

## CABINET

20 JUNE 2017

<b>Title:</b> Barking Riverside Gateways – Partner Procurement Strategy	
<b>Report of the Cabinet Member for Finance, Growth and Investment and the Cabinet Member for Economic and Social Development</b>	
<b>Open Report</b>	<b>For Decision</b>
<b>Wards Affected:</b> Thames Ward	<b>Key Decision:</b> Yes
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<b>Summary</b> <p>The Barking Riverside Gateways Housing Zone project involves the phased development of around 3,000 homes, commercial space and associated facilities, supported by £30m of funding from the Greater London Authority (GLA). Currently the area presents a very poor gateway into Barking Riverside consisting of dated industrial premises which divide the Thames View Estate from Barking Riverside. The project will bring new housing, a site for a new school, connecting communities together and transforming the appearance of the area. The scheme will ensure modern employment space is provided as part of a mixed-use development so that overall jobs numbers are not lost.</p> <p>In April 2016, Cabinet agreed to enter into an Overarching Borough Agreement (OBA) and associated Intervention Agreement(s) with the GLA, forming the basis for the Housing Zone arrangements with the Council, and securing £30m of funding for acquisitions and redevelopment. The OBA has been entered into and the Intervention Agreement is being negotiated alongside finalising the procurement strategy.</p> <p>Delivery of the scheme requires substantial land assembly. Officers have been considering options for the procurement of a partner to contribute funding towards land assembly and work in partnership with the Council / Be First on the delivery of the scheme in a phased approach. This report outlines recommended next steps to be taken in procuring a partner.</p>	
<b>Recommendation(s)</b> <p>The Cabinet is recommended to:</p> <p>(i) Agree the procurement of a partner, via Competitive Procedure with Negotiation, to deliver the aims and objectives of Barking Riverside Gateways Housing Zone, on the terms set out in the report;</p>	

- (ii) Approve the procurement of professional services, including legal advisors, property advisors and associated professional technical advisors, to support the procurement of a partner, on the terms set out in the report;
- (iii) Delegate authority to the Strategic Director for Growth and Homes, in consultation with the Cabinet Member for Finance, Growth and Investment, the Chief Operating Officer and the Director of Law and Governance, to enter into all contracts associated with the procurement processes referred to in the report; and
- (iv) Delegate authority to the Chief Operating Officer to agree all matters related to the financial viability of proposals following endorsement by the Council's Investment Panel.

### **Reason(s)**

In April 2016 Cabinet agreed to enter into an Overarching Borough Agreement and associated Intervention Agreement(s) with the Greater London Authority, forming the basis for the Housing Zone arrangements with the Council, and indicatively securing £30m of funding for acquisitions and redevelopment.

The Barking Riverside Gateways Housing Zone project involves the phased development of around 3,000 homes, commercial space and associated facilities, supported by grant from the GLA. The project will bring new housing, improved school provision and the removal of some run-down industrial buildings as a way of bringing the Thames View Estate closer to the new Barking Riverside area, and firmly aligned with the Council's priority of "Growing the Borough".

## **1. Introduction and Background**

- 1.1 The Barking Riverside Gateways Housing Zone project involves the phased development of around 3,000 homes, commercial space and associated facilities, supported by funding of £30m from the GLA. The project will bring new housing, improved school provision and the removal of some run-down industrial buildings as a way of addressing the severance between Thames View Estate and Barking Riverside.
- 1.2 By Minute 121 (19 April 2016), the Cabinet agreed to enter into an Overarching Borough Agreement and associated Intervention Agreement(s) with the Greater London Authority, forming the basis for the Housing Zone arrangements with the Council, and indicatively securing £30m of funding for acquisitions and redevelopment. In order to progress land acquisitions, Cabinet agreed to undertake acquisitions through Compulsory Purchase should these powers be required. The Council has now entered into the Overarching Borough Agreement with the GLA and commenced land acquisitions – initially through the approved land acquisition budget. The Council will be required to enter into a further Intervention Agreement with the GLA in order to secure the £30m.
- 1.3 Cabinet also agreed that a further report was presented on options for delivery of the new homes on site. The purpose of this report is to provide a summary of

progress on the project to date and to recommend an approach to the procurement of a delivery partner to work with the Council and Be First.

