

Item No. 8.	Classification: Open	Date: 15 May 2012	Meeting Name: Cabinet
Report title:		Gateway 1 - Procurement Strategy Approval Aylesbury Regeneration: development partnership	
Ward(s) or groups affected:		Faraday Ward	
Cabinet Member:		Councillor Peter John, Leader of the Council	

FOREWORD – COUNCILLOR PETER JOHN, LEADER OF THE COUNCIL

The Aylesbury Estate is unique. There is no other neighbourhood of a comparable size, located so close to the heart of the city, in need of regeneration and with such a committed, active community.

Southwark Council is committed to the regeneration of the Aylesbury and to the vision expressed through our Aylesbury Area Action Plan. This commitment transcends political divisions.

There have been a number of notable successes to date, including investment in Burgess Park, local schools through Building Schools for the Future, and some new housing.

However, over the last couple of years, the project has been through a challenging period. In November 2010 the Government withdrew PFI funding, grant funding for social housing has since also reduced significantly, and the general economic situation has been gloomy.

In spite of this the council has been determined to ensure that these challenges are overcome. Together with our residents, we have taken the time to look at our delivery model for the regeneration, learning lessons from other similar projects across London and beyond. We have concluded that to deliver this long-term programme, we need to forge a new long-term delivery partnership with a partner who brings the experience, skills and financial capacity to work with us to unlock and drive forward the regeneration of the area.

This report sets out our procurement strategy to secure such a partner. This is a major undertaking for the council, and we will be seeking to find the very best partner to work with us in the long-term. We know that we are looking for a consortium and supply chain, that brings drive and vision, and will share our commitment to delivering this important regeneration programme.

I would like to encourage all potential bidders to look at this opportunity, while there are other business opportunities coming to market, the regeneration possibilities that the Aylesbury has, are not mirrored elsewhere. Nor will you find elsewhere such a committed local community and an experienced council determined to succeed. Put simply, against the current economic backdrop, there are few other opportunities on this scale with so much potential and in which bidders can have so much confidence.

RECOMMENDATIONS

That the cabinet:

1. Approve the procurement strategy to use a 3-stage EU negotiated procedure as outlined in Section 3 of this report for the Aylesbury regeneration partnership, seeking a partner with the key attributes outlined in Section 1 of this report and in accordance with the commercial and financial principles outlined in Section 2 of this report.
2. Note that a further report will be submitted to cabinet to seek approval to appoint a preferred bidder for the Aylesbury regeneration partnership.
3. Agree that any release from earmarked reserves to meet costs of procurement should be approved by the Finance Director in consultation with the cabinet member for Finance, Resources and Community Safety, as set out in paragraph 79.
4. Delegate authority to the director of regeneration to agree the final evaluation criteria, as set out in paragraph 57.

BACKGROUND INFORMATION

5. On 14 December 2010 the cabinet received a report on the consequences of the government's decision to cutting the proposed £181m funding for the Aylesbury PFI housing project (one of 13 housing PFI pipeline projects nationally). At this stage, the cabinet reaffirmed its commitment to regenerating the Aylesbury Estate and requested officers to complete and submit the outline business case (OBC) for the PFI project and to review possible alternative funding sources, reporting back to cabinet in February 2011.
6. On 28 February 2011 the cabinet received a report making recommendations on a way forward to maintain the council's momentum in progressing the regeneration of the Aylesbury estate, in line with the Aylesbury Area Action Plan (AAAP). As part of this way-forward, it was agreed by cabinet that further consideration be given to the possibility of establishing a longer-term development partnership.
7. At that stage, it was felt that such an approach could (a) bring greater momentum to the regeneration, as a longer-term partner would have a stake in the future of the wider area; (b) bring a wider level of expertise to help with development roll-out; (c) help ensure a more coherent housing and estate management approach; and (d) allow the council to initiate compulsory purchase orders by providing greater delivery certainty.
8. As a result, the cabinet requested that officers consider an appropriate route for seeking a development partner for the Aylesbury, with an initial focus on phase 1b and 1c (Bradenham, Chartridge, Arklow House and Chiltern), taking into account lessons learned on Aylesbury Phase 1a and other similar projects within Southwark.
9. Since that time, officers have undertaken a lessons learned exercise looking at other comparable regeneration projects and the council's portfolio of similar projects. This work informed an options appraisal evaluating the relative

advantages and risks of the development partner approach, in comparison with the alternative site-by-site approach. In considering the development partner approach, two potential commercial structures were examined (a) partnership by contract; and (b) partnership via a corporate structure (i.e. where the council would form a corporate entity with a private sector partner). The options appraisal is summarised in Appendix 1. This options appraisal was also informed by soft market testing of the options with key developers and housing associations working in Southwark.

