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| <b>Meeting:</b>         | <b>Cabinet</b>  |
| <b>Meeting date:</b>    | <b>27 July 2017</b>   |
| <b>Title of report:</b> | <b>To approve the appointment of a developer to work in partnership with the council in delivering the development and regeneration programme</b> |
| <b>Report by:</b>       | <b>Cabinet member contracts and assets</b>  |

## **Classification**

### **Open with Exempt appendices**

Appendices 5 and 9 are exempt by virtue of paragraph 3 information relating to the financial or business affairs of any particular person (including the authority holding that information) of the Access to Information Procedure Rules set out in the constitution pursuant to Schedule 12A Local Government Act 1972, as amended.

## **Key decision**

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function to which the decision relates.

This is a key decision because it is likely to be significant in terms of its effect on communities living or working in an area comprising one or more wards in the county.

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**

Countywide

## **Purpose**

To approve the appointment of a developer to work in partnership with the council in delivering the development and regeneration programme.

## Recommendations

### THAT:

- a) the highest scoring tender (name to be announced at the meeting) be appointed as the preferred bidder to work in partnership to deliver the council's development and regeneration programme;
- b) the director for economy, communities and corporate having consulted with the chief financial officer and cabinet member contracts and assets, and having received satisfactory confirmation of tender commitments, be authorised to complete contractual arrangements with X for a period of 10 years;
- c) in the event that satisfactory confirmation of tender commitments is not received from the preferred bidder, the director for economy, communities and corporate, following consultation with the chief financial officer and cabinet member for contracts and assets and having received satisfactory confirmation of tender commitments, be authorised to enter into the contract for the development and regeneration programme with the second highest bidder ("the reserve bidder");
- d) following completion of contractual arrangements options appraisal and business cases for development of the former Bromyard depot and the Hereford station approach sites be brought forward for consideration as the first phase sites; and
- e) thanks are extended to all bidders for the courteous, prompt and productive way in which they have all participated in the procurement.

## Alternative options

- 1 The council could determine not to appoint a development partner at this stage. This is not recommended because alternative options to procuring a development partner were explored in the report to cabinet in June 2016, and the procurement process has confirmed suitable partners are available and offer an appropriate delivery vehicle to achieve the council's ambitions.
- 2 Selecting an alternative partner is not recommended as doing so could result in a challenge to the procurement process. This would delay or prevent contract award, result in significant costs to the council and delay the benefits anticipated from the programme.
- 3 The first phase sites could be progressed using a different commissioning option. However, the development and regeneration programme offers a fast and efficient route to development which will maximise the benefit from the significant amount of work that has been done by the partner in collaboration with the council during the procurement process.

## Reasons for recommendations

- 4 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 has been successfully completed and the recommendation of this report implement the results of this competitive process.
- 5 The arrangements that have been agreed with the bidders represent the most effective mechanism by which to:
  - a) Generate the greatest potential to raise capital and revenue receipts from the council's land holdings, whilst controlling the nature, speed and character of developments;
  - b) Contribute to the delivery of the target of 800 homes for Hereford city centre and to the housing targets set out within the core strategy;
  - c) Create a commissioning option that supports the emerging objectives of programmes including the economic masterplan, one Herefordshire and one public estate;
  - d) Underpin the regeneration of the county via a long term pipeline of works
  - e) Target the use of local labour and local supply chain, creating jobs, apprenticeships, training and education initiatives and provide support for local SMEs for third sector groups and the community;
  - f) Improve skills and educational attainment and enable the development of new economic activity to address the problem of low wages in the county;
  - g) Facilitate collaborative working between partners conducting developments within the county.

## Key considerations

- 6 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.
- 7 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.
- 8 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.

- 9 In line with its support for the economic vision, the development and regeneration programme is designed to support Herefordshire Council's contribution to the One Public Estate (OPE) programme. This is a national programme run by the Cabinet Office Government Property Unit and the Local Government Association. The programme promotes joint working across the public sector to make best use of their collective assets. It has three key objectives of creating economic growth (new homes and jobs), delivering more integrated, customer focused services and generating efficiencies through capital receipts and reduced running costs.
- 10 The council, as the lead body for the One Herefordshire programme, was accepted into the OPE programme in April and awarded initial funding of £285,000 to support technical and feasibility work to bring forward projects within the county. A report on this is due to be considered elsewhere on this agenda. The development and regeneration programme will be a commissioning option for the projects brought forward as part of the OPE programme.

### **The procurement**

- 11 On 16 June 2016, cabinet decided to start an EU compliant procurement (using the competitive dialogue process) to appoint a developer partner. Cabinet agreed a set of commissioning objectives (included in appendices 1 and 2 (commissioning objectives and diagram) that have been used to underpin and guide this procurement. The commissioning objectives for the programme ensure:
- a) Flexibility to deliver using a variety of funding mechanisms (see appendix 3);
  - b) Clear governance and rapid mobilisation, with minimum administration cost;
  - c) Transparency, demonstrating best value and
  - d) Delivery of a range of regeneration, education and training and community support initiatives.
- 12 The procurement strategy was developed to deliver the commissioning objectives, define the scope and structure of the overarching agreement, and ensure compliance with European procurement rules. It was informed by a number of sources of information including: the core strategy, the market consultation which took place in the first half of 2016; a review of property services; feedback from Members; and feedback from other stakeholders and councils.
- 13 The procurement process started on the 25 June 2016 with an initial short listing process (the pre-qualification questionnaire or PQQ). Three rounds of dialogue have been conducted with the selected bidders during which solutions were progressively developed that deliver the commissioning objectives. Bidders' proposals were assessed by a cross functional team of 17 subject matter experts made up from council officers and external advisers. The final tender evaluation criteria are set out at appendix 4 final tender evaluation requirements.
- 14 Two compliant final tenders were received on 15 June 2017. These tenders have been assessed against a set of criteria designed to ensure that the commissioning objectives were met. The final solution of the preferred bidder is summarised in appendix 5.

## The agreement

- 15 The overarching agreement has been developed in consultation with our legal consultant and has been reviewed by Sharpe Pritchard legal services. It is based on a contract model that has been used by a number of councils to put in place partnerships with developers. This gives the security of a tried and tested industry standard contract but developed and enhanced for our local needs. The contract will have an initial 10 year term with the possibility of extensions based on successful delivery of strategic performance measures. A high level description of the contract is included at appendix 6.
- 16 The contract will take the form of an overarching programme agreement. This will establish and manage a long term development programme in support of the council's strategies (including its economic vision). The programme agreement will also regulate the overarching relationship between the council and the developer. Underneath it there will be a series of design and build contracts; development and partnering agreements for housing and other developments such as student accommodation, extra care or car parking. These will be put in place whenever a new project is agreed. The council will benefit from the value of the developed land (and associated regeneration programme benefits), whilst the developer will receive profit from its contribution (which is the resources and reward for risk required for the agreed development).
- 17 Any potential new regeneration and development projects will follow an agreed process, outlined in appendix 7 governance process diagram. This uses the council's decision making process to manage the way that sites are included in the programme and how the options for development are approved.
  - a) Stage Zero - site approval process for Inclusion in the development partnership programme (internal council process)
  - b) Stage One - project approval process (preliminary appraisal)
  - c) Stage Two - project approval process (detailed appraisal)
- 18 Best value is assured by the co-design of projects by the developer and the council, as it is the value of the developed assets that ultimately determine land value. In this way, the council and the developer can balance the maximisation of sales revenue (for example via house types; density of development and massing), with the achievement of other commissioning objectives, such as the achievement of strategic objectives and the creation of 'holistic and balanced' communities. Value for money will also be ensured by extensive use of open book accounting, the ability to benchmark costs, transparent competition of supply chain opportunities and if required ultimately the ability to use alternative commissioning routes.
- 19 The agreement will be available for use by other contracting authorities including One Herefordshire partners and others (e.g. Herefordshire University). It can be used either for directly commissioned projects or joint projects with the council. This will support closer cooperation between the council and its public sector partners in development and regeneration projects including OPE.

- 20 The dialogue with bidders has enabled us to secure commitments in relation to the approach to service delivery. These include:
- a) A business case for the programme setting out details of the potential programme of works; appraisal of the council's land holdings; funding and development options for the Station Approach and Bromyard sites;
  - b) A regeneration programme setting out details of supply chain; training; education; environmental and community support initiatives.
  - c) A mobilisation plan;
  - d) An overarching communications plan;
  - e) Site specific marketing plans;
  - f) Branding plans tailored to the specific development which will have a masterbrand with a series of sub-brands customised to the specific type of development;
  - g) A suite of key performance indicators (including targets and approach to reporting). Key performance indicators include measures on programme performance in respect of
    - i. the number of homes delivered;
    - ii. build quality;
    - iii. cost and time delivery;
    - iv. environmental standards; health and safety measures;
    - v. proportion of local labour used;
    - vi. support for the local supply chain (including third sector supply chain);
    - vii. conformance to the CITB (Client Based Approach) benchmarks in respect of apprenticeships; training and education placement numbers;
    - viii. stakeholder and customer satisfaction;
    - ix. communication and reporting targets;
    - x. school governor appointments; and
    - xi. support for community groups and initiatives.
- 21 Proposals submitted by bidders as part of the final tender are set out in appendix 8 final tender products requested from bidders.

## **Procurement recommendation**

- 22 The results of the completed scoring of each tender will be announced by the Cabinet member for contracts and assets at the Cabinet meeting which will complete the table set out within appendix 9. This is necessary to maintain confidentiality prior to the meeting and enable communications to the bidders to be appropriately managed. The completed table will identify the scores obtained by both bidders in the process (Bidders X and Y). Appendix 4 outlines the procurement evaluation methodology used. Appendix 10 Competitive Dialogue Process Guide 2017.05.24 describes the procurement process as completed (this process was originally intended to complete in April 2017 but was extended to July 2017 in October 2016 as a result of a change to the first batch sites).
- 23 The procurement recommendation is for the highest scoring bidder to be confirmed as the Preferred Bidder and for authority to be delegated to the director for economy, communities and corporate to complete contractual arrangements.
- 24 If the director is not satisfied with the confirmation of the preferred bidder's tendered commitments, it is recommended that the director be authorised to proceed to confirm the commitments made by the second highest scoring bidder (the reserve bidder) and if satisfactorily confirmed, complete contractual arrangements

## **First batch projects**

- 25 The procurement process included two potential 'First Batch' sites that were used to understand and demonstrate the capabilities of the potential partners and assess their ability to provide value for money: the former Bromyard depot and station approach – the former Rockfield Road site.
- 26 These sites were chosen to ensure that their outline design stages could be accommodated within the procurement timetable, and allowed the council to assess the bidders' capabilities against real opportunities using the designs produced for these sites as the basis for the financial evaluation i.e. generate capital and revenue receipts. The aim was for the plans developed during the tender stage to be progressed (via refinement and consultation) within the programme governance structure immediately on appointment.
- 27 These two sites will be the first two sites to be included in the development and regeneration programme. The developer will be asked to produce an outline development appraisal (within the context of the overall development programme business case). The outline development appraisal will include costed designs for each site. The outline development appraisal will be subject to cabinet approval following which the developer will apply for planning permission, returning to cabinet for further approval if material changes are required to the project, for example to incorporate the terms of any grant of planning permission.
- 28 The options for each site (e.g. land disposal; tenure and funding) will be presented as an options appraisal, which will also confirm the feasibility of proposals for cabinet approval. Land value will be assessed through transparent valuations, sales revenue predictions and construction costings (with the council retaining ownership of the land throughout the process unless an alternative structure is the council's preference).

- 29 The Station Approach site has also been identified as an opportunity within the One Public Estate programme for potential use as key worker/student accommodation or a multi storey car park. This is in line with work carried out during the development and regeneration programme procurement. The appraisal of the Station Approach site will be carried out in this wider context to ensure opportunities across public sector partners are fully explored. Due diligence arrangements will include estimated land value backed by an independent land valuation; subsequent sales will be via a competitive, open market process; developer's costs will be visible via open book accounting and rates for profit and overhead are fixed via the competitive procurement process to appoint the developer.

### **Contract award and mobilisation**

- 30 Assuming that the recommendations of this report are accepted, the contract will be awarded to the successful bidder by the end of August. Outline development appraisals will be developed for the first batch projects (within the context of the overall business case for the programme) with the aim of gaining cabinet approval to progress the first batch sites to submission of planning permission during 2017 and progression to the construction phase of development during 2018.
- 31 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.
- 32 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. The partnership board will recommend to cabinet how the programme should be developed.
- 33 Contract management for the partnership will be provided by the team responsible for the management of the public realm contract. This team has built strong capability in managing contracts based on a long term partnerships. This approach builds on these capabilities providing the council with a high level of assurance and improving the efficiency and resilience of contract management in this area of its business.
- 34 The programme will also require a significant level of programme management, which will be provided by the council's programme director housing and growth, and legal support, which will be sourced by the council's legal department.
- 35 Any costs incurred by the developer will be covered by the benefits that they receive from the developments. The council will only be liable for reimbursing the developer's costs if the council decides not to proceed with the proposed project approach (as opposed to the project being unfeasible) or decides to commission the development via an alternative route. There is, therefore, no up front cost in entering into the overarching agreement.



- 36 For commercial projects the council will get the guaranteed independently assessed land value, in the form of an upfront deposit of 15% with the rest paid as sales are made. Additionally the council will get a 50% share of any increase in sales value or decrease in construction costs (overage) while being protected against any drop in market value or increase in construction costs (as these are borne by the developer).
- 37 It is expected that the development and regeneration programme will be establish a strong pipeline of development projects. The development partner will be expected to work closely with the council to help it maximise the value of its property assets. However, further sites will only be included in the development and regeneration programme after an internal council options appraisal and the programme will not be the council's exclusive commissioning option.

### **Conclusion**

- 38 The development and regeneration programme procurements put in place a programme that will allow the council to maximise the economic benefits of its property asset base and support economic development and housing growth in Herefordshire. The procurement strategy to put in place new arrangements for these services has been developed over the past year based on the objectives of the council, feedback from stakeholders and commercial considerations. This report details the results of the procurement of the development and regeneration programme are on target to deliver their objectives. Cabinet is asked to approve the recommendations to enable contracts to be put in place.

### **Community impact**

- 39 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.
- 40 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.
- 41 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.
- 42 The project has the potential to significantly contribute to the achievement of the following council strategies:
- a) The Corporate Plan: through support for the economic vision, core strategy, and other strategies below;
  - b) The Economic Vision; by offering a commissioning route for the council and its partners for key projects and by investment in the county by the development partner;
  - c) The Core Strategy; by enabling the construction of housing on council sites;

- d) The Corporate Property Strategy; by allowing the council to maximise the financial benefits that it receives from its development sites;
- e) Health and Wellbeing Strategy; through targeted training and support for vulnerable groups;
- f) Children's and Young People's Strategic Plan; through support for school governorships and training and career development for young people;
- g) The Equalities and Human Rights Charter; the overarching agreement obliges the provider to ensure that they support the council in fulfilling its duties under equality legislation;
- h) And the Environmental Strategy / Policy; the partner is committed to supporting the council in its objective to become a low carbon council.

## Equality duty

- 43 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:

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

- 44 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. An equality impact assessment has been carried out and is included in appendix 11.

## Financial implications

- 45 The recommended decision in this current cabinet report does not in itself commit the council to any programme / project costs, although there will be fully budgeted costs in completing the preferred bidder stage of the procurement process. The programme of delivery will be subject to future decisions for individual or grouped projects, each decision to be recommended through the appropriate governance processes and to include specific financial implications.
- 46 The governance processes for project approvals are set out in appendix 7. At each stage of approval, the council is committed to underwriting certain development costs incurred by the developer:
- a) Stage 0: Site Approval Process for inclusion in the development programme – stage 0 is an internal council process to produce an options appraisal for cabinet to decide the best development option for a site: this will include the potential for the site to be included in the Programme. If the site is included in

the programme at the end of stage 0 the developer will fund the costs of feasibility / design incurred by the developer. However, if the site is found to be feasible and subsequent stage 1 approval is not granted by cabinet, the council will be liable to pay the costs (revenue) of the feasibility work completed by the developer, however the council will receive any feasibility work completed. The decision maker(s) will need to be mindful of this potential revenue implication when approving stage 0 / rejecting stage 1.

- b) Stage 1: Project Approval Process (Preliminary Appraisal) – in conjunction and in consultation with officers, members and stakeholders, the developer produces a preliminary appraisal of the site (including designs sufficiently developed to enable planning permission to be applied for). The preliminary appraisal will include development type and likely capital and / or revenue income, the commercial approach will depend upon the specifics of the project(s) and will be a matter for the specific decision by cabinet. The stage 1 report is intended to request approval from cabinet for planning permission to be applied for.
- c) Stage 2: Project Approval Process (Detailed Appraisal) – If any material changes to designs and capital or revenue to be received are necessitated by any further feasibility work or the result of planning permission, these will return to cabinet for approval. Otherwise the project will continue to build out. The developer receives the feasibility costs at project completion or subject to any agreed stage payments within the contract (which will have been approved by cabinet).

