



**TITLE OF REPORT:**

**SELECTION OF A CONTRACTOR FOR THE CONSTRUCTION OF MIXED TENURE HOMES AT KING'S CRESCENT ESTATE - PHASES 3&4**

**Key Decision No. NH P87**

**CPC MEETING DATE: 8 July 2019**

**CLASSIFICATION:**

**Open with exempt appendices**

**By Virtue of Paragraph(s) 3, Part 1 of schedule 12A of the Local Government Act 1972 appendix 1 is exempt because it contains Information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.**

**WARD(S) AFFECTED:**

**Brownswood**

**CABINET MEMBER:**

**Mayor Glanville**

**Housing Regeneration**

**KEY DECISION:**

**Yes**

**REASON:**

**Spending**

## **GROUP DIRECTOR**

**Kim Wright**

### **1. CABINET MEMBER'S INTRODUCTION**

- 1.1** At its meeting in July 2011 the Council's Cabinet agreed the Estate Regeneration Programme. The Cabinet report outlined the Council's approach to the development of a strategy for the delivery of high quality new build housing and improved living standards across a number of housing estates in the Borough. The Programme was updated and approved by Cabinet in March 2014 and again in October 2015. A further update was recently provided and approved by Cabinet in April 2019.
- 1.2** In approving the Programme, the Cabinet also agreed a portfolio as opposed to a site-by-site approach to the regeneration of its housing estates. This approach enables the Council to combine the development value of schemes which have the potential to generate a surplus with those that require a net investment. The value created by the outright sale and shared ownership homes to be delivered at King's Crescent will help to fund the delivery of new social rented homes within the scheme, the refurbishment of existing homes at King's Crescent, the new community facilities on the estate and wider genuinely affordable housing delivery across the programme.
- 1.3** Through this self-funded, self-delivery model we have already built 115 high quality homes for social rent and shared ownership in the first phases of regeneration at Kings Crescent, alongside major improvements to more than 100 existing homes and public spaces on the estate, by working in close partnership with the local community. These plans continue this approach to complete the transformation of the estate and deliver even more much-needed homes for Kings Crescent alongside clear benefits for existing residents.
- 1.4** Across all our new developments we are committed to maximising the number of genuinely affordable Council homes and I am delighted that, following design revisions and new funding secured from the Mayor of London, we can now provide 28 additional Council homes for social rent on top of the previous proposals.

### **2. GROUP DIRECTOR'S INTRODUCTION**

- 2.1** The Estate Regeneration Programme is based on the delivery of mixed tenure developments. Based on current market conditions the Programme is forecast to be self-funding but each individual scheme is subject to robust financial viability testing. This report is seeking approval to commence the procurement of a contractor for Kings Crescent Phases 3 and 4. The process will ensure that the Council selects a contractor on the basis of both cost and quality. It also

allows for further detailed financial assessments to be undertaken prior to entering into formal contractual arrangements.

### **3. RECOMMENDATION(S)**

**Cabinet Procurement Committee is recommended to:**

- 3.1 Agree to initiate a single stage tender process using the *Competitive Procedure with Negotiation* provided for within Regulations 26(4) of the Public Contracts Regulations 2015 for the construction of King's Crescent Phases 3 and 4. The project involves the construction of 219 homes including 28 for social rent, 75 for shared ownership, and 116 for outright sale, as well as a new community centre and commercial space.**
- 3.2 Note that with regard to the 75 shared ownership and 116 outright sale homes, the recommended procurement strategy requires the Council to make use of the authorities granted by Cabinet in the Sales and Marketing Framework report of the 18<sup>th</sup> July 2016 in respect of the direct development and disposal of those homes.**
- 3.3 Note the sales risk in relation to the 116 outright sale homes and the intention to market and sell these properties on a phased basis, subject to a market review and detailed sales and/or exit strategy for each phase.**
- 3.4 Grant authority to the Group Director of Neighbourhoods and Housing and the Group Director of Finance and Corporate Resources to implement the sales and marketing strategy for each phase and/or implement an appropriate alternative exit strategy.**

### **4. RELATED DECISIONS**

- 4.1 At its meeting of 18th July 2011 the Council's Cabinet agreed the Estate Regeneration Programme. The Programme was updated and approved by Cabinet in March 2014 and again in October 2015. A further update was recently provided and approved by Cabinet in April 2019.**
- 4.2 At its meeting on the 18<sup>th</sup> July 2016 the Council's Cabinet agreed the Sales and Marketing Framework, authorising the Director of Regeneration to implement the Sales and Marketing Framework in relation to shared ownership and outright sale disposals for both the Estate Regeneration and Housing Supply Programmes, and authorising the Director of Strategic Property and the Director of Regeneration to dispose of leasehold and freehold interests in the shared ownership and outright sale homes developed or to be developed as part of those Programmes.**

