

# CHESHIRE EAST COUNCIL

## Cabinet Member for Regeneration and Assets

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<b>Date of Meeting:</b>	26 <sup>th</sup> November 2015
<b>Report of:</b>	Caroline Simpson, Executive Director for Economic Growth and Prosperity
<b>Subject/Title:</b>	Royal Arcade Redevelopment Scheme: Mechanism for Procurement of a Development Partner
<b>Portfolio Holder:</b>	Councillor Don Stockton

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### 1. Report Summary

- 1.1 Crewe town centre is at a pivotal point in terms of its potential to attract new investment, increase footfall from residents and visitors, and instil greater civic pride. A revival is already underway, instigated in part by the Council's commitment to the new £15m Lifestyle Centre and the approval of a University Technical College (UTC) for Crewe, as well as wider investments in strategic infrastructure, such as the new roads connecting the town to the A500/M6, and the prospect of major investment in a new HS2 North-West Hub at Crewe.
- 1.2 In September, the Council's Cabinet gave approval for officers to commence the procurement process to select a development partner to deliver a leisure-led, mixed use redevelopment scheme on the Royal Arcade site in Crewe town centre, which it acquired earlier this year. This was subject to a decision to:  
  
delegate authority to the Portfolio Holder for Regeneration & Assets, in consultation with the Portfolio Holder for Finance & Assets, the Executive Director for Economic Growth & Prosperity, Chief Operating Officer and Head of Legal Services to determine the mechanism for selection of a preferred development partner and scheme, to commence this process and to continue this through to the identification of a preferred development partner.
- 1.3 This report therefore presents the alternative options for procurement and recommends the preferred approach.

### 2. Recommendation

- 2.1 It is recommended that the Portfolio Holder for Regeneration & Assets:
  - i) gives approval to officers to proceed in procuring a development partner through a competitive dialogue procurement approach.

### **3. Other Options Considered**

3.1 As the recommended option is for a procurement exercise to appoint a Development Partner to deliver a redevelopment scheme with the Council, there are a number of procedures that can be utilised listed below which fall under the Public Procurement Regulation 2015:

- a) Open Procedure
- b) Restricted Procedure
- c) Competitive Procedure with Negotiation
- d) Competitive Dialogue Procedure

#### **a) Open Procedure**

3.2 A contract notice is placed in the Official Journal of the European Union (OJEU) advertising the contract opportunity and it is then open to any bidder to submit a bid. Effectively the contract notice is the invitation to tender (the tender documents are downloaded from the web-address, which has to be given in the notice). The completed tender documents then have to be returned by the deadline date specified in the notice.

3.3 A detailed specification of requirements will be required to be issued and the Council must ensure that this can be evaluated against in a fair and transparent manner on a level playing field.

<b>Advantages</b>	<b>Disadvantages</b>
This procedure has the shortest timescales, which are a minimum of 35 days (less 5 days if electronic receipt of tenders).	Less favourable to bidders as it requires all bidders to complete all the documentation in a single stage i.e. they must complete both the Suitability Assessment Questionnaire and respond to the Quality Award Criteria, even though they might not pass the Suitability Assessment stage, therefore this can sometimes be interpreted by bidders as very time consuming and resourceful and therefore the appetite to participate may be reduced
Less resource requirements in terms of officer time.	No provision for negotiation
Ensures that only bidders who want to win the work express an interest.	If the Council is unsure of the final solution required, then this procedure is not appropriate.

#### **b) Restricted Procedure**

3.4 The call for competition in OJEU to advertise the opportunity is made with a contract notice. Bidders respond to the notice, applying for inclusion in the award procedure, usually by completing a Pre-qualification questionnaire (PQQ) – effectively applying to be shortlisted

for invitation to tender (ITT). The shortlist for ITT is drawn up from an evaluation of the specific pre-qualification information which respondent bidders are required to provide in order to be considered.

- 3.5 The authority must state in the contract notice the number of bidders that it intends to shortlist, which the Directive states have to be at least five (to the extent that there are sufficient qualified applicants). This may be specified as an absolute number or as a range; e.g. minimum five, maximum seven. Only those bidders pre-qualified and shortlisted are invited to tender.
- 3.6 The timescales for submission of the Pre-Qualification Questionnaire is a minimum of 35 days (less five days if electronic receipt of tenders) and a minimum of 30 days (less five days if electronic receipt of tenders) for submission of the Invitation to Tender.
- 3.7 A detailed specification of requirements will be required to be issued and this must be able to be evaluated against in a fair and transparent manner on a level playing field.

