

BRECKLAND DISTRICT COUNCIL

Report of: The LABV Project Board

To: Full Council: 9 December 2014

(Author: Julie Kennealy, Executive Director of Place)

Subject: Selection of Preferred Bidder in anticipation of the creation of a Breckland Local Asset Backed Vehicle (LABV).

Purpose: To recommend to Full Council to appoint a preferred bidder and proceed with a LABV joint venture (subject to legal and financial close).

Recommendations:

Full Council is asked to agree one of the following options:

Option 1 - Agree Land Group LLP's LABV solution and appoint Land Group LLP as the Preferred Bidder following the procurement exercise and complete the final phase of the procurement consisting of finalisation of the contractual documents. Prior to signing the contractual documents approval will be sought from Full Council.

Option 2 - Do not continue the LABV procurement project and cease all activity.

If Option 1 is selected, Full Council is asked to approve the following recommendations:

- 1) To select Land Group LLP's variant LABV solution and appoint Land Group LLP as the Preferred Bidder.
- 2) The initial business plan sites for the LABV joint venture will be Riverside, Burghwood Drive Mileham and Chapel Road Attleborough.
- 3) To delegate authority to the LABV Project Board to complete the financial and legal requirements necessary to reach legal and financial close, within the existing budget as previously approved for this project.
- 4) That prior to financial and legal close approval of Full Council is sought to approve entering into the contract.
- 5) The LABV Project Board with existing membership will continue to meet as required.
- 6) To delegate authority to the Chief Executive to identify and instruct appropriate officers to set up a wholly owned local authority company which is limited by shares which will be the Special Purpose Vehicle to deliver the LABV.

1.0 BACKGROUND

- 1.1 In October 2013 Full Council authorised the establishment of a project that would seek to procure a private sector partner through an EU competitive dialogue procurement process which would aim to create a Local Asset Backed Vehicle (LABV) joint venture.
- 1.2 The LABV procurement was initiated, following an options appraisal in response to an identified need to address four identified “drivers for change” These are:
- (1) Step change in financial performance of asset base;
 - (2) Accelerate growth in the District;
 - (3) Provide a vehicle to enable stalled projects to proceed; and
 - (4) Provide a vehicle for Regeneration;
- 1.3 The drivers for change were translated into specific objectives, which the solution arising from the procurement process was to meet :

No	LABV Objective
1	Achieve economic growth outputs
2	Secondary financial benefits
3	Contribute to fulfilment of LDF delivery (through LABV sites) and unlock stalled and unviable projects
4	Create a set of linked schemes to deliver change across a series of sites / area
5	Deliver sustainable high quality built form and design
6	Visible improvements to public spaces / public realm
7	Communication and consultation with the public
8	Financial return
9	Financial robustness
10	Financial deliverability
11	Appropriate risk allocation
12	A LABV that works well with the Council as a joint venture partner
13	Council does not cede control
14	Single cohesive interface
15	Acceptable exit strategy

- 1.4 The Council appointed a team of professional expert advisors to the project being Trowers & Hamlins LLP for legal and procurement advice, PriceWaterhouseCoopers (PWC) for financial advice and Urban Delivery for property advice.

In October 2013 the procurement formally started with the issue of the Official Journal of the European Union (OJEU) Notice, which was followed by a Pre-Qualification Questionnaire (PQQ). Three bidders submitted completed questionnaires; these were Morgan Sindall Investments Ltd, Land Group LLP and Guildhouse UK Ltd.

- 1.5 All three bidders passed the PQQ assessment and were invited to the next stage which was to submit their outline solutions (Invitation to Submit Outline Solutions (ISOS)). In May 2014 the Council received three ISOS returns and these were

evaluated following which all three bidders were invited to the next stage which was to undertake dialogue with the Council in anticipation of the bidders submitting their final detailed solutions (Invitation to Submit Detailed Solutions (ISDS)).

- 1.6 During the dialogue the Council developed the solutions with bidders which resulted in a progressive step by step approach to a longer term 50/50 joint venture based on the successful delivery of an agreed group of projects (alongside other qualifying criteria). This solution will involve the Council initially owning the majority of the shares in the joint venture. In November 2014 final bids (solutions) were received from two remaining bidders, Land Group LLP and Guildhouse UK Ltd (Morgan Sindall Investments Ltd having withdrawn from the process). The final two bids (solutions) were formally evaluated according to predefined and pre-published evaluation criteria. This identified a clear differential between the bids (solutions). The most economically advantageous tender in terms of being measured against the tender evaluation criteria which was formulated in advance to the original objectives and financial return has been evaluated by the Council's project team and the appointed external Financial, Property and Legal advisors.

