

By: Roger Gough, Cabinet Member for Regeneration and Supporting Independence
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To: Cabinet 16th June 2008

Subject: Ashford's Future – proposed formalisation of the Ashford's Future Partnership Board and the related incorporation of a Special Purpose Vehicle

Classification: Unrestricted.

Summary: This paper informs Members of the proposal for formalising and restructuring the Ashford's Future Delivery Board. It also seeks approval for the County Council's participation in the establishment of a Special Purpose Vehicle (SPV) as a key new element in delivering growth to Ashford.

Introduction: The current delivery structure in Ashford

1. (1) The Ashford's Future Delivery Board (AFDB) is an informal partnership comprising the key organisations with a role to play in delivering successful, sustainable growth in Ashford. The Founding Partners comprise ABC, the County Council, SEEDA and EP. Other organisations represented on the Board currently include the Environment Agency, Highways Agency, Housing Corporation, and Robyn Pyle of Land Securities as a private sector representative.
- (2) The informal partnership has worked effectively to date, and has secured additional partner and Government resources that have funded masterplanning and other technical studies; some significant land purchases, especially in the town centre; the funding of the Ashford's Future Core Team; a range of projects to kick start growth, including 'green space', economic development and voluntary sector capacity building projects.
- (3) This activity has been driven and co-ordinated by the Ashford's Future Core Team and by an executive officer group drawn from the partners, in support of the AFDB.
- (4) The Ashford Growth Area is entering a new phase of delivery. Given the scale of infrastructure that needs to be provided to support the doubling of the size of the town it is acknowledged that the Ashford's Future Partnership will need to adapt and strengthen its programme and project management capacity. Accordingly it is proposed that current arrangements be revised to ensure the efficient delivery of key projects, and the securing of resources.

The rationale for change

2. (1) In 2006 a review of delivery arrangements in Ashford was undertaken by consultants on behalf of the DCLG. Their report (entitled the Bell Report) recommended that the Delivery Board should be reduced in size, that it should have stronger private sector representation, and be able to accept developer and other contributions.

(1) The Ashford's Future partners commissioned a further study by Genecon (Economic and Spatial Regeneration Consultants). Genecon confirmed the widespread view that the existing informal arrangements for co-ordination between the Ashford's Future partners needed to be put on a more formal basis in order to strengthen delivery capacity. This is the purpose of the proposed Partnership Agreement. The Genecon Study also identified a range of reasons for establishing a SPV for specific purposes.

(2) At the County Council's instigation, the need for an SPV has been questioned with DCLG. The case was put that the same outcome could be achieved by strengthening the existing partnership arrangements and that a SPV may be inefficient in financial terms as the local authorities can borrow at a cheaper rate than the SPV. The SPV may also be liable to Corporation Tax and VAT, and Stamp Duty Land Tax might be payable on any transfer of land assets. The SPV might not draw in additional private sector finance other than through the kind of joint ventures with developers that are already proposed under existing arrangements.

(3) However, DCLG has made it clear in discussions that future Growth Area Funding for Ashford would be dependent on a commitment to the establishment of an SPV under private sector influence.

(4) In addition, it is accepted that private sector input in the form of an SPV will bring expertise, challenge and a new approach. The SPV will also bring a culture change and a perception that Ashford is entering a new phase of delivery. It should be noted however, that the SPV is only one part of the equation. **It will not provide the solution to all Ashford's infrastructure funding requirements.**

Restructuring the Ashford's Future Delivery Board

3. (1) It is proposed to formalise and rename the current Ashford's Future Delivery Board (AFDB) to the 'Ashford's Future Partnership Board' (AFPB), and to put in place revised membership arrangements. This will continue to be a public sector-led partnership, retaining the responsibility for developing and championing the overall Programme for Development for Ashford. This document, approved by the AFDB, and submitted to Government, sets out key project priorities for Ashford's growth, for all main partners to support and assist in delivering. DCLG has subsequently awarded Growth Area (GAF 3) funding to Ashford totalling £23m for the three year period 2008 to 2011, providing a significant statement of commitment to the Ashford Growth Area.

