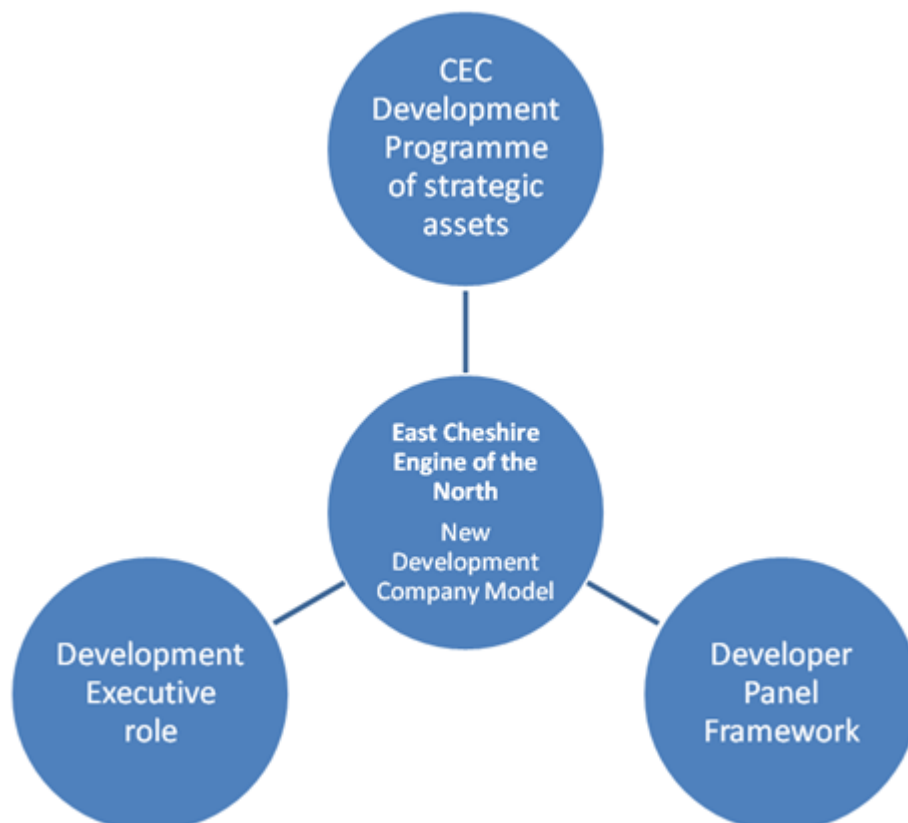
Establish a joint venture with a private sector investor or substantial developer(s) to deliver the programme. This would require a substantial initial investment in procurement and legal advice and a major exercise to select a JV partner. Benefit realisation with this option may be challenging

given the wide range of sites in the development programme (in terms of objectives, scale, value and complexity) and with the costs and timescale of establishing a JV.

10.9 It is vital to get the structure of the new organisation right, but the skills mix and capacity is vital too. A new Development Executive role is being created to lead the delivery of our Development Programme and the establishment of the new delivery vehicle. The appointment of the new Development Executive role will provide initial additional capacity to fulfil the functions of the Delivery Vehicle and over the next few months will be supplemented by a small dedicated support team which includes the range of skills and expertise to deliver the functions below.

10.10 There will be short-term resource implications relating to the Interim Development Executive and new team however it is anticipated that the majority if not all the costs associated within this position can be funded directly through the capital programme – attached to a new financial model which will be worked up over the next few weeks.

10.11 The diagram below indicates the interaction between the various strands of work:



10.11 The new Delivery Vehicle will complement a range of other interventions that the Council is proposing in order to deliver its growth agenda. It will work with the new Major Applications Team within the Planning

Department in the same way that any private developer will be to promote land and bring forward through the planning process.

10.12 The proposed timeline is as follows:

Jan/Feb 2013	Appointment of Development Executive / Appointment of external advice on legal and finance issues
Feb 2013	Shadow Board in place and early review of Development Programme. Council approval in principle.
March 2013	Cabinet decision to establish the company following legal + finance advice and preparation of a strategic business case

## **11.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report writer:

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