

# SCARBOROUGH BOROUGH COUNCIL

Town Hall  
Scarborough  
YO11 2HG

Date 08 November 2022

**To: Members of the Cabinet**

Dear Councillor

**Cabinet - Tuesday, 15 November 2022**

Please find attached the following report which was not available when the agenda was circulated:

- 9.** Better Homes - use of Council owned land to accelerate the delivery of quality affordable homes and social value through a Joint Venture development partnership (Pages 1 - 120)

To consider the report of the Director (RB) (reference 22/232) attached

Yours sincerely


*St John Harris*

St John Harris  
Democratic Services Manager

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- 1.**
- 2.**

## NOTES

 <b>SCARBOROUGH</b> BOROUGH COUNCIL	<b>REPORT TO CABINET TO BE HELD ON 15<sup>th</sup> November 2022</b>
<b>NOT FOR PUBLICATION - This report contains exempt or confidential information:</b>  <b>APPENDIX 2</b> <b>APPENDIX 3</b>	<b>Key Decision: YES</b>  <b>Forward Plan Ref:</b>
<b>Corporate Aims</b> <b>Better Lives, Better Homes, Better Places, Brighter Futures</b>	<b>Cabinet Portfolio Holder:</b>  <b>Cllr Liz Colling,</b> <b>Portfolio Holder for inclusive Growth</b>  <b>Cllr Carl Maw,</b> <b>Portfolio Holder for Stronger Communities &amp; Housing</b>

**REPORT OF: Commercial Director 22/232**

**WARDS AFFECTED: All**

**SUBJECT: BETTER HOMES – use of Council owned land to accelerate the delivery of quality affordable homes & social value, through a Joint Venture development partnership**

**RECOMMENDATION (S):**

Cabinet is recommended:-

- (i) to note the conclusion of a compliant competitive dialogue process to procure a strategic development partner with whom to establish a Joint Venture housing development partnership, in accordance with the Public Contract Regulations 2015, the Council's agreed procurement objectives and requirements, and the Council's published Award Criteria and Evaluation Methodology; and
- (ii) to note that final tenders from three bidders were received by the Council on 19<sup>th</sup> August 2022, that these tenders were evaluated by the Council's Evaluation Panel in accordance with the Award Criteria and Evaluation

Methodology detailed in the published procurement documents, and that the tender evaluated as being the most economically advantageous was submitted by Lovell Partnerships Limited, who have consequently been identified as the Preferred Bidder; and

- (iii) to note that all bidders have been notified of the identity of the Preferred Bidder in accordance with Regulation 86 of the Public Contract Regulations 2015 and that the statutory standstill period has ended; and

Noting that the following recommendations are each subject to the obtaining of consent from North Yorkshire County Council under the Direction made pursuant to s.24 of the Local Government & Public Involvement in Health Act 2007:-

- (iv) to approve the establishment of a Joint Venture limited liability partnership between the Council and Lovell Partnerships Limited, for the purposes of delivering good quality and environmentally sustainable homes, with a focus on accelerating the provision of affordable housing and generating social value; and
- (v) to give final approval to the disposal of land owned by the Council at Clarence Drive Filey, Musham Bank Eastfield, Sandybed Crescent Scarborough, Pollard Gardens Scarborough, Moor Lane Newby, California Road, Whitby, Rievaulx Road Whitby and Sandsend Road Whitby, to the Joint Venture partnership, further to the in-principle approval given by Cabinet on 29<sup>th</sup> June 2021; and
- (vi) to enter into the contracts and all legal and financial arrangements required to establish and implement the Joint Venture limited liability partnership between the Council and Lovell Partnerships Ltd, to include:-
- Members' Agreement between the Council and Lovell Partnerships Ltd to establish a 50:50 Joint Venture limited liability partnership, on the principal terms set out at Appendix 3 ; and
  - Land Transfer Agreement between the Council and the Joint Venture in respect of the Council owned sites, on the principal terms set out at Appendix 3; and
  - All other agreements and documents contained in the list of documents at Appendix 3, required to implement the commercial arrangements set out in the Members' Agreement and Preferred Bidder's solution,

and to delegate authority to the Chief Executive in consultation with the Leader, the Monitoring Officer, the s.151 Officer and the Project Director, to agree the final detailed terms of the legal contracts, financial instruments and ancillary documents required.

## **REASON FOR RECOMMENDATION(S):**

To enable the Council and the new North Yorkshire Council to act as regional leaders in addressing the failure by the development market to provide sufficient suitable affordable housing, by being proactive in making the most effective use of the Council's landholdings to accelerate the delivery of the well-designed, energy efficient, quality affordable homes that our residents need, both today and for generations to come.

The Joint Venture ('JV') partnership will ensure the provision, at scale and pace, of the right mix of homes to meet evidenced local needs, whilst contributing significantly to the local economy, providing education, skills and employment opportunities to young people, under-represented groups, local tradespeople and SMEs, expediting the advance toward carbon net zero, and driving community benefits at a local and neighbourhood level.

## **HIGHLIGHTED RISKS:**

- A delay in achieving North Yorkshire County Council consent resulting in Lovell Partnerships Ltd electing not to enter into the JV with the Council and choosing to invest elsewhere;
- Cabinet approval not being given to the Council establishing the JV and disposing of the 8 ring-fenced sites to the JV;
- North Yorkshire County Council consent not being given to the Council entering into the contracts required to create the JV and to dispose of the 8 SBC sites to the partnership, meaning the Council would not have the legal power to award the contracts to enter into the JV partnership.

Each of the above risks would result in the Council being unable to utilise private investment, expertise, resources and access to grant funding, in conjunction with the value of its own land, to optimise the numbers of affordable homes available to our residents, resulting in the housing waiting list continuing to grow. The opportunities to maximise design and build quality, to promote environmental sustainability, and to harness the strategic potential of good quality affordable housing to improve the economic profile, health and wellbeing, and aspirational perspective of our residents, would be lost.

- Entering into the JV as a 50:50 development partner activates the Council to new development risks, which are set out in detail in the Risk Register to this report, together with details of the mitigation measures and controls secured by sharing that development risk equally with a similarly incentivised market leading development partner, within the confines of a proven and robust legal partnership model.

## **1. INTRODUCTION**

- 1.1 The development market in Scarborough is failing to deliver against our housing needs, as demonstrated through our Strategic Housing Market

Assessment ('SHMA'). This assessment shows a significant and urgent need for quality housing, both market and affordable, that addresses a broad demographic, including the young economically active, families, and an increasingly ageing population.

- 1.2 The market is delivering smaller, poor quality homes, in limited numbers and at low rates of affordable housing. The SHMA noted that up to 70% of all homes built in the Borough in the last 5 years do not meet Nationally Described Space Standards, ('NDSS'). Waiting lists for social rented housing are increasing, with c.2,000 households registered on North Yorkshire Home Choice, and a mismatch between the types of housing being supplied by the market and the housing needs of those waiting.
- 1.3 The income / house price ratio continues to price ever more residents out of the private market. The proportion of households in fuel poverty is higher in North Yorkshire than nationally, with Scarborough already having the highest percentage in the North Yorkshire area, and the cost of living crisis continuing to intensify exponentially. Our increasingly ageing population also presents significant challenges in meeting the housing needs of our communities, with Scarborough having the highest population aged over 65 in North Yorkshire. Across North Yorkshire, between 2019-2041, the number of people aged 65 and over will increase by 39% and the number over 85 will increase by 110%, creating unique requirements regarding the size, types and tenures of housing required to enable people to stay living within their communities.
- 1.4 In wide ranging public consultation exercises, our residents have told us that there is ***'not enough affordable housing for young people', 'not enough social housing', 'a serious lack of accessible housing (private and social) available for disabled people', and that 'new build housing is not affordable for locals... in a low wage town locals are priced out of the market'***.
- 1.5 The market alone is delivering neither the numbers, nor the types of affordable housing required by our residents, with a compounding lack of progress against the Council's, and the wider York & North Yorkshire region's stated ambitions around environmental sustainability, climate change mitigation and carbon reduction. This market failure shows no signs of abating, as the local development market is largely only active where development is viable and Homes England affordable housing grant can be secured.
- 1.6 The jointly agreed regional devolution priorities recognise the severe demographic, economic and environmental challenges to delivering high quality, affordable homes across the region, stressing that ***"the market alone will not deliver sufficiently high quality affordable homes"***. The York & North Yorkshire devolution bid was clear that:-

***“Current planning and funding mechanisms are not sufficient to address viability-driven downward pressure on affordable housing requirements, particularly against a backdrop of transitioning to zero carbon delivery housing. This means that, without additional investment, we will not be able to maintain supply whilst also providing affordable housing to the levels necessary to meet local need and support the growth and prosperity of our region”***

- 1.7 This failure of the market to deliver is reflected across the districts of North Yorkshire, and recognition that more must be done has been articulated by the Council and the pan-North Yorkshire authorities through the York, North Yorkshire & East Riding (‘YNYER’) Strategic Housing Partnership, comprised of elected Members from each of the North Yorkshire District and County Councils, together with East Riding of Yorkshire Council, City of York Council, Homes England, Registered Providers and other strategic industry stakeholders. The Vision of the Strategic Housing Partnership is:-

***"Enabling more new homes, and for all housing to be of a quality, type and size that meets the needs of our urban, rural and coastal communities and supports economic growth"***

- 1.8 The YNYER Strategic Housing Partnership’s **Housing Strategy Review 2021-2023**, is designed to address the pressing issues existing across the North Yorkshire geography linked to housing affordability, homelessness, decent homes, and carbon reduction, during the period of transitional change through Local Government Reorganisation (‘LGR’) and devolution.

The Review sets out the commitment to ensuring that the housing needs of our residents and communities continue to be met during the LGR transition, and states that the Review is intended to guide housing action and investment, and to set the agreed strategic housing priorities across the area during this period, emphasising that:-

***“it is important that we do not lose momentum during this time of great change... housing affordability remains a key issue”.***

- 1.9 The Council has therefore developed an approach to arrest this market failure and to act as a catalyst for the delivery of increased numbers of quality, environmentally sustainable and affordable homes, delivered at pace and within a long term, strategic place-shaping context. This approach to delivery is through a 30 year 50:50 Joint Venture partnership with private sector housing development partnership specialist, Lovell Partnerships Ltd, (‘Lovell’). The partnership will enable the Council to secure financial investment and development resource and expertise to deliver quality homes at pace, whilst retaining decision making power, sharing development risk with an equally incentivised experienced market leader, and generating a financial return from its land value, which can be reinvested into the delivery of higher numbers and better quality of affordable homes than either the Council, or the market,

could provide in isolation. The proposed JV offers a solution in which the whole is demonstrably greater than the sum of its individual parts.

1.10 The long-term JV partnership approach proposed by the Council, and developed in the solution tendered by Lovell, sets out a clear vision and ambition for change that aligns with the Council's requirements and with wider sub-regional strategic plans. It maximises not only investment into the rapid delivery of more good quality affordable homes to meet the needs of the area's residents, but also secures:-

- critical contributions to education, skills and employment, (particularly in key developing 'green' industries and for groups requiring most support);
- economic growth and investment in local supply chains, local labour and local SMEs;
- significant carbon reduction, climate change mitigation and environmental sustainability measures, through design and social value commitments;
- opportunities for increasing the health, well-being and aspirational achievements of our residents; and
- commitment to the provision of a wide range of community-based social value outcomes.

1.11 Ancillary to its primary purpose of delivering these socio-economic benefits, the financial structure of the partnership approach will also provide to the new North Yorkshire Council a tax transparent commercial return from development, with the long term flexibility for this to be used to reinvest in further affordable housing, or to apply to other general fund purposes.

1.12 This report provides details of: the need for intervention, the partnership arrangements considered and developed by the Council, the procurement process undertaken to select a development partner, details of Lovell's successful tendered solution, and demonstration of how this solution both meets the Council's objectives and requirements, and is strategically aligned with wider, pan-North Yorkshire and regional priorities and action plans.

## **2. CORPORATE AIMS**

2.1 This report recommends the creation of a long term JV housing development partnership between the Council and Lovell. The proposed partnership arrangements provide a wide-ranging, holistic solution that will support the whole spectrum of the Council's Corporate Aims, as detailed below:-

### **Better Homes: A good quality home for all**

We will:-

- Work with our partners such as Registered Providers to ensure high quality, affordable and accessible homes are developed that meet the needs of local residents, including future generations;



- Ensure we have a good mix of homes, a mix of types and tenures including homes that meet the needs of all ages including those with disabilities;
- Further improve our work to prevent homelessness and help vulnerable people to live independently in their homes;
- Develop additional interventions to tackle rough sleeping including additional supported accommodation.

**Better Lives: Happy, healthy, active people:-**

We will:-

- As part of new residential developments, require a contribution towards sports and recreational facilities from developers where appropriate;
- Continue to invest in our community groups to offer a diverse range of opportunities;
- Ensure developments take into account good quality design principles, including 'designing out crime' principles;
- Ensure that our urban environments are well maintained and managed, clean and green;
- Develop new models to support those with complex needs, including people affected by substance misuse and mental health issues.

**Better Places: A clean green and attractive environment to be proud of**

We will:-

- Provide high quality/standards of development through our Development Management Service;
- Ensure that people have access to clean, green active travel options promoting healthy lifestyles, such as cycling and walking;
- Encourage and support healthier and greener options for travel where appropriate, including investing in the environment through provision of electric car charging points;
- Require developers to provide electric car charging points in future developments where parking is provided;
- Work with others to encourage awareness of environmental issues, recycling and litter disposal;
- Incorporate sustainable technology in new developments wherever possible;
- As part of new developments require the provision of quality greenspaces on new developments or a contribution towards improving existing facilities

**Brighter Futures: A Borough where economic growth benefits everyone, where residents are able to develop their skills, and more business and residents benefit from regeneration and investment**

We will:-

- Encourage more investment in the Borough to create employment opportunities for our residents;
- Challenge our assets and utilise Council land to bring forward development to support economic growth;
- Work with partners to identify shared development opportunities;

- Provide business space both for new business start-ups and for businesses to grow;
- Help our residents to get the skills they need to take up the jobs that are created, especially a pathway for younger people from an early age;
- Promote apprenticeships across the Borough;
- Provide opportunities for mentoring and work experience schemes;
- Work with our universities, colleges, schools and businesses to match future business opportunities with the right skills provision and support the promotion of opportunities;
- Work to ensure people have access to good educational and training opportunities;
- Work to ensure there are opportunities to obtain high quality employment, accessible to all;
- Develop skills within in each industry sector;
- Buy goods and services from local business wherever possible;
- Work to secure the maximum possible amount of public sector investment, aimed at 'levelling up' our economy;
- Promote the Borough as a great place to live and work.

2.2 Across the wider North Yorkshire area, the partnership solution also supports the aims of:-

- The York & North Yorkshire devolution priorities around housing and carbon net zero/ negative
- The York North Yorkshire & East Riding Strategic Housing Partnership Review 2021-23;
- The York & North Yorkshire Routemap to Carbon Negative;
- The York & North Yorkshire Skills Strategy 2021-2026;
- The emerging Draft Housing Strategy of the new North Yorkshire Council.

### **3. BACKGROUND AND ISSUES**

3.1 At the inception of the Better Homes programme, having recognised the significant and increasing challenges facing the Borough's residents in accessing quality affordable housing, (detailed in Cabinet reports of May 2020, December 2020, June 2021), the Council agreed a number of strategic objectives to guide its response to these challenges. This enabled the Council to consider the various different delivery models available to it to address these challenges, through a strategic options appraisal, which compared the advantages/ disadvantages of each approach, and assessed each delivery model's ability to meet the Council's strategic objectives.

Through this process, the Council was able to establish, in an impartial and evidence based manner, which model was best able to deliver on the Council's strategic requirements.

## **Key Strategic Objectives leading to choice of delivery model:**

### **Desire to capitalise on external resources, funding and development expertise to deliver affordable housing at the required pace:**

The Council identified that it owned land suitable for housing development, but did not have sufficient internal resource, expertise and access to funding to develop that land ***at the pace required*** to address the significant existing and continually increasing affordable housing demand.

Therefore a form of partnership with the private sector was preferred over direct delivery, to provide access to the additional development resources and funding that could increase the pace of development, whilst allowing the Council to share the development risk and associated rewards with an experienced development partner.

### **Long term decision-making influence:**

Whilst recognising the benefits of drawing on the resources, funding and expertise of the private housing development sector, the Council remained clear of the importance to it, and its communities, of ***retaining an appropriate degree of control*** over development and decision making, throughout the lifetime of any partnership. This was in order to ensure that Council priorities such as quality of development, (design, space standards, accessibility etc.), environmental sustainability, pace of delivery, affordability, place-making, access to increased affordable housing for local people, social value etc., would continue to be given appropriate prominence in any development decisions relating to its land. The Council was clear that it should retain the ability to influence development with an equal say, through a 'seat at the decision making table', for the whole lifetime of the partnership, as opposed to providing land for third party developers to develop according to their own priorities and commercial imperatives, with limited control over outputs for the Council's residents in the long term. This has enabled the Council to put in place mandatory minimum requirements within the partnership arrangements around, e.g., NDSS space standards and environmental requirements in relation to any housing built by the JV.

### **Flexibility:**

It was important to the Council to achieve a long term partnership, with the ability to bring a strategic place-making perspective to a long term pipeline of sites, avoiding piecemeal ad-hoc development and the need for multiple costly and time consuming individual procurement exercises. The delivery model selected also needed to be flexible enough (i) to allow the Council to respond to changes in the market and changes in housing need over the long term; (ii) to be future-proofed in respect of local government reorganisation ('LGR'), enabling successor authorities to use the vehicle if desired; and (iii) to combine the Council's land assets and place-making and economic

development experience with the capital investment, development management expertise and resources available from within the private sector. Any collaborative approach had to provide better outcomes for the Council's residents than either sector could provide in isolation.

### **Financial:**

The Council required the partnership model selected to be financially sustainable, covering its own costs and generating additional returns for the Council which could be reinvested, (entirely at the Council's discretion), to focus on improved quality of homes, (including environmental and energy sustainability measures and space standards), increased quantity of affordable homes and contribution to social value objectives. The Council also needed the selected model to be financially flexible enough to respond to the Council's financial priorities over the long term. The delivery model needed to be able to maximise available grant funding, and to maximise the potential for cross subsidy across a portfolio of sites, enabling less commercially viable sites to be brought forward alongside more commercially attractive sites. The Council wished to be able to share development risk and reward with an experienced development partner, proportionate to its equity, (i.e. land), investment.

A Strategic Options Appraisal, ([available here](#)), was undertaken, supported by a team of external advisors, including strategic, financial, commercial and legal structuring specialists, to establish which delivery structure was best able to meet the Council's agreed strategic objectives noted above.

This recommended the corporate JV limited liability partnership ('LLP') model as being best able to meet the Council's objectives – bringing in external development expertise, resources and funding; enabling true joint decision making throughout the life of the partnership; providing flexibility to add sites and adapt according to market, political or other macro changes during the partnership's lifetime; enabling the generation of a commercial return whilst sharing development risk and reward; and providing the Council with the protections of limited liability and tax transparency.

- 3.2 On 21<sup>st</sup> June 2022, following consideration of a Treasury Green Book Business Case, ([available here](#)), Cabinet approved in principle the creation of a corporate 50:50 JV partnership to deliver the Council's strategic objectives around the acceleration of the delivery of quality affordable homes. Cabinet also approved the commencement of a competitive dialogue procurement exercise to identify an appropriate private sector entity with whom to form a strategic development partnership, subject to a further report being brought to Cabinet at the conclusion of the procurement process. Cabinet also gave in principle approval to the disposal of 8 Council owned sites to the JV.
- 3.3 Between November 2021 and October 2022, officers, supported by a team of external advisors, conducted the competitive dialogue process, with final

tenders being submitted by the shortlisted bidders in August 2022 and evaluation of tenders being completed in early October 2022. Full details of the procurement process and the governance arrangements are contained in **Appendix 1** to this report.

- 3.4 The most economically advantageous tender was identified as having been submitted by Lovell Partnerships Ltd ('Lovell')
- 3.5 Lovell's appointment as Preferred Bidder has been confirmed to Lovell and to the unsuccessful bidders in accordance with Regulation 86 of the Public Contract Regulations 2015.
- 3.6 Under a Direction made as part of the LGR transitional arrangements, and pursuant to s.24 Local Government & Public Involvement in Health Act 2007, ('the s.24 Direction'), Scarborough Borough Council is required to obtain the consent of North Yorkshire County Council, ('NYCC'), prior to entering into contracts with a value over a specified financial threshold. Transactions critical to the establishment and implementation of the JV fall within this scope. Scarborough Borough Council has advised Lovell that the 3<sup>rd</sup> stage of the procurement process – the preferred bidder stage, in which the contracts are refined and optimised prior to contract award - will not be commenced until consent under the s.24 Direction has been obtained, (to protect the Council and Lovell from incurring additional costs until consent has been received). Officers are liaising with NYCC colleagues to arrange for the matter to be considered by NYCC at the earliest opportunity.
- 3.7 Following the granting of consent, arrangements will be put in place between Scarborough Borough Council officers and advisors, Lovell senior officers and advisors, and NYCC colleagues to keep NYCC informed throughout the preferred bidder stage and the refinement of the contracts ahead of contract completion, to ensure a smooth transition to the new Authority in 2023.

