CABINET

Report subject	**Bournemouth Town Centre Vision (TCV): Winter Gardens Site – Regeneration Opportunities**
Meeting date	27 May 2020
Status	Public with confidential Appendix D
Executive summary	Cabinet on 12 February 2020 approved a number of decisions in relation to the Winter Gardens scheme relating to the funding and lease terms which will assist the ability to secure third party funding. The purpose of this report is to (i) seek approval for additional Council finance in accordance with the terms of the BDC Members Agreement to deliver the scheme and realise the scheme benefits and; (ii) consider the acquisition of certain elements of this strategically important scheme to enable the Council to meet its housing targets and long term regeneration objectives. The proposed financing structure for the Winter Gardens Scheme is made up of Third-Party Finance (Debt and Forward Funding) and what is termed under the BDC Members Agreement as “Member Loans”, Additional Council Finance and Additional Private Sector Partner (PSP) Finance. The relevant extract from the BDC members Agreement is set out at Appendix B. The Additional Council Funding requested will be in the form of a loan which will be repaid back at the end of the scheme in advance of development returns in accordance with Clause 7 and 26 of the BDC Members Agreement. A key part of the financing structure is to secure investors via the forward sales/funding of key elements such as the Public Car Park, Private Rented Sector units (PRS) and Age Friendly residential elements.

	In addition to agreeing the Additional Council Finance it is proposed that the Council acquire the Public Car Park and Private Rented Sector (PRS) elements of the scheme to support its Corporate Plan objectives to deliver socio-economic benefits to the town and create Dynamic Places through strategic regeneration or redevelopment opportunities. The PRS element will be operated via the Council's wholly owned company, Seascape Homes and Property Limited. The financial case for acquiring these elements is detailed in the confidential appendix attached to this report. The outbreak of the Novel Coronavirus (COVID-19), declared by the World Health Organisation as a "Global Pandemic" on 11 March 2020, has impacted global financial markets and market activity is being impacted in many sectors. The short to medium term impact of COVID-19 on the residential PRS market sector is unclear at this stage. The impact on the market and valuations will be constantly reviewed and considered as part of the due diligence still to be undertaken prior to completion.
Recommendations	**It is RECOMMENDED that Cabinet:** **(a) approves the request for up to a further £7.6M Additional Council Finance less the Site Lease Value. The Site Lease Value will be calculated once the construction procurement process is complete and the terms of the Third Party Finance have been settled. It is anticipated this will be around Q1 2021;** **(b) approves the MTFP to be updated in 2021/22 to include £304k per annum (plus interest) for the Minimum Revenue Provision (MRP) associated with this Additional Council Finance;** **(c) the purchase of the Private Rented Sector (PRS) and Car Park elements of the Winter Gardens Scheme, from the Bournemouth Development Company LLP, on the terms detailed in the confidential part of this report;**

	(d) authorises the Corporate Property Officer in consultation with the Monitoring Officer to agree the detailed [contract provisions]; **(e) approves the grant of a 50-year lease of the PRS elements to Seascape Homes and Property Limited on terms to be agreed by the Corporate Property Officer in consultation with the Monitoring Officer; and** **(f) approves the MTFP to be updated in 2021/22 for the net loss of income relating to the redevelopment of the Winter Gardens car park totalling £743,200.** **That Cabinet recommends to Council that;** **(g) the Capital Programme be amended to include Additional Council Finance up to £7.6M less the Site Lease Value anticipated to be drawdown in 2021/22. [It would be prudent to assume the Additional Council Finance will be £7.6M];** **(h) the Capital Programme be amended to include provision for these acquisitions to be funded by prudential borrowing, which is subject to RPI as detailed in the confidential part of this report; and** **(i) the Section 151 Officer be authorised in consultation with the Portfolio Holder for Finance to determine the detailed funding arrangements for both the forward purchase of the PRS and Public Car Park and the Additional Council Finance.**
Reason for recommendations	To enable this exciting and reputationally important mixed-use regeneration scheme to go ahead, helping to deliver high quality homes, and increased footfall in Bournemouth Town Centre. To contribute to the Council's Corporate vision, specifically helping to create dynamic places, investing in the homes our communities need and revitalising and re-inventing our high streets and local centres. The proposals in addition to delivering regenerative benefits are in accordance with the Capital Investment Strategy (Non-Treasury) 2020-2025 (CIS) objectives and criteria adopted by Cabinet on 18 March 2020 and take note of the HM Treasury consultation document; Public Works Loan Board: future lending terms dated March 2020.

Portfolio Holder(s):	Councillor Mark Howell, Regeneration & Culture
Corporate Director	Bill Cotton, Corporate Director, Regeneration and Economy
Contributors	Report Author: Sarah Longthorpe, Strategic Projects and Investment Manager Martin Tiffin, Town Centre Vision Programme Leader
Wards	Town Centre / West Cliff
Classification	For Decision and Recommendation

Background

1. The establishment of the Bournemouth Development Company LLP (BDC) as a joint venture between the Council and a wholly owned subsidiary of Morgan Sindall Investments Ltd, in the form of a limited liability partnership (LLP), was designed to bring forward the regeneration of Bournemouth Town Centre. An LLP structure was utilised to restrict the Councils exposure to the financial risk on residential and commercial developments on council owned land while simultaneously ensuring the council has a stake in the rewards of ownership, in the form of 50% of the development profit.

