

**HERTFORDSHIRE COUNTY COUNCIL**

**CABINET**

**MONDAY, 19 MARCH 2018 AT 2.00PM**

**HERTFORDSHIRE COUNTY COUNCIL –  
APPOINTMENT OF JOINT VENTURE PROPERTY DEVELOPMENT  
PARTNER**

*Report of the Director of Resources*

Author: Mike Evans, Head of Estates Management

Executive Member: David Williams, Leader of the Council (as responsible for the Resources, Property and the Economy portfolio)

**1. Purpose of report**

- 1.1 To provide Members with an update on the outcome of the final stage of the Competitive Dialogue relating to the appointment of a joint venture property development partner.
- 1.2 To enable Cabinet to consider the award of the contract to the wholly owned subsidiary company (“Devco”) of the Preferred Bidder as set out in the Part 2 report to be the Joint Venture (JV) partner that will enter into a joint venture with Herts Living Limited (HLL).
- 1.3 To provide Cabinet with the corporate structure for the JV and routes for investment and land transfer.
- 1.4 To provide Cabinet with the Delegation Matrix for HLL, the amended Articles of Association for HLL and an update on the HLL Member Advisory Group, which are set out in the Appendices.

**2. Summary**

- 2.1 Cabinet has previously considered reports relating to this matter, on 13 March 2017, 10 July 2017 and 18 December 2017, and approved the process through which the County Council have selected the Preferred Bidder in line with an EU compliant procurement process and also agreed the creation of HLL.
- 2.2 This report summarises the final stage of the Preferred Bidder process to confirm the detail of the offer and contractual terms, specifically the corporate structure of the JV partnership between the DevCo, the Preferred Bidder and HLL.

- 2.3 This report also seeks approval to award the contract to the DevCo as a wholly owned subsidiary company of the Preferred Bidder and agreement for the proposed Articles of Association and Delegations Matrix for HLL.
- 2.4 The identity of the Preferred Bidder and DevCo will be made public once the contract award letter has been issued and the required standstill period under the EU procurement rules has expired.
- 2.5 The tender exercise set out twelve initial development opportunities as seen in Appendix 1. These sites have been declared surplus by the County Council and are currently to be taken forward via the Joint Venture.
- 2.6 This report is supported by more detailed information which is exempt under Part 1 of Schedule 12A to Local Government Act 1972 (as amended), which is contained in the accompanying Part 2 report.

### **3. Recommendations**

- 3.1 The Resources, Property & the Economy Cabinet Panel will consider a report on this item of business at its meeting on 15 March 2018. The Panel will be asked to recommend to Cabinet the following:

*3.1.1. "That Cabinet:*

- i. authorises the award of contract to DevCo as a wholly owned subsidiary company of the Preferred Bidder subject to a Parent Company Guarantee from the Preferred Bidder, in accordance with the procurement process, that leads to the formalisation of the partnership between Herts Living Limited and the Preferred Bidder, subject to the award of the contract not occurring until full Council has agreed the recommendation referred to in xi below.*
- ii. approves the delegation matrix for Herts Living Limited, as set out in Appendix 2, and notes that any changes to the Delegations Matrix will be in accordance with the delegations set out within that document.*
- iii. approves the amended Articles of Association for Herts Living Limited, as set out in Appendix 3.*
- iv. approves the County Council entering into the Initial Sites Option Agreement between the County Council, Herts Living Limited and the Joint Venture LLP (as detailed in section 12 of this report) the terms of such documents to be agreed by the Director of Resources, in consultation with the Leader of the*

*Council (as responsible for the Resources, Performance & the Economy portfolio).*