### **5. OPTIONS APPRAISAL AND BUSINESS CASE (REASONS FOR DECISION)**

- 5.1.1 This report outlines the process for procuring a main contractor using a Competitive Procedure with Negotiations procurement route and entering into a single stage design and build contract for King's Crescent Phases 3 and 4, a development project in the Brownswood Ward. The Council wishes to continue the phased development of King's Crescent as an exemplary housing, community and commercial scheme and to procure a main contractor to deliver the project. The contractor will be appointed to take the project forward from RIBA stage 3+.
- 5.1.2 The parcel of land to be developed at the King's Crescent site has been cleared since the last demolition in 2013. The development of the site represents an opportunity to complete the regeneration of King's Crescent which, apart from the introduction of new-build mixed tenure homes, also provides for refurbishment of existing blocks, improved amenity space, public realm improvements, replacement community space, new commercial space and new office/workspace.
- 5.1.3 King's Crescent Phases 3 and 4 comprise the following:
- 116 outright sale homes
  - 75 shared ownership homes
  - 28 social rent homes
  - Refurbishment works to existing blocks
  - A new community facility
  - 480m<sup>2</sup> of retail commercial space
  - 500m<sup>2</sup> of office/ workspace
  - Associated public realm and landscape works including improved facilities for play and recreation.
- 5.1.4 In addition to the works described in 5.1.3 the Council are considering adding general repairs, maintenance and component renewal to the package of works in line with the provisions of the Housing Asset Management Strategy, to include external works, works to communal areas and works to specialist mechanical and electrical services as identified by condition surveys to be undertaken prior to works commencing. The budget for this work, allowed for in the Housing Asset Management Strategy, will be apportioned to this Regeneration scheme. This approach ensures a joined-up approach to capital investment, reduces overall disruption to residents and should offer better Value For Money (VFM) to undertaking works separately.
- 5.1.5 An outline application for the refurbishment of existing buildings and the erection of new buildings ranging from 4 to 12 storeys equating to a maximum of 765 residential dwellings, retail, café/restaurant, community centre, and a multi-use games area was given Planning Consent on 26 November 2013 (Planning Ref 2013/1128). Phases 1 and 2 comprised 79 social rent, 36 shared ownership and 158 outright sale new build homes, the external refurbishment of 101 existing homes and 629m<sup>2</sup> of retail/cafe/restaurant space together with associated landscaping. Phases 3 and 4 were granted in outline with all matters reserved apart from an estate access road. The outline element provided

parameters for a series of new blocks, external refurbishment of 174 existing homes and a further 500 m2 retail/cafe/ restaurant/leisure space and 240m2 of community centre floorspace.

- 5.1.6 A detailed planning application for Phases 3 and 4 was submitted in May 2019. As part of this submission the Council will be seeking to increase the amount of housing to be delivered in comparison to the masterplan and set down in the Overarching Estate Regeneration Programme Unilateral Undertaking (UU) which was agreed by the Planning Sub-Committee in April 2014. The consented mix for Phases 3 and 4 was 79 shared ownership and 138 outright sale homes. The new planning application is seeking permission for 219 homes, representing an increase of 2 homes. The overall mix of homes has been improved to include 28 additional social rent homes. There are also 4 less shared ownership homes, and 22 less outright sale homes.
- 5.1.7 Bidders will be required to offer a single contract price for building out the whole of the scheme. A period of negotiation based upon prescribed criteria, defined by Hackney Council, has been built into the procurement process. The form of contract to be used will be a JCT Design and Build Contract with Hackney Council amendments.
- 5.1.8 A construction cost plan has been prepared for the Council by its Quantity Surveyor (QS), Potter Raper Partnership, setting out the estimated costs of construction. Please refer to Exempt Appendix 1.
- 5.1.9 The estimated costs are based on RIBA Stage 3 (planning application stage) proposals. A pre-tender stage estimate will be based on developed designs (Stage 3+) and is due to be completed in September 2019. The anticipated construction cost will therefore be finalised at the end of this process and may vary from the estimated cost in Appendix 1.
- 5.1.10 The cost of the scheme will be funded from sales receipts of the outright sale properties, the first tranche equity sales of the shared ownership properties, and the future rental income from the social rented and shared ownership properties. In line with the Programme's portfolio approach, the projected scheme surplus will be used to cross-subsidise the Programme.
- 5.1.11 It is recommended that the Council will act as developer for the outright sale and shared ownership homes, marketing and disposing of them in line with the Council's approved Sales and Marketing Framework.
- 5.1.12 With 116 outright sale properties currently valued at £67.5m, this exposes the scheme, programme and the HRA to an increased financial risk. In addition, the 75 shared ownership properties are currently valued at £43.56m, with forecast first tranche equity sales of £15m. To spread this sales risk it is intended to phase the release of the outright sale units.
- 5.1.13 A market review and marketing strategy will be produced for each sales phase, with authority to proceed to market properties delegated to the Group Director

of Neighbourhoods and Housing and Group Director of Finance and Corporate Resources.