## **4. CONSULTATION**

### **4.1 Corporate Plan Consultation**

The public consultation exercise carried out in order to inform the Council's Corporate Plan asked our communities what their priorities were. Our communities told us that affordable, decent housing and tackling homelessness should be high on the Council's agenda, with 90% of all respondents saying that a good quality home for all was 'important or very important' to them. Examples of specific consultation feedback received in relation to the lack of affordable housing in the Borough are included at **paragraph 1.4** above. The Corporate Plan priority 'Better Homes' was developed to respond to these priorities raised by the community.

### **4.2 Overview & Scrutiny Board pre-decision engagement and scrutiny**

Throughout the duration of the project, and the development of the partnership solution, the former Overview & Scrutiny Board and the present

Lives & Homes Overview & Scrutiny Committee have played a significant role in policy development and pre-decision scrutiny, demonstrating clear cross-party support to the objectives and the development of proposals. The input of cross-party members has been instrumental in shaping the project direction and the objectives to be achieved by the proposed JV partnership.

**November 2020 – Development of strategic objectives around affordable housing delivery, in order to inform initial strategic options appraisal to identify the most appropriate approach to housing delivery that would meet the Council’s requirements**

In order to allow for cross party overview and input into this corporate priority, non-executive Members were invited to participate in critical friend challenge, and to engage in policy development, through pre-decision scrutiny at an Overview & Scrutiny Board meeting on 18th November 2020. Overview & Scrutiny Board Members were asked to provide feedback and input into the development of the Council’s strategic objectives, (and their relative importance), in relation to the delivery of affordable housing. The cross-party Members’ feedback was set out in the Cabinet report of December 2020 and the recommendations shaped the objectives approved by Cabinet as the Council’s agreed objectives for any housing delivery approach.

**May 2021 - Pre-decision scrutiny and engagement in relation to the developing Green Book Business Case to examine a shortlist of delivery approaches**

At Cabinet in December 2020, Members considered the strategic options appraisal undertaken against the strategic objectives shaped by the Overview & Scrutiny Board in November 2020, and tasked officers, supported by an external consultancy team, to prepare a Green Book Business case in respect of the two highest scoring delivery options, (corporate joint venture (LLP), and development agreement) and also the ‘status quo’ reference case, simple land sale. A report and presentation was provided to Lives & Homes Overview & Scrutiny Committee on 26<sup>th</sup> May 2021, covering the background and context to the development of the Business Case. The report and presentation summarised the emerging direction of the Business Case, familiarised Members with the proposed JV model being considered through the Business Case, informed Members of the appropriate procurement process to secure a JV partner, and addressed areas of risk and reward. Members of Lives & Homes Overview & Scrutiny Committee were requested to scrutinise the JV delivery model and its ability to achieve the Council’s strategic objectives, to ensure that cross party engagement would inform proposals prior to consideration by Cabinet.

**June 2021 - Pre-decision scrutiny of draft report to Cabinet to approve the corporate JV approach, and to commence a procurement process to identify a private sector development partner**

Lives & Homes Overview & Scrutiny Committee received a copy of the draft report to Cabinet of June 2021, for the purposes of undertaking pre-decision scrutiny and feeding recommendations into Cabinet for consideration.

Recommendations from the Overview & Scrutiny Committee Members that were commended by Cabinet, and were consequently included in the Council's procurement requirements, included exploring options to ensure that any affordable housing created through the project remained affordable in perpetuity, that the project should include opportunities for further environmental enhancements, and that the Lives and Homes Overview & Scrutiny Committee would like to continue to be involved in the project going forward, to assist in future decision making and monitoring the progress and outcomes of the project.

#### **May 2022 – Procedural Milestone update report**

A report was provided to Lives & Homes Overview & Scrutiny Committee at the interim submission stage of the competitive dialogue process to ensure cross-party Members continued to have oversight of the process.

#### **July 2022 – Verbal milestone update report**

A verbal update was provided to Lives & Homes Overview & Scrutiny Committee in July 2022 to provide an update in relation to procedural milestones of the procurement process.

#### **November 2022 – Pre-decision scrutiny of Cabinet report recommending entering into contracts to establish and implement the JV partnership with Lovell**

Lives & Homes Overview & Scrutiny Committee was provided with a copy of the draft of this Cabinet report ahead of its meeting of 4<sup>th</sup> November 2022, for the purposes of undertaking cross party engagement and pre-decision scrutiny.

The Lives and Homes Overview & Scrutiny Committee recommended that:

- (1) the Cabinet looks favourably on the proposals as set out in the report; and
- (2) a clear training and development plan be devised for Members charged with the scrutiny and oversight of the Better Homes Joint Venture Partnership in the new North Yorkshire Council.

#### **4.3 Preliminary Market Engagement and Soft Market Testing**

Wide-ranging pre-procurement market engagement and analysis and soft market testing was carried out to obtain the views of housing market operators, including Registered Providers of Social Housing and housing developers, prior to launching the procurement exercise.

A preliminary market engagement exercise carried out in October 2020 was advertised in the Official Journal of the European Union to ensure exposure to the widest spectrum of the industry as possible. A further soft market testing exercise carried out in April and May 2021 sought the market's views on the Council's further refined proposals, including seeking the market's thinking in relation to the impacts of the proposed LGR. The Council's approach and requirements for the procurement exercise, and the portfolio of ring-fenced SBC sites were welcomed by market operators as being in strategic alignment with their own policies, and modelled within market facing, sensible and achievable parameters. The market considered the risks and opportunities of LGR and advised that the procurement continued to present an attractive proposition, in which the benefits of the proposed partnership could be extended to benefit the wider North Yorkshire area if desired by any new unitary Authority.

The responses to both the October 2020 preliminary market engagement and the May 2021 soft market testing exercise demonstrated a significant appetite and enthusiasm amongst the housing development market to invest and work in partnership with the Council, to jointly fund and deliver the quality homes that our communities need. This gave confidence that commencing a procurement exercise on the basis proposed would result in the identification of a high calibre, appropriately resourced, and strategically aligned partner organisation.

#### **4.4 Scarborough Borough Council Ward Member, All Member, Town Council and Parish Council Briefings**

All Scarborough Borough Council Members and Eastfield, Filey and Whitby Town Councils were provided with a written briefing and Q&A sheet in advance of the commencement of the preliminary market engagement exercise.

A series of further briefing sessions with Ward Members, opened out to all Borough Council Members, and individual briefing sessions with Eastfield, Filey and Whitby Town Councils, and Newby & Scalby Parish Councils were conducted in March & April 2021 to highlight project progress and the initial portfolio of sites being considered for inclusion in any future JV arrangement.

A series of Project Board, Cabinet and Portfolio Holder briefings has been undertaken since the last Cabinet report, in addition to the Overview & Scrutiny updates detailed above and Audit Committee updates and Member briefings detailed below.

A further written Ward Member briefing has been provided to Ward Members in whose wards the 8 initial SBC sites are located, to ensure Ward Members are apprised of the progress of the project prior to consideration by Cabinet.



#### 4.5 **Public consultation on disposal of open space land**

A number of the 8 initial SBC sites ring-fenced for disposal to the JV partnership are classed as public open space. Prior to the decision by Cabinet in June 2021 to dispose of the sites to the JV partnership, the statutory consultation exercise in accordance with s.123(2A) Local Government Act 1972 was undertaken. Prior to this process, Member Briefing sessions were held with all Scarborough Borough Council Members, Filey, Whitby & Eastfield Town Councils and Newby & Scalby and Cayton Parish Councils. Given the impacts of the coronavirus pandemic, the statutory consultation period of 2 weeks was extended to 4 weeks to provide the community with the maximum opportunity to engage.

Responses to the public open space consultation were considered by Cabinet prior to their decision in June 2021 to dispose of the 8 initial sites to the JV, and full details are provided in the June 2021 Cabinet report.

#### 4.6 **Sites – Local Plan consultation and planning statutory consultation pre development**

All sites ring-fenced for disposal to the JV partnership have been allocated for housing or are within development limits within the current Local Plan. This process required significant public consultation prior to Local Plan adoption by full Council.

Notwithstanding this, at such time as any development on any of the sites is brought forward by the JV, the usual statutory planning process will apply. Public consultation, on an application by application basis, will be undertaken in the usual way. Lovell have also committed to undertaking additional community consultation on a site by site basis as appropriate to each site, (for further details, please see Planning Implications section of this report).

#### 4.7 **Tenants**

Where sites identified for inclusion in the Better Homes project are currently occupied, tenants have been informed of progress through the project and this engagement will continue at the appropriate time in respect of each site, as part of the process of working up development proposals on each site.

#### 4.8 **Audit Committee**

Officers have engaged with the Member Risk Champion & Governance Champion of the Audit Committee, both prior to the Cabinet's decision to commence the procurement process, (10<sup>th</sup> June 2021) and following the identification of the Preferred Bidder, (18<sup>th</sup> October 2022), to provide briefings on risk and governance issues in relation to the proposed partnership model and also the risks of not proceeding with the partnership. An update report was provided to Audit Committee, setting out the procedural aspects and governance arrangements of the procurement process, in January 2022.

#### 4.9 External Audit

The Council's external auditors, Mazars, have been informed of the project and have been provided with updates and the opportunity for engagement in relation to procedural, governance and risk issues.

### 5. ASSESSMENT

#### Partnership Arrangements

- 5.1 It is important to be clear about what the Council's procurement exercise has sought to procure. The Council **has not** sought to procure a fixed price contract with a third party developer for a series of costed and designed development schemes.

What the Council **has** sought to procure is a development partner with the appropriate development management skills and experience, equity investment intentions, access to funding, and aligned strategic objectives, to work with the Council to develop housing together, in a corporate JV partnership, in which the Council and the development partner will each be equal 50% partners, equity investors and decision makers. The JV is a long term strategic place-making partnership, with a lifespan of 30 years.

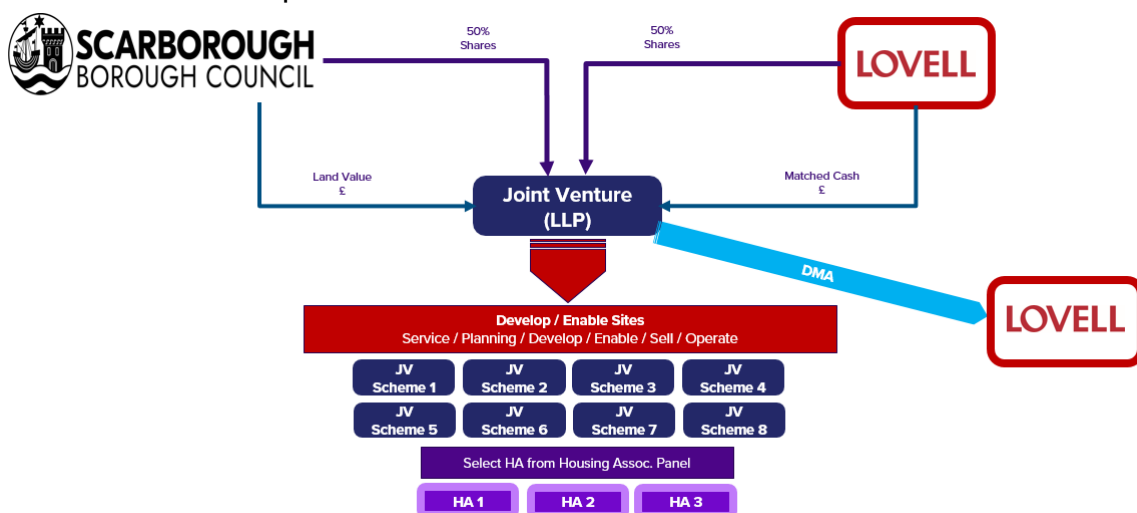
- 5.2 The procurement process has agreed the partnership framework through which individual sites will be brought forward for development by the JV, once established. The unanimous approval of both the Council and Lovell, through their own internal decision making processes, will be required to each individual development scheme as the partnership brings it forward.
- 5.3 The JV partnership's purpose will be to deliver good quality and environmentally sustainable homes, focused on accelerating the provision of affordable homes above planning policy levels, and on generating social value. Social value requirements include promoting education, skills & employment, supporting the growth of local businesses, creating healthier, safer and resilient communities and promoting social innovation. It will be the JV partnership itself, once established, that will bring forward development schemes for approval, utilising the combined skills and assets of the Council and the private sector.

The partnership will focus solely on development and **will not** retain housing stock or be a stock holding/ operating organisation.

- 5.4 The procurement process also encompassed the provision of strategic development support from the private sector partner to the Council, in undertaking wide ranging asset challenge work, to which the new North Yorkshire Council would have access, should it so wish, for additional support in undertaking the asset review of the combined assets of the constituent authorities under LGR.

- 5.5 Through the procurement, and at the meeting of Cabinet in June 2021, a portfolio of 8 initial sites was ring-fenced for disposal to the JV from the Council's asset portfolio. These sites are all in the Scarborough Borough and were identified through an extensive asset challenge process by the Council. This process identified sites either already allocated for housing in the Local Plan, or within development limits, and in respect of which, (taking into account planning, legal, viability/ land value and operational development constraints and opportunities), officers concluded that a case for residential development might be able to be made by a developer. The partnership arrangements provide that these sites can be drawn down into the JV for development only after a series of conditions have been met. The partnership arrangements have been made flexible enough to enable additional Council owned sites to be developed by the JV in the future, and this will be at the new unitary Council's discretion, taking into account commercial factors and any legal or other advice obtained by the new unitary Council at the time.
- 5.6 At the launch of the procurement, the Council cast the terms of its proposed partnership arrangements, (ensuring that these were flexible enough to take into account LGR), in a set of Key Commercial Principles and suite of draft legal contracts, which were published to all bidders. Bidders were asked to agree to the principles of the partnership arrangement as set out by the Council, or if they wished to offer a partnership arrangement/ model which differed from that proposed by the Council, they were asked to amend the contracts to reflect that offer.
- 5.7 The JV partnership arrangements tendered by Lovell generally reflect those designed by the Council and detailed in the Cabinet report of June 2021. **Appendix 3** contains an overview of the key principles contained in the contractual suite which captures the partnership arrangements. Lives & Homes Overview & Scrutiny Committee Members and Cabinet Members have been provided with the opportunity to attend a legal briefing with statutory officers, project leads and the Council's external legal advisors to work through the partnership arrangements and legal suite in detail.

5.8 The Partnership model is illustrated below:-



- 5.9 The Council will contribute its land interests in Council-owned sites into the JV, subject to the satisfaction of certain conditions by the JV, by way of a loan to the partnership at an appropriate interest rate. Lovell will provide a matched level of cash equity investment, also by way of a loan to the JV at the same interest rate, meaning risk and reward arising out of the partnership is split equally between the Council and Lovell. Where the total of the land value and matched cash is not sufficient to undertake development, additional funding will be provided by Lovell, again as a loan to the JV, and at a commercial rate of interest, or alternatively the JV could access senior (bank) lending. The partnership arrangements include a right, though no obligation, for the Council to contribute additional funding with Lovell, or to act as senior lender, should it so wish.
- 5.10 The partnership arrangements have been designed to allow the JV the ability to either **enable** or fully **develop** a site, (or phases of a site). Enabling means obtaining planning permission and installing services and infrastructure at the site, then disposing of phases or plots to a third party house-builder to construct and sell the homes. Development refers to the JV both enabling and completing all construction on a site, and disposing of the homes to the end users, e.g. Registered Providers for the affordable rented/ shared ownership homes, and by sale on the open market for the private homes. This allows flexibility for the partnership and also the ability to provide opportunities to other local house-builders, or potentially self-build plots, where appropriate.
- 5.11 Lovell will provide development management services to the JV under a contract for services, known as the Development Management Agreement. The procurement process tested bidders' capabilities and resources in development management and competitively tested the fees to be paid by the JV to Lovell for these services. Lovell's fee for the Development Management Services was the lowest tendered fee.
- 5.12 Lovell will also be appointed as the main construction contractor under the tendered partnership arrangements. The legal arrangements contain provisions to ensure that Lovell's overhead and profit percentages in respect of construction works are benchmarked against the market on a regular basis throughout the lifetime of the partnership and also that Lovell's performance as construction contractor is monitored through a KPI regime. Failure to meet performance thresholds under the KPI regime can ultimately lead to the loss of construction exclusivity for Lovell on future sites. This would result in the partnership letting the construction contract for future sites in the open market.
- 5.13 Given the different roles that Lovell has under the partnership arrangements, (equity investor and Member in the partnership, service provider to the JV under the Development Management Agreement, and main construction contractor to the JV under the construction contracts), the legal arrangements contain provisions in respect of cross-default and also provide for the JV to appoint a Joint Venture Supervisor - an independent cost consultant with a duty of care to the JV and to each Member separately - to ensure that the JV

achieves, and can evidence, value for money, and that the Council can demonstrate best value in the use of its land assets.

- 5.14 The returns generated from the disposal of the plots or the homes developed by the JV partnership will be applied in a repayment 'waterfall' – firstly to repay any senior (bank) debt, then to repay the Council's and Lovell's equity investment and interest thereon, and finally to distribute profits remaining in the partnership equally between the Council and Lovell. Therefore, following the development and sale of a site, the Council's land value, plus the accrued interest on that land value will be repaid to the Council. In addition the Council will receive its 50% of the development profits.
- 5.15 The partnership arrangements include a unique in-built reinvestment mechanism to enable the Council to choose to utilise all, or part, of its development returns to reinvest into the delivery of additional affordable homes. In this way the partnership is enabled to deliver quantities of affordable homes significantly in excess of planning policy levels, through the reinvestment of a proportion of the Council's land value and profit.

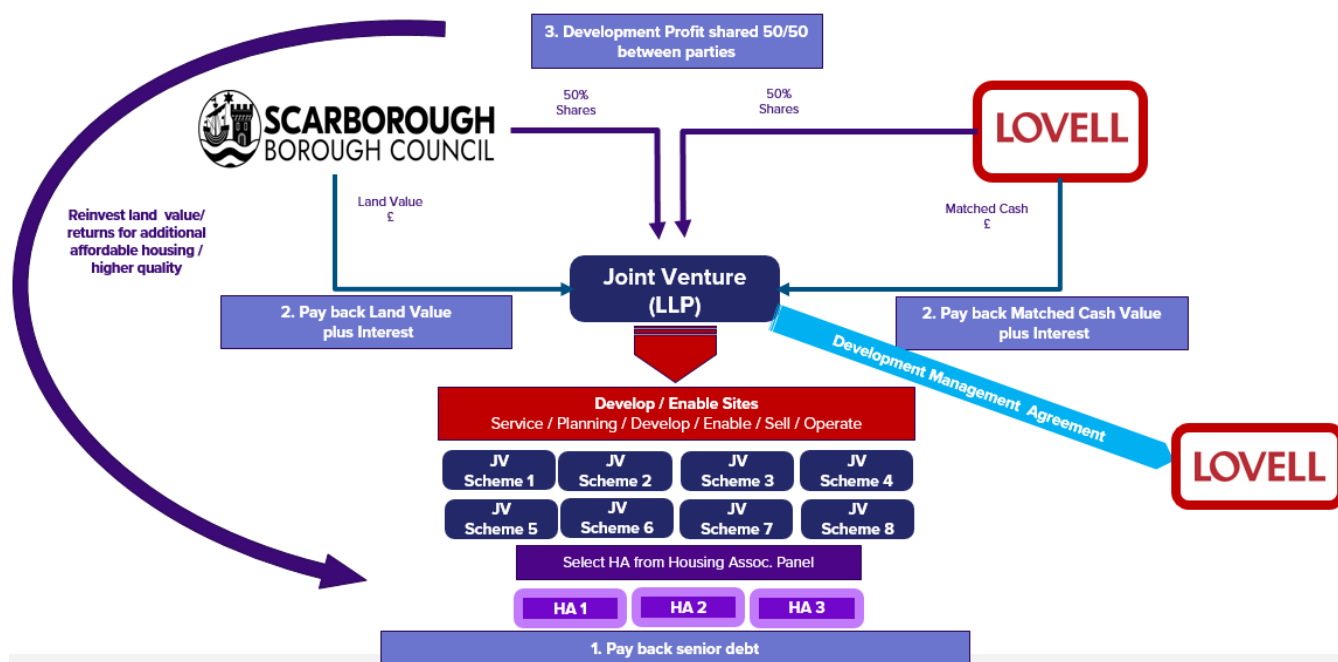
For example, increased provision of more quality affordable homes would be achieved through the granting of a proportion of the Council's development return to the Registered Provider, ('RP'), that will ultimately purchase and manage the affordable units. This will enable a greater number of units to be developed and acquired as affordable homes. As the business planning cycle of the JV develops, the Council will be able to make an informed decision in respect of reinvestment of Council receipts from the JV, (or cash-flowing such investment against future such receipts). This investment is likely to take the form of direct grant from the Council to the RP involved in taking the additional affordable units. This provides the opportunity to use the Council's assets to generate income and profit, and then to recycle those returns into increasing the availability of quality affordable housing, addressing the long term growing need in a streamlined way that complies with procurement regulations and subsidy control requirements. The Financial Implications section of this report provides further detail of the reinvestment mechanism.

