



**Finance, Resources, Audit and Governance Committee**  
**26 July 2024**

## **Restructure of the Big Sky Group**

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**Portfolio:** Leader of the Council

**Ward(s) Affected:** None

### **Purpose of the Report:**

In light of the recent increase in temporary accommodation properties, officials have reassessed the management of these properties with the aim of leveraging the knowledge and skills within the Big Sky Companies. Consequently, there is a need to reorganise the Big Sky Group by introducing a teckal-compliant company alongside the current development and property management entities. This restructuring will enable the Council to utilise the expertise and resources within Big Sky, facilitating the direct awarding of contracts without the need for a procurement exercise.

### **Recommendations:**

1. That the Finance, Resources, Audit and Governance Committee review the recommendations below, which were agreed in principle by Council on the 20<sup>th</sup> May 2024, and agree they are the best way forward.

Council as the Shareholder of Big Sky Ventures Ltd to direct the company:

1. To agree to the creation of a teckal compliant company, working title Big Sky Teckal Ltd.
2. To agree to the creation of a new company, which will be a body governed by public law, working title Big Sky Staff Ltd.
3. To agree to the transfer of the existing employees within Big Sky Property Management Ltd to the newly established Big Sky Staff Ltd.

4. To agree to the governance arrangements for the new companies as outlined in section 4.8 with minor amendments to be delegated to the Director of Resources in consultation with the Shareholders Representative for the Big Sky Group.
5. To agree to the restructure of the group as shown in diagram 4.6.

## **1 Summary**

1.1 This report proposes a restructure of the Big Sky Group with the inclusion of a new teckal compliant company and a new company that is compliant with the definition of a body governed by public control which will employ the Big Sky staff. These changes will enable the Big Sky Group to continue to provide an efficient and effective Property Management Service for the Council, whilst operating within the procurement legislation for public sector bodies.

## **2 Background**

2.1 The Big Sky Companies were originally set up to deliver two outcomes; development of housing and to manage property including the commercial assets of the Council, with the aim of providing a return to the Council.

2.2 While the majority of this return is via the interest the Council receives from loans to the companies, other financial benefits are identified below:

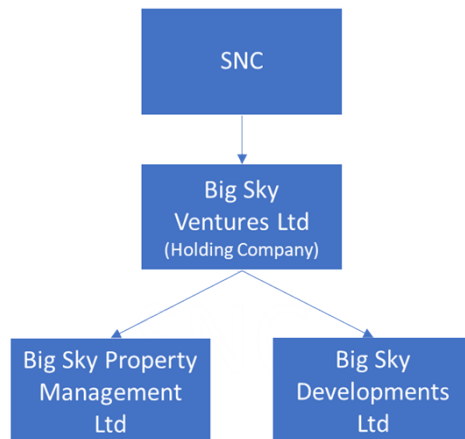
- Council tax on the dwellings,
- Planning and building control fees,
- New homes bonus,
- Community Infrastructure Levy (CIL) and S106 contributions.
- Where commercial property is part of the development it also delivers business rates income.
- Charitable Donations to organisations that support the work the Council delivers.
- Sponsorship of Council events
- Advertising income

2.3 There have also been other significant benefits such as:

- Leveraging Council assets to create housing,
- Promoting economic growth and development and attracting additional investment such as the Homes England funding,
- Co-location of homes and jobs to enhance residents' lifestyles,
- Maximising the benefit to residents through optimising the use of Council reserves and preserving capital within the district.

## **3 Current Position/Findings**

3.1 Following legal and tax advice the following company structure in relation to the Big Sky Companies was agreed at Cabinet in January 2015.



- Big Sky Ventures Ltd (BSV) – The top-level holding company with the Council as sole shareholder of this company which in turn is sole owner of the other companies in the group.
- Big Sky Developments Ltd (BSD) (formerly named Rosebery Park Developments Limited) – The development company, which has delivered Roseberry Park at Poringland and Maple Park in Long Stratton and currently developing St Giles Park at Cringleford.
- Big Sky Property Management Ltd (BSPM) – This company manages the residential portfolio of properties which includes those properties retained from the developments for private sector rental and also the Council's commercial property portfolio. The company employs the staff that carry out the work not only for the property management company but also for the development company too. In addition, this company provides advice and support to South Norfolk Council on capital projects associated with properties/land as well as general property related advice.

3.2 Originally the income from the Council to the Property Management Company was a significant proportion and the company was considered teckal compliant which allowed the Council to maximise the expertise within Big Sky through the direct award of work. In addition the value of the work awarded to Big Sky wasn't large enough to contravene the public procurement regulations.