- 5.1.14 Under the General Consent 2013, the Council only has powers to sell dwellings to purchasers who do not intend to immediately sub-let. This potentially limits the pool of available purchasers. If the Council wishes to complete disposals to individual investors or private rented sector operators, an application to the Secretary of State would be required. A review of these options will be considered in the sales strategy for each phase. This will only be considered as part of a risk management strategy as the Council's preference remains to sell homes to owner occupiers.
- 5.1.15 At current market values only a proportion of the outright sale homes would be eligible for buyers under the Government's Help to Buy Shared Equity scheme. This scheme has significantly benefited sales progress with recent schemes and therefore is a consideration. Also it should be noted that it is not known at present whether the government will continue funding Help to Buy after 2023.
- 5.1.16 Should sales not achieve the forecast values, or in the case of reservations been slower than expected, alternative strategies (as set out in the Risk Section below and which are not included in the current Sales and Marketing Framework) will need to be considered to maintain the viability of the scheme, Programme and HRA, some of which may require Cabinet approval.

## **5.2 Strategic Context:**

- 5.2.1 The Council's Estate Regeneration Programme was agreed by Cabinet at its meeting on 18th July 2011. The Programme was updated and approved by Cabinet in March 2014 and again in October 2015. A further update was recently provided and approved by Cabinet in April 2019.
- 5.2.2 The Council's Sustainable Community Strategy (SCS) 2018-2028 has five priorities. A contribution to Priority 1: 'everyone can enjoy a good quality of life and the whole community can benefit from growth' is evidenced through the proposals to radically transform the vacant land, whilst ensuring that the surrounding buildings and open space are enhanced through new landscape work and building refurbishment. The inclusion of commercial space and specifically workspace within this scheme will contribute to the delivery of Priority 2: 'residents and businesses fulfil their potential...', increased local prosperity and contributes to community life'. Priority 3 : 'greener and environmentally sustainable community' is met through enhanced ecology and biodiversity with the associated landscaping on the estate, 600m<sup>2</sup> + of increased public open space and 16 additional trees on the estate, substantive measures to reduce carbon dioxide emissions, passive and active design measures to address overheating and energy demand for cooling, adoption of noise and waste mitigation strategies, the introduction of Sustainable Urban Drainage Systems (SUDS) and the link to the CHP system delivered in Phase 1

### **5.3 Preferred Option:**

- 5.3.1 The estimated value of the work is over the EU threshold for works contracts and a procurement process compliant with The Public Contract Regulations 2015 (the Regulations) must be followed. Using the Competitive Procedure with Negotiation provided for within the Regulations is the recommended method of procuring the proposed building works. It enables the opportunity for a wide range of suitable contractors to tender, and also provides a method in which best value can be obtained in terms of both price and quality. Recent tenders using a restricted procedure failed to reach a satisfactory outcome as the market responded with non-compliant tenders that exceeded their pre-tender estimate. To resolve these issues the procurement was concluded with the use of a negotiated procedure without prior publication. To address the issue of non-compliant tenders and to ensure an efficient procurement programme the preferred approach is to use a Competitive Procedure with Negotiation route at the outset.
- 5.3.2 A soft market testing exercise was carried out in April 2019 requesting views on contractor's experience of a Competitive Procedure with Negotiation route as well as alternative approaches e.g. whether a single or two-stage D&B contract is preferred if a Restricted route was selected.
- 5.3.3 The recommendation reflects market knowledge and feedback from the soft market testing. The housing market is subdued resulting in a significantly more competitive tendering market as development (developing) contractors return to more traditional construction contracts. The extended Brexit deadline to October 2019 impacts the procurement approach as this is creating a significant amount of uncertainty. The incorporation of the negotiation stage within the procurement route affords tenderers and the council a degree of flexibility to negotiate on contract terms.
- 5.3.4 The Council proposes to act as developer for the outright sale and shared ownership homes and directly dispose of all relevant homes on a leasehold basis, subject to the review process detailed in paragraph 5.1. The Council's Sales and Marketing Strategy that has been developed and authorised by Cabinet enables the Council to market and dispose of shared ownership and outright sale homes directly to individuals. Using in-house expertise we can demonstrate value for money and ensure that the homes are marketed to the local community, giving people living and working in the borough priority to access a suitable home of their choice. The profile of Hackney Council as a developer of new homes for sale and the Hackney Sales brand is being strengthened with each project delivered. The Council's in-house sales team, Hackney Sales, can demonstrate a track record of success across a number of ERP projects including the initial phase of Kings Crescent, resulting in 87% of shared ownership homes being allocated to Hackney residents.
- 5.3.5 A cohesive, consistent in-house approach to sales and marketing provides a transparent and customer focused method for the delivery of projects such as

Kings Crescent Phases 3 and 4, which deliver new build outright sale and shared ownership homes that can be accessed by priority groups.