- v. *authorises the Director of Resources, in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio) to finalise all arrangements, to make any other decisions as are necessary and agree other documents (including the Parent Company Guarantee from the Preferred Bidder) necessary for the County Council to conclude the arrangements in the Recommendation 3.1.1.i*
- vi. *confirms that the Director of Resources has authority to act as the shareholder representative for the County Council regarding Herts Living Limited, and has authority to authorise the Directors of Herts Living Limited to enter into a contract and create the Joint Venture partnership with DevCo as a wholly owned subsidiary company of the Preferred Bidder, including all the required legal documents and such other documents required to enable the setting up of the Joint Venture partnership (as detailed in section 12 of this report).*
- vii. *delegates to the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio), as representative shareholder for County Council authority to formalise the composition and structure of the HLL Member Advisory Group.*
- viii. *notes the proposed corporate structure of the Joint Venture Partnership and the routes (set out in section 6 of this report) of how the County Council will transfer land for development to Herts Living Limited or the Joint Venture Partnership, and delegates to the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio), authority to implement the corporate structure of the Joint Venture Partnership and to utilise the routes for investment and the transfer of land for development to Herts Living Limited or the Joint Venture Partnership, (subject to such land being determined as surplus to requirements in accordance with the County Councils Constitution and identified by the County Council as available to Herts Living Limited or the Joint Venture Partnership).*
- ix. *notes that the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio), will develop with the*

*Managing Director of Herts Living Limited the required Business Plan for Herts Living Limited, which will be presented to Cabinet at a later date to agree the terms.*

- x. delegates to the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio), authority to agree and provide a loan to Herts Living Limited in the sum of £325,000, on terms that are acceptable to the Director of Resources in consultation with the Chief Legal Officer with regards the legal documentation required.*
- xi. recommends that full Council approve a limit of £50m for non-treasury investments to cover the arrangements required in accordance with the routes for investment and land transfer (set out in section 6), as required by Ministry of Housing Communities & Local Government statutory guidelines and to be included in a revised Treasury Management & Investment Strategy.*
- xii. delegates (subject to full Council agreeing to recommendation xi) authority to the Director of Resources in consultation with the Leader of the Council (as responsible for the Resources, Performance & the Economy portfolio), to agree and provide loans to Herts Living Limited to fund the purchase of equity in the Joint Venture on terms agreed by the Chief Legal Officer.*

3.2 The Panel's recommendation/s to Cabinet will be reported orally at the Cabinet meeting and circulated to Members in the Order of Business sheet.

#### **4. Background**

4.1 In March 2017, Cabinet gave approval to carry out the procurement process to identify a Joint Venture development partner to assist the County Council, through a wholly owned subsidiary (now established as Herts Living Ltd), in the development of 12 initial sites owned by the County Council. The OJEU process proceeded through autumn/summer 2017.

4.2 Officers completed the evaluation of final tenders submitted as part of the procurement process and on 18 December 2017 Cabinet agreed (amongst other recommendations/decisions) the selection of the Preferred Bidder, and delegated to the Director of Resources, in

consultation with the Leader of the Council (as responsible for the Resources, Performance & Economy portfolio), to enter into discussions with the Preferred Bidder with a view to clarifying, specifying and optimising aspects of the Preferred Bidder's final tender (including but not limited to project governance, sites to be developed, phasing, financial profile and communications) and to confirm commitments contained in the final tender to be in a position to award the contract to the Preferred Bidder.

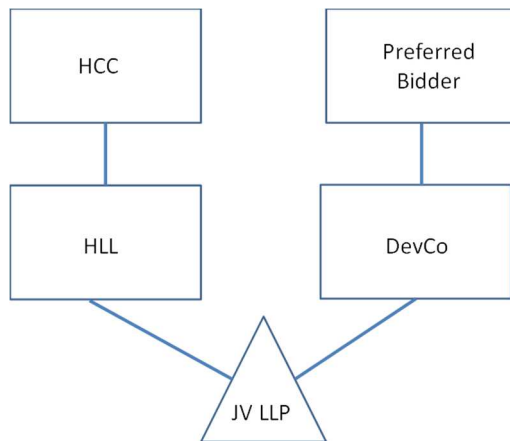
- 4.3 The County Council is now in a position to:
- 4.3.1 award the Contract to DevCo and for HLL to enter into the Joint Venture, which will allow each party to participate in the property development of selected sites, and to share equally in the development profits. The proposed terms of the Joint Venture are set out in Section 12 of this report, and these will be contained in the Partnership Agreement to be entered into by the parties.
  - 4.3.2 bring forward property development opportunities and to realise improved financial returns over the long term, which may be achieved via disposal of surplus land and assets (subject to compliance with the County Council's Constitution with regards to disposal and declaring such land/assets surplus to requirements).
  - 4.3.3 agree the amended Articles of Association (Appendix 3) and the composition of the Delegations Matrix (Appendix 2), for HLL (details of which are set out in section 7).
- 4.4 Cabinet requested that the Business Plan for HLL be referred to Cabinet to consider and agree. The Director of Resources will develop the Business Plan for HLL with the Managing Director of HLL, in consultation with the Directors of HLL, and recommended to the Shareholder Representative.
- 4.5 This proposal provides enhanced capital receipts and a share of developers profit compared with traditional disposal to the market. These benefits are considered sufficient to outweigh the potential risk from fluctuations in the property market.

