
**UPDATE ON THE PROCUREMENT OF A DEVELOPER PARTNER
FOR THE CHANNEL VIEW REGENERATION PROJECT**

HOUSING AND COMMUNITIES (COUNCILLOR LYNDA THORNE)

AGENDA ITEM: 6

Appendices 2a and 2b,3 and 4 are not for publication as they contain exempt information of the description contained in paragraph 14, 16 and 21 of Schedule 12A of the Local Government Act 1972.

Reason for this Report

1. To update Cabinet on the procurement process for the appointment of a developing partner for the Channel View regeneration project.
2. To detail the outcome of the tender evaluation exercise, identify the preferred Bidder and set out the required next steps.
3. To seek approval to delegate authority to the Corporate Director People & Communities in consultation with the Cabinet Member Housing and Communities and Cabinet Member for Finance, Modernisation and Performance and Director of Governance and Legal Services and Monitoring Officer and the Section 151 Officer, to appoint the preferred bidder, including:
 - a. Delegating all such matters arising from this report required to conclude the appointment, including matters referenced within the exempt legal advice set out at Appendix 4;
 - b. Approve the final contract wording and enter into the Umbrella Agreement for the whole programme with the preferred bidder;
 - c. Enter into a Joint Construction Tribunal (JCT) 2016 Design & Build contract for Phase 1 following all necessary post tender due diligence and confirmation that the scheme is within viability parameters; and
 - d. Entering into Pre-Contract Services Agreement's (PCSA) for future phases.

Background

4. The Channel View project represents the largest and most holistic estate redevelopment proposal so far in the council's housing development programme. The project will replace 180 existing properties on Channel View road, including a 13 storey tower block, with around 319 new mixed tenure homes for the existing community. The project will be delivered across various phases.
5. The first phase scheme delivers 81 accessible and adaptable older person apartments to replace the existing tower block. Every property will comply with the Welsh Government WDQR 2021 standards. The new homes will promote independent living and reduce the need for future adaptations. Phase 1 also includes a range of communal facilities and a café, all of which will provide services and support to the wider older person population within the local community.
6. Overall, the project will deliver a high quality, highly energy efficient, low-carbon homes, better connectivity for the estate and for the wider community, improvements to the public open space at the Marl, and the creation of well-managed, attractive public realm using green infrastructure and SUDS.
7. The council has been consulting with residents on this estate since 2016 when an estate improvement scheme and the refurbishment of the existing tower block was being proposed. During the development of both proposals it was discovered that much of the low-rise houses and blocks of flats on the estate were suffering from significant structural movement. Many blocks seemingly beyond economic repair and the costs to retain and refurbish the tower block, dealing with the external and internal issues the block faces were becoming increasingly unviable.
8. In 2017 the council put on hold the plans and undertook detailed consultation with all residents affected by the proposals to instead bring forward a holistic redevelopment of the estate. A master-planning design team was appointed to develop a high-level masterplan and residents were consulted on these proposals.
9. A hybrid planning application was approved at Committee in December 2021 for the overall masterplan and the detail of phase 1.
10. In March 2022 Cabinet approved a report (Appendix 1) seeking authority to:
 - approve the progression of the Channel View redevelopment scheme and agree that a procurement exercise be implemented to identify and appoint a Contracting Partner to deliver the entire project including phase 1, the design development, consultation and planning of future phases, the demolition of the existing housing stock and the construction of future phases (subject to viability).
 - approve the use of the Crown Commercial Services Framework (RM6088: Construction Works and Associated Services) to procure the

Contracting partner.

