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**REPORT FOR: CABINET**

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<b>Date of Meeting:</b>	30 <sup>th</sup> May 2019
<b>Subject:</b>	Harrow Strategic Development Partnership
<b>Key Decision:</b>	Yes
<b>Responsible Officer:</b>	Paul Walker - Corporate Director, Community
<b>Portfolio Holder:</b>	Cllr Keith Ferry - Deputy Leader and Portfolio Holder for Planning, Regeneration and Employment  Cllr Adam Swersky - Portfolio Holder for Finance and Resources
<b>Exempt:</b>	No, save for Appendices [2, 3, 4 and 5] to this report which are exempt under paragraph 3 of Schedule 12a of the Local Government Act 1972 (as amended) in that they relate to the financial or business affairs of any particular person including the Authority
<b>Decision subject to Call-in:</b>	Yes
<b>Wards affected:</b>	All Wards
<b>Enclosures:</b>	Appendix 1: Site Plans Appendix 2: Heads of Terms (Part II -exempt) Appendix 3: Evaluation Criteria (Part II - exempt) Appendix 4: Risk Register (Part II - exempt) Appendix 5: Information Memorandum 'The Proposition' to the market (Part II - exempt)

## **Section 1 – Summary and Recommendations**

This report sets out the proposed procurement exercise to procure a Strategic Development Partner to assist with the delivery of a number of the Council's core strategic development sites within the Regeneration Programme.

### **Recommendations:**

Cabinet is requested to:

1. Approve the Regeneration Programme Objectives, as set out in paragraph [3.2].
2. Agree a Strategic Development Partnership, established through a partnership vehicle, as the preferred delivery approach for the development of Core Sites in the Regeneration Programme.
3. Approve the commencement of the proposed procurement exercise to identify a Strategic Development Partner as set out in the report, as set out in paragraph 7.1.
4. Agree the proposition to be put to the market as part of the procurement exercise, as set out in Appendix 5.
5. Delegate authority to the Corporate Director - Community, following consultation with the Portfolio Holder for Planning, Regeneration and Employment and the Portfolio Holder for Finance and Resources, to:
  - a. make any necessary amendments to the draft procurement documentation and agree the final versions for publication; and
  - b. take all other necessary steps to conduct the procurement exercise, including shortlisting and deselection of bidders in accordance with the Public Contract Regulations 2015
6. To delegate authority to the Corporate Director – Community, to procure support for external commercial and legal advice to support the procurement exercise, the costs of which must be contained within the agreed financial capacity stated at paragraph 9.1.

### **Reason: (For recommendations)**

In order to progress the delivery of the Council's Regeneration Programme for Core Sites in its ownership which will contribute to Harrow's regeneration ambitions.

## **Section 2 – Report**

### **Introductory paragraph**

- 2.1 Five years ago Harrow Council, with key stakeholders, set its ambitions to progress Harrow's growth and development. These plans were given a name: Building a Better Harrow (BaBH) and at the heart of that ambition was a determination to build good quality homes for Harrow's people. Harrow has attracted new investment in the borough and there are many developments coming to fruition, including Gayton Road and 51 College Road. There are also other plans in the consultation phase to continue to build new homes in the borough which include Transport for London's (TFL) development with Redrow Homes in the vicinity of Harrow on the Hill Station.
- 2.2 The Council is also committed as a landowner to contribute to the borough's regeneration. It has developed its own regeneration programme to contribute toward the BaBH ambition.
- 2.3 The purpose of this report is to seek Cabinet approval to commence a procurement process under the Public Contract Regulations 2015 using the Competitive Dialogue procedure, to procure a Strategic Development Partner to assist with the delivery of the Council's Regeneration Programme.
- 2.4 The major role of the development partner will be to work alongside the Council to deliver regeneration, new homes, social and economic benefits and a sense of place across the three Core Sites Council owned by the Council within the Harrow Area of Opportunity.
- 2.5 The Council has reviewed which of its sites would have the greatest impact and contribution to regeneration within Harrow's Area of Opportunity. The three sites (the Core Sites) selected comprise the Council's flagship Regeneration Project at Poet's Corner; Peel Road (which is the preferred site for the Harrow New Civic Centre) and Byron Quarter (Phase 1). The Greenhill Way site is not included at this stage as the site remains a key strategic site for future development opportunities in Harrow's town centre by contributing to the mix use of culture/leisure and retail.

