

ABERDEEN CITY COUNCIL

COMMITTEE	Enterprise, Planning & Infrastructure
DATE	26 November 2009
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	City Development Company
REPORT NUMBER:	EPI/09/058

1. PURPOSE OF REPORT

The purpose of this report is to update Elected Members on progress towards the establishment of an Aberdeen City Development Company, as mandated by the Policy & Strategy Committee of 9th June 2009, and to seek Committee approval for the following recommendations.

2. RECOMMENDATION(S)

It is recommended that the Committee:

- (a) Notes the progress to date in the development of the City Development Company partnership options;
- (b) Approves the proposed process of establishment of a City Development Company project board in light of previous committee instruction and nominate 4 Directors;
- (c) Authorises the City Solicitor to execute the Articles of Association as summarised at section 6.13 of this report, and submit the same to the Office of the Scottish Charity Regulator as part of the City Development company's application for charitable status;
- (d) Authorises officers to utilise the Office of Government Commerce (OGC) Multi-Disciplinary Consultancy Framework Agreement to obtain external business and financial planning consultancy support, subject to the outcome of an appropriate due diligence of the procurement method and contractual terms and conditions by the City Solicitor; and,
- (e) Authorises the Convener of the Enterprise, Planning & Infrastructure Committee, jointly with the Director of Enterprise, Planning &

Infrastructure, to appoint the Chairperson and private sector representatives following discussion with founding partners.

3. FINANCIAL IMPLICATIONS

- 3.1 As this report primarily seeks to update Elected Members on the body of work referred to or associated with the previously agreed establishment of the City Development Company, there are no new financial implications arising from this report. Costs associated with the establishment of the City Development Company are being met by virement from the existing South of the City Urban Regeneration Company budget line within the Enterprise, Planning & Infrastructure Directorate budget.
- 3.2 This report seeks authorisation to utilise the Office of Government Commerce (OGC) Multi-Disciplinary Consultancy Framework Agreement to obtain external business and financial planning consultancy to support the Council in the identification of the long list of potential interventions/projects. This process will take into account any assets which may be made available to the City Development Company, the categorisation of these interventions/projects based on risk and deliverability, and contribution of the same to the Council's strategic objectives.
- 3.3 Prior to the use of this Framework to source advisers, the City Solicitor shall undertake a full due diligence in relation to the procurement methods utilised, in order to ensure that the services required by the Council are available via the Framework and have been tendered in compliance with the requirements of the Public Contracts (Scotland) Regulations 2006 ("the Regulations"). Where the Council utilises the outcome of a procurement undertaken by another public body, then the Council is deemed to have undertaken the procurement as far as compliance with the Regulations is concerned. This means that if the procuring organisation has breached the Regulations then the Council is also deemed to be in breach and is exposed to the risk of legal challenge. As such, a straightforward examination of the procurement and scope of the services available via the Framework should identify whether there are any risks which may need to be managed.
- 3.4 In addition to the foregoing, the City Solicitor shall also undertake a due diligence of the terms and conditions of contract applicable to the Framework. One of the conditions of a Framework is the fact that standard contractual terms must be used without variation. Accordingly, it is necessary for those terms to be assessed by the City Solicitor to identify any potential risk or liability issues which may need to be managed as part of the contract. At the very least, it will enable an informed decision to be

made in terms of the appropriateness or otherwise of utilising the Framework.

3.5 Within the UK, it is recognised that the adoption of these types of delivery vehicles can bring efficiency savings and demonstrate best value by virtue of their aim to:

- provide a single vision and strategic focus for the regeneration of an area;
- act as a catalyst for private sector investment by raising investor confidence;
- guide investment by the public and private sectors towards an agreed set of objectives and outcomes;
- speed up the pace of delivery;
- maximise the use of public sector assets, including land; and
- provide a strategic approach to tackling infrastructure issues such as transport and land assembly.

4. SERVICE & COMMUNITY IMPACT

4.1 The **Single Outcome Agreement** and **Community Plan 2008** outline a vision for Aberdeen City which is welcoming to business (National Outcome 1) and **Vibrant, Dynamic and Forward Looking**.

