



# Agenda

## Extraordinary Council

Tuesday, 30 July 2019 at 7.00 pm

Brentwood County High School, Shenfield Common, Seven Arches Road,  
Brentwood CM14 4JF

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### Membership (Quorum – 10 )

Cllrs Parker (Mayor), Ms Sanders (Deputy Mayor), Aspinell, Barrett, Dr Barrett, Bridge, Chilvers, Clarke, J Cloke, S Cloke, Mrs Davies, Fryd, Mrs Fulcher, Haigh, Hirst, Mrs Hones, Hossack, Jakobsson, Keeble, Kendall, Kerslake, Laplain, Lewis, McCheyne, McLaren, Mrs McKinlay, Morrissey, Mynott, Naylor, Nolan, Mrs Pearson, Poppy, Mrs Pound, Reed, Tanner, Tierney and Tumbridge

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### Agenda

| Item | Item   | Wards(s)<br>Affected | Page No |
|------|--|----------------------|---------|
| 1.   | Apologies for Absence  |                      |         |
| 2.   | Declaration of Interest from Members and Officers  |                      |         |
| 3.   | Appointment of a Joint Venture Partner   | All Wards            | 5 - 36  |
| 4.   | King Georges Playing Field<br>Report and Appendices To Follow  |                      |         |
| 5.   | Urgent Business<br>To consider any matter which, by reason of special circumstances to be specified in the minutes of the meeting, the Mayor considers should be considered at the meeting as a matter of urgency. |                      |         |

A handwritten signature in black ink, appearing to read 'Steve Summers', with a long horizontal flourish extending to the right.

Steve Summers  
Interim Chief Executive

Town Hall  
Brentwood, Essex  
15.07.2019

## Information for Members

### Substitutes

The names of substitutes shall be announced at the start of the meeting by the Chair and the substitution shall cease at the end of the meeting.

Where substitution is permitted, substitutes for quasi judicial/regulatory committees must be drawn from Members who have received training in quasi- judicial/regulatory decision making. If a casual vacancy occurs on a quasi judicial/regulatory committee it will not be filled until the nominated member has been trained.

### Rights to Attend and Speak

Any Members may attend any Committee to which these procedure rules apply.

A Member who is not a member of the Committee may speak at the meeting. The Member may speak at the Chair's discretion, it being the expectation that a Member will be allowed to speak on a ward matter.

Members requiring further information, or with specific questions, are asked to raise these with the appropriate officer at least two working days before the meeting.

### Point of Order/ Personal explanation/ Point of Information

#### Point of Order

A member may raise a point of order at any time. The Mayor will hear them immediately. A point of order may only relate to an alleged breach of these Procedure Rules or the law. The Member must indicate the rule or law and the way in which they consider it has been broken. The ruling of the Mayor on the point of order will be final.

#### Personal Explanation

A member may make a personal explanation at any time. A personal explanation must relate to some material part of an earlier speech by the member which may appear to have been misunderstood in the present debate, or outside of the meeting. The ruling of the Mayor on the admissibility of a personal explanation will be final.

#### Point of Information or clarification

A point of information or clarification must relate to the matter being debated. If a Member wishes to raise a point of information, he/she must first seek the permission of the Mayor. The Member must specify the nature of the information he/she wishes to provide and its importance to the current debate. If the Mayor gives his/her permission, the Member will give the additional information succinctly. Points of Information or clarification should be used in exceptional circumstances and should not be used to interrupt other speakers or to make a further speech when he/she has already spoken during the debate. The ruling of the Mayor on the admissibility of a point of information or clarification will be final.

## Information for Members of the Public

### Access to Information and Meetings

You have the right to attend all meetings of the Council and Committees. You also have the right to see the agenda, which will be published no later than 5 working days before the meeting, and minutes once they are published.

Dates of the meetings are available at [www.brentwood.gov.uk](http://www.brentwood.gov.uk).

### Guidelines on filming, photography, recording and use of social media at council and committee meetings

The council welcomes the filming, photography, recording and use of social media at council and committee meetings as a means of reporting on its proceedings because it helps to make the council more transparent and accountable to its local communities.

Where members of the public use a laptop, tablet device, smart phone or similar devices to make recordings, these devices must be set to 'silent' mode to avoid interrupting proceedings of the council or committee.

If you wish to record the proceedings of a meeting and have any special requirements or are intending to bring in large equipment then please contact the Communications Team before the meeting.

The use of flash photography or additional lighting may be allowed provided it has been discussed prior to the meeting and agreement reached to ensure that it will not disrupt proceedings.

The Chair of the meeting may terminate or suspend filming, photography, recording and use of social media if any of

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these activities, in their opinion, are disrupting proceedings at the meeting.

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#### **Private Session**

Occasionally meetings will need to discuss some of its business in private. This can only happen on a limited range of issues, which are set by law. When a Committee does so, you will be asked to leave the meeting.

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#### **Access**

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#### **Evacuation Procedures**

Evacuate the building using the nearest available exit and congregate at the assembly point in the Car Park.

**30 July 2019**

**Extraordinary Council**

**Appointment of a Joint Venture Partner**

**Report of:** *Chris Leslie – Executive Director of Commercial Services*

**Wards Affected:** *All*

**This report is:** *Public with exempt appendices*

## **1. Executive Summary**

- 1.1 This report seeks approval to award the Joint Venture (JV) contract to the preferred bidder. The JV contract is for a 30 year 50:50 Joint Venture partnership between Seven Arches Investments Ltd (SAIL) and the preferred bidder.
- 1.2 An initial 3 sites were selected to be the first to have site development schemes prepared by the JV and formal approval for this is sought.
- 1.3 As a 50:50 partnership an equity cash contribution maybe required in addition to the land value to ensure funding remains matched between the partners. There is also opportunity to provide loan funding to the JV, which will provide an additional income stream.