## **Context**

- 1.4 Barking Riverside is London's largest housing development site with outline planning approval for 10,800 homes and associated facilities. With 2km of River Thames frontage it offers superb potential to provide housing in a new community with accessibility to central London in a borough where property prices are more affordable for London's workforce. One of Barking Riverside's current challenges however is the oppressive entrances into the new development through a dated, unattractive industrial area. The contrast between Barking Riverside's award-winning architecture and the industrial area is stark. The negative image is raised by existing and potential residents and there have been numerous negative press articles highlighting this major barrier to Barking Riverside achieving its potential.
- 1.5 The Thames Road industrial area occupies a key strategic location within the London Riverside Opportunity Area and forms a physical and perceptual barrier between significant housing development at Barking Riverside of 10,800 homes and the Thames View Estate and the Barking Town Centre Housing Zone. Unlocking development potential at Thames Road could release capacity for up over 3,000 homes and commercial space.
- 1.6 Comprised of industrial premises with many coming to the end of their useful life, the area presents a key opportunity to deliver homes for residents across a range of tenures together with new types of workspace on the ground floor. The wider area will soon benefit from the London Overground extension to Barking Riverside, connecting Thames Road and Barking Riverside and an interchange at Barking with the existing c2c Fenchurch Street line, the District and Hammersmith & City lines. The new infrastructure will act as a catalyst to re-connect Barking and Dagenham residents with over 2 kilometres of Thames waterfront, providing access to new parks and open space, and act as an uplift for property values.
- 1.7 However, unlocking development potential at Thames Road is not without challenges and will not come forward without public sector intervention. It also is anticipated that much of the land will be contaminated owing to its current use of heavy industrial land and its proximity to water courses and the River Thames and Barking Creek means that flood risk is a design and delivery constraint which must be mitigated to unlock development in this area.
- 1.8 These challenges alongside the opportunity for development have been recognised by the GLA, who indicatively approved an allocation of £30m to the Barking Riverside Gateways Housing Zone when designated in April 2016.
- 1.9 The challenge of turning the predominantly industrial area that is Thames Road and surrounds into a residential led regeneration opportunity has never been underestimated, and indeed was a centrepiece of the bid to the GLA. It is also critical that redevelopment of the site addresses the importance of delivering at least the existing number of jobs that are currently on site.

## **2. Proposal and Issues**

2.1 The key initial challenge is land assembly, and since the bid for funding was successful, the Council has been undertaking a range of activities in order to work to overcome this:

- Acquiring strategic properties within the Housing Zone, to date 12 and 47 Thames Road have been secured with more in discussion.
- Engaging with businesses and landowners in the area to promote the designation of the housing zone and seek to negotiate future acquisitions as part of a land acquisition strategy.
- Obtaining legal advice in respect of procurement arrangements to determine the most viable route for land use change and delivery of up to 3,000 homes whilst ensuring that high standards of management and maintenance are maintained across the public realm across the zone.
- Appointing designers Rick Mather Architects to prepare a Development Framework for the entire site which will inform the tender process.
- Undertaking soft market testing with a range of partners to inform the procurement approach.

2.2 In relation to soft market testing the Council highlighted the opportunity to potential partners at MIPIM (the world's largest property/investment event) and have had general discussions with a number of potential partners. It is recognised the scale and complexity of the project means there will be a limited pool of interest.

2.3 Significant funding is required in order to acquire property interests across the Housing Zone. There is therefore a funding gap, which needs to be filled in order to achieve the full extent of anticipated delivery over the Housing Zone. Officers have identified that a partner is therefore required to work together with the Council to deliver the ambitions of the Housing Zone and fund acquisitions. Be First will play a major role in the scheme delivery and development management function.

