

Wiltshire Council

Cabinet

2 February 2021

Subject: Procurement of Joint Venture partner

Cabinet Member: Cllr Philip Whitehead – Leader of the Council and Cabinet Member for Economic Development, MCI and Communications

Key Decision: Key

Executive Summary

This report seeks cabinet consideration to procure a master development partner to form a joint venture (JV) with the Council to develop the Council's land holdings as part of the Future Chippenham programme and possibly other Council owned sites.

The Council has expert advice on the model of a joint venture that would be attractive to the market. The advice tested the viability of the JV model based on the existing development model for Future Chippenham and this shows the Council would maximise its return from the JV model compared to the conventional approach of disposing of its land on the open market.

This advice is provided to members as an appendix to the Part II report which should be read in conjunction with this and is restricted because it contains information which refers to the financial and business affairs of the parties concerned (including Wiltshire Council) which is exempt information under schedule 12A of the Local Government Act 1972 as amended.

The procurement of a JV partner in these circumstances is a new approach for Wiltshire Council although it has been implemented by a number of other Local Authorities.

The report seeks authority to procure expert procurement advice, legal and property advice so as to enable the successful procurement of the JV partner.

Proposal(s)

Cabinet is asked to,

1. Agree to seek a joint venture partner to form a master developer for the Council owned land included in the Future Chippenham programme.
2. Agree to procure specialist commercial advice to inform the JV procurement process
3. Agree to procure specialist legal advice to inform the JV procurement

4. Agree to procure specialist property advice to inform the JV procurement.

Reason for Proposal(s)

The council owns a significant amount of the land which is included as part of the Future Chippenham programme. The council should seek to maximise the value from these important public assets and ensure that it achieves the objectives of the Future Chippenham programme while delivering the best possible return for the Wiltshire Council and its residents. The expert advice received by the council strongly indicates that the optimum model for achieving these objectives is to seek a joint venture partner to form a master developer for the council-owned land included in the programme. Therefore, cabinet's approval is requested to endorse both this approach and to agree that the council team proceed with the procurement of specialist commercial, legal and property advice to deliver a successful and compliant procurement process to secure a joint venture partner.

Terence Herbert
Chief Executive

Wiltshire Council

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Purpose of Report

1. The purpose of this report is to seek cabinet's approval to procure a partner to form a joint venture ("JV") master developer with the Council to develop the Council's land holdings as part of the Future Chippenham programme.

Relevance to the Council's Business Plan

2. The proposals will directly contribute to two priorities in the Business Plan
 - a. growing the economy
 - b. creating strong communities.

Background

3. On 13 October 2020 cabinet agreed that the council enter into a Grant Determination Agreement ("GDA") with Homes England for £75 million towards deliver of the Future Chippenham programme, based on a robust financial model and HIF recovery strategy. The Wiltshire HIF recovery strategy has been approved by Homes England and the terms of the GDA finalised by the Chief Executive in consultation with the Leader of the Council, Interim Corporate Director of Resources (s. 151 officer) and Director of Legal and Governance. The GDA was sealed on 18th December 2021
4. As part of ongoing project delivery proposals were invited from professional experts in the field to support the council in developing a delivery approach for the potential housing programme which forms part of the project deliverables. Specifically, advice was sought on the potential to attract a Joint Venture (JV) partner to support it, building on the work it has undertaken in respect of its HIF bid and working in partnership as appropriate with its current broader professional team in delivering key infrastructure.
5. 31ten Consulting were appointed and their final report ("JV report") is presented to cabinet as Appendix A to the Part II report. The reason it is restricted is because it contains information which refers to the financial and business affairs of the parties concerned (including Wiltshire Council) which is

exempt information under schedule 12A of the Local Government Act 1972 as amended.