#### **5.4 ALTERNATIVE OPTIONS (CONSIDERED AND REJECTED)**

- 5.4.1 Procurement of a contractor/developer and entering into a contract with them through a hybrid Development Agreement was considered as an option. This option was used to deliver Phases 1 and 2 of the regeneration proposals. A lease was granted to the developer for the outright sale element of the scheme and the social rent and shared ownership homes were delivered under an associated Design & Build contract.
- 5.4.2 The hybrid agreement reflected the council's risk profile at the time and, in particular, the financial constraints placed upon the Council from the HRA debt cap.
- 5.4.3 Whilst there was an advantage to transfer sales risk to the developer at this point of the programme, the disadvantage was that Council forfeited the full sales receipt and paid for the developer taking the sales risk. The hybrid agreement was rejected in this case to enable sales receipts to be maximised and furthermore to enable the Council to exercise exit strategies such as conversion from outright sale to shared ownership without restriction.
- 5.4.5 Procuring through a Framework was considered. However, this was rejected due to concerns about narrowing the market. The following were considered:
- i) South East consortium New Build & Refurbishment Framework (above £8 million) - This framework contains 7 contractors that could express interest and bid for this work, however only 2 contractors had the experience and capacity to deliver this type of development.
  - ii) Delivery Partner Panel 3 (DPP3) – This framework has been procured through a fully compliant Official Journal of the European Union (OJEU) process, and can be used to enable the efficient procurement of housing-led development on land owned by public sector bodies and Homes England. Although this framework has the breadth and depth of contractors experienced in this market, it is not available to London boroughs.
  - iii) London Development Panel 2 - This framework for residential-led development has been set up to support the London Mayor's ambition to accelerate housing development in London. Fundamentally the framework is established for developer contractors rather than D&B contractors hence this framework was not considered as suitable for the preferred procurement route.
  - iv) LCP major works frameworks – The London Construction programme major works framework is currently being retendered and has not been available for consideration.



5.4.6 The decision was taken to use the OJEU procurement route to give the widest range of suitable contractor/developers the opportunity to tender, and also provide a framework in which best value can be obtained in terms of both price and quality.

5.4.7 A soft market test of Competitive Procedure with Negotiation was undertaken along with the alternative option of the restricted procedure with a one or two stage tender process. The findings were that most contractors had experience of the Competitive Procedure with Negotiation route and were willing to tender on the basis of this route alongside a single stage D&B contract. General market intelligence suggests that the appetite for single stage is growing whilst that for two stage is declining.

## **5.5 Success Criteria/Key Drivers/Indicators:**

5.5.1 King's Crescent will deliver new housing including homes for social rent, shared ownership and outright sale. The scheme also includes the refurbishment of 4 existing blocks and will deliver office/workspace, new commercial units and a community space. Completion of this phase of works will complete the entire regeneration of the estate.

5.5.2 Success will be measured by:

- Provision of well-designed new homes for social rent, shared ownership and outright sale;
- Provision of high-quality public, semi-public and private outdoor space;
- Meeting London Plan and Hackney Local Plan policy standards on energy by:
  - Reduction in carbon emissions against Building regulations Part L 2013 by 37.9% for residential, 26.7% for non-domestic (36.5% combined) achieved by
    - Enhanced U-values of walls, floors, roofs and windows;
    - Improved air tightness through reduced air permeability rates;
    - Reduced need for artificial lighting;
    - Incorporation of low energy light fittings;
    - Incorporation of mechanical heat and ventilation recovery system (MHVRs);
    - Incorporation of advanced lighting and space conditioning controls and;
    - Incorporation of heat and electricity consumption devices for individual homes;
    - Minimising internal heat generation through energy efficient design;
    - Reducing the amount of heat entering the buildings during summer through orientation of the glazing , external shading and the provision of internal blinds;
    - Consideration of the carbon dioxide emissions associated with gas-boilers;
    - Supplying energy efficiently by connecting the estate-wide CHP which will enable potential link-up with district heat network and;
    - Provision of photovoltaic panels (PVs)

- Achievement of BREEAM 'Excellent' rating on the community and commercial spaces.
- Meeting London Plan and Hackney Planning Policy standards on sustainability by achieving:
  - Effective Resource Management
    - Re-use of vacant and developed land with an effective layout and scale;
    - Efficient design of the massing and internal layouts;
    - Enhanced ecology and biodiversity with associated landscaping;
    - Use of responsibly sourced materials with low embodied carbon and;
    - Specification of water efficient fittings limiting water consumption.
  - Adaptation to Climate Change
    - Provision of passive and active design to address overheating and demand for active cooling;
    - Incorporation of Sustainable Urban Drainage Systems measures to address future risks of flooding
  - Pollution Management
    - Adoption of a Site Waste Management Plan to reduce waste and pollution during the construction period
    - Adoption of suitable noise mitigation strategies including the provision of refuge areas for residents.
- A healthy and active community is fostered through the encouragement of walking and cycling;
- Delivery of a new community facility that is well used for the benefit of the local residents and surrounding community;
- The design creates a sense of place, adding to the local identity of the area;
- The new development is integrated into the existing community and environment;
- Tenders represent value for money , meeting the financial targets whilst maintaining qualitative standards;
- Delivery of employment, apprenticeship and training benefits;
- Delivery within the proposed programme;
- Optimisation of sales receipts from outright sale homes to assist with the delivery of social rent homes across the programme;
- Sales targets being met in relation to void times and values, with shared ownership allocations prioritised to applicants from the borough.

## **5.6 Whole Life Costing/Budgets:**

- 5.6.1 The Council's Estate Regeneration Team have developed, in consultation with Housing Services, a standardised Design Specification for the new build homes and landscaping that will be delivered by the Estate Regeneration Programme.
- 5.6.2 The Council will take on the management and maintenance of the new homes once complete. In approving the design specification Housing Services have considered both the requirements and the costs of future maintenance and management. These costs are built into the wider HRA Business Plan.