(2) A Partnership Agreement between the four Founder Partners (ABC, KCC, SEEDA, and EP) will establish a formal (though non-legally

binding) decision-making framework and will replace the existing informal arrangements on which the Partnership has been operating. Partner decisions will include formal approval of the Programme for Development and agreeing funding priorities, committing founder partners to support the growth agenda, the allocation of GAF and similar monies and - in the future - tariff funding.

(3) Cabinet is invited to nominate or confirm the Board Member for the AFPB on behalf of KCC.

(4) The AFDB has also agreed on the incorporation of a company limited by guarantee to act as a special purpose vehicle (SPV) to support the delivery of the Ashford's Future Programme. The company will have four public sector directors and four private sector directors, including a private sector Chairman, Robyn Pyle.

(5) The Founding Partners (Ashford BC, Kent CC, SEEDA and EP) are each in the process of seeking their necessary approvals to participate in the SPV and revised Ashford's Future Partnership Board.

The Proposed SPV

4. (1) The SPV will have two clear functions. Firstly, ensuring the delivery of key projects, to include bringing forward town centre sites where a number of different partners are involved in delivery, addressing a number of infrastructure constraints (including transport and flood risk management), and providing a more focused, better co-ordinated and better-resourced structure. A draft list of priority projects for the SPV has been endorsed by the AFDB, and is listed at the end of this report. In delivering projects the SPV's role will be to lead or to co-ordinate in order to ensure the efficient delivery of projects.

(2) Secondly the SPV is to provide a programme management function on behalf of the AFPB. In this role the SPV will ensure that all organisations with a responsibility for projects identified in the Partnership's Programme for Development are delivering on time and on budget, and will report to the AFPB.

SPV Staffing and Structure

(3) The SPV will have a board of directors (the SPV Board) comprised of representatives from ABC, KCC, SEEDA and EP, and up to four directors chosen from the private sector one of whom would act as Chair of the Board and who will exercise a casting vote at Board level. The AFDB has approved the appointment of Robin Pyle, a Director of Land Securities as Chair of the SPV, and the three other private sector directors, Vince Lucas (South Eastern), Bill Brisbane (retiring director from Roger Tym) and Courtney Collins (retired director from Gledes). The four founder members (ABC, KCC, SEEDA, EP) will each nominate a Director

(4) Cabinet is invited to nominate a Director for the SPV Board.

(5) To date, activity has been driven and co-ordinated by the Ashford's Future Core Team and by officers drawn from the partners, in support of the AFDB. It is proposed that a new SPV team will subsume the functions of the existing Ashford's Future Core Team. The existing team has been reviewed, and staff currently employed by ABC are in the process of being transferred (under the TUPE Regulations) to the new SPV where appropriate. It is anticipated that the SPV team will be fully operational by the Autumn 2008.

(6) The Managing Director Judith Armit has been appointed and will take up post in June. Judith will be employed by Ashford Borough Council on an interim basis pending transfer to the SPV in the event that the Founder Partners agree to proceed with the proposed arrangements. Job roles have been developed for the other core staff in the SPV team. Where ABC employees are likely to have their contracts of employment transferred to the SPV, matters are being handled in line with TUPE Regulations and ABC's employment policies.

(7) There are currently informal arrangements operating in the Ashford's Future team whereby County Council officers work alongside members of the team to develop and deliver specific projects. This is particularly effective for transport projects. A similar arrangement of staff allocation is proposed for the SPV where necessary to strengthen project delivery and to ensure co-ordination with inter-related projects. For clarity, there are no plans to formally second or otherwise transfer the employment of any County Council officers to the SPV.