2.4 A partner is therefore sought to undertake the following key objectives:

- Work in partnership with the Council/Be First to undertake acquisitions across the Housing Zone
- Further develop proposals to deliver around 3,000 new homes and associated employment, community provision and public realm across the Housing Zone in line with the development framework
- Take a long-term management interest in the Housing Zone

## **3. Options Appraisal**

### **3.1 Procurement Options Analysis**

3.2 Whilst the Council is equipped and ready to undertake strategic acquisitions which may arise sporadically and need to be undertaken quickly, in order to achieve development over the scale of 3,000 new homes and a mix of uses, a partner is required. Indeed, if compulsory purchase order powers are needing to be used it is essential it can be shown that the development can be funded and delivered. The following options have therefore been explored:

### **3.3 OJEU Procurement**

- 3.4 For the procurement of works and services, including a development partner, over the European Threshold of £164,176 for services and £4,104,394 for works must be undertaken through the OJEU route of procurement. There have been no immediate changes to these requirements following the BREXIT vote.
- 3.5 Comments from potential investment partners during informal soft market testing discussions, made clear that OJEU Competitive Dialogue approach of procuring a developer or funding partner is not attractive to the market or investors, primarily owing to timescales and nature of protracted negotiations. Soft market testing also revealed that in terms of timescales, the summer months should be avoided to commence a procurement process of this scale.
- 3.6 However, there is now an OJEU compliant procedure, namely 'Competitive Procedure with Negotiation' that can be used to select a development partner that compresses timescales compared to a dialogue approach and in turn provides greater certainty to bidders over the length of procedure they would be involved in. This process was introduced by the Public Contracts Regulations 2015 and is still a relatively new procedure in the UK. The process is similar to the restricted procedure but allows for meetings and negotiations with bidders prior to final tenders being submitted.
- 3.7 The approach also allows the Council and Be First to keep meetings and negotiations to a minimum and manage costs and time for all parties involved, and ensure that the Council is acting within its powers.
- 3.8 Appendix 1 provides a comparison of Competitive Procedure with Negotiation, compared with Competitive Dialogue.
- 3.9 By way of illustration, and subject to further advice from legal advisors, under this approach bidders would first be required to undertake preparation and submission to the Council of a Selection Questionnaire (previously called a Pre-Qualification Questionnaire). Bidders will be required to comply with eligibility checks in relation to organisational and financial standing and answer qualitative questions with regard to a scoring matrix to judge capability and understanding of the project. This will enable the Council to ensure that parties of the required quality and financial standing are shortlisted to enter the main stage of the procurement process.
- 3.10 Following shortlisting of the Selection Questionnaire, a shortlist of bidders will be invited to respond to a formal Invitation to Tender (ITT). The ITT can be structured to assess responses to technical, finance and legal criteria. The Competitive Procedure with Negotiation then allows for a period of discussion and negotiation with bidders at which clarification questions may be made.
- 3.11 The final stage of the process once clarification questions have been undertaken will be a Call for Final tenders. At this stage a different weighting may be applied to assessment criteria which formed the basis of the original ITT. Once a final bidder has been selected a standstill period of ten days precedes final execution of the form of contract. An indicative timetable of duration of the procurement process is set out within Appendix 1.

3.12 This is the preferred option. The next section set out alternative options and why they have been rejected.

### **3.13 London Development Panel**

3.14 The London Development Panel (LDP) is the London Mayor's land procurement panel, which consists of 25 of the UK's most experienced housing developers who have a track record of delivering in London. In order to obtain a place on the LDP, companies needed to demonstrate that they had a sound and tangible track record of delivering housing on public sector land and that they were actively doing so in Greater London.

3.15 Whilst the panel is available for local authorities across London to use and could be led by either LBBD or the GLA, the LDP can only procure housing led development projects through the form of standard Development Agreement. The panel cannot be used to procure a Joint Venture partner or investment partner.