2. Where relevant a separate individual development subsidiary company of BDC is established for each development focused on one of the 16 car parks that Bournemouth Council entered into the agreement.

3. The Council's contribution of land is valued and turned into a member loan note to the individual development subsidiary. This is then matched by a cash injection (advance sum) from Morgan Sindall which is also turned into a member loan note to the individual development subsidiary company. Any member loan notes by the two partners in the joint venture should be on equal terms (pari passu) otherwise one party could be seen to be taking on more risk than the other and, in the Councils situation, it could be deemed as providing aid to a private sector company.

4. In October 2015, Bournemouth Borough Council approved the Winter Gardens Site Development Plan (SPD). Following four years of detailed design, in March 2019 BDC secured planning permission for a £150 million residential led mixed-use development at the site of the former Winter Gardens Concert Hall and the surrounding area.

5. On 12 February 2020 Cabinet received an update on the scheme and agreed to amend the existing loan of £3.4 million to an “Additional Council Finance Loan note” and increase the Advance Sum budget to enable this development scheme to progress and assist the Bournemouth Development Company (BDC) with securing third party funding.

6. Third party debt funding requires an element of “equity”. Equity for the purposes of this report is the “Additional Council Finance” and the “PSP” Additional Finance” to be invested from the Members of BDC prior to their own investment, and to be repaid after the third-party debt has been repaid with any fees and interest incurred.

7. The equity is based on a market gearing which can be between 25% and 40% of the total debt funding required. The BDC Members Agreement recognises that the equity requirement is shared between parties to maintain a pari passu basis to reduce funding costs to the development and therefore increase the anticipated profit. As with the Citrus Building it is assumed that equity (*in the form of Additional Council Finance and PSP Additional Finance*) is invested on an equal basis by both members of BDC for the elements of the development which are not forward funded or covered by the Third Party Debt. Chart 1 detailed in Appendix A demonstrates the equal funding position with this scheme.

8. Following 12 months of market engagement by the BDC development team, it is now proposed that the funding sources to be utilised in the delivery of the scheme will be:

   - Member Loans (For Advance Sums by MS / Site Lease Value by the Council and Cash Match (if any by MS)
   - Additional PSP Finance and Additional Council Finance
   - Third Party Debt funding for the open market sales product, residential parking, retail, convenience store and leisure elements and PRS in Block(A).
   - Forward Funding/ Sale for the PRS in Block B and the age friendly elements in Blocks C and D
   - Forward Funding/ Sale for the public car park

9. Chart 2 in Appendix A highlights the sources of development funding identified above.

BDC Contractual Information

10. It is important to explain that the contractual relationship between the Council and Morgan Sindall Investments (MSIL), as Members of the BDC, consist of a number of legal documents, one of which is the Limited Liability Partnership Members’ Agreement (“LLP MA”). The Delegations policy contained in the LLP MA requires certain decisions to be taken at “LLP Member” level the amount of the Members Loans requires Council approval.

Member Loans

11. Under the terms of the LLP Members Agreement, members of BDC can make loans to BDC. To date MSIL have made a loan to fund the *Advance Sums* of up to £4.9m. The terms of this funding is enshrined in the BDC legal agreements.

12. The Advanced Sums are the amounts required to fund the feasibility, outline design, planning, detailed design and procurement processes. They are funded by the winter gardens individual development subsidiary company of BDC by an Advanced Sum Loan Note from Morgan Sindall.

13. The Advanced Sum Loan is repaid and replaced with the Additional PSP Finance Loan Note at contract completion. The Additional PSP Finance Loan Note is repaid in pari passu with the Additional Council Finance Loan Note before the distribution of any profit or loss on the development.

Additional Finance by the BDC members

14. Under the terms of the LLP Members Agreement, members of BDC can make available funding (via a loan) to BDC under what are termed *Additional Council Finance* and *Additional PSP Finance*. To date both the Council and Morgan Sindall have made available to BDC (via its subsidiary) £3.4 million each to enable the purchase of an adjoining site to ensure comprehensive development. The terms of this finance must comply with the terms set out in clause 6.7 of the LLP Members Agreement (see Appendix B for an extract with relevant sections highlighted yellow).

15. The BDC Members Agreement allows for provision by Morgan Sindall and the council of additional finance to an individual development subsidiary, on terms to be agreed between the parties. Any Council finance is required to be provided on arm's length and genuine commercial terms which are fully State Aid compliant. Further loans can be provided by other third parties and institutional investors on terms agreed by the BDC. Such terms need to be approved by the Council and Morgan Sindall as members of BDC.

16. Developments are therefore funded by differing forms of debt. When the development is completed and sold the proceeds are first used to repay the highest ranking debt. After that any additional finance loan notes to the Council and Morgan Sindall are repaid. Finally, the council and Morgan Sindall member loan notes issued against the land value (as match by MS) are repaid. Only then is any surplus (profit) potentially shared equally (50/50) between the Council and Morgan Sindall. If the scheme makes insufficient revenue to support the repayment of the low ranking debt then this debt is not repaid.

17. In respect of the Winter Gardens individual development subsidiary the council and Morgan Sindall have already issued, on equal terms, a loan to enable the £6.8 million purchase of the connected Exeter Road site. The £3.4 million loan from each partner being at 2.98% for a fixed five-year period which meant it was repayable before the project's completion and therefore outside of the established and normal debt structure as per the Member's Agreement.