## **5. The Procurement Process**

- 5.1 All elements of the procurement process were robust and transparent and complied with the Public Contracts Regulations 2015 (PCR 2015), as set out in the report to Cabinet on 18 December 2017.
- 5.2 The final stage of the procurement process leading to contract award is described as the Preferred Bidder stage. The purpose of this stage enables discussion between the County Council and Preferred Bidder in which the final tender may be clarified, specified and optimised at the request of the County Council in accordance with the PCR 2015. The County Council may also initiate negotiations with the Preferred Bidder to confirm financial commitments or other terms contained in the tender, provided that this:
- Does not have the effect of materially modifying essential aspects of the tender, and
  - Does not risk distorting competition or causing discrimination
- 5.3 The County Council has complied with the requirements set out in 5.2 with regards the Preferred Bidder stage, leading to the recommendation to enter into contract with DevCo with the appropriate Parent Company Guarantee from the Preferred Bidder.

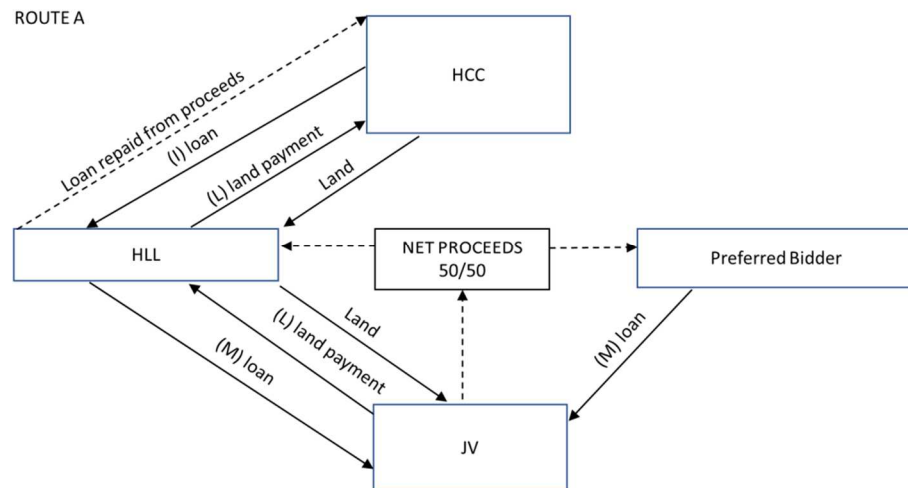
## **6. Key outcome from Preferred Bidder stage**

- 6.1 Preferred Bidder discussion has enabled the County Council to confirm the corporate structure through which to create the Joint Venture partnership. Based on legal advice received the 50/50 Limited Liability Partnership (“LLP”) corporate structure is appropriate and is consistent with the offer from the Preferred Bidder. This position has minimised the need for any contract adjustments to the legal suite of documents included as part of the tender.
- 6.2 The 50/50 corporate structure will deliver a 50/50 split of development profit to DevCo & HLL. It comprises a joint venture LLP owned equally by HLL and DevCo, as wholly owned by the Preferred Bidder, as shown in the diagram below. Stamp duty (SDLT) is payable on the transfer of land to the JV, with 50% relief. Profits made within the JV on the development and sale of assets will be passed in equal shares to HLL and DevCo (as wholly owned subsidiary of the Preferred Bidder, where they will be subject to corporation tax. The net profit can then pass to County Council as a dividend. The corporate structure is shown below:



- 6.3 HLL and the Preferred Bidder will contribute equity with the value of 35% of the land and development costs in the JV, each providing an equal share. The remaining 65% of costs will be met from external borrowing by the JV.
- 6.4 Legal advice from Counsel has indicated that, to meet S123 best consideration requirements, best consideration reasonably obtainable for the land must be received at the point of transfer, as cash, loan or loan note. Interest will be charged on any loan or loan to HLL by the County Council so that the County Council is no worse off than if it had received the whole receipt when the land was transferred. The County Council cannot itself invest directly in the JV, as the JV is operating for commercial gain.
- 6.5 There are a number of routes to meet these requirements, all of which result in the same outcome: at the time of transfer of the land the County Council receives best consideration reasonably obtainable for the land. Offsetting this, HLL is provided with the required equity for the investment via a loan arrangement between the County Council and HLL. These loans will be unsecured, although the eventual land values and development profits are projected to exceed the loan value
- 6.6 These alternative routes are:
- a) Land transfer via HLL, funded by loan:
    - The County Council advances a loan to HLL on commercial terms (to meet State Aid requirements) for the value of the land,
    - HLL purchases the land from the County Council for best consideration reasonably obtainable in accordance with s123 requirements at the date of disposal.
    - HLL then immediately sells the land on to the JV for the land value less HLL's equity share.

- This payment from the JV is used to part repay the loan provided by the County Council, leaving an outstanding balance equal to the equity share.
- This will be repaid when the developed properties are sold and equity is repaid to HLL.



Key:

- (I) loan = the loan from HCC to HLL which must be repaid in full plus interest.
- (M) loan = a matched loan of the same value from each partner (HLL and Preferred Bidder) to introduce sufficient equity into the joint venture to enable development
- (L) payment = full “Red Book Valuation” consideration for the land, as provided by an independent RICS valuer.

b) Land transfer via HLL, funded by loan note:

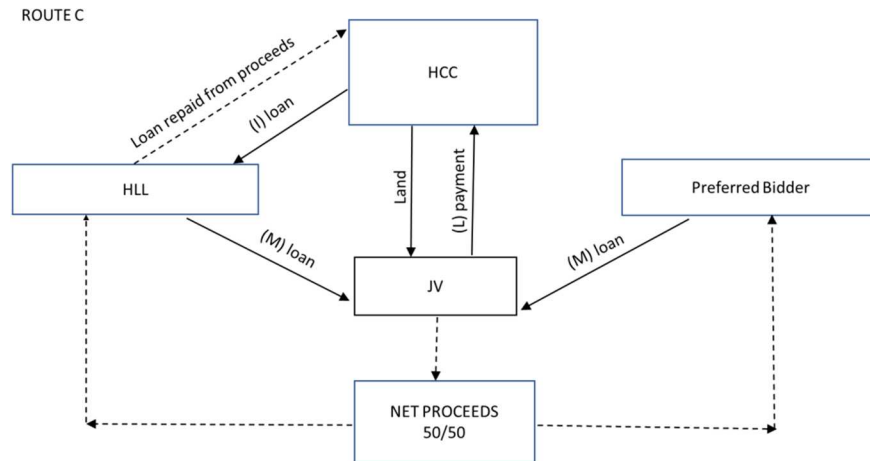
- Land transfers to HLL, who provide a loan note to the County Council for the land value, (best consideration reasonably obtainable),
- Land transfers from HLL to JV,
- JV pays value above equity to HLL, who part pay the loan note to the County Council,
- Balance of loan note will be paid when the properties are sold and equity is repaid to HLL.

c) Land transfer directly from County Council to JV:

- County Council advances to HLL a loan of the equity required for the development,



- HLL invest equity in the JV,
- The JV then purchases the land, paying the County Council best consideration reasonably obtainable in accordance with s123 requirements at the date of disposal.
- Loan will be repaid by HLL when the properties are sold and equity is repaid to HLL.