- delegate authority to the Corporate Director People & Communities, in consultation with the Cabinet Member for Housing & Communities and the Corporate Director Resources to approve the evaluation criteria and tender documents and manage the procurement process to the stage of identifying the preferred bidder. *Approved in ODR reference COM729* .
11. Blake Morgan Cost Consultants and Employers Agent have been appointed to evaluate the pricing element of the submitted tenders and to advise on the post tender due diligence, through to the signing of a JCT Design & Build contract for Phase 1, and the entering into an Umbrella Agreement for all future phases.
 12. Hugh James have been appointed as external legal advisors and have advised on the procurement route, have provided the Umbrella Agreement, drafted the JCT D&B 2016 form of contract and drafted the Pre-Contract Services Agreements to be used for all design and planning work for future phases of the masterplan. Hugh James will continue to provide advice when concluding the contract award process. Hugh James have provided external legal advice on the procurement process and highlighted any risks in appendix 4.
 13. The overall scheme costs for Phase 1 are to be met by the HRA Capital Programme, Section 106 contributions, and Social Housing Grant. Phase 1 consists of 100% council properties and will replace the older person housing scheme in the existing high-rise block. The existing tenants of the high-rise block will be decanted into the new buildings in phase 1, allowing us to demolish the high-rise tower.

Issues

14. Since the scheme achieved planning consent in December 2021, there have been a number of legislative changes that will need to be addressed to ensure compliance, particularly with reference to the emerging Building at Height requirements. This will be addressed through the JCT D&B contract for Phase 1.
15. To encourage strong competition for the project from the Crown Commercial Services framework, it was decided that Lot 5: CWAS 2 would be utilised to issue the tender pack rather than RM6088 Lot 6.3, of the Construction Works and associated Services section as detailed in the previous Cabinet report. We have received confirmation that the CCS framework was advertised at a value of £30 billion and the current spend to date on CWAS 2 is £26M.
16. All 3 contractors named within Lot 6.3 were also named on Lot 5: CWAS 2 with 20 named contractors on Lot 5 in total. All 20 named contractors were directly contacted to ensure they were aware that the Channel View project tender pack was being issued. All contractors were also invited to an on-

line presentation setting out the tender opportunity and to detail the tender pack details and process to be followed. Hugh James have provided external legal advice on the procurement process and highlighted any risks in appendix 4.

17. A deadline was set for the 24th August 2023 for all tender returns to be submitted. It is likely to be a reflection of current market conditions that despite the steps taken to increase participation 1 bid has been received.
18. In line with the tender process, which enables the evaluation of sole bids, as confirmed by Hugh James in their advice notes (appendix 4) the tender has been reviewed for accuracy and evaluated using the agreed scoring criteria as set out in the tender documents:
 - a. **Pricing (phase 1) 35%**
assessed by Blake Morgan. Report available in Appendix 2a
 - b. **Quality 50%**
questions evaluated by Housing Development and Procurement and commissioning. Scoring matrix available in Appendix 3
 - c. **Social value 15%**
questions evaluated by Housing Development and Procurement and commissioning. Scoring matrix available in Appendix 3
19. The Quality and Social value aspects of the tender return are both very good/excellent and as such the evaluation team have no areas of concern. The tender return not only meets all the requirements set out for the quality and social value sections of the tender but also, in some areas, exceeds the minimum requirements.
20. As a sole bid was received, the pricing element for Phase 1 of the bid submission was evaluated and benchmarked against other similar schemes that have been recently tendered within the last 2 years. The tender price received for Phase 1 is provided in Appendix 2a. It is higher than the pre-tender cost estimate due to a very challenging market and bespoke high quality specification. Abnormal costs have also been identified within the cost report. Post bid due diligence will be undertaken before the final CSA for the JCT is approved. The tender sum for phase 1 as shown in appendix 2a, is the maximum contract sum expected for phase 1.
21. Furthermore, as part of the Quality submission, all bidders were requested to identify their approach to adding value, analyses the current design/specification, identify any opportunities to introduce innovation that may result in cost savings, improvements to safety, speed of delivery, better the low-carbon requirements or reduce the on-going future maintenance requirements. As noted in paragraph 12, the preferred bidder has identified design changes that are required due to changes in Fire legislation and Building Regulations, but has also proposed opportunities to deliver innovation and added value, the project team would like to explore these options once in contract.