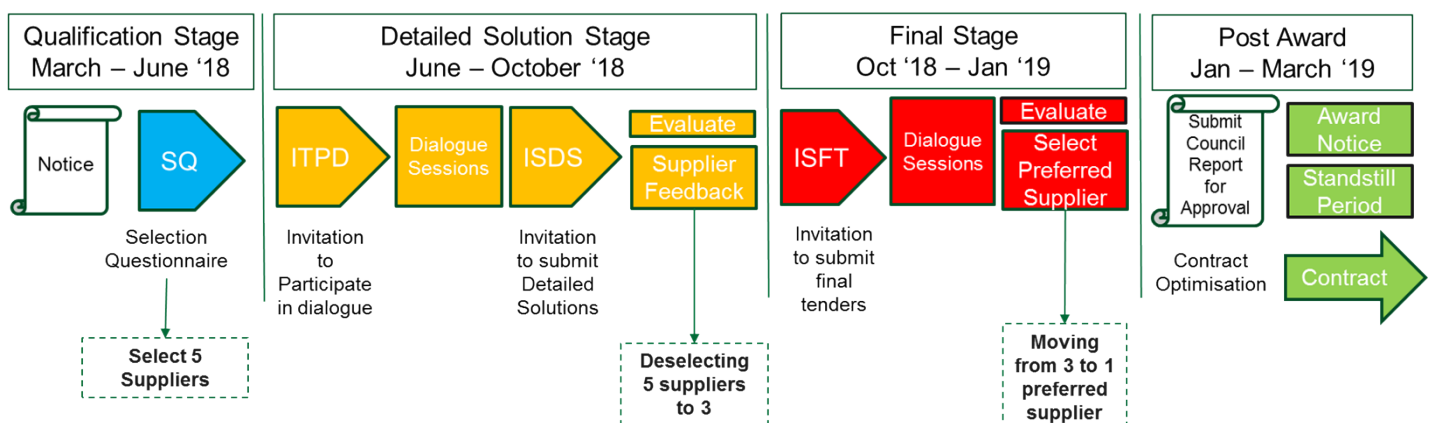
## **2. Recommendation(s)**

- 2.1 **That the Joint Venture partnership contract and framework agreement be awarded to Morgan Sindall Investments Ltd through Seven Arches Investments Ltd, subject to agreement of final detailed terms between the parties in compliance with procurement regulatory requirements.**
- 2.2 **That the Director of Corporate Resources be given delegated authority in consultation with the Leader of the Council, to agree the final detailed terms and to enter into the Joint Venture partnership agreement and related contracts in compliance with procurement regulatory requirements.**

- 2.3 **That the three initial sites (William Hunter Way Car Park, Maple Close garage site and Westbury Road Car Park) have site development schemes worked up under the agreement by the Joint Venture.**
- 2.4 **That a funding facility of up to £60m at any one time be made available to provide equity and senior debt in relation to the Joint Venture with the use of the facility delegated to the Section 151 Officer in consultation with Group Leaders.**

### 3. Introduction and Background

- 3.1 On 21 March 2018 Council approved a Competitive Dialogue Procedure under the Public Contracts Regulations 2015, to procure a Joint Venture partner. This followed a series of member engagement through previous Committee reports, Project Board, all member and ward member briefing sessions.
- 3.2 Through advice from specialist consultants, use of soft market testing and member engagement it became apparent that a Joint Venture partner would be the best delivery option for the Asset Delivery Programme.
- 3.3 At the Council meeting in March 2018 the procurement documentation was approved and since that meeting officers and specialist consultants have been carrying out the procurement process in accordance with those documents and the Public Contracts Regulations 2015.
- 3.4 The procurement process with timescales was presented back in March 2018 and had remained on schedule until a preferred bidder was selected.



- 3.5 The procurement process is outlined in the following paragraphs:
- 3.6 **Qualification Stage** – This was the first sift of bidders and identified early those who were most likely to be selected as a partner. Bidders responded to the Selection Questionnaire and were evaluated in accordance with their responses. Following this, five bidders were selected to go through to the next stage. Restricting the number to five provided the Council with a strong selection of partners and kept the assessment resources required at the next stage reasonable. The bidders also remained engaged knowing the competition had decreased when they progressed to the detailed solution stage.
- 3.7 **Detailed Solution Stage** – The successful five bidders submitted their detailed solutions in accordance with the Council's instructions. Solutions were discussed through a series of dialogue sessions between the bidders and the Council throughout June and July 2018. Bidders then submitted their responses to the evaluation questions. These were evaluated in accordance with the Council's requirements, as determined by the scoring methodology outlined in the procurement instructions. The best 3 bids were taken through to the final stage.
- 3.8 **Final Stage** – The final three bidders had an opportunity to refine their solutions in line with the Council's detailed requirements as articulated in the bid documents. Solutions were further discussed through dialogue sessions throughout September and November, with their final bids submitted in December. A Preferred Bidder was then selected based on how well their solutions meet the Council's requirements, as in the detailed solution stage. The final scores are shown in appendix A.
- 3.9 Following the selection of a preferred bidder in January 2019 a number of activities took place to brief members on the selection before Annual Council in May. These included:
- All Councillor briefing on 11<sup>th</sup> February;
  - All Councillor meeting with the preferred bidder on 18<sup>th</sup> March;
  - Two drop-in sessions for Councillors on 10<sup>th</sup> and 25<sup>th</sup> April;
  - All Councillor meeting with the preferred bidder aimed at new Councillors on 8<sup>th</sup> May.
- 3.10 Since Annual Council several further actions have taken place to inform Councillors before a full Council decision is made. These included:
- Flowchart showing Councillors' formal decision making process in site designs and transfer (Appendix D);