18. This loan was issued on the basis that it would be repayable in five years from the date of drawdown, in August 2022.

19. The recommendation in the February report was to reclassify the loan as an additional finance loan note and therefore would now be payable on completion of the scheme after any repayment of higher ranking debt. This means the Council is now taking on a higher level of risk. This higher level of risk obligates the council to consider a higher interest rate to ensure the loan is still state aid compliant. However, as the private sector company are happy to continue to invest their £3.4 million at 2.98 per cent, then the Council can continue at this rate as it is deemed to be State Aid Compliant.

20. That said, any additional finance loan notes or member contribution loan notes are unsecured and will potentially not be repaid if the development is not successful. The Winter Gardens scheme is a large (circa £150 million GDV) development and therefore there are several risks that need to be managed and are outlined the risk assessment section of this report. Councillors therefore need to understand when and how they have received assurance on the scheme's overall viability as ultimately this £3.4 million of Council and a further £7.6m taxpayers money will be invested in the scheme alongside the value of the winter gardens car park land.

21. Should the Council decide to invest an additional £7.6 million into the long-term viability of the scheme then it will be required to ensure its Non-Treasury Asset Investment Strategy discloses the material long-term, illiquid nature of this holding.

22. The reclassification of this £3.4 million loan also obligates the council to adhere to the latest statutory guidance for such arrangements rather than those in force when the original loan was drawn down. By reclassifying this loan, the council will now treat the loan and the further loan of £7.6 million as capital expenditure financed by borrowing within its accounts. In turn this means the council is required to set-a-side a minimum revenue provision (MRP) payments for the prudent repayment of the debt, which in accordance with the councils approved MRP policy equates to £136,000 per annum (4%).

23. Provision has been made as part of the proposed 2020/21 budget for this £136,000 annual payment. Any resources set aside annually as part of this process should be available for redistribution when the loan is eventually repaid. In addition, a maximum £304k per annum (4%) will need to put aside as the Minimum Revenue Provision

(MRP) for the new £7.6m loan and the associated interest the council will need to bear on the associated borrowing and this will need to be reflected in the Medium Term Financial Plan (MTFP) 2021/22. To model this more accurately we will need a forecast from BDC as to the time-period over which this drawdown will occur

24. In respect of the value of the member loan note associated with land the council will hold in the Winter Gardens this will not be determined until later in the process when the conditions set out in the option agreement between the Council and BDC have been satisfied.

25. The February report authorised the increase in the Advance Sums to be met from a loan to BDC from MSIL. This does not have an impact on the MTFP. The increased budget and cost of build could erode the Site Lease Value (Council's Land Value) and the Council's profit expectation, however it is too early to predict whether this is actually the case and as receipt of these payments are not included in the MTFP, there is no adverse impact.

26. The change to the original £3.4 million loan to a Council Additional Finance Loan means that the loan will not be repaid on a set date. Instead the loan will be repaid once the higher ranking debt is repaid in full. The Council will however be entitled to receive interest until such time as the loan is repaid as it will be able to do so in relation to the additional £7.6 million which is likely to commence being drawn down in 2021/22.

27. The amount of Additional Council Finance ("ACF") required to secure Third Party Debt is estimated to be around £7.6 million less the Site Lease Value. It is too early to determine the precise amount of the ACF as the Site Lease Value will not be known until such time as the construction procurement process is complete and the "contract sum" under the fixed price lump sum construction contract has been agreed between BDC and the appointed contractor. It is anticipated that the precise level of ACF will be known around Q1 2021. It is prudent at this stage to assume that the ACF is £7.6 million.

Regeneration Opportunities

28. The BDC has been undertaking market engagement in relation to the forward funded opportunities within the scheme for the last 12 months.

29. These opportunities within the mixed-use scheme consist of Private Rented Sector (PRS) and age friendly accommodation, a 225 public car park, 4,000m2 leisure provision, a range of A3 restaurant units with alfresco dining fronting Exeter Road and a convenience store facing the BIC roundabout.

30. A brochure providing further detail on this development is attached at Appendix C.

31. The individual elements of the scheme have been considered by the Investment Panel against the criteria of the CIS and in the context of the Council's existing investment portfolio asset base and sector exposure. The panel collectively determined that it is appropriate for the Council to focus its interests on the elements of the scheme that are strategically fundamental to the delivery of the regeneration of the town centre and the provision of new homes, the Residential PRS and Public Car Park elements, not the Retail and Leisure sector elements.

32. As part of the Town Centre Vision, the Council acknowledges that transport movement is crucial to its long term success and that the future car parking locations and ownership play an important part in delivering holistic town centre regeneration.

33. The scheme has been designed across four blocks A1 & A2, B, C & D to support a phased construction approach. It is proposed that blocks A & B are built out first which incorporate the majority of the basement parking, A3 retail street frontage, leisure space and the convenience store. This will be followed by blocks C&D.

34. An indicative programme is detailed in the Investment Brochure, with a start on site scheduled for Q1 2021, blocks A & B are due to complete in late 2023 with the completion of the whole scheme in mid-2024. Based on this draft programme it is envisaged BCP would take ownership of the proposed investment elements in late 2023 early 2024.