Given the duration of the lifetime of the partnership vehicle, appropriate protections for the Council have been built into the partnership arrangements to allow for changes in political direction, so the Council has the ability, but no obligation, to reinvest its returns. This decision will be made at the Council's sole discretion and on a site by site basis.

- 5.16 With regard to the ongoing management and maintenance of the affordable and social rented homes, Lovell's tendered solution is for the JV partnership to establish a panel of Registered Providers of Social Housing. This approach enables appropriate RPs to be selected for schemes across Scarborough Borough and the new unitary authority area that are best suited to local circumstances. In this way the JV can ensure best value and the most appropriate long term management solution for each site. A formal selection

process will take place for RPs on the formation of the JV and will be a joint decision between the JV and the Council. The selection process will focus on quality of housing and neighbourhood management services, commitment to providing affordable homes in perpetuity, and financial offer and approach. Local Authorities could be considered in this process.

5.17 The repayment waterfall and Council reinvestment mechanism is illustrated below:-



### Site Business Plan process and Land Transfer

5.18 Throughout its lifetime, the JV will bring forward development schemes on each of the sites ring-fenced to it by Scarborough Borough Council, and such other sites as it may acquire from other sources during its lifetime.

5.19 Having already been ring-fenced for disposal to the partnership by Cabinet in June 2021, (and subject to the consent of the NYCC under the s.24 Direction), the initial 8 Council sites will be contractually committed to the JV following its establishment, subject to the fulfilment of several pre-conditions. The legal transfer of each of the 8 initial sites will take place on a site by site basis and an individual site will not be transferred by the Council to the JV until each of the required pre-conditions has been met in respect of that site.

The pre-conditions relate to:-

- The Council providing satisfactory title and vacant possession to the site;
- The JV obtaining detailed planning permission in respect of the development of the site, through the usual planning regime;
- The JV demonstrating to the Council's satisfaction that it has secured funding in respect of the development of the site;
- An individual Site Business Plan having been approved by the JV Board, and by the Council and Lovell, as Members of the JV, through each

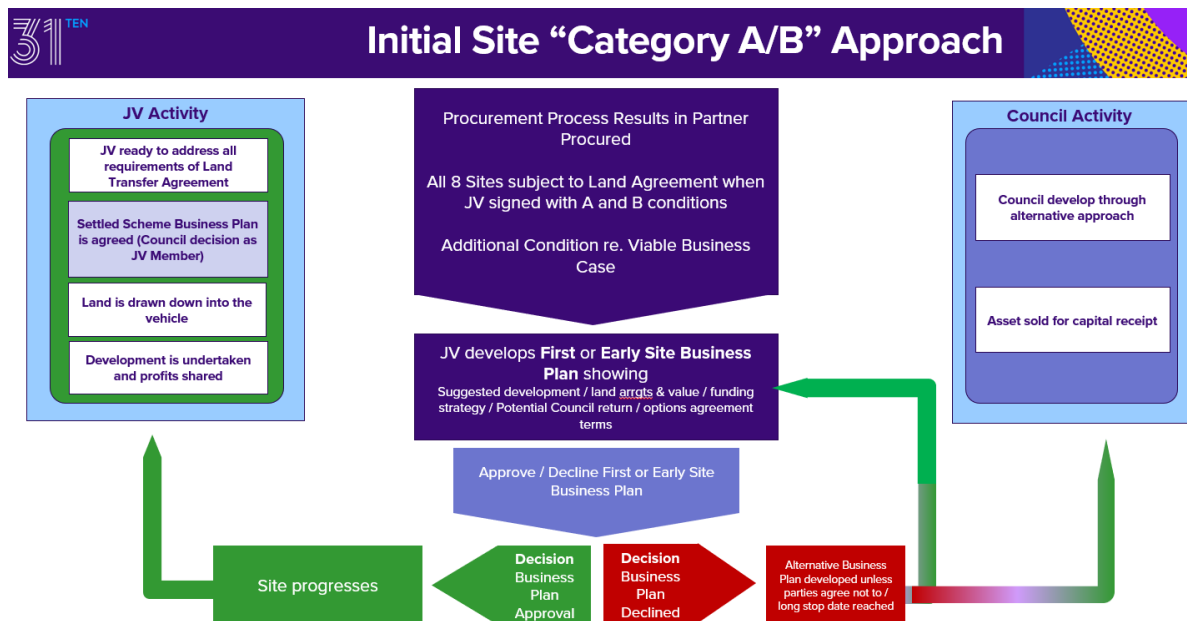
organisation’s internal decision making processes. The Site Business Plan will cover matters such as financial appraisals, viability thresholds, funding strategy and risk assessments, Council reinvestment strategy, detailed design, housing mix analysis, development programme, planning, sustainability and sales strategies, land valuations and purchase price, and social value outputs in respect of that individual site;

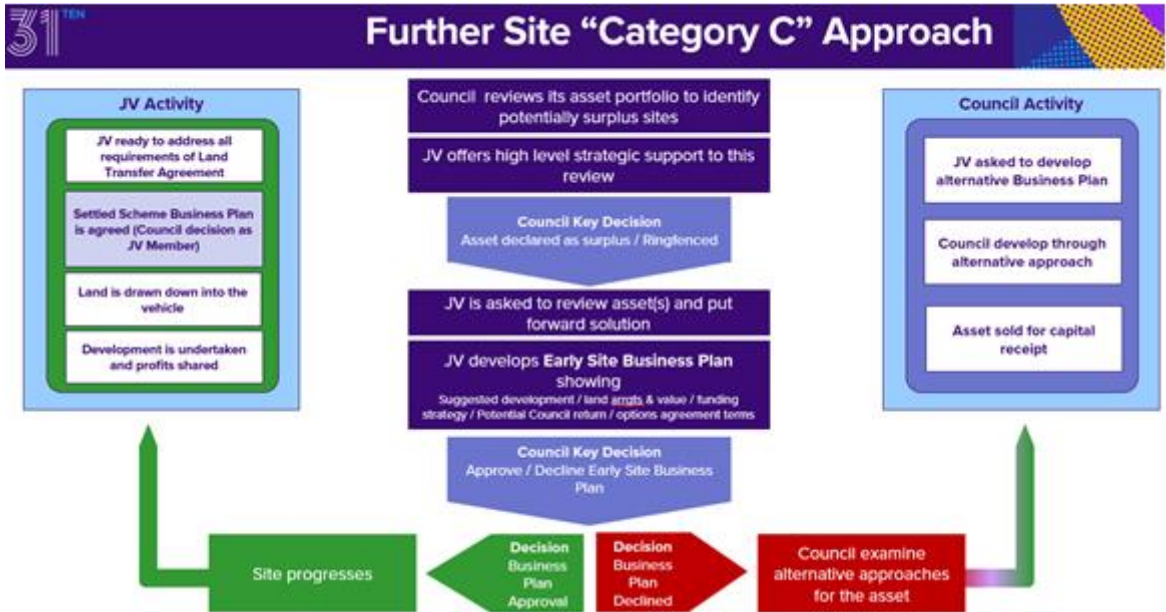
- The fulfilment of certain milestones on specific sites prior to drawing down other sites.

On the satisfaction of all of the pre-conditions in respect of an individual site, the Council will transfer that site to the JV in exchange for loan notes to the sum of the land value.

A summary of the land transfer arrangements is set out at **Appendix 3** to this report.

5.20 The process in respect of the transfer of the Council’s sites to the JV partnership is illustrated below. Categories A & B represent the 8 initial ring-fenced Council sites. Category C represents any future sites that the Council may wish to develop through the vehicle:-





5.21 Work undertaken by Lovell as part of the procurement exercise will form the basis for the first two Site Business Plans, which will be developed and brought forward for approval by the Council/ North Yorkshire Council and Lovell following the receipt from the NYCC of consent under the s.24 Direction.

**How Lovell’s bid meets the Council’s partnership objectives, requirements and aspirations**

5.22 At procurement launch, the Council published to the market its 10 Procurement Objectives, as agreed by cross party Members and set out below:-

1.	to form a long term partnership to fund, enable and, where appropriate, develop a programme of key sites, and for the Council to have an equal decision-making authority within the partnership
2.	to deliver high quality new housing and regeneration in line with local needs now or in the future, with the overarching aim of delivering significant levels of affordable housing in excess of local planning policy requirements
3.	to undertake activities to increase environmental sustainability and carbon reduction in the short, medium and long term
4.	to drive the agenda of having a good mix of homes, a mix of types and tenures including homes that meet the needs of all ages and those with disabilities
5.	to maximise social value contribution from the activities of the partnership
6.	to drive the pace of development
7.	to acquire (from any source) and/or sell land for the purpose of achieving the Objectives, in particular delivering significant levels of affordable housing
8.	to maximise grant funding into the partnership



9.	the Council to invest its land to receive meaningful returns and it also has some appetite for risk, subject to investments being balanced by commensurate reward
10.	to enable the Council to reinvest its returns to increase the level of affordable housing

- 5.23 These were supplemented by a detailed Descriptive Document, which provided further granular detail of the Council's requirements and aspirations in respect of each high level Objective. For example, where an Objective referred to 'quality housing', it was important for the Council, and bidders, to be clear what this meant to the Council. The Descriptive Document therefore crystallised high level Objectives into specific and measurable outcomes, giving clarity of expectation to bidders and enabling robust testing of bidders' solutions during the procurement exercise. The Objective relating to 'quality' was therefore further articulated as including requirements for NDSS space standards, accessibility/ adaptability of housing design, and specific environmental sustainability requirements in respect of the homes to be developed by the JV. Such requirements were informed and directed by findings in relation to housing need set out in the Strategic Housing Market Assessment and also by the Council's declaration of a Climate Change Emergency and Ecological Emergency, in line with wider regional and national priorities.
- 5.24 The partnership solution which has been tendered by Lovell meets all of the Council's Procurement Objectives, and the detailed requirements and aspirations articulated by the Council in the Descriptive Document, and also provides areas of additional value over and above the requirements set out by the Council.
- 5.25 Certain parts of Lovell's tendered solution contain matters which remain subject to commercial confidentiality requirements, and where this is the case, these aspects are detailed in the restricted **Appendix 2** to this report. Where matters are not commercially confidential these aspects of the Lovell tender are detailed in the following part of this report.

### **Objective 1:**

To form a long term partnership to fund, enable and, where appropriate, develop a programme of key sites, and for the Council to have an equal decision-making authority within the partnership

### ***How tested through the procurement:***

- Q7 *Partnership Approach – Bidders were required to put forward the partnership approach for the new venture, including demonstrating how the partnership would operate to fund, enable and develop the programme of sites, and to demonstrate how this will be accomplished through a 50/50 partnership between the council and the bidder.*

- Q9 *Legal – Bidders were required to put forward the legal arrangements that enshrined the partnership approach detailed in Q7 and to include appropriate provisions for the 50/50 operation of the partnership as well as the legal process that underpinned the development lifecycle.*
- Q3 *Funding – Bidders were required to develop the funding strategy for the partnership and to show how this would be realised for the case study sites. This included providing evidence that the funding could be secured.*
- Q6 *Skills & Capabilities - Bidders were required to put forward the skills and capabilities that they would bring to bear to deliver the JV Business Plan, including details of individuals, with CVs.*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
<b>Long term partnership and Council to have equal decision making authority</b>	
Council partnership arrangements – 50:50 JV (LLP) with 30 year lifespan	In response to the partnership approach question Lovell clearly demonstrated their commitment to the 30-year 50:50 partnership. They also put forward legal proposals that are in line with the Council's requirements for equal decision making between the parties.
<b>To fund a programme of key sites</b>	
The Council required bidders to demonstrate their approach to funding sites through the JV. This included a need to explain the partnership approach to funding in principle, enshrine this within the legal documents and to exemplify how it would work for the case study sites.	Lovell put forward a funding strategy incorporating funding from the Council's land value, partner loans, forward sales, grant and reinvestment funds. The approach was included in the partnership approach and was exemplified through the financial submission for the case study sites.
<b>Enable and develop a programme of key sites</b>	
The Council required bidders to provide development management services to the JV through a Development Management Services contract, with the JV procuring construction works and services in accordance with the JV Procurement Policy. The JV seeks to achieve value for money by ensuring the appropriate procurement of goods, works and/or services. Where relevant, the bidders, (as the Development Manager), will manage the process for the procurement of works and services. These services and terms for the development management services are set out in the Development Management Agreement, which bidders were required to accept the terms of.	<p>Lovell as part of their response accepted the majority of the terms of the Development Management Agreement and demonstrated their capability to enable and develop sites in their responses to the skills &amp; capabilities question and approach to procurement of contractors and supply chain question.</p> <p>Lovell are proposing to act as Main Contractor to deliver all residential works exclusively for the JV and provided construction exclusivity arrangements as mark-ups to the Procurement Policy; these are deemed acceptable to the Council and will be able to evidence value for money.</p>

## **Objective 2:**

To deliver high quality new housing and regeneration in line with local needs now or in the future, with the overarching aim of delivering significant levels of affordable housing in excess of local planning policy requirements

### **How tested through the procurement:**

- Q1 *Financial - The procurement tested the bidders' commercial offer – i.e. using the Council's 8 sites as a hypothetical case study. On a desktop basis, without the benefit of site investigations or invasive surveys, bidders were required to demonstrate the financial return that they could deliver from the development of planning policy compliant housing development schemes, to the quality standards required by the Council and in line with local needs. Bidders were then tasked with demonstrating how the financial return generated could be applied to deliver additional numbers of affordable homes were it to be reinvested by the Council.*
- Q4 *Scheme Master-planning & Design – Bidders were required to develop a series of 3 schemes on 3 of the sites that will pass to the JV. These were run as case studies for the procurement exercise in order to evidence how the bidder would approach realising the appropriate mix of uses to address the Council's requirements and local need, whilst delivering a viable scheme. The sites chosen were examples of small, medium and large sites with varying degrees of development complexity, so that bidders' ability across a spectrum of different sites could be tested. Bidders were required to use their design work to demonstrate how the Council's objectives around delivering above planning policy numbers of affordable homes, addressing local housing needs, place-making, improving housing quality, (through design and environmental interventions), and ensuring quality ongoing housing management would be achieved by the JV partnership.*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
Housing to meet Local Needs now and in the future	
<b>Affordable Rents:</b> <ul style="list-style-type: none"><li>should be no more than 80% of local market rents and should be capped by the Local Housing Allowance</li></ul>	Affordable rent has been modelled on the basis of the lower of 80% of the market rent or Local Housing Allowance as instructed.
<b>Homes for Local People:</b> (Affordable Homes) <ul style="list-style-type: none"><li>100% nomination rights to be granted to the Council in respect of all affordable rented housing built by JV</li></ul>	Lovell fully endorses the Council's 100% nominations approach, and also consider Local Lettings strategies can be a helpful tool in ensuring high quality and tailored local services. These will be specified in the brief for the JV's RP partner(s)

<p><b>Homes for Local People: (Other Homes)</b></p> <ul style="list-style-type: none"> <li>• how can bidders seek to ensure local access to other housing developed by the JV (e.g. intermediate, open market sale), to prioritise access to the local community</li> </ul>	<p>Lovell proposes to work with the JV's RP partner(s) on the targeting of the shared ownership homes and the JV's marketing of the First Homes locally. They propose that the JV operates a 'local first' approach to its pre-marketing to prioritise local people for the release of each phase of market sales before more widely releasing.</p>
<p><b>Affordable in Perpetuity:</b></p> <ul style="list-style-type: none"> <li>• how can bidders seek to ensure that the affordable housing built by the JV remains affordable in perpetuity</li> </ul>	<p>Lovell have proposed a 'triple lock' approach to ensure that affordable housing can be retained as affordable in perpetuity and accessible for local people. This includes:</p> <ol style="list-style-type: none"> <li>1. specifying the in-perpetuity requirement and Council's 100% nomination rights for affordable homes being delivered through planning consents, via planning conditions and/or section 106 agreements.</li> <li>2. Sale &amp; Purchase Agreements between the JV and the selected RP will mirroring perpetuity requirements on any 'additionality' affordable.</li> <li>3. Grant agreement for reinvestment funds between the Council and RP requiring any staircasing/right-to-acquire proceeds to be ringfenced by the RP for reinvestment locally into further affordable housing.</li> </ol> <p>25% of the planning policy level of affordable homes will be built as 'First Homes' - a discounted sale product, (of at least 30% against market value), for first time buyers with a combined annual household income not exceeding £80k, so the Council will be able to ensure that these discounted homes remain available for local people in perpetuity, with these sold direct by the JV rather than via an RP.</p>
<p><b>Affordable Housing Management:</b></p> <ul style="list-style-type: none"> <li>• Ongoing management of Affordable Homes must be of high quality and effective – must be managed by an RP regulated by Regulator of Social Housing, with a demonstrable record of quality housing management</li> </ul>	<p>Selected RP partners will be required to be regulated by the Regulator of Social Housing and provide evidence of quality of service offered to customers.</p> <p>Quality of housing and neighbourhood management services is a primary selection criteria for RP partners. It is</p>

	<p>proposed that the Council's Grant Agreement to the RP, (for use of reinvestment funds for additional affordable housing), includes a provision for evidence of quality of service and that failure to deliver high quality and locally responsive management services would prevent further schemes being progressed with that RP.</p> <p>Selected RP partners will be involved in the design process to ensure long term management is factored into designs.</p>
<b>Quality of Housing (Design and Environmental)</b>	
<p><b>Local Plan Compliance:</b></p> <ul style="list-style-type: none"> <li>all developments to comply with Local Plan policy</li> </ul>	<p>Lovell's solution demonstrated a robust approach to obtaining planning permission, setting out:-</p> <ul style="list-style-type: none"> <li>the steps they would take to ensure comprehensive pre-planning community engagement, (including leaflet drops to surrounding properties, facilitating discussions between project team and residents, public exhibitions, public websites, virtual events, meetings with Ward Councillors, Town/ Parish Council, MP and stakeholders such as Whitby Civic Society),</li> <li>Community Design workshops</li> <li>formal pre-application discussion with the LPA and other key stakeholders, e.g. Historic England,</li> <li>co-production of Design Codes; and</li> <li>formal Planning Performance Agreements,</li> </ul> <p>as appropriate to the scale of development. Lovell's solution demonstrated that they have conducted a robust review of all applicable Local Plan policies in order to bring forward policy compliant schemes.</p>
<p><b>First Homes:</b></p> <ul style="list-style-type: none"> <li>25% of planning policy affordable homes required to be First Homes – discounted sale for first time buyers</li> </ul>	<p>25% of Lovell's policy compliant number of affordable homes are First Homes.</p>

<p><b>Tenure Blind Developments:</b></p> <ul style="list-style-type: none"> <li>Affordable Homes to be distributed throughout developments and developments to be 'tenure blind' so that affordable homes are not distinguishable from private homes</li> </ul>	<p>Development will be tenure blind in respect of build quality of open market sale and affordable housing.</p>
<p><b>Nationally Described Space Standards ('NDSS'):</b></p> <ul style="list-style-type: none"> <li>All properties developed by the JV (affordable and market) to meet NDSS standards, including bedroom size as well as overall property size</li> </ul>	<p>100% of properties developed by the JV under Lovell's solution will meet NDSS standards.</p>
<p><b>Accessible &amp; Adaptable:</b></p> <ul style="list-style-type: none"> <li><b>5% of all homes</b> across the portfolio to meet Building Regulations Part M4(3)(a), to meet the needs of wheelchairs users</li> <li><b>Aspiration</b> - 100% of all homes across the portfolio to meet Building Regulations Part M4(2) adaptable standard</li> </ul>	<p>5% of homes built by the JV will comply with Building Regulations Part M(4)(3) – accommodates the needs of wheelchair users</p> <p>100% of homes built by the JV will comply with Building Regulations Part M(4)(2) – adaptable design to meet the needs of older people and those with some disabilities</p>
<p><b>Building for a Healthy Life:</b></p> <ul style="list-style-type: none"> <li>Bidders to incorporate principles of the Building for Healthy Life Design Toolkit in all developments</li> </ul>	<p>The principles of the Building for a Healthy Life toolkit have informed the place-making principles and designs for Musham Bank, Sandybed Crescent and Rievaulx Road provided by Lovell as part of their response to the Scheme Master-planning, Concept &amp; Design question.</p>
<p>Overarching aim of delivering significant levels of affordable housing above planning policy requirements</p>	
<p>As part of the procurement, bidders were asked to submit policy compliant schemes for each of the case study sites to deliver a total available level of Reinvestment Funds. Bidders were then asked to utilise these funds to increase the level of affordable housing across the portfolio.</p>	<p>Lovell's proposal for the case study sites provided affordable housing levels significantly above planning policy, with <b>14% affordable housing</b> at policy compliant provision <b>moving to 60% affordable housing using reinvestment funds.</b></p>

### **Objective 3:**

To undertake activities to increase environmental sustainability and carbon reduction in the short, medium and long term

In common with NYCC and other Councils in the area, e.g. Ryedale, Craven, and City of York, Scarborough Borough Council has declared a Climate Emergency, and in 2019 pledged to do everything within its power to make the Borough of Scarborough carbon neutral by 2030. This commitment is also reflected in the York, North Yorkshire & East Riding LEP Routemap to Carbon Negative.