<b>Advantages</b>	<b>Disadvantages</b>
More favourable with bidders as they only have to complete the tender documentation in stages and are not required to complete the ITT documentation if they are not short-listed and therefore less resourceful for them.	Longer timescales.
Allows us to draw up a short-list of bidders.	No provision for negotiation.
Ensures that only the appropriate/ capable bidders are invited to tender.	The ITT documents are required to be ready and issued at the same time the OJEU notice is published.
Less time-resource intensive in the evaluation of tenders.	If there is uncertainty as to what is the required final solution, then this procedure is not appropriate.

**c) Competitive Procedure with Negotiation (CPwN)**

- 3.8 The competitive procedure with negotiation is very similar to the restricted procedure above except, crucially, negotiations with the bidders are allowed following receipt of initial bids (and an iterative process during which individual bidders may be deselected at each stage is allowed). However once negotiations are concluded, there has to be a formal final tender stage and those tenders cannot be negotiated upon.
- 3.9 The timescales for submission of the Pre-Qualification Questionnaire is a minimum of 30 days and a minimum of 30 days (less five days if electronic receipt of tenders) for submission of request of initial tenders.

<b>Advantages</b>	<b>Disadvantages</b>
More favourable with bidders as they only have to complete the tender documentation in stages and are not required to complete the ITT documentation if they are not short-listed.	Longer timescales
Allows us to draw up a short-list of bidders.	More resourceful in terms of officers time due to the dialogue stages.
Ensures that only the appropriate/capable bidders are invited to tender.	More resourceful in terms of bidders time due to the dialogue stages and therefore there might not be the appetite.
Ensures that through dialogue the correct solution is achieved.	No negotiation after final submission of tenders.
Negotiation is permissible.	
Award on initial tenders is permissible without any negotiation if this right is reserved.	

#### **d) Competitive Dialogue Procedure**

- 3.10 This procedure is similar to the CPwN, in that there is dialogue with each of the shortlisted bidders followed by a formal tender stage. This procedure is quite intensive and is for use with particularly complex contracts. A key difference from CPwN is that the Directive expressly provides for (limited) scope for negotiation on the final tenders 'to confirm financial commitments or other terms. In common with the CPwN, an iterative procedure is permitted and a minimum of 3 bidders have to be shortlisted (to the extent that there are sufficient qualified applicants).
- 3.11 The timescales for submission of the Pre-Qualification Questionnaire is a minimum of 30 days, however there is no minimum time limit for the dialogue process and no prescribed minimum time for return of tenders.
- 3.12 This route is designed for particularly complex contracts where the contracting authority needs to hold a dialogue with bidders to discuss all aspects of the proposed contract and is particularly relevant for awarding contracts which have complex legal and financial make up and/or risks attaching or where the eventual solution is not known (i.e. only the requirements of the solution).
- 3.13 To all intents and purposes, the competitive dialogue procedure can be used for anything that is not 'off the shelf', although for some of the grounds (see below) the competitive procedure with negotiation may be more appropriate. The specific derogations are summarised below.
- When the needs of the contracting authority cannot be met without adaptation of readily available solution.
  - When the requirement includes design or innovative solutions.

- c) When negotiations are needed because of specific circumstances of the contract related to the nature, the complexity or the legal and financial make-up or because of the risks attaching to them.
- d) The technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference
- e) A failed open or restricted procedure, due to only irregular or unacceptable tenders submitted. Note that if 'all of and only' those (pre-qualified) bidders that tendered in the failed open or restricted procedure are included in the 'new' procedure, then a further contract notice is not necessary.

Advantages	Disadvantages
More favourable with bidders as they only have to complete the tender documentation in stages and are not required to complete the ITT documentation if they are not short-listed.	Longer timescales
Allows the drawing-up a short-list of bidders.	More resource intensive in terms of officers' time due to the dialogue stages.
Ensures that only the appropriate/ capable bidders are invited to tender.	More resource intensive in terms of Council and bidders' time due to the dialogue stages and therefore there might not be the appetite with bidders, especially as the Council has short time scales for the completion of the dialogue.
Ensures that through dialogue the correct solution is achieved.	
Negotiation is permissible.	
Negotiation of final tenders is permissible.	