- Leader and Chair of PRED meeting with Morgan Sindall Investments Limited;
  - Contract review by Leader and Chair of PRED;
  - Assurance report from East of England Local Government Association produced (Appendix E);
  - Councillors' risk review session held on 19<sup>th</sup> June;
  - Risk Q&As provided to Councillors (Appendix F);
  - Detailed risk report produced (Appendix G);
  - Addition of 2 Non-Executive Directors added to the JV board.
- 3.11 The joint venture board members from SAIL's side will be Steve Summers (Interim Chief Executive), Chris Leslie (Executive Director of Commercial Services) and Phoebe Barnes (Deputy Sector 151 Officer). These board members will also have support from relevant experts where required.
- 3.12 Following Council approval to award the contract and subsequent issuing of the award notice there will be a 10 day standstill period. Contracts can not be signed during this period and the unsuccessful bidder has the opportunity to challenge the decision.
- 3.13 The specialist consultants who have supported the process are:
- East of England Local Government Association (EELGA)
  - 31ten Consulting (Financial & Procurement Lead)
  - Sharpe Pritchard (Legal Advisors)
  - Montague Evans (Property Advisors)
  - J C Gill and Co Limited (Programme Support)
- 3.14 Following evaluation of the final tenders in accordance with the approved criteria a Preferred Supplier has been selected. Council approval is required to formally award the contract and enter into the suite of contracts to deliver the project along with appropriate financing and delegation to ensure effective operation.
- 3.15 An indicative timetable of the activities that will occur following the approval to award the contract is provided in Appendix H.

### **Scoring Methodology and Evaluation of Final Tenders**

- 3.16 Bidders submissions were evaluated based on their responses to 11 detailed questions. The evaluation questions were approved by full Council on 21 March 2018 along with the scoring criteria. An overview of the questions and available marks are reproduced in the following table:



| Question No. | Question Heading                                 | Tier 1     | Tier 2     | Tier 3     |
|--------------|--|------------|------------|------------|
|              | <b>Price</b>                                     |            |            |            |
| <b>1</b>     | <b>Commercial Offer:</b> Overall Financial Offer | <b>40%</b> | <b>80%</b> | <b>60%</b> |
| <b>2</b>     | <b>Commercial Offer:</b> Assumptions             |            |            | <b>40%</b> |
| <b>3</b>     | <b>Commercial Offer:</b> Funding Proposal        |            | <b>20%</b> |            |
|              | <b>Quality</b>                                   |            |            |            |
| <b>4</b>     | Scheme Concept and Design                        | <b>60%</b> | <b>30%</b> |            |
| <b>5</b>     | Programme  |            | <b>25%</b> | <b>40%</b> |
| <b>6</b>     | Planning Strategy                                |            |            | <b>30%</b> |
| <b>7</b>     | Skills and Capabilities                          |            |            | <b>30%</b> |
| <b>8</b>     | Partnership Approach                             |            | <b>20%</b> |            |
| <b>9</b>     | Legal: Partnership Agreement                     |            | <b>13%</b> | <b>77%</b> |
|              | Legal: Framework Agreement                       |            |            | <b>23%</b> |
| <b>10</b>    | Social Value                                     |            | <b>7%</b>  |            |
| <b>11</b>    | Third Party Specialists                          |            | <b>5%</b>  |            |

- 3.17 Each question was evaluated by a panel of assessors that included both Council officers and specialist consultants. Moderation sessions with the panels were held by an independent moderator from Sharpe Pritchard to ensure a single robust score was agreed for each question. Scores for each question were awarded on a scale of 0-5 in accordance with the approved evaluation criteria. The final scores for each bid were calculated from the weighting of marks for each question in accordance with the above table.
- 3.18 Attached at Appendix A is the table showing the final score of each of the Final Tenderers. Morgan Sindall Investments achieved the highest score, and on this basis in accordance with the procurement exercise is the preferred bidder.
- 3.19 Commercial income estimates have been included in the budget setting process for 2019/20 and the forecast period, of which it is anticipated the JV will contribute. A summary of this budget is included in the following table:

| <b>Policy Initiatives</b>              | <b>2019/20<br/>£'000</b> | <b>2020/21<br/>£'000</b> | <b>2021/22<br/>£'000</b> |
|--|--------------------------|--------------------------|--------------------------|
| Commercial Income/Wholly owned Company | 800                      | 1,130                    | 1,330                    |

- 3.20 A framework agreement was also created as part of the procurement (appendix C). This allows other authorities listed in the agreement to enter into a similar arrangement with Morgan Sindall Investments without the needs to undertake their own procurement. Authorities wishing to access the framework are required to pay the Council a £10,000 fee plus 0.075% of the gross development value of works built as a result of the agreement. The advantages of the framework are that it allows the authorities to progress at pace without having to run a procurement, removes some of the risks associated with the process and is likely to be cheaper than running their own procurement exercise.