3.16 In terms of timescales, whilst the panel has been procured in order to save time in terms of a pre-qualification selection stage for bidders, which would be required under OJEU, soft market testing stages would still need to be undertaken to judge the appetite of bidders for the Housing Zone project. The structure of the panel means that it is difficult to enable any form of evolving or ongoing dialogue with a potential partner – the procurement approach needs to be rigidly defined from the start of the process in order to guard against potential challenge, as has been successfully mounted in the past.

3.17 In addition whilst the panel is extensive, there are a number of potential bidders who are not on the panel, and therefore its use could restrict the best range of organisations bidding and furthermore the panel expires later in 2017 and will not be renewed until 2018.

3.18 Owing to the reasons outlined above, use of the LDP to procure a funding partner for the Housing Zone is not recommended.

### **3.19 Extend Red line of Barking Riverside**

3.20 The Barking Riverside development forms the southern boundary to the Barking Riverside Gateways Housing Zone. Barking Riverside Ltd (BRL) was formed as Joint Venture by Bellway Homes and English Partnerships (now GLA). London and Quadrant Housing Association (L&Q) purchased Bellway's shares in BRL and became the GLA's joint-venture partner in March 2016. L&Q's involvement will significantly assist in bringing forward homes on the site.

3.21 The GLA published a VEAT notice when L&Q were procured, to advertise their intention to let a contract without opening it up to formal competition.

3.22 The abbreviation VEAT stands for Voluntary Ex-Ante Transparency notice and it is covered by the Remedies Directive. A contracting authority may decide that a contract does not require prior publication through a contract notice in the OJEU. A reason for this decision may be that the contract meets the exceptional conditions described in Article 31 of Directive 2004/18/EC. This is route by which L&Q were procured by the GLA to participate in Barking Riverside.

3.23 Owing to the proximity of the site to the Barking Riverside Gateways Housing Zone, consideration has been given to whether BRL could expand its role and boundary of area of operation to lead development of the Housing Zone. However, owing to the route in which L&Q became involved in the project, it is anticipated that expanding the boundary of Barking Riverside without a formal procurement competition for other interested parties to participate in would be subject to a high risk of challenge. For this reason, this route is not recommended.

### **3.24 Seek to work with L&Q directly**

3.25 Given L&Q's experience at Barking Riverside, and understanding of the site, property values and market intelligence, an alternative route to expanding the boundary of Barking Riverside would be to work with L&Q to bring forward development on site. In order to appoint L&Q as a development partner, though Council would need to either procure through the London Development Panel, or commence a procurement process through OJEU.

3.26 If the Council chose not to procure L&Q, it is anticipated they would participate as a third party, akin to any other land owner within the boundary of the Housing Zone. The Council would not be able to exert any control over timescales and form of development other than its statutory functions as a Local Planning Authority over the development area, and whilst L&Q may be keen to work with the Council in partnership, this would only be able to be on an informal basis which must demonstrate that there is no commercial benefit provided through any partnership or enabling relationships.

3.27 In either scenario, L&Q's involvement would result in a major amount of risk exposure with regard to funding development sites within the Barking Riverside area of the borough. Initial discussions with L&Q have revealed that they currently do not have the appetite to take forward the Housing Zone as it stands.

### **3.28 Appointment of Professional Team**

3.29 In order to undertake the procurement process of such a complicated project, it is recognised that specialist support will be required to augment existing resources within the Council/Be First.

3.30 Specifically, external Legal advisors have been identified as being required in order to undertake the following tasks:

- Preparation of OJEU notice and tender documentation
- Preparation of evaluation criteria and negotiation
- Legal support during competitive negotiation process.

3.31 It is proposed that a brief for these services is tendered to Lot 8 of the Crown Commercial Services Legal Framework: Major and Complex Projects, which has a total of 24 established legal practices on the framework. Bids would be evaluated on a 40% price / 60% quality basis and by officers from BDT legal and Regeneration to ensure that the most appropriate advisors are selected for this project. The order of cost associated with this advice shall be established through competitive tender and in accordance with the Council's Contract Rules.