Main Considerations for the Council

Advantages of Procuring a JV master developer partner

6. The JV report identifies a number of advantages to the council in procuring a JV master developer partner to work with it and deliver the Future Chippenham housing programme. These include the following;
 - a. A JV master developer partnership will provide specialist commercial and development expertise to the programme. The council does not have this type of expertise in-house and it will be essential to drive the programme forward, meet Homes England HIF associated targets for housing and maximise the financial return to the council taxpayer (profit share the council will receive - as detailed in the exempt JV report).
 - b. The JV partner will bring access to both finance and expertise essential to the delivery of a large-scale development of this type; they will also bring specialist expertise in housing and commercial property development. They will bring experience to drive the planning application process and conduct negotiations with the Local Planning Authority (LPA) and other relevant statutory bodies and stakeholders necessary to secure positive and timely planning outcomes.
 - c. The JV Master Developer will take full project responsibility from conception of the scheme and will be a distinct single commercial entity operating at arm's length from the council with clear and unambiguous separation from the council's wider functions. In addition, the establishment of a JV partner will support the compulsory purchase order strategy for the Future Chippenham programme by underwriting the land acquisition required for the road and /or housing.

Disadvantages of Procuring a JV Partner

7. The JV Master Developer approach limits the council in terms of its ability to control the form of development. The Council representation on the JV board will equate to the equity investment made. In addition, there will be an element of up-front cost in establishing the partnership which should be considered in the light of potential return.
8. If established the JV will have a high degree of autonomy to determine the form and phasing of development, although it will align with Homes England targets as agreed in the housing delivery strategy.
9. Development proposals that emerge will of course be subject to the planning process in the usual way, so the council's control over the form of

development will be the same as for any other privately promoted scheme, via the implementation of its planning policy.

10. The procurement of a JV developer partner has cost and time implications that are considered within the exempt report.
11. Homes England will need to approve any Joint Venture contract to ensure it aligns with the principles of the HIF GDA.

Council owned sites that are proposed for inclusion within the JV

12. The following council owned sites could be made available to JV ;
 - a. Land lying to the south of Cocklebury lane, Chippenham
 - b. Land at Hither Farm, Stanley Lane, Stanley, Chippenham
 - c. Land on the Eastern side of the River Avon and lying to the South of Lower Lodge Farm, Chippenham
 - d. Hither Farm, Stanley Lane, Chippenham
 - e. Hardens Farm, Chippenham (SN15 3RB)
 - f. Land at Forest Gate Farm, Chippenham
 - g. Middle Lodge Farm, Pewsham
13. The above list is not exhaustive and could be supplemented by other landholdings within the Future Chippenham area subject to on-going negotiations.
14. To make best use of the JV procurement, consideration will also be given to the inclusion of other council-owned sites elsewhere in the County as part of this procurement process, and this will be subject to further reporting to Cabinet if this avenue is pursued.

Procurement Advice Required

15. The council will require further strategic advice from specialist consultants to support the procurement process to appoint a JV Master Developer Partner.
16. The Council's consultants have outlined the approach to the advice they consider that the council will require which is set out at **Appendix A** to the exempt report. In brief terms, the recommended approach is to proceed via a staged UK subsidy control regime compliant (Competitive Dialogue) process. This would be preceded by further work managed by the council's appointed strategic advisers to both test and refine the procurement process and undertake preliminary soft market testing in advance of commencing the procurement process itself.
17. Alongside the strategic procurement advice, the council will also require independent legal and property / financial advice which will include specialist taxation advice.
18. The legal advice will include scoping the form of legal arrangement that the JV Master Developer partnership will comprise of, and; prepare a detailed and robust set of procurement documents in that context. Alongside this, technical

legal support to ensure governance and monitoring arrangements will be set up in an appropriate and robust way to ensure the council's interests are fully protected.

19. In addition to legal and strategic procurement advisers, the council will also need to appoint property / financial specialists to advise on issues such as land valuation methodology, tax and state aid implications as well as design and quality expectations to inform the procurement documentation.
20. The advisory team will support the council in refining the procurement process prior to engaging with the market, undertaking soft market testing and the subsequent staged competitive dialogue process, and; in negotiating the terms of the JV Master Developer partnership with the preferred partner towards the conclusion of that process.

