

Title of Report	LBH Britannia Phase 2b Residential Design and Build Contract Award		
Key Decision No	FCR S151		
For Consideration By	Cabinet		
Meeting Date	27 March 2023		
Cabinet Member	Mayor Phillip Glanville		
Classification	Open with Exempt Appendices		
Ward(s) Affected	Hoxton East and Shoreditch		
Key Decision & Reason	<table border="1"> <tr> <td>Yes</td> <td>Result in the Council incurring expenditure or savings which are significant having regard to the Council's budget for the service / function</td> </tr> </table>	Yes	Result in the Council incurring expenditure or savings which are significant having regard to the Council's budget for the service / function
Yes	Result in the Council incurring expenditure or savings which are significant having regard to the Council's budget for the service / function		
Implementation Date if Not Called In	3 April 2023		
Group Director	Ian Williams, Group Director for Finance and Corporate Resources		
Contract value, both Inclusive of VAT and Exclusive of VAT (for the duration of the contract including extensions)	£155,685,124 (Excl VAT)		
Contract duration (including extensions, e.g. 2 yrs + 1 yr + 1 yr)	May 23 to August 27 est. (including Defects Liability Period)		

1. Cabinet Member's introduction

- 1.1. Through the Council's flagship Britannia project we are already seeing the benefits of the biggest public sector investment in the area in a generation, overcoming funding challenges to provide the multi-award winning and nominated high-quality facilities and infrastructure that Hackney residents deserve, directly delivered by the Council and serving some of the most challenged parts of our borough.
- 1.2. The multi-award winning Britannia Leisure Centre attracted over one million visits in 2022, with 6,500 direct debit and 5,400 pay and play members enjoying 118 fitness classes each week in one of London's best and most inclusive leisure centres.
- 1.3. The new Shoreditch Park Academy represents our continuing ambition for education in Hackney, seeing over £40m of investment not just into one of the finest school buildings in the country, but even more importantly the future of our young people. We also recently saw it get the Royal seal of approval with a visit from the new Duke of Edinburgh - a fitting tribute given his father helped open the original Britannia Centre.
- 1.4. This Cabinet report sets out our plans to complete the Council's final commitment at Britannia by appointing a contractor to deliver much-needed new Council homes on the site of the former leisure centre.
- 1.5. Following direct Council investment agreed last year, these include 51 homes for social rent alongside shared ownership homes and homes sold outright, to pay for both the new social housing and the new infrastructure already delivered in the absence of sufficient government funding.
- 1.6. While the existing plans for new homes already have full planning permission, the appointment will also enable the Council to work with the contractor to implement changes to the design of the new buildings to incorporate a second staircase, ensuring the new development meets the highest fire safety standards and without reducing the number of new homes for social rent. This work sits alongside our response to the Government's recent consultation on fire safety and sees us putting our response into action in one of our most significant developments.
- 1.7. In recommending this report to Cabinet, I would also like to thank the Britannia Project team for all they have already delivered and their work on this paper.

2. Group Director's introduction

- 2.1. This paper marks a significant gateway in the delivery of Hackney's Britannia masterplan. In April 2017, Cabinet agreed to progress the masterplan as a self delivery project; with the social and public infrastructure being delivered up front, ahead of any residential cross subsidy. Following on from the successful delivery of a new secondary school and award winning Britannia

Leisure Centre (BLC), the Council's delivery focus now turns to the residential phase of the project, including the delivery of 81 affordable homes. Despite setbacks to the delivery of the affordable housing on the Phase 2a site due to the Secretary of State refusing the Council's Section 77 application, the project has been re-phased and is now in a position to award a Design and Build contract to a main contractor.

- 2.2. The award of this contract follows on from a single stage procurement exercise, which was advertised via the Find a Tender Service (FTS) and used the Competitive Procedure with Negotiation (CPN) to enable the flexibility to react in challenging market and economic conditions to Tender Price Inflation (TPI) increases. The Council elected to use this mechanism to negotiate alternate facade options and value engineering which could be optionally instructed by the client post selection.
- 2.3. In recommending this award of contract, consideration has also been given to the Council's risk position in moving forward as developer on this scheme. In conjunction with our Sales and Marketing Agents, our Sales and Marketing Strategy has been developed and updated, building on the principles of ensuring that the maximum cross subsidy is returned from the sale of the private homes, to enable the up front delivery of the Phase 1 social infrastructure and 81 affordable homes. This strategy assumes a launch of outright sales in the UK prior to the launch (the following month) internationally. The profile of sales and specific launch timelines for each of the two private for sale blocks will be monitored pending updates to the construction programme.
- 2.4. The Hackney Britannia Phase 2b project has received detailed planning approval and has submitted Full Plans to Building Control. Since this approval, the Council has considered the impact of emerging legislation in relation to the delivery of single stair buildings above 30m in height, and has carried out a feasibility study to add a second staircase to all buildings (three) which are 30m or above in this phase. This includes blocks H4 (social rent), H5 (outright sale), and H6 (outright sale / shared ownership). The financial impact of this change is presented in Exempt Appendix 1, and is the basis on which the scheme would progress post contract. Design changes, together with the instruction of optional negotiated value engineering / alternate facade construction methods will be explored and instructed as a coordinated change package with the recommended supplier post award.