5.6.3 The new workspace/office and commercial spaces will be marketed. The options for the workspace are to either market to workspace providers or for Property Services to lease the units directly.

## **5.7 Policy Context:**

5.7.1 The regeneration of housing estates and their wider neighbourhoods is a key objective of the Council. In July 2009 the Cabinet agreed a report titled 'Housing Renewal Programme New Development Strategy' which set out a new approach to housing regeneration. This report was followed up with the Cabinet's approval of the Council's Estate Regeneration Programme in July 2011, which was subsequently updated and approved by Cabinet in March 2014 and again in October 2015. A further update was recently provided and approved by Cabinet in April 2019.

## **5.8 Consultation/Stakeholders:**

5.8.1 Extensive consultation has taken place with existing residents on the estate and those from the neighbouring area during the design and planning process. This comprised:

- 2 lessons learnt workshops;
- 3 themed workshops;
- 2 residents visits (to a community facility and comparable estate regeneration);
- 1 focus group interview; and
- 4 public consultation events.

5.8.2 The main forum to provide residents information regarding the regeneration proposals is the Residents' Steering Group (RSG). Residents from the group have received training on the construction procurement process and will participate in the procurement of a contractor. There has also been considerable consultation with residents and the RSG on the scheme design.

5.8.3 The Sales and Marketing team have been involved throughout the design process, providing comments on all aspects of the proposed design which may impact on the sales outcomes. Specifically, the positioning of both tenures to maximise sales values, balance affordability of shared ownership and ensure compliance with lender requirements. Attention has been paid to the marketability of the proposed internal layouts which should maximise light and views and deliver uncomplicated living and circulation spaces. The team considers that overall the project will deliver a good mix of typologies.

5.8.4 The Council's Property Services and Area Regeneration team have been involved in the design as well as the sales and marketing strategy for the commercial space and workspace.

5.8.3 As part of the planning process a statutory consultation is being undertaken.

5.8.4 Key stakeholders involved in the regeneration have been:

- Council officers from Estate Regeneration, Area Regeneration, Housing Services, Finance, Procurement, Property Services and Sales & Marketing;
- Residents from King’s Crescent;
- King’s Crescent Residents’ Steering Group; and
- Ward Councillors.

## 5.9 Risk Assessment/Management:

5.9.1 The cost of the construction works and the income received from the sale of the shared ownership and outright sale homes are the major elements of the overall project finances and factors relating to these are therefore the key risks that need to be mitigated and managed throughout the project.

Risk	Likelihood	Impact	Overall	Action to avoid or mitigate risk
	L – Low; M – Medium; H - High			
Planning consent is not granted.	L	H	M	<ul style="list-style-type: none"> <li>• Regular engagement during design process with Planning.</li> <li>• Planning consultant, architect and project manager will liaise with planning team during the application process.</li> <li>• Regular regeneration team liaison with ward councillors with respect to any residents’ concerns.</li> </ul>
Lack of market interest if the Council is the developer (may prefer the opportunity to achieve profits from sale themselves).	M	M	M	The Employer’s Agent has undertaken a soft market testing exercise and confirmed sufficient interest in the tendering opportunity.
Tenders returned over budget.	M	M	M	The Employer’s Agent cost plan has been completed using BCIS data, benchmarking against comparable scheme tenders within the Council’s

				<p>programme and in the wider social housing market.</p> <p>The procurement route allows for a formalised negotiation process where potential value engineering options can be considered in relation to the items for negotiation.</p>
Contractor going into liquidation during construction	L	H	M	<p>Answers to SQs and financial checks will be carried out prior to selection and will establish bidders' financial capacity to undertake the works. Updated information will be requested if there are any delays encountered close to the start of contract e.g. Dunn and Bradstreet financial status reports. Regular checks throughout the contract period will also be carried out.</p>
Unable to sell all of the outright sale homes and generate the expected or required income for the Council	M	M	M	<p>There will be an option to phase the sale of the outright sales homes through the construction phasing. The sales and marketing strategy also has a series of exit strategies to assist in this scenario e.g. outright sales homes can be 'flipped' to shared ownership in the event of significant sales downturn.</p>
Unable to sell all of the shared ownership homes and generate the expected or required income for the Council	L	M	M	<p>Shared ownership could be converted to PRS/HLR should the property market not be suitable for large scale disposals.</p>
Contractual risk due to	L	L	L	<p>The legal implications of</p>

untested Hackney amendments to JCT D &B 2016				any new amendments or unamended JCT contract clauses will be fully explored by expert legal advice and tested with a wide range of consultant employer's agents before agreement.
Failure of the procurement process causes delays presenting a reputational risk.	L	M	M	There is a breadth of experience of the procurement route amongst the legal team Employer's Agent and procurement team.  The procedure has been soft market tested.  The key negotiation points will be pre-determined and the associated programme will be carefully considered.
Option to tax the blocks containing the commercial space, particularly the B1 workspace, restricts the ability to attract start-ups, risking the lettability of the space.	M	L	L	Model the impact of reducing rents to accommodate the VAT potentially chargeable on the B1 workspace.