35. In total the development has 350 plus dwellings providing 1,2, and 3 bed flats. It is essential to the overall scheme viability that the housing element contains a proportionate mix of sale, rent and age friendly accommodation that reflects current and future market demands. In this development it is roughly a third of each type.

36. In accordance with the CIS all offers are made subject to contract and: -

- all necessary surveys
- an assessment of necessary capital works
- a formal "Red Book" valuation to ensure best value is demonstrated in accordance with Section 123 of Local Government Act 1972
- benchmarking with comparable transactions
- an agreed "exit strategy"
- legal due diligence
- financial due diligence including credit information for all tenants
- the requisite Council approvals

37. As highlighted in the executive summary the short to medium term impact of COVID-19 on the residential PRS market sector is unknown at this stage although industry experts such as Savills are currently reporting that rents remain largely unimpacted

at this stage. Current research by leading agents and property portals are all projecting that the current crisis will create a short sharp dip in market conditions with us starting to recover late 2020/early 2021.

38.

39. The Royal Institute of Chartered Surveyors (RICS) have issued guidance to its valuers highlighting that less weight can be attached to previous market evidence for comparison purposes, to inform opinions of value.

40. Indeed, the current response to COVID-19 means that it is faced with an unprecedented set of circumstances on which to base a judgement. Consequently, less certainty and a higher degree of caution will be attached to valuations than would normally be the case. Given the unknown future impact that COVID-19 might have on the real estate market, RICS has recommend that valuations are kept under frequent review.

41. The proposed PRS acquisition is a long term (50 year) opportunity for the Council, the impact on market rents and valuations will be constantly reviewed and considered as part of the due diligence still to be undertaken as detailed in item 35.

42. The Council will be required to enter into an Agreement for Lease for both elements and will provide forward funding for the acquisitions later this year. The Agreement for lease will detail the contractual obligations and a stage payment schedule which will be drawn down during the two-year construction period. The Council is familiar with entering into these types of agreement and it is proposed that finalisation of the heads of terms for these contracts is delegated to the Corporate Property Officer and Monitoring Officer.

43. The financial model for the acquisition of the PRS and Public Car Park elements are detailed in the confidential Appendix D attached to this report.

44. The purpose of this report is to update Members and seek approval for the equity investment required for the delivery of the scheme and to acquire the specific elements highlighted to deliver new homes and support the long term regeneration of the town centre

Private Rented Sector (PRS)

45. This opportunity concerns the acquisition of a 250-year leasehold interest in relation to 123 PRS homes located in block A2 and the four lower floors of block B and the 225 space Public Car Park within the Winter Gardens scheme.

46. These blocks have been specifically designed to reflect the PRS market with a mix and size of accommodation to suit market demand. The units in block A1 and the upper floors of block B will be offered for open market sale, due to their projected values and positioning within the scheme. Blocks C& D will provide age friendly accommodation.

47. A report compiled by Knight Frank revealed that demand for privately rented homes continues to grow with an additional 560,000 households expected to be living in the

private rented sector by 2023. There are currently 29,416 professionally managed PRS units completed, with a current pipeline of PRS units under construction or in planning of 110,092.

48. Favourable demographic trends, a continuing supply/demand imbalance in the housing market and attractive rental growth prospects, not to mention stable long-term returns, combine to make the UK's PRS market a particularly strong investment proposition for institutional investors as well as local authorities who are increasingly entering this market.

49. The letting market in the town remain strong and on prime newer housing stock, such as Citrus Building, Coast, The Summit and Berry Court there are currently properties on the market with rents of around £850 to £1,100 pm for a 1 bed and 2 beds from £1,150 to £1,500pm.

50. It is important to note that this scheme is strategically important to the Council to enable it to meet its Housing Targets and to support regeneration. Investing in the PRS element will improve tenant choice in the local marketplace and will ensure access to high quality, professionally managed, private-rented homes. It is anticipated that, combined with low entry and exit costs for tenants, the homes will appeal to an increasingly mobile, professional workforce.

51. This means that the 123 build to rent homes in the completed development will be owned by BCP Council and will be let at market rents on Assured Shorthold Tenancies. There will be parking provision within the scheme available separately to the public car park for the PRS tenants to use on an unallocated basis.

52. Since the Council is not able to grant Assured Shorthold Tenancies, the homes will be managed and operated by the Council's wholly owned company, Seascape Homes and Property Limited (SHP), on a long lease which is already set up to provide such services.

53. It is a strategic objective of SHP to grow its market share in PRS schemes across the BCP area and to date the Council has acquired a 46 flat PRS scheme at St Stephens Road and is committed to funding 26 units of PRS accommodation within the Council's Princess Road scheme. There is demand locally for smaller blocks of PRS units to meet housing need.

Public Car Park

54. In addition to the PRS element it is proposed the Council acquire the 225-space public car park which will be managed in-house.

55. By developing on Council-owned town centre surface level car parks, such as the Winter Gardens it is acknowledged that during the construction phase of the development, the revenue generated from the car parks in question would cease and car parking would be displaced to other car parks in the locality.

56. It should be noted that income projections within the financial model rely on increasing the car park tariffs for this site by 50% per annum. Income is based on 2018-2019 actual base income per space for the Winter Gardens car park.

57. It should be noted that in relation to this site only the proposed pricing strategy would be a change from the current Council pricing policy.