3. **Recommendations**

Cabinet is recommended to:

- 3.1. **Design and Build Contract Award.**
 - 3.1.1. **Note the completion of a single stage procurement in relation to the selection of a Design and Build contractor for Phase 2b of the Britannia project (residential).**

- 3.1.2. **Approve the award of a JCT Design and Build contract to Supplier A as set out in Exempt Appendix 1.**
- 3.1.3. **Authorise the Director of Legal, Democratic and Electoral Services to agree and enter in to all necessary legal and ancillary documentation relating to the Design and Build contract for Britannia Phase 2b (residential), including all necessary consents required to enable the development.**

3.2. Appropriation.

- 3.2.1. **To agree that the land at the site of the Old Britannia Leisure Centre, shown edged purple on the plan at Appendix 2, which is currently held for leisure purposes under the General Fund, is no longer required for those purposes.**
- 3.2.2. **To approve the appropriation of the land set out at within the Phase 2b development boundary (edged purple) for planning purposes to facilitate the carrying out of the development pursuant to section 122(1) of the Local Government Act 1972.**
- 3.2.3. **To agree that following completion of the development proposals within the Phase 2b development boundary (edged purple) the land shown hatched pink/buff on the plan at Appendix 2 will no longer be required for planning purposes and approve the appropriation of the land for housing purposes to be transferred to and administered from the Housing Revenue Account and in accordance with section 9 of the Housing Act 1985 and section 122(1) of the Local Government Act 1972.**
- 3.2.4. **To agree that following completion of the development proposals within the Phase 2b development boundary (edged purple) the remainder of the land within the purple Phase 2b development boundary on the plan at Appendix 2 will no longer be required for planning purposes and approve the appropriation of the land for general purposes to be administered from the General Fund Account and in accordance with section 122(1) of the Local Government Act 1972.**
- 3.2.5. **To authorise the Group Director Climate, Homes and Economy, Group Director of Finance and Resources and the Director of Legal, Democratic and Electoral Services to deal with all necessary arrangements to effect the appropriation set out in this report.**

4. **Reason(s) for decision**
- 4.1. **Design and Build Contract Award.** Following approval to the procurement business case by Cabinet in March 2022, the Hackney Britannia Project proceeded to a Contract Notice for a Design and Build Contractor via the Find a Tender Service (FTS) on 21 June 2022. This single stage procurement was carried out using the Competitive Procedure with Negotiation (CPN) provided for within the Public Contract Regulations 2015.
- 4.2. Following the issue of the PAS91 Selection Questionnaire, and draft Invitation to Participate (ITP) documents, five suppliers returned a Selection Questionnaire and four were subsequently invited to participate in a single stage tender process. Initial Tenders were then received from two suppliers on 9 November 2022, following the early withdrawal of two suppliers within the first couple of weeks of the ITP phase. Following review of these Initial Tenders, the Council elected to negotiate on two of the four nominated negotiation areas, and proceeded to receive Final Tenders from both suppliers on 7 February 2023. Following the evaluation of these Final Tenders, this report summarises the outcome of that process and recommends Supplier A be confirmed as recommended supplier, with a total score of 79.24% compared to Supplier D at 57.22%.
- 4.3. The recommendation of this Contract Award enables the Britannia masterplan project to proceed to the delivery phase of the housing project, and in turn proceed to implement the Sales and Marketing Strategy to support the self delivery model of development, and maximise cross subsidy delivered through the sale of the homes for outright sale both domestically and internationally.
- 4.4. Given emerging developments in relation to Fire Safety, and the Government's ongoing consultation in relation to the potential requirement for all new buildings over 30m to provide a second staircase, the project has considered the impact of adopting this position ahead of any potential legislative changes. Whilst the project already has detailed planning permission for the scheme, and has submitted Full Plans, it has been agreed that the adoption of a second staircase on the three of the four Britannia blocks which are 30m or above is the most prudent approach going forward to protect delivery of the project's objectives. For this reason, this report recommends entering into a contract with Supplier A which will enable the Council to work in collaboration with our recommended supplier to implement these design changes prior to submitting for relevant pre-start on site approvals.
- 4.5. Following a feasibility study by the client design team on the impact of adding a second staircase to three of the four buildings, an updated financial model has been run and the summary position is presented at Exempt Appendix 1. The financial implications are considered and set out further in paragraph 6, including the alternate options which have been considered should the

Council decide not to proceed with the housing delivery phase of the masterplan.

- 4.6. **Appropriation.** Appropriation of land for planning purposes under section 122 of the Local Government Act 1972 ('the 1972 Act') provides the Council with a mechanism for helping minimise the delay or uncertainty associated with regeneration projects by ensuring that the proposed developments cannot be held up by injunctions in support of third party rights.
- 4.7. In order to de-risk the development of the mixed tenure/use scheme at Britannia Phase 2b, the appropriation of the land shown within the planning boundary line at Appendix 2 is required.
- 4.8. The land at the site of the old Britannia Leisure Centre, as shown in Appendix 2, for which authority to appropriate is being sought, is currently a vacant construction site following the demolition of the old Britannia Leisure Centre as part of the Phase 1 works. Once the development has been completed, the land hatched in pink/buff will be appropriated as housing land and transferred to the HRA. The remainder of the land within the Phase 2b development site planning boundary will no longer be required for planning purposes and will be appropriated for general purposes to be administered from the General Fund Account and in accordance with section 122(1) of the Local Government Act 1972.
- 4.9. Subsequent to the transfer of the land to the HRA and General Fund, the Council will lose the benefits of the appropriation for planning purposes. The Council will not, however, lose the protection over whatever was built while the land was appropriated for planning purposes, and as such the newly built development would not be subject to an injunction (i.e. third parties whose rights have been injured as a result of the development will not be able to halt the development). The affected parties may, however, be able to seek compensation. Exempt Appendix 3 provides further background information.