#### **Poet's Corner**

Poet's Corner is the Council's flagship regeneration site. It is situated immediately to the south of Harrow & Wealdstone station. The site currently comprises the Council's existing Civic Centre and extends to c. 11.4 acres.

#### **Peel Road**

The site comprises of Peel Road, and adjoining land, and it is situated immediately to the north of Harrow & Wealdstone station and extends to 1.7 acres.

## **Byron Quarter (Phase 1)**

The entire Byron Quarter site comprises of a number of leisure facilities including the Council's Leisure centre and extends to 19.3 acres. Only phase 1 is included within the procurement exercise and this extends to 3.7 acres and is situated in the south eastern corner of the site.

- 2.6 The Council is currently exploring the possibility of accelerating the building of affordable homes on a small stand alone site (Plot S) within the Poet's Corner scheme. Consequently, this site has been excluded from the red line boundary for Poet's Corner (colour coded on plans attached).

Indicative site plans outlined in redline are included at Appendix 1.

- 2.7 The Council has secured planning permission for a New Civic Centre on the Peel Road to contribute to the wider regeneration of Wealdstone. The Council's proposition to the market makes clear that it's preference is for the Civic Centre to be re-provided on Peel Road. However, the Council accepts the need to adopt a solutions led approach to ensure that the most effective delivery strategy is adopted. Alternative proposals within the context of the delivery objectives across all three Core Sites will be considered by the Council.
- 2.8 The outcome of the procurement exercise will be brought back to Cabinet for consideration and to seek a decision on the appointment of a Strategic Development Partner and the associated legal arrangements.

## **Options considered**

- 2.9 The following options have been considered as delivery approaches in order to take forward the development of the Core Sites:

(i) Straightforward Site Disposal

An outright sale of the Council's land to a developer, in exchange for a capital receipt. This option has been discounted because it imposes insufficient controls to ensure the achievement of the Council's Regeneration Programme Objectives in relation to these strategically important sites. In addition, the Council's return would be limited to the undeveloped land values which would be unlikely to realise sufficient funds in order to re-provide the Civic Centre.

(ii) Direct Delivery

The Council obtains and implements the planning permissions itself, and delivers schemes directly via construction contracts at its own cost and risk. This option has been discounted as it would require the Council to take on an unsustainable level of debt and exposure to risk in relation to delivery of the schemes in the residential market place. The review of the Regeneration Programme highlighted the challenges facing the Council when seeking to ensure it has sufficient

capacity and expertise to deliver schemes of this scale and complexity.

(iii) Development Agreement

This option is based on the Council entering into a contract with a developer. The Council gives the developer an option to buy the land under a development agreement. The developer would have obligations to pursue the development of the sites including the obtaining of planning permission, following which land ownership would usually transfer to the developer. Under this structure the Council passes the development risk to the developer and the developer receives the development return. The Council receives a Capital receipt for the value of the land (valued prior to any development or planning) with potential for future payments when the land is developed.

The Council can set preconditions that the developer has to meet before the land passes to the developer, such as securing planning permission or funding. The development agreement can also set out the dates by which the key milestones are to be delivered.

Pros

- For a single site the approach can be a more straightforward procurement exercise than for a Strategic Development Partner.
- The development agreement passes the development risk to the third party provider. Broadly the landowner gets the land value whether or not the development works out, as long as the preconditions are met.
- This approach can work well for smaller sites.

Cons

- The Council will have less control and influence over the detailed aspects of development (including time and quality) as this will be controlled by the developer. Although some quality standards or benchmarks can be included in the development agreement, this has to be balanced with giving the developer the ability to make commercial and operational decisions as the project is implemented.
- It is more difficult to vary a development agreement to take account of different market and industry conditions so it is less flexible. This can be problematic over the course of a long- term project where market cycles changes to financial conditions and the Council's requirements are inevitable.
- To achieve the Council's objectives, the Strategic Development Partnership will offer the Council the potential of optimising the return to be reinvested (for example, to fund the Civic Centre).

