



PRCC.12 16/17

**Prosperous Communities
Committee**

Date: 14 July 2016

Subject: Procurement of a Development Partner for WLDC

Report by:	Eve Fawcett-Moralee
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Purpose / Summary:	To approve the procurement of a development partner to assist the Council in the implementation of Gainsborough's Regeneration Delivery Plan.

Recommendation

1. That members approve the procurement of a development partner to assist the Council to deliver:
 - its regeneration delivery plan for Gainsborough; and
 - appropriate aspects of the land property agenda in the Commercial Plan (the outline scope of which is as set out in 1.2 of this report).
2. That members recommend Corporate Policy and Resources Committee approval to a budget of up to £0.1m for the cost of the procurement process and this be funded from the Investment for Growth Fund.
3. That members recommend Corporate Policy and Resources Committee approval to the resource implications detailed below at Appendix 1; exempt sections of this report; and ensure that this commercially sensitive information remains confidential.

4. That further reports be submitted to the Prosperous Committee over the next 12 months to seek approval at the key stages of the procurement process, which shall include:

- prior approval of the OJEU notice, the PQQ and the development prospectus;
- prior approval of the Invitation to Submit Outline Proposals ("ISOP") and Invitation to Submit Detailed Solutions ("ISDS") documents to be released to the shortlisted bidders; and
- prior to selection of the preferred bidder as detailed in section 2.3 of this report.

IMPLICATIONS

Legal: The Council is a contracting authority for the purposes of the Public Contracts Regulations 2015 (the "**Regulations**"). As such, it is required to formally procure a development partner in accordance with the Regulations. Officers have worked with Lincolnshire County Council's legal team to agree the procurement procedure and have instructed legal advisors, DWF LLP, (via a framework agreement) to lead the legal process on our behalf.

DWF LLP will advise on the procurement process, and will prepare the contract terms and conditions in order to set up and the deliver the project.

This advice shall also include, but not be limited to:

Advising on the soft market testing and developer day to promote the project;

Preparing the Prior Information Notice ("**PIN**"), OJEU Notice and the Pre-Qualification Questionnaire for bidders;

Advising on the appropriate evaluation criteria at PQQ and tender stage in order select a delivery partner in accordance with the Regulations;

Advising on the Invitation to Submit Outline Proposals ("**ISOP**") and Invitation to Submit Detailed Solutions ("**ISDS**") documents, and conducting the negotiation with shortlisted bidders;

Advising on any State aid issues throughout the dialogue as the "solutions" emerge, in addition to advising in relation to compliance with section 123 of the Local Government Act 1972 and other legal requirements, as the proposals are worked up as part of the procurement procedure;

Preparing and negotiating the appropriate contract terms and conditions; and

Viability and market advice subcontracted to development specialist Cushman and Wakefield.

Financial FIN/42/17

Within this report, members are being asked to approve a budget, capped at £0.1m, for the cost of procuring a development partner (via the NEPRO framework). The cost is estimated at £0.05m and includes legal and viability advice. However, it would be prudent to set a budget limit of £0.1m and this be funded from the Investment for Growth Fund.

The capital programme includes £18.875m for the delivery of the Gainsborough Growth Plan. This programme, therefore, is about leverage of private sector development to deliver a viable option in Gainsborough town centre.

Please see Exempt Appendix 1 for further financial implications.

Staffing:

This project will be led by the Commercial Director and supported by Strategic Lead for Economic Development as part of the agreed work plan.

Equality and Diversity including Human Rights:

This project has been developed to attract significant private sector investment, initially to Gainsborough, to deliver a commercially viable mixed-use development to anchor the western end of the town centre.

This is the key project within the Gainsborough regeneration programme, with the primary focus being the creation of a self-sustainable and affluent town and constituent community. Specific programmes for the South West and North Wards will assist in addressing the multiple indices of deprivation, in tandem with the Strategic Partnership in the South West Ward and the Council's Skill's programme.

Risk Assessment :

The Council is looking to attract an experienced development partner with expertise in regeneration and “market making” to drive viability and commercial return to the Council.

The Council has received advice from its legal and development experts to conduct soft market testing and host a developer day in order to receive feedback on the intended scope of the procurement with the ultimate intention of maximising the appeal of our offer to the market and enhancing viability.