3.32 In addition it also anticipated that the following professional services may be required to support the procurement process:

- Property services and valuation
- Architectural support
- Surveying services - utilities and geotechnical surveyors

3.33 In line with the approach to be taken regarding the appointment of external Legal advisors, quotes will be sought against a brief for services in line with the Council's requirements under the Contract Procedure rules. It is proposed that the Council's Construction Related Professional Services Framework is used for surveying services, and the GLA ADUP panel used for architectural support.

#### **4. Estimated Contract Value, including the value of any uplift or extension period.**

4.1 The level of investment being sought by an Investment/Delivery partner is in the region of £60m. The gross development value of the resulting development based on a quantum of 3,000 homes is in excess of £1bn should the entirety of the capacity identified for homes be implemented.

4.2 The value of professional services advice shall be established through tendering in line with requirements of the Contract Rules. The use of frameworks will ensure that if values are received in excess of the OJEU threshold then a compliant procedure has been undertaken.

#### **5. Duration of the contract, including any options for extension.**

5.1 It is envisaged that the duration of the contractual relationship with a partner would exist operationally during the development period up to 2030, and then beyond into management arrangements to be negotiated over the period of a long leasehold.

5.2 Professional services support will only be required for the duration of the procurement process of an anticipated 12 months + 6 months allowance for delay.

#### **6. Is the contract subject to (a) the (EU) Public Contracts Regulations 2015 or (b) Concession Contracts Regulations 2016? If Yes to (a) and contract is for services, are the services for social, health, education or other services subject to the Light Touch Regime?**

6.1 Owing to the nature of the value of the development and acquisitions involved the contract will be subject to OJEU procurement regulations.

#### **7. Recommended procurement procedure and reasons for the recommendation.**

7.1 The recommended procurement procedure is via OJEU compliant Competitive Procedure with negotiation. The benefit of this approach is that it provides the market-place with finite timescales within which negotiations will be undertaken and is not open ended. Owing to the complex nature of the project which requires the skills of external parties in order to deliver it, Competitive Procedure with Negotiation allows for an element of dialogue within defined timescales in order to develop bespoke responses for the project.



## **8. The contract delivery methodology and documentation to be adopted.**

- 8.1 An overview of Competitive Procedure with Negotiation and associated documentation is attached as Appendix 1.
- 8.2 Professional services support shall be subject to the Council's standard terms and conditions.

## **9. How the procurement will address and implement the Council's Social Value policies.**

- 9.1 This project will require contractors, suppliers and other project team members to be aware of and responsive to the needs of all residents regardless of background and circumstances. Potential partners will be required through the procurement process to demonstrate a commitment to supporting the Council's own teams in implementation of high quality customer care and commitment to Social Value policies.

## **10. Consultation**

- 10.1 Initial engagement has taken place with businesses/other occupiers in the area regarding the Housing Zone. Consultation with local residents will be undertaken on proposals once a partner has been procured and development proposals have been formulated upon which to form the basis for engagement in advance of any planning application which would itself be subject to further consultation. One of the criteria for selection will be to assess how the bidder will work with Be First in local community consultation and engagement.

## **11. Procurement Implications**

Implications completed by: Francis Parker – Senior Procurement Manager

- 11.1 The use of the Competitive Procedure with negotiation is suitable for a procurement of this size, scope and complexity.
- 11.2 The OJEU process that is recommended is compliant with the Council's contract rules and the PCR 2015. The chosen routes for the sourcing of professional services to support this complex procurement are also compliant and suitable.
- 11.3 More detail is required regarding the assessment of bids to be able to evaluate the potential for value for money. However the process will be thorough and allows scope to refine requirements in order to achieve the best outcome and value for money.