Key:

- (L) loan = the loan from HCC to HLL which must be repaid in full plus interest.
- (M) loan = a matched loan of the same value from each partner (HLL and Preferred Bidder) to introduce sufficient equity into the joint venture to enable development
- (L) payment = full “Red Book Valuation” consideration for the land, as provided by an independent RICS valuer.

6.7 These arrangements have been considered from legal, tax and accounting perspectives, informed by external specialist legal, tax and treasury management advisers. All are compliant for section 123 and have equal risk position. Cabinet is requested to delegate to the Director of Resources the final arrangements for any loan / loan note or transfer of land between the County Council and the JV, as appropriate for each site or circumstance (as per recommendation *xii*)

6.8 The joint venture LLP and land transfer mechanisms have been evaluated for sites where land is being developed to provide dwellings for sale, at a profit. For some developments, this model may not be appropriate – for example where assets are being developed for

service delivery or other non-commercial use. Alternative models include (but where applicable will be subject to further reports to Cabinet in accordance with the County Councils Constitution):

- The County Council as direct partner in a JV LLP, where development can be demonstrated to be for regeneration or other non-commercial purposes – no corporation tax would be payable
- An alternative commercial arrangement, where the County Council obtains its profit share as an overage (usually as enhanced capital receipt).
- Direct development by the County Council (for non-commercial purposes) or HLL (for commercial development)

The choice of model will be subject to specialist advice and any proposals will go through the County Council's normal approval processes.

- 6.9 The County Council reserves the right not to use the JV LLP structure, and to seek other avenues for developing or disposing of the County Council's land. The arrangements with DevCo, the Preferred Bidder and the County Council also clearly set out this right.
- 6.10 The loan arrangements for the equity investment will be classified as non-Treasury, 'other investments' under latest statutory guidance from MHCLG. These include loans made by a local authority to one of its wholly-owned companies or associates, to a joint venture, or to a third party. From 1 April 2018, authorities are required to set a self-assessed limit on the value of such investments, and to include various disclosures in their Treasury Management or Investment Strategies.
- 6.11 The financial model for the first 12 sites to be developed by the JV requires a loan to fund HLL's equity contribution. These will be capital loans, required to be treated as capital expenditure. Similar loans would be required were HLL to undertake direct development.
- 6.12 As set out in Appendix 4, Cabinet are asked to recommend to County Council that for 2018/19 an upper limit of £50m is set for such investments. This, along with necessary disclosures on credit risk, will be included in a revised Investment Strategy to be brought to County Council as required, once full guidance is available.

## **7. Herts Living Ltd**

- 7.1 The Delegations Matrix, attached as Appendix 2 sets out at what level decisions can be made within HLL by the Managing Director and other

Directors on behalf of HLL only, and what decisions (that will be inherently more significant in nature) will need to be referred to the County Council as shareholder. The Delegations Matrix will be reviewed by the Council's shareholder representative and Board of Directors of the Company at the annual general meeting of HLL, or more frequently if desired by the shareholder representative.

- 7.2 On 10 July 2017, Cabinet delegated to Director of Resources to exercise the rights of the County Council as shareholder including attending and voting at meetings, and requesting the directors of HLL to take or refrain from taking action, as shareholder representative ("Shareholder Representative"). The Shareholder Representative is the first point of contact for the Directors on matters that require the consent of the County Council under the Delegation Matrix. Sitting above the Shareholder Representative will be a HLL Member Advisory Group, which will be comprised of elected members and also the Shareholder Representative (see below). The HLL Member Advisory Group will provide oversight and guidance in accordance with the Delegations Matrix attached as Appendix [2].
- 7.3 In line with accepted practice, HLL adopted the model articles of association on a temporary basis from incorporation of the company. The model articles of association are not suitable for a company in the long term that is wholly owned by a local authority and a revised set of articles has been prepared that reflects the fact that the company is wholly owned by the County Council. The Articles of Association were also revised to allow the incorporation of the Delegations Matrix referred to in section 7.1. The County Council retains an appropriate level of control of HLL through a provision in the Articles of Association that provides that it has the ability to instruct the directors to take, or to refrain from taking, any specified action.