10. It is now recommended that cabinet approve the procurement of the Aylesbury development partner by contract, seeking a partner to support the council's vision for the regeneration of the Aylesbury. This vision is to regenerate the Area (see paragraph 19) so it becomes a vibrant part of the Walworth neighbourhood with:
 - Homes that have a range of tenure and ownership options that are attractive and affordable for local residents and new people moving to the Area ;
 - A mixed community including families, elderly and vulnerable people;
 - Excellent schools, improved transport, community facilities and new businesses;
 - A high quality public realm, including well designed streets, squares and parks; and an environment that is safe and sustainable.
11. Such development partnerships are a tried and tested approach to tackling large estate redevelopment projects with similar regeneration visions and are well understood by the property development market. In summary, these agreements comprise a long-term contractual partnership (typically 15 to 30 years), whereby an over-arching contractual agreement (a development agreement) provides for the partner to draw down parcels of land for development from within a larger development area, subject to clearly agreed conditions and in accordance with a pre-determined form of land-transfer. In addition to the actual development obligations within individual sites, the partner typically has responsibilities for the development of master-planning and other strategic implementation activities that will enable the development of the wider area, and securing planning consents. The partner also undertakes long-term housing and area management responsibilities.

Market considerations

12. It is anticipated that the interested parties in bidding for this opportunity will include developers, house-builder developers, contractor developers and housing associations (registered providers "RPs"). In addition, the expectation is that interested parties will also bring (a) a number of more niche developers, perhaps including leisure and other specialist development skills, in order to deliver non-residential elements of the development; (b) a range of architects to ensure that a vibrant design solution can be delivered; and (c) a range of other professional skills to ensure that the technical, financial and marketing challenges of the development can be met.
13. Although the overall size of the opportunity is large, the development programme is lengthy due to the constraints of achieving vacant possession and the limitations of the market to absorb very high numbers of private for sale homes in the area (it is anticipated based on market feedback that a maximum of 100 units

per annum is realistic). As such, it is therefore an opportunity that is within the capacity of an individual large developer, or a consortium of smaller developers.

14. A soft market testing exercise has been undertaken to understand the perspective of a cross section of the development market towards the prospect of an Aylesbury development partnership. This exercise has concluded that there is market appetite for this opportunity, and that there is greater market appetite for this type of opportunity than the alternative site-by-site approach. The soft market testing exercise did identify a number of issues, principally around the costs of the procurement and pre-development obligations. The strategy outlined in this report has been structured to respond to this feedback.

KEY ISSUES FOR CONSIDERATION

15. The key issues for consideration have been structured into three sections:

- Section 1: Key attributes of the partner
- Section 2: Commercial and financial principles
- Section 3: Procurement strategy

Section 1: Key Attributes of the Partner

16. In order to ensure that the selected partner has the capacity to drive forward the successful delivery of the council's regeneration vision for the Aylesbury estate, it is recommended that the council seeks a partner with strengths in the following areas:

- **Development implementation** – ability and capacity to manage the delivery of a major area redevelopment, ensuring viability and technical feasibility, managing the area through the redevelopment transition, facilitating re-housing, and bringing forward tangible local benefit wherever possible. .
- **Design** – skills to deliver a vibrant range of high quality tenure-blind urban design solutions, in addition to individual homes and other spaces with quality detail design, which meet or exceed the environmental requirements to secure planning consents.
- **Area management** – ability to manage new housing, other facilities and the public realm effectively across the Area, ensuring a coherent service for residents.
- **Economic benefits** – ability to realise tangible economic opportunities, through the construction process and beyond, to provide stimulus to the local economy.
- **Strategic marketing** – ability to improve the profile and reputation of the Walworth area, attracting new residents and people interested in the economic opportunities that the newly developed area presents.
- **Partnership working** – commitment to working in close partnership with the council and residents, involving residents at each stage, from design through construction, to housing management; and working in partnership to respond to changing circumstances and challenges over the lifetime of the partnership.
- **Commercial and financial robustness** – willingness and ability to accept a proportional level of commercial risk associated with the redevelopment, and the financial capacity to invest upfront for returns released as a result of successful area redevelopment, delivering housing products that are

affordable for Aylesbury residents.

Section 2: Commercial and Financial Principles for the Proposed Aylesbury Development Partnership

17. The proposed Aylesbury development partnership would be based on the model set out in paragraph 11. The council would enter into a long-term agreement (c. 20 years), which would require the partner to work with the council to tackle a range of strategic implementation issues and give the partner the opportunity to draw-down parcels of land for development across the Aylesbury estate, subject to pre-agreed conditions and satisfactory performance. This agreement will govern the relationship between the parties and establish the terms of land-transfer. Once the partner has drawn-down a parcel of land, they will also become responsible for long-term area and housing management within that parcel. There is no standard form for such agreements, and the agreement will need to be developed in response to the particular circumstances of the Aylesbury development. Following consideration of these circumstances, it is recommended that the Aylesbury development agreement be structured in accordance with the commercial and financial principles outlined in this Section. These principles have been prepared by regeneration, corporate finance and legal officers, together with advice from the council's external financial advisors (Grant Thornton) and legal advisors (Nabarro). These commercial principles have been finalised taking into account feedback from the market through the soft market testing exercