

<b>Meeting:</b>	<b>Cabinet</b>
<b>Meeting date:</b>	<b>Thursday 14 December 2017</b>
<b>Title of report:</b>	<b>To approve the mobilisation of the development and regeneration programme</b>
<b>Report by:</b>	<b>Cabinet member contracts and assets</b>

## **Classification**

Open

## **Decision type**

Key

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

## **Wards affected**

(All Wards);

## **Purpose and summary**

To approve the allocation of budget to deliver the mobilisation phase of the procurement programme following the appointment of a developer to work in partnership with the council in delivering the development and regeneration programme.

In June 2016, Cabinet decided that the council should carry out a procurement to identify a developer partner. The aim was to maximise the benefit that the council could achieve from the land that it owns with development potential. This procurement process resulted in a Cabinet decision on 27 July 2017 to appoint Keepmoat Homes as the preferred bidder.

The cabinet report in June 2016 confirmed that resources required for the procurement of the developer had been estimated at £250K and a budget was provided for this. The final cost of the

procurement, including market consultation and additional due diligence checks, was £300k. The additional budget was approved by the Cabinet member in October 2017 and will allow the procurement process to complete and for the contract award to be confirmed.

Once the contract award is confirmed the development partnership will need to be mobilised. The recommendations in this report are required to ensure that the mobilisation is effective.

## **Recommendation(s)**

**That:**

- (a) legal and commercial support to finalise the contract (development and regeneration programme overarching agreement) with the development partner be procured at a cost of not more than £90k;**
- (b) subject to satisfactory completion of contractual arrangements the appointed development partner be requested to develop within 3 months of the formal request being made, a stage 1 submission, including a business case and estimated timescales for housing on the Bromyard depot land and paddock site;**
- (c) subject to satisfactory completion of contractual arrangements, to include the tranche 1 projects – county bus station and car park; Model Farm, Ross-on-Wye; Hildersley SUE, Ross-on-Wye – onto the programme subject to the council completing its internal (stage 0) approval, including options appraisal, for each site;**
- (d) the council's client side revenue costs, estimated at £155k annually, be funded from within existing operational budgets; the client side capital costs, including externally commissioned professional services, are estimated at £503k annually and are included in the council's capital programme; and**
- (e) the programme director growth be authorised, following consultation with the chief finance officer, to take all operational decisions necessary to allocate the above client side resources in accordance with contractual and client side requirements.**

## **Alternative options**

- 1 The council could determine not to proceed to the mobilisation phase. This is not recommended as Cabinet has agreed to award the contract to the preferred or the reserve bidder and has confirmed the first batch projects – Bromyard depot and Station Approach – onto the programme.
- 2 The council could determine not to approve the allocation of funding to enable the delivery of the mobilisation phases of the programme. This is not recommended as failure to secure expert legal and contract mobilisation support would significantly increase the timescales of mobilisation of the development partnership and legal support will be required to ensure we have a comprehensive contract which adequately reflects the council's requirements.

## **Key considerations**

- 3 The council's corporate plan 2016-2020 includes the following strategic priorities: helping residents to live safe, healthy, independent lives; keep children and young people safe and give them a great start in life; support the growth of our economy; and to secure better services, quality of life and value for money.

- 4 In July 2017 Cabinet appointed Keepmoat Homes Ltd as its preferred development partner and authorised the director for economy, corporate and communities to complete contractual arrangements subject to satisfactory confirmation of tender commitments.
- 5 The stand-still period required under procurement regulations and the completion of due diligence activities such as the gathering of references is now complete and the council is in a position to confirm the contract award and commence the contractualisation and mobilisation phases of the project. Authorisation to confirm the contract award was delegated to the director economy communities and corporate following consultation with the chief finance officer and cabinet member contracts and assets.
- 6 Mobilisation of the programme will involve:-
- formal confirmation of most economically advantageous tender;
  - finalisation of contractual details or queries to the agreement of both partners;
  - the agreement and calibration of the Key Performance Indicators;
  - scheduling of tendered commitments;
  - establishment of programme boards and operational management arrangements; and
  - delivering briefings to stakeholders, contract management and other services to embed contract in day-to-day activity.
- 7 These activities will require external legal and commercial support. This report seeks to authorise the procurement of external legal and commercial support and the allocation of a further £90k that will be required for final negotiations with the developer and completion of the contract.
- 8 Two potential projects were identified in the Cabinet report in July 2017 as the first batch projects of the programme. These include the first batch projects: Bromyard depot land and paddock site; and station approach. During the procurement bidders were asked to develop proposals for both sites and these sites will be included in the programme when the contract award is confirmed. A number of other potential projects have been proposed as potentially suitable for inclusion in the programme: county bus station and carpark; Model Farm, Ross-on-Wye; and Hildersley SUE, Ross-on-Wye. The Cabinet member contracts and assets is recommended to be delegated authority to include the tranche 1 projects subject to the council successfully completing its internal appraisals.
- 9 Current base budget funding will be used to support the mobilisation of the partnership, continue to develop the programme, and to manage the contracts relating to each individual development project. **The total revenue cost of the client has been estimated as £155k annual cost which will be funded from within existing operational budgets.** The client arrangements are described in appendix 2.
- 10 The council's capitalisation guidelines will be used to identify where future programme management spend will be included in the overall cost of projects within the programme. This spend will be treated as capital spend as it is contributing towards the development of specific assets identified in the project business case. The total estimated capital cost of the council's client has been estimated as £503k which will be funded from the council's capital programme.

- 11 Initial feasibility costs will be funded from the revenue base budgets. Only allowable costs will be capitalised and treated as part of the capital programme.
- 12 The overarching agreement specifies that the developer partner will work with the council to prepare the programme business case and the outline development appraisals for the first batch projects for consideration by cabinet. As part of the mobilisation and early stages of the contract, the developer partner will be expected to engage with stakeholders to facilitate the progress of the development and regeneration programme. Communications, mobilisation and marketing plans have been developed as part of the procurement process to ensure that stakeholders are informed and involved as appropriate. Any further development costs associated with the first batch projects – Bromyard depot and station approach – will be agreed with the developer.
- 13 The partnership arrangement will fully comply with the council's framework for partnerships governance. The partnership agreement will set out the terms of reference for a joint partnership board that will provide strategic governance and the DRP Team which will provide operational management. The partnership board will recommend to cabinet how the programme should be developed.

## **Community impact**

- 14 The council's corporate plan 2016-2020 includes the following strategic priorities: helping residents to live safe, healthy, independent lives; keep children and young people safe and give them a great start in life; support the growth of our economy; and to secure better services, quality of life and value for money.
- 15 The wider Herefordshire economic vision sets out a bold and ambitious framework for economic growth within the county, guiding investment to, and within, the county and is supported by the recently adopted core strategy. Delivery of the core strategy and economic vision will rely on significant investment in a variety of developments across the county.
- 16 Supporting the corporate plan and economic vision, the council's property strategy for 2016 to 2020 includes the objectives to maximise the economic benefits of the council's property asset base and to support economic development and housing growth.
- 17 The project has the potential to significantly contribute to the achievement of a number of council strategies. Agreement to apply funding towards the mobilisation of the development partnership will enable progress to be made towards delivering against those strategic objectives.

## **Equality duty**

- 18 Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to:

- a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 19 The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. Our providers will be made aware of their contractual requirements in regards to equality legislation.

## Resource implications

- 20 It is estimated that the total one off cost for completing the mobilisation phase will be approximately £90k. This cost will be met from within existing Growth operational budgets including any balances remaining within the £300k budget for the procurement originally agreed in June 2016 and increased in October 2017.
- 21 The programme of delivery will be subject to future decisions for individual or grouped projects. Each decision will be made using the appropriate council governance processes and will include project specific financial implications.
- 22 The council's capital programme, approved in December 2016, included initial indicative capital expenditure of £20.6m over the first three years of the programme. This is subject to identifying funding of £20m. The assumed principle of the programme is that it generates net capital and revenue returns for the council and is thus self-financing, with programme surpluses potentially supporting the council's medium term financial strategy. The use of these capital resources will be proposed in specific business cases and subject to the council's normal governance processes.
- 23 Future programme management spend to support potential development projects will also be included in the overall cost of those projects. This spend, subject to it being in accordance with the council's capital accounting policy, will be treated as capital spend as it is contributing towards the development of the asset specified in the project business case. Any costs that are not directly associated with the development of specific projects will be funded from within the existing operational budgets managed by the programme director – housing and growth.
- 24 Initial feasibility costs will be funded from the revenue base budgets. Only allowable costs will be capitalised and treated as part of the capital programme. This will take into account the possibility that either the council decides not to place the project on the programme (at stage 0), or that the project is not taken forward by the development partner or the council (at stage 1 or 2).
- 25 The current planning assumptions are that there will be:
- a) 2 stage 0 projects at any one time. It is assumed that the external cost of developing the outline business case to a level that satisfies the capital strategy working group will be £30k for each project, paid for from the DRP capital budget. This assumes that external technical support is sourced in accordance with the council's contract procedure rules and that all other resource requirements are met via internal resources and previously allocated budgets; and
  - b) 2 projects in stage 1 and stage 2 of the new project approval process. Each will have an agreed development programme fee, paid for from the DRP capital budget, that represents the likely costs of developing the project to the developer.
- 26 If there is a requirement for more projects than is anticipated in the planning assumptions then there will be an increased need for resources. This spend, subject to it being in