3.3 Under the Procurement Act 2023, teckal exemptions are now called vertical arrangements but the requirements are still around:

3.4 Control of the company carrying out the work. The Council is the parent of the company, and no other person or company holds shares in the company or exerts a decisive influence on the activities of the company either directly or indirectly and;

3.5 More than 80% of the activities carried out by the company are carried out on behalf of the Council. The legislation allows the Council to make a

provision about how the percentage of activities is calculated but previously income has been used as a substitute for activities.

- 3.6 Over the years the income derived from the residential properties within BSPM has grown significantly, as the company has grown its residential property portfolio mainly from retaining properties from its own developments. The level of income it receives from the Council is so small compared to the level of rental income, that it doesn't comply with the 80% requirement above in 3.5.
- 3.7 While in past years, the value of the work carried out by BSPM hasn't been above procurement thresholds it is envisaged going forwards that there will be a need to award more work to BSPM. This is due to two factors; firstly some of the large projects within the Council's five-year capital programme are related to the delivery of property scheme where the experience and expertise of the BSPM staff would be beneficial. Secondly, in 2023/24, the Council has purchased a significant number of properties for temporary accommodation to fulfil the increase in demand. These residential properties need to be managed in line with the regulations around rental properties and given the expertise, systems and processes that already exist within BSPM it would seem an efficient and effective solution for BSPM to take on the property management of all the temporary accommodation. It is unlikely that even with this additional income in future years BSPM would fulfil the 80% activities test.

#### **4 Proposed Actions/Recommendations**

- 4.1 Given the current situation outlined in section 3 above, Officers have taken legal, tax and accounting advice on the best way forward for the Council to maximise the use of the expertise in BSPM while complying with procurement legislation.
- 4.2 The outcome of this advice is to create two new companies within the Big Sky Structure. One, will be compliant with the vertical arrangements' requirements contained within the Procurement Act 2023 and would be utilised to carry out solely Council work. It is proposed that this company has a working title of Big Sky Teckal Ltd. This work would include:
- The management of the Council's commercial property assets
  - The management of the temporary accommodation stock
  - Condition surveys for the Council's property assets
  - Advice on specific capital property projects
  - Disposal of property assets where applicable
  - General property advice
- 4.3 The second company would be a new company for the purpose of employing the staff currently employed in BSPM and any new staff going forward. Existing staff would TUPE into the new company under their existing terms and conditions. The reason for moving the staff out into a separate company from BSPM is that under the existing arrangements the new teckal company described in 4.2 above, will need to comply with public procurement

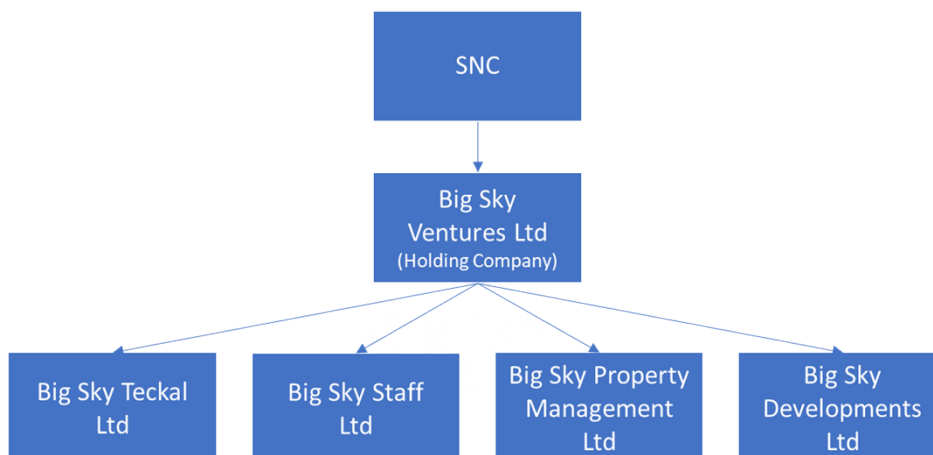
regulations and therefore couldn't award the work direct to staff in BSPM. This new staff company would then recharge to the other Big Sky companies the time its staff spends carrying out the work for each individual company. It is proposed that the working title for this company is Big Sky Staff Ltd.

4.4 This company would be a body governed by public law (BGPL), which means it fulfils the "Three Limb Test" described below but itself is not teckal compliant meaning it can work for any of the companies within the Big Sky group or indeed external companies.

4.5 The "Three Limb Test" defines a company which fulfils all three tests below:

- Test 1 – Established for the specific purpose of meeting needs in the general interest, not having an industrial or commercial character.
- Test 2 – Has a legal personality e.g. a company
- Test 3:
  - 1 Financed for the most part by the State, regional or local authorities or by other BGPL or
  - 2 Subject to management supervision by those authorities or bodies or
  - 3 Has an administrative, managerial or supervisory board, more than half of whose members are appointed by the State, regional or local authorities or by other BGPL.