Legal Framework

21. It is expected that the JV company will be established via a shareholder agreement which will establish the level of control that each party to that agreement will have. The council will place its land into the company (most probably in a phased way - to be governed by the terms of the agreement). This will be matched by corresponding financial contributions from the council's JV partner to fund the delivery of the development. Mechanisms will be put in place to allow the Council to receive its profit share in relation to equity investment as dividend once agreed trigger points are reached. The detail of this will be negotiated as part of the competitive dialogue process. Cabinet shall be invited to consider and approve the terms proposed prior to any proposed agreement being entered into by the council.
22. The independent property advice referred to above will include advice on the terms of the agreement in relation to the value of the council's land assets proposed to be included within the JV. It will specifically consider the terms of the agreement in relation to whether the council is receiving best consideration for its land and that the terms of the agreement meet appropriate tests in relation to the most economically advantageous use of the council's assets.

Overview and Scrutiny Engagement

23. An opportunity to brief the Chairman and Vice chairman of the Environment Select Cttee and financial planning task groups is being sought. Subject to the briefing comments will be reported at cabinet.

Safeguarding Implications

24. There are no safeguarding implications relating to this report's proposals as they concern solely the proposed procurement of a JV master developer partner.

Public Health Implications

25. There are no direct Public Health implications relating to this report's proposals as they concern solely the proposed procurement of a JV master

developer partner. The proposals will enable the council to deliver positive environmental and economic outcomes which will have a positive impact on Public Health.

Procurement Implications

26. As set out above, the expert advice the council has received recommends proceeding by way of a staged UK subsidy compliant (Competitive Dialogue) process.
27. Detailed procurement implications are dependent on the structuring of the project which concerns the financial and business affairs of the parties concerned (including Wiltshire Council), which is exempt information under schedule 12A of the Local Government Act 1972 as amended. These options are therefore considered in the Part II confidential report accompanying this report.

Equalities Impact of the Proposal

28. There is no Equalities Impact relating to this report's proposals as they concern solely the proposed procurement of a JV master developer partner.

Environmental and Climate Change Considerations

29. There are no direct Environmental / Climate Change considerations relating to this report's proposals as they concern solely the proposed procurement of a JV master developer partner.

Risks that may arise if the proposed decision and related work is not taken

30. The council has received advice from recognised industry experts which indicates that the optimum model for securing best value from the council's assets and achieving the objectives of the Future Chippenham programme is to secure a JV master developer partnership.
31. A key reason for this recommendation is that it mitigates risk associated with delivering Future Chippenham by way of resourcing and transfer. On the one hand, by bringing its expertise and experience in planning development, and access to both finance and financial acumen, the proposal will reduce the overall risk profile of delivering Future Chippenham. It will also transfer risk because the JV Master Developer will take full responsibility from conception of the scheme and will be a distinct single commercial entity operating at arm's length from the council.
32. This approach will also establish a clear and unambiguous separation from the council's wider functions including its role as the Local Planning Authority, thereby reducing the risk of perceived or actual conflict of interest. If the proposed decision is not taken, then these risks may remain unmitigated as the programme to deliver Future Chippenham progresses.
33. The related work as set out in the Proposals of this report is essential in ensuring a legally compliant and commercially effective procurement process to secure a JV master developer partnership. If this related work were not

undertaken, then there would be significant risk of legal challenge and failure to secure best value for money from the procurement.

Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks

34. Time constraints: in order to meet the council's commitments under the HIF GDA using the proposed approach, procurement of a JV master developer partnership will need to follow a relatively strict timetable. This risk will be managed through ensuring adequate resourcing is available to the council and professional teams working on the project and that the procurement criteria for the specialist external advisors are explicit about the milestones that need to be achieved.
35. Cost: As noted above under main considerations, a disadvantage to the proposed approach is that it will incur some upfront cost in procuring specialist advice and managing the procurement process. This is mitigated by its affordability within the approved budget to deliver the Future Chippenham scheme, and the significant return which is projected by the council's expert advisors the JV partnership will accrue to the council compared with any other approach. There is, as with any procurement process, a risk that it may not be successful in securing a viable JV partnership, and therefore the costs associated with running the process would effectively be lost. This risk will be mitigated by ensuring that the council and professional teams are adequately resourced and qualified to manage the process effectively and ensure a positive result for the council and this project.
36. Quality of development: As noted above under main considerations, by entering into a JV partnership the council will give up some of its control over assets currently in its sole ownership to enable the partnership to progress the development of those sites. The planning system itself mitigates for this risk since development proposals that emerge will be subject to full consultation in line with the Statement of Community Involvement and planning approval. However, the council will not under a JV partnership have full autonomy over proposals that the partnership develops. The risk of entering into a JV partnership which does not achieve the objectives of the Future Chippenham programme or the design and quality expectations of the council will be mitigated through the Competitive Dialogue process by evaluating bids (amongst other evaluation criteria) on the proposals put forward to the council at that stage.