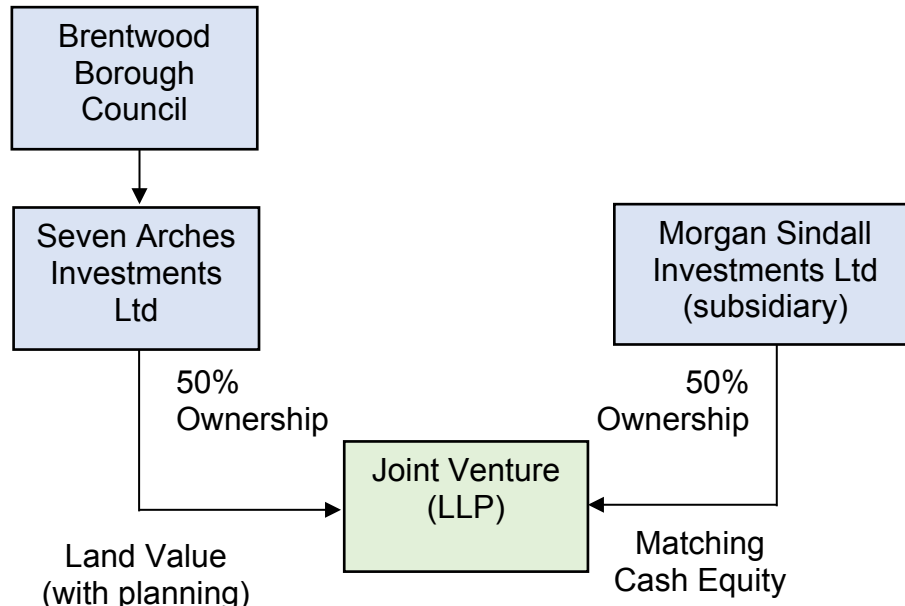
#### **4. Development Sites**

- 4.1 As reported to Council in March 2018 there are three initial sites that will be put forward to the Joint Venture to have site development plans worked up under the agreement. Those sites are:
- William Hunter Way Car Park
  - Maple Close Garage Site
  - Westbury Road Car Park
- 4.2 It is anticipated that the Joint Venture will develop further Council sites as well as undertake acquisitions and development of non-Council owned property. On 19<sup>th</sup> September 2017 the Policy, Projects and Resources Committee was informed of the assets considered as part of the asset challenge and triage process. The findings from this process will assist the identification of future sites with the assistance of the Joint Venture partner.
- 4.3 Site development plans are required to be approved by both Joint Venture partners which will contain a variety of information such as the site design, disposals, management strategy and projected financials.
- 4.4 Where a site is transferred into the Joint Venture it will do so with the benefit of planning permission. As such the Council will benefit from both the full uplift in land value and a 50% share of development profits. The

JV will be responsible for obtaining planning permission and the risks associated with this are borne by the JV.

## 5. Joint Venture Governance

- 5.1 A “development vehicle” will be required to allow the partnership to operate. This will be through a new, separate private entity set up as a Joint Venture owned 50% by the Council’s wholly owned subsidiary (Seven Arches Investments Ltd) and 50% by a wholly owned subsidiary of the partner. This and similar models are already used by a number of local authorities and public agencies in the UK to bring forward major development on their land, where those authorities do not have the investment capacity and skills to achieve the best possible outcomes without a partnership approach of this kind. A Joint Venture development vehicle can combine Council land with private investment and expertise while maintaining an appropriate degree of Council control over the pace and quality of development. It can also potentially give the Council a long term income stream as well as capital returns, which will be reinvested in accordance with the Council’s statutory functions, on social and economic benefits or on other Corporate Plan objectives.



- 5.2 The Joint Venture will be established as a Limited Liability Partnership (LLP). An LLP is used as this is the most tax efficient option and follows legal and financial advice. Seven Arches Investments Ltd (SAIL) will have three representatives nominated to the Board (the same number as the partner). The operational aspects of the Joint Venture will be carried out by the partner, reporting and accountable to the JV board.

- 5.3 Morgan Sindall Investments Ltd will partner with the JV company via a subsidiary specially created for this purpose. There will be two parent company guarantees in place: one between SAIL and Morgan Sindall Group PLC under the terms of which Morgan Sindall Group PLC will guarantee the obligations of its subsidiary in respect of its Membership to the JV and, secondly, one between Morgan Sindall Group PLC and the JV as employer under the terms of which Morgan Sindall Group PLC will guarantee the obligations in relation to the works being undertaken. This ensures the Council's liability is protected.
- 5.4 The Localism Act 2011 allows local authorities to do anything an individual can do. However, section 4 of the Act requires that any activity that has a commercial purpose must be undertaken through a company. The use of SAIL provides the Council with additional benefits including financial flexibility to fund the initial cost of development and limiting liability.
- 5.5 Due to tax, funding, liability and administration advantages there would be subsidiaries created under the Joint Venture. These do not affect the 50:50 control and allows the effective operation of the partnership.
- 5.6 One of the purposes of partnering is to take advantage of the partner's resources and expertise. All works and services procured by the JV are required to be procured in accordance with the procurement policy agreed by the partners on an open book basis. This ensures best practice, the demonstration of value for money and appropriate market testing is undertaken, all of which is subject to independent verification. The procurement policy has been competitively tested through the procurement process.
- 5.7 The Council will also benefit from the Pre-emption Agreement, which gives the Council first refusal on assets sold by the Joint Venture. This will include affordable housing and other residential properties and potentially commercial units.
- 5.8 A suite of legal documents has been prepared to govern the operation of the Joint Venture which include:

Key Agreements:

Partnership Agreement  
Framework Agreement

Ancillary Agreements:

Master Development Management Agreement

Investment Agreement  
Parent Company Guarantee (works)  
Parent Company Guarantee (membership)  
Site Option Agreement  
Form of Lease  
Form of Land Transfer  
Pre-emption Agreement

Loan related Ancillary Documentation:

Private Sector Partner Loan Note Instrument  
Land Matching Loan Note Instrument  
Running Costs Loan Note Instrument  
Development Subsidiary Loan Note Instrument  
Investment Subsidiary Loan Note Instrument  
Private Sector Partner Security Agreement  
Council/SAIL Security Agreement  
Development Subsidiary Security Agreement  
Investment Subsidiary Security Agreement  
Inter Creditor Deeds

## **6. Funding**

- 6.1 The Joint Venture partner will bring the resources and expertise to source and secure all the funding required to deliver and manage each development undertaken by the JV alongside the matched equity commitment from SAIL, using the most cost effective and efficient funding solutions. The JV will be funded through a mix of equity, senior debt lending and forward funding, with the key principle being to minimise the JV's peak capital requirements and thus improve the Return on Capital Employed.
- 6.2 The JV will adopt a strategy that minimises the amount of partnership capital invested in the developments through:
- Forward funding – for build to rent and affordable housing, reducing the sales and market risk and reducing the capital employed by each partner;
  - Securing of senior debt – up to 65% Loan to Cost where there is an appropriate cost of borrowing;
  - Utilising grant/Government sources of funding – this may include infrastructure funding if this is available for the sites.
- 6.3 With regard to sourcing senior debt, to ensure the most competitive funding terms and value for money the JV will manage and make use of a funding competition on each occasion that senior debt is required. The

final selection of funders will be made jointly. The Council will also have the ability to provide secured senior debt to the JV. This is advantageous because the Council will be able to lend at a margin increasing the returns from the JV rather than paying costs to a third party.