4.6 A diagram showing the proposed new structure for the Big Sky Group is below:



4.7 It is proposed that the company secretary for the Big Sky Group incorporates the two new companies. The names of the two new companies to be agreed by the Directors of Big Sky Ventures Ltd but are to be in line with the other names of the Big Sky companies.

4.8 The following governance arrangements are proposed:

4.8.1 Share Capital – Each company to have £1 ordinary paid up share from Big Sky Ventures Ltd.

4.8.2 Articles –

- To adopt the same articles as the other Big Sky companies as these are the standard articles amended for the shareholders representative & rotation of Directors.

4.8.3 Directors on the two new companies – to demonstrate the Council has control it is proposed that there are:

- A minimum of 3 Directors on the Board
- One of those is the Council's Managing Director
- One is a Member of the Council
- One is the Development Director of Big Sky

4.8.4 To be tax efficient the companies will be within the same VAT group and Corporation Tax group to be able to offset any losses against other company profits.

4.8.5 The following governance arrangements will be put in place and will mirror those of the other companies within the Big Sky Group:

- Registered Office – Trumpeter House.
- Own Bank Accounts - Signatories – The same signatories as the other Big Sky Bank Accounts.
- Schedule of matters reserved to the Board to be in line with the current schedule of matters for BSPM.
- Board terms to be in line with the current ones for BSPM.
- No staff to be directly employed by Big Sky Teckal Ltd.
- Accounts & Accountancy arrangements as per the other companies within the Big Sky Group.
- VAT and Corporation Tax arrangements as per the other companies within the Big Sky Group.
- Insurance arrangements to be managed through the Big Sky insurance arrangements for Directors.
- Policies – the same policies as per the other Big Sky companies will be adopted except where they refer to Procurement.
- Procurement policies for the two new companies will be in accordance with public procurement regulations.
- Company Secretary – provided by the Council as per the other companies within the Big Sky Group.
- There is a requirement for SLA's to be in place between Big Sky Teckal Ltd & the Council for services provided by the Company.
- There will be a recharge from the Council to the two new companies will be for company secretary services. The Council will also recharge Big Sky Staff Ltd for HR and IT support.

It is proposed that should there be a need to make any minor amendments to items listed in section 4.8 above these are delegated to the Director of

Resources in consultation with the Shareholders Representative for the Big Sky Group to enable the two companies to be set up and operating as swiftly as possible.

## **5 Other Options**

- 5.1 The Council could decide not to restructure the Big Sky Companies however that would mean the Council would not be able to directly award work to BSPM. This would mean additional work for the Council as well as delays in progressing work and would also mean that the expertise and knowledge that is within the Big Sky Companies could not be maximised for the benefit of the Council.

## **6 Issues and risks**

- 6.1 Resource Implications – The additional work that would be passed to the teckal compliant company is already budgeted for within the Council's budgets. There is an additional cost for Big Sky to bear in relation to the administration of running two additional companies, but this will be kept to a minimum.
- 6.2 Legal Implications – Legal advice has been taken in coming to the proposed solution.
- 6.3 Equality Implications – There are no equality implications the transfer of the BSPM staff to the new Big Sky Staff Ltd will be under TUPE and therefore they will retain the same terms and conditions as previously.
- 6.4 Environmental Impact – There are no environmental impacts.
- 6.5 Crime and Disorder – None
- 6.6 Risks – The proposed restructure of Big Sky is to minimise the risk of a procurement challenge from the Council directly awarding contracts to its wholly owned company.

## **7 Conclusion**

- 7.1 There is a need to restructure the Big Sky Group to continue to provide an efficient and effective Property Management Service for the Council going forward, whilst operating within the procurement legislation for public sector bodies.

## **8 Recommendations**

- 8.1 That the Finance, Resources, Audit and Governance Committee review the recommendations below, which were agreed in principle by Council on the 20<sup>th</sup> May 2024, and agree they are the best way forward.

Council to recommend to Big Sky to:



- 8.1 The creation of a teckal compliant company, working title Big Sky Teckal Ltd.
- 8.2 To agree to the creation of a new company, which will be a body governed by public law, working title Big Sky Staff Ltd.
- 8.3 To agree to the transfer of the existing employees within Big Sky Property Management Ltd to the newly established Big Sky Staff Ltd.
- 8.4 To agree to the governance arrangements for the new companies as outlined in section 4.8 with minor amendments to be delegated to the Director of Resources in consultation with the Shareholders Representative for the Big Sky Group.
- 8.5 To agree to the restructure of the group as shown in diagram 4.6.

**Background papers**

None