5. **Background**

Policy context

- 5.1. The Britannia masterplan has been presented to Cabinet at each key project gateway since the approval of the Business Case in April 2017. The project has delivered a new secondary school and award winning state of the art leisure centre in the absence of sufficient central government funding, and has already implemented significantly upgraded public realm and site wide infrastructure pending the completion of the masterplan through the delivery of Phase 2. This infrastructure includes the masterplan's connection to a permanent energy centre and District Heat Network which will be delivered on the Colville regeneration site.
- 5.2. Despite considerable ring fenced investment for the school, including the provision of a new Multi-Use Games Area (MUGA), and provision of a new Early Years Centre, the Secretary of State refused a Section 77 application

to build on a corner of the existing Shoreditch Park Primary School (previously the marketing suite for the Anthology Hoxton Press development) as Phase 2a of the masterplan. Cabinet subsequently approved the re-phasing of the masterplan in March 2022 to maintain the Council's commitment to deliver the affordable housing as part of the first phase of residential on the Phase 2b site. The appointment of a Contractor to build Phase 2b is thus the next key gateway to deliver on these promises.

Consultations

- 5.3. The project was consulted on formally prior to recommendation and adoption of the financial business case to Cabinet in April 2017. Since that date, previous Cabinet reports have updated on informal and formal consultations relating to the planning process and appropriation of Open Space in order to deliver the new Britannia Leisure Centre.
- 5.4. Engagement has continued throughout the procurement phase of the project, with a bi-monthly online Residents' Forum to update and answer queries in relation to the project. The last scheduled Forum (February 2023) was postponed, pending conclusion of the evaluation phase of the project and a recommendation being presented to Cabinet. The next Residents' Forum is scheduled for 4 April 2023.

Project progress

- 5.5. **Sales and Marketing Strategy.** Since the last update to Cabinet in March 2022, and concurrent with the procurement of a Design and Build contractor, the project proceeded to procure and appoint a Sales Agent, Savills UK, and a Marketing and Branding Agent, Four Communications, to work with the client and development manager to work up a delivery phase Sales and Marketing Strategy. This strategy was presented to the Board in September 2022, and has been reviewed in preparation for this Cabinet update.
- 5.6. The sales strategy has been developed based on the client's basecase construction programme, and to reflect a delivery sequence which ensures the earliest delivery of the affordable housing whilst recognising the construction and logistics constraints of delivering two tall buildings on a constrained site. This sequence was confirmed as an Employer's Requirement during the design and build procurement phase, and has been met by each contractor as part of their detailed construction programme.
- 5.7. The Sales strategy will be reviewed following confirmation of a revised construction programme with the recommended supplier. The principles which are likely to remain are as follows:
 - 5.7.1. The launch of H6 shortly after the start on site for Phase 2b, to tie in with either a spring or autumn launch season internationally,

- 5.7.2. The launch of H5 12-18 months after H6, subject to the forecast sales rates, and to ensure there is not an oversupply against demand at any one time,
 - 5.7.3. The launch of each block domestically first (month 1), followed up by an international sales launch (month 2), and
 - 5.7.4. A flexible sales and marketing programme, subject to sales performance, buyer demand, and changing economic contexts, to ensure the optimum sales approach for the outright sale homes.
- 5.8. A marketing and branding strategy has been developed at concept level, under the development banner of 'Shoreditch Parkside'. This will continue to be developed in the lead up to the launch. The marketing approach will marry appropriately with the marketing strategy for the Shared Ownership homes (delivered by Hackney Sales), giving a coherent, yet buyer specific approach.
- 5.9. In order to ensure that the project delivers the requirements of the private for sale buyer market, the design team, in conjunction with our interior designer, Suna, are in the process of reviewing the specifications for the key communal areas and final apartment fit outs. These interior design specifications will then be issued to the contractor and developed into a coordinated design through the provisional sum protocol which was issued with the Employer's Requirements.
- 5.10. **Employer's Agent and Clerk of Works Appointments.** The appointment of a specialist residential-sector client monitoring team is essential to de-risking the project and ensuring a high quality of product delivery. This is critical to avoid abortive costs and delays, and also to be able to deliver the anticipated sales value from the homes for outright sale. Further details relating to the project management of the Design and Build contract is set out in the relevant section within this report.
- 5.11. A procurement exercise has been carried out using the Notting Hill Genesis Development Consultants framework Lots 9 (Employers Agent) and 13 (Clerk of Works). As a low risk procurement, the business case and contract awards for these services were carried out under delegated Director authority. Intent to award letters were issued to the successful suppliers on 27 February 2023, with a voluntary standstill period ending at 23:59 on 9 March 2022.
- 5.12. **Neighbourly matters.** Many residents will remember the lane which ran to the side of the old Britannia Leisure Centre between the leisure pool area and Mawson Court. This lane was required for fire escape of the old BLC and is largely under the ownership of the Peabody Trust, as freeholder of Mawson Court. In order to ensure this lane does not attract antisocial behaviour or litter dumping prior to the completion of the Phase 2b

development, this lane was temporarily brought into the construction hoarding boundary under licence with Peabody.

- 5.13. The project team has worked up a draft planning application to return this land permanently to the Peabody Trust following the construction and development of Phase 2b. These landscape proposals will enhance the boundary treatment between the two properties, naturally prevent and discourage antisocial behaviour, and add appropriate landscaping which will enhance the enjoyment and visual amenity of the area.