#### **How tested through procurement:**

Q4 *Scheme Master-planning & Design – Bidders were required to develop a series of 3 schemes on 3 of the sites that will pass to the JV. These were run as case studies for the procurement exercise in order to evidence how the bidder would approach realising the appropriate mix of uses to address the council's requirements and local need whilst delivering a viable scheme.*

*As the activities of the JV partnership are required to contribute to carbon neutrality, bidders were specifically tested, through their design and master-planning responses, on their commitment to this principle and to the objectives and key themes of the Council's Climate Change Strategy.*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
<b>Part L Building Regulations:</b> <ul style="list-style-type: none"><li>100% homes to be constructed to Future Homes standard as soon as practicable and no later than 2025 (even in the event of delay to Part L implementation nationally)</li></ul>	<p>100% of homes built by the JV will comply with Building Regulation Part L updates to Future Homes Standard with immediate effect, rather than from 2025/6 implementation date.</p> <p>This includes a fabric first approach to energy efficiency, no gas into the developments, and renewable heating and energy options, including air source heat pumps.</p>
<b>Contribution of partnership activities to Climate Change Strategy Objectives and key themes:</b>	
<ul style="list-style-type: none"><li>minimise and decarbonise energy use in properties within the Borough</li></ul>	<p>As part of Lovell's response to the Scheme Master-planning, Concept &amp; Design question (for Musham Bank, Sandybed Crescent and Rievaulx Road):</p> <ul style="list-style-type: none"><li>Lovell has a route map to Future Homes Standards and zero carbon and beyond for all homes.</li><li>As well as new Part L of building regulations ('fabric first approach' and renewable technologies),</li></ul>

	<p>Lovell has reflected upcoming Part O updates on overheating and thermal comfort in design and financial proposals.</p> <ul style="list-style-type: none"> <li>• There will be no gas into developments, and optimum energy sources and systems will be considered as part of scheme development and planning, including air source heat pumps.</li> <li>• Use of Modern Methods of Construction ('MMC'), to promote carbon reduction, reduce waste and improve thermal performance</li> </ul>
<ul style="list-style-type: none"> <li>• encourage active and public transport to be the primary modes of movement in the Borough and promote use of EV where car use is necessary</li> </ul>	<p>As part of Lovell's response to the Scheme Master-planning, Concept &amp; Design question (for Musham Bank, Sandybed Crescent and Rievaulx Road):</p> <p>Musham Bank proposals:</p> <ul style="list-style-type: none"> <li>• The site will be a walkable and accessible place to live with safe walking and cycling routes to local services and active travel models being the default option</li> <li>• Will ensure that there are attractive and safe routes to schools and that each phase is fully connected into the green infrastructure.</li> <li>• Homes designed to be enabled for EV charging</li> <li>• Will work with UK Active Travel to and other agencies on developing the EV charging strategy.</li> <li>• Will work with the Council on the 'last mile' strategy to connect into wider opportunities for e-bikes and e-scooters</li> </ul> <p>Sandybed Crescent and Rievaulx Road proposals:</p> <ul style="list-style-type: none"> <li>• Electric charging points for all residents at Rievaulx Road and Sandybed Crescent</li> <li>• Cycle storage for all dwellings at Rievaulx Road and Sandybed Crescent</li> <li>• Retention of existing bus stops at Rievaulx Road and improvements to footpaths to bus stops at Sandybed Crescent to encourage use</li> <li>• Retaining and enhancing public right of way at Rievaulx Road to</li> </ul>



	encourage active walking routes
<ul style="list-style-type: none"> <li>grow a greener Borough with more land used for carbon sequestration,</li> </ul>	<p>As part of Lovell's response to the Scheme Master-planning, Concept &amp; Design question (for Musham Bank, Sandybed Crescent and Rievaulx Road):</p> <p>Musham Bank proposals:</p> <ul style="list-style-type: none"> <li>Committed to achieving a minimum of 10% net biodiversity gain.</li> <li>Biodiversity to be improved by introducing green and blue infrastructure at Musham Bank to benefit ecological resilience of wider area</li> </ul> <p>Sandybed Crescent and Rievaulx Road proposals:</p> <ul style="list-style-type: none"> <li>Strong connection with retained POS at Sandybed Crescent, with trees and natural habitats encouraging flora and fauna</li> <li>Improve biodiversity at Rievaulx Road through planted edges to threshold of houses, retaining existing trees or planting replacements and additional trees where possible</li> <li>Community amenity garden for residents at Rievaulx Road; planting, seating and play space</li> </ul>

#### **Objective 4:**

To drive the agenda of having a good mix of homes, a mix of types and tenures including homes that meet the needs of all ages and those with disabilities

#### ***How tested through the procurement:***

- Q4 *Scheme Master-planning & Design – Bidders were required to develop a series of 3 schemes on 3 of the sites that will pass to the JV. These were run as case studies for the procurement exercise in order to evidence how the bidder would approach realising the appropriate mix of uses to address the council's requirements and local need whilst delivering a viable scheme*
- Q1 *Financial Template – The schemes designed were required to be included in the financial template to demonstrate their viability*
- Q2 *Assumptions – The key assumptions behind the financial template were required to be justified and robustly evidenced to ensure the financial analysis*

could be relied on. This included the relevant costs and incomes for the mix of uses put forward in the designed schemes.

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
<p><b>Mix of property types:</b></p> <ul style="list-style-type: none"> <li>to address housing need demonstrated by the SHMA and appropriate to each individual site location</li> </ul>	<p>The solution put forward by Lovell included a clear rationale linking the mix of property types to be delivered on site with local housing need and planning policy</p>
<p><b>Tenure Mix of Homes:</b></p> <ul style="list-style-type: none"> <li>70% rented and 30% intermediate expected within affordable units (both planning policy compliant and additional affordable homes)</li> </ul>	<p>The affordable units put forward were in line with this mix.</p>
<p><b>Homes to be Accessible &amp; Adaptable to meet the needs of all ages and those with disabilities:</b></p> <ul style="list-style-type: none"> <li><b>Requirement</b> - 5% of all homes across portfolio to meet M4(3)(a) standard, to accommodate the needs of wheelchairs users (in accordance with findings of SHMA)</li> <li><b>Aspiration</b> - 100% M4(2) adaptable standard, to meet the needs of older people and those with some disabilities</li> </ul>	<p>5% of homes built by the JV will comply with Building Regulations Part M(4)(3), to accommodate the needs of wheelchair users</p> <p>100% of homes built by the JV will comply with Building Regulations Part M(4)(2), adaptable design to meet the needs of older people and those with some disabilities</p>

### **Objective 5:**

To maximise social value contribution from the activities of the partnership

#### **How tested through procurement:**

Q10 *Social Value - Bidders were required to detail both their approach to delivering Social Value and their specific, legally binding, commitments, with reference to the 4 priority themes set out by the Council.*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
<p>The Council required that the JV must be committed to delivering social value and community benefits across its operations, and set out 4 priority themes for the delivery of Social Value:-</p>	<p>The Lovell solution meets the Council's requirements and aspirations, and provides several areas of added value, by committing to delivering social value and community benefits.</p>

<p>(i) <b>Promoting Skills &amp; Employment:</b> supporting growth and development opportunities for all within the community, and ensuring access to opportunities to develop new skills and gain meaningful employment;</p> <p>(ii) <b>Supporting the Growth of Responsible Local Businesses:</b> providing local businesses with skills to compete and the opportunity to work as part of public sector and big business supply chains;</p> <p>(iii) <b>Creating Healthier, Safer &amp; Resilient Communities:</b> prioritising wellbeing and community cohesion;</p> <p>(iv) <b>Promoting Social Innovation:</b> promoting new ideas and finding innovative solutions to social problems that will aid societies to prosper.</p>	<p>Lovell's offer included a firm commitment of time, funding and resources to kickstart the JV's social value activities spread evenly across the four Council priority themes. It made clear commitments to local training and skills development, working with the Construction Skills Village and other partners, and to the involvement and development of local businesses and supply chains in the delivery of the works.</p> <p>Lovell's specialist division, Lovell Later Living, is already developing in Scarborough and the JV represents a real opportunity to extend the ambitious programme of work it is planning with local older people across the whole of the JV's area of operation including inter-generational initiatives to tackle loneliness.</p> <p>Lovell is equally keen to work with local schools and has proposed a County-wide schools challenge, working with educational charity MOBIE which was established by the TV presenter and Architect, George Clarke. The challenge would encourage local school children to design the homes we need for the future.</p>
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Further details of Lovell's social value offer are provided at **Appendix 2** to this report.

### **Objective 6:**

To drive the pace of development

#### ***How tested through the procurement:***

Q5 *Programme - Bidders were required to provide an overall programme of development for the Council's 8 sites that were included in the procurement as a case study, together with more detailed individual site programmes and risk registers.*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
The Council aspires to the delivery of the schemes as fast as practicable, whilst addressing its key requirement to increase the level of affordable housing	Lovell's solution programmed the development of multiple sites at once, with a number of teams on site across the Borough simultaneously, and sites being strategically programmed to provide a logical and efficient pipeline for teams to move

delivered	<p>between.</p> <p>Due to this, and on the basis of the desktop, hypothetical case studies provided for the purposes of the procurement exercise, Lovell were able to project completion of <b>732</b> homes across the 8 SBC sites within 9 years of mobilisation of the JV partnership. Of those 732 homes, subject to the Council's reinvestment of approximately 40% of its reinvestment funds, and alongside use of Homes England grant, <b>437</b> homes were projected to be affordable – that is an <b>additional 320 affordable homes over planning policy compliant levels</b>.</p> <p>It should be noted that the above profile and number of homes were developed as a part of the case study for the procurement. The approach to realising these results is part of the partnership approach moving forward but the actual numbers will be subject to the development of a live business plan for the new partnership, including accommodating the Council's agreed to approach to reinvestment.</p>
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**Objective 7:**

To acquire (from any source) and/or sell land for the purpose of achieving the Objectives, in particular delivering significant levels of affordable housing

***How tested through the procurement:***

Q9 *Legal - Bidders were required to mark up on the draft contracts any areas in which their tendered solution varied from the Council's preferred position.*

<b><i>Council Requirements &amp; Aspirations:</i></b>	<b><i>Lovell Solution:</i></b>
Legal agreements as drafted by the Council provide for the JV to acquire, develop and sell land and enter into leases	Lovell's tendered solution agreed to these provisions without amendment

**Objective 8:**

To maximise grant funding into the partnership

***How tested through the procurement:***

Q1 *Financial submission – Bidders completed a financial template for the case study sites demonstrating how different elements of grant could be applied to the schemes.*

Q2 *Assumptions – Bidders were required to provide robust evidence and justification for any grants they highlighted in their financial submission*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
<p>The Council wished to test bidders' ability to bring grant funding into the partnership in order to address the Council's objectives, including maximising the level of affordable housing.</p>	<p>Lovell put forward a solution that demonstrated a clear approach to maximising grant into the partnership on a scheme by scheme basis.</p> <p>This was well evidenced through their submission on the case study sites, which showed both a clear approach to realising grant and also a prudent approach to its application, considering the likely grant conditions that would apply.</p>

**Objective 9:**

The Council to invest its land to receive meaningful returns and it also has some appetite for risk, subject to investments being balanced by commensurate reward

**How tested through the procurement:**

- Q1 *Financial submission – Bidders completed a financial template for the case study sites demonstrating the potential value for the Council's land as well as the additional return it would receive through a share of profit and any interest it would generate. This was balanced with the non-financial returns received such as increased levels of affordable housing.*
- Q2 *Assumptions – Bidders were required to provide robust evidence and justification for any of the assumptions in the financial template that underpinned any land value and returns to the Council, as well as the viability of the schemes.*
- Q3 *Funding – Bidders were required to develop the funding strategy for the partnership and to show how this would be realised for the case study sites. This included providing evidence that the funding could be secured.*
- Q7 *Partnership Approach – Bidders were required to put forward the partnership approach for the new venture, including demonstrating how returns would be generated and the approach to how investments and returns would work for the new partnership.*
- Q9 *Legal – Bidders were required to put forward the legal arrangements that would underpin the partnership, including capturing how land investment and return would work, and how any other returns are generated and shared.*

<b><i>Council Requirements &amp; Aspirations:</i></b>	<b><i>Lovell Solution:</i></b>
<p>The Council requires an approach that will demonstrate both Best Consideration for its assets and how value for money is achieved more broadly.</p>	<p>Lovell put forward a solution that included a clear:</p> <ul style="list-style-type: none"> <li>• Approach to agreeing the land value for each site that was in line with the Council's requirements;</li> <li>• Procurement policy for the JV to achieve VFM for any services procured;</li> <li>• Approach to maximising financial return to the JV and, in turn, the Council; and</li> <li>• Approach to sharing financial rewards generated by the partnership</li> </ul>
<p>The Council developed a reinvestment approach that would enable it, at its own discretion, to choose to reinvest returns from sites to further the objectives of the partnership, e.g. to generate more affordable housing. It wanted to understand how bidders would utilise such returns to address these objectives.</p>	<p>Lovell's approach demonstrated a high level of reinvestment returns that could be generated from the case study sites and the highest number of affordable homes that could be delivered utilising these returns.</p>
<p>The Council required a clear approach to be developed to demonstrate how services procured by the JV would be value for money.</p>	<p>The procurement policy included as a part of Lovell's solution showed a clear and robust approach to ensuring value for money from the supply chain of the JV.</p>
<p>The Council required the right to be the senior lender, (to act as the bank), for any debt requirements of the JV going forward. Importantly this was to be a first right of refusal for the Council to be this funder, not a requirement for the Council to be it.</p>	<p>This right was preserved in the Lovell solution.</p>
<p>The Council aspired that the JV would repay the Council for the set up costs of the JV, a total funding requirement of £848k.</p>	<p>This repayment was accommodated in full by the Lovell submission over a short time period of operation.</p>
<p>The Council required a deliverable funding strategy to be developed, and evidenced for the JV that would support the delivery of the programme of works.</p>	<p>A clear funding strategy was submitted utilising Council land value, Lovell investment and forward sale of elements of development</p>

**Objective 10:**

To enable the Council to reinvest its returns to increase the level of affordable housing

**How tested through the procurement:**

- Q1 *Financial submission – Bidders completed a financial template for the case study sites demonstrating how Reinvestment Funds could be generated and applied to deliver higher levels of affordable housing.*
- Q2 *Assumptions – Bidders were required to provide robust evidence and justification for any the assumptions in the financial template, including the generation and application of reinvestment funds.*
- Q3 *Funding – Bidders were required to develop the funding strategy for the partnership including showing how reinvestment funds would be applied*

<b>Council Requirements &amp; Aspirations:</b>	<b>Lovell Solution:</b>
The Council developed a reinvestment approach that would enable it, at its own discretion, to choose to reinvest returns from sites to further the objectives of the partnership e.g. to generate more affordable housing. It wanted to understand how bidders would utilise such returns to address these objectives.	<p>Lovell’s approach demonstrated a high level of reinvestment returns that could be generated from the case study sites and the highest number of affordable homes that could be delivered utilising these returns.</p> <p>The approach detailed in the partnership approach was also clear on how decisions would be taken and how these were mapped to key milestones.</p>

**5.26 Conclusion and Summary of Lovell tender and the contribution the JV can make to the achievement of SBC priorities and long-term pan-North Yorkshire objectives and ambitions**

The Lovell bid provides a unique opportunity for Lovell, Scarborough Borough Council and the continuing authority to work together to demonstrate true regional leadership in driving green growth and pride in our places, in the long term.

The JV partnership designed by the Council and developed by Lovell, will operate sustainably and at scale.

It will address the challenges that many of our communities face as a result of increasing numbers of properties being used as second homes and holiday lets/ AirBnB, by providing access for local people to quality affordable homes.

Through the Council’s reinvestment of its land value and development returns, the partnership will increase the numbers of affordable homes built and able to remain affordable in perpetuity, to ensure that access to a good quality

home for all is a commitment from which both our current residents, and future generations, will benefit.

The whole spectrum of housing need will be addressed by the JV, including social rented accommodation of different types/ sizes; intermediate tenures such as shared ownership; First Homes discounted sale products, aimed at first time buyers whose income falls below a maximum threshold; and open market sale, with priority marketing within the local area. The needs of our elderly and disabled residents will be met through accessible and adaptable design.

The JV partnership solution will provide the opportunity for an exceptional melding of a private sector market leader with the 'stronger together' unitary model of local government, establishing a springboard to securing significant investment into the delivery of levels of affordable housing and pace of delivery that neither the Council nor the market could achieve alone.

The proposed partnership will also drive real progress in the journey to net zero carbon, and carbon negative, not only as an exemplar in the design and construction of new homes, but also through investing in training in green technology education, to ensure that the area develops and retains the necessary skills for the future, and through delivering local social value initiatives targeting energy efficiency.

The investment offered by the partnership into economic recovery and growth is compelling, with commitments to schools and college programmes; the provision of apprenticeships, mentoring, job-seeking and interview support for key groups, such as members of the Armed Forces and care leavers; and employment opportunities for local tradespeople, SMEs and local housebuilding organisations.

The JV partnership offers these benefits plus the overarching opportunity to steer long term strategic place-shaping and social investment across the Borough, and potentially the whole of the North Yorkshire area, right from the very inception of the new North Yorkshire Council.

As an additional tool to complement existing housing delivery models in use across the area, the JV partnership is positioned and ready to enable the Council and its successors to deliver truly transformative change to residents' outcomes across the Borough and across North Yorkshire.

## **5.27 Alternative Options Considered**

5.27.1 Prior to developing the JV partnership model, alternative approaches to using Council owned land to increase the numbers and quality of affordable homes were identified and analysed in the Strategic Options Appraisal exercise considered by Overview & Scrutiny Board in November and Cabinet in December 2020.



Alternative options considered were:-

- Land disposal
- Contractual JV with private sector (i.e. development agreement)
- Corporate JV with private sector
  - JV: Enabling Partner
  - JV: Development Partner
  - JV: Investment Partner
  - JV: Hybrid
- Self Development

The Strategic Options Appraisal, ([available here](#)), contains a detailed analysis of the characteristics, advantages and disadvantages of each approach, together with an assessment of the ability of each approach to meet the Council's agreed strategic objectives. In assessing the delivery model best able to meet the Council's strategic drivers, the hybrid corporate JV and development agreement were demonstrated as being the highest scoring corporate vehicle and the highest scoring contractual approach respectively.

5.27.2 The Treasury Green Book Business Case considered by Cabinet in June 2021, ([available here](#)), therefore examined in further detail the corporate JV and development agreement approaches, against a reference case of simple land disposal. This demonstrated the corporate JV model to be the model best suited to achieving the Council's agreed strategic objectives and requirements, bringing in external development expertise, resources and funding; enabling true joint decision making throughout the life of the partnership; providing flexibility to add sites and adapt according to market, political or other macro changes during the partnership's lifetime; enabling the generation of a commercial return whilst sharing development risk and reward; and providing the Council with the benefits of limited liability and tax transparency.