It is important that the formal procurement is informed by initial soft marketing testing and feedback from the market as the viability of commercial development in Gainsborough, outside of Marshall's Yard, is unproven.

The Council's town centre sites (Bridge Street, Shipwrights, Baltic Mill, and BM Bargains/Lord Street) have multiple site constraints (including the need to provide town centre car parking) but are well placed and co-located to provide a critical mass of development to transform the appearance, function and viability of the town centre.

The inclusion of the Starter Home agenda into this procurement exercise will broaden the appeal of Gainsborough as a development proposition to a development partner by increasing the level of enabling funds and giving more control over the quality and pace of residential development to support town centre regeneration.

In this context, the Council is looking to create a development platform sufficient to create a viable developer's return. Augmenting the role of the development partner with our Commercial land and property agenda will further strengthen our offer and create the ability to drive an appropriate financial return to the Council over time.

It is important to note that this procurement will not preclude the Council from undertaking land and the property activities outside of this partnership. The previous attempts to procure a development partner were based on a narrower scope and were the subject of legal challenge due to potential non-compliance with public procurement law. Market conditions at the time also meant that the proposals were subsequently proven to be non-viable.

In order to facilitate a successful outcome for the procurement, the Council:

(i) has taken early and comprehensive legal and commercial advice in order to procure a preferred partner in accordance with the Regulations and the Council's constitution. This advice has provided a clear and compliant process and will allow the Council to properly scope its requirements from the procurement;

(ii) has put in place effective project management arrangements to ensure that each stage of the procurement process is reported to the Corporate Policy and Resources Committee, and/or Prosperous Communities Committee (as appropriate). This shall ensure that elected members are provided with information on progress, are aware of the status of the project, and decisions are taken on a fully informed basis;

(iii) has decided to undertake early soft market consultation (following a Prior Information Notice and a developer day) and market feedback will be considered prior to the release of an OJEU Notice. The OJEU Notice and the procurement documentation will be flexible to facilitate a response from the market. These responses shall be evaluated by officers in accordance with the Council's pre-disclosed evaluation criteria and considered by the Corporate Policy and Resources Committee, and/or Prosperous Communities Committee (as appropriate);

(iv) has put in place appropriate internal capacity in order to evaluate the tenders submitted by the bidders;

(v) will take steps to engage with tenderers in accordance with the requirements of the Regulations and the Council's constitution. This will act to safeguard the procurement process from a successful challenge;

(vi) will take steps to ensure that elected members on the Corporate Policy and Resources Committee, and/or Prosperous Communities Committee (as appropriate) are provided with a briefing on the proposed procurement process so that they are aware of the requirements of the Regulations and the Council's constitution; and

(vii) will be provided with legal and commercial advice prior to any land disposal to ensure compliance with legislation and Council constitution requirements.

In addition, sufficient feasibility work has been undertaken to assess the development potential of all of the Council-owned sites in the town centre and those included on the Starter Home agenda to determine a benchmark solution in terms of development quantum, quality and viability.

This has resulted in the Council agreeing in principle to support the development/s via agreed enabling funds, and to the inclusion of some of the housing zone sites in our Starter Home bid. The sites, as a package of assets with the enabling funds, create a viable proposition considered by our expert advisers to be of sufficient value to attract high quality market interest. This is further enhanced by the inclusion of the land and property agenda in our Commercial Plan. The success of this project is ultimately dependent on the ability of the private sector to take up the site opportunities, successfully attract end users and create a new residential market to drive commercial return.

The nature of the development partnership between the Council and development partner will be defined in the process; and the apportioning of development risk will be factored into the evaluation process.

Climate Related Risks and Opportunities :

The new development will ensure that current building regulation standards on sustainability can be achieved and provision for cyclists is included. The programme will deliver a critical mass of population to ensure Gainsborough's future sustainability.