Whole Life Costing/budgets

- 5.14. Phase 2b of the Britannia project contains housing and Class E commercial uses. The design of the scheme was taken to RIBA Stage 4 - Technical Design prior to issue to the contractors through the procurement process. Performance Specifications were included within the Employer's Requirements and were worked up to consider both the needs of the Council, as asset owner and manager of the affordable homes, but also of the demands of the private for sales market. The Council's affordable housing specification considers the whole life cost of the items it specifies, to ensure that items are robust to start with, and easy to maintain and replace.
- 5.15. As part of a masterplan development, the capital cost of the design and build contract being recommended (and the budget required to deliver this) is presented within the overall financial model for the development (refer section 6 and Exempt Appendix 1 for more details).

Risk assessment

- 5.16. A strategic risk register is reviewed by the Steering Group on a monthly basis and by the Board on a bi-monthly basis. At the end of February, the following strategic/financial risks were reported. The risk ratings are presented following the actions to avoid/mitigate the risks:

Risk	Likelihood	Impact	Overall	Action to avoid/mitigate risk
Emerging Legislation relating to Tall Buildings	High ▾	Medium ▾	Medium ▾	Proactive approach to assess the impact of adding a second staircase into blocks which are 30m or above. Viability to be considered on this working assumption. Proactive approach to work up a Gateway 2 submission (Building Safety Act) with

Risk	Likelihood	Impact	Overall	Action to avoid/mitigate risk
				recommended supplier.
Cost Increases relating to TPI / design development	High ▾	Medium ▾	Medium ▾	<p>Use of JCT D&B contract to manage change from the initial Employer's Requirements.</p> <p>Work in collaboration with a contractor partner to mitigate programme delay through efficient programming of design changes and priority design packages</p>
Reduction in Private for Sale Income	Medium ▾	High ▾	Medium ▾	<p>Viability model based on reduced income as an outcome of second staircase addition.</p> <p>Close working between the design team and sales agent to ensure private for sale homes remain in line with buyer market and demand profiles.</p> <p>Sensitivity analysis carried out to forecast likely sales.</p> <p>Update of sales forecast following review of design prior to submission of planning / mobilisation to start on site.</p>

Savings

- 5.17. As a capital project, there are no cash savings associated with this contract award. The focus of the contract award and the masterplan project is to ensure that the delivery of the Phase 2b residential project delivers best value through the procurement of the contractor and ensures the highest quality of delivery to protect the assumptions and expectations of the sales and marketing strategy.

Equality impact assessment

- 5.18. The Phase 2b development has been designed to take into consideration the requirements of the GLA and London Borough of Hackney planning policy to create an accessible and inclusive environment. The buildings have been designed to be inclusive and accessible environments, which meet the needs of all potential users by removing barriers that create undue effort, separation or special treatment. Everyone, regardless of disability, age or gender will be able to use the buildings equally, confidently and independently with choice and dignity. The proposals incorporate:
- Suitable means of access for all people from the entrance points.
 - Sufficiently wide routes allowing people to pass each other with lifts provided where there are level changes.
 - Principal entrances and lobbies that are identifiable and accessible.
 - Independent horizontal and vertical movement that is convenient and ensures that people can make use of all relevant facilities.
- 5.19. 90% of the residential units meet Building Regulation requirement M4(2) 'accessible and adaptable dwellings' and the remaining 10% meet Building Regulation requirement M4(3) to be 'wheelchair user dwellings' which are designed to be wheelchair adaptable for residents who are wheelchair users in accordance with London Plan Policy 3.8 (2021).

Sustainability and climate change

- 5.20. Social value benefits. The Invitation to Participate required suppliers to respond to the Employer's Sustainable Procurement Strategy Requirements by responding to each of the three areas below in Quality Criterion 7 - Sustainable Procurement Outcomes. This attracted 10% of the Quality Score.
- 5.21. Responses to these questions were clarified during the Initial Tender clarification and negotiation phase, and committed to as part of Final Tender responses. The importance of these commitments and a broader social value offering to the Council was stressed at both of the supplier clarification meetings which were held. The key elements of the recommended supplier's response and commitments are set out in headline below.
- 5.22. The development of an Employment and Skills Plan is a requirement of the Employer's Requirements and will be worked up in conjunction with Hackney Works once the recommended supplier has been confirmed.
- 5.23. Procuring green. The recommended supplier has committed to promote circular economy principles through their supply chain, thus reducing waste and consumption. They have had continuous accreditation to ISO 14001:2015 since 2010, and delivered the UK's first Fabric Energy Efficiency Standard (FEES) compliant schemes where a fabric first approach

has improved overall efficiency by over 50%. For the Britannia Phase 2b contract, they have specifically committed to:

- Carry out regular reviews of embodied carbon, providing regular quantified reports which will drive selection of materials with low embodied carbon, e.g. in the design of concrete mixes and structural elements.
- Use in-house buying expertise to identify opportunities for the procurement of sustainable materials, e.g. FSC certified / Grown in Britain timber; concrete, steel and plasterboard certified to BES6001; locally sourced materials; and durable materials to minimise repairs and maintenance.
- Use self-delivery capability and in-house logistics facilities to develop a sustainable construction delivery strategy, e.g. just in time (jit) deliveries to site of Construction Consolidation Centres (CCC); reusable packaging, materials supplied incorrectly, surplus materials are all sent back on return journeys; materials delivered as close as possible to each other; and a target of >99% waste diverted from landfill during the construction stage.

