BRECKLAND DISTRICT COUNCIL

Report of: **Councillor Paul Hewett, Executive Member for Contracts & Assets**

To: **Cabinet 14 October 2019**
Council 31 October 2019

(Author: **Ralph Burton, Strategic Property Manager)**

Subject: Review continuation of the Breckland Bridge property development joint venture partnership.

Purpose: This report provides information to allow Members to decide if the Council should continue the Breckland Bridge property development joint venture partnership after assessing the previous phase of the partnership and the business plan for the future phase.

Recommendations:

Members are requested to consider the continuation of the Breckland Bridge partnership on the basis of the content of the proposed changes and future business plan as outlined in this report.

Cabinet is asked to approve either Option 1 or Option 2 as follows:

Option 1 – Continue to be a partner in the Breckland Bridge joint venture vehicle and in doing so:

a) Issue an Extension Notice (on the basis of the terms set out in this report) to the Land Group LLP to continue the partnership per the Shareholders Agreement.

b) To continue the Leader of the Council as the nominated Shareholder Representative and to undertake all necessary shareholder decisions except for the approval of the business plan annually which is delegated to Cabinet.

c) To continue the existing governance arrangements and in doing so:
(i) Delegate all the relevant shareholder consent matters to the Shareholders Representative.
(ii) Delegate the appointment (and any subsequent removals or re-appointments) of:
- the Officer Director to the Chief Executive.
- the External Director to the Shareholder Representative.
- the Member Director to the Shareholder Representative.

(iii) Indemnify the Council's appointed Directors from personal liability.

d) To continue the appointments of the current Breckland Council appointed Directors to Breckland Bridge until changed by either the Chief Executive or Shareholder Representative (as per c) above.

Option 2 - As per Option 1 above with the addition of:

e) Approve the additional small site project delivery.

Subject to Cabinet approval of either Option 1 or 2 above **RECOMMEND TO FULL COUNCIL** that: a) The new business plan be agreed as outlined in summary in Table 3 of the report. b) The financial requirements of the business plan be agreed and delegate the S.151 Officer to undertake any related ancillary matters in order to implement the recommendations of this report and amend the capital and revenue budgets and any other on-going expenditure and release of funding including the following: (i) Award loans in accordance with the Council's adopted Treasury Management Policy. (ii) Release up to £20,000 for the legal fees to undertake the legal due diligence and extension documentation. (iii) Provide the funding and approval of the provision of the client support post.

1.0 BACKGROUND

1.1 In 2014 the Council procured a partner with the necessary property and development skills and experience to create a long term joint venture strategic partnership. The original reasons were to use the Council's property assets to:

- Secure a step change in the financial contribution of the existing land asset base.
- Accelerate growth in the District.
- Provide a vehicle to enable important projects to proceed (Riverside).
- Provide a vehicle for Regeneration – a positive "place changing" impact.

1.2 The resulting private-public partnership, Breckland Bridge Ltd (formed in 2015) was set to achieve this by the development and regeneration of land and property owned by the Council predominantly in the Breckland area under a the following vision: *To use Breckland Council's property and land assets to make a positive contribution to the regeneration and economic development of the Breckland district.*

1.3 The Council created a bespoke version of an asset backed vehicle and opted for a smaller and local partner and also limited the activity of the partnership to three projects (see Table 1 below) in the first phase. Setting up and being a partner and shareholder in Breckland Bridge Ltd was a new concept for the Council and it has been a new way of working. It is not a traditional outsourcing contract and as a joint venture it requires joint working and joint decision making. The legal governance framework of the partnership (the shareholders agreement) is complex and the Council has had to adapt to its role as a shareholder in the joint venture amalgamating this into its local authority role.

1.4 During the initial business plan period, 2015 to 2020, the Council has owned 90% of the company and the private sector partner, Land Group LLP has owned 10%. This is different to a standard asset backed vehicle approach where typically the shareholdings, risk share, funding split and profit share are split equally 50/50. The intention was/is to move to a typical 50/50 arrangement at the 5th year anniversary.

1.5 Breckland Bridge was/is anticipated to be long term partnership and the legal documentation is designed to support this with a review at this 5th year anniversary. At the outset three tests were designed to support this decision at this review point. These tests have been passed (see Table 3 below). On the basis that the tests have passed at this review point, if the Council decides not to continue (Option 3) there needs to be a sound commercial basis to support this decision (Option 3).