## 5.10 Market Testing (Lessons Learnt/Bench Marking):

5.10.1 The Council's Employer's Agent, (Potter Raper), have undertaken soft market testing with a selection of contractors. Their findings indicate that there is significant interest from contractors which would tender for this scheme as a single stage design and build contract. The same contractors have indicated both experience of, and an appetite for, the Competitive Procedure with Negotiation procurement route. This will be consolidated by a SQ process.

## 5.11 Savings:

5.11.1 The project will deliver new high quality mixed tenure homes, external refurbishment of 4 blocks, commercial space (including workspace) and community space, and will therefore contribute to the regeneration of the borough. This will provide better value for money for Hackney residents and

provide the basis for the Council to continue delivering a cost effective housing management and maintenance service.

## **6. SUSTAINABILITY ISSUES**

The Sustainable Procurement Policy, Strategy and Guidance (“PSG”) supports the priorities to achieve balanced, sustainable communities and neighbourhoods which celebrate their diversity and share in London’s growing prosperity enabling a good quality of life for all. As a London borough the importance of working with our neighbours and contributing to regional and national sustainability goals to realise local benefits is recognised.

### **6.1 Equality Impact Assessment and Equality Issues**

6.1.1 The recommended procurement route is to follow a Competitive Procedure with Negotiation fully compliant with the Regulations. The process of advertising the project through a Contract Notice in OJEU is in itself the fairest way to attract the interest of all construction firms capable of undertaking the works. With respect to Equality and Diversity the selection questionnaire (SQ) will establish the bidders’ track record and compliance with the Equality Act 2010. Disability discrimination compliance is included in the design specification to ensure that the contractor will deliver a compliant scheme.

### **6.2 Environmental Issues:**

6.2.1 The estate will deliver a sustainability strategy that meets the relevant Council planning policy as well as meeting London Plan requirements. In meeting sustainable design and construction policy requirements the following design principles have been adhered to:

- Minimising carbon dioxide emissions across the site including the building and services such as heating and cooling systems;
- Avoiding internal overheating and contributing to the heat island effect;
- Efficient use of natural resources and systems in and around buildings;
- Minimising noise and pollution;
- Minimising the generation of waste and maximising reuse or recycling;
- Avoiding impacts from natural hazards including flooding;
- Ensuring the buildings are comfortable and secure for users, including avoiding the creation of adverse local climatic conditions;
- Securing sustainable procurement of materials, using local supplies where feasible; and
- Promoting and protecting biodiversity and green infrastructure.

6.2.2 The scheme efficiently uses land resources, optimising density whilst incorporating a network of generously-sized amenity space, reintegrating the estate surrounding streets and open public spaces. The scheme has been designed with high levels of glazing to allow for sufficient levels of daylight and

sunlight. In the construction phase the impact of operations will be minimised through the adoption of best practice measures, formalised in a Construction and Environmental Management Plan. The adverse impacts of surface water flooding will be minimised through the adoption of a comprehensive Sustainable Urban Drainage Strategy. The scheme will incorporate a wide array of features to enhance and protect biodiversity.

6.2.3 The scheme has been designed to minimise energy demand through an enhanced building fabric, minimising heat loss through air infiltration, reducing reliance on artificial lighting, utilising low energy lighting, and the use of mechanical ventilation and heat recovery (MHVR). The buildings will be connected to a site wide heat network which incorporates an energy centre built during the first phase supplied by combined heat and power (CHP) and high efficiency boilers.

6.2.4 The contractor will be required to fully comply with the Site Waste Management Plan (SWMP) Regulations 2008. Appropriate methods of waste minimisation and the consequent economic, technical and practical implications will need to be reported. The SWMP will set targets for waste reduction and recovery and be required to demonstrate how the targets will be achieved, the actual levels of waste reduction and recovery will be monitored for comparison with the targets. The targets will include:

- A maximum of 15% of waste to be disposed as landfill;
- Not less than 10% of the total material value to be derived from reused and/or recycled content.

### **6.3 Economic Issues:**

6.3.1 The Unilateral Undertaking will specify the obligations for meeting and reporting on specific local labour and training targets. In Phases 1 and 2 the Unilateral Undertaking required a minimum of 25% of the workforce as local labour. There were obligations to:

- provide notification of all vacancies for employees, self-employed and sub-contractors of employment or service arising from the construction;
- supply a detailed labour plan for the duration of the construction plan identifying what skills, employment and services are required;
- have an active programme for recruiting and retaining apprentices in trades such as bricklaying, carpentry, plumbing, electrical and plastering;
- employ at least one apprentice per £5million of construction contract value and to provide the planning team with written evidence documenting the programme of recruitment;
- have an active programme of recruitment and retention of adult improvers in the trades outlined above, employing at least one adult improver per £5 million of construction contract value, providing monitoring evidence to the planning team;



- seek approval for a written procurement plan detailing the goods, materials, services and works to be used during the construction phase; and
- provide a financial contribution of £3,750 per each £5 million contract value towards the cost of NVQ training courses.