- 6.4 Morgan Sindall has a proven track record in raising senior debt and other forms of funding with long established relationships with a range of debt providers, having worked with them for many years. They have delivered funding solutions across a broad range of asset classes, market conditions and commercial structures, including the 2007 credit crunch and consequential market turbulence.
- 6.5 The Partnership Agreement (Appendix B) sets out the proposed Loan Note Security arrangements with the loan notes issued by the JV to its partners in support of its financial obligations secured against the development. Where external loan finance is utilised the external loans will be made available on the basis of good lending practices and also recognising prevailing market conditions at the time. The exact nature of the security will depend upon the nature of the development, the risks involved and also the duration of the development. External financing will take repayment priority over the equity of the JV partners.
- 6.6 Based on the peak funding requirements for both equity and senior debt identified in the procurement against the current financial model, a funding facility of up to £60m at any one time has been requested. This will ensure funding is in place for the JV to commence operations and for the Council to be in a position to benefit from the opportunity to provide senior debt. The loan facility may need to be adjusted depending on the actual developments that come forward and associated business plans.

## **7. Long Term Benefits**

- 7.1 The JV will deliver social value directly through its activities but also through its supply chain (i.e. the JV's contractors, their supply chains and the JV's consultants where possible). To ensure ambitions are met, it will:
  - a) Appoint a Social Value Champion to manage, monitor and report progress;
  - b) Generate a set of Social Value Targets for each scheme that will be linked to the build cost or value of professional fees and industry benchmarks (e.g. National Skills);
  - c) Use a Social Value Charter for each member of the supply chain to sign confirming their support for the JV's social value ambitions;

- d) Identify and work with Social Value Stakeholders to assist the Champion with achieving the Social Value Targets;
- e) Specify Social Value in the Tenders in a way that can be scored;
- f) Develop and use a set of Social Value Contract Clauses to use in agreements with the development supply chain with clear monitoring processes;
- g) Develop and use Social Value Monitoring Forms and Systems;
- h) Use a Social Value Calculator to monetise the outcome.

7.2 Support for local SMEs and social enterprises will be delivered by a mixture of financial (e.g. buying goods and services) and advisory support. This could include:

- i. Promote and deliver meet-the-buyer events at local venues for each scheme/ batch of schemes, inviting local SMEs and Social Enterprises and advising them of the value, type and timing of opportunities and how to compete for and win work;
- ii. Advertise opportunities locally in local press and on the JV's webpage;
- iii. Reserve contracts for social enterprises, meeting with them to find out capabilities and capacities;
- iv. Provide pro-bono support, by donating staff time to social enterprises and local SME start-ups (e.g. professional advice and support for community benefit projects)
- v. Use Social Value Targets and Contract Clauses to ensure the JV's development supply chain deliver on social value commitments.

7.3 Targeted recruitment from disadvantaged groups and communities will be through the JV supply chain. Working with specialist social enterprises such as TrAC, Catch 22 and local stakeholders, groups to target can be identified and engagement methods arranged. In addition to these employment initiatives, support for communities through community benefit projects will also be another potential benefit. Apprenticeships and jobs for local people will also be created as a result of the developments.

7.4 It is anticipated that the JV will develop homes and affordable housing for the Borough. The developments will be shaped by the Council and the possibility of on-going control through retained assets and site management will ensure active involvement in the future. This could include events in community spaces managed under the JV.

7.5 The partner will work with the Council to identify a future pipeline of sites that will produce a sustainable revenue stream. This will include working with the Project Board and Corporate Asset Management Group. With a partner in place the Council has the opportunity to progress regeneration, development and social housing projects at pace with expert support.

## **8. Reasons for Recommendation**

- 8.1 Council approval is required to award a major contract.

## **9. References to Corporate Plan**

- 9.1 This fits with the Council's Transformation Vision, to explore new income generating ideas and opportunities and vision for Economic Development.

## **10. Implications**

### **Financial Implications**

**Name & Title: Jacqueline Van Mellaerts, Director of Corporate Resources**

**Tel & Email: 01277 312 829**

**[Jacqueline.vanmellaerts@brentwood.gov.uk](mailto:Jacqueline.vanmellaerts@brentwood.gov.uk)**

- 10.1 The financial implications are referred to in the main body of the report. Council staff have worked closely with the Council's strategic financial advisors for the procurement exercise and have been involved at every appropriate opportunity. On 19<sup>th</sup> September 2017, members were advised anticipated set up costs in taking forward an asset development programme were to be up to £2m – £3m. As at March 2019 the Council has spent approximately £612k which has been funded from the Council's Organisational Transformation Reserve.
- 10.2 The Council's Medium Term Financial Plan was approved at Full Council on 27<sup>th</sup> February, and as stated in 3.15 of the above report, it is expected that the JV will contribute towards the anticipated savings of the Council's budget which will be incorporated into SAIL's business plan.
- 10.3 Site development plans are required to be approved by both Joint Venture partners which will contain a variety of information such as the site design, disposals, management strategy and projected financials. Business Plans will be worked through for each scheme which will incorporate all this aspects.
- 10.4 As stated, based on the peak funding requirements for both equity and senior debt identified in the procurement against the current financial model, a funding facility of up to £60m at any one time has been requested. This is advantageous for the Council as it will be able to lend at a margin, increasing the returns from the JV rather than paying the



costs to a third party. This funding facility will be reviewed at each request and the appropriate risks considered in consultation with Group Leaders. The Council is not required to provide senior debt, if it does not feel appropriate to do so. However, the Council's Treasury Management Strategy will need to be amended in order to be able to provide this facility.

#### **Legal Implications**

**Name & Title:** Daniel Toohey, Head of Legal Services and Monitoring Officer

**Tel & Email:** 01277 312 860 daniel.toohey@brentwood.gov.uk

- 10.5 Legal implications are referred to in the body of this report. The Council must ensure that it complies with procurement requirements including the Public Contracts Regulations 2015, and its Constitution (Contract Standing Orders). The Council must also comply with further legislative requirements including when trading and in relation to corporate governance; Legal Services have worked closely with external legal advisors to maintain compliance and will continue to do so.