22. Whilst the tendered price is higher than anticipated, there are a number of factors that have impacted on overall costs. However, the project can still be delivered within the existing budget framework subject to post tender due diligence which may result in future projects being put on hold. The Post bid due diligence process will enable the project team to work through added value and cost saving options. This work will be completed to ensure viability parameters are met before entering into the JCT Construction contract.
23. Appendix 2b also provides confirmation of the budget allocated to Phase 1 to provide confidence that the maximum contract sum is budgeted for.
24. Hugh James have provided external legal advice on the risks associated with post bid discussions which are highlighted in appendix 4.
25. On appointment the preferred bidder will be required to review the following before a substantial start on site can be achieved:
 - a. Review of phase 1 designs due to new fire regulations and building regulation.
 - b. SAB and Welsh Water approvals
 - c. Discharge of pre commencement Planning conditions
26. The Umbrella Agreement states that A Pre Contract Service Agreement will be required on future phases. An outline of the process is as follows:
 1. The Developer shall engage a design team to work in partnership with the Council to develop a design and specification for the applicable Phase up to RIBA Stage 2;
 2. The Developer shall provide the Council with an indicative works cost (in a Contract Sum Analysis format for all the Developer's Works) to enable the Council to undertake a viability exercise and make a Welsh Government technical submission;
 3. If viable and or technical approval is received from the Welsh Government, the Developer shall work with the design team to develop the design and specification up to RIBA Stage 4 to finalise costs and to enable the Council to carry out pre-contract viability;
 4. The Developer shall also obtain SAB Approval and Reserved Matter application for the Phase (alongside any other statutory agreement required on that particular phase) and both the Developer and the Council will comply with the provisions in Schedule 2; and
 5. An updated Social Value Delivery Pan for the applicable Phase;
 6. The final Contract Sum Analysis and the Developer's proposals for the Developer's Works shall be presented to the Council for formal approval to enable both parties to enter into the Building Contract for the Phase.
27. Each phase will need to be assessed and return a positive financial viability position prior to being approved. The Umbrella Agreement ensures that approval for future phases is dependent on financial viability and additional approvals.

28. The housing mix for each subsequent phase of the project, which will provide some homes for sale, will be determined through the detailed design and planning process and will be dependent of development costs, market conditions and likely sales values.
29. It is noted later phases may be subject to property transactions. In such cases the Council will need to have regard to advice from a qualified valuer as part of any appraisal to ensure compliance with the Council's Property Procedure Rules and s.123 of the Legal Government Act 1972.
30. Phase 1 of the project, benefitting from detailed planning consent, includes a proposal for a café. An operator for this facility will need to be identified during the construction stage. An award of a lease will be subject to a separate decision by Strategic Estates in accordance with Council's Property Procedure Rules.

Local Member consultation

31. Local members have been fully consulted regarding the Channel View project and wider public consultation is currently underway.

Reason for Recommendations

32. To enable the council to move to the delivery stage of the Channel View redevelopment project.

Financial Implications

33. The report highlights the significant increase in costs of developing the first phase of the project compared to that envisaged as part of the original Cabinet approval and subsequent pre tender estimates. Independent advice project and cost management advice in the assessment of tenders highlights some of the disproportionate costs seen in the tender submission compared to comparable projects. This is identified as a result of disproportionately high rates for some elements and works packages, current design and high specification concerns, wider economic factors, and lack of competition in the tender exercise. Appendix 2b sets out some of the actions proposed to be taken prior to any contract award that would be considered, however it is not clear at this stage whether any efficiencies are deliverable and whether the additional changes such as Fire Regulation and Building Regulations, which are not currently considered, may offset or increase potential costs. It is not proposed to undertake a further tender exercise, but to work with the single bidder to determine options to take the scheme forward.
34. The appendix 4 set out the legal implications and risk of procurement challenge. Cabinet should be assured that any mitigations to the conclusions set out in that advice have been put in place by the Council. This includes compliance with any grant terms and conditions and the financial implications of any challenge and abortive costs.