- 47 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 subject to specific business cases and governance in line with the process outlined above, but it is presumed that the council's access to relatively low cost borrowing from the Public Works Loan Board would provide an attractive option for financing appropriate projects, where doing so improves the council's return on the investment. The capital programme will be updated each year on a rolling basis, to identify indicative future spend within the programme.
- 48 Individual projects may not themselves generate a positive financial return if they are considered to deliver on particular strategic objectives of the council's corporate plan, and therefore it may be appropriate to group projects where it is considered necessary to cross-subsidise.
- 49 The council may incur direct revenue costs for individual projects and will incur ongoing programme management costs, however the programme is intended to be self-funded over the life of the programme. There is also the potential for any council 3<sup>rd</sup> party costs to be charged to the programme, however the intention is that these services would be commissioned and funded by the developer. A council revenue budget exists to support the ongoing programme management costs, which are not directly attributable to specific projects but provide for a programme team to monitor the development partner's adherence to the contract. This revenue budget is currently included within ECC base budgets, but is assumed to be phased out over time (generating an MTFs saving over and above current approvals) as the programme starts to generate revenue income.

- 50 The financial evaluation of the bids received during the procurement has utilised an evaluation tool developed by an external financial advisor. The tool has been used to evaluate the indicative costs and returns of two pilot projects:
- a) the former Bromyard depot (considered to generate a capital return for the council); and
  - b) Station Approach in Hereford (considered to be a revenue generating opportunity for the council).
- 51 The evaluation modelled a number of factors across the two projects to derive a single ten-year Net Present Value for each bidder. Whilst the costs and revenues are indicative prior to the projects progressing through the appropriate approval stages, they have been used to scrutinise the robustness of the bidders' cost plans and modelling. The evaluation template requires bidders to provide significant detailed assumptions of their cost plans, which have been scrutinised against market rates by the council's externally commissioned technical advisor. The cost assumptions provided appear to be robust and competitive.
- 52 The evaluation tool / template will be retained by the council to similarly assess option appraisals throughout the life of the programme, to provide comparative financial implications of different site options as well as providing a detailed cost breakdown of each project for the council to scrutinise. Costs are developed on an open book basis. In the event that the council technical advice indicates that costs are not robust or are unreasonably high, the council could opt not to commission a project. The contract also provides for an independent review process, should there be a dispute between the council and the developer about specific costs prior to the works being commissioned.

## **Legal implications**

- 53 The council has the legal powers to enter into the overriding agreement under the general power of competence under the Localism Act 2011.
- 54 A compliant procurement procedure has been followed to secure this award.
- 55 The overarching agreement commits the council to a strategic partnering arrangement with its chosen partner/developer whereby the council makes available specified council sites exclusively to the partner/developer for first call on potential development. The partner/developer writes a development programme (and refreshes it annually for council cabinet approval, always at partner/developer cost) and then either the council or partner/developer seeks to call off new projects from the development programme. The partner/developer only makes a financial return/profit if it successfully implements a new project.
- 56 It is appropriate for the council to enter into the overarching agreement. The term is for 10 years and does not have an earlier termination date. The decision whether to agree to projects will be a decision for cabinet and will have its own terms and conditions.

## **Risk management**

57 A table summarising the project risks and the responses which seek to eliminate, manage or mitigate these is included at appendix 12.

## **Consultees**

58 Consultation was carried out during the market consultation to inform the development of the procurement strategy outlined within this report. This included engagement with members and key stakeholders.

59 No feedback has been received from the consultation with group leaders carried out in the preparation of this report.

## **Appendices**

Appendix 1 - Commissioning Objectives Diagram

Appendix 2 - Commissioning Objectives

Appendix 3 - Sources of funding

Appendix 4 - The Final Solution of the Proposed Preferred Bidder

Appendix 5 - Final Tender Evaluation Requirements (**Exempt**)

Appendix 6 - High level description of the contract

Appendix 7 - Sample Governance Process Diagram

Appendix 8 - Final Tender Products Requested from Bidders

Appendix 9 - Final Tender Evaluation Results (**Exempt**)

Appendix 10 - Competitive Dialogue Process Guide 2017.05.24

Appendix 11 - Equalities impact assessment

Appendix 12 - Risks

## **Background papers**

- None identified.