#### **11. Appendices to this report**

- Appendix A (exempt) – Evaluation Scores
- Appendix B (exempt) – Partnership Agreement
- Appendix C (exempt) – Framework Agreement
- Appendix D – Formal Decision Making Flowchart
- Appendix E – EELGA Report
- Appendix F (exempt) – Risk Q&As
- Appendix G (exempt) – Detailed Risk Report
- Appendix H – Initial Activities

#### **Report Author Contact Details:**

**Name:** Chris Leslie – Executive Director of Commercial Services

**Telephone:** 01277 312500

**E-mail:** christopher.leslie@brentwood.gov.uk

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## **Appendix A – Evaluation Scores**

### **EXEMPT / CONFIDENTIAL**

NOT FOR PUBLICATION by virtue of the likely disclosure of information exempt under para. 1 and 3 of Part 1 to Schedule 12A to the Local Government Act 1972, namely information relating to any individual and information relating to the financial or business affairs of any particular person (including the Council).

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## **Appendix B – Partnership Agreement**

### **EXEMPT / CONFIDENTIAL**

NOT FOR PUBLICATION by virtue of the likely disclosure of information exempt under para. 1 and 3 of Part 1 to Schedule 12A to the Local Government Act 1972, namely information relating to any individual and information relating to the financial or business affairs of any particular person (including the Council).

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## **Appendix C – Framework Agreement**

### **EXEMPT / CONFIDENTIAL**

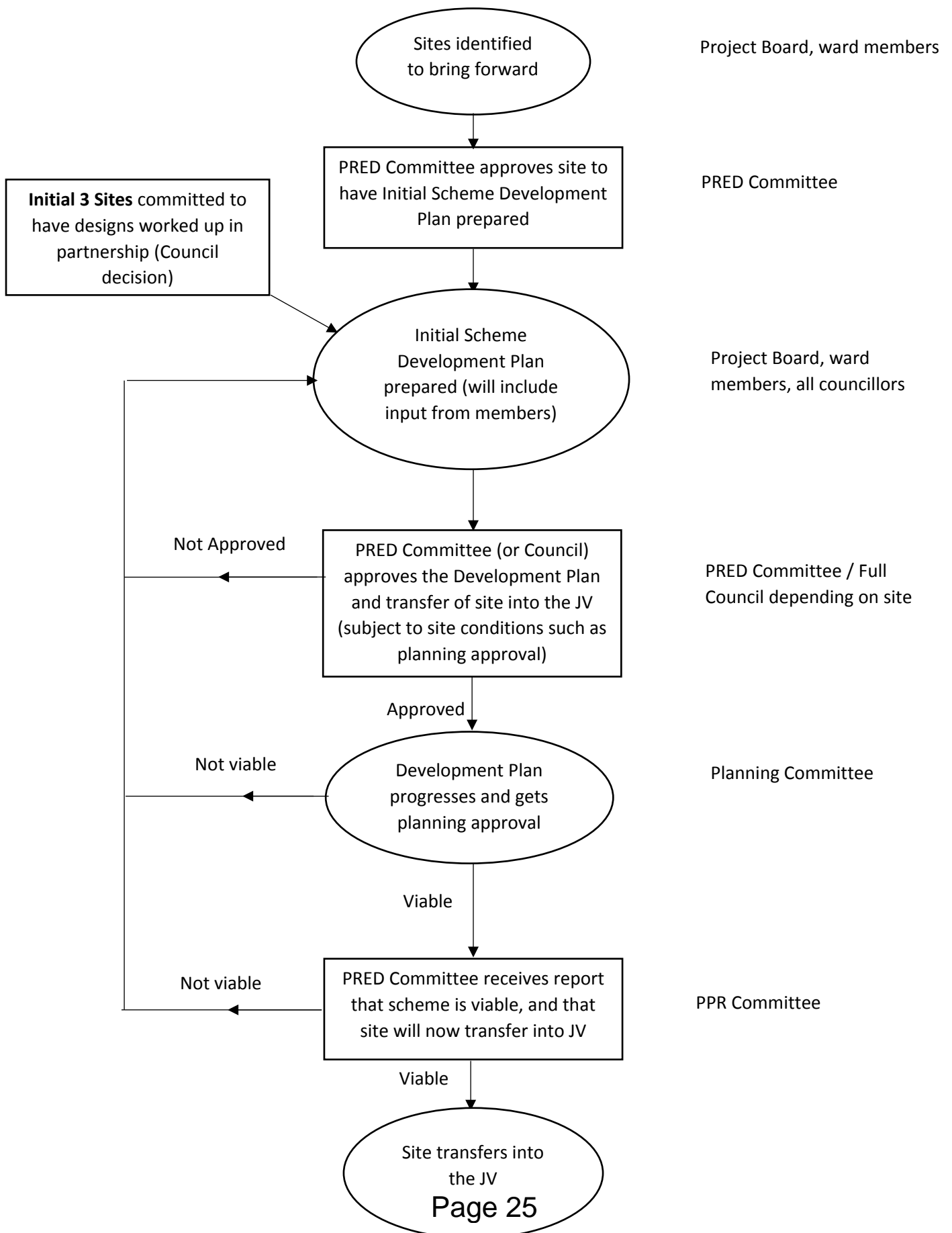
NOT FOR PUBLICATION by virtue of the likely disclosure of information exempt under para. 1 and 3 of Part 1 to Schedule 12A to the Local Government Act 1972, namely information relating to any individual and information relating to the financial or business affairs of any particular person (including the Council).

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# Appendix D Site Transfer Formal Decision Making Process

## Member input



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## **Brentwood Borough Council – Asset Development Programme East of England Local Government Association Review Report June 2019**

### **Background**

The East of England LGA (EELGA) has supported Brentwood Borough Council (BBC) since the inception of its project to redevelop a number of sites across the Borough. This report summarises EELGA's role in the project. It also reviews and reflects on the Council's use of external experts, its overall governance of the project and on the process followed.