accordance with the council's capital accounting policy, will be treated as capital spend as it is contributing towards the development of the asset specified in the project business case.

- 27 Initial feasibility costs will be funded from the revenue base budgets. Only allowable costs will be capitalised and treated as part of the capital programme.

## **Legal implications**

- 28 The legal department has undertaken a procurement in accordance with the council's contract procedure rules and selected a preferred external provider.
- 29 The mobilisation of the contract is necessary to ensure that the partnership can be utilised when a suitable development is approved.
- 30 Requesting a stage one submission from Keepmoat is the first part of the process and will incur payment of fees and contractual commitments by the council. The terms of the contract will be the subject of discussions between the preferred bidder and the council during mobilisation. The decision to finalise the contract will be taken by the director for environment, communities and corporate in consultation with the chief financial officer and Cabinet member for contracts and assets after consideration of the finalised terms.

## **Risk management**

- 31 A risk managed approach has been taken in the programme management of the development and regeneration partner procurement. Risk management will continue to form part of the future stages of the project. The following major risks are being monitored and managed:
- 32 Risk: insufficient projects are identified to justify the programme; response: the council's land holdings have been analysed as part of the procurement process and a draft programme has been developed based on the analysis of these properties.
- 33 Risk: potential projects do not result in developments; response: a revenue reserve will be put in place to cover the cost of any potential projects that are aborted during the new project approval process.
- 34 Risk: there is insufficient technical resource to support the programme; response: the business case for each project will include an assessment of the need for external technical support.
- 35 Risk: there is insufficient legal support for the programme; response: legal services are putting in place arrangements that will allow the programme access to external legal support that is knowledgeable about the programme and its legal foundations. The business case for each project will include the requirement for this external legal support.
- 36 Risk: succession planning – there is a need to ensure that sufficiently experienced staff with the right skills are in place to manage the programme; response: the programme management team has been identified from the current council establishment. This team will be supplemented with external technical support as required. Contract management will be provided by the council's environment and place contract management team. This team has recruited additional resource in anticipation of this programme. It manages a number of similar contracts and has experience of working in a partnership environment.

- 37 Risk: delivery issues – there is a risk that the delivery partner does not deliver to an appropriate standard: response: the council will work closely with the developer to identify and deal with issues of quality at an early stage. The contract is designed to encourage issues to be identified early and dealt with in a transparent and cooperative way.
- 38 Risk: partnership working – the overarching agreement assumes that the council and the developer will establish a long term partnering relationship which will develop openness and trust. There is a risk that adversarial attitudes develop that will waste time and money; response: the partnership agreement will encourage the appropriate behaviours and these will be monitored as part of mobilisation and programme delivery.

## **Consultees**

- 39 Consultation was carried out during the market consultation to inform the development of the procurement strategy agreed in June 2016. This included engagement with members and key stakeholders.
- 40 The overarching agreement with the developer will specify the consultations that will be required at each stage of the approval process.
- 41 Group leaders have been consulted and no comments have been received.
- 42 The local ward members have also been consulted. They are supportive but would like to ensure local members are consulted on the implications of any local developments on future public service delivery; specifically health service provision.

## **Appendices**

Appendix 1 – commissioning objectives

Appendix 2 - council client arrangements

## **Background papers**

None identified.