## **8. Legal Structure**

- 8.1 The terms of the Joint Venture agreement will allow HLL and the DevCo & Preferred Bidder to work together to bring forward sites for development. The legal structure permitting the joint working relationship will consist of a number of agreements with an overriding Partnership Agreement in place setting out the mechanisms upon which the Partnership will assemble the land, develop the asset and share the receipts.

- 8.2 In respect of the disposal of the land, the County Council must meet its duty under section 123 of the Local Government Act 1972, to secure best consideration reasonably obtainable and valuation advice will be sought to ensure this is the case for each specific disposal.
- 8.3 As set out in the previous reports to Cabinet, the County Council created HLL using its powers under section 1 of the Localism Act 2011, which provides the “general power of competence” (GEPOC) which permits the County Council to do any activity which an individual may do, for a commercial purpose subject to such being through a company, hence the creation of HLL. The JV partnership will be in the form of a LLP between HLL and the Preferred Bidder, which is within the County Council’s powers for HLL.
- 8.4 The County Council is empowered to advance HLL by way of a loan/loan notes by virtue of its powers of investment under s12 Local Government Act 2003 and the general power of competence under s1 of the Localism Act 2011. S12 of the Local Government Act 2003 permits the County Council to make investments (in this case by way of a loan) for the purpose of the prudential management of its financial affairs (the wider remit of the project being the increased financial returns available from entering in to the JV than would otherwise be the case). This power is supplemented by the general power of competence contained in s1 of the Localism Act 2011, which provides that a local authority has the power do the same things that an individual may do, which would include making loans.
- 8.5 Under each route, sums advanced by the County Council to HLL for the purpose of making HLL’s investment into the JV for each site (by way of direct loan or by the issue by HLL of loan notes) could be secured by way of a legal charge over the relevant site(s). if a third party lender is required to provide funding to the JV LLP, that relevant lender will likely insist on taking a charge over the land. Providing in each case there is sufficient land value to allow for it, the County Council will have security for its own lending to HLL to fund the investment into the JV. In a scenario, where the bank and the County Council have security over the same land, the bank will likely require the County Council to enter into a deed of priority that sets out on a contractual basis the ranking of security (the bank security taking priority over the County Council’s). The County Council’s security would be effective unless a situation arises where the bank enforced its own loan, the land value had dropped (or the anticipated land value had not been achieved) and there was no longer enough value in the land to repay both the bank and the County Council.

## **9. Financial Implications**

- 9.1 Specialist tax advisors have confirmed the suitability of the proposed LLP structure outlined in section 6 for the initial projects involving development of dwellings for sale. The Council's Treasury Management advisors have provided guidance on the accounting treatment of the land transfers and how the funding fits within the Council's Treasury Management and Capital Strategies.
- 9.2 Other structures have been considered but are not suitable for the initial housing projects, for legal or commercial reasons. However they may be suitable for future projects, and so will be considered as these are developed.
- 9.3 Given the scale of the development and the complexity of the delivery mechanisms, specific tax advice will be sought for individual sites as appropriate to address site or project specific issues. Cash flows for funding and profit distribution will be mapped and the tax liabilities for each stage will be considered.

## **10. The EU procurement position**

- 10.1 The County Council has benefited from a very competitive EU procurement process and the evaluation process established the most advantageous tender, based on a 40:60 price/quality split. It would not be lawful to award to a bidder other than the Preferred Bidder who has been selected following rigorous assessment against the predetermined procurement criteria. The alternative to the award of contract is, therefore, to abandon the procurement which would lead to substantial wasted procurement costs, and require an alternative long term strategy to be established.
- 10.2 There are no grounds to delay the decision to award to the Preferred Bidder. To do so would delay the proposed benefits to the County Council, it would have a negative impact on the County Council's reputation and the credibility of its procurement process.