58. It is proposed that the net operating income that can be reasonably and robustly assumed from this new public car park will be applied to fund (a) the capital and interest payments required under prudential borrowing and (b) annual operational expenditure.

59. The car park element has been modelled over a 30-year term at 3.5% using prudential borrowing and at the end of the term the Council will own the asset with no outstanding loans.

Lease Structure

60. BCP is the freeholder of the majority site area with the exception of a parcel of land which was acquired by the Winter Gardens Development LLP (WGD), a wholly owned subsidiary of BDC in 2017 to enable the development. Under the conditions of the Option Agreement for BCP land, the site under option will be transferred into WGD as a 250-year lease for development in addition to the land acquired. The lease for the PRS and car park will be transferred back to the Council in the most efficient tax and funding structure which is to be determined with legal and tax advice.

61. BDC are proposing to form a management company and purchasers of the scheme will share ownership to ensure everyone has an element of control in the management of the estate. It will be essential for the Council to ensure the correct management structure is in place for the robust control of building insurances, future maintenance and management of the estate and to obtain the benefit of collateral warranties.

62. As these are leasehold acquisitions service charges and maintenance costs will be incurred, these have been factored into the financial appraisal for both elements.

63. Acquisition of these long leasehold interests will enable the Council to retain control of public car parking provision within this prominent town centre redevelopment and provide high quality rented accommodation whilst generating a return.

64. With regards to the timing it is envisaged that the Public Car Park lease will be transferred to the Council at the start of construction with forward funding to commence at that stage on a monthly drawdown basis. It is acknowledged that a Section 123 Valuation will be undertaken at this time.

65. It is envisaged that the PRS leases will be transferred at what is termed as Golden Brick level (the level above the commercial elements and car park) with forward funding to commence at that stage on a monthly drawdown basis.

Summary of financial implications

66. The confidential financial report in appendix D considers the detailed terms for the acquisitions and the financial business case for proceeding.

67. As part of Town Centre Vision and agreeing to develop on Council-owned town centre surface level car parks, the Council acknowledge that during the construction phase of the development, the revenue generated from the Winter Gardens car park would cease and car parking would potentially be displaced to other car parks in the locality.

68. The level of car parking income across the Town Centre Car Parks as a whole has been going up year on year despite a number of car parks being closed as people take up space in previously less used car parks. It is anticipated that the car parking revenue received from the closure of Winter Gardens car park will result in an increase in car parking revenue in other car parks in the area including those owned by the Council and third-party operators. However, in this instance, displacement is negatively affected as the three largest alternative car parks to Winter Gardens are not owned by the Council.

69. It must however be noted that any decrease in the level of the Council's car parking income must be balanced against the value of regenerating the area, a land value which demonstrates "best value" under section 123 of the Local Government Act of 1972 and a 50% share of the profit from the development.

70. Overall the financial model concludes that these strategic acquisitions will deliver a positive return for the Council over the respective terms. At the end of this period, the Council will own the assets with no outstanding loans.

71. In addition, the wider economic benefits of the proposals include;

    a. no debt (outstanding loans) associated with the assets at the end of its economic life. Therefore, any capital growth over this period will be a direct benefit to the Council.

    b. the estimate value of the assets at the end of its economic life, assuming this value increases by the standard rate of inflation and the asset is maintained in a consistent condition.

    c. the option going forward of selling the assets at any point to realise a capital receipt to recoup the original investment.

    d. in respect of the Bournemouth Development Company (BDC), protecting the Councils purchase price/contribution, as this is fixed with the risk of cost overruns covered by BDC.

    e. in respect of Seascape Homes and Property Limited, any profits arising from the management of the PRS scheme may be returned to the Council by way of dividend payments via Seascape Group Limited.

72. Once purchased, the performance of these assets will be closely monitored to ensure that it continues to meet income and expenditure projections, with necessary corrective action taken as necessary.

73. In addition to the financial risks associated with funding these acquisitions the following factors have also been considered;

- Legal parameters within which Prudential Borrowing can be undertaken –The Government retains the power to "cap" any local authority undertaking what they regard as risky borrowing. Any such cap could impact on other programmes and ambitions of the Council;
- In addition, CIPFA has started a review of the prudential code in response to concerns expressed by some commentators regarding increasing property investment activity by Council solely for investment purposes;
- HM Treasury consultation document title “Public Works Loan Board – future lending terms” dated March 2020;
- State Aid implications;
- Availability of capital resources – including Community Infrastructure Levy, and impact assessment of their depletion on the Council;
- Cashflow implications.

Summary of legal implications

74. The legal obligations of the Council and Morgan Sindall Investments Ltd as members of BDC are set out in a Limited Liability Partnership Members’ Agreement which was negotiated as part of an EU Procurement Process undertaken in 2009/2010. The Delegation’s Policy contained in the LLP MA identifies the decision to be taken at “LLP *Member”* level, decisions to be taken at Partnership Board level and decisions to be undertaken at Development Manager level.

75. The Localism Act 2011 grants local authorities far-reaching powers to act commercially. The purchase of these assets for investment purposes is entirely in accordance with these powers.

Summary of human resources implications

76. The BDC has board representatives from the Council and also from Morgan Sindall Investments Ltd. The board representatives are responsible for delivering the Winter Gardens Development. BDC has appointed Morgan Sindall Investments Ltd as the Development Manager to manage the day to day development activity. The Development Manager is tasked with implementing BDC Board decisions and reporting on progress.