1.7 Market Intelligence / Tailored LABV

- 1.8 The aim of establishing a LABV joint venture with the preferred bidder is to deliver a number of objectives and to achieve overall economic benefit for the area the LABV serves. To date Breckland Council's focus has been on commercial asset management with the main aim to obtain the best immediate receipt for the Council. Recently there has been a broader focus adopted by the Council which centres on district growth and district benefits thus enabling total economic benefit.
- 1.9 Traditionally LABVs have been the domain of large public bodies, attracting major private sector partners in areas of high land value. Breckland is a smaller district, mainly rural with low land values, so a traditional model LABV does not lend itself readily to these current circumstances. However the value of a LABV as a delivery vehicle to enable us to meet wider district growth objectives remains high.
- 1.10 The Council's core business is not direct property development delivery and this along with the need to create more economic benefit led the Council to change its approach and develop a tailored LABV approach that best meets our own specific organisational and district needs.

This new approach was different in that an arrangement for a LABV has been created with a two stage process. Initially in the first stage the Council will own a majority of the shareholding in the joint venture and the LABV will deliver three property projects. There is then an incremental approach to establishing the partnership (second stage) and that the longer term partnership is based on success. The success criteria being (1) actual delivery completed (2) financial standing of partner tested and (3) agreed future business plan. This allows the Council to:

- Test the partner's capacity – i.e. on three sites.
- In the medium term – obtain professional asset management capacity to develop the business plan for longer term.
- Move to a longer term arrangement – with confidence and experience.

1.11 The Solution

1.12 Land Group LLP's solution in response to the Council's requirements is to deliver the following in the initial business plan:

- Burghwood Drive, Mileham – The proposal is for the direct build out of the existing outline planning permission of 11 residential units of which 4 are affordable. This project will have an immediate start and an indicative timetable for construction to be completed in March 2016 and sales to be completed by December 2017.
- Riverside, Thetford – The proposal is for the direct delivery of the existing full planning permission for a mixed use scheme for leisure and retail use. This will be via a head lease solution where the Council retains the freehold. A start on site planned for May 2015 and practical completion by September 2016.
- Chapel Road, Attleborough – The proposal is for the direct development of a residential scheme based on 12 units of which 5 are affordable. Due to the existence of a licence for the adjacent school to use this site as a playing field this scheme will not start immediately. However a planning application will be submitted by the end December 2015 with a view to construction being undertaken by end of December 2016 and sales to be completed by December 2018.

1.13 Land Group London LLP ('Land Group') - Profile

1.14 Land Group is based in Suffolk and is a corporate company with many subsidiaries created for different projects they are involved in. Land Group specialises in property development, consultancy and project finance with principle activities of property investment, development consultancy, property investment, development consultancy, Private Finance Initiative (PFI), Public Private Partnerships (PPP), project management and building consultancy.

1.15 Land Group has experience of delivering a number of high value public sector projects, particularly in the PPP and PFI sectors, including working with NHS Trusts on projects to deliver an £8m new hospital facilities, a £35m new mental health facility and residential units, a £45m project for a new pharmacy and laboratory, and working with a County Council on an £85m project to refurbish, redevelop or relocate 11 fire stations. Land Group has no shareholding in a contractor or house-builder.

1.16 Financial & Legal Close - Procurement Stage

1.17 Following the decision to award the contract to the preferred bidder, Land Group as per the recommendations of this report, the Council will issue debriefing letters to the bidder who was unsuccessful and a preferred bidder letter to the successful bidder. A 10 day standstill period will apply following issue of the debriefing letters during which the Council will be prohibited from entering into the contract with the preferred

bidder and giving the unsuccessful bidder the opportunity to challenge the award decision.

1.18 Following the standstill period, the Council will finalise the contractual documents with the preferred bidder through the financial and legal close stage during which the Council will clarify aspects of the successful tender or confirm commitments contained within the tender. The Council expects to enter into the Shareholders Agreement and other contractual documents with the preferred bidder in February 2015 but this is an estimated date and may be subject to change.

1.19 Riverside

1.20 By choosing Land Group's solution for a LABV and delivering Riverside via this solution the Council commits to delivering Riverside whether the LABV reaches legal and financial close or not, because the hotel operator agreement will have become unconditional on 20 December 2014.

2.0 OPTIONS

2.1 Option 1

Agree Land Group's LABV solution and appoint Land Group as the Preferred Bidder following the procurement exercise and complete the final phase of the procurement consisting of finalisation of the contractual documents. Prior to signing the contractual documents approval will be sought from Full Council.