### **Role of EELGA**

In early 2017 EELGA was invited by BBC's Chief Executive to advise how the Council might best approach its ambition to make a number of assets work more effectively for the Borough and produce better returns for the Council and its residents .

Following a formal proposal EELGA was procured in March 2017 to work with the Council in a 7-step process to help drive forward this agenda. These steps were detailed as follows:

- Step 1 – Establishing the objectives of the programme.
- Step 2 – Establishing the assets in scope / asset triage process / site data audit
- Step 3 – Understanding site planning position
- Step 4 – Site Option Appraisals / development appraisals
- Step 5 – Review, discuss and stress test this provisional development programme, with the Council,
- Step 6 – Develop options for delivery of the programme.
- Step 7 – Conduct soft market testing / review delivery options to determine the programme delivery route.

These steps were successfully completed by the Council with EELGA's support by the end of 2017.

As a result of this process and after an extensive engagement with the market through soft market testing the Council determined that it favoured securing a long-term development partner on a joint venture basis as the means of best realising its ambitions.

The East of England LGA's proposal had proposed an 8<sup>th</sup> step as follows:

- Step 8 (if required) – Advise on procurement of delivery agent/s, as determined above, and assist with their management depending on the delivery route or routes selected.

Since this stage had now been reached it triggered EELGA to make a further formal proposal to provide advice and support to assist with the actual procurement phase of the project. This resulted in EELGA being appointed to carry out the lead strategic and financial support role.

The financial role was responsible for advising on the financial elements of every decision. For example, these elements included the viability of the project, how financial elements of the procurement would be assessed and the inter-relationship between price and quality. This also

involved generating a bespoke financial model for the project, to assess programme viability, and a separate one for the procurement to assess bidders' price offering. Essentially there were 3 main stages that EELGA now assisted with going forward:

- **Pre-Procurement Support**
  - Interpretation of results of First Stage of work (i.e. steps 1-7 above)
  - Undertaking resource planning for the Preferred Approach
  - Developing scope of procurement of partner
  - Site Options / Preparation
- **Procurement Support**
  - Developing procurement approach / documents:
    - Selection Questionnaire – to assess and pre-qualify bidders for the procurement, including an assessment of historic performance on similar projects and financial assessments.
    - Descriptive Document – setting out the Vision and Objectives of the Council, within a prospectus that the market will see showing what the Council is trying to achieve and laying out the headlines of the procurement.
    - Specification – to articulate the Council's requirements, providing a detailed scope of works / specification that the Council is seeking from its partner.
    - Evaluation Criteria – setting out how potential partners will be evaluated. These criteria explain the balance between price and quality in this assessment and set out the types of quality questions to be asked, ranging from questions about the skills and capabilities of its potential partner, to its approach to planning, and from scheme design through o partnership approaches.
    - Scoring mechanisms – a technical approach to how questions are scored in order to shortlist bidders and eventually select the preferred partner.
  - Undertake Procurement:
    - Conduct "Competitive Dialogue" which typically takes between 6 and 12 months, depending on a number of factors, ranging from the stages utilised within the procedure to the level of Dialogue. It requires Dialogue sessions with bidders and marking and moderation of responses in stages across the timetable:
    - Selection Questionnaire stage – all bidders assessed and 5 are selected to proceed to Detailed Solutions
    - Detailed Solutions stage – 5 bidders are taken through the process. Three rounds of dialogue are held with bidders at this stage. 3 bidders are selected to proceed to Final Tender
    - Final Tender stage – 3 bidders are taken through the process. Three rounds of dialogue are held with bidders at this stage. 1 preferred bidder is selected.
- **Post Procurement Support**
  - Optimise Contract
  - Once the preferred bidder has been selected there is then a period to optimize and finally sign the contract. Typically, this entails a period of 2 to 3 months with support from the team to ensure the finalised contract is in line with the procurement and that the legal documentation effectively captures the arrangements.
  - Handover / Mobilisation Support

### **Use of External Experts**

Throughout the 2-year programme BBC has, in EELGA's opinion, been very careful to engage suitably qualified and experienced experts to guide it and assist with this complex procurement. These personnel supplemented the work of BBC's own internal project team. (N.B. It is noteworthy that the Council put in place and maintained throughout the process a high-level dedicated officer team with the necessary skill sets and behaviours to manage a complex project successfully).

In terms of external support BBC benefited from taking on board a contracted property expert (Chris Gill) who was able to co-ordinate and link all the external inputs with the internal team and Members.

BBC also appointed very experienced specialist external legal support (Sharpe Pritchard) to supplement its own high-calibre internal legal resource to help develop the procurement documentation and manage and oversee the detailed procurement process itself.

In addition BBC appointed EELGA and endorsed its engagement and use of a specialist market leading financial and joint venture consultancy practice, 31ten Consulting, to carry out the extensive business case development and the financial modelling and appraisal work as part of EELGA's strategic and financial adviser role. The role of 31ten Consulting was crucial in helping the Council deliberate and work through the many options it had in how to approach the market. For example its consultants, together with EELGA, helped the Council explore different options ranging from simple development agreements and contracts through to self-development options. This thorough evaluation process enabled the Council to ascertain its risk and reward appetite and eventually to decide that a long-term joint venture approach, sharing risks and rewards equally with a partner, would optimise its position and best secure its objectives.

Other specialists were also usefully brought in as necessary at key stages to assist with appraisal during the procurement – for example Montague Evans for property advice in scoring bids and moderating.

### **Governance**

BBC established very sound governance arrangements for this project.

Its leading Members played an active and very positive role in steering, challenging and overseeing the project from inception. Similarly the Chief Executive and his top management team played an equally engaged, active role. The close working relationship between Members and officers and flow of information together with appropriate "check and challenge" sessions was all very beneficial to the process.