Title and Location of any Background Papers used in the preparation of this report:

Call in and Urgency:

Is the decision one which Rule 14.7 of the Scrutiny Procedure Rules applies?

i.e. is the report exempt from being called in due to urgency (in consultation with C&I chairman)

Yes

No

Key Decision:

A matter which affects two or more wards, or has significant financial implications

Yes

No

Executive Summary

To approve the procurement of a development partner to assist the Council with the implementation of its Regeneration Delivery Plan for Gainsborough and appropriate aspects of the Land Property agenda in the Commercial Plan 2015-20.

Initially, this will include the development of the Council assets in Gainsborough town centre and potentially deliver the Starter Home agenda (if our bid dated 13 May 2016 is successful) with the Homes and Communities Agency.

The procurement process will be conducted in accordance with the competitive dialogue procedure for complex projects (pursuant to Regulation 30 of the Public Contracts Regulations 2015) which allows development and financial solutions to be fully considered and refined with a shortlist of pre-qualified developers. A key benefit of this procedure is the ability to commence the dialogue with a long list of sites/projects and test the cohesiveness and viability of “the preferred solution”.

The procurement of a development partner is integral to the delivery of the Council’s corporate regeneration and commercial agendas (approved by the Council in March 2016). Specifically, it will ensure that the Council’s objectives to achieve economic and housing growth are realised, maximising the use of the Council’s asset base and enabling funds to create an appropriate financial return to the Council.

1 Introduction

- 1.1 The Council is looking to procure a development partner in order to:
- (a) deliver economic and housing growth;
 - (b) implement the Council’s Regeneration Delivery Plan for Gainsborough; and

(c) implement appropriate aspects of the Land Property agenda in the Commercial Plan 2015-20.

The Council wants to procure a development partner that:

(a) is looking to invest and work in partnership with the Council over a mid-term period (e.g. for an initial term of five years, with the option to extend to ten years) to promote economic and housing growth and the creation of a self-sustainable Gainsborough;

(b) will allow the Council to deliver various phases of housing and town centre regeneration projects over this period following an agreement on viability, uses and market demand.

1.2 The current outline scope for the procurement of a development partner is as follows:

(a) review all of the Council's assets in Gainsborough to determine future use following development of the town centre and creation of a western anchor of the town centre. This western anchor is envisaged to include a public sector hub, 8,000 sq/m of new comparison goods retail floor space, 5,000 sq/m of new convenience floor space and a leisure offering;

(b) develop the Council's initial feasibility work for viable development proposals for the Gainsborough town centre;

(c) provide and assist the Council with a clear strategy as to how it can successfully deliver its ambitions of growing and developing Gainsborough;

(d) commence town centre development, which is market driven, at the earliest opportunity;

(e) consider the role of the Guildhall/Council's accommodation requirements (and creation of a public sector hub which would see the Department for Work and Pensions, Well North and a GP offering located together) and related One Public Estate agenda on town centre viability and commercial objectives, with the development partner working with the Council to ensure the success of the development;

(f) implement the Starter Home programme which involves, amongst other programme activities:

- acquisition of sites with the Homes and Communities Agency;

- housing typologies;

- phasing; and

- the creation of 300 starter homes by 2021;

(g) creation of a new and differentiated housing market with the construction of up to 800 further homes;

(h) attract further regeneration funds and create commercial confidence;

(i) drive commercial return to the Council on capital through a share of the profits on commercial projects;

(j) develop our commercial capacity and acumen;

(k) kick start the commercial land and property agenda and market test the "housing company" commercial position; and

(l) deliver business growth and investment.

This outline scope is conveyed in the PIN to be published to commence the formal market testing stage of the procurement process. This scope will be refined and revised, as applicable, following the response to the PIN from the market. This Committee will:

- (a) be updated following the feedback from the market at the developer day being held in August 2016; and
- (b) approve the final scope of the procurement prior to publication of the OJEU notice.

The Council may (in due course) facilitate its development partner by exercising its powers (as required and approved by the Council in due course) in relation to:

- (a) the acquisition of land (including compulsory purchase orders as required and approved by the Council);
- (b) grant funding;
- (c) prudential borrowing;
- (d) taking headleases of properties which are subsequently let to third parties;
- (e) the recycling of business rates;
- (f) the delivery of its office accommodation agenda;
- (g) the Community Infrastructure Levy; and
- (h) affordable housing requirements.