2.2 Option 2

Do not continue the LABV procurement project and cease all activity.

3.0 REASONS FOR RECOMMENDATIONS (PURSUANT TO OPTION 1)

3.1 The LABV model and identification of a preferred bidder has been procured through a competitive dialogue process as advertised in the OJEU.

3.2 The LABV model has been assessed by external consultants, Price Waterhouse Coopers and their analysis demonstrates the opportunity for the Council to obtain added value from the proposed developments within the initial commitment phase of up to £1million, relating only to the initial wrapper of three recommended sites. In addition to the financial benefit, the LABV model provides added value to the Council over alternative development methods through:

- A phased approach to the partnership with the Council holding the majority share for the period of the initial agreed business plan (maximum 5 years from legal close (est. February 2015) after which point and subject to evidence of successful delivery and robust financial standing a built in opportunity for incremental progression to a full 50/50 traditional LABV structure will apply;

- A governance structure designed to guarantee equal Council engagement and control in all decision making;
- Time to deliver the longer term partnership if the Council want to and allows time to develop the larger business plan.
- The delivery of Riverside, Thetford, a key project for the District as well as the delivery of two further residential schemes within the first business plan period;
- Full flexibility over future land transfers with no exclusivity beyond the initial wrapper of 3 sites
- Open book accounting, market testing for all fees and charges and an agreement to review fee structures in line with any increase in scale and scope of the private sector partner interest beyond the initial business plan period and
- Critically, the LABV provides the Council with an opportunity to secure a partner, who offers strategic expertise and experience to kick start, maintain and support the delivery of key development priorities in a compliant, efficient and flexible way than would otherwise be the case.

4.0 EXPECTED BENEFITS

- 4.1 LABVs are created for a number of reasons ranging from general regeneration and rounded “place making” drivers to specific requirements for unlocking difficult sites or managing a suite of assets.
- 4.2 Although the drivers behind the creation of a LABV are variable, all share a fundamental purpose which is namely the use of private sector expertise and capacity to drive through and realise economic benefits.
- 4.3 The Breckland LABV provides a sound mechanism to deliver wider growth objectives and in so doing secure economic benefit across our district.
- 4.4 It is important to measure performance across a broad spectrum and the LABV performance criteria is as follows:

Growth and Regeneration

1. Achieve economic growth outputs
2. Secondary financial benefits
3. Contribute to fulfilment of LDF delivery (through LABV sites) and unlock stalled and unviable projects
4. Create a set of linked schemes to deliver change across a series of sites / area
5. Deliver sustainable high quality built form and design
6. Visible improvements to public spaces / public realm
7. Communication and consultation with the public

Financial

8. Maximise financial return
9. Robustness of financial proposals
10. Financial Deliverability
11. Appropriate Risk allocation

Partnership

12. A LABV that works well with the Council as a joint venture partner
13. Council does not cede control
14. Single cohesive interface
15. Acceptable exit strategy

Each LABV additional project will be assessed according to the Project Approval process set out in the Shareholders Agreement.

5.0 IMPLICATIONS

5.1 Carbon Footprint/Environmental Issues

- 5.1.1 These have been considered and in the opinion of the author there are no direct implications as a result of the report.

5.2 Constitution & Legal

- 5.2.1 The Council has the power to invest in a company pursuant to section 12 of the Local Government Act 2003. The Council also has a power of general competence pursuant to section 1 of the Localism Act 2011 and where the Council is proposing to exercise its power of general competence for a commercial purpose, it must do so through a company as required in section 4 of the Localism Act 2011. The Council has the power to enter into contracts such as the shareholders agreement, development services management agreement and related documents pursuant to section 1 of the Local Government (Contracts) Act 1997. When disposing of an interest in land in excess of a leasehold of interest of seven years, the Council has a duty pursuant to section 123 of the Local Government Act 1972 to obtain the best consideration reasonably obtainable or where the land is held for planning purposes, pursuant to section 233 of the Town and Country Planning Act 1990. The Council will receive independent valuation advice to ensure that it is complying with its duty to obtain the best consideration reasonably obtainable when disposing of any relevant interests in land to the LABV or its subsidiaries. With the exception of the first three projects (Riverside, Mileham and Chapel Road, Attleborough) all further projects will be subject to a two-stage project approval process by the LABV's board which will include Council-appointed directors.
- 5.2.2 Elected members should be aware that the Council's exercise of functions pursuant to the LABV and all decisions made in relation to the recommendations in this report are separate to the Council's functions as a local planning authority. Any planning applications made by the LABV or its subsidiaries will therefore be subject to the usual separate statutory procedures.

