

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.

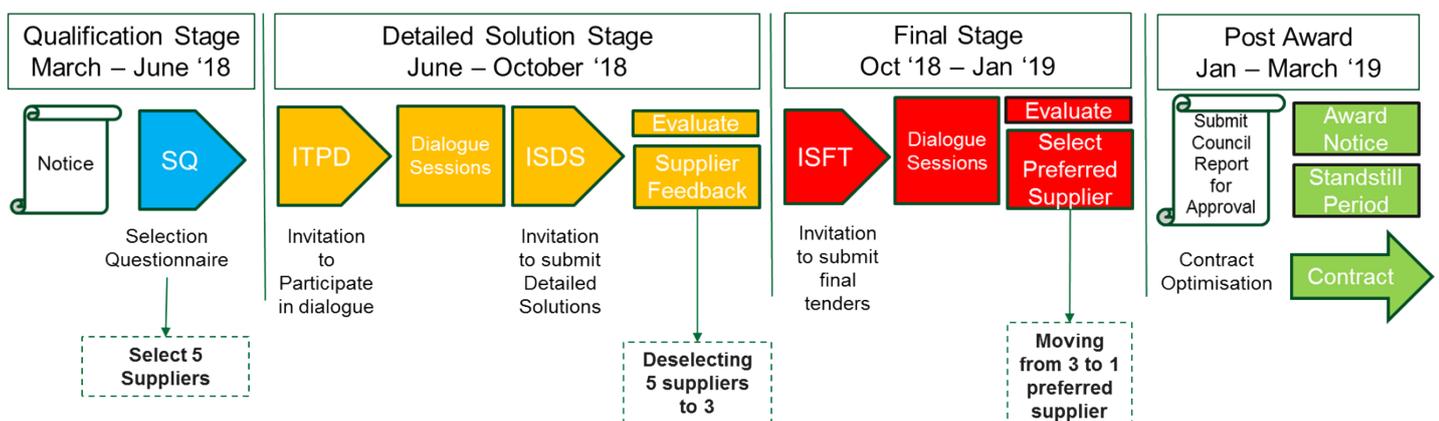
2. Recommendation(s)

- 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 11th February;
 - All Councillor meeting with the preferred bidder on 18th March;
 - Two drop-in sessions for Councillors on 10th and 25th April;
 - All Councillor meeting with the preferred bidder aimed at new Councillors on 8th 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 19th 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 affective 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
Price				
1	Commercial Offer: Overall Financial Offer	40%	80%	60%
2	Commercial Offer: Assumptions			40%
3	Commercial Offer: Funding Proposal		20%	
Quality				
4	Scheme Concept and Design	60%	30%	
5	Programme		40%	
6	Planning Strategy		25%	30%
7	Skills and Capabilities		30%	
8	Partnership Approach		20%	
9	Legal: Partnership Agreement		13%	77%
	Legal: Framework Agreement			23%
10	Social Value		7%	
11	Third Party Specialists		5%	

- 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:

Policy Initiatives	2019/20 £'000	2020/21 £'000	2021/22 £'000
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 19th 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.

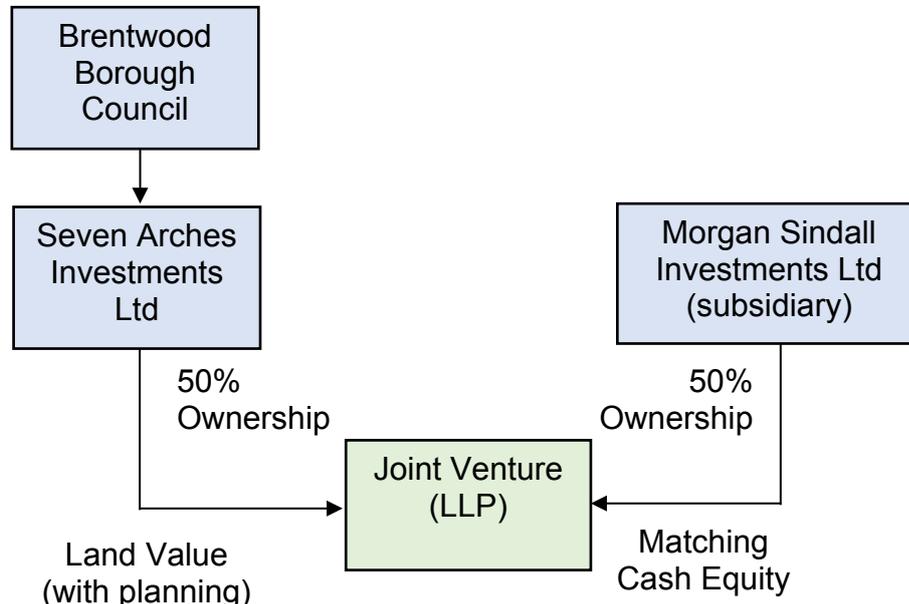
4.3 Site development plans are required to be approved by both Joint Venture partners which will contain a variety of information such as the site design, disposals, management strategy and projected financials.

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

- 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 19th 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 27th 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