#### 4. Reasons for Recommendations

4.1 It is anticipated that the proposed scheme will be a mixed-use scheme, and tenderers are likely to submit proposals that have different uses and in different quantum in terms of physical space, which will also create variations in the cost/value of a scheme. Schemes which create additional footfall and generate benefits to the wider town centre are to be encouraged, although this does mean that the Council will need to be able to negotiate with shortlisted tenderers to achieve the optimum outcome for the Council. Factors to be taken into consideration, which can't be specified at the outset include, but are not limited to the following:

- a) the likely value of investment by a funder/developer
- b) the overall scale of the scheme and of the individual uses
- c) the funding route to be used by the appointed developer eg whether they have the capacity to fund in house or will be seeking external funding

- d) the approach to delivery and whether/how the scheme might be phased
- e) the financial viability of different proposals and developer profit requirements
- f) the degree of risk to be absorbed by the developer eg the extent to which some may be prepared to commence the development on a speculative basis
- g) the approach to delivery and how this aims to minimise the short term adverse impact on the town centre.
- h) the proposed arrangements for negotiating with existing leasehold interests
- i) the additional footfall generated by a new scheme
- j) the opportunity to include a replacement bus station / interchange facility within a proposed scheme
- k) the opportunity to include new car parking within a proposed scheme
- l) the retention of existing buildings / features within a proposed scheme
- m) the enhancement of existing and/or creation of new public realm within a proposed scheme
- n) the relationship between the proposed scheme and other parts of the town centre identified in the Council's Regeneration Delivery Framework
- o) the financial terms of any agreement, including potential capital receipts and ground rent returns for the Council.

4.2 For the reasons stated above, the recommended procurement approach is the Competitive Dialogue route.

## **5. Background /Chronology**

- 5.1 In April 2015, under Cabinet Procedure Rule No 53 of the Council's Constitution, the Council decided to acquire the Royal Arcade site in Crewe town centre. This decision was taken at Cabinet on 21st April 2015.
- 5.2 Following the acquisition of the Royal Arcade site, the Council commenced the first stages of its delivery plan for the site's redevelopment. It has been in dialogue with a number of interested parties in relation to the future of the site, including existing occupiers of the properties, developers, the owners of other sites/properties and other key stakeholders.
- 5.3 The Council undertook an evaluation of the different options for delivery of a redevelopment scheme on this site. This was done through internal discussions with Council officers and its external advisers, Cushman & Wakefield (formerly known as DTZ) and took account of delivery timescales, financial implications, deliverability issues and risks. Following this evaluation and an analysis of the responses from developers, the preferred option recommended to, and agreed by

Cabinet on 29 September, was to select and appoint a development partner through a procurement process.

- 5.4 Under this option, the Council would select and appoint a commercial development partner to deliver a leisure-led, mixed-use redevelopment scheme with the developer carrying the development risk. The Council would need to undertake a compliant procurement process undertaken pursuant to the Public Contracts Regulations 2015. Through the informal dialogue with developers to date, this has emerged as the preferred option for most developers, as they would seek for the Council to be engaged throughout this process as a partner, sharing ownership and refining the scheme.
- 5.5 The likely timetable for delivery would be dependent on the process undertaken, but a developer could be appointed within 6-9 months if an open or restricted procurement process is undertaken, or up to 12 months if a competitive dialogue undertaken. Provided the procedure is implemented correctly and, in particular, that the Council's requirements are clearly articulated at the outset, this option carries a low risk of a successful challenge which could derail the process. Further, most developers are familiar with the competitive dialogue procedure..

## **6. Wards Affected and Local Ward Members**

- 6.1 All Crewe wards and all Crewe Local Members.

## **7. Implications of Recommendations**

### ***Policy Implications***

- 7.1 The proposal in this report relates directly to four key outcomes identified in the Council's Three Year Plan:

#### **Outcome 2: Cheshire East has a strong and resilient economy.**

Cheshire East

is known as a good place to do business – we attract inward investment, there is

access to a high quality workforce and our businesses and visitor economy grow, to create prosperity for all.

#### **Outcome 4: Cheshire East is a green and sustainable place.**

Cheshire East's rural and urban character is protected and enhanced through sensitive development, environmental management, transport and waste disposal policies.