(8) The SPV team has been operating in transitional form since April 2008 to coincide with the start of the Growth Area Funding (GAF) 3 period, being fully operational by the Autumn. This is requiring work on a number of fronts, including finalising a number of documents, namely:

- b) The non-binding Partnership Agreement between the four Founding Partners (Ashford Borough Council (ABC), the County Council, the Regional Development Agency (SEEDA), English Partnerships (EP)) to put the overall Ashford's Future Partnership on a more formal basis (see para 3(2) above);
- c) The SPV company documents (see para 4(9) below);
- d) The SPV Business Plan that will outline the activities that the SPV proposes to carry out in delivering aspects of the Programme for development;
- e) Accountable Body Procedures that will detail the role, responsibilities and procedures to be undertaken by Ashford Borough Council in receiving and allocating GAF and other monies;
- f) Financial Regulations and other procedural documents for the SPV.

SPV Company Documents

- (9) The SPV Company documents comprise:
 - b) A Memorandum and Articles of Association for the Ashford SPV, and

- c) A Members' Agreement between the four 'Founder Members' of the SPV (ABC, KCC, SEEDA, EP) to regulate their approach to the operation of the SPV.

(10) The Members Agreement is a document that requires that certain decisions can only be made by the unanimous agreement of the Members. In effect, this provides the County Council with a de facto veto for important matters. This list of decisions is set out in the Members' Agreement (and reproduced at Appendix 1) and includes matters such as: approving the company's draft Business Plan prior to submission to the AFPB for approval, agreeing any variation to the business or objectives of the company, agreeing to the admission of new members of the company, acquiring and disposing of land, applying for Planning consents, applying for grant funding and appointing private sector directors.

SPV Membership Control

(11) All Companies, including the SPV, are operated at two levels, that is, by the Members and the Directors. The Members of the Company are the owners of the Company and certain decisions can only be made by the Members. Such decisions include changing the objects and winding up of the Company. The Articles provide that new members may be admitted to the company; however this can only be done with the unanimous approval of the Founder Members, meaning that KCC would have an effective right of veto over the admission of new members. The County Council, as opposed to any individual, will be the Company Member. Clearly it would be impractical for all membership decisions to be the subject of formal reports to the County Council. It is therefore recommended that delegated authority is given to the County Council's representative on the AFPB to make certain Company Member decisions, in consultation with the Director of Law and Governance and Director of Finance.

Directors Control

(12) The second level of operation of a Company is via the Directors. Directors are appointed to manage the Company on behalf of the Members. As stated above, the documentation provides that the Directors of the Company will be four nominees of the Public Sector partners and up to four individuals from the private sector.

(13) This therefore establishes a 50/50 split between Private and Public sectors, although the Chair of the Board will be from the private sector and will have a casting vote. Director decisions will be made by simple majority.

(14) It is proposed that Directors should not have any direct financial interest in Ashford. Where there is any perceived conflict of interest, the private sector Directors will be expected to abstain from voting.

The SPV Business Plan

(15) The SPV Business Plan has been drawn up (and is currently in draft form) in response to the Programme for Development, and details the activities to be carried out by the SPV in delivering aspects of the PfD. The documents require the SPV to act in accordance with a Business Plan that has been given prior approval of the Members under the Members Agreement. The SPV Business Plan will be the subject of a further report to seek approval of the County Council.

Feedback and Approval from DCLG

(16) The Ashford's Future Team has been managing the interface between AFDB and DCLG, and we are assured that DCLG has been kept informed of developments and is satisfied with progress. The DCLG has already confirmed GAF funding of £23m for Ashford. The DCLG has confirmed its intention to meet the core operating costs of the SPV team in order for the SPV to be viable.

Implications for the County Council

Towards 2010

5. (1) The proposals support the delivery of a number of Towards 2010 targets, including (1) Jobs, (3) Town Centre Regeneration, and (40) Housing development and infrastructure.

Legal Issues

(2) The County Council's Director of Law and Governance is satisfied that the proposed legal documents adequately safeguard the County Council's position with respect to its participation in the proposed arrangements.