## **12. Legal Implications**

Implications completed by: Bimpe Onafuwa, Contracts and Procurement Solicitor

- 12.1 This report is seeking approval to undertake the procurement of a project partner, and various professional services providers, with whom to deliver the Barking Riverside Gateways Housing Zone project which involves the phased development of around 3,000 homes, commercial space and associated facilities.
- 12.2 Given the potential value of this project the requirements of the Public Contracts Regulations (PCR) 2015 will have to be adhered to. The various contracts must be procured in a manner that is transparent, fair and that ensures the equal treatment of bidders.
- 12.3 The various professional services contracts also have to be procured in line with the Council's Contract Rules which require, in Rule 28.5, that contracts with a value of £50,000 or more have to be advertised and opened up to competition.
- 12.4 The proposed procurement procedure, timetable, advertising media and evaluation criteria noted in the procurement strategy are indications of a compliant exercise.

## **13. Financial Implications**

Implications completed by: Katherine Heffernan – Finance Group Manager

- 13.1 The main proposal of this report is to seek Cabinet's approval to undertake a procurement process to appoint a partner to work with the Council in order to more effectively deliver the aims and objectives of Barking Riverside Gateways Housing Zone. The costs in respect of the proposed procurement exercise, including the procurement of a professional team that will support the process, can be covered by existing Regeneration and Economic Development budgets.
- 13.3 As set out in paragraph 4.1, the development partner, once appointed, is likely to invest the sum of around £60m into the Barking Riverside Gateway Housing Zone and have a contractual relationship with the Authority until at least 2030. It is proposed that agreement of the outcome of the procurement exercise should be delegated to the Council's Chief Operating Officer. However, prior to this agreement a detailed exercise of the financial offer proposed by the successful partner and the full financial implications for the Authority must be undertaken and endorsed by the Investment Panel.
- 13.3 Without such an exercise being undertaken, it is not possible to assess the full financial implications of the successful partner's proposal in the longer term.

## **14. Other implications**

- 14.1 **Risk Management** – The procurement process will aim to supply potential partners with as much background information as possible upon which to base their bids. The Council has already begun this process by preparing design proposals which can be used as a basis for bidding, but further information, for example with regard to utilities and ground conditions will be prepared to accompany tender documentation.

The procurement process will be overseen within existing structures. Existing governance arrangements will ensure that proposals, such as with regard to financial viability are tested accordingly, in line with established approval processes.

- 14.2 **Contractual Issues** – The procurement approach proposed has been put forward. Prior to commencement of the tendering process, legal advisors will assemble all necessary contract documentation to ensure that the procurement process is effective and not subject to challenge. The nature of Competitive Dialogue with Negotiation allows tenderers to put forward bespoke solutions to respond to the objectives of the project and legal advice will be sought throughout the process, from internal and external advisors where necessary.
- 14.3 **Staffing Issues** – This proposal will be delivered through existing resources within the Council and Be First.
- 14.4 **Corporate Policy and Customer Impact** - The Barking Riverside Gateways Procurement is a key part of the Council's vision to capitalise on the potential of being London's growth opportunity and turn this into reality. 'Growing the Borough' is one of the Council's top priorities and includes building of high quality housing. The Barking Riverside development forms an integral part of delivering the vision for the borough.

The Council is committed to ensuring that it continues to put equalities and diversity at the heart of everything it does and continues to discharge its duties under the Equality Act 2010. As such a Community and Equalities Impact Assessment has been carried out and is attached at Appendix 3.

- 14.5 **Safeguarding Children** – Relevant issues are covered in the Community and Equality Impact Assessment at Appendix 3.
- 14.6 **Health Issues** – Relevant issues are covered in the Community and Equality Impact Assessment at Appendix 3.
- 14.7 **Crime and Disorder Issues** - Relevant issues are covered in the Community and Equality Impact Assessment at Appendix 3.
- 14.8 **Property / Asset Issues** – The Council owns a number of existing assets within the red line boundary of the Barking Riverside Gateways Housing Zone. It is proposed that decisions regarding these assets are delegated.

**Public Background Papers Used in the Preparation of the Report:** None

**List of appendices:**

- Appendix 1 - Competitive Dialogue Comparison
- Appendix 2 – Indicative Procurement Timetable
- Appendix 3 – Community and Equality Impact Assessment