**Outcome 5: People live well and for longer.** Local people have healthy lifestyles and access to good cultural, leisure and recreational facilities. Care services focus on prevention, early intervention and physical and mental wellbeing.

- 7.2 This report aligns strongly to the Council's Economic Development Strategy and its more recently created Vision and Strategy for Economic Growth: East Cheshire Engine of the North, which articulates the need to increase investment in our town centres, by ensuring they offer themselves as attractive locations for retail and leisure operators.

- 7.3 As part of the Council's All Change for Crewe regeneration programme, there is previous work that has laid the way for this report. This includes:

*Prospectus for Crewe:* Sets out the Council's development priorities for the town centre, based on five key zones, and three development areas under the Council's influence. This served to garner interest from the development community and instigate dialogue which has helped to inform this report.

*All Change for Crewe - High Growth City:* Reflects recent progress in the wider Crewe area, including Bentley's expansion, plans for geothermal energy and investment secured to enhance connectivity through road and rail.

***Legal Implications (to be authorised by the Head of Legal Services)***

- 7.4 The Localism Act 2011 introduced the General Power of Competence, which allows the Council to do anything an individual can do, provided it is not prohibited by other legislation. These powers have replaced the previous wellbeing powers, however, the use of these powers must be in support of a reasonable and accountable decision made in line with public law principles.
- 7.5 All procurement documentation must be made available at the outset of the procurement process to comply with the Regulations and this means that the Council needs to decide what its input into the partnership is going to be and the scope of the site.

On average a competitive dialogue takes between 12 and 15 months to conclude, but it can be done within 12 months if the appropriate information and resources are provided, and the appropriate process adhered to.

***Equality Implications***

- 7.5 There are no immediate equality implications at this stage, but any redevelopment scheme advanced by the Council will need to consider the implications for different groups of residents, particularly those less than have more difficulty accessing it. In particular account is taken of the World Health Organisation 'Age Friendly Cities', which seeks to ensure that the towns are positioned to tap into the potential and needs of older people as residents and users of town centres



### ***Rural Community Implications***

- 7.6 The regeneration of Crewe town centre promotes the economic prosperity of Crewe. This has a direct relationship with residents and businesses across the wider South Cheshire area, including rural communities that shop, visit or work in Crewe.

### ***Human Resources Implications***

- 7.7 None

### ***Public Health Implications***

- 7.8 None

### ***Financial implications***

- 7.9 'Crewe Town Centre Regeneration' is a named scheme within the 2015/18 Capital Programme approved by Council in February 2015. This budget was used to acquire the Royal Arcade site and associated costs. It has also been agreed that this budget will also be used to meet additional costs associated with taking forward the proposed redevelopment of the Royal Arcade site, including:
- professional advice (e.g. legal procurement and commercial development appraisal advice)
  - interim project management required to cover a procurement process.
  - other costs associated with the procurement of a development partner.
- 7.10 During the proposed procurement process we will need to establish the Council's financial preferred position on a number of factors, including:
- any financial or legal undertakings the Council is prepared to give or waive, including any implications for the value of part or all of the Royal Arcade asset
  - any financial or legal undertakings the Council is seeking to secure, such as capital receipt and ground rental income.
- 7.11 This will be considered under the proposed delegation, but will be subject to a recommendation to a subsequent meeting of Cabinet to finalise the appointment of that development partner, and the terms of that appointment.
- 7.12 It should be noted that whilst the Council will seek best consideration for the site, in terms of its value, this will be weighed against other regeneration benefits that the redevelopment scheme could deliver, along with the potential uplift in business rates.

- 7.13 Additional costs associated with the proposed procurement process will be charged to the Crewe Town Centre Regeneration budget, subject to the approval of the Portfolio Holder, in consultation with the Director for Economic Growth & Prosperity, the Crewe Town Centre Programme Board, the new Stakeholder Panel and in line with the Council's corporate assurance and control processes.
- 7.14 The Council will continue to seek to secure external grant funding to contribute towards the costs of the proposed redevelopment of this site and/or sites in close proximity.

## **8. Risk Management**

- 8.1 The identification, evaluation and mitigation of risks will be a core aspect in the process of procuring a development partner, particularly within the context of evaluating developer proposals.
- 8.2 The management of this project will be undertaken in accordance with the Council's corporate assurance and control processes.

## **9. Access to Information / Bibliography**

None

## **10. Contact Information**

10.1 Contact details for this report are as follows:

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