A new Unilateral Undertaking will be agreed for the scheme containing similar obligations. In turn, these obligations will be incorporated into the build contract. In addition, bidders will be challenged as part of the procurement process to improve upon these requirements and set out how they will deliver these outputs and outcomes. A range of KPIs will be established relating to opportunities for local training and employment, and the use of source materials from local suppliers and manufacturers which will be monitored at monthly site meetings. In addition these KPIs are monitored at the Division's Housing Development Board.

## **7. PROPOSED PROCUREMENT ARRANGEMENTS**

### 7.1 Procurement Route and EU Implications:

7.1.1 The recommended procurement route is to follow a Competitive Procedure with Negotiation procedure compliant with the Public Procurement Regulations 2015. The process of advertising the project through a Contract Notice in OJEU is in itself the most effective way to attract the interest of construction firms capable of undertaking the works. A contractor will be appointed through a two stage tender process: an initial Selection Questionnaire (SQ) followed by a negotiated Invitation to Tender (ITT). Responses to the first round evaluation will be assessed on 2 key elements:

- Fixed price lump sum for the works; and
- Qualitative submission.

### 7.1.2 SQ stage:

The SQ stage will examine:

- Eligibility to bid;
- Financial and economic capacity to undertake the project;
- Experience of working with residents;
- Experience of partnership working and delivery of mixed-use developments including high density, mixed-tenure housing commercial;
- Experience of undertaking refurbishment works with residents in -situ;
- Delivering high quality landscape and public realm; and
- Track record of good construction practices

### 7.1.3 Tender stage: tender documentation will include

#### 1) Project Particulars

## Description of works

- Project management organisation chart
  - Design team composition;
  - Estimated start date
  - Employer's Requirements including design submitted to or agreed by the Planning Authority;
  - Enhanced design details to protect design integrity and quality;
  - Evaluation matrix;
  - Site surveys; and
- 
- Title plans for the site
  - Preliminaries including Project Particulars and,
  - Conditions of Contract

## 2) Pricing Document:

- Fully detailed contract sum analysis pro form

## 3) Qualitative Assessment:

Questions will be asked which will assess exactly how bidders intend to deliver this project. These will include:

- Integration with the local community
- Construction logistics
- Proposed project team
- Proposed design team and how design integrity will be maintained
- Delivering quality
- Health and Safety
- Sustainability (e.g. waste disposal)
- Construction programme
- Commitment to employment and training targets
- London Living Wage payment compliance

## 7.1.4 Evaluation:

The tenders received will be evaluated on the basis of a **70:30** price/quality ratio. Tenders will be assessed by the Evaluation Team (see paragraph 7.2.2). The financial information submitted in the Pricing Document will be assessed in order to verify the details of the tender, interrogate the bid made and examine the assumptions used.

## 7.1.5 Negotiation:

The second stage of the tender process will seek returns in response to the ITT documentation. If required there will be a limited number of rounds of negotiation followed by a final request for a best and final offer (BAFO) and a BAFO tender submission from the three contractors taken through to the second stage of the tender process.

## 7.2 Resources, Project Management and Key Milestones:

### 7.2.1 Project Team:

- Director of Regeneration
- Head of Estate Regeneration
- Project Manager
- Project Officer
- Architects: KCA/HHb//Muf Architecture
- Employer's Agent: Potter Raper
- Cost Consultants: Potter Raper
- Development Advisor: Carter Jonas
- Planning Consultant: Tibbalds

### 7.2.2 Evaluation Team:

- Project Manager
- Project Officer
- Design Manager
- Resident Representative
- Finance Team
- Employer's Agent: Potter Raper

### 7.2.3 Evaluation Team Advisers

- Procurement Category Lead and Category Manager
- Legal Services
- Property Services

7.2.4 The following Key Milestones are subject to factors such as the receipt of Planning Permission, no requests from tenderers for time extensions being granted, and compliant, suitable bids being received:

<b>Key Milestones</b>	
Business Case report to CPC	08/07/2019
Issue SQ	19/08/2019
Closing date for SQ	19/09/2019
SQ evaluation	20/09/2019-03/10//2019
Issue ITT	04/10/2019
Tender returns	13/12/2019
Tender Evaluation	13/12/2019-16/01/2020
Negotiated Tender Period	17/01/2020-28/02/2020
Contract Award Report considered at CPC	06/2020
Standstill Period	04/06/2020-17/06/2020
Sign contracts	09/07/2020
Mobilisation period	09/07/2020- 18/11/2020
Start on site	19/11/2020

### **7.3 Contract Documents: Anticipated contract type**

JCT Design & Build Form of Contract 2016 with Employer's Requirements and Hackney Council specific amendments.

### **7.4 Contract Management:**

The project will be managed by the Project Manager overseen by the Head of Estate Regeneration. The Council has appointed an Employer's Agent as Contract Administrator. The Employer's Agent will carry out monthly valuations of works completed on site and certify the value of these works. Weekly meetings will take place until the contract is on site. Thereafter monthly site meetings will take place. Decisions and change control will be undertaken at these meetings in line with agreed governance procedures, contract management policies, and the terms and conditions of the JCT Contract.