5.24. Procuring for a better society. The recommended supplier's approach is to work closely with external partners (councils, third sector companies, brokerages and training partners) to deliver employment and training support to local residents - especially those who are typically underrepresented in the industry or who face significant barriers to entry. They deliver a pre-start programme to provide 'ready to work' training, offering support with basic literacy and numeracy, providing the PPE and appropriate workwear through an employment support grant programme and offering CSCS card applications. The recommended supplier has committed to place 75 apprentices on the project (in line with the requirement to deliver 1 apprenticeship per £2m of construction spend), and has demonstrated delivery against such targets with other clients. They have also committed to use reasonable endeavours to ensure that 30% of the labour employed across the works is local. The details of how the apprenticeships and employment and training opportunities will be delivered for the scheme will be developed in conjunction with Hackney Works and the contractor's employment and skills manager once the recommended supplier has been confirmed. The recommended supplier has also committed to providing 12 work placements per calendar year via Hackney 100 programme and provide 160 volunteer hours per calendar year, to be allocated in coordination with Hackney, but to include school visits/presentations/mock interviews/job fairs and Hackney Ways into Work.

5.25. Procuring fair delivery. Suppliers were required to complete the O1 - Equality Opportunity, Diversity Policy and Capability Module of the PAS91 form in order to prequalify for the project. All suppliers passed the PAS 91 Pass/Fail criteria. The JCT Design and Build Contract (2016 edition), includes clauses referring to compliance with the Bribery Act, and suppliers returned the

necessary signed certification in relation to anti-corruption / bribery as part of their tender submissions. In addition, suppliers committed to pay the London Living Wage to their employees and to impose this requirement on their supply chain for the duration of the contract. The recommended supplier also highlights their commitment to diversity and inclusion, including their active support of the CITB Construction Ambassador programme - training 12 ambassadors in the last year, and as a founder member of the Women into Construction campaign, supporting 23 women through work experience placements and 20 into employment in the last year.

Tender Evaluation

- 5.26. The Contract Notice which was issued via the Government’s Find a Tender Service called for potential suppliers to submit a PAS91 Selection Questionnaire response, which included questions relating specifically to the supplier’s experience of a similar scale, nature, and context as for Britannia Phase 2b.
- 5.27. The evaluation criteria was based on a 60% Quality to 40% Cost basis, with Social Value included as a criterion within the Quality section of the scoring. The CPN process set out the four negotiation points which the Council may opt to negotiate on (quality questions 8, 9 and 10; contract terms and conditions).
- 5.28. Following receipt of five selection questionnaires on the 26 July 2022, responses were checked for compliance, and all five responses passed. The evaluation team then went on to score the five project specific questions. A moderation meeting was held and the top four suppliers were notified that they had been successful at the PAS91 stage of the process. This was on the basis that the Council had set out that it would take up to four suppliers through to the ITP stage in the draft ITP, and on the basis that there was less than 10% in the scores between the third highest scoring supplier and the fourth highest scoring supplier. A summary of the PAS91 stage moderated scores is as below:

PAS Stage Reference	PAS91 Pass/Fail	PAS91 Project Specific	PAS 91 Rank
1	Pass	94.00	1
2	Pass	88.00	2
3	Pass	80.00	4
4	Pass	74.00	5
5	Pass	84.00	3

- 5.29. Following the issue of the Invitation to Participate (ITP) on 17 August 2022 to the four shortlisted suppliers, two confirmed that they would not be

proceeding with the procurement prior to the first 'meet the client' briefing session. The reason stated for both was 'insufficient resources at this time'.

- 5.30. Two suppliers continued to engage with the client team throughout the Initial Tender period, and proceeded to submit Initial Tenders on 9 November 2022. Initial Tenders were reviewed for completeness, and initial commercial clarifications issued. Following a period of evaluation and an initial moderation meeting, the project team, following consultation with procurement and legal colleagues, proceeded to elect to negotiate on two of the four negotiation points identified within the ITP documentation. These were: Added Value/Value Engineering (quality criterion question 8) and Legal Terms and Conditions. After nominating these negotiation items, the team proceeded to enter a period of negotiation (for those nominated points) and clarification (for all other criterion and commercial aspects).
- 5.31. The project called a close to the negotiation and Initial Tender clarification phase by the issue of an invitation to submit a Final Tender on 23 January 2023, with responses subsequently received from both suppliers on 7 February 2023. Following a final review of the commercial and quality responses, a final moderation meeting was held on 15 February and cost and quality scores and comments were confirmed by the evaluation team. The Final Tender evaluation position is set out below in the Procurement Recommendation table, with a recommendation to proceed with Supplier A with a total score of 79.24%. Whilst Supplier D submitted a marginally lower priced bid, Supplier A submitted the Most Economically Advantageous Tender taking into account both price and a significantly higher quality score.

Procurement Recommendation

Final Tender Reference	Quality (max 60%)	Price (max 40%)	Social Value (incl)	Total (max 100%)
Supplier A	40.14	39.1	Incl Quality	79.24
Supplier D	17.22	40	Incl Quality	57.22

Contract management arrangements

- 5.32. The delivery of the Britannia masterplan has been led and managed since 2017 under the governance of the Britannia Board and the Britannia Steering Group. Day to day ownership of the delivery of the Phase 2b project sits with the Project Director, supported by a team of design & build and sales & marketing professionals. In the specific instance of the contract management arrangement for the delivery of the Phase 2b Design and Build Contract, the following client management/monitoring team is in place to ensure the delivery of the contract's outcomes:
- Design and Build Project Leadership Support - Cohesive
 - PMO - LBH
 - Design Champion - Sara Grohmann, Feilden Clegg Bradley Studios
 - Employer's Agent - Ikon/Cast

- Cost Consultant - Core Five
- Clerk of Works - Rund
- MEP client monitoring - Buro Happold
- Facade client monitoring - Wintech

5.33. There will also be liaison required with the Sales Advisory team and marketing and branding team, to ensure that ongoing buyer needs are met through the delivery of a residential product which meets quality and price expectations.