This option has been discounted for the following reasons:

- The Council is seeking to use the Core Sites to have a broader regenerative effect both for the borough and the immediate neighbourhoods the sites are situated in. On that basis it will be important that the Council can influence the overall development of those sites during each phase and have sufficient control to ensure that the schemes progress.
- The Council requires a model that is flexible enough to deal with different market cycles, changes to financial conditions and changes in the Council's requirements which maybe required over such a long term period.
- The Council needs the Core Sites to support the acceleration of housing growth both to meet local housing need/ demand in the borough and to support the housing targets in the London Plan.
- Given the size of the Core Sites and the Council's requirements (which include the re-provision of a Civic Centre funded by the Core Sites), the Council needs to optimise any financial return in order to reinvest this to achieve its objectives.

#### (iv) Strategic Development Partnership

This option is based on the Council providing the land and capital funding with the development partner, who is selected following the procurement exercise, supplying finance, technical expertise and capital funding. Both the Council and the Strategic Development Partner put in equal shares of funding and/or equity. Together the Council and the Strategic Development Partner set up a Strategic Development Partnership sharing the risk and reward on a basis defined during the procurement exercise. The partnership is constituted as a separate legal entity, most usually a Limited Liability Partnership, which would be jointly owned and operated by the Council and the other partner, (or partners if there is more than one partner selected). The Council gives the Strategic Development Partnership the option to buy the land.

The Council can set preconditions that the partnership has to meet before any land is passed to it, such as securing planning permission or additional funding. The partnership agreement will also set out controls over the decision making, governance, finance, security etc. for the future.

#### Pros

- Using a Strategic Development Partnership model offers an integrated approach to development of sites which mirrors the ambitions of the Council as it makes its contribution to the wider regeneration ambitions of the Borough.
- The partnership offers the potential for an appropriate level risk related return for the Council as the Council shares in all of the returns;

- There is a greater level of control over development, timing, design etc as the Council will be an equal partner in the partnership making decisions.
- The partnership can be structured so that the Council and the development partner have equal incentives/ disincentives to behave in certain ways.
- The partnership approach is more flexible and so it can respond better to market changes and financial conditions over the course of a long term project. It can also respond to emerging opportunities flexibly such as additional sites which may become available during the life of the partnership.
- The partnership structure can be used to make the construction supply chain available to other community projects.
- Being a corporate partner gives the Council access to private sector skills and finance not otherwise available to it.

#### Cons

- The procurement process takes longer to select a development partner than a developer for a single site.
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- In comparison with the direct delivery option the Council does apportion an amount of control to its development partner

2.10 It is therefore recommended that the Council seek to establish a Strategic Development Partnership, because:

- This option gives the greatest chance of achieving regeneration and development on a scale consistent with the Council's ambitions and objectives and enabling the wider economic and social benefits the Council requires.
- The flexibility of the partnership approach works best for multi-site and complex developments, in particular there is a high dependency between Poets Corner and Harrow New Civic, which will benefit from a flexible approach to phasing, labour and programming across the Core Sites.
- The partnership will give the Council greater influence and control over the detail of the development including timings and design quality which will impact on the delivery of the Council's wider objectives as Community Leader and place maker.
- The opportunities to access skills, finance, supply chain and other benefits through the life of the partnership can support the Council's wider Regeneration Programme and community works.
- The Strategic Development Partnership will offer the Council the potential of optimising the return to be reinvested in order to achieve the Council's objectives.

### 3. Background

3.1 The Council has a significant role in the regeneration of the borough. Through its role as a community leader it sets out, in consultation with other key stakeholders, the regeneration ambitions for the borough which are clearly defined in promoting a sense of place, promoting housing supply, stimulating investment and growth for prosperity, jobs and skills.

