

## Meeting of the Cabinet – 31 October 2007

### Delivering the Masterplan for Dudley Town Centre

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#### Appendix D: Arms Length Company (ALC) – justification of need, structure, and draft Heads of Terms

##### 1. ALC - Justification of need

The scale, timing and context of the project make it a challenging one for the Council. In order to meet the project objectives, there will be a need for specialist skills, resource and leadership. An indication of some key requirements which will be crucial to the project success are listed below:

- **Property Development Skills** – Delivering a £318 million programme needs dedicated property development skills and experience to lead the project and overcome obstacles when these arise. At the political level, it is vital that ambitious projects of this nature enjoy the support and commitment of members and senior officers. Members need to be kept informed of the progress of projects which requires good communication and proper briefing before presenting papers to Cabinet;
- **Flexibility** - These resources need to meet the challenges of the project for its duration, and will need to be managed throughout the project lifecycle as resource requirements change. There will also be differing requirements of departments across the authority and differing political pressures. Overall, good communication links between the partners and within the Council will ensure that the confidence of the private sector can be maintained;
- A broad range of client side consultancy skills and added capacity will need to be assembled. This will include expertise in programme management and design, public and private sector finance, valuation and cost consultancy, commercial and legal advice, fundraising and structuring;
- **Commitment to Design Excellence** – the Council's objective is to achieve design excellence for the development of each of the ADF sites. In taking forward a number of key town centre sites, it is important that the urban design of each site and the proposed uses are integrated in such a way that the end developments are sustainable from a design and economic perspective;
- **Financial Creativity** – again, flexibility will be the key to the project's success and to ensure the Council realises value for money on its investment. The delivery structure should ensure that the Council can 'value capture' in addition to playing a more a strategic role in the delivery of the scheme; and
- **Long-term Commitment** – the delivery of each of the ADF sites will require a long term commitment from the Council and its partners, as well as the

private sector developer partner, in order to meet the project objectives over the lifetime of the project.

In conclusion, to deliver the ADF the Council will need:

- Significant capacity devoted exclusively to the project, which provides a well managed, multi-disciplinary team built on technical and project management specialists;
- strong leadership and a project champion; and
- a joined up approach from within the Council and other public sector partners and the ability to communicate with, and generate confidence within, the private sector.

### **Internal Structure of the Company**

Staff and running costs of the company would be related solely to the delivery of its activities. Ongoing costs will include financial, audit, tax, and the use of specialist advisors, retained as necessary throughout the project. An audit, financial and monitoring method statement will form part of the procurement contract.

### **Control of the Arms Length Company**

The Arms Length Company will have its own business plan which outlines its role and objectives. Key performance indicators for the company will be agreed based upon delivery of key milestones in the development process. The staff of the Arms Length Company will be responsible to the Board of Directors, who will meet on a regular basis and will hold the staff to account on performance, as well as providing advice, guidance and approval for key decisions. Reports on the progress of the Company will also be submitted to the Council.

### **3. Draft Heads of Terms for the Arms Length Company - Dudley Delivery Company (working title) “DDC”**

The following Heads of Terms head out the principal terms based on which the Dudley Delivery Company (DDC) will be established.

The DDC is proposed to be a company limited by guarantee. It is proposed to act on an arm's length basis from the Council (Dudley MBC).

These Heads of Terms are not exhaustive.

1. DMBC will form the company (DDC) and be the sole member.
2. The business of the Company will be to act as an agent to Dudley MBC and its partners (AWM and EP) in providing development management and design management services and to arrange the procurement of appropriate development solutions on the agreed Business Plan Sites and thereafter to ensure the delivery of the development solutions, at all times protecting

DMBC's (and as appropriate DMBC's partners) land investment into each project. The company is also to work with 3rd parties, as appropriate, to arrange the effective marketing and promotion of the development sites, alongside the regeneration of Dudley, plus also to ensure the integrated improvement of the public realm in the town centre. The design and development aspirations in the Business Plan are to be in accordance with the principles set out in the Area Development Framework (ADF) for the Town.

3. The term of the Company will be [4] years.
4. The members agreement for the Company will provide for a board structure to be established. The Board shall be on more than [6] directors plus an independent Chair. Meetings of the board will take place at least quarterly and will take place at the registered office of [xxx]. Telephone Board Meetings will be permitted. At least five business days notice will be given of each board meeting and an agenda circulated at the same time that notice is provided. However, a meeting may be held on shorter notice providing that greater than 50% of the Board Directors agree.
5. [2] Directors will be members and/or Officers of the Council. The balance of the directors and the Chair will be selected on the basis of having one or more of the following areas of skill/ experience:
  - » Property development (generally)
  - » Construction procurement
  - » The practical implementation of good quality design
  - » Business management
  - » Financial management and financing.
6. The Council will need to agree the Business Plan (which will be prepared and submitted by the Directors to the Council). Thereafter the Company will have the delegated authority to operate and make decisions so long as it is, at all times, operating within the Business Plan
7. The Business Plan will be updated annually and approved within [2 months] of the following financial year. In the event that a new business plan is not agreed, the old business plan will prevail.
8. The company will be funded annually by a grant from the Local Authority (the grant may be co-funded by EP and/or AWM). The condition precedent to each additional grant award will be the acceptance of the new business plan
9. The Company will make an estimate of its costs over its entire period of operation and will propose a basis for capitalising these costs into each project within the Business Plan. At start on site for a project, the allocated capital costs of the DDC will be repaid to DDC from the developer of that plot.

10. The Company will procure the following staffing:

- » Development Director (FT)
- » Head of Design (FT)
- » Assistant projects officer (PT)
- » Finance manager (PT)
- » Administrative Assistant (FT)

11. Staffing will be on a contract basis with the council responsible for any costs of early termination in the event that the Company is wound-up before its Term.

12. The Council will be responsible for insurance arrangements, with the Company and D and O's being under the Council's umbrella policies.

13. Voting will need to be agreed and established to address the following issues and to give the Council veto over issues that are not in accordance with the business Plan including the following:

- » Expenditure and funding outside the approved business plan
- » Appointment/ replacement of directors
- » Alteration of constitutional documents
- » Entering into new projects or new types of business or a geographical expansion of the current business
- » Any merger, joint venture or material co-operation arrangement with third parties
- » Any sale, transfer or disposal of the whole or a substantial part of the Company's assets or business
- » Liquidation of the Company (except in case of insolvency)
- » Entry into a VAT group (except with any subsidiaries)
- » Appointment of any employees or the establishment of any pension scheme.

14. The Council will be responsible for internal accounting and liaising with the Company auditors (who will be agreed between the members and appointed at the 1st Board meeting). [A set of management accounts for the Company will be circulated to each of the members on a quarterly basis].

15. The members' agreement will contain a standard confidentiality provision restricting the parties from disclosing confidential information relating to the formation and operation of the business.
16. The registered office of the Company will be at [ ].
17. The Company's accounting year end will be 31 March.