Summary of environmental impact

77. A key objective of the Corporate Plan is to reduce the town centre’s carbon footprint, whilst improving its competitiveness. The scheme presents many opportunities to do this by having more people living in the town centre thereby giving them better access to town centre amenities. This reduces the need for a private car. The location of the scheme within the town centre has easy access

to key retail and leisure attractions, the main Bournemouth transport terminal at the station and regular bus routes make this a very sustainable location. The Environmental impact analysis indicates that this is likely to have a positive impact on the carbon footprint.

78. The proposed new public car park provision is in line with current policy, however the current car parking strategy is being reviewed with a Supplementary Planning Document (SPD) due at the end of 2020. With the shift towards fewer larger town centre car parks in the Council's ownership more control can be exerted over future pricing strategies and usage.

79. The evolution of the construction industry demands that buildings are delivered more economically, within shorter time frames, more cost-effectively and with reduced impact on the environment. BDC currently uses Building Information modelling (BIM) to deliver benefits on its projects, but going forward would look to integrate BIM more to increase the opportunity for offsite prebuild. This includes engaging and supporting the supply chain to adopt BIM standards and processes on a typical project, and delivery of data to drive automated manufacture and offsite production.

80. BDC seeks to work closely with local suppliers, clients, designers to procure sustainable materials wherever possible. Rather than just optimising the acquisition, use and disposal of resources, BDC looks to create a loop of reusable resources and assets for their clients. This is demonstrated on existing projects from choosing materials and components to optimise operation as well as build, to promoting training and employment within the local community.

81. BDC will procure environmental risk assessments, through the supply chain, for each project that address the construction, commissioning and handover phases. Every project, once on site has an environmental management plan that describes the systems, monitoring and auditing to achieve the project's objectives in a sustainable manner.

Summary of equality implications

82. The Equality Impact Needs Assessment indicates that the TCV provides substantial opportunities to create a positive Equalities Impact, particularly by improving accessibility of the town centre.

Summary of risk assessment

83. The Town Centre Vision, as a major programme of the Council, has been subject to a full Risk Assessment.

84. Members should ensure they have considered matters relating to the risk, security, liquidity and proportionality associated with the proposal. They should also satisfy themselves that the potential returns are consistent with the level of risk.

85. Requests for finance loan notes or additional Member contributions from the Council is a standard market requirement for equity funding from partners for developments.

86. Investment Risk: including the risk that the development is non-profit making. This risk can, for certain elements of the development, be mitigated if parts of it are pre-sold. In other words, parts of the scheme are sold to institutional investors before construction works on site commence. The residential element of the scheme does however expose BDC to significant market risk. By undertaking the residential element in stages, it is intended that this market risk can be mitigated to avoid creating an oversupply and building units that meet end users/purchaser's requirements.

87. Construction Risk including late completion and cost overruns. BDC will enter into a fixed price lump sum contract with the building contractor to mitigate the effects of such risk being held by BDC.

88. Prudential Borrowing Risk – as identified Item 54, it is likely that prior to the drawdown of funds CIPFA will have completed their review of the prudential borrowing code on Local Authority Investments. The outcome of this review may restrict the funding options available to the Council. However, this investment alongside the financial benefits identified will contribute to the Council's Corporate vision, specifically helping to create dynamic places, investing in the homes our communities need and revitalising and re-inventing our high streets and local centres. It is therefore our understanding that suitable Prudential funding will be available to the Council. The consultation outcomes will be reviewed when available to ensure our understanding remains correct. The current view of HM Treasury (as outlined in para 1.36 and 1.37 of the above mentioned consultation document) is that the government fully supports Councils using commercial structures to advance core objectives of service delivery, housing and regeneration and is merely aiming to address the relatively narrow sub set of capital spending of Councils who have been using PWLB loans to buy investment assets primarily for yield.

Appendices

Appendix A - BDC Winter Gardens Scheme Debt & Development Funding
Appendix B - Extract from LLP Members Agreement setting out clause 6 and 7
Appendix C - Winter Gardens Brochure
Appendix D - Confidential Financial Report - CONFIDENTIAL – Please note should Cabinet wish to discuss the contents of Appendix D the meeting will need to go into Confidential (Exempt) session.