Financial Implications

37. The Council commissioned expert advice on the best Joint Venture model for the Future Chippenham programme to maximise returns and deliver the project, this advice is attached in the part two report. The estimated cost of procuring a Joint Venture Partner is forecast to be circa £0.600m and the set-up cost of a Joint Venture Partner circa £0.100m. It is proposed that this is funded from the existing approved Capital Programme Budget for Housing Infrastructure Fund.

38. Highways England will need to agree to the Joint Venture Partner arrangement in accordance with the terms and conditions of the HIF grant.

Legal Implications

39. The Legal Department will oversee/manage the various legal input that will be required for the procurement of a joint venture partner for the development of the Council's land holdings within the Chippenham Future expansion project. There will be extensive legal work at various stages of the project, including but not limited to the drawing up of a suite of legal documentation between the Council and its JV partner, and the undertaking of the legal processes for the compulsory acquisition of land needed for the road infrastructure, etc. Whilst some of the legal work will be directly undertaken in-house, a significant amount will also require input from law firms with specialisms in the fields of procurement and development law. The Director of Legal and Governance will ensure that the procurement process is in compliance with the Public Contracts Regulations 2015 (as amended/or any future replacement, and that any agreements entered into with a joint venture partner are entered into in the best interest of the Council; are in compliance with the Council's obligations under the GDA; are in line with the Council's Best Consideration obligations under section 123 of the Local Government Act 1972; and that where applicable, any subsidy given is not in breach of the UK's international obligations.

Workforce Implications

40. There are no workforce implications relating to the proposed decision.

Options Considered

41. Proceed with the Future Chippenham programme in the absence of any form of public – private sector partnership: While this may in the short term eliminate some of the risks described above of proceeding with the proposals, it would be contrary to the recognised industry expert's independent and professional opinion as to the optimum model for delivering the Future Chippenham scheme and fail to secure its advantages as set out under the Main Considerations section of this report. For these reasons this is not the recommended option.
42. The council could follow a different procurement process and / or set different partnership objectives. Examples include an 'Enabling Only' partnership or hybrid. The expert advice received by the council has considered these options and the pros and cons of each. It is the JV Report's conclusion that the preferred approach to achieving the council's objectives should be to procure for a JV Master Developer. The procurement process that should be followed for such a partnership is determined by law and best practice and follows from this conclusion.

Therefore, it is not recommended at this stage that the council choose a model or approach contrary to the advice it has received. The council's approach is determined by its objectives and these will continue to be refined following market testing and agreement with relevant internal and external stakeholders. These will then form part of any subsequent procurement process.

43. Proceed with the procurement of a JV Master Development partnership and undertake the proposed work associated with this: This is the recommended option on balance of the advantages and risk assessment set out in this report.

Conclusions

44. The Future Chippenham programme is very important in achieving the council's business plan objectives, delivering the council's commitments under the HIF Grant Determination Agreement with Homes England, and delivering the vision for Chippenham as an attractive and sustainable place for people to live, work and enjoy. It is therefore essential that the council take the optimum approach to delivering its objectives and for this reason it has sought independent expert professional advice to inform its decision making. The project team has reviewed and scrutinised this advice, and on the basis of the advantages and risk assessment set out in this report, recommends that cabinet approve the proposal to procure a JV Master Development partnership and the necessary proposed work to ensure a compliant and successful process is undertaken to achieve this.

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Appendices

Appendix 1 is included in exempt agenda

Background Papers

None