35. No viability assessment is attached to the report for consideration. Any agreed approach to the scheme will need to meet the viability parameters set to support the long term viability, affordability and sustainability of the overall HRA business plan. Where a viability assessment is in excess of the parameters, this does not necessarily mean a scheme should not proceed but the rationale and financial impact of doing so should be clearly articulated. There are a number of additional funding options that are being considered to meet the cost of the scheme. The values of these and associated terms and conditions are not confirmed. To allow this report to be considered at Cabinet a number of future housing schemes have been identified to be put on hold pending the outcome of the next steps, this is to ensure the project can remain within the existing budgetary framework. Any decision to delegate a decision to enter into a construction contract should be done having regard to clear parameters or targets to be set by Council beyond which any decision should be reconsidered by Cabinet. Any Officer decision needs to be within the budgetary framework and be approved only after receipt and consideration of all confirmation of grant approvals and associated terms and conditions. These are not currently deemed to be in place as part of this report.
36. The report highlights community and wider investment to be undertaken as part providing services to the wider population e.g. community facilities, cafe. No business case is presented as part of any viability assessment or the cost of this or the net operating cost of the facilities identified within this report. These costings and approach to operation should be clearly identified as part of the decision making in respect to the immediate costs to be assured that immediate and ongoing costs can be met from the Housing Revenue Account.
37. The feedback from this and other tender exercises in respect to housing schemes in the year will need to be considered in the updated Housing Revenue Account Medium Term Financial Plan and Business plan, to ensure that development costs currently assumed are reflective of the current market and housing standards being designed. This is to ensure that any borrowing undertaken by the Council and schemes proposed remain affordable and sustainable over a prudent period.

Legal implications

38. The report seeks approval to delegate authority to the Corporate Director People & Communities to conclude the post tender due diligence and appoint the preferred bidder in relation to a procurement of the project off the Crown Commercial Services framework (Construction Works and Associated Services 2 (CWAS2)).
39. The value of the project is such that the Public Contracts Regulations 2015 (PCR 2015) apply. The Council must therefore comply with the requirements of the PCR 2015 when procuring and awarding this contract.
40. Procurement via a framework agreement is permitted under PCR 2015 provided:

- the framework is compliant with the procurement regulations;
 - the Council is a participating local authority able to rely upon the framework agreement;
 - the works to be undertaken fall within the nature and scope of the works covered by the framework, or lot relied upon;
 - the procedure set out in the framework agreement for awarding the contract is followed;
 - the terms and conditions of contract as set out in the framework agreement are used; and
 - the term of the framework covers the period of the proposed works contract.
41. Legal Services has not reviewed the specific framework or the tender documents issued for this procurement and note that external legal advice has been obtained as to the procurement route and tender process to date as set out in exempt Appendix 4.
42. The decision maker should have regard to the advice provided and the risks and rewards that might be a consequence of proceeding as proposed. It is noted that conclusion of the process and the award of contract to the preferred bidder will be subject to a further decision by the Corporate Director People & Communities whereby further legal advice will be obtained and provided on the proposed contract award as required.
43. In the event a contract award is made, it is noted later phases may be subject to property transactions. In such cases the Council will need to have regard to advice from a qualified valuer as part of any appraisal to ensure compliance with the Council's Property Procedure Rules and s.123 of the Legal Government Act 1972.
44. Before entering into the JCT Design and Build Contract for Phase 1, all property, planning and SAB approval issues for Phase 1 should also be addressed to ensure access to the site can be given to the contractor and works commenced following site access.
45. It is understood that the project is to be partially funded via Social Housing Grant and consideration should therefore be given to any funding conditions to ensure all grant conditions can be complied with.