5.27.3 A further alternative option would be to choose not to award contracts to enter into the JV partnership arrangements. The impact of such inactivity would be:-

- The Council failing to deliver on housing targets through reliance on planning policy and the market alone;
- The market continuing to provide less than policy compliant numbers of affordable homes, at lower quality, and sizes smaller than NDSS;
- The challenge of ensuring access to a range of suitable housing, both affordable and for market sale, particularly for local people, will not be addressed by the development market;
- The risk of Council owned land laying dormant for a long period during LGR transition, or costing money to maintain, and local plan allocations not being utilised to meet evidenced housing need;
- Potential for sites to be sold and land-banked, or developed in a way that does not meet with the Council's objectives, with a significantly reduced

degree of influence for the Council in place-shaping and community building;

- The Council needing to incur significant costs to achieve its housing ambitions, having lost the benefit of external funding and external expertise from a well-resourced and experienced development partner, and also forgoing a potential development return that could contribute both to increased affordable housing and to other corporate priorities;
- Opportunities for economic growth and local investment and harnessing education, skills and employment outcomes will be lost, together with lasting benefits to communities through social value initiatives;
- A significant opportunity to make real progress towards carbon reduction will be missed.

#### **5.27.4 In-built Flexibility to accommodate North Yorkshire Council's housing development aspirations**

A key strategic driver for the partnership arrangements from the very inception of their development was that they needed to be designed flexibly enough to enable the new North Yorkshire Council to benefit from the JV if it wished to use the partnership in the future to develop additional land contained within its own portfolio for housing, but conversely that the arrangements should make no commitment beyond the 8 initial SBC sites to the partnership. This was to ensure that the partnership could be entered into without delay to address known urgent need across the Borough, whilst retaining the freedom for the new North Yorkshire Council to consider all opportunities for its landholdings post 1<sup>st</sup> April 2023. The partnership arrangements were therefore designed to provide an additional development tool for the Council, which will be ready to deliver key outcomes to address urgent need without delay.

Similarly, the partnership was designed to not be a stockholding organisation, so that the new unitary Council remained free to make its own decisions in relation to ongoing housing management, without the existence of the JV partnership prejudicing these considerations in any way.

The partnership framework has therefore been cast to allow future sites, (including those owned by the new North Yorkshire Council, owned by Lovell, or owned by third parties), to be identified for housing development and invested into the partnership, as agreed between the new North Yorkshire Council and Lovell, at any time during the partnership's 30 year lifetime, in order to continue to deliver a programme of housing, with increased numbers of affordable homes, over a period of 30 years. The agreed legal arrangements already contain the appropriate process to facilitate this, and **Appendix 3** provides further details.

Lovell's solution also includes the provision of property and development expertise to work with the Council's teams and the JV, to identify and appraise opportunities, and to ensure the most appropriate delivery route is adopted to

maximise the value that can be achieved from the potential investment of any of the new unitary Council's assets.

Importantly, there is no obligation on the North Yorkshire Council for any further sites beyond the 8 SBC ring-fenced sites to be drawn into the JV partnership. Indeed, in order to ensure appropriate continuous oversight and scrutiny of the partnership, it is important that the Council, including the new North Yorkshire Council, is able to test the partnership in terms of value for money and achievement of the Council's objectives, throughout its operational lifetime. It is therefore advisable for the Council to establish development pipeline 'gateways' to keep the private sector partner, through the JV, incentivised to continue meeting the Council's objectives for the duration of the partnership. The careful selection of the initial 8 SBC sites, (being of varying sizes, development complexities and viabilities), will allow the new Council to monitor and test how well the partnership performs in the development of different types of sites, and the overall success of the partnership operations, in order to inform what sites the new North Yorkshire Council may, or may not, wish the partnership to develop in the future. This pilot/ gateway principle enables the maximum degree of commercial incentivisation, flexibility and assurance to be maintained for the Council in the long term.

Given the considerations set out above, another alternative option under early consideration was to seek to undertake a review of the new North Yorkshire Council landholdings prior to entering into any development partnership, with a view to ascertaining whether any other sites may be suitable for development by the partnership. This option was discounted on the basis that the JV arrangements were able to be designed to allow for this flexibility to bring in future sites during the lifetime of the vehicle.

There would therefore be no advantage to delaying entering into contracts pending a North Yorkshire Council asset review, as this is already accommodated through the proposed partnership model. However considerable disadvantage would be caused to the community by failing to secure the benefits available to our communities through mobilising the JV without delay in order to address the exponentially increasing challenges facing residents, and to deliver much needed outcomes at the earliest opportunity.

## **6. IMPLICATIONS**

### **6.1. Policy Implications**

The recommendations in this report support the following policies:-

- The North Yorkshire devolution priorities around housing and achieving carbon negative status
- the York, North Yorkshire and East Riding Strategic Housing Partnership Housing Strategy Review (2021-2023);

- York & North Yorkshire Routemap to Carbon Negative;
- York & North Yorkshire Skills Strategy 2021-2026;
- The emerging Draft Housing Strategy of the new North Yorkshire Council;
- Scarborough Borough Council Corporate Plan;
- Scarborough Borough Council Climate Change Strategy;
- Scarborough Borough Council Housing Strategy 2021-2026.

## 6.2. Legal Implications

### (i) Power to use Competitive Dialogue procurement route

s.26(4) Public Contract Regulations 2015 gives contracting authorities the power to apply a competitive dialogue procedure where:-

- (i) the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- (ii) they include design or innovative solutions;
- (iii) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
- (iv) the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference.

These circumstances apply to the Council's procurement of a JV housing development partner.

### (ii) Power to enter into a JV partnership under a LLP structure

Under s.1 Localism Act 2011 the Council has power to do anything that individuals generally may do, (known as the 'General Power of Competence').

Whilst the Act goes on to provide at s.4 that where a Council is carrying out activities for a commercial purpose, it must do so through a company, the case of Peters v Haringey (2018) clarified the position with regard to local authorities' participation in LLPs.

This case established the principle of the 'dominant purpose test', which is an examination of the principal motivation of the local authority, (irrespective of the motivation of other participants), in entering into an LLP.

Where that motivation is principally commercial, activities will need to be undertaken through a company structure. However where the dominant

purpose is not commercial, local authorities are empowered to participate in an LLP.

The procurement objectives established by the Council demonstrate that the dominant purpose of the Council's Better Homes project, and the Council's participation in any JV partnership, relate to the provision of affordable housing, social value, regeneration and the wellbeing of the Borough's residents, as opposed to being for a dominantly commercial purpose.

It is therefore considered that an LLP structure is lawfully available to the Council and s.4 Localism Act 2011, (the requirement for a company), is not engaged.

(iii) Legal Considerations in respect of LLP structure

Partnerships incorporated as LLPs are regulated by the Limited Liability Partnership Act 2000 and the Limited Liability Partnerships Regulations 2001, which impose accounting, auditing and other requirements on LLPs, similar to those imposed on limited companies.

Partners in an LLP are referred to as 'Members' of the partnership. Members have statutory responsibility for certain tasks and are liable in default to a fine or penalty.

LLPs must be incorporated at Companies House, conferring limited liability on their Members. The proposed JV will require a Membership Agreement which establishes a Partnership Board and governs how the business will operate, financial arrangements, decision making arrangements, dispute resolution and the responsibilities of each of the Members. Details of this Agreement are provided at **Appendix 3**.

(iv) Power to dispose of land

s.123(2) Local Government Act 1972 gives a local authority the power to dispose of land, subject to the receipt of the best consideration reasonably obtainable. This requirement will apply to any disposal by the Council of sites into the new partnership.

Best consideration can be demonstrated by the Council obtaining an independent professional valuation verifying that the disposal does constitute best consideration. This assessment is made at the time of the disposal so will need to be tested as and when each site is transferred to the partnership. The price payable will be determined through the Site Business Plan process and will reflect the fact that each site will have planning permission and be otherwise ready for development when contributed to the partnership. In terms of land value, the Council will receive 100% of any planning uplift.

s.123(2A) requires a local authority to advertise its intention to dispose of land which is open space and to consider any objections received in response to those advertisements, prior to making a decision on the disposal. Prior to the in-principle decision to dispose of the land, made by Cabinet on 29<sup>th</sup> June 2021, the appropriate consultation process was undertaken and all representations considered by Cabinet. Section 9 of the Cabinet report dated 29<sup>th</sup> June 2021 details the process undertaken and the consideration of representations by Cabinet.

(v) Power to invest

The partnership arrangements set out by the Council, and agreed to by the Lovell, involve the Council investing the value of its land, as its equity stake in the partnership, by way of a loan to the partnership.

s.12 Local Government Act 2003 gives a local authority the power to invest for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs, or for both purposes. 'Functions' can include all duties and powers of the Council, including statutory functions to benefit and improve its area and to promote its area's economic development. In using this power, the Council must have regard to relevant statutory guidance and comply with its approved and published investment strategy, and ensure that it keeps within the parameters of an investment role. Further information in relation to investment is set out under Financial Implications.

(vi) Subsidy Control

Under the Trade & Co-operation Agreement entered into between the European Union and the United Kingdom on 31<sup>st</sup> December 2020 ('the TCA'), both the EU and the UK undertook to implement an effective subsidy control regime in their respective territories. For the EU, this will be the existing body of State Aid law, but the UK is required to implement its own system of subsidy control law embodying the principles set out in Article 366 of the TCA

Those principles require, very broadly, that a subsidy should (i) promote a legitimate public policy objective; (ii) be proportionate to meeting that objective; and (iii) not produce distortions of competition which outweigh its positive effects.

As an interim step, pending the entry into force of the UK's bespoke system of subsidy control law, the relevant provisions of the TCA have been incorporated into domestic law by s.20 European Union (Future Relationship) Act 2020.

The Subsidy Control Act 2022 received the Royal Assent on 28<sup>th</sup> April 2022 and the Government has announced that the Act will enter fully into force on

4<sup>th</sup> January 2023. Until then, UK subsidy control will continue to exist in the interim form as described above.

As such, the establishment, governance and operation of the proposed JV will need to be on open market terms, with the Council receiving commercial rewards for its participation in the JV that are commensurate with its investment and the risks it is taking. The Council's external advisers have provided advice to the Council to ensure that this principle is reflected in the procurement, financial and legal documentation.

(vii) Governance

The governance and decision making principles of the proposed LLP are set out at **Appendix 3** of this report and Appendix D of the Business Case approved by Cabinet in June 2021. Final details in relation to governance matters within the Council will be agreed throughout the preferred bidder stage, as contracts are refined with Lovell, the Council and the continuing authority, in order to meet the new North Yorkshire Council's governance arrangements. A further report will be brought to the Council prior to contract close to agree internal decision making, Member oversight and other governance matters.

(viii) LGR

Pursuant to a Direction restricting transactions made under s.24 Local Government and Public Involvement in Health Act 2007, the consent of NYCC is required to enter into the contracts to implement the JV and to dispose of the Scarborough Borough Council owned sites to the partnership. In the event that the NYCC chooses not to give consent, Scarborough Borough Council will not have the legal powers to enter into the partnership arrangements and contracts will not be awarded. This will result in none of the benefits of the partnership being realised. The procurement documents published to bidders from the launch of the procurement have been transparent about the need for third party consent. The Conditions of Procurement published with the procurement documents issued to bidders at the outset of the process provided that bidders remain responsible for all costs and expenses incurred by them in connection with the entire procurement, and that the Council shall not be liable to reimburse or compensate the bidders in respect of any bidder costs. The Conditions of Procurement also provided that the Council shall have no liability for any costs in respect of the cancellation of the procurement for any reason.

(ix) Significant external specialist legal and procurement advice has fed into all stages of procurement process, from the strategic options appraisal, through the detailed business planning stage and drafting of partnership arrangements and draft contracts, to dialogue with bidders during the competitive exercise and identifying the preferred bidder. Following the decision of the NYCC on

consent under the s.24 Direction, the external legal advice will continue into the preferred bidder stage and through to contract closure.

### 6.3 Financial Implications

#### (i) Council Resourcing: Recovery of the set-up costs from the JV partner

As part of their submission, Lovell have committed to the repayment of the Council's £848k set up costs in full. These costs will be repaid on a phased basis over the first few operational years of the partnership.

#### (ii) Council Resourcing: Ongoing Resource Requirements

Once the new JV has been established, there are a series of ongoing roles for the Council in its operation. These roles principally relate to:

- Council as JV Member (i.e. shareholder);
- Council as Landowner; and
- Providing 3 representatives on to the new JV Board

The principal resources required to support this process will be Council staff time in reviewing Business Plans, Site Business Plans and other reports from the JV, taking appropriate decisions through the Member and Officer structure, and the costs of the officers who will represent the Council on the JV Board.

An estimate of the additional costs the Council would incur from these activities has been made at circa. £100k per annum. These costs are planned to be funded through a first call on returns from the JV before any reinvestment commitments are made; thus resulting in a cost neutral revenue budget position for the Council.

There could be a timing mismatch in the early years of the partnership where these costs would be incurred in advance of returns starting to be made from the JV. Any such timing mismatches will need to be factored into the Council's Medium Term Financial Plan to ensure that a cost neutral revenue budget position is maintained over the short to medium term. The timing of development profits will be dependent on the JV's proposed development proposals, therefore this will be further considered and assessed as the first JV Business Plan is developed, prior to formally entering contract.

#### (iii) Reinvestment Approach

The JV partnership arrangements include the reinvestment approaches available to the Council.



These approaches enable the Council to choose, at its own discretion, to reinvest its returns, generated in the form of land value and profits, from the JV partnership on a scheme-by-scheme basis, in order to facilitate more effective delivery against its objectives, for example to increase the level of affordable housing or to increase design quality.

Whilst the starting assumption has been set that the Council will seek to reinvest, it is important to maintain controls to ensure that the reinvestment represents best value, that the potential costs and risks of each reinvestment decision have been considered, and that a reinvestment decision continues to correlate with the Council's aspirations.

In order to facilitate this, the Site Business Plan process has been established, which will enable the Council to decide whether it wishes to reinvest its potential returns on a scheme-by-scheme, or batch of linked schemes, basis. The decisions on proposed reinvestment will take into account the outputs that the reinvestment will achieve, alongside a consideration of the financial implications and potential risks associated with the reinvestment.

Through this approach the financial implications of any reinvestment decisions can be taken on an ongoing basis as the JV partnership operates. As such, this report does not seek to quantify a commitment at this stage as this will be subject to future decisions.

Instead, what does need to be understood, are the potential financial implications of the two reinvestment approaches built into the arrangements, which are as follows:

- The first method seeks to reinvest Council returns once they have been generated. The Council would realise its land value and development profits from a site, or series of sites, and seek to reinvest all or part of them in future sites. As such the Council would realise the financial returns and hold them in reserve and reinvest them at a later date. As the returns have already been realised when a reinvestment decision is made this option presents minimal financial risk to the Council.
- The second method calculates predicted returns on a site or package of sites, and the Council could choose to commit to reinvest those projected returns, in part or in full, at risk, in advance of a development taking place. In this scenario the Council would need to fund the reinvestment costs in advance of the returns being realised. There would be a funding cost associated with this decision as the investment would need to be funded, at least on an interim basis, from borrowing or Council resources with a view that the borrowing or resources would be repaid or replenished once returns from the development have actually been realised. There is a risk that the Council's financial returns may not

ultimately be sufficient to repay the upfront investment therefore this represents a more high risk approach.

The reason this second approach has been built into the arrangements, despite this additional financial risk, is to enable reinvestment in advance on a site to deliver the objectives more effectively from the outset. If Method 1 is used it could be a lower level of affordable housing would be delivered on a site in order to generate returns to reinvest in the future, thus not meeting the objectives on that early site very effectively.

As explained above, both of these potential approaches will be built into the arrangements to enable the Council to make future decisions on the reinvestment approaches that it might wish to take. These will be agreed by the Council on a case by case basis.

The mechanism to facilitate reinvestment will be agreed as a part of the reinvestment decision process. It is most likely to be through a grant agreement with the owner and operator of the affordable housing that is to be funded, but could be through alternative mechanisms that are developed in the future. The key requirement is that any proposed approach complies with the regulations around subsidy control to ensure no inappropriate subsidy is applied to the new partnership.

(iv) Council Equity Investment

The Council is committing to invest its land value into the JV. This land is planned to be invested at best consideration, with the benefit of planning permission. The Council would invest this value through a loan note structure, where the JV issues the Council or Lovell loan notes, (a form of corporate debt), to the value of the land or cash being contributed. As such the full value is invested as a loan as the site is drawn into the JV. The Council can then potentially receive interest on this land until the full value is paid back at the conclusion of development. This is known as the Council's "Equity" investment.

The decision to invest this land is subject to the Site Business Plan process through which the Council has the power to take a decision after reviewing the Site Business Plan and judging the financial implications and whether the objectives have been met at that stage.

There may be circumstances where the Council is asked whether it wants to invest further resources, usually in the form of cash, as "Equity" into the vehicle. This is usually because the level of value from the Council's land along with the partners matched investment, is not sufficient to address the arrangements needed for a bank to lend to the vehicle. There is commonly a ratio of equity to debt that needs to be achieved in order to receive funding.

The Council has maintained the ability to loan this cash to the vehicle, again with an interest rate generating a return for this investment. There is however no obligation for the Council to do so. This again will be assessed through the Site Business Plan controls detailed above and would be subject to future approvals.

The Council has the legal power under s.12 Local Government Act 2003 to invest for any purpose relevant to its functions under any enactment, or for the purposes of the prudent management of its financial affairs. In doing so it must have regard to the Statutory Guidance on Local Government Investments (3<sup>rd</sup> Edition) and comply with its approved and published investment strategy. The Guidance contains requirements around ensuring that those elected members and statutory officers involved in making investment decisions have the appropriate capacity, skills and information to enable them to make informed decisions on specific investments, to assess risk profile in the context of the strategic objectives and to understand overall risk exposure.

The Guidance also requires the Council to ensure that those advising it understand the prudential framework and regulatory regime to which Local Authorities are subject, and to ensure appropriate governance arrangements are in place to ensure accountability, responsibility and authority for decision making on investment activities.

A programme of training will be provided to elected Members and Officers prior to approval of the first Site Business Plan.

(v) Council acting as Senior Lender

The JV structure detailed within this report has shown how the new vehicle would be funded. This demonstrates that the Council's land and matched investment from the partner will form the "Equity" of the vehicle. This could potentially be supplemented by senior debt, or bank debt, in the future. However it should be noted that the preferred approach put forward as a part of the Lovell submission would be for partner funding, (i.e. an initial option for the Council to fund 50% of the partner funding and where not taken, a provision for Lovell to provide all of the further funding at an unmatched interest rate), to be the preferred funding approach where achievable, due to the value for money advantages connected with such an approach.

This lending would typically be secured against the land and it would principally fund the majority of the construction costs of the scheme.

The Council is able, should it wish, to fulfil the Senior Lender role on development works of this type and this is a role that many other Councils have chosen to undertake in similar JV partnerships. The lending to the vehicle would need to be at the same rates a private bank would offer in order to address the subsidy control regulations, but because the Council could

source funding significantly cheaper than this, it has the potential to generate investment income to the Council from undertaking this activity.

Clearly, such activity does not come without risk, and appropriate security and management arrangements would need to be in place to justify the lending rate, but it is an option that could be attractive to the Council.

As a result, arrangements have been put in place within the JV structure to enable the Council to be given first option as to whether it wishes to undertake this role of Senior Lender on a scheme-by-scheme basis. The provision of any such loan would be pursuant to the Council's approved and published Investment Strategy and would be subject to Full Council approval.

(vi) Accounting implications

The reinvestment approach will be further developed at the next stage, in particular reviewing the appropriate accounting treatment of revenue and capital returns and how these are reinvested to deliver the desired outcomes.

The Council will be required, at the end of each financial year, to commission a valuation of both the Council's loan book and equity investment in the JV partnership. If there is any indication, as a result of these valuations, that the JV will not be in a position to meet any loan repayments and/or the financial strength of the LLP indicates a reduction in the value of the Council's loans this will mean the Council has to impair the assets on its balance sheet and, depending on the nature of the reduction in value may be required to make good any reduction in value.

### 6.3. **Equality and Diversity Implications**

An Equality Impact Assessment has been carried out and kept updated at appropriate stages of the project. This will continue to be kept under review.

### 6.4. **Local Government Reorganisation Implications**

6.4.1 This transaction will fall within the scope of the Direction restricting transactions made under s.24 Local Government and Public Involvement in Health Act 2007. This means that NYCC consent is required to enter into the contracts to implement the JV and to dispose of the Scarborough Borough Council owned sites. Officers will liaise with the County Council's Officers as appropriate to secure the necessary consents from the continuing authority. In the event that the NYCC chooses not to give consent, Scarborough Borough Council will not have the legal powers to enter into the partnership arrangements.