As the local planning authority, the Council defines local plans and as a direct owner of land, the Council can use its assets to contribute to the borough's regeneration ambitions and it is the latter role that this Cabinet report and recommendations are based upon.

The Council established a Regeneration Programme with the intention of delivering a quantum of development to contribute to Harrow's wider regeneration ambitions across the borough.

3.2 The objectives of the Council's Regeneration Programme are:

- *To contribute/deliver wider regeneration across the Borough via new and improved mixed tenure housing, civic and community facilities, new employment space and the enhanced use of property assets the Borough.*
- *To accelerate the pace of housing delivery across a portfolio of sites*
- *To secure wider economic and social benefits for local residents, including skills and training, health improvements and new employment opportunities*
- *Use existing and new property assets to optimise value for the Council*
- *To contribute to the delivery of well designed high quality places that make a difference for communities, businesses, residents and families both now and in the future.*

3.3 There have been a number of key decisions which directly relate to this procurement exercise.

September 2015 - Building a Better Harrow Delivery Programme - approval in principle to vacate the existing Civic centre and build a smaller and more efficient Civic centre in the Heart of Wealdstone.

September 2017 – Building a Better Harrow Autumn 2017 – approve the commencement of procurement for one or more delivery partners for the Poets Corner , Bryon Quarter, New Civic Centre and Greenhill way

December 2018 – Regeneration Programme Update- delegate the powers previously delegated to the Chief Executive to the Corporate Director Community.

## **4. Current situation**

There is an established Harrow Strategic Development Partnership Programme Board (HSDPB), chaired by the Corporate Director - Community. This Board includes input from key operational Departments: Finance, Legal and Procurement. It also includes externally appointed advisors Avison Young (Commercial Property Advisors) and Pinsent Masons (Legal Advisors). The HSDP Programme Board sits within the Corporate Structure and reports regularly to the BABH Board.

## **5. Implications of the Recommendations**

- 5.1 Cabinet needs to agree the proposition contained within this report to take forward the next stage of the procurement for a Strategic Development Partner. For consideration, this report outlines both the structure and governance arrangements which may form part of the legal arrangement once a Partner has been selected. The ultimate decision on the appointment of the Strategic Development Partner will be made by Cabinet following the completion of the procurement exercise, which is currently anticipated to be May 2020.

### **5.2 Structure of the Development Partnership**

- 5.2.1 The Council intends to deliver sites via a new separate private entity set up as a Harrow Strategic Development Partnership (HSDP) and owned 50% by the Council and 50% by a private sector partner. HSDP is anticipated to take the form of a Limited Liability Partnership and be set up on a long term basis for a period likely to be 30-35 years.
- 5.2.2 The assets of the HSDP will comprise: (a) the Council's 3 Core Sites identified for development by the HSDP (each site would only be transferred once defined conditions have been satisfied e.g. viability and suitable planning permission) and capital funding (b) investment by the private partner which matches the value of each site and finance the Council transfers to the HSDP.
- 5.2.3 The HSDP will carry out construction works to develop the sites transferred to it and appoint a Development Manager to manage the sites. The Council will also have the option to offer future sites to the HSDP for development.
- 5.2.4 The HSDP will also provide construction works to Council owned sites, for example, to construct the Harrow New Civic Centre.

### **5.3 Governance of the Strategic Development Partnership**

- 5.3.1 The key decisions of the HSDP will be reserved for decision by the Council and private partner as equal partners and will require unanimous approval.
- 5.3.2 Key decisions include approval of the HSDP's business plan and objectives, any alteration to the scope of the business plans any new partners, third party funding and any actions which fall outside of the business plan.
- 5.3.3 The Council and private partner will constitute a board of representatives for the day to day management and decision making of the HSDP (the "**Board**").
- 5.3.4 The Council will appoint representatives of its choice onto the Board and the private partner will appoint an equal number of representatives. The representatives of each party will have one collective vote and any decision must be made by unanimous approval.
- 5.3.5 The Board's decisions will include approving: defined activities set out in the business plans (e.g. disposals or acquisitions of assets) and agreeing the terms of contracts in accordance with defined fixed parameters. The establishment of a business team will have the responsibility of managing the day to day running of the development activities as set out in the agreed business plan.
- 5.3.6 Where the Council and private partner or Board cannot agree on a matter due to lack of unanimity, this will create a 'deadlock' which, if unresolved, will result in the winding up of the HSDP. The legal agreements will also contain appropriate provisions to deal with default of the private partner.
- 5.3.7 Once procurement process has completed, the Corporate Director – Communities, is required to report back to Cabinet to gain approval to appoint the successful Strategic Development Partner.