Financial implications

(3) The DCLG has indicated that the adoption of an SPV structure by the partners will be a pre-requisite for securing DCLG funding, and English Partnerships have indicated that it would be more likely to invest in the Ashford Growth Agenda if an SPV were in place. The SPV will be a company limited by guarantee, with each of the Founding Members liable for a contribution of £1 towards any debts that may be outstanding on the winding up of the company. The creation of an SPV on these terms does not, therefore, represent a direct financial risk to KCC, although it is possible that KCC may be asked to give specific financial guarantees to support the arrangements (albeit such obligations are likely to be shared equally between the four Founding Partners).

(4) Ashford Borough Council is the Accountable Body for GAF 3 government funding and other monies, and receives and holds the funding on behalf of the Founding Partners. Funds are then drawn down by partner organisations responsible for specific projects in delivering the Programme for Development.

(5) For projects where the County Council is the lead organisation, funding will be drawn down from ABC by the County Council in accordance with Accountable Body procedures and GAF 3 Funding Guidance. These monies are both outside and additional to the County Council's own budgets.

Partner roles, contributions and risks

(6) ABC has an Accountable Body role (see above), and acts as AFPB Chair. This is appropriate in terms of local accountability and there are safeguards in the company documents/Partnership Agreement about where funding should be prioritised and the approval mechanisms for the overall Programme for Development, which will ensure that other Founding Partners will have appropriate influence. The County Council intends to use its positive bilateral relationship with ABC to ensure that ABC does not in fact dominate or control AFPB to the County Council's detriment.

(7) It was anticipated that partners would contribute assets to the SPV, and that the SPV would attract private sector investment. Asset and other contributions to the SPV by the partners are not yet clear. SEEDA is currently exploring the most cost-effective way of making assets available to support delivery in Ashford. Officers consider that in order for the SPV to be effective, particularly in terms of delivering key town centre sites, it is essential that SEEDA's assets (especially those acquired with DCLG funding) are either donated or loaned to the SPV on terms agreed with the SPV and the Founder Members. The County Council's position is that it will only provide contributions in kind to the SPV, through the provision of dedicated specialist staff to deliver particular projects eg transport. It is not proposed to transfer funds from the County Council's base budgets to the SPV.

(8) Advice is awaited from SEEDA's consultants on tax and vat implications and the outcome of this advice will inform the final shape of the SPV to ensure that it is capable of meeting its original intentions ie to drive forward regeneration and infrastructure delivery but in the most tax efficient way.

Consultations

6. (1) Ashford Borough Council's Executive Committee approved the proposals on 6th March 2008.
- (2) The broad terms of reference for the Partnership Agreement, SPV Board and SPV team were agreed by the AFDB at its meeting on the 13th December 2007.
- (3) This matter was reported to the County Council's Environment and Regeneration Policy Overview Committee on 31st January 2008, where the POC gave in principle support to the establishment of the SPV, subject to funding being available to cover the costs.

Reporting

7. (1) The SPV will provide quarterly monitoring reports to the AFPB on the Programme for Development. Reports will include updates on project delivery with information on milestones, outputs, risks, issues to be addressed and budgetary information and such additional information as the AFPB may reasonably request from time to time.
- (2) The KCC representative on the AFPB will have responsibility for ensuring there is appropriate co-ordination within KCC and will report to Cabinet on progress. The SPV Business Plan - which will define the scope of its activities - and Ashford's Future Programme for Development will also be reported to Members for approval. Approval of subsequent amendments to the Business Plan may be delegated to the representative of KCC as Founder Partner, such representative acting in consultation with the Director of Law and Governance and the Director of Finance.
- (3) The County Council's normal democratic processes will therefore not be compromised.
- (4) The process of developing the new arrangements has highlighted the need for a strengthening of the County Council's own procedures, business planning, reporting and decision-making in respect of the Ashford Growth Agenda. It is important to ensure that corporate objectives and resources are agreed prior to inputting to the Ashford Growth Agenda. Accordingly processes and procedures are being developed and Chief Officers will be responsible for ensuring their effective implementation.

Policy Framework

8. (1) The proposed decision is in accordance with the Policy Framework as set out in the Constitution.