4.2 The proposals in this report contribute to this ambition and help to create the conditions necessary for the delivery of the Aberdeen City and Shire Economic Future's '**Building on Energy- An Economic Manifesto for Aberdeen City and Shire**' strategic vision of "*Aberdeen City and Shire to be recognised as one of the most robust and resilient economies in Europe with a reputation for opportunity, enterprise and inventiveness that will attract and retain world-class talent of all ages*".

4.3 There are also linkages to the Economic Development theme of **Vibrant Dynamic and Forward Looking** through ensuring the sustainable development of the Aberdeen City and Shire economy and the pursuit of opportunities for regeneration and development shared with the **City Regeneration Strategy**, and thus a positive impact is anticipated in terms of the Equalities and Human Rights Impact Assessment.

5. OTHER IMPLICATIONS

5.1 Officers have been closely engaged with the Council's external legal advisors, Brodies LLP, in identifying and assessing legal risk and policy implications as they relate to the proposed establishment of the City Development Company. The outcome of these discussions is outlined in further detail within this report.

6. REPORT

City Development Company – Aberdeen Economic Context

- 6.1 Over the past decade Aberdeen City and Shire has made a significant contribution to Scottish economic growth. Recent research identifies that Aberdeen City and Shire generated £10.9bn (12%) of Scotland's Gross Value Added (GVA)¹ economic output in 2006 and accounts for 11% of all Scottish jobs, despite only having 9% of Scotland's population.
- 6.2 Aberdeen's position as the UK hub of the North Sea energy industry, combined with productivity levels consistently above Scottish or UK averages and strong export performances, give the City a unique economic profile. While economic data over the past month indicates that the worst of the global economic downturn may now be over, any economic recovery is likely to be relatively slow due to continued stress in credit and financial markets and pressure on consumer spending as unemployment rises and households paid off debt.
- 6.3 Within the Aberdeen City and Shire region, Aberdeen City is the larger of the two authorities in economic terms accounting for almost two thirds of the entire regional labour market and also home to most of the region's North Sea Oil related activities. The impact of the recession may therefore potentially be felt hardest in the City in contrast with the Shire.
- 6.4 Within this context, Oxford Economics forecast that, in output terms, GVA is expected to fall by 2.8% in Aberdeen City in 2009, show very little growth in 2010, before growing by 1.6% and 2.1% in 2011 and 2012 respectively. Aberdeenshire is expected to suffer a GVA fall of 2.5% in 2009 before a sharper recovery (relative to Aberdeen City) of 0.9% in 2010. Growth then picks up pace at 2.5% and 3.1% over the following two years.
- 6.5 Furthermore, Oxford Economics predict that the recession will see a sharp decline in total employment in both authorities, with Aberdeen City set to lose around 9,500 jobs by 2011, whilst Aberdeenshire will contract by just under 2,700 employees during the same period. Put another way, 78% of the region's predicted job losses are forecast to occur in Aberdeen City in the period to 2011.

¹ Gross Value Added (GVA) is a measure of the value of the goods and services produced in the economy. It is primarily used to monitor the performance of the economy and is now the measure preferred by the Office for National Statistics (ONS) to measure the overall economic well-being of an area on a sub-national or regional basis.