APPENDIX A

BDC Winter Gardens Scheme Debt & Development Funding

Chart 1

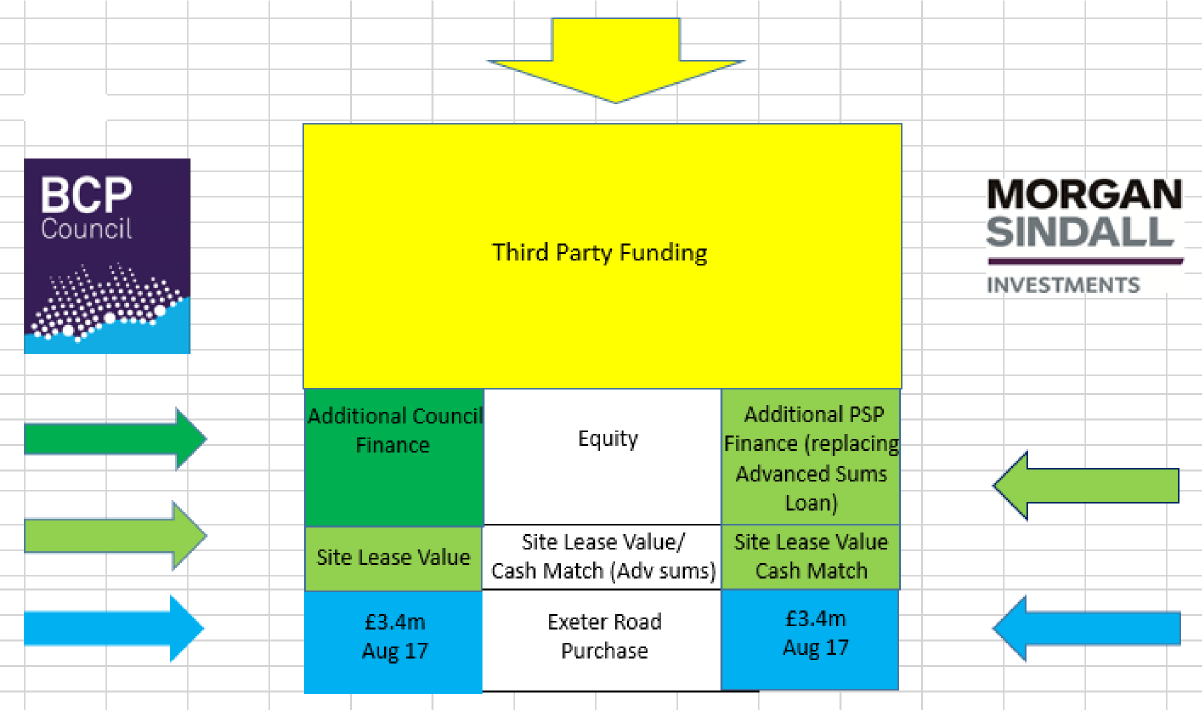
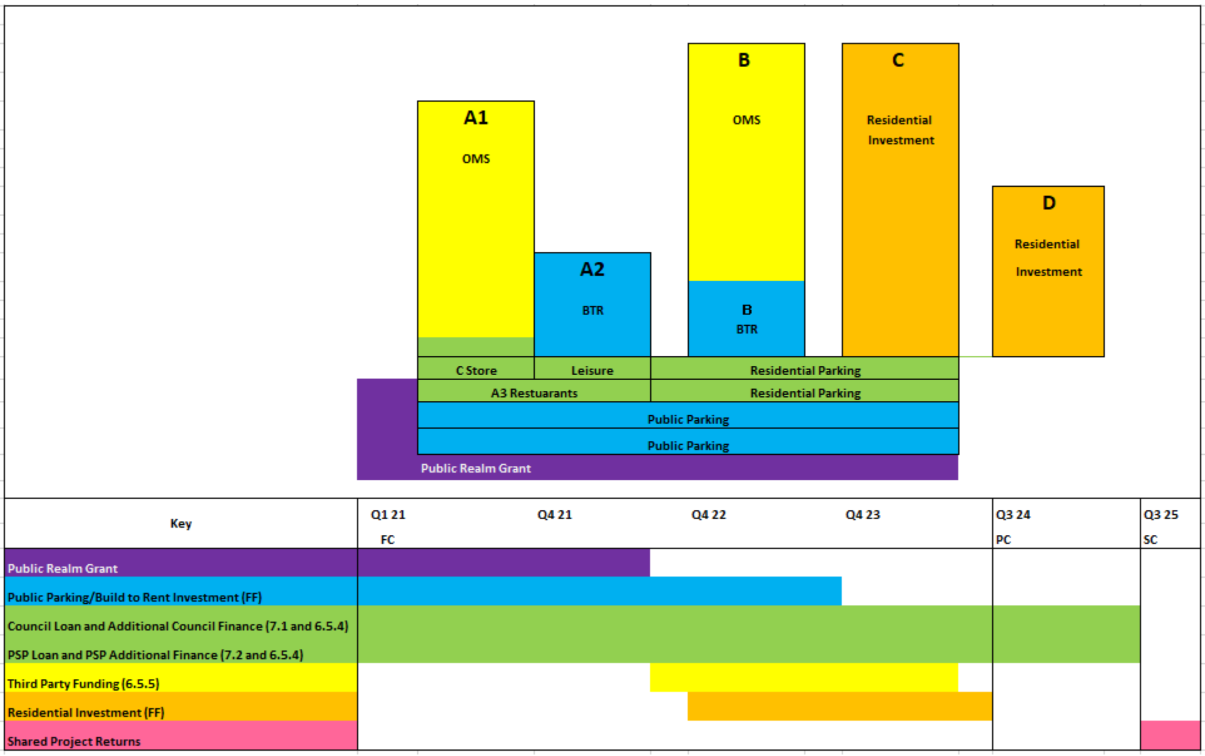


Chart 2



APPENDIX B

Extract from LLP Members Agreement setting out clause 6 and 7

6.4 No Member shall have the right to the return of its respective Capital Contribution except as otherwise provided under the terms of Clause 32.4.