5.34. The Employer's Agent will administer the Design and Build contract on behalf of the client, and within the scheme of delegation for the project. Monthly site meetings will be held with the Contractor, supported by the client management and monitoring team.

5.35. Contract performance will be measured against the Employer's Requirements and agreed Contractor's Proposals, including programme and cost parameters. Escalation will be by way of regular Principals meeting (normally held bi-monthly or ad-hoc as required) which will bring together the key Director level leads to discuss performance against the contract, including areas of concern, and delivery against agreed Key Performance Indicators.

Key performance indicators

5.36. Key Performance Indicators (KPIs) were included as an Employer's Requirement within the tender and will be monitored by the client management and monitoring team.

KPI Subject	Measurement	Monitoring Method and Info Responsibility	Metric
Programme	Total days early or delayed.	Contractor to update the programme monthly and provide reasons for delays. EA to assess contractor report and provide their own final monthly view	Nr. of days
	Accuracy, timeliness, and quality of contractor's	EA to assess monthly	Qualitative assessment / 5

KPI Subject	Measurement	Monitoring Method and Info Responsibility	Metric
	programme/ delay reporting		
Cost	Divergence between original cumulative forecast and last valuation.	Contractor to make applications. EA to report monthly	£ difference on Total Gross Value
	Divergence between application and agreed valuation (or Pay Less Notice amount).	EA to value and report monthly	£ difference on Total Gross Value
	Divergence between last monthly forecast and last valuation	Contractor to make applications. EA to report monthly	£ difference on Total Gross Value
Change Control	Contractor proposed changes - Quality and timeliness of design, time and cost information.	EA to assess monthly.	Qualitative assessment / 5
	Employer proposed changes - Responsiveness of design and cost information (including detail	EA to assess monthly	Qualitative assessment / 5

KPI Subject	Measurement	Monitoring Method and Info Responsibility	Metric
	and breakdowns).		
	Completion and completeness of Change Request Form (min 2 weeks prior to consent deadline)	EA to assess monthly	Qualitative assessment / 5
Quality of Construction	Assessment of site inspector report (seriousness of quality concerns identified).	EA to assess monthly	Qualitative assessment / 5
	Assessment of Contractor response to remediating Site Inspector concerns	EA to assess monthly	Qualitative assessment / 5
	Defects - number remedied within timeframes	Contractor and LBH to provide information to EA for monitoring and report monthly from practical completion.	Nr of defects
Design	Timeliness of General Design Information Release to allow sufficient time for Employer review	Contractor to report days early or delay from Information Release Schedule Targets EA to check and report	Qualitative assessment / 5

KPI Subject	Measurement	Monitoring Method and Info Responsibility	Metric
Health and Safety	Qualitative Assessment of Contractor H&S approach including site assessment by PD and response to H&S concerns including accidents and near misses	Contractor to provide own H&S assessments and information. EA and PD to assess	Qualitative assessment / 5
Waste management	Percentage of waste diverted from landfill	EA to assess monthly	% diverted
	Initiatives undertaken to minimise waste arising from deliveries to site	EA to assess monthly	Qualitative assessment / 5

6. Comments of the Group Director of Finance and Corporate Resources.

- 6.1. The financial business case for the Britannia masterplan scheme was first reported to and endorsed by Cabinet in April 2017. At this stage a Council contribution was estimated at £41.8m based on feasibility level design. This funding was agreed to be made available up front and finance charges were not applied to the provision of this capital. Finance has historically been modelled at 2.5% for capital required above this amount, but given the current cost of borrowing, this has now been updated going forward to reflect a 5% rate from April 2023.
- 6.2. Since the 2017 approval to proceed with the masterplan, Cabinet has been updated at a number of key gateways on the latest current day forecasts for the scheme. As a project which is reliant on residential sales, these reports have also considered development risk - initially through the application of a broad 7.5% developer's contingency, and then since the update to March in

2019 by way of a sensitivity analysis which looked at tender price inflation (TPI) and new build sales forecasts. Now that the majority of cost inflation risk has been bought out through the Fixed Price contract, this report presents a current day Council contribution, together with a standalone Gross Development Value (GDV) forecast sensitivity. This sensitivity is based on the sales forecasts currently published by four Sales Agents. Given the uncertain and unpredictable macro economic conditions over the last 2-3 years, these forecasts however need to be taken cautiously, particularly when considered over the life of the project, rather than looking at potential trends over the coming quarters/year.

- 6.3. The last masterplan financial update to Cabinet was in March 2022, when a Council contribution of £64.96m was presented. This followed on from the Secretary of State's adverse decision in relation to the proposed phase 2a site, and Cabinet's endorsement to move forward on the scenario where the original phase 2a site remains undeveloped.
- 6.4. Based on the financial assessment set out in Exempt Appendix 1, this report presents a required Council contribution of between £74.454m to £78.177m. The GDV forecast across four agents projects the following sensitivity to this current day forecast:

Forecast by Agent	Current Day GDV	Forecast GDV	Variance
High	£234,397,500	£250,307,432	£15,909,932
Average		£242,422,179	£8,024,679
Low		£232,946,660	-£1,450,840