1.3 The Council's land ownership in Gainsborough and partnership with the Homes and Communities Agency has created a good platform from which to promote development. Other regeneration funds are being targeted from the Starter Home Unlocking Land Fund, Historic England and Greater Lincolnshire Local Economic Partnership/Devolution agenda.

1.4 This is creating market interest in Gainsborough from developers with regeneration expertise and credentials in working in partnership with the public sector. In effect, the Council's regeneration investment is "making a market" but it is important to note that the viability of "down town" Gainsborough remains fragile.

2 The process to select a preferred development partner

2.1 The Council is a contracting authority for the purposes of the Regulations and the likely value of the works which will be carried out by the development partner will exceed the current threshold of £4,104,394. As such, it is required to formally procure its development partner in accordance with the Regulations.

2.2 Following a review of the procurement, it was decided to adopt the competitive dialogue procedure as:

- (a) the needs of the Council cannot be met without the adaption of readily available solutions; and

(b) the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, complexity or the legal and financial make-up or because of the risks attached to them.

2.3 The competitive dialogue procedure shall take place in accordance with the following indicative timetable (the bold text indicates a key stage to be considered by subsequent Prosperous Communities and Corporate Policy and Resources Committees):

- Produce a Development Prospectus – July 2016
- Publish PIN – July 2016
- Publish Estates Gazette advertisement – July 2016
- **Hold a developer day which allows developers to visit the sites and discuss the opportunity – August 2016**
- **Consider responses to the PIN, refine the outline scope (as necessary) and agree evaluation criteria – August 2016**
- Publish OJEU Notice – September 2016
- Pre-qualification of bidders – October 2016
- Provide shortlisted bidders with the ISOP – October/November 2016
- **Outline solutions submitted by shortlisted bidders – December 2016/January 2017**
- Review and approval of outline solutions – January 2017
- Bidders shortlisted further and invited to submit detailed solutions ("ISDS") – January/February 2017
- Dialogue with shortlisted bidders on detailed solutions - January/February/March 2017
- Final tenders submitted – March/April 2017
- Evaluation of final tenders – March/April 2017
- **Approval of preferred bidder status and development agreement – March/April 2017**
- Bidders notified of decision and mandatory standstill period is observed – March/April 2017
- Contract awarded to preferred development partner – March/April 2017
- Contract award notice is published – April/May 2017

2.4 The competitive dialogue procedure allows development and financial solutions to be refined with the bidders in a commercial in confidence and without prejudice environment. The procedure is resource and time intensive and to get best value out of the process it is recommended that the Council commences the dialogue with a focused but broad offer to consider the widest possible potential solutions.

3 Investing in Gainsborough to deliver growth

3.1 The Council's regeneration and economic plans for Gainsborough are predicated on housing-led economic growth which is formalised through our

statutory obligations to seek to deliver the local plan. The scale of growth required is very ambitious but is supported by an economic evidence base and a sustainable spatial plan.

3.2 The master plan analysis has been updated in the last 6 months through:

- Central Lincolnshire Local Plan – specifically the Gainsborough chapter and supporting retail study (White Young Green) reveals the need for circa 5,000 square meters of new convenience and 8,000 square meters of new comparison goods retail floor space, along with a deficit in existing leisure including food and drink and hotel accommodation floor space (note half of the national average);
- Heritage master plan for Gainsborough town centre in discussion with Historic England, which will formulate a bid for Townscape Heritage Initiative funding to the Heritage Lottery Fund to enable the repair and refurbishment of the town's historic fabric;
- Place Marketing work (Thinking Place September 2015) which highlighted Gainsborough's strengths and potential to be a strong location capable of attracting a critical mass of new population;
- Planning and Infrastructure Strategy (Mouchel/Nexus April 2016) to advise on interventions and prioritising interventions to improve the town's infrastructure;
- Housing Viability – How to Build a Viable and Differentiated Housing Market in Gainsborough (Lambert Smith Hampton April 2016)

The Corporate Policy and Resources Committee has agreed a regeneration delivery plan for Gainsborough and the Housing Zone to address these negative themes as a precursor to building development confidence in the town.