### **5.4 Additional services**

Any additional works or services required will be procured by the HSDP in accordance with the HSDP's own procurement policy (agreed by the Council and private partner in advance) on a value for money basis and ensuring quality.

### **5.5 Resources**

- 5.5.1 Internally the appropriate skills and experience are deployed to support the procurement process including senior staff from Regeneration, Finance, Legal, Procurement and Communications.
- 5.5.2 The process is being supported by external legal and commercial property expertise. The costs of the Procurement process are being funded within existing resources.

## **5.6 Staffing/Workforce**

5.6.1 The Council's Regeneration Programme is both ambitious and challenging and to deliver effectively there is a requirement to have the skills and capacity in place to deliver.

The Regeneration review confirmed that the scale of development in Harrow requires:

- Focussed leadership, experienced in delivery,
- A commercial rigour at each and every stage,
- An integrated approach to development, procurement, design, construction and operation.

5.6.2 Therefore, to progress successfully through the pre market, procurement and set up phases of a Strategic Development Partnership heralds a significant workload and will require new capacity and capability within the Council.

5.6.3 Capacity will be strengthened through the appointment of a Commercial Development Director, for an 18 to 24 month period with an absolute focus on:

- Delivering commercial opportunities for the Council to maximise financial returns
- Building commercial relationships with developers and investors/funders
- Leading negotiations and securing a Strategic Development Partner that is right for Harrow's objectives
- Securing the best deal for Harrow

## **6. Risk Management Implications**

There is a risk register for the Strategic Development Partnership procurement process which is included within (appendix 4).

## **7. Procurement Implications**

7.1 The procurement of the Strategic Development Partner will be undertaken in compliance with the Public Contract Regulations 2015. The procedure that is most suitable for a procurement of this size and complexity is the Competitive Dialogue procedure. The use of this procedure will allow the Council to have detailed dialogue with potential interested parties at defined stages of the tendering to ensure that final submissions are technically and commercially as closely aligned to the Council's visions, objectives and outcomes for the strategic partnership.

7.2 The Council has explored the GLA's new London Development Panel known as LPD2 as a procurement route for a Development partner for

Harrow. LPD2 is a single- lot framework of 29 well established developers. House builders, contractors and Registered Providers of Social Housing (RP's). These have been through a GLA competitive procurement process. The panel can be used by Harrow Council and provides an efficient method for selecting development partners for their sites.

- 7.3 However this method of procurement has been discounted as it has been designed for a Development Agreement and is not the optimum approach to procure the Strategic Development Partnership.
- 7.4 The evaluation criteria are detailed in Appendix 3 of this report.

## **8. Legal Implications**

- 8.1 Judicial review proceedings have been brought against local authorities in the past, questioning the legality of partnerships structured via separate corporate vehicles. However, in 2018 the High Court ruled the use of an LLP is lawful where the local authority's primary or dominant purpose is not a commercial purpose. Therefore, local authorities must identify the statutory powers and the purpose of incorporating the commercial vehicle before progressing such an approach,
- 8.2 This report has made the Council's objectives clear and therefore, the purpose of entering into a separate commercial vehicle.
- 8.3 The Council has a range of statutory powers to incorporate corporate vehicles: Section 1 of the Localism Act 2011 (known as the general power of competence) permits local authorities to do anything that individuals can do subject to any specific restrictions contained in legislation. Section 4 of the Localism Act still permits an authority to act for a commercial purpose, however, this must be done via a company rather than an LLP.
- 8.4 The Council is able to establish and participate in an LLP pursuant to the general power of competence above and where it is established to facilitate or is conducive or incidental to the discharge of any of its functions, the power set out in section 111(1) of the Local Government Act 1972.
- 8.5 The Council has statutory authority to hold property for a variety of purposes including those mentioned in section 120(1) of the Local Government Act 1972 which include for the benefit, improvement and development of their area. The Council also has the power to invest for any purpose relevant to its functions under any enactment; or for the purposes of the prudent management of its financial affairs (s.12 Local Government Act 2003).
- 8.6 The Council may dispose of land by agreement in accordance with Sections 123 of the Local Government Act 1972 and consequently, transfer land into the chosen corporate vehicle, provided that disposal is made having received the best consideration reasonable obtainable.