1.6 Table 1 outlines what has been achieved against what was expected at the outset.

Table 1 - Expectations and Achievements

Expected	Achieved / Performance
• A joint venture based on 90/10 shareholding in favour of the Council.	• A joint venture based on 90/10 shareholding in favour of the Council.
• A 20 year agreement with a decision to continue at the 5th anniversary (to allow both parties to test the partnership).	• A long term (20 year) agreement subject to an extension review at the 5th anniversary.
• Vision: *To use Breckland Council's property and land assets to make a positive contribution to the regeneration and economic development of the Breckland district.*	• Breckland Council's assets were/are being used in the three initial projects as outlined below and development at these sites has/will regenerate these sites.
• 3 initial projects: ◦ Riverside leisure scheme – 40,000 sq ft leisure space regenerating part of Thetford town centre. ◦ Mileham housing scheme – 11 new homes built, completed and sold – with a surplus of £162k and land receipt of £83k. ◦ Chapel Rd housing scheme – 12 new homes and surplus of £151k and land receipt of £143k.	• 3 initial projects: ◦ Riverside leisure scheme – 40,000 sq ft leisure space - built and developed on time / budget and part of Thetford town centre regenerated. ◦ Mileham housing scheme – 14 new homes built, completed and sold – with a surplus of £189k and land receipt of £75k. Plus 4 dwellings transferred to Council at for shared ownership. ◦ Chapel Road housing scheme – 10 new homes, planning permission achieved. Forecast surplus of £114k and land receipt of £215k.
• Cash return - £460k from land sales, fees & interest. • Repayment of working capital (£270k) and working capital interest of £57k.	• Forecast cash return - £580k from land sales, fees & interest. • Repayment of working capital (£270k) and working capital interest of £164k if extension agreed (By end of year 7 (year 2 of extension)
	• Local Plan residential allocations for Banham site (44 units), Kenninghall site (15 units). • Planning permissions for residential change of use for Gressenhall (1 unit), Colkirk (21 units), Litcham (16 units). • Supported property development advice, guidance and reports on over 20 different schemes / properties.

1.7 Table 2 outlines the lessons learnt from the previous phase and the relevant changes in response for the next period of the partnership.

Table 2 - Lessons Learnt and Changes Required

Lessons Learnt	Changes Required
• This is a modest arrangement that will not significantly accelerate growth for the district. This is in part because it is limited in its capacity to develop only Council owned assets. This has been revisited and checked with procurement advice.	• New financially focused vision (rather than regeneration / growth focused): *To use Breckland Council's property assets and reserves to create positive financial return.*
• The overhead (corporate) costs have been high compared to the overall surplus from the first business plan. This is in part due to the limited activity in the first phase. However the overhead costs have been appropriate in comparison to the market.	• A leaner joint venture with reduced overhead costs to allow the partnership to focus on projects with certainty of delivery. • Reduction in corporate fees and an increase in project fees presented as an alternative. This is a greater risk for Land Group as fee payment is based on project delivery – instead of standard fees from working capital.
• Communications activity from the Council's involvement in Breckland Bridge has not always met Council expectations.	• Land Group recognise the need for the Council to be proactive regarding external communications regarding its involvement in the joint venture. Therefore a major part of the Breckland Bridge communications budget is to be removed and Breckland Bridge to support the Council on the PR / communications activity the Council needs to derive from the joint venture.
• To enable success the joint venture has required more client (officer) support than expected and this is unsustainable in the long term.	• To ensure success, funding released to provide the necessary internal client resources to coordinate and manage the Council's interest in this joint venture.
• Economical basis for sharing risk and rewards is acceptable, however moving forward a more equitable split (as originally anticipated) will share risk and reward more equally.	• Baseline 50/50 shareholding split (therefore 50/50 risk and reward) – but with flexibility for Council to add up to maximum of 70% funding to improve pace of delivery if required.
• Little ability to progress direct development of small sites because capacity prioritised and absorbed on larger schemes.	• Opportunity to progress disposal of small sites (before or after planning permission) rather than direct development to churn receipts more quickly.
• The partners have further financial capacity which can be increased (to a cap).	• Ability to have larger business plan with greater number of schemes as proposed in the new business plan. • Opportunity to progress disposal of small sites (before or after planning permission) rather than direct development to churn receipts more quickly. • Flexibility to add projects i.e. if significant project occurs and requires delivery.