- 5.2.3 Where Council elected members or officers are to be appointed to represent the Council as directors on the LABV, they will be given appropriate training in order that they have a full picture with regard to their responsibilities and it is intended that the next report to Council with regard to the recommendation to sign the shareholders agreement and related documents will address the arrangements to be put in place with regard to appointing and indemnifying Council-appointed directors and therefore that detail will follow in the next report.
- 5.2.4 The proposed form of the LABV has now evolved from a company by shares which was owned equally by the Council and its private sector partner with equal profit sharing to a solution which involves a majority shareholding by the Council and minority shareholding by its private sector partner with profit sharing adjusted to reflect each parties' relative levels of investment.
- 5.2.5 Provided the Riverside, Mileham and Attleborough projects are successfully delivered and the private sector partner meets the Council's required assessment with regard to financial and economic standing, there will be an option for the private sector partner to subscribe for shares in the LABV to increase to an equal shareholding with the Council and the option to put forward further sites in the LABV "wrapper" subject to a two stage project approval process.
- 5.2.6 In procuring this solution, the Council has advertised in OJEU and conducted a competitive dialogue process on the grounds that Council was "not objectively able to specify in advance the legal and financial make-up of the project or define in advance the technical means capable of satisfying its needs and objectives" - this is standard justification for use of the competitive dialogue procedure. The Council has therefore conducted the competitive dialogue in successive stages in order to identify a solution capable of meeting the Council's requirements. Following selection of the preferred solution, the Council may request the participant identified as having submitted the most economically advantageous tender, to clarify aspects of that tender or to confirm commitments contained in the tender provided that this does not have the effect of modifying substantial aspects of the tender or the Invitation to Submit Detailed Solutions and does not risk distorting competition or causing discrimination.

5.3 Contracts

- 5.3.1 The subject matter of this report will be referred back to council prior to entering into any formal contract for the private sector partner and the formal incorporation of the shared LABV. The contractual obligations to the hotel provider for Riverside are covered within the body of this report.

5.4 Corporate Priorities

- 5.4.1 This approach underpins the corporate priority 'To support our local economy'.

5.5 Crime and Disorder

- 5.5.1 In the opinion of the report author having considered the issue of crime and disorder there are no implications.

5.6 Equality and Diversity/Human rights

5.6.1 In the opinion of the report author having considered the issue of equality and diversity / human rights, there are no implications.

5.7 Financial

5.7.1 The Council's external Financial Advisor has undertaken an independent review of Land Group LLP's proposal and the solution offered generates a significant net return to the Council in addition to delivery of key sites.

5.7.2 This report is to select a preferred solution and the financial offer supports this recommendation. However, there remain a number of detailed financial issues to clarify after selection of preferred solution to achieve financial and legal close to ensure the Council is not exposed to unnecessary or unforeseen financial implications.

5.7.3 The report to approve signature of the Shareholders Agreement and related contractual documents will be supported by a full financial analysis of the final contract arrangements

5.8 Health & Wellbeing

5.8.1 The Council needs to demonstrate that it has had regard to its public sector equality duty and that the Council before commencing and throughout the procurement has considered how this contract might improve the economic, social and environmental well being of its area pursuant to the Council's duties under the Public Services (Social Value) Act 2012.

5.9 Risk Management

5.9.1 Land Group LLP has presented a sound bid and they have clearly undertaken a lot of work and have developed their solutions during dialogue to accommodate the Council's requirements.

5.9.3 This report is to select a preferred solution. The report to Council to enter into a contract will be accompanied by a full contract risk log.

5.10 Staffing

5.10.1 At this stage there are no implications for staffing.

5.11 Stakeholders / Consultation / Timescales

5.11.1 The 20 December 2014 is the critical date for the council's obligations to the hotel provider for the Riverside development.

5.11.2 All planning applications will be subject to the usual separate consultation procedures.

6.0 WARDS/COMMUNITIES AFFECTED

All

7.0 ACRONYMS

LABV – Local Asset Backed Vehicle
OJEU – Official Journal of European Union
LLP – Limited Liability Partnership
PQQ – Pre Qualification Questionnaire
ISOS – Invitation to Submit Outlines Solutions
ISDS – Invitations to Submit Detailed Solutions

Background papers: None

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Director / Officer who will be attending the Meeting

Name and Post: Julie Kennealy, Executive Director of Place

Key Decision: No

Exempt Decision: No

This report refers to a Discretionary Service

Appendices attached to this report:

Appendix 1 – Supplementary Confidential Information