- 6.6 Although there is a forecast return to jobs growth from 2012 onwards, it is not expected that the region will return to its 2008 employment levels until after 2018. By 2018 the total decline in Aberdeen City and Shire will be around 6,000 jobs with 8,300 jobs lost in the City combined with an equivalent increase of 2,200 in Aberdeenshire. Most of the net job losses will be in manufacturing and the regionally important oil industry.
- 6.7 Overall, Oxford Economics' forecast suggests that, as the recovery from the current downturn will be largely service sector led, the region will experience a weaker upturn than most other regions in Scotland. While a modest return to economic (GVA) growth will begin in 2010, and accelerate in 2011, for the period 2011–2018 GVA growth in Aberdeen City & Shire is only expected to average 2.7% per annum.
- 6.8 This is slower than the equivalent growth rates of 2.9% expected for Scotland and the 3.3% expected for the UK over the same period meaning that the gap between economic (GVA) growth rates in Aberdeen City & Shire and the UK could widen over the next 10 years without action or policy intervention.
- 6.9 The economic outlook above, presents a number of risks and opportunities which could impact upon the City and the wider regional economy. Foremost amongst these are skills and labour market participation issues. For example, unemployed workers will face an erosion of their skills while they remain out of work, the flow of young workers into sectors under particular stress, such as construction, may aggravate skill-shortages when the economy recovers, while youth unemployment will rise significantly in the short-term and graduates may not be able to find jobs commensurate with their educational attainment or vocational training needs.
- 6.10 Similarly, opportunities also present themselves to the Council and the City Development Company in terms of positioning themselves for the projected 'upturn' in the economy allied to a falling cost base and asset prices. For example, Oxford Economics cite a potential benefit of quality resources becoming more available to businesses and organisations much more cheaply than when the national and regional economy was at its 2007 peak with space costs in Aberdeen City and Shire, for example, being likely to fall over the short term thereby creating an opportunity for businesses to achieve a lower cost base without necessarily being forced to trade off against location or quality of accommodation.
- 6.11 Within this backdrop, the City Development Company would seek to remediate pockets of 'market failure' within the City region, and to not only contribute to the sustainable 'macro' economic future of the area, but to

facilitate with partners the capturing of value for targeted beneficiaries within a charitable / regeneration role.

City Development Company Principles and Articles of Association

6.12 The high level proposed **principles** of the Aberdeen City Development Company shall be to:

- Secure and maximise effectiveness of the timely provision of infrastructure and other public sector investment;
- Harness development benefits (and value where appropriate) that can be used to support investment in public infrastructure or other community benefits;
- Champion economic development within Aberdeen City
- Attract investment and spending in support of regeneration and economic growth; and,
- Secure effective engagement of partners and stakeholders and to align their investment programmes, behind an agreed set of priorities.

6.13 The principles above are reflected within the City Development Company's proposed **Articles of Association**. These state that the City Development Company will be established with the object of pursuing the following charitable objects as defined within the Charities and Trustee Investment (Scotland) Act 2005, namely:

- Urban regeneration;
- Relief of poverty and unemployment;
- The advancement of community development including, but not limited to, maintenance or improvement of the physical, social and economic infrastructure and by assisting people who are at a disadvantage because of their social and economic circumstances;
- The provision and improvement of housing for those who are in the conditions of need (provided that such power shall not extend to relieving any local authorities or other bodies of a statutory duty to provide or improve housing);
- The creation of training and employment opportunities by providing, or assisting with the provision of, workspace, buildings and/or land for use on favourable terms [*this covers the development of new facilities for*

businesses to set up in the area on favourable terms – note though for it to be charitable, it is important that the primary objective is one of training/job creation];

- The provision, maintenance and/or improvement of public amenities [*this covers investment in infrastructure and public realm*]; and
- The protection, conservation and/or improvement of the environment, including the remediation of environmental damage to facilitate the use of such remediated land or assets (subject to a duty to ensure that the public benefit overrides the private benefit conferred on the owner of the protected, conserved or remediated land or asset).

6.14 The above charitable objects shall be progressed for final approval by both the Office of the Scottish Charities Regulator (OSCR) and the City Solicitor in due course.

6.15 Given the lead role played by the Council in promoting the establishment of the City Development Company, it is proposed that the company will be subject to the full scope of the European Union Public Procurement Directives, including appropriate use of the Official Journal of the European Union to seek private sector development partners given the European Court of Justice's recent judgment in *Jean Auroux and Others v Commune de Roanne*² which has forced a number of UK local authorities to abandon previously well progressed development partnerships tendering agreements which had not been previously advertised through the Official Journal of the European Union.

6.16 European Union State Aid regulation and compliance issues have also been extensively examined by the City Development Company project team, assisted by Brodies LLP. State aid is a European Commission term which refers to forms of assistance from a public body, or publicly-funded body, given to economic 'undertakings' on a discretionary basis, with the potential to distort competition and affect trade between member states of the European Union to be incompatible with the European Treaty.