- 6.5. Note that these estimates would change the forecast masterplan contribution if realised and would have a knock on impact on finance requirements, e.g. in the average scenario, the total masterplan contribution would reduce (as a minimum) by £8.024m, e.g. from £74.454m to £66.429m.
- 6.6. A further option to be considered is that the Council carries out no further development on the site, and makes good the Phase 2b site. The assumption is that this area would be made good and returned to public realm. This scenario would require the Council to contribute at least £129.4m to close out the masterplan (noting that this estimate includes the cost of any finance required to fund this). This would have a significant impact on the diversion of funds from other capital projects and would have knock on impacts in relation to the Medium Term Financial Plan.
- 6.7. One option which could be explored to recover a significant proportion of spent costs in the absence of the Council wanting to develop the land, is to sell the Phase 2b plot by way of a long leasehold land sale. It is believed that

this would be received well, should it come to market, by either the Private Sale or Build to Rent (BTR) markets. This option has been modelled alongside the current proposal taking account of sunk costs estimated at the end of March 2023 and the net present value (NPV) of both options compared from that point. On this basis the NPV of the current proposal is £9.4m greater than the disposal option. To clarify, the £9.4m assumes that the estimated price per unit sold remains at the current day value. If the sensitivity values set out in paragraph 6.4 above are overlaid, the range in which the current proposal exceeds the disposal option is £8.2m to £22.6m, with the average being £16m.

6.8. As set out in paragraph 6.1, the original financial business case (April 2017) estimated that the Council would be required to contribute £41.8m to the overall Britannia masterplan. In the project's financial model this funding is factored in upfront with the balance assumed to be met from borrowing with the estimated cost of borrowing also accounted for within the estimated costs of the project. As referred to above the financial model includes interest modelled at prevailing rates. Up to this point in the scheme the Council has not incurred any additional external borrowing but has internally borrowed from the Council's cash balances and therefore no interest costs have been incurred. Although it is important to continue to monitor the project's financial model with interest factored in, as had this internal borrowing not been required, the Council would have received interest on cash balances, when we look at funding of the expenditure we are addressing actual costs incurred.

6.9. The updated estimate at current day prices forecasts that an increased contribution of £74.454m to £78.177m will be required to deliver the scheme. Therefore, in moving to the construction and sales phase of the Phase 2b project, the Council has to consider the need to fund a further £32.654m to £36.377m of expenditure and that the capital element of this will need to be included in the Council's capital programme going forward and the revenue impact taken into account in the Medium Term Financial Plan (MTFP). The capital element is estimated to be circa £29m and this will need to be financed from borrowing with a minimum revenue provision (MRP) made over the useful life of the asset, which is assumed to be 50 years, being the estimated useful life of the leisure centre, as the school was funded by a combination of specific and basic need grant. This gives an estimated annual increase in MRP charge of £0.6m which will need to be factored into our revenue plans going forward. Given, as noted in paragraph 6.4 to 6.5 above and discussed further below, we will not know the true cost of the project until all units are sold, this figure is likely to require adjustment, up or down at a point in the future. In terms of interest costs, these continue to be forecast and monitored at an overall capital programme level and factored into the Council's MTFP on a rolling basis.

6.10. Given the scale of the Britannia project and the uncertainty surrounding the housing market as a result of the current macroeconomic climate, it is important that we continue to revisit cost and revenue estimates (both actual

and forecast) on a regular basis during the delivery phase of the project and factor the impact this will have on the Council's financial plans, both revenue and capital.

- 6.11. The main risk of the project's financial model rests with the eventual sale and values achieved in respect of the private residential units on the phase 2b site. Since the last report to Cabinet, the sales and marketing strategy has been developed in conjunction with our sales advisory team. As Sales Agent for the delivery phase, Savills have produced an updated current day Gross Development Value (GDV) for the Phase 2b scheme. This has assessed the positioning of the scheme against its competitors, both from a product quality perspective and a delivery timeline perspective. Concurrent with this, the work to develop the marketing and branding strategy for the scheme and interior design specification reflects the advice of the Sales Agent in terms of attracting the target market in line with the optimum Sales Strategy. Key to managing financial risk will be the regular review and adaptation of the sales and marketing strategy to ensure that the development continues to attract and secure the achievable price points to meet (and exceed) the estimated GDV. Further detail in relation to the sales assumptions made are included at Exempt Appendix 1.
- 6.12. Whilst a large proportion of the cost inflation risk has been secured through the award of the Design and Build Contract, there are elements within the Contract Sum which are provisional and/or subject to change, e.g. interior design specification for the private apartments and communal areas, development of the second staircase feasibility design. The client management and monitoring team will need to work with the contractor in order to deliver best value through an Open Book process on these items, offsetting cost inflation and additional cost items with value add/value engineering suggestions. Proposed optional value add/value engineering proposals were negotiated as part of the tender, and a swift review and 'fixing' of these post contract will be key to effective cost risk management, as will a collaborative approach to minimise programme delay by concurrent design development and efficient programming of consents and approvals. Further information in relation to cost assumptions and the contract mechanism to incorporate the second staircase are included in Exempt Appendix 1.

7. VAT implications on land and property transactions

- 7.1. The disposal of the Shared Ownership and private for sale units is zero-rated for VAT purposes, while the provision of Social Rented properties is non-business, so VAT inputs may be recovered in the usual way for all residential properties.
- 7.2. The public realm works is a non-business activity, so any VAT costs incurred will be recoverable in full.

7.3. With the option to tax already in place for the Phase 2b site, the lease of the new commercial property will be standard rated for VAT purposes.

8. Comments of the Director of Legal, Democratic and Electoral Services

8.1. Cabinet agreed on 14th March 2022 to initiate a single stage Design & Build process using the Competitive Procedure with Negotiation (CPN) for the construction of Britannia Phase 2b. It was also agreed that a recommendation report will be brought back to Cabinet prior to award of contract and therefore this Report is being presented to Cabinet for approval.