Equality Duty

46. In considering this matter, the Council must have regard to its public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). This means the Council must give due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief.

47. When taking strategic decisions, the Council also has a statutory duty to have due regard to the need to reduce inequalities of outcome resulting from socio-economic disadvantage ('the Socio-Economic Duty' imposed under section 1 of the Equality Act 2010). In considering this, the Council must take into account the statutory guidance issued by the Welsh Ministers ([WG42004 A More Equal Wales The Socio-economic Duty Equality Act 2010 \(gov.wales\)](#)) and must be able to demonstrate how it has discharged its duty.
48. An Equalities Impact Assessment aims to identify the equalities implications of the proposed decision, including inequalities arising from socio-economic disadvantage, and due regard should be given to the outcomes of the Equalities Impact Assessment where required.

Well Being of Future Generations (Wales) Act 2015

49. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible.
- (a) In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2023-26. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives.
- (b) The wellbeing duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
- (c) The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible using the link below: <http://gov.wales/topics/people-and->

General

50. The decision maker should be satisfied that the procurement is in accordance within the financial and budgetary policy and represents value for money for the Council.
51. The decision maker should also have regard to, when making its decision, to the Council's wider obligations under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.
52. All decisions taken by or on behalf the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers of behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances

Policy and Budget Framework

53. The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

HR Implications

54. There are no HR implications for this report.

Property Implications.

55. The Strategic Estates Department (SED) has been providing advice and assistance on certain property matters in respect of the procurement of a contracting partner to deliver the Channel View Redevelopment Project and acquisition of a new build opportunity.
56. Specifically, the Estates team has been involved with the assessment and agreement of an in principle redline plan to define the area available for development. The Estates team will also instruct and advise on an independent valuation to inform any land transfers and financial appraisal. Any property transactions or valuations required to deliver any proposals should be done so in accordance with the Council's Asset Management process and in consultation with Strategic Estates and relevant service areas.
57. In regard to the appropriation of land required for this scheme to proceed, it is important to note the principles of value relate to the re-provision of Public Open Space and associated community amenity. SED has, and will continue

to, work closely with Council colleagues in the relevant departments to ensure clarity around the detail of this process.

58. There are no other specific property implications to be reported at this stage, though it should be noted that the Corporate Property Strategy 2021-26 (CPS) was approved at Cabinet in December 2021. The CPS sets out in detail on the Council's wider property strategy going forwards, including relevant targets over the next five years such as on carbon reduction, which may have a bearing how the proposals are developed.

RECOMMENDATIONS

Cabinet is recommended to:

1. approve the conclusion of the tender award process for the Channel View regeneration project.
2. delegate authority to the Corporate Director People & Communities in consultation with the Cabinet Member Housing and Communities and Cabinet Member for Finance, Modernisation and Performance and Director of Governance and Legal Services / Monitoring Officer and the Section 151 Officer, to appoint the preferred bidder, including:
 - a. Delegating all such matters arising from this report required to conclude the appointment, including matters referenced within the exempt legal advice set out at Appendix 4;
 - b. Approve the final contract wording and enter into the Umbrella Agreement for the whole programme with the preferred bidder;
 - c. Enter into a Joint Construction Tribunal (JCT) 2016 Design & Build contract for Phase 1 following all necessary post tender due diligence and confirmation that the scheme is within viability parameters; and
 - d. Entering into Pre-Contract Services Agreement's (PCSA) for future phases.

SENIOR RESPONSIBLE OFFICER	Sarah McGill Corporate Director People & Communities
	15 September 2023

The following appendices are attached:

Appendix 1 – Cabinet Report March 2022.
Confidential Appendix 2a – Blake Morgan Tender Report
Confidential Appendix 2b - Summary of costs and budget
Confidential Appendix 3 - Tender evaluation Scoring matrix
Confidential Appendix 4 – External Legal Advice
Appendix 5 – Single Impact Assessment.