6.4.2 The Council has engaged with NYCC since the launch of the procurement and announcement of LGR, providing copies of the Strategic Options Appraisal carried out to determine the most appropriate housing delivery

model, the Green Book Business Case detailing the proposed 50:50 hybrid JV LLP approach, and providing briefings and presentations to NYCC officers and the LGR work-stream lead for Housing & Property. Now the preferred bidder and detailed solution have been identified, the Council is in a position to formally seek the consent of NYCC, under the s.24 Direction, to entering into the relevant contracts to establish the JV partnership. The Council will continue to work with Officers of NYCC to provide further detailed information and to facilitate engagement with NYCC Officers and Members ahead of the County's consideration of the consent under the s.24 Direction.

6.4.3 LGR has been explicitly and intentionally factored into the design of the Better Homes solution from its inception, and was front and centre of the preparatory planning stages, right from the consideration of the original Strategic Objectives which led to the choice of delivery vehicle.

This has included:-

- during pre-procurement engagement with the market to develop the procurement opportunity prior to its publication;
- making express provision for LGR in the published procurement documentation;
- ensuring the objectives of the procurement align with the strategic objectives of the wider North Yorkshire authorities in relation to housing, climate change, skills, employment and economic growth;
- embedding the impact of the opportunities and risks of LGR into the partnership arrangements and legal documentation provided to bidders at procurement launch.

The project, the procurement, and the partnership arrangements have been intentionally designed with LGR front of mind, in order to enable the pressing need for affordable housing delivery in the Borough of Scarborough to be addressed at the required pace, avoiding any hiatus during any lengthy LGR transition period.

At the same time, the arrangements have been designed to enable the new authority to have ready access to an additional delivery tool to assist it in arresting the affordable housing crisis across the wider North Yorkshire geography that it will inherit on vesting day, should it wish to capitalise on pre-procured external funding, resources and expertise, whilst retaining a clear decision making role.

Importantly however, the partnership arrangements have been designed to commit nothing more than the 8 initial ring-fenced SBC sites to the JV, thereby giving NYC the option to not use the vehicle as an additional method of building more affordable housing beyond the first 8 SBC sites, should NYC have other preferred delivery methods ready and able to address housing need at the required pace from 1st April 2023.

(i) Pre-market engagement

Before launching the procurement, SBC carried out pre-market engagement with the housebuilding market around the Council's objectives, proposed delivery model, proposed procurement route and emerging LGR proposals. Once LGR was formally announced by the Government, further soft market testing was conducted to see whether this would change the market's appetite to bid for the development partnership opportunity. Bidders' feedback was that the opportunity remained attractive, with the potential for the JV to acquire a further pipeline of housing development sites, beyond the initial 8 SBC pilot sites, for development over its 30 year lifetime, being a positive element of the opportunity, though noting that the decision on whether to invest additional Council owned sites would always be a decision entirely for the new authority once established, and that nothing more than the 8 initial Scarborough Borough sites was committed.

Lovell's projected programme for development of the initial 8 SBC sites is approximately 10 years and the JV will be seeking a further pipeline of sites for development for the remainder of the partnership's 30 year lifetime – these can be sites acquired from the new North Yorkshire Council, should it so wish, and/or sites acquired by the JV from Lovell, and/or from the market.

(ii) Alignment of Procurement Objectives with shared pan-North Yorkshire Housing priorities

The procurement objectives of the Better Homes programme, as set out in the published procurement documents, have been designed to align with, and support, the shared housing delivery priorities of the pan-North Yorkshire authorities.

**York North Yorkshire & East Riding ('YNYER') Strategic Housing Partnership's Housing Strategy Review 2021-23**

As can be seen from the Procurement Objectives set out at **section 5** and **Appendix 1** to this report, the JV partnership is designed to support the following key priorities of the Strategic Housing Partnership:-

- **Maintaining housing supply whilst improving the quality of new homes;**
- **Working with partners to enable housing supply, especially focusing on areas with delivery challenges;**
- **Working with partners to facilitate high quality new housing;**
- **Increasing supply of affordable housing by working with partners to improve capacity to deliver affordable homes, including tackling barriers to delivery;**
- **Meeting housing needs, including those of vulnerable households and those with specific needs;**
- **Ensuring that people have a decent home to live in.**

## **York & North Yorkshire Devolution Priorities**

In illustrating the barriers to delivering quality affordable housing faced across the North Yorkshire area, the York & North Yorkshire devolution bid cited high viability costs, upfront project and site development and infrastructure costs, and lack of resource and capacity post planning permission, resulting in insurmountable viability challenges and stalled developments.

The Better Homes JV will assist in addressing these challenges identified by the pan-NY authorities, by increasing access to public grant and private funding; increasing scalable development capacity and expertise; and supporting construction-based training, employment and economic growth opportunities, through the social value commitments of the preferred bidder, thus contributing to the region's priority of delivering affordable, low carbon homes across the York and North Yorkshire area.

## **York & North Yorkshire Routemap to Carbon Negative**

The JV partnership supports the following key objectives of the pan-North Yorkshire Routemap to carbon negative:-

- **to harness the economic opportunities of net zero, leveraging public and private sector investment;**
- **to catalyse collaborative action at pace and scale;**
- **to build confidence that reaching net zero and beyond to carbon negative is feasible;**
- **to position York and North Yorkshire at the forefront of national climate action,**

and will contribute particularly towards the Vision and strategic priorities of the Heating & Buildings Sector Action Plan of the Routemap.

## **York & North Yorkshire Skills Strategy 2021-2026**

The JV partnership supports the following Ambitions of the Strategy:-

- **Young people are equipped to make quality decisions about education, training and careers;**
- **The local skills market meets the needs of local businesses in a dynamic economy;**
- **Communities are empowered by learning and skills that enable everyone to participate fully in society,**

with particular contribution to linking schools with local businesses; championing technical skills through apprenticeships; supporting local skills providers to develop learning and training programmes for people of all ages; and addressing barriers to employment and progression.

## **Emerging Draft Housing Strategy - North Yorkshire Council**

The JV partnership supports the emerging themes of the draft Housing Strategy presently being developed by the pan-North Yorkshire Authorities, and will contribute to aspirations around meeting housing need, maintaining an appropriate supply of affordable and market homes and increasing the quality of homes.

### **(iii) Contract notice**

When publishing a procurement opportunity, an indicative contact value must be stated to enable prospective bidders in the market to assess whether the opportunity is one they are interested in. The published contract value for the Better Homes procurement opportunity was stated as a range between £130m to £3.9bn, to account for both SBC's 8 ring-fenced sites and also to enable sites across the pan-North Yorkshire geography to be developed by the partnership within the same procurement exercise, should the new North Yorkshire Council wish in future to use the vehicle to develop a further pipeline of housing sites. The upper sum was arrived at by taking into account the geography of the new North Yorkshire Council area and adjusting for degree of open space and for a likely maximum capacity of the JV. The entire development market was therefore able to be clear about the potential size of the opportunity, both on the SBC sites alone and allowing for LGR, and to decide whether to bid. The procurement process tested bidders on their ability to develop the 8 SBC owned sites at pace, and to scale up in the event of future sites being made available. The Lovell solution provided robust demonstration of Lovell's ability to deliver the 8 SBC ring-fenced sites and to scale up to deliver additional sites throughout the lifetime of the partnership.

### **(iv) Statutory Vesting of Scarborough Borough Council's Member Interest & Novation of contracts**

On the inception of the new North Yorkshire Council on 1<sup>st</sup> April 2023 all contractual and proprietary interests in the ownership of the District and County Councils in North Yorkshire will automatically transfer into the ownership of the new North Yorkshire Council, via statutory vesting.

This will apply to any contracts entered into by Scarborough Borough Council in relation to the JV partnership.

In addition, all of the partnership legal agreements published at procurement launch in 2021 include provisions to account for the effects of LGR, including referencing the geography of the new North Yorkshire Council, as statutory successor of Scarborough Borough Council.

The legal documentation underpinning the proposed JV also enables the Council's interests to be transferred to any successor body, in the event that



any right, obligation or liability does not automatically vest under statute, thus enabling the new North Yorkshire Council to operate within the vehicle to continue to make increased numbers of quality affordable homes available to residents.

#### **6.5. Communications**

A communications strategy will be drawn up jointly with Lovell. The partnership arrangements require each Member of the partnership to obtain the consent of the other prior to the issue of any announcements in relation to the partnership.

#### **6.6. Staffing**

Following receipt of consent under the s.24 Direction, Council officers will work with NYCC officers to agree a resourcing plan for the preferred bidder stage and for mobilisation into operational stage, to ensure smooth transition to the new Authority.

A full training programme will be provided for JV Board Representatives, and for elected Members and Officers involved in both the decision making aspects and the ongoing oversight of the JV during its operational stage.

#### **6.7. Planning**

All land to be developed through the JV approach will be subject to the planning regime in the usual way.

It will be for the JV partnership, once established, to design development schemes in respect of the identified sites and to propose any measures necessary to enable any planning constraints to be addressed with sufficient robustness to enable the Local Planning Authority to grant permission in accordance with planning law, policy and material planning considerations.

The obtaining by the developer JV partnership of detailed planning permission in respect of any individual Council owned site is a pre-condition of the transfer of that site from the Council to the JV. Consequently, prior to any transfer of Council land to the JV, the JV will need to demonstrate that an acceptable detailed planning permission has been obtained. Where the JV partnership is not able to obtain planning consent, under the contract conditions the land will not transfer to the JV, and will remain in Council ownership.

The process of obtaining planning permission will involve the usual pre-planning engagement and community and statutory consultation to inform the Council's decision as Local Planning Authority in respect of each individual site brought forward for development.

The Council's distinct roles as JV Member, landowner, and as Local Planning Authority must, and will, remain entirely separate.

6.8. **Crime & Disorder**

No implications

6.9. **Health & Safety**

The partnership arrangements will enable the monitoring and management of the performance of Lovell as construction contractor through a KPI regime, including Health & Safety KPIs.

6.10. **Environmental**

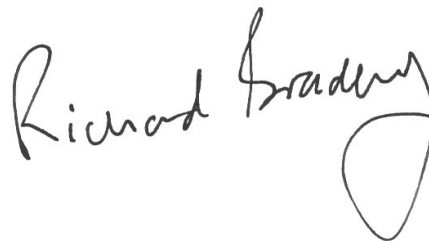
In line with the Council's declaration of a Climate Emergency in 2019, and Ecological Emergency in 2021, the Council embedded environmental sustainability as a key driver of the Better Homes project, through enshrining this key priority within both the project's strategic objectives and the procurement objectives.

A Climate Change Impact Assessment has been undertaken and is attached at **Appendix 4**. The Climate Change impact of the proposals contained in this report are assessed as being **positive** for the Council and **extremely positive** for the Borough

## 7. ACTION PLAN

Action	Indicative Date
Cabinet decision to enter into JV partnership with Preferred Bidder (subject to consent of NYCC under s.24 Direction)	15 <sup>th</sup> November 2022
Engage with and report to NYCC to obtain consent under s.24 Direction	As soon as practicable following November Cabinet decision, if approved
Commencement of Preferred Bidder stage with Lovell to refine and optimise contracts	Immediately following receipt of consent under s.24 Direction

Signature:



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Commercial Director

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**Background Papers:**

Please give details of all publicly accessible (non private) background papers applicable to the report.

Lives & Homes Overview & Scrutiny Committee report (22/232) 4<sup>th</sup> November 2022

Leader Portfolio report (22/213) 3<sup>rd</sup> October 2022

Lives & Homes Overview & Scrutiny report (22/124) 18<sup>th</sup> May 2022

Audit Committee report (22/34) 27<sup>th</sup> January 2022

Council report (21/100) 5<sup>th</sup> July 2021

Cabinet report (21/100) 29<sup>th</sup> June 2021

Lives & Homes Overview & Scrutiny Committee report (21/100) 17<sup>th</sup> June 2021

Lives & Homes Overview & Scrutiny Committee report (21/94) 26<sup>th</sup> May 2021

Cabinet report (21/70) 20<sup>th</sup> April 2021

Cabinet report (20/237) 15<sup>th</sup> December 2020

Overview & Scrutiny Board report (20/221) 18<sup>th</sup> November 2020

Cabinet report (20/78) 12<sup>th</sup> May 2020

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT THE AUTHOR.

## Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
<b>PROCUREMENT RISKS</b>								
1	28.10.22	<b>Procurement Regulations:</b> The pre-contract process is not run with the appropriate level of probity and regulation thus exposing the Council to ongoing challenge risks	Potential legal challenge from bidder	<b>Technical Support</b> – The Council’s procurement team remain involved in the project supported by procurement expertise from the external expert legal, procurement, strategic and financial advisors. This will continue throughout the process until contract award.	B3	B2	Commercial Director	Review, manage and report via Project Highlight Reports to Project Board.
2	28.10.22	<b>Changing requirements</b> The Council changes its requirements throughout the procurement process	Legal challenge  Costs increase	<b>Advanced work</b> – The project was undertaken following significant workshops with officers and cross party elected Members to ensure the Council’s requirements were clear and well documented.  Report to Cabinet at the conclusion of the procurement process to approve that a complaint procurement process has taken place in accordance with the key principles agreed at the outset of the	B3	A3	Commercial Director, Monitoring Officer	Review manage and report via Project Highlight Reports to Project Board.

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				procurement				
3	28.10.22	<b>Commitment to process</b> Market perceiving a lack of commitment from Council to entering into a JV Venture following procurement	Perceived lack of commitment from Council leading to withdrawal of preferred bidder	Recommendation to approve creation of 50:50 JV LLP	B3	A3	Project Board	Review manage and report via Project Highlight Reports to Project Board.
4	28.10.22	<b>Commitment to process</b> Failure to agree to disposal of 8 SBC owned sites to JV	Perceived lack of commitment from Council leading to withdrawal of preferred bidder	Recommendation to approve disposal of sites	B3	A3	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.
5	28.10.22	<b>Key Staff</b> Change to key staff part way through procurement, arising from LGR staffing changes	Delay to commencement of preferred bidder stage until fixed team settled, requirement for knowledge transfer, intended timescales for preferred bidder stage not met, loss of market confidence.	Key resources identified and made available to project prior to commencement of preferred bidder stage.	C4	C4	Head of Paid Service, North Yorkshire County Council	Review and manage through LGR workstreams and Project Board reporting.
6	28.10.22	<b>LGR Procurement Risk</b> change in Local Government geographical area resulting in potential desire to change contract requirements	Risk of legal challenge  Potential abortive costs and reputational risk	Mitigated through provisions of procurement documentation and legal suite. Legal advice to be taken and considered at each stage.	C3	C3	Commercial Director, Monitoring Officer	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		throughout procurement, or lack of clarity in contract notice						
7	28.10.22	<b>Reputational:</b> Market reputation – if Council is not seen to be credible and positioned to operate effectively in the market, (whether for capacity or capability reasons, or due to perception of democratic decision making processes), reputation in the market will quickly become damaged	Withdrawal from process by preferred bidder	Full resourcing of project, from internal and external support. Full training plan. Dedicated procurement team drawn from senior officers who have worked up the detail of the project to date.	B3	B1	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.
8	28.10.22	Disgruntled Bidder	Possibility the project could be delayed due to legal challenge  Legal costs	Robust procurement process, mitigations in procurement documents, advice from external experts.	C3	B1	Monitoring Officer	Review manage and report via Project Highlight Reports to Project Board.
<b>RISKS OF NOT ENTERING JOINT VENTURE PARTNERSHIP</b>								
9	28.10.22	Council decides not to establish Joint Venture or NYCC does not give consent under s.24 Direction	Inability to award contract to establish JV partnership  <b>Pace of delivery:</b> Without a Joint Venture being	Consider the project business case for preferred delivery model to meet Council's objectives and enter into JV.	E4	B1	Commercial Director	Consideration of Business Case and Cabinet report.

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
			<p>established pace of delivery of affordable homes will continue to stall.</p> <p><b>Political:</b> Without progressing this solution there is a risk that the Council will not be able to act effectively to address its political objectives of:</p> <ul style="list-style-type: none"> <li>Increasing affordable housing numbers above planning policy levels;</li> <li>Delivering better quality housing (size, accessibility, adaptability);</li> <li>Realising climate change mitigations and carbon reduction measures;</li> <li>Delivering economic impact, skills, training and local employment</li> <li>Achieving better social value outcomes</li> </ul> <p>Potential legal challenge</p>	<p>Cabinet Report, and Overview &amp; Scrutiny pre-decision engagement.</p> <p>JV's alignment with and contribution to wider pan-North Yorkshire strategies, objectives and actions plans re housing, employment and skills, and carbon reduction.</p> <p>Mitigations in procurement documents</p>				Engagement with NYCC Members and Chief Officers.
10	28.10.22	Council takes no active role in development of affordable housing on its land and relies solely on planning powers and housing market to	<p><b>Market continues to deliver:</b></p> <ul style="list-style-type: none"> <li>Less than policy affordable housing</li> <li>Housing at smaller sizes than NDSS</li> </ul>	Consider the project business case for preferred delivery model to meet Council's objectives	E4	B1	Commercial Director	Cabinet Consider Business Case, Cabinet Report, Overview & Scrutiny pre-decision

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		develop.	<ul style="list-style-type: none"> <li>Lower quality housing</li> </ul> <p><b>Lack of Site Utilisation:</b></p> <ul style="list-style-type: none"> <li>The Council's surplus land may lay dormant, costing money to maintain</li> <li>The Council will continue to fail to deliver housing targets</li> <li>The Local Plan allocations will not be utilised</li> <li>Sites will be sold and potentially land banked / not deliver Council objectives</li> <li>Council loses the opportunity to gain financial benefit from a share of potential development profits on the sites</li> </ul>					engagement.
11	28.10.22	Council seeks to develop its land through Development Agreement(s) with developer(s)	Lack of single strategic partner, no holistic Borough wide approach, need to undertake procurement exercise each time, lack of flexibility in the long term, lack of involvement in decision making in the long term, limited ability to cross subsidise sites or to reinvest in quality and social value, ultimate need to take legal action to enforce contractual obligations, significant resource requirement to monitor and manage contractual obligations	Consider the project business case for preferred delivery model to meet Council's objectives	D4	B1	Commercial Director	Cabinet Consider Business Case, Cabinet Report, and Overview & Scrutiny pre-decision engagement.



Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
12	28.10.22	<b>Financial</b> Council seeks to subsidise development of affordable housing through less than best consideration transfers to housing developers	Failure to obtain best consideration reasonably obtainable or value for money.  Inability to influence design, quality, social value.  For the Council to progress its strategic objectives there is a risk that it will need to incur significant additional costs that are not currently provided for within the MTFP	Consider the project business case.	D4	B1	Commercial Director	Cabinet Consider Business Case, Cabinet Report, and Overview & Scrutiny pre-decision engagement.
13	28.10.22	Failure to contract a suitable partner or identify suitable development projects	Failing to enter into Joint Venture and thus need to use alternative delivery method with risks as set out above	Clarity around Council requirements and robust procurement process	B4	B2	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.  Engagement with NYCC Members and Chief Officers.
<b>RISKS OF ENTERING INTO JOINT VENTURE LLP</b>								
14	28.10.22	<b>Governance:</b> Lack of clarity of governance – lack of clear lines of decision making	Inappropriate decision making within the Joint Venture structure – i.e. within Board of the Joint Venture and within Council in its role as Joint Venture Member	Development of clear governance arrangements as part of contractual suite: Development of Members' Agreement detailing:	B3	B2	Monitoring Officer	Review manage and report via Project Highlight Reports to Project Board. Sign off by

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				<ul style="list-style-type: none"> <li>• LLP Role</li> <li>• Reserved Matters to Joint Venture Members</li> </ul> <p>Development of Council governance approach to service objectives, which utilises an appropriate Delegations Matrix to address different Council functions – Joint Venture Member Role / Landowner Role / Funder Role etc., by mapping:</p> <ul style="list-style-type: none"> <li>• Key Member groups</li> <li>• Officer delegations</li> </ul> <p>All arrangements to be developed through the procurement process, agreed through the Cabinet / Full Council process as appropriate and agreed with the new partner</p>				<p>Monitoring Officer and s.151 Officer.</p> <p>Engagement with NYCC officers.</p>
15	28.10.22	<p><b>Governance:</b> Lack of understanding of different roles for JV and its Members</p>	<p>Inappropriate decision making within the JV structure – i.e. within Board of JV and within Council in its role as JV Member</p>	<p>Training will be provided to the Council covering</p> <ul style="list-style-type: none"> <li>• The different roles the Council has</li> <li>• Responsibilities under each role</li> <li>• Specific training for officers acting as JV</li> </ul>	C3	B2	Commercial Director	Roll out training plan

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				<p>Board members</p> <ul style="list-style-type: none"> <li>• Training for Members acting as JV Member and Members acting in an overview, scrutiny and governance capacity</li> </ul>				
16	28.10.22	<b>Governance:</b> Council's internal decision making framework too cumbersome	Lack of agility to support operations in a timely fashion appropriate to commercial market	<p>Development of clear governance arrangements as part of contractual suite.</p> <p>Development of Council governance approach to service objectives that utilises an appropriate Delegations Matrix to address Member Role /Landowner Role / Funder Role by mapping:</p> <ul style="list-style-type: none"> <li>• Key Member groups</li> <li>• Officer delegations</li> </ul> <p>All arrangements to be developed through the procurement process, agreed through the Cabinet / Full Council process as appropriate and agreed with the new partner</p>	C3	B2	Monitoring Officer	<p>Review manage and report via Project Highlight Reports to Project Board. Sign off by Monitoring Officer and s.151 Officer.</p> <p>Engagement with NYCC officers.</p>
17	28.10.22	<b>Governance:</b> Inappropriate individuals appointed as Council	Conflicts of interest between Council role and Joint Venture role for Joint Venture Board representatives	Options appraisal undertaken with EMT/ Project Board and Cabinet to map out potential areas of risk of conflict –	B4	B2	Commercial Director	Roll out training plan

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		representatives on JV Board – conflict of interest or lack of expertise		<p>intention to appoint non – statutory officers to Board of Joint Venture to reduce potential for conflict of interest arising between Joint Venture and Council.</p> <p>Training to be provided to the Council covering:</p> <ul style="list-style-type: none"> <li>• The different roles it has</li> <li>• Responsibilities under each role</li> <li>• Specific training for officers acting as JV representatives Board members</li> <li>• Specific training for Council Members and Statutory Officers</li> </ul>				
18	28.10.22	<b>Governance:</b> Council acting outside of its powers (ultra vires) in establishing the Joint Venture	Legal challenge to Council	Legal Advice from Pinsent Masons setting out powers to enter into a Joint Venture, (structured as an LLP), set out in Legal Implications of report	A3	A1	Monitoring Officer	Legal advice to Monitoring Officer confirmed in Cabinet Report
19	28.10.22	<b>Governance:</b> Failure to follow through on objectives e.g. Reinvestment of returns to deliver	Financial returns used for other Council priorities, leading to failure to achieve strategic objectives of this project, loss of credibility. Reputational damage.	Contractual suite enabling Council to reinvest on a site by site/ phase by phase basis, any extent of returns, without obligation.	C3	B2	Commercial Director, s.151 Officer	Review manage and report via Project Highlight Reports to Project Board.