6.17 Nevertheless the principle of incompatibility does not amount to a full-scale prohibition. There are a number of derogations contained within the European Treaty itself in addition to a series of regulations, decisions, approved schemes and frameworks under which the European

² In this case, the court decided that the EU procurement requirements apply to a contract between a regulated public body and an economic operator where (i) the development is to provide an economic or technical function and (ii) the development meets a specific objective of the public body. The public works in the Roanne case related to the provision of a leisure centre and this was held to perform an economic function. As for meeting the specific objectives of the disposing authority, this need not be in terms of a detailed specification – simply being in conformity with the authority's policies for regeneration can be sufficient for the proposed procurement to fall under EU law.

Commission considers various, specified, forms of state aid to be compatible with the EC Treaty and therefore permissible by public authorities. This is in addition to case law generated by the European Court of Justice.

- 6.18 In order to ensure transparency, predictability and legal certainty these have been examined extensively by the City Development Company project team in order to determine the scope and breadth of the City Development Company's proposed operations whilst ensuring the European Treaty declaration of incompatibility of State Aid is respected. Brodies have confirmed in legal advice to the Council that, as long as the City Development Company is not competing for commercial development contracts against third parties, then it is unlikely that there will be any particular advantage over other commercial operators and any properly obtained funding (including amounts in relation to initial operating costs) is unlikely to constitute state aid.

Asset Transfer

- 6.19 As outlined to Members of the Policy & Strategy Committee (9th June 2009), Local Asset Based Vehicles (LABVs), such as Urban Regeneration Companies (URCs) and City Development Companies (CDCs), are a mechanism which allows local authorities to use their assets to realise long-term investment from the private sector for regeneration projects. Local Asset Based Vehicles provide a route to bringing public and private sectors together to pool finance, land, expertise and powers, allocate risks and returns appropriately, and plan and deliver projects more strategically.
- 6.20 LABVs also provide the ability for authorities to realise a 'value added' position from their asset base by providing a mechanism by which local authorities can retain a long term stake in developments, participate in returns from subsequent uplifts in property values and to strategically plan for development on a city wide (or beyond) basis.
- 6.21 The ability of Local Asset Based Vehicles to raise infrastructure funding is heavily dependent upon the quality of the asset base under its control as the ability to raise finance against the assets are themselves dependent upon a series of variables such as revenue generation, capital value increase potential and degree of development risk. Put another way, LABVs only provide the framework within which assets can be leveraged, rather than as an independent means of revenue generation.
- 6.22 Brodies have prepared a draft Heads of Terms which lays the parameters upon which the Council and the City Development Company will transfer defined assets for City Development Company project purposes. The Heads clearly outline that the City Development Company shall undertake

the promotion and development of assets in terms of its charitable purposes and related objectives only, and in accordance with, a business plan agreed between the Council and the City Development Company.

- 6.23 The City Development Company shall also comply with all relevant legislative requirements, including State Aid and Public Procurement Directives. Any transfer of assets (sale or lease) by Aberdeen City Council to the City Development Company or its nominee shall be conditional upon a number of criteria being fulfilled.
- 6.24 These include the amount to be paid representing “best consideration” as defined in law; the proposed development being in accordance with Planning Authority requirements; that the proposed development of the asset being in accordance with the Council’s regeneration and economic development objectives; and dependent upon the City Development Company having selected its development partner in accordance with EU public procurement regulations.

Relationship between the City Development Company and other Initiatives

- 6.25 The City Development Company is one of a number of initiatives and programmes being supported by Aberdeen City Council at this time. The City Development Company shall be complementary to, for example, the Aberdeen Business Improvement District and the Council’s ongoing examination of alternative innovative infrastructure finance mechanisms, such as a potential Tax Increment Financing funding mechanism.
- 6.26 A Business Improvement District is a partnership between a local authority and the local business community to develop projects and services that will benefit the trading environment within the boundary of a clearly defined commercial area, where businesses have voted (in a ballot) to invest collectively in local improvements which will benefit the local economy by means of a statutory levy, typically 1%, upon non-domestic business rates.
- 6.27 The complementary nature of the City Development Company and the proposed Aberdeen Business Improvement District can be illustrated with the following scenario: The City Development Company, as a part of its agreed business plan with the Council, chooses to develop an asset within the proposed Business Improvement District boundary. Following completion of the asset’s development, in what ever manner, the re-developed asset commands a higher rateable value which translates into a higher Business Improvement District levy upon the re-developed asset.
- 6.28 The experience of Business Improvement Districts in other Scottish towns and cities (notably Edinburgh, Falkirk and Inverness amongst others) has

shown that Business Improvement Districts typically focus on localised investment needs, streetscape, marketing and promotion and other environmental quality improvements within the specified District area. However, the Business Improvement District as an entity does not enjoy the power or have the necessary financial resources to directly invest in capital assets or site development (e.g. land remediation) which a City Development Company would. Nevertheless the two organisations working collaboratively with each other, and the Council, can meet each others and the City's investment and business development needs.