6.5 The Business Plans shall identify the envisaged funding requirements of the LLP and the relevant Development Subsidiaries and the requirements for drawdown of Member Loans from time to time. It is intended that the funding requirements of the LLP and the Development Subsidiaries shall be met through the following methods: -

6.5.1 the Member Loans;

6.5.2 the Interim PSP Finance;

6.5.3 the provision by the PSP of Additional PSP Finance to individual Development Subsidiaries on terms as may be agreed by the LLP and the PSP from time to time;

6.5.4 the provision by the Council of Additional Council Finance to individual Development Subsidiaries on such arms length commercial terms as may be agreed by the LLP and the Council from time to time;

6.5.5 further loans provided on arm's length commercial terms from an institutional lender or other third party **("Third Party Funder")** to individual Development Subsidiaries on terms as may be agreed by the LLP from time to time **("Third Party Funding");** and

6.5.6 the LLP lending sums to Development Subsidiaries in accordance with Clauses 7.8 and 7.9.

6.6 Unless otherwise unanimously agreed by the Members, no Additional PSP Finance or Third Party Funding shall be provided in relation to a Site or Package of Sites until such time as all the PSP Loan(s) for that Site or Package of Sites is drawn down by the LLP.

6.7 (Where required) the Business Plans shall identify the amounts of Third Party Funding to be provided by a Third Party Funder, Additional PSP Finance and/or Additional Council Finance (as applicable) provided always that:-

6.7.1 the loans are provided on the most commercially and financially advantageous terms obtainable by the LLP (or the LLP acting on behalf of the Development Subsidiary) at the time of borrowing;

6.7.2 the borrowings of any Development Subsidiary shall comply with the Maximum Gearing Threshold; and

6.7.3 the amounts are approved by members in accordance with the delegation policy

6.8 The Parties agree that the Council may provide funding to the LLP to meet up to 50% of:

6.8.1 any Advanced Sums to be expended to pursue Stage 1 Project Appraisal Sign Off in relation to Sites to be brought forward in accordance with the Partnership Business Plan and Development Programme, subject always to the aggregate of any Council and PSP funding by way of Advanced Sums in relation to such activity being no greater than the Advanced Sum Cap;

6.8.2 any Advanced Sums to be expended in relation to Non Site Specific Costs; and·

6.8.3 any Advanced Sums set out in the Site Development Plan(s) from time to time

provided that the terms of such funding shall be in accordance with the principles set out in Schedule 15 and such further detailed terms as the LLP, the Council and the PSP may (in their absolute discretion) agree to give effect to such principles.

MEMBER LOANS

Council Loan

7.1 Subject to the terms of the Option Agreement, the Council shall grant a lease of each site to an individual Development Subsidiary set up in accordance with Clause 21 and Schedule 10 for the purposes of developing out such site or Package of Sites. In consideration of the grant of a Lease by the Council to the relevant Development subsidiary the LLP shall issue to the Council such number of Council Loan Notes as is equal to the Site Lease Value for the relevant site transferred, The aggregate Site Lease Value of all sites so leased shall constitute the Council Loan from time to time.

PSP Loan

7.2 The PSP agrees to match the Council Loan and agrees to pay to the LLP the Site Lease Value of each site leased to the LLP by the Council pursuant to the Option Agreement, This shall constitute the PSP Loan which shall be provided by t he PSP in accordance with the provisions of Clauses 7.4 and 7.7 (inclusive). It is acknowledged and agreed that:

7.2.1 in relation to each Site, the Site Lease Value of such site will not be known by the Parties until such time as it is calculated in accordance with the Option Agreement and, consequently, the aggregate Council Loan and matching PSP Loan shall be unknown until such time; and

7.2.2 from time to time the PSP shall contribute Advanced Sums in order to fund the Non Site Specific Costs which shall be excluded from the calculation of the PSP Loan. **Package of Sites**

7.3 The Parties may package Sites together (each a "Package of Sites") where the aggregate Site Lease Values for such Package of Sites is considered to be more than or equal to the aggregate of Advanced Sum to be advanced in relation to such Sites. In such circumstances, the aggregate Site Lease Values for such Package of Sites shall determine the PSP Loan to be paid by the PSP in relation to such Sites. Where a Site Lease Value for any Site comprised within the Package of Sites is less than the Advanced Sums advanced by the PSP in relation to such Site the PSP Outstanding Loan Commitment in relation to such Package of Sites shall be determined in accordance with the following formula:

PSP Outstanding Loan Commitment for the Package of Sites = A

minus B Where:

A= in relation to each Site where the Site Lease Value exceeds or is equal to the Advanced Sums (plus interest accrued thereon) advanced for such Site, the Site Lease Value minus the Advanced Sums (plus interest accrued thereon) advanced in relation to such Site (aggregated across the Package of Sites)

B = in relation to each Site where the Advanced Sums (plus interest accrued thereon) advanced for such Site exceed the Site Lease Value for such Site, the Advanced Sums (plus interest accrued thereon) advanced in relation to such Site minus the Site Lease Value (aggregated across the Package of Sites).

In circumstances where the aggregate Advanced Sums advanced in relation to such Package of Sites is more than the aggregate Site Lease Values for such Sites, then the provisions of Clauses
7.7.1 and 7.7.2 shall apply and reference to:

7.3.1 Site in Clause 7.7.1 shall be to the relevant Package of Sites;

7.3.2 Advanced Sum Capitalised Amount in Clauses 7.7.1 and 7.7.2 shall be to the outstanding Advanced Sum Loan Notes (plus interest accrued thereon and which has not yet been