4 The Commercial Plan

4.1 The Commercial Plan 2015-20 has 3 programmes complementary to the Gainsborough regeneration delivery plan, namely the ST3.1 land and property, ST3.3 creation of a housing company and ST4.4 delivery of business growth and regeneration. Including these programmes in the scope to procure a development partner will significantly increase its market appeal.

4.2 This will allow the Council to have a commercial dialogue with a range of developers on how best to integrate these objectives and evolve the business plan with the Council for the inclusion of subsequent projects if this constitutes best value. In doing so, the commercial and development acumen of the Council will be significantly enhanced.

4.3 The Council will still be at liberty to undertake such projects outside of this development partnership and engage with other partners in these activities on a

case by case basis. This inclusive, rather than exclusive, approach follows expert legal and development advice.

5 Initial Development proposals - Gainsborough Town Centre

5.1 Trading in the town centre has continued to decline due, in part, to the national trends, as retail patterns have dramatically changed over the last decade and due to the success of Marshall's Yard. In reality Marshall's Yard has doubled the retail floor space of the town centre and its modern format appeals to multiple retailers. This, coupled with its exemplary urban environment and management regime, have further depleted the role of the traditional town centre. This is evidenced in the further decline of the street market and higher than national average vacancy rates in town centre premises.

5.2 The public realm and Heritage-led Indicatives can only go so far to address built environment issues but can do little to assist in commercial viability. Ultimately, the Council's housing-led economic development will create transformational change through the attraction of 4,350 new homes to the town with the requisite increase in population of in excess of 30,000 residents. However, to attract this scale of new housing, Gainsborough must provide a "whole town offer" and provide further retail, restaurant and leisure floor space.

5.3 The Council has the ability to change the fortunes of the town centre through the use of its asset base and provision of support through enabling funds. The town centre sites enhanced by the inclusion of the Starter Home agenda, the Council's own accommodation requirements and potential further land assembly are capable of creating significant development potential. Whilst viability is still fragile, this potential portfolio of sites and projects is regarded as sufficient to generate a reasonable developer's profit / "regeneration" return.

5.4 The Council requires a highly skilled developer partner with significant expertise in town centre development and quality housing to provide development solution of the quality of the successful Marshall's Yard. Cumulatively, these developments will have the ability to effectively anchor the western end of the town centre and strengthen the linkages with the riverfront and Housing Zone work i.e. deliver a more holistic regeneration solution.

5.5 The competitive dialogue process will evaluate development proposals for Gainsborough town centre and one or more of the Housing Zone/Starter Home bid sites to determine the quality of each bidder's development solutions.

6 Implications for car parking strategy

6.1 The car parking strategy was informed by a review of car parking in the district by Parking Matters in 2015, which confirmed that adequate car parking provision exists in the town, even assuming the loss of the entire multi-storey facility. The redevelopment of the multi-storey into a superstore will provide 120

car parking spaces by summer 2017, providing surplus/contingency car parking for the town.

6.2 Redevelopment of the Council's car parks has always been envisaged. The sequencing of the development of these sites will need to be carefully considered to ensure an adequate supply of car parking throughout the development period. The provision of high quality car parking in the new development will be a key evaluation criteria in this procurement exercise.

7. Conclusion

7.1 The development of the town centre sites is long overdue. There is some upturn in market confidence in the town and evidence that the Council's investment plans are creating positive market sentiment. Regenerating the town centre is considered the primary way to create a new and a differentiated housing market in Gainsborough and is urgently required to safeguard the heritage of the town and support/compliment Marshall's Yard. A first rate development partner is required to work with the Council to achieve this.

7.2 The Council's Commercial Plan and Regeneration agendas have created a development platform to attract a commercial partner/create a commercial vehicle. In addition, our portfolio of sites in Gainsborough, coupled with the Starter Home programme, are capable of delivering a critical mass of development to anchor the western end of the town centre and regenerate the riverfront. The relationship with town centre regeneration/Place Making and the delivery of housing growth is proven. The Council would benefit from this upturn in viability in the medium and long term.

7.3 Using Council assets and funding now to secure a development partner to commence delivery is key to building wider investment confidence and to attracting further grant funds. Working with a development partner, the Council significantly increase the pace of its overarching objective to achieve economic and housing growth in the district to enable financial self-sufficiency for the Council.