	• **Additional positive changes:** • Removal of annual standard property review but with flexibility to add this in as required therefore not losing the ability to obtain advice, guidance and expertise on an 'as requested' basis which has been a key benefit over the initial period. • The exclusivity of assets removed allowing Council flexibility to dispose or use assets for other projects i.e. community related activity.

1.7.1 Generally Land Group report a positive partnership experience so far with the Council and the relationship is working well.

1.7.2 The outcome of the above changes in Table 2 is a more focused joint venture creating a greater number of delivery projects resulting in better derived value.

1.7.3 The following table summarises the results of the partnerships tests that were undertaken as part of the due diligence to review the condition and performance of the partnership. This is a 'one-off' test to be undertaken at this review point.

Table 3 – Partnership Tests – Summary Outcome

• **Partnership Extension Tests:** • **Performance:** Overall performance and outputs to date from the joint venture has suggested it has been a success with the two completed projects. There is no reason to suggest that this will not be repeated with the final project which is yet to be completed. • **Provision of new satisfactory business plan:** A financial model of the next 6 year business plan has been received and analysed and provides a satisfactory positive financial return. • **Partner covenant strength**: The partner has sufficient financial standing to meet the financial obligations proposed by the new business plan. Cash flow requirements will need to be reviewed at each project approval to ensure that the cumulative impact of projects and sensitivities do not expose either partner to an unaffordable cash flow or excess risk.

1.8 Table 4 outlines the content of the next business plan with the relevant risks if the joint venture is continued (Option 1 or 2 of this report). The next business plan currently only covers a period of 6 years. Therefore new projects will be added to the business plan to cover the remaining period of the partnership (4-5 years) unless at that point the partners agree to cease.

Table 4 – Future Business Plan and Opportunities / Risks

Future Business Plan	Opportunities and Risks
• The next 6 year business plan is forecast to include the following: • **Projects / Activity:** • Chapel Road, Attleborough, land – 10 unit residential scheme with full planning permission.	• There is the potential to gain value from the Council's assets and generate cash returns of c.£2m-£3m but the Council will need to commit significant temporary cash to the joint venture on a rolling basis over the life of this arrangement which will then

- Whissonsett Road, Colkirk, land – 21 unit residential scheme and public open space with outline planning permission secured. - Wellingham Road, Litcham, land – 16 unit residential scheme and public open space with outline planning permission secured. - Chapel Street, Shipdham, land – 36 unit residential scheme and public open space with outline planning permission submitted. - Powell Close, Kenninghall, land – 15 unit residential scheme with Local Plan allocation secured. - Gaymer Close, Banham, land – 44 unit residential scheme with Local Plan allocation secured. • **Outputs:** • New homes – 142. • All loans repaid. • Potential cash return of £2.5m from interest on loans, fees and land sales. • Enhanced by a further £592k if small sites additional activity is agreed (Option 2 of this report). • **Financial Requirement:** • Cash commitment average of £2m over business plan period through loans (up to £2.5m).	not be available for other opportunities should they arise. • Income and expenditure is affected by a range of risks including: - Construction costs increase. - Sales income decreases. - Interest rates rise. - Achievement of planning permissions. - Delays. - One or both partners have insufficient cash to support the programme of works. - Disagreements occur. • Returns are affected if risks occur outside of forecast range. • Disputes are managed through the legal documentation. • A break clause exists at the 10th and 15th anniversary. • Key controls include: - Projects can be delivered in phases. - There is a two stage project approval process before a project is started so there are checkpoints to confirm risks and financial exposure. - Land is valued independently before being sold and transferred to the company. - The company tenders construction contracts. - There is a refresh of the business plan annually to review progress and outturn. - Each partner appoints directors and there are quarterly company board meetings to review performance. • If the joint venture has to pause activity for any reason there are standstill overhead costs of £66k pa of the company and its subsidiaries – the costs of which would be shared 50/50 with Land Group.