- 6.29 Similarly, the City Development Company is highly complementary to the concept of Tax Increment Financing (TIF) although as with Business Improvement Districts the two do not directly overlap. Tax Increment Financing is a concept which originates in the United States. In its broadest terms it is designed to allow local authorities to capture incremental value in the form of tax revenues generated from new development and/or infrastructure development within a defined area.
- 6.30 TIF works on the principle that the supply of new or improved infrastructure usually leads both to new development and to an increase in the value of surrounding property, both of which serve to increase the level of property taxation in the area. Within a designated TIF district (in UK parlance, an Accelerated Development Zone or ADZ), this anticipated increased taxation (the 'tax increment') is 'captured' and used to fund the infrastructure that has been provided through securitisation of TIF revenues against prudential borrowing requirements.
- 6.31 It should be noted that while local authorities do not currently to retain or hypothecate local tax revenues as outlined above, there is a high degree of interest at both Holyrood and Westminster in enabling local authorities to run pathfinder Tax Increment Financing projects within defined parameters as an alternative finance mechanism for local authorities given the current constraints generally upon UK and Scottish public finances.
- 6.32 Aberdeen City Council, alongside other Scottish Cities, notably Edinburgh and Glasgow, is actively engaging with Scottish Enterprise with a view to establishing an Accelerated Development Zone pathfinder project within Aberdeen using Tax Increment Financing principles.
- 6.33 While the City Development Company, per the Business Improvement District example above, may not be initially directly connected to any TIF pathfinder project, any development of assets by the City Development Company within an Accelerated Development Zone district will, it is expected, result in an increase of rateable value of such an asset, the increment of which – in a Tax Increment Finance scenario – would accrue

to Aberdeen City Council as the local authority responsible for the Accelerated Development Zone.

7. Partnership Arrangements

- 7.1 The Council has been advised that at this moment in time, the founding members of the City Development Company can consist of Aberdeen City Council and Scottish Enterprise. The intended inclusion of ACSEF as a founding member is not possible whilst they lack 'legal entity' status. There are two options for inclusion of ACSEF, whereby individual ACSEF Directors could become 'admitted' members conferred by the two founding members, or that ACSEF becomes a legal entity prior to the incorporation of the City Development Company.
- 7.2 At the time of report writing, it is anticipated that ACSEF are to hold a Board meeting in November 2009 at which this matter can be discussed.
- 7.3 The Director of Enterprise, Planning & Infrastructure is progressing discussions with Scottish Enterprise regarding their membership.

8. Board Structure

- 8.1 The City Development Company Board shall be separate from the Council and consist of a maximum of 12 Directors. Of these 12, Aberdeen City Council shall be entitled to appoint a maximum of 4 positions to ensure a public sector minority in keeping with the requirements of Scottish charities legislation and with the findings of Scottish Government research into delivery vehicle best practice.
- 8.2 The Convenor of the Enterprise, Planning & Infrastructure Committee together with the Director of the Enterprise, Planning & Infrastructure are requested to nominate private sector representatives to sit as a Chairperson and remaining Directors of the Aberdeen City Development Company Board, following discussion with founding partners.
- 8.3 At the time of writing, an Elected Member workshop has been arranged to allow officers the opportunity of briefing Members on the City Development Company.

9. Project Timeline

- 9.1 The City Development Company project is progressing well against its anticipated milestones and target outputs. The next steps in the critical path include the acquisition of external business and financial planning consultancy support towards the development of the Business Plan and


the submission of an application to the Office of the Scottish Charity Regulator for charitable status.

10. REPORT AUTHOR DETAILS

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