Conclusions

9. (1) The proposals as detailed in this paper will help take forward the growth agenda in Ashford, enabling more effective delivery and reflecting the County Council's priorities. KCC is already heavily involved in supporting growth proposals in Ashford. The establishment of the SPV should help to ensure that KCC resources are more effectively deployed, together with an improvement in the collective capacity of the Ashford's Future Partnership to deliver a coherent and co-ordinated programme of projects and other activity to deliver growth in Ashford.
- (2) The commitments and structures will provide robust governance arrangements, and should reassure Cabinet Members that the arrangements for the Ashford SPV incorporate the necessary safeguards.

(3) The Government's confidence in Ashford's ability to deliver growth through these new arrangements is being demonstrated by the securing of Growth Area Funding.

(4) The success of the new arrangements will depend largely upon the County Council's and other partners' level of engagement. It is important to ensure there is an integrated approach to the Growth Agenda across all Directorates. This is necessary in order to ensure the delivery of the County Council's commitments under the PfD, to allocate adequate resources in terms of funding and staffing, and also to protect KCC's service delivery interests. The developing KCC Regeneration Strategy should also provide the opportunity for the County Council to confirm its commitment and future contributions.

Recommendations

2. (1) Subject to resolution of the matters referred to in paragraph (2) below and subject to funding being made available by DCLG and/or other sources to cover the establishment and operating costs of the SPV:

Cabinet is requested:

- (b) to agree to the County Council becoming a Member of the Ashford's Future SPV;
- (c) to authorise KCC's entry into a Partnership Agreement and Members' Agreement as outlined in this report;
- (d) to make appointments to represent the County Council on the AFPB and of a representative to attend general meetings of the SPV and exercise the County Council's voting rights as a member of the SPV on behalf of the County Council;
- (e) to delegate sufficient authority to such appointees to enable them fully to exercise the rights and discharge the duties relating to such appointments, acting as necessary of such in consultation with the Director of Law and Governance and Director of Finance;
- (f) to nominate a Director on the SPV Board to manage the Company on behalf of the Company Members on such terms as the Director of Law and Governance shall approve.

(2) **To note** the following matters to be resolved:

(ii) The Director of Law and Governance to review and approve the proposed reporting regime of the SPV to the AFPB, and be satisfied this facilitates robust scrutiny by the AFPB of the Programme Management function; and

(ii) Approval of finalised arrangements by EP, SEEDA, DBERR (if required in respect of EP and SEEDA) and DCLG (in respect of all AFPB and SPV arrangements and in particular in respect of DCLG's funding of such arrangements).

- (3) **To grant** delegated authority to the Managing Director of Environment and Regeneration in consultation with the Cabinet Member for Environment and Regeneration and the Director of Law and Governance to approve the final versions of the following documents on behalf of the County Council: the SPV Memorandum and Articles of Association, the Members' Agreement and the Partnership Agreement and authority for the Director of Law and Governance to execute those documents on behalf of the County Council.
- (4) **To request** all County Council Managing Directors to consider the implications of the proposed Ashford's Future SPV and Programme for Development on their service areas.
- (5) **To note** that a further report will be submitted seeking approval of the terms of the Ashford's Future Programme for Development and the SPV Business Plan.

Background Documents: Available from the Author below:

2. Partnership Agreement
3. Memorandum and Articles of Association
4. Members Agreement
5. Accountable Body Procedures – report to ABC Executive
6. Ashford's Future Programme for Development
7. The relationship between the AFPB and the SPV
8. The proposed SPV staffing structure
9. Genecon Report
10. Bell Report

11. Explanation of Terms:

ABC – Ashford Borough Council

AFDB - Ashford's future Delivery Board (current name for Partnership Board)

AFPB – Ashford's Future Partnership Board – new name for AFDB

DBERR – Department for Business Enterprise and Regulatory Reform

DCLG – Department for Communities and Local Government

EP – English Partnerships

Founder Members – public sector Members of the SPV (ie ABC, KCC, SEEDA, EP)