## **11. Share Certificate and Loan**

- 11.1 The County Council will be the registered holder of one thousand, seven hundred and fifty ordinary fully paid up shares of £100 each in HLL (giving HLL a share capital of £175,000).
- 11.2 On completion of its investment in HLL, the County Council will be issued with a share certificate that evidences its shareholding. In addition, the County Council will be providing a loan to HLL in the sum of £325,000, on terms that are acceptable to the Director of Resources and Chief Legal Officer and agreed with the HLL Board of Directors.
- 11.3 HLL can be financed through a mix of equity (raising funds through the issue of shares in the company), and debt (a loan). In determining the value and purchase of the shares and provision of a loan/loan note, the requirements with regards to State Aid have been taken into account, ensuring that any financing the County Council makes to HLL is done at arm's-length commercial terms and in line with market practice. The County Council has considered the balance of debt to equity (i.e. its gearing). The gearing of HLL should be representative of a similar market participant/competitor. There will be no State Aid where it can be demonstrated that the gearing is in line with what would be expected under normal market economy conditions: the so-called Market Economy Operator Principle (MEOP). The Council has considered this and determined that 65% of the financing coming by way of debt and 35% by way of an equity investment will be in accordance with MEOP, and will ensure that the loan/loan note is on terms compliant with MEOP too.

## **12. Legal documents**

- 12.1 As part of the procurement process, bidders were required to submit a developed suite of legal documents that accurately reflected their financial model and wider submission. The summary below sets out the key documents to be signed at completion that form part of the Preferred Bidder's proposal, the signatories to these documents and some commentary on their purpose and key provisions.

Document	Signatories	Purpose and key provisions
LLP Partnership Agreement	(1) HLL (2) DevCo (3) JV LLP	<p>The partnership agreement regulates the relationship between HLL and the DevCo as a wholly owned subsidiary of the Preferred Bidder and captures the commercial arrangement in contractual form. The key provisions included are:</p> <ul style="list-style-type: none"> <li>• The agreement of the objectives of the JV.</li> <li>• Identifying the potential development models that can be utilised, being joint development (to be used on most sites), direct development and land promotion.</li> <li>• Procurement of works and services by the JV.</li> <li>• The development and agreement of the JV business plan.</li> <li>• Financing the JV and contractually binding the Preferred Bidder via DevCo to their financial proposal.</li> <li>• Monitoring JV progress.</li> <li>• The distribution of profits and losses in the JV.</li> <li>• Management and control of the JV, including setting out the reserved matters requiring the consent of both HLL and Preferred Bidder.</li> <li>• Provisions dealing with conflicts of interests and how these situations are resolved</li> <li>• The process for identifying and dealing with deadlock situations.</li> <li>• Termination of the JV and wider exit arrangements.</li> </ul>
Initial Sites Option Agreement	(1) County Council (2) HLL (3) JV LLP	<p>This agreement governs the process of transfer of the land from HLL (or the County Council) to the JV LLP for it to develop. Under the agreement, the JV LLP is granted an option to acquire the Initial Sites. Key provisions include:</p> <ul style="list-style-type: none"> <li>• The option granted by the County Council/HLL to the JV LLP will come into effect at signature.</li> <li>• The JV LLP will then use reasonable endeavours to satisfy the site conditions that have been set out in the relevant scheme development plan, a document that will be agreed between HLL and the Preferred Bidder in relation to each Initial Site. The JV LLP will not be able to call on its option before the site conditions are satisfied. The conditions to be satisfied include obtaining planning permission, agreeing the business plan for the site, obtaining suitable funding, obtaining all necessary consents and it passing a viability test.</li> </ul>

Document	Signatories	Purpose and key provisions
Development Management Agreement	(1) JV LLP (2) Preferred Bidder	<p>Under this agreement, the JV LLP will at completion appoint the Preferred Bidder to manage the developments and provide certain services to it. Preferred Bidder shall be contractually bound to provide these services to the JV LLP with reasonable skill and care and to take such actions as are to be expected of a properly qualified, experienced and competent property development manager. Briefly, the services to be provided are:</p> <ul style="list-style-type: none"> <li>• Running the JV on a day-to-day basis</li> <li>• Pre-construction services</li> <li>• Construction and sales services</li> <li>• Any additional services relating to an alternate model in the case of a direct development or land promotion site.</li> </ul> <p>In consideration for these the JV LLP will pay certain fees to Preferred Bidder for the services provided to it.</p>
Parent company guarantee	(1) Preferred Bidder (2) County Council	<p>As the DevCo is being used to enter into the JV LLP is a newly-incorporated vehicle, the Preferred Bidder is agreeing to guarantee the obligations of the Preferred Bidder under the partnership agreement.</p> <p>This parent company guarantee ensures that the County Council can rely on the more robust financial covenant offered by the Preferred Bidder.</p>