2.0 OPTIONS

2.1 Cabinet is asked to approve either Option 1 or Option 2 as follows:

Option 1 – Continue to be a partner in the Breckland Bridge joint venture vehicle and in doing so:

a) Issue an Extension Notice (on the basis of the terms set out in this report) to the Land Group LLP to continue the partnership per the Shareholders Agreement.

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Option 2 - As per Option 1 above with the addition of:

e) Approve the additional small site project delivery.

Subject to Cabinet approval of either Option 1 or 2 above **RECOMMEND TO FULL COUNCIL** that:

a) The new business plan be agreed as outlined in summary in Table 3 of the report.

b) The financial requirements of the business plan be agreed and delegate the S.151 Officer to undertake any related ancillary matters in order to implement the recommendations of this report and amend the capital and revenue budgets and any other on-going expenditure and release of funding including the following:
(iv) Award loans in accordance with the Council's adopted Treasury Management Policy.
(v) Release up to £20,000 for the legal fees to undertake the legal due diligence and extension documentation.
(vi) Provide the funding and approval of the provision of the client support post.

2.2 Option 3

Do not continue to be a partner in the Breckland Bridge joint venture vehicle and do not extend the partnership.

If the Council does not continue the joint venture all three initial projects from the initial business plan have been completed and any additional authorised projects any current debt or surplus in the company will be distributed or supported by the shareholders. The Council would receive (if surplus exists) or contribute (if debt exists) 90% to the total. Appendix 3 provides further analysis on the alternative options available to the Council if this is option is taken. If this option was taken in this report, further analysis of the options in Appendix 3 would be undertaken and brought back to Members.

3.0 REASONS FOR RECOMMENDATIONS

3.1 Overall the performance outputs of the joint venture have been good based on the two projects which have been completed (Riverside and Mileham) and the forecast outputs from the third project (Chapel Road, Attleborough) are positive. It has been an effective partnership so far and the Council has been able to obtain income from land receipts and loan interest. The joint venture has also added capacity to the Council's property teams and thus access to strategic property advice. This guidance has been efficient and cost effective and delivered at speed which would otherwise have to have been procured. This should not be under-estimated given the additional activity the joint venture has undertaken. The joint venture has also undertaken work to prepare sites for a more delivery-focused business plan over the next period, subject to the decision to continue.

3.2 The Council now needs to consider whether to continue the partnership and the main reasons for doing so are set out below:

- Breckland Bridge is now established and should deliver both a financial return and housing return over the next 5-10 years.
- The next business plan is financially viable, based on the assumptions upon which it has been modelled and providing the risks are managed and the controls embedded within the legal documentation are adhered to.
- There are added benefits to being in the partnership and the changes that are proposed reflect the learning from the first business plan period. This will improve the outputs for the second period which will be more delivery focused with less overhead on the company. This does not lose the flexibility of receiving services from the partnership as required. The re-focused financial vision will also assist the joint venture.
- Delivery over the initial period has been good and the partner Land Group wants to stay involved in the joint venture.
- Projects have been successfully delivery on time and within budget and achieved what they set out to achieve and they (Mileham) has made a financial surplus.
- The ability to access additional property development expertise and skills efficiently.
- Additional ad-hoc work property related can be undertaken without the need for procurement.
- Allows for delivery quickly without need for individual procurement on individual projects.
- There is an established and trusted partnership infrastructure and there is no need to re-procure the partner.
- By continuing the joint venture the Council gains further value from the procurement investment and set up costs.
- There are known break points over the next 10 years should the Council wish to exit.
- The Council earns an enhanced rate of return on its surplus cash.
- An independent property development consultant has undertaken a thorough assessment of the proposed financial model for the next phase of the partnership and concluded that - *the Council would appear to receive a return commensurate with the risk likely for these types of development*

3.3 The Council is obtaining development and delivery capacity and expertise and skills to deliver complex projects on time and budget against low land values and at the same time creating a financial surplus subject to managing the identified risk.

4.0 EXPECTED BENEFITS

4.1 The expected benefits from the decision to accept Option 1 or Option 2 are:

- Positive gross forecast financial return to the Council over the next 6 year period.
- Multiple projects can be delivered at same time.
- The capacity to deliver construction schemes.
- Skills and experience to deliver construction scheme and review assets.
- Gives the Council the ability to choose to provide loan funding to create optimum return.
- Wider benefits other than immediate project delivery i.e. project development activity.
- Forecast housing outputs c.142 new homes over the next 6 years built on Council-owned land.