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		objectives		Clear political direction re expectation as to reinvestment  Monitoring - Implementation of partnership business plan				
20	28.10.22	<b>Capacity:</b> Lack of resource to support Joint Venture 'Member' role internally	Inability to make robust and timely decisions on business cases, stalled land draw down from Council to Joint Venture, stalled development, delay in receiving returns, reputational damage, damage to credibility of vehicle	Full resource plan to be developed at next stage showing ongoing resource need, including relevant specialisms from finance / property / legal / development.	B3	A2	Commercial Director	Following consent under s.24 Direction, develop resourcing plan with NYCC officers for preferred bidder stage and operational stage of JV
21	28.10.22	<b>Capacity:</b> Failure to source appropriate representatives to act on JV Board	Inability of Council's representatives on Joint Venture Board to make decisions in the interest of furthering the business of the partnership	Provision made in ongoing costs budget to allow for recruitment of additional expertise to JV Board if required.	B3	A2	Commercial Director	
22	28.10.22	<b>Capacity:</b> Lack of expertise for different roles	Limited number of officers pulled too thinly	Training and resource plan developed to build internal skills and resilience	B3	A2	Commercial Director	Roll out training plan
23	28.10.22	<b>Capacity:</b> Lack of officer/ elected member understanding of risk profile and legal structure of LLP	Poor decision making	Training and resource plan developed to build internal skills and resilience	B3	A2	Commercial Director	Roll out training plan

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
24	28.10.22	<b>Capacity:</b> The Council does not have the resources for appropriate ongoing oversight across the life of the JV	Institutional blindness to activities of Joint Venture and degree to which it is meeting its Business Plan objectives	Costs of ongoing operation and oversight built into ongoing project budget within Business Case and to be recovered from Council's reinvestment to cover costs  Regular standardised reporting from Joint Venture to Council.  Training for officers and members	B3	B2	Commercial Director	Review manage and report via Project Highlight Report into Shareholder Governance Arrangements
25	28.10.22	<b>Development Risk – Planning &amp; pre-Construction:</b>  Poor stakeholder engagement & objections  Failure to achieve planning consent/Undeliverable planning  Cost Overruns	Failure to achieve planning consent  Inability for Joint Venture to acquire land from Council. Inability to develop sites and crystallise returns, inability to reinvest into strategic objectives.  Financial implications for the JV and the potential equity value of the Council's asset holdings in the JV  Reductions in the potential levels	Procurement of a partner with development management expertise to design schemes likely to obtain planning consent  Monitoring of the JV by the Council from a shareholder perspective	D4	B3	Commercial Director	Production of annual overarching business plans

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
			of Council development profits					
26	28.10.22	<p><b>Development Risk - Construction:</b></p> <p>Ground Conditions and archaeology</p> <p>Increasing Build Costs</p> <p>Services/Utilities – Location, Diversion, Installation, Connection, Guarantee supply</p> <p>Defective design</p>	<p>Increased build costs, sterilisation of sites, impact on viability, impact on site design, impact of yield from site, delay to programme, delay to delivery of units, reduction in overall return to Council</p> <p>Financial implications for the JV and the potential equity value of the Council's asset holdings (e.g loan notes) in the JV</p> <p>Reductions in the potential levels of Council development profits</p> <p>Financial issues for the Council if development profits have been committed in advance, in full, and the risks are identified during the construction period.</p>	<p>Procurement of a partner with development management expertise and financial resources – tested through procurement.</p> <p>Monitoring of the JV by the Council from a shareholder perspective</p> <p>Risk management methods built into reinvestment approach on a case by case basis</p>	D4	C2	Commercial Director	Review manage and report via Project Highlight Report into Shareholder Governance Arrangements
					D4	C3		
27	28.10.22	<p><b>Development Risk - Sales:</b></p> <p>Projected Sales Values not Achieved</p> <p>Sales – no RP for affordable housing</p>	<p>Decreased revenue returns, impact on site viability, impact of reinvestment of returns to meet strategic objectives.</p> <p>Delay to receipt of returns pending disposal of affordable</p>	<p>Requirement within procurement for partner to demonstrate disposal strategy for market and</p>	C3	C3	Commercial Director	Review manage and report via PHR into Shareholder Governance Arrangements
					C3	C3		Site Business Plans

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		Market absorption – Projected sales rates not achieved  Second Homes	housing  Delay to receipt of returns pending open market sales  Homes sold or rented for use as holiday homes  Financial implications for the JV and the potential equity value of the Council's asset holdings (e.g. loan notes) in the JV  Financial issues for the Council if development profits have been committed in advance, in full.	affordable housing  Nomination rights for Council included in contractual suite in respect of affordable (rented) housing  Risk management methods built into reinvestment approach on a case by case basis – decisions on funding on a case by case basis	C3  B3  B2	C3  B3  B2		
28	28.10.22	<b>Development/ Financial:</b> Significant proportion of the Programme being reliant upon a handful of sites, e.g. Musham Bank	Risk concentrated on the performance of a handful of sites  JV may become unviable if future due diligence renders the higher opportunity sites to be undevelopable  Prevent achievement of strategic objectives	Continue asset challenge process which may identify pipeline of sites that may be suitable for development by the JV.  Initial due diligence and upfront work undertaken to understand the indicative viability and potential development obstacles for the existing package of sites	C4	B2	Commercial Director	Review manage and report via Project Highlight Reports to Project Board



Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				Opportunity for JV to purchase additional sites for development and / or JV partner to introduce sites for development				
29	28.10.22	<b>Development:</b> No robust appraisal of Scheme Business Plans or lack of expertise to challenge projects and oversee delivery	Possibility of the programme underperforming  Financial risks to the Council if profits are reinvested in advance, business case projections are not robust and development profits are less than projected.	Ensure business cases are appraised and evaluated by an in-house sophisticated team, familiarisation with business case templates ahead of operational phase, roll out of training programme, support from external expertise to ensure knowledge transfer and use of external specialists to support the appraisal process where needed  Risk management methods built into reinvestment approach on a case by case basis	B3	B2	Commercial Director	Training of internal team.
30	28.10.22	<b>Legal:</b> Contractual arrangements do not protect the Council adequately	Risk not allocated appropriately between Council and Joint Venture	Effective legal arrangements procured and contracted, backed up by shareholder monitoring.	B2	B1	Monitoring Officer	Review manage and report via Project Highlight Reports to Project Board.

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
31	28.10.22	<b>Legal:</b> Subsidy Control is not addressed effectively	Legal challenge	Effective legal and financial arrangements procured and contracted backed up by shareholder monitoring.	B2	B1	Monitoring Officer, s.151 Officer	External legal advice
32	28.10.22	<b>Legal:</b> Relevant consents cannot be gained for transfer of land	Inability for Joint Venture to acquire land from Council. Inability to develop sites and crystallise returns, inability to reinvest into strategic objectives.	Procurement of a partner with development management expertise.  Longstop dates built into contractual arrangements enabling Council to dispose of land outside of Joint Venture at appropriate stage if Joint Venture unable to develop.	C4	C4	Commercial Director	
33	28.10.22	<b>Financial:</b> Tighter Public Sector controls relating to Local Authority finance and borrowing	Possibility of the Council being unable to fund development of sites through its equity and debt	The JV model has been developed to enable it to operate with no ongoing debt from the Council or equity investment beyond land value	B2	B2	s.151 Officer	
34	28.10.22	<b>Financial:</b> The schemes completed by the JV do not deliver the anticipated level of returns resulting in a shortfall on reinvestment funds that have been committed in	The Council will have funded the reinvestment in advance, potentially from borrowing, as such the lack of realised returns from the JV will result in a negative impact in the Council's financial position that will need to be funded.	The reinvestment mechanisms have been developed to enable the Council to assess risk in advance for any reinvestment, and indeed stagger its reinvestment to limit its exposure	C3	C3	s.151 Officer	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
		advance						
35	28.10.22	<b>Financial:</b> The JV developments fail - Risk of abortive costs for developing up initial schemes pre land draw down	Abortive costs for the JV, which would need to be funded from future development profits Reduced financial returns for the Council Potential financial viability issues for the JV if costs are significant	Appropriate delegations and decision making structure as between JV and Council and within the Council enshrined in legal suite.	B4	B2	Monitoring Officer, s.151 Officer	Review manage and report via Project Highlight Reports to Project Board. Sign off by Monitoring Officer and s.151 Officer.
36	28.10.22	<b>Financial:</b> The Council cannot/fails to resource the costs of acting as Member of the Joint Venture	Inappropriate decision making, lack of oversight over vehicle, delay to delivery	Recognition of the ongoing revenue costs associated with the operation of the JV built into budget	B2	B2	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.
37	28.10.22	<b>Financial/ Governance:</b> The Land Value does not hurdle s123 requirements	Legal challenge	Red book independent valuation at time of land transfer	B2	B2	Commercial Director	
38	28.10.22	<b>Financial:</b> The JV is unable to secure financing.	Development of Council land stalls and JV stagnates  Options granted to the JV on the Council owned sites prevent development of the sites, and Council cannot meet its strategic objectives	Robust testing through procurement process	B4	B4	Commercial Director	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
39	28.10.22	<b>Financial:</b> Reinvestment of land receipts and development profits in affordable housing may not be sustainable if other financial pressures arise in future years	Council potentially unable to fulfil statutory duties  Reductions in service delivery	Reinvestment approach is optional and is assessed on a case by case basis  Reinvestment is subject to Member approvals and will be considered alongside the Council's financial position at that time	B3	B3	s.151 Officer	
40	28.10.22	<b>Financial:</b> Financial returns on a development are not sufficient to cover amounts reinvested in advance	Council borrowing or resources not repaid, which will result in revenue budget costs or restrict future capital spend  Increase in revenue budget requirement will impact on future service delivery	Reinvestment in advance is optional and will be assessed on a case by case basis  Robust assessment of business cases, risks and outputs prior to reinvestment decisions being made and recommended  Section 151 sign off of all reinvestment decisions	B2	B2	s.151 Officer	
41	28.10.22	<b>Financial:</b> Returns from developments are insufficient to repay Council land or cash equity	Sub optimal capital receipts from sale of land  Shortfalls need to be funded from profits on future JV development sites  Financial implications for the Council if this relates to cash equity as funds cannot be repaid	Land and cash equity investments repaid prior to development profit	B2	B2	s.151 Officer	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
			Financial implications for the Council if land receipts have been committed					
42	28.10.22	<b>Economic:</b> Long term nature of project (30 years duration)	Political changes may lead to change of priorities during the lifetime of the project	Clear exit strategies built into the legal and contractual arrangements  Reinvestment of financial returns into housing are optional therefore Council could continue to develop sites through the JV but invest the financial returns generated to pursue alternative priorities				
43	28.10.22	<b>Economic:</b> Wider economic trends e.g. economic downturn	Developers being less likely to undertake developments – building materials cost inflation	Continual monitoring and adaptation of programme as necessary				
44	28.10.22	<b>Partnership/ Contractual</b> - Development partners "cherry-picking" the best sites	Possibility of the less attractive sites not getting developed	Contractual provisions and Milestone pre-conditions requiring 'batching' more challenging sites together with better sites	B3	B2	Commercial Director	
45	28.10.22	<b>Partnership:</b> Change of partner control and strategic direction	Partners' strategic objectives no longer align	Deadlock provisions in contractual suite with SBC having 50% voting rights on JV Board and reserved matters control	B4	B4	Commercial Director	

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				Contractual provisions for dispute resolution and termination/ exit in the event of total misalignment of partners' strategic direction				
46	28.10.22	<b>Partnership:</b> Risk around construction exclusivity not achieving value for money/ best value	Council does not receive value for money in respect of construction works	Contractual provisions incl. KPIs, procurement policy and regular exposure to competition/ benchmarking	B3	B2	Commercial Director	Continual benchmarking
47	28.10.22	<b>Partnership:</b> Risk of partner wearing numerous hats – investment partner, development manager, construction contractor etc.	Risk of cross default – partner defaults on obligations under one of its roles, but not in another role	Contractual protections built into legal suite	C3	C2	Monitoring Officer	
48	28.10.22	<b>Reputational:</b> Substandard products or poor results	Loss of credibility in partnership and Council	Business plan approval process  Council's role on the JV	B3	B2	Commercial Director	Site Business Plans
49	28.10.22	<b>Reputational:</b> Community opposition preventing development of key sites	Some key sites may not be developed for the optimum return to generate affordable housing numbers or revenue for the council	Community and stakeholder engagement strategy	D4	C3	Commercial Director	Implement an effective communications and engagement plan.

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
50	28.10.22	<b>Reputational:</b> Alienation of other RPs in the local market	Other (unsuccessful) RPs and developers may cease developing in the Borough and prioritise other locations	Relationship management with other RPs – early successes programme and its continuation, other opportunities - clear communications that this is an additional tool not a replacement for all other delivery approaches – additional sites beyond initial identified sites will be assessed on a case by case basis in terms of delivery approach	D4	C3	Commercial Director	Comms Plan & stakeholder engagement
51	28.10.22	<b>Political:</b> Future changes in political control or strategic direction of the Borough Council	Possibility that there may be an attempt to cancel the project.  Potential legal challenge and abortive costs if procurement stopped or Council pulls out of JV  The Council would not benefit from potential development profits from the JV if an alternative approach is taken.	Appropriate legal safeguards in procurement documentation and termination provisions in JV documentation  The optional reinvestment approach should ensure that the financial benefits of the JV are beneficial to the Council regardless of political leadership.	C4	C2	Commercial Director	Implement an effective communications and engagement plan and cross-party project scrutiny and briefing
52	28.10.22	<b>Legislative/Political – LGR:</b> NYCC does not give consent under s.24 Direction	Inability to continue procurement to appoint partner  Delay to procurement process whilst seeking consent	Communication and engagement across sub regional and national stakeholders and partners	C4	B4	Commercial Director	Communications Plan & Stakeholder engagement

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
			<p>Abortive costs</p> <p>Reputational damage</p> <p>Housing, economic, social value and financial objectives not met</p>	<p>Robust business case</p> <p>Ability within legal documentation for Council's interest to be transferred to a successor body.</p> <p>Continual monitoring of costs and political landscape</p>				Engagement with NYCC Members and officers.
53	28.10.22	<b>Organisational/ Cultural:</b> Lack of corporate buy in	Unclear or fractured organisational presentation to market resulting in loss of market confidence	Communications Plan, cross party member briefings,	C4	C3	Commercial Director	Cabinet, Council decisions, Overview & Scrutiny cross-party support
54	28.10.22	<b>Organisational/ Cultural:</b> Optimism bias/ 'institutional blindness'	Failure to robustly recognise risks and mitigations through desire to see project succeed	Check and challenge approach involving periodic review, cross party oversight, clear shareholder governance procedures, internal and external Audit review	B4	B3	Commercial Director	Project Highlight reports to Project Board, Overview & Scrutiny oversight
<b>PROJECT RISK</b>								
55	28.10.22	<b>Risk Management</b> Inadequate Approach to Risk Management	Strategic objectives not met, legal challenge, financial overruns	<p>Robust risk management approach adopted for the project in line with Council's risk management strategy</p> <p>Ongoing project Risk register will be developed by project</p>	B2	B1	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.



Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
				team in consultation with the following: <ul style="list-style-type: none"> <li>• External legal, financial and property advisors</li> <li>• Risk &amp; Governance Champions</li> <li>• Council's risk advisor</li> <li>• External Audit</li> <li>• Live tool that will adapt throughout the phases of the project</li> </ul>				
56	28.10.22	<b>Professional/ Managerial</b> Inadequate systems in place to capture, monitor & report programme performance,	Possibility of being unable to accurately measure progress and stated benefits	Establish adequate systems to capture monitor and report programme performance	B2	B1	Commercial Director	Review manage and report via Project Highlight Reports to Project Board. Overview & Scrutiny & Audit Committee oversight
57	28.10.22	<b>Professional/ Managerial</b> Key members of the Council staff and project team leaving	Loss of detailed knowledge of foundational structure of partnership, loss of 'corporate memory', delays to the project	Ensure key person cover, avoid unreasonably overloading team, establish succession planning, develop in-house staff, ensure corporate support	B3	B2	Head of Paid Service	Review manage and report via Project Highlight Reports to Project Board.  Engagement with NYCC through LGR

<b>Risk Ref</b>	<b>Date</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
58	28.10.22	<b>Reputational</b> Overloading the programme with unachievable deliverables	Failure to deliver, loss of credibility in vehicle/ Council.	Options appraisals and business cases providing clarity about what the programme can deliver and what it can't deliver	B3	B2	Commercial Director	Review manage and report via Project Highlight Reports to Project Board.

**Glossary of Terms**

- Risk                                   An event which may prevent the Council achieving its objectives
- Consequences                       The outcome if the risk materialised
- Mitigation                           The processes and procedures that are in place to reduce the risk
- Current Risk Score                 The likelihood and impact score with the current mitigation measures in place
- Target Risk Score                 The likelihood and impact score that the Council is aiming to achieve
- Service Unit Manager             The Service Unit or Officer responsible for managing the risk
- Action Plan                         The proposed actions to be implemented in order to reduce the risk to the target score

***Risk Scoring***

Impact	5					
	4					
	3					
	2					
	1					
		A	B	C	D	E
	Likelihood					

Likelihood:

- A = Very Low
- B = Not Likely
- C = Likely
- D = Very Likely
- E = Almost Certain

Impact

- 1 = Low
- 2 = Minor
- 3 = Medium
- 4 = Major
- 5 = Disaster



## **(22/232) - Appendix 1 – Procurement Process**

In pursuance of Cabinet’s decision of 29<sup>th</sup> June 2021, officers have undertaken a procurement process to identify an appropriate private sector entity with whom to form a strategic development Joint Venture (‘JV’).

This Appendix provides details of the process undertaken.