Furthermore, as mentioned above, BBC established a very strong, well-resourced dedicated project management team who exhibited total professionalism and commitment to the project and the Council's aims.

### **Reflections on Process / Due Diligence**

EELGA has been associated with many complex property related procurements and asset programmes and is aware of their challenges and potential problems.

In its view this particular exercise has been pursued with scrupulous care and diligence by all concerned and the Council has pursued a very thorough process.

BBC invested in high quality external advisers and ensured it benefited from their experience and advice. The Council also maintained strong governance arrangements to challenge and steer the project.

The Council spent sufficient time 'up front' to work out its objectives and approach, and importantly its approach to risk and reward, and this laid the foundation for the procurement itself. It also put considerable time and resource into carrying out a detailed soft market testing exercise over several days (with noteworthy participation by the Deputy Leader on behalf of Members and the Chief Executive) and into exploring all the market options (as outlined above) before entering into procurement. This helped to ensure its overall approach was sound and that the market was ready to respond positively.

The procurement process itself was very thorough involving a detailed competitive procurement process over some 10 months and conducted with due care and diligence.

All of these factors combined will have helped ensure that BBC has achieved the best result it could in the market at this time in seeking a suitable long-term asset development partner to deliver its agreed objectives.

End

## **Appendix F – Risk Q&As**

### **EXEMPT / CONFIDENTIAL**

NOT FOR PUBLICATION by virtue of the likely disclosure of information exempt under para. 1 and 3 of Part 1 to Schedule 12A to the Local Government Act 1972, namely information relating to any individual and information relating to the financial or business affairs of any particular person (including the Council).

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## **Appendix G – Detailed Risk Report**

### **EXEMPT / CONFIDENTIAL**

NOT FOR PUBLICATION by virtue of the likely disclosure of information exempt under para. 1 and 3 of Part 1 to Schedule 12A to the Local Government Act 1972, namely information relating to any individual and information relating to the financial or business affairs of any particular person (including the Council).

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# Appendix H

## Indicative Timetable of the Joint Venture's Initial Activities

| Date                       | Activity  |
|----------------------------|---|
| 30 <sup>th</sup> July 2019 | <ul style="list-style-type: none"> <li>• Council approval given to award the contract;</li> <li>• Name of JV chosen.</li> </ul>   |
| August - October 2019      | <ul style="list-style-type: none"> <li>• Contract signed following standstill period;</li> <li>• First JV Board meeting;</li> <li>• Recruitment of Non-Executive Directors (NEDs) commences;</li> <li>• Set up Brentwood Office;</li> <li>• Set up systems;</li> <li>• Create JV branding and website;</li> <li>• Ensure appropriate staff are in place;</li> <li>• Work up site design stakeholder engagement process in consultation with Councillors;</li> <li>• Commence stakeholder engagement on site designs (inc Councillors and community groups);</li> <li>• Identify further surveys/studies that are required (e.g car parking &amp; traffic);</li> <li>• NEDs selected;</li> <li>• Second JV Board meeting and appointment of NEDs.</li> </ul> |
| October – December 2019    | <ul style="list-style-type: none"> <li>• Plan local 'meet the supplier' events;</li> <li>• Develop and approve the Social Value Method Statement;</li> <li>• Identify further suitable sites for the JV;</li> <li>• Continue stakeholder engagement and begin preparation of site development plans for the existing sites.</li> </ul>  |

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## **Members Interests**

Members of the Council must declare any pecuniary or non-pecuniary interests and the nature of the interest at the beginning of an agenda item and that, on declaring a pecuniary interest, they are required to leave the Chamber.

- **What are pecuniary interests?**

A person's pecuniary interests are their business interests (for example their employment trade, profession, contracts, or any company with which they are associated) and wider financial interests they might have (for example trust funds, investments, and asset including land and property).

- **Do I have any disclosable pecuniary interests?**

You have a disclosable pecuniary interest if you, your spouse or civil partner, or a person you are living with as a spouse or civil partner have a disclosable pecuniary interest set out in the Council's Members' Code of Conduct.

- **What does having a disclosable pecuniary interest stop me doing?**

If you are present at a meeting of your council or authority, of its executive or any committee of the executive, or any committee, sub-committee, joint committee, or joint sub-committee of your authority, and you have a disclosable pecuniary interest relating to any business that is or will be considered at the meeting, you must not :

- participate in any discussion of the business at the meeting, of if you become aware of your disclosable pecuniary interest during the meeting participate further in any discussion of the business or,
- participate in any vote or further vote taken on the matter at the meeting.

These prohibitions apply to any form of participation, including speaking as a member of the public.

- **Other Pecuniary Interests**

Other Pecuniary Interests are also set out in the Members' Code of Conduct and apply only to you as a Member.

If you have an Other Pecuniary Interest in an item of business on the agenda then you must disclose that interest and withdraw from the room while that business is being considered

- **Non-Pecuniary Interests**

Non –pecuniary interests are set out in the Council's Code of Conduct and apply to you as a Member and also to relevant persons where the decision might reasonably be regarded as affecting their wellbeing.

A 'relevant person' is your spouse or civil partner, or a person you are living with as a spouse or civil partner

If you have a non-pecuniary interest in any business of the Authority and you are present at a meeting of the Authority at which the business is considered, you must disclose to that meeting the existence and nature of that interest whether or not such interest is registered on your Register of Interests or for which you have made a pending notification.

## **Extraordinary Council Terms of Reference**

Business at extraordinary meetings of the Council shall be restricted to the following:

- (a) to appoint a Member to preside at the meeting if neither the Mayor nor the Deputy Mayor are present and able to preside;
- (b) to receive apologies for absence from Members;
- (c) to receive any declarations of interest from Members and Officers;
- (d) to consider any business set out in the notice convening the meeting;
- (e) to consider any matter which, by reason of special circumstances to be specified in the minutes of the meeting, the Mayor considers should be considered at the meeting as a matter of urgency.

No other business will be transacted.

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