12.2 The documents described above contain the key provisions governing the relationship between HLL and the Preferred Bidder. Further legal documents will be entered into by HLL, which include:

- The loan note instruments that set out the terms of the loan notes issued by the JV LLP to each of HLL and Preferred Bidder;
- The forms of transfer and of lease to be used upon the call down by the JV LLP of the initial sites once the site conditions have been satisfied;
- Detailed heads of terms in relation to situations where the joint development model is not utilised and one of the direct development or land promotion models are adopted;
- Agreements that govern the development of a site that has been agreed by both parties as being a community project.

12.3 These documents are largely either mechanical in nature (e.g. the loan note instruments and the forms of transfer) or are agreements that will



be negotiated between the parties in greater detail as and when they are required.

### **13. Risk**

- 13.1 Given the substantial financial sums of money involved and the reputational impact that property development can have, risk registers at the County Council, Herts Living Limited and the joint venture vehicle will be maintained. At present the County Council has a live and up to date risk register for the project.
- 13.2 The main risk to the County Council in entering into the joint venture arrangement is the uncertainty of income flowing back to the County Council given the volatility of the property market; this is at least partially mitigated by the beneficial location of Hertfordshire, the relative stability of the County's property market and the operational flexibility that is available under the proposed routes. It is considered that the joint venture will provide greater certainty on land value income, as well as the County Council's share of developer's profit. The governance arrangements will ensure robust financial forecasting and delivery obligations are adhered to.

### **14. Equalities Implications**

- 14.1 When considering proposals placed before Members it is important that they are fully aware of, and have themselves rigorously considered the Equality implications of the decision that they are making.
- 14.2 Rigorous consideration will ensure that there is a proper appreciation of any potential impact of that decision on the county council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to read and carefully consider the content of any Equality Impact Assessment (EqIA) produced by officers.
- 14.3 The Equality Act 2010 requires the County Council when exercising its functions to have due regard to the need to: (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership;

pregnancy and maternity; race; religion and belief, sex and sexual orientation.

- 14.4 As property developments come forward full equality implications of the decisions are taken account of through local planning policy compliance.

#### Background Information

- *Cabinet Agenda 10 July 2017*  
<https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/516/Committee/8/SelectedTab/Documents/Default.aspx>
- *Cabinet Agenda 13 March 2017*  
<https://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/509/Committee/8/SelectedTab/Documents/Default.aspx>
- *Cabinet Agenda 18<sup>th</sup> December 2017*  
<http://cmis.hertfordshire.gov.uk/hertfordshire/Calendarofcouncilmeetings/tabid/70/ctl/ViewMeetingPublic/mid/397/Meeting/656/Committee/8/Default.aspx>

## **Appendix 1**

The initial sites selected for the procurement exercise are:

1. Former Day Centre and Adjacent Property, South Oxhey (0.56 ha)
2. Former Meriden School Site Harvest End, Watford (0.18 ha)
3. Ariston Centre Heathlands, St Albans (2.63 ha)
4. Land fronting Dark Lane Dark Lane, Cheshunt (1.81ha)
5. Former Elderly Persons Home, Cheshunt (0.51ha)
6. Former Wormley School Site St Laurence Drive, Wormley (0.42ha)
7. Former Elderly Persons Home, Welwyn Garden City (0.25 ha)
8. Former Lonsdale School Former Lonsdale School Retained Land, Stevenage (2.02 ha)
9. Former Lannock School Whiteway, Letchworth (2.18 ha)
10. Former Elderly Persons Home, Letchworth (0.31 ha)
11. Land at Waterbeach Bericot Way, Waterbeach, Welwyn Garden City (0.71 ha)
12. Land at Bury Green Road Land at Bury Green Way, Cheshunt (3.78 ha)