### **7.5 Key Performance Indicators:**

7.5.1 The main KPIs will be set to monitor:

- Programme
- Budget
- Quality
- Waste management
- Employment and training targets
- Neighbour complaints - the contractor will be required to register the site with the Considerate Contractor's Scheme.

## **8. COMMENTS OF THE GROUP DIRECTOR FINANCE AND CORPORATE RESOURCES**

8.1 There are no budgetary implications that follow the recommendations in this report.

8.2 The adoption of Design & Build delivery (as opposed to the 'hybrid Development Agreement' used previously) does have budgetary implications as the Council is responsible for sales and marketing costs. Depending on the success of the Council-led sales programme, all of these costs may not be capitalisable.

8.3 In addition, attached to the Design & Build approach is the risk that anticipated returns are not achieved.

8.4 However, the change of approach also obviates the need to account for a profit to the developer partner (typically estimated at around one fifth of the value of outright sale units) which would include the developer's own allowance for risk of a downturn in property prices.

8.5 This means that, so long as property price inflation does not reflect a fall of similar magnitude during the period of construction, the change of approach should be economically advantageous to the Council.

8.6 Furthermore, the Council has an additional disposal opportunity for a proportion of the outright sale units (to the wholly-owned property rental company) if, at the point they are marketed, expected returns are lower than forecast.

## **9. VAT Implications on Land & Property Transactions**

9.1 The Council may choose to 'Opt to Tax' the development site with the benefit that irrecoverable VAT could then potentially be reclaimed.

9.2 With regards to the Council's current plans for the long term use of the site, the main disadvantage of Opting to Tax is that charges for services provided from commercial/community premises will generally incur VAT on outputs.

9.3 This could harm the prospects of new and/or small enterprises making use of on-site workspace provision that:

- do not generate enough turnover to qualify for VAT registration (in which case they will not be able to recover input VAT)

or;

- are registered for VAT, but for whom the charging of VAT on outputs means the price of their services are uncompetitive

9.4. Mitigation strategies to address the impact of applying or disregarding the Option will be considered during the discussion which will precede that decision.

## **10. COMMENTS OF THE DIRECTOR OF LEGAL AND GOVERNANCE SERVICES**

10.1 The procurement process in this Report has been assessed as High Risk and therefore pursuant to paragraph 2.7.10 of Contract Standing Orders the approval to progress to market will be with Cabinet Procurement Committee.

10.2 The works to be procured in this Report are of an estimated value above the threshold for works of £4,551,413 under Regulation 5 of the Public Contracts Regulations 2015 and therefore it will be necessary to publish an OJEU notice in respect of the procurement of the works. It is proposed to use the Competitive Procedure with Negotiation under Regulation 29 of the Public Contracts Regulations 2015 to award the contract for such works.

10.3 Under the Competitive Procedure with Negotiation the Council will negotiate with tenderers the initial and all subsequent tenders submitted by them, except for the final tender, to improve their content. In doing so the

Council will need to ensure equal treatment of all tenderers and shall not provide information in a discriminatory manner which may give some tenderers an advantage over others. Notwithstanding the opportunity to negotiate with tenderers, it is possible for contracting authorities to award a contract on the basis of the initial tenders without negotiation where they have indicated that they reserve the possibility of doing so, and therefore the Council should reserve this right in the tender documentation.

10.4 The proposed procurement exercise in this Report has considered the requirements of and commitments made in the Council's Development Strategy approved by Cabinet on 29<sup>th</sup> April 2019 and, subject to approval, will assist the Council in delivering these objectives.

10.5 Legal Services will assist with the drafting of contractual and procurement documents for this matter as requested.

## **11. COMMENTS OF THE PROCUREMENT CATEGORY LEAD**

11.1 This is a complex procurement that is above the EU Threshold for works and there are elements of the tender that, based on recent market experience, are likely to require negotiation with tenderers.

11.2. The areas that are subject to potential negotiation have been discussed in detail with the Project Team and the Council's Professional Advisors. They will be limited as far as possible and restricted to those areas where negotiation is necessary in order to manage delivery risk and to control and fix costs.

11.3 This will ensure that the procurement process will not be a disincentive to the market. Soft market testing has been undertaken to verify that this is the case.

11.3 It is therefore considered that the recommended Competitive Procedure with Negotiation is the most appropriate procurement route for this development project in the current market.

11.4 The tender process will be managed by the council's Procurement Team through the electronic tendering system in order to ensure that the procurement process is fully compliant with the Public Procurement Regulations (2015).

## **APPENDICES**

Appendix 1 (EXEMPT) - Construction Cost Plan

## **EXEMPT**

By Virtue of Paragraph(s) Part 1 of schedule 12A of the Local Government Act 1972 this report and/or appendix is exempt because it contains and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Information relating to the financial or business affairs of any particular person (including the authority holding the information)

## **BACKGROUND PAPERS**

**In accordance with The Local Authorities (Executive Arrangements) (Meetings and Access to Information) England Regulations 2012 publication of Background Papers used in the preparation of reports is required**

### **Description of document (or None)**

None

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