5.0 IMPLICATIONS

5.1 Constitution & Legal

5.1.1 The Shareholders Agreement contains provision for the joint venture arrangement to be extended on or before the 5th Anniversary. This provision must be complied with. The Agreement also contains relevant break clauses at the 10th and 15th anniversaries of the agreement should this be necessary. External lawyers will be instructed to review and amend accordingly the Shareholders Agreement if this extension is agreed.

5.1.2 An internal governance framework already exists for the Council as shareholder to manage its interests and liabilities in the joint venture and no changes are proposed to this framework which comprises of the nomination of three directors (independent, member and officer) to the Company board and the nomination of the Leader as Shareholder Representative. As happens now there will still be a quarterly highlight report to assess performance of the joint venture on an exception basis. This will be provided to Cabinet Members and the business plan will be authorised by Cabinet annually. The Council needs to be an intelligent client to fully support its role in this joint venture which is vital to its success and it is proposed that a client officer role is created accordingly as set out in 5.6.1.

5.1.3 Option 1 or 2 cannot be implemented until Council has approved the budget elements of the recommendation.

5.2 Contracts

5.2.1 By issuing an Extension Notice the Council will be entering into a legally binding agreement to continue its role in the partnership until 2030. There are clauses to break the agreement if required at certain dates.

5.3 Corporate Priorities

5.3.1 This approach underpins the following corporate priorities:

Our Council:

- Continue to strengthen our commercial approach which will secure our financial position by identifying income generation opportunities and efficiencies through trading and sharing.
- Maximise the returns generate by the Council's commercial and operational assets.

- Continue to work effectively with all our partners to deliver significant benefits to the communities of Breckland.

5.4 Financial

5.4.1 The financial model for the next business plan is a decision making tool and is not an indication of exact returns. Approving the continuation does not approve the individual projects. They are subject to a separate approval/due diligence process. Standstill costs of approx. £66k per annum remain due if the partnership enters a pause situation for any reason.

5.4.2 The balance of risk and reward requires careful consideration. There is the potential to gain value from the Council's assets through Option 1 and 2 and generate cash returns of c.£2m-£3m from interest on loans and income from sale of land. In order to finance this the Council will need to commit significant cash to the joint venture on a rolling basis which will then not be available for other opportunities should they arise. The cash commitment and forecast returns may be affected by sensitivities and controls are in place to minimise sensitivities and mitigate risk.

5.4.3 Under Option 3, if the continuation of the joint venture is not agreed the working capital and interest due at the date of the extension will not be repaid. This would be a one off cost and avoiding such costs is not a reason to continue.

5.4.4 Appendix 1 provides more detailed financial analysis.

5.5 Risk Management

5.5.1 See Appendix 2.

5.6 Staffing

5.6.1 Per the existing governance arrangements which are working well it is recommended that the Council continues to provide one staff member to be the Officer Director on behalf of the Council.

5.6.2 To further ensure the partnership is successful in the next phase it is recommended that funding is authorised to provide the necessary resources (new post) to coordinate and manage the Council's interests in this partnership joint venture vehicle following the lesson learnt point in Table 2 about the sustainability of this client-side support currently. The costs for this post have been added to the financial assessment and deducted from the forecast returns.

5.7 Stakeholders / Consultation / Timescales

5.7.1 All planning applications will be subject to the usual separate consultation procedures. If the recommendations are approved it is anticipated that the new business plan will be back-dated to a start date of 01 April 2019.

6.0 WARDS/COMMUNITIES AFFECTED

All

7.0 ACRONYMS

Background papers: Council 28 March 2015 - Committee Report - Creation of a regeneration and property development joint venture – decision ref 29/15

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Director / Officer who will be attending the Meeting
Name and Post: Ralph Burton, Strategic Property Manager

Key Decision: Yes

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report:

Appendix 1 – Financial Commentary	Exempt
Appendix 2 – Risk & Risk Log	Exempt
Appendix 3 – Alternative Options	Exempt
Appendix 4 – Land Group Profile	Exempt