- 8.7 It is envisaged that the Council will nominate directors onto the board of the chosen corporate vehicle; however major commercial decisions will be referred back to Cabinet.
- 8.8 The title to each of the Core Sites has been reviewed. Whilst all are burdened by various covenants and legal impediments, it is envisaged that the Council will use its statutory powers of appropriation pursuant to the Housing and Planning Act 2016. Such powers extinguish title encumbrances insofar as they could impede development and instead allow any party whose rights have been infringed to claim compensation.
- 8.9 All procurement activity of works and services must be carried out in compliance with the Public Contracts Regulations 2015 and Council Contract Procedure Rules

## **9. Financial Implications**

- 9.1 The Council has previously created financial capacity to fund the revenue elements of the Regeneration Programme. The total capacity was £5.1m of which £3.4m has been used and the balance remaining for 2019/20 is estimated at £1.7m.
- 9.2 This report recommends delegated authority to the Corporate Director – Community, to procure such advice and the costs to be contained within the overall capacity of £1.7m.
- 9.3 As the procurement exercise progresses, this will inform the future costs and cash flow implications for the council including the capital borrowing requirement, capital financing costs, financial returns and the on going support required.
- 9.4 At this early stage in the process such financial implications cannot be quantified and hence no adjustments are recommended to the Council's revenue budget or capital programme.
- 9.5 If the financial implications of the HSDP can be quantified at the point of setting the draft and final budget and the MTFs, scheduled for Cabinet in December 2019 and February 2020 respectively, the appropriate changes will be recommended. Should this not be the case the budget, MTFs and capital programme will be updated and reported in line with Financial Regulations.
- 9.6 The post of Commercial Development Director will be funded within existing resources (existing staffing budgets and the financial capacity as described above)

## 10. Equalities implications / Public Sector Equality Duty

The EQIA for the Regeneration Programme (attached)

## 11. Council Priorities

The Council's vision:

### Working Together to Make a Difference for Harrow

- Making a difference for the vulnerable
- Making a difference for communities
- Making a difference for local businesses
- Making a difference for families

Please find below the link to Building a Better Harrow website and Regeneration Strategy document 2015-2016:

<http://www.buildingabetterharrow.co.uk/#/about/>

## Section 3 - Statutory Officer Clearance

Name: Dawn Calvert	<input type="checkbox"/>	on behalf of the * Chief Financial Officer
Date: 21 <sup>st</sup> May 2019		
Name: Matthew Dineen	<input type="checkbox"/>	on behalf of the * Monitoring Officer
Date: 21 <sup>st</sup> May 2019		
Name: Nimesh Mehta	<input type="checkbox"/>	on behalf of the * procurement Officer
Date: 21 <sup>st</sup> May 2019		
Name: Paul Walker	<input type="checkbox"/>	Corporate Director
Date: 21 <sup>st</sup> May 2019		

<b>Ward Councillors notified:</b>	<b>YES</b>
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<b>EqIA carried out:</b>	<b>YES</b>
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<b>EqIA cleared by:</b>	
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## **Section 4 - Contact Details and Background Papers**

**Contact:** Paul Walker, Corporate Director Communities, Direct Telephone No. paul.walker@harrow.gov.uk

**Background Papers:** [Equality Impact Assessment](#)

<b>Call-In Waived by the Chair of Overview and Scrutiny Committee</b>	<b>NO</b>
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