### **1. Procurement Objectives**

The procurement objectives which the Council required any partnership solution to meet were supported by Overview & Scrutiny Board in May 2021 and agreed by Cabinet in June 2021. They are as follows:-

1.	to form a long term partnership to fund, enable and, where appropriate, develop a programme of key sites, and for the Council to have an equal decision-making authority within the partnership
2.	to deliver high quality new housing and regeneration in line with local needs now or in the future, with the overarching aim of delivering significant levels of affordable housing in excess of local planning policy requirements
3.	to undertake activities to increase environmental sustainability and carbon reduction in the short, medium and long term
4.	to drive the agenda of having a good mix of homes, a mix of types and tenures including homes that meet the needs of all ages and those with disabilities
5.	to maximise social value contribution from the activities of the partnership
6.	to drive the pace of development
7.	to acquire (from any source) and/or sell land for the purpose of achieving the Objectives, in particular delivering significant levels of affordable housing
8.	to maximise grant funding into the partnership
9.	the Council to invest its land to receive meaningful returns and it also has some appetite for risk, subject to investments being balanced by commensurate reward
10.	to enable the Council to reinvest its returns to increase the level of affordable housing

### **2. Procurement Route**

For reasons given in the Cabinet report of 29<sup>th</sup> June 2021, the procurement process chosen was the competitive dialogue process. This is a strictly regulated process under the Public Contracts Regulations 2015.

## **Phases of Competitive Dialogue Procurement process**

The competitive dialogue procurement process consists of the following phases, which are detailed in previous reports and summarised below:-

### **Phase 1 – “Find a Tender” Notice & Selection Questionnaire**

- The first phase of the procurement seeks to select a shortlist of bidders based on their past experience, financial standing and their ability to meet key compliance standards. This is achieved through the assessment of a Selection Questionnaire (SQ).
- This Phase is commenced by publishing the opportunity to the whole of the market through a ‘Find A Tender’ notice, along with the detailed procurement documents that explain the opportunity and how the partner will be selected. Those interested can express interest and then complete the SQ.
- The Council then assesses the SQ responses by ensuring bidders pass the compliance and financial standing hurdles and then scoring the technical experience questions. The aim of this stage is to take forward a shortlisted number of bidders that have the potential to deliver the Council’s requirements.

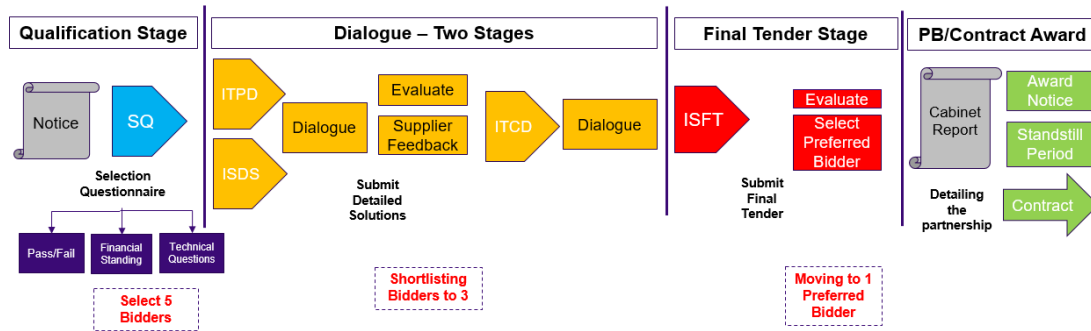
### **Phase 2 – two stage Dialogue process with an interim submission to shortlist bidders**

- The Dialogue stage is the opportunity for bidders to present their solutions, responding to a series of tender questions and detailing to the Council how they will deliver the requirements that the Council has set out in the procurement documents. The dialogue enables the bidders to outline their potential responses and approaches and to discuss and understand what the Council is seeking to achieve. On the basis of these discussions, bidders then submit their solutions for assessment.
- The Council ran a two-stage dialogue process whereby a series of 4 dialogue sessions were undertaken with each bidder, then a response to each of the evaluation questions was submitted by bidders. The responses were evaluated and moderated, and the highest scoring 3 bidders shortlisted to move to the second stage of Dialogue. The second stage provided the shortlisted bidders with a further 4 dialogue sessions each, to enable them to improve their solution, before submission of final tenders for evaluation, in order to arrive at the Council’s Preferred Bidder.

### **Phase 3 – Selection and contract optimisation**

- Once the Preferred Bidder has been selected there is a contract optimisation stage. During this stage, the Council will seek to ‘clarify, specify and optimise’ the bid to refine the solution and ensure the contracts are effective.

The procurement process is illustrated in the diagram below:-



**SQ:** Selection Questionnaire | **ITPD:** Invitation to Participate in Dialogue | **ISDS:** Invitation to Submit Detailed Solutions | **ITCD:** Invitation to Continue Dialogue | **ISFT:** Invitation to Submit Final Tenders

Throughout the procurement process, from launch to identification of Preferred Bidder, cross party members have been kept updated on the progress of the procurement exercise through procedural milestone update reports to Overview & Scrutiny Committee, Audit Committee and the Risk & Governance Champions of Audit Committee

### 3. Award Criteria & Evaluation Methodology

Tenders were evaluated by reference to a clear and consistent evaluation framework, comprising a 60% Quality 40% Price split, as approved by Cabinet in June 2021.

The award criteria and evaluation methodology were published to all bidders at procurement launch:-

Question No.	Evaluation Criteria	Tier 1 Weighting	Tier 2 Weighting (expressed as a % of the overall weighting)
<b>Price</b>			
1a	Financial Submission	<b>40%</b>	18%
1b	Construction Cost Overrun Risk		Risk Flag
1c	Development Management Fee		5%
2	Assumptions At this ISFT Stage, Question 2 (Commercial Offer: Assumptions) will have a threshold score of 2. A Bidder who scores less than a 2 in this question at this ISFT Stage will be disqualified and excluded from any further participation in this Procurement.		10%
3	Funding Proposal		7%
<b>Quality</b>			
4a	Scheme Concept and Design – Illustrative Masterplan – Musham Bank	<b>60%</b>	9%
4b	Scheme Concept and Design – Scheme Concept Design – Sandybed Crescent		6%
4c	Scheme Concept and Design – Scheme Concept Design – Rievaulx Road		6%
5	Programme		6%
6	Skills and Capabilities		5%
7	Partnership Approach		9%
8	Approach to procurement of contractors and supply chain		5%
9	Legal		11%
10	Social Value		3%

## 5. Tender Evaluation Questions - what were bidders tested on?

As the Council is procuring a partner and the framework through which the partnership will operate, the procurement evaluation criteria was designed to test bidders' ability to put forward partnership solutions that would meet the Council's requirements across the above 10 different areas.

As a way of testing the bidders' development and partnership skills and resources - including their access to funding - the evaluation methodology used the 8 committed initial SBC sites, (which sites vary in size and development complexity), as a case study, to assess how bidders would seek to operate a development JV in partnership with the Council, which would meet all of the Council's objectives, if the JV were to deliver development on those sites.

The ten areas tested in the procurement were:

### (Q1) Commercial Offer: Overall financial offer

- this question tested the financial implications of the bidders' solutions through three elements; 1(a) the overall financial return which might be generated from the 8 SBC sites, and amount of affordable housing generated above planning policy levels through those sites; 1(b) the financial risk of the bidders' construction approach; and 1(c) the commercial fee being offered for providing development management services.

### (Q2) Commercial Offer: Narrative & Assumptions

- this question tested the robustness of the bidders' assumptions in the financial model, through a requirement for benchmarked/ market evidence – showing that the build costs / sales values etc. that bidders put forward were appropriate and achievable in the market.

### (Q3) Commercial Offer: Funding Proposal

- this question tested the funding strategy being offered for the JV based on the 8 case study sites.

### (Q4) Scheme Concept & Design

- this question tested bidders' abilities and approach to master-planning and design, using example designs for 3 of the 8 schemes.

### (Q5) Programme

- this question tested the pace at which development could be undertaken, based on bidders' detailed programmes for case study schemes delivered through the JV model.

### (Q6) Skills & Capabilities

- this question tested the quality and structure of the bidder's team that would be committed to the JV, including how continuity would be ensured through the lifetime of the partnership, e.g., scaling teams up or down to manage fluctuations in the market during the course of the partnership's lifetime. It also tested how the bidder would work in partnership with the Council to support the (new) Council's asset strategy.



#### **(Q7) Partnership Approach**

- this question tested the bidders' partnership model, including a detailed explanation of how their partnership solution would work, how decisions would be taken and how financial elements would flow through the partnership.

#### **(Q8) Approach to Procurement of Contractors and supply chain**

- this question tested the bidders' proposal for ensuring that value for money is secured by the JV in its contractual arrangements for procuring goods, works and services, including how construction contracts/ subcontractor packages would be let, how construction cost risk is managed, and the role of the JV partner.

#### **(Q9) Legal**

- this question required the full legal suite to be agreed and tested how the legal arrangements for the partnership would address the Council's requirements, including the terms of the partnership agreement, relevant land agreements and service contracts.

#### **(Q10) Social Value**

- this question tested how social value would be captured through the partnership through detailed social value commitments offered by the bidder. Social value priority themes include: promoting skills and employment, supporting growth of responsible local businesses, creating healthier, safer and more resilient communities and promoting social innovation.

### **6. Evaluation Teams & Process**

An Evaluation Panel comprising 15 subject matter experts, including SBC housing, planning, legal and construction expertise, and NYCC's Head of Finance (Commercial), together with legal, procurement, development, property, design and strategic finance consultants specialising in local government JV arrangements, evaluated all bidders' solutions against each of the evaluation criteria and tender evaluation questions, through each stage of the procurement shortlisting process.

An independent Moderator was engaged as part of the process to ensure the process of evaluation was undertaken in a fair and non-discriminatory manner.

All officers and advisors involved in dialogue and the evaluation of bids undertook detailed training in the competitive dialogue and evaluation process in December 2021 and again in April 2022.

All officers involved in the dialogue and evaluation of bids signed confidentiality statements and conflict of interest declarations at each stage of the procurement process.

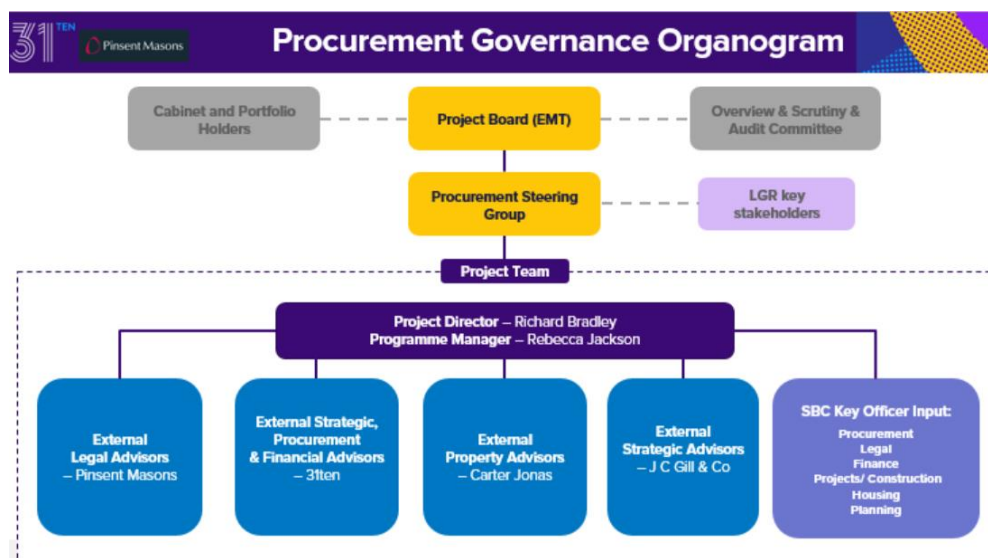
### **7. Procurement Governance**

To ensure robust governance throughout the procurement exercise, the following measures were implemented:-

- Appointment of a dedicated Project Director and Programme Manager in November/ December 2021;

- Continued appointment of a nationally recognised advisory team, comprising 31ten, Pinsent Masons LLP, Carter Jonas, J C Gill & Co Ltd to support the process and form part of the Evaluation Team alongside Council officers;
- Appointment of an external experienced Moderator, to ensure that tender evaluation was carried out in a transparent, non-discriminatory and open way;
- Bespoke training provided to all Evaluation Panel members on the procurement process, evaluation and moderation.
- Clear and structured internal project governance measures embedded, including:-
  - A wide ranging Project Team, drawn from all relevant professional disciplines; including Housing, Estates & Strategic Land, Finance, Procurement, Legal, Planning, Projects & Construction, Communications;
  - The Project Team reporting in and escalating issues to the Project Board, comprising the Council’s EMT, including CE, s.151 officer and Monitoring Officer;
  - Establishment of a Procurement Steering Group from procurement launch, comprising a representative from each external advisor and the Project Director, Programme Manager and Head of Procurement, meeting weekly to manage strategic issues and escalations to Project Board where necessary;
  - Regular procedural milestone reporting to elected Members;
  - Engagement with NYCC and Local Government Reorganisation work-stream leads during the unitary authority transition period.

The procurement governance arrangements implemented are illustrated below:-



## **8. Arriving at the Preferred Bidder**

The tender evaluation scoring process was conducted through 2 different methodologies, published to all bidders at the procurement launch.

For all “Quality” questions bidder responses were assessed against a standard scoring matrix, with scores being derived by assessing how well the responses delivered against the Council’s requirements as detailed in the procurement documents.

For the “Price” element of the scoring the actual financial elements of each bidder’s submission were assessed against each other through a comparative scoring approach.

The Preferred Bidder is the party that scored the highest cumulative score from their answers to the questions.

## NOTES

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## NOTES

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## NOTES



## **(22232) Appendix 4**

### **Scarborough Borough Council Climate Change Impact Assessment**

The purpose of this assessment is to ensure proposals to the Council are in line with commitments to tackle climate change. In 2019, the Council declared a Climate Emergency and pledged to do everything within its power to make the Borough carbon neutral by 2030, [see here](#). In 2021, the Council adopted its first Climate Change Strategy to build on this declaration and highlight the key areas of focus the Council will take in reducing the carbon emissions both within the Council itself and across the Borough, [see here](#).

Climate change and carbon emissions should be considered at every stage of a proposal's lifetime, from initial working to evaluation. This impact assessment presents a framework tool to highlight the potential climate change impacts a proposal can have. The assessment highlights six areas of impact associated with the Council and seven areas of impact across the Borough. Impacts should be assessed over the lifetime of a proposal with each impact rating based on the 'net' impact of a proposal, any impacts of specific periods or events under the proposal that combine to provide the total impact should be detailed in the explanation column. The assessment generally does not require a quantitative report of the emissions associated with the proposal, though significant areas of impact should be clearly outlined.

A proposal should be considered to have a positive impact if it reduces climate change effects (reduces emissions, increases carbon storage, increases resilience, increases awareness), a neutral impact if it brings no clear change (either positives and negatives balance, or no impact at all), and a negative impact if it worsens climate change effects (increases emissions, reduces carbon storage, reduces resilience, reduces awareness). Where a proposal has no impact at all in any given category, as indicated in the initial screening process, then the additional information cells may be left blank.

The initial Climate Change Impact Screening must be completed for all proposals to be considered by Members. This full Climate Change Impact Assessment must be completed if indicated in the screening process, and attached as an appendix to reports to Council, Cabinet, and Overview and Scrutiny Committees. Based on the completion of the assessment table, you should also assess the overall climate change impact of your proposal for both the Council and the Borough. This overall assessment should outline how any positive impacts outweigh negative impacts, or vice versa. For further advice on completing the assessment, please contact the Climate Change and Carbon Reduction Officer [harry.baross@scarborough.gov.uk](mailto:harry.baross@scarborough.gov.uk).

**Proposal: Better Homes 50/50 Housing Joint Venture**

**Director: Richard Bradley**

**Prepared by: Richard Bradley**

**Date: 4<sup>th</sup> October 2022**

Over the lifetime of this proposal, how will it impact...?	Positive impact	Neutral impact	Negative impact	Explain why it will have this impact and over what timescales.	How will any negative impacts be mitigated and positive impacts enhanced?	How do these impacts compare to other available options, including making no change?
<b>Transport</b> emissions (fleet, staff/member travel, commuting) associated with the <b>Council</b>		√		No additional Council staff or Council vehicles are required as part of the Joint Venture.	Any negative impacts can be mitigated by using Council electric fleet and / or use of remote working for meetings.	No additional benefits would be gained if the programme didn't go ahead.
<b>Energy use</b> emissions (heating, electricity) associated with the <b>Council</b>		√		Energy saving measures are being introduced into Council properties. No additional Council building space is required as part of the Joint Venture	Where appropriate energy saving measures will be introduced to all buildings. The council owned buildings will be on a green tariff	No additional benefits would be gained if the programme didn't go ahead.
<b>Fuelled equipment use</b> emissions associated with the <b>Council</b>			√	Negative impact during construction phase.	More non fuelled equipment are likely to become available during the lifetime of the 30 year joint venture. This will only be a short term impact and is outweighed by the greater sustainability benefits	No additional benefits would be gained if the programme didn't go ahead.
<b>Water consumption</b> emissions associated with the <b>Council</b>	√			No additional water usage from council buildings during construction / lifetime of Joint Venture	All new homes will have greater water efficiency measures that meet new building control regulations.	No additional benefits would be gained if the programme didn't go ahead.

<b>Procurement and waste</b> emissions associated with the <b>Council</b>	√			Specific procurement and site waste treatment has been incorporated in to the tender evaluation process / legal mark-up arrangements	The Council can refuse a site business plan should these measure not adequately meet the needs of the Council.	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.
<b>Awareness</b> of climate change and emissions within the <b>Council</b>	√			A brand new housing joint venture is a huge opportunity for Council staff to learn from market leading developers in this field.	Site business plans can be available for Council staff to read. Opportunities for learning from the joint venture partner will be available for Council staff.	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.
<b>Transport</b> emissions across the <b>Borough</b>		√		The majority of new builds will satisfy inward latent demand / inward movement of residents All schemes will be to Building Healthy Lives design principles, that include active travel and associated design principles. The partnership will prioritise the use of local labour and local supply, minimising transport emissions.	100% of new homes will have access to electric charging points, bike storage facilities. Preference for local resident housing is key feature of joint venture.	No additional benefits would be gained if the programme didn't go ahead.
<b>Energy use</b> emissions (heating, electricity) across the <b>Borough</b>	√			Construction will have an energy impact. Green construction skills village will build the capacity in the area on sustainable construction. All new builds will be required to have energy	The Council can refuse a site business plan should these measures not adequately meet the needs of the Council. The procurement process has made clear the Council's requirements and aspirations about sustainable homes that	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.

				efficiency measures included, using a fabric first approach, no gas into the developments, and thermal efficient considerations.	meet Future Homes Standard from the outset.	
<b>Water consumption</b> emissions across the <b>Borough</b>	√			All new builds will be required to have water efficiency measures included	The Council can refuse a site business plan should these measures not adequately meet the needs of the Council. The procurement process has made clear the Council's requirements and aspirations about sustainable homes that meet Future Homes Standard from the outset.	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.
<b>Waste emissions</b> across the <b>Borough</b>	√			Construction methodologies will require on site waste treatment and recycling.  Circular economy principles embedded in partner offer (e.g. onward use of waste materials)	The Council can refuse a site business plan should these measures not adequately meet the needs of the Council. The procurement process has made clear the Council's requirements and aspirations about sustainable homes that meet Future Homes Standard from the outset.	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.
<b>Carbon storage and sequestration</b> (vegetation, land use) negative emissions across the <b>Borough</b>		√		Net biodiversity gain and environmental impact assessments will be required as part of the planning and development stages of any site business plans.	The Council can refuse a site business plan should these measures not adequately meet the needs of the Council. The procurement process has made clear the Council's requirements and aspirations	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.

					about sustainable homes that meet Future Homes Standard from the outset.	
<b>Resilience</b> to the impacts of climate change (heatwaves, droughts, storms, floods) across the <b>Borough</b>	√			<p>New builds will have SUDs associated with them where appropriate.</p> <p>Procurement process has made clear the Council's aspirations about sustainable homes that meet Future Homes Standard from the outset.</p>	Local Plan identifies areas prone to flooding, which are not allocated development status within the Local Plan	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas.
<b>Awareness</b> of climate change and emissions across the <b>Borough</b>	√			<p>A brand new housing joint venture is a huge opportunity for residents and businesses to learn from market leading developers in this field.</p> <p>Links between the partnership and schools, colleges and training establishments will increase awareness of climate change issues and mitigations.</p>	Site business plans can be available for people to read. Opportunities for learning from the joint venture partner will be available for residents and businesses	No additional benefits would be gained if the programme didn't go ahead. Only a 50/50 joint venture allows the Council influence in these areas

<b>Impact Area</b>	<b>Overall climate change impact</b> Very Positive / Positive / Neutral / Negative / Very Negative	<b>Reasoning for overall climate change impact rating</b>
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<b>Council</b>	Positive	There will be marginal impact of emissions for council fleet or additional staff travel. Long term benefits will outweigh short term negative impacts of construction
<b>Borough</b>	Very positive	Future Home Standards, enhanced energy efficiency and modern methods of construction used from the outset. Huge opportunities for sustainable supply chain, green energy training and skills and huge opportunities for positive messaging around sustainable new homes.