8.2. In addition, the “approval of the initial proposals, selection of preferred option(s), approval of masterplan, delivery plans (including annual plans) funding arrangements within the budget strategy, disposals and acquisitions of land, charters and/or other documents setting out Council’s proposals for residents affected by the schemes and structures for delivery” are reserved to the Mayor and Cabinet under the Mayor’s Scheme of Delegation (January 2017) so Cabinet is permitted to approve the recommendations in this Report.

8.3. Details of the procurement process using the Competitive Procedure with Negotiation under Regulation 29 of the Public Contracts Regulations 2015 undertaken by the Council are set out in this Report. Under the Competitive Procedure with Negotiation the Council elected to negotiate with two tenderers the initial tender submitted by them to improve their content prior to submission of a Final Tender. In doing so the Council ensured equal treatment of all tenderers. It should be noted that, subject to confirmation of details regarding the addition of a second staircase to blocks H4, H5 and H6, it may be necessary to agree further contract conditions and sums with Supplier A as detailed in Exempt Appendix 1.

Appropriation

8.4. Appropriations of land are an executive function under the Local Government Act 2000 and related Regulations. The decision to appropriate land is to be taken by Cabinet as per the Mayoral scheme of delegation and as further provided for by Rule 15.13 of London Borough of Hackney’s Financial Procedure Rules, which further requires that the land has been declared surplus to its current use by the relevant Group Director.

8.5. The Council is authorised by Section 122 of the Local Government Act 1972 to appropriate land within its ownership for any purpose for which it is authorised to acquire land by agreement. Where land has been appropriated for planning purposes, the consequence is that the erection, construction or carrying out of any building or other works or future uses on such land is authorised, if done in accordance with planning permission, notwithstanding that it may involve interference with third party rights. The Council will be in a position to appropriate upon the grant of planning permission.

8.6. In order to appropriate land for planning purposes (as described in s226 of the Town and Country Planning Act 1990) the Council must be satisfied that this will:

(i) facilitate the carrying out of development or improvement on or in relation to the land by being likely to contribute to the achievement of any one or more of the following objectives, namely:

(a) the promotion or improvement of the economic wellbeing of the Borough;

(b) the promotion or improvement of the social wellbeing of the Borough;

(c) the promotion or improvement of the environmental wellbeing of the Borough; or

(ii) the land is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated.

8.7. The provision of additional residential units which would be the result of the proposed development would satisfy the first limb of the requirement set out in section 226(1)(a) of the Town and Country Land Act 1990.

8.8. Before the land can be appropriated under Section 122, the land must no longer be required for the purpose for which it was held immediately prior to appropriation. It is for the Council to determine whether the land is no longer required for the purposes for which it is held.

8.9. By virtue of appropriating the land in question under Section 122 of the Local Government Act 1972 ("Section 122"), Section 203 of the Housing and Planning Act 2016 provides a statutory power for the Council to override third party easements and other rights. This will apply to building or other works to be constructed or maintained on the land or future uses where these are in accordance with a planning permission for the development of the land.

8.10. The power contained in Section 203 does not remove the rights of those persons having the benefit of easements or other third party rights to compensation arising from the interference with such rights, but it does remove the potential for such persons to delay the development by obtaining an injunction to prevent interference with such rights.

9. **Comments of the Procurement Category Lead**

9.1. The Phase 2b scheme was procured using the Competitive Procedure with Negotiation strategy under the Public Contracts Regulations 2015, to undertake and complete Phase 2b of the Britannia Scheme construction programme. The opportunity was advertised in accordance with the legislation in the Find A Tender Service.

- 9.2. The procurement process for the appointment of the works contractor was led by the Construction and Environment Category Team with input from the project team's technical advisors. The procurement was carried out in line with the strategy set out in the business case report which approved the Competitive Procedure with Negotiation route undertaken. After the initial tender submission the Council elected to negotiate on two negotiation points; 'Added Value / Value Engineering (quality criterion question 8) and Legal Terms and Conditions'. Following negotiations suppliers submitted their final tenders. The bid submissions were clarified as necessary and evaluated using a set of criteria which formed an overall split of 60% quality and 40% price.
- 9.3. The procurement team worked in collaboration with the project, legal and employer engagement teams and due consideration was given to the project objectives, contract terms and sustainability issues that needed to be addressed. The Council has been provided with flexible contract delivery options. The recommended supplier has committed to deliver wider sustainability benefits in the borough as an integral part of delivering the construction project. There is a requirement to pay the London Living Wage in accordance with Council policies.
- 9.4. The procurement exercise has allowed the Council to achieve the optimum combination of the cost of the project, quality of build and any desirable community benefits as part of the delivery of the scheme.
- 9.5. It is the considered opinion of the procurement team that this exercise followed a compliant process. Cabinet is recommended to approve the report.

Appendices

Appendix 2 - Appropriation Site Plan

Exempt Appendices

Appendix 1 - Britannia Masterplan Financial Summary (Exempt)

Appendix 3 - Rights to Light Impact Assessment (Exempt)

Appendix 4 - List of Suppliers at SQ Stage (Exempt)

Appendix 5 - List of Shortlisted Suppliers (Exempt)

Appendix 6 - Breakdown of Quality and Cost Scores (Exempt)

Appendix 7 - Price Comparison (Exempt)

By Virtue of Paragraph 3 Part 1 of schedule 12A of the Local Government Act 1972 this appendix is exempt because it contains information relating to the financial or business affairs of 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.

Background documents

None.

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