

REPORT TO: POLICY & RESOURCES COMMITTEE ON 30 MARCH 2010

SUBJECT: MORAY PROPERTY DEVELOPMENT COMPANY

BY: HEAD OF ESTATES SERVICES

1. REASON FOR REPORT

1.1 This report invites Committee to consider the dissolution of Moray Property Development Company and transfer of its assets and liabilities to the Council.

1.2 This report is submitted to Committee in terms of the Council's Administrative Scheme relating to industrial and commercial development.

2. RECOMMENDATION

2.1 It is recommended that Committee approves:-

(a) officials proceeding, in conjunction with the Board of Moray Property Development Company, to dissolve Moray Property Development Company and transfer its liabilities and assets to the Council;

(b) the Council indemnifying the external directors of the Moray Property Development Company against any personal costs to them arising from the administration and winding up of the company, other than costs attributable to bad faith on their part; and

(c) Moray Property Development Company's property assets being amalgamated into the Council's Industrial Portfolio.

3. BACKGROUND

3.1 Moray Property Development Company (MPDC) was established by the Council in 1999 (as a non profit making company limited by guarantee) in order to assist in accessing European funding. The Company's objectives are to promote, encourage and assist economic development in Moray and to create and protect employment opportunities in the area.

- 3.2 MPDC has developed small business centres at Elgin, Lossiemouth and Keith, as well as 3 large factory units at Chanonry Industrial Estate, Elgin and 3 small workshops at Westerton Road North Industrial Estate, Keith – a schedule of the properties is attached as **APPENDIX 1**. These buildings were all developed on land leased from the Council.
- 3.3 As can be seen from **APPENDIX 1** all bar one of MPDC's properties are currently let and its management accounts to 30 September 2009 show a net quarterly income of £7,709. The audited accounts for the year ended 31 March 2009 showed a net income of £23,431 for the year.
- 3.4 Occupation levels of industrial properties in Moray are currently high with demand for premises outstripping supply in most locations. Despite the national recession there is little evidence of the strong demand in recent years for industrial land and buildings abating significantly. It is anticipated that barring national economic difficulties impacting more locally, or an unforeseen change of circumstance in the local economy, occupancy levels will continue to remain generally high in the short/medium term. Correspondingly rental levels would be expected to continue to increase steadily.
- 3.5 The Company's Articles of Association state that there will be a maximum of five directors; of who two shall be nominees of the Council (Councillors G McDonald and G McIntyre are currently directors of the Company). There have only been four directors for some time now and the remaining two private/independent directors have advised that they consider that the objects of the Company have been met and now wish to step down and dissolve the Company and transfer its assets to the Council.
- 3.6 It is considered that it would be in the Council's interests to consider the dissolution of MPDC and transfer of its assets to the Council for the following reasons:-
- the Council can access directly the same European funding programmes as MPDC;
 - the Council can fulfil the role of MPDC at lower cost by utilising Prudential Code Borrowing;
 - MPDC is not able to carry out development projects which involve high initial investment and longer term returns as all projects are funded from borrowing;
 - there are costs in maintaining the Company which could be saved by the Council taking over MPDC functions. The cost to the Council of managing the Company separately would be saved;
 - there could be further savings generated by combining them with the existing assets held on the Industrial Portfolio; and
 - it would ensure the properties continue to be used in the long term to support economic development in Moray.

- 3.7 The Scottish Government has confirmed that there would be no adverse implications for the Council in respect of the European Funding used for the existing MPDC developments if the properties continue to be used for the purposes set out in the original funding applications – these varied between the different developments, but broadly the smaller units were to provide business accommodation for small/start up businesses and the larger units for larger established businesses, all to encourage economic development in Moray.
- 3.8 Independent legal opinion was obtained which advised that the best way to proceed would be to:-
- (a) amend the Company's Memorandum of Association to permit a transfer of assets to the Council.
 - (b) transfer the assets and liabilities of the Company to the Council at nil value. The properties have been valued by the District Valuer and no capital gains tax would be payable in doing this.
 - (c) make application to have the Company removed from the Register of Companies without a formal winding up process.
- 3.9 The 2 external directors on the board of the Company do not receive any remuneration. Directors can be personally liable to statutory fines if company documents are not lodged on time at the Registrar of Companies. It is proposed that the Council indemnify them against any personal costs resulting from the administration and winding up of the Company, other than costs attributable to bad faith on their part.
- 3.10 It would be proposed that MPDC's property assets be amalgamated into the Council's Industrial Portfolio.
- 3.11 The Economic Development and Infrastructure Committee at its meeting on 23 February 2010 approved the proposals in principle and referred them to this Committee for consideration.

4. SUMMARY OF IMPLICATIONS

(a) Single Outcome Agreement/Service Improvement Plan

This report is in accordance with Local Priorities 9 (Economic Development) and 10 (Efficiencies) of the Single Outcome Agreement.

(b) Policy and Legal

The Company's board would need to approve the winding up and distribution of the Company's assets. The Company's assets consist of a number of properties held on ground leases from the Council. These leases would require to be terminated prior to the appropriate Winding Up resolution being passed.

The Registrar of Companies would then need to be notified of the dissolution.

(c) Resources (Financial, Risks, Staffing and Property)

Financial/Risks

MPDC's property portfolio was valued by the District Valuer at a market value of £1,000,000, in September 2008. The value was reduced to £943,331 in the accounts at 31 March 2009. The total net assets are £38,689 after the deduction of liabilities including a bank overdraft of £497,089.

The annual accounts for 2008/09 show a gross rental income of £117,700 and a net income of £23,431 after tax (£33,953 before tax). It would be expected that the Company's property assets would continue to produce a net profit in the short/medium term, barring an unforeseen change in local economic circumstances.

There would be no capital gains tax liability to the Council in accepting a transfer of MPDC's assets/liabilities.

The Scottish Government has confirmed that there would be no adverse implications for the Council in respect of the European Funding used for the existing MPDC developments if they continue to be used for the purposes set out in the original funding applications.

By taking over MPDC functions the Council would be relieved of the administration costs (estimated at approximately 120 hours of staff time) of managing the Company separately. MPDC currently pay an annual audit fee of £1,100, which would not require to be paid by the Council. There could be further small savings by combining MPDC property assets with the existing assets held on the Industrial Portfolio, although these are difficult to quantify.

The Profit and Loss Account for MPDC at 31 March 2009 totalled £38,689; any balance on this account would be transferred to Moray Council after the deduction of the costs of winding the company up.

It is difficult to quantify accurately the Council's likely legal fees/expenses, but these are not expected to exceed £2,500.

Staffing

It would be anticipated that the dissolution of the Company and amalgamation of its property assets with the Council's industrial portfolio would save Council staff time in administering and managing MPDC as a separate company.

Property

The property implications are as set out in this report.

(d) Consultations

Alasdair McEachan, Principal Solicitor (Commercial and Conveyancing), the Head of Financial Services and the Principal Development Officer have been consulted and their comments incorporated within this report

Councillors McIntyre and G McDonald (directors of MPDC) – shall be able to advise Committee of their views at the meeting.

5. CONCLUSION

5.1 MPDC's private directors consider that the objects of the Company have been met and wish to dissolve the company and transfer its assets to the Council. It is considered to be in the Council's interests to accept a transfer of MPDC's assets to the Council at no cost.

Author of Report: Stuart Beveridge, Senior Estates Surveyor
Background Papers: None
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