Founding Partners – relates to membership of Ashford's Future Partnership, and parties to Partnership Agreement (ie ABC, KCC, SEEDA, EP)

LDV – Local Delivery Vehicle (Government-sponsored body to deliver Growth Agenda in Growth Areas)

Partnership Agreement – Non-legally binding agreement between the Founding Partners

PfD – Programme for Development; document describing the intended delivery activities and outcomes for growth, by the Ashford's Future Partnership

SEEDA – South East England Development Agency

(AF) SPV – (Ashford's Future) Special Purpose Vehicle; the LDV proposed to be set up as a company limited by guarantee

12. Top 10 Priority Projects for the SPV

The following projects have been approved by the AFDB as priorities for ensuring delivery in the period 2008 to 2011:

- M20, Junction 9 and Drivers Roundabout
- Victoria Way
- Elwick Precinct
- Dover Place and Station Improvements
- Construction Skills Academy
- Enterprise Centre
- Marketing Strategy
- Broadband
- Sustainable Energy Supply
- Greenspace Infrastructure

13. Author Contact Details

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Appendix 1: “Material Matters” as defined in the Draft SPV Members Agreement

The following matters require the unanimous approval of all four Founding Members (ABC, KCC, SEEDA, EP):

2. The approval of, amendment to or variation of any Key Document.
3. Approving the Business Plan prior to adoption by the Company.
4. Approving any matter for which provision has not been made in relevant Business Plan for that Financial Year.
5. The approval of any matter which is outside the normal course of the Business;
6. The approval of, amendment to or variation the Financial Regulations.
7. Any variation to the Business and/or Objectives of the Company.
8. The admission of new members to the Company.
9. A variation to the maximum number of Directors to be appointed to the Board and the composition of the Board.
10. Any decision to waive the confidentiality restrictions imposed on any of the Founder Members or Directors under this Agreement.
11. The appointment or removal of any person as Managing Director and the terms of appointment of the Managing Director.
12. Determining whether any Director (or any person recruited to work for the Company) shall be entitled to remuneration or reimbursement of expenses in connection with the performance of his or her duties for the Board and determining the level and terms upon which such remuneration will be payable where such remuneration is outside the parameters of the Business Plan.
13. Forming any subsidiary of the Company, or acquiring any interest in any other company, partnership, limited partnership, limited liability partnership, trust or other body (incorporated or otherwise) and/or entering into joint ventures or partnerships.
14. Subject always to paragraph 17 of this Schedule acquiring, disposing or agreeing to acquire or dispose of (in each case) any freehold or leasehold interest in or licence over land (including the exercise of an option);

15. Entering into or making any contract, or incurring any capital expenditure with a total cost to the Company of more than [£x]. ***[DN: Parties to consider in conjunction with Financial Regulations]***
16. Taking any step which will result or may result in a winding up of the Company.
17. Making any petition or passing any resolution to wind up the Company or making any application for an administration or winding up order or giving notice of the intention to appoint an administrator or filing a notice of appointment of an administrator unless in any case the Company is at the relevant time insolvent and the Founder Members reasonably consider (taking into account their fiduciary duties) that it ought to be wound up.
18. Disposing or charging any land or assets which were initially transferred to the Company by a Founder Member, or which were financed in whole or in part by a Founder Member.
19. Entering into (or agreeing to enter into) any borrowing arrangement and giving any security in respect of such borrowing.
20. Entering into any grant funding agreement.
21. Applying for Growth Area Fund monies and other funding.
22. Applying for planning consents and lodging appeals against planning authorities.
23. Altering:
 - 2.0 the name of the Company;
 - 3.0 the registered office of the Company;
 - 4.0 the accounting reference date of the Company;
 - 5.0 the place of business of the Company;
24. The categorisation of any Reserved Matter as a Material Matter.
25. The variation of any Reserved Matter and the approval of what constitutes a Reserved Matter, being such matters as cannot be delegated by the Board from time to time.
26. Any other matters which the Founder Members shall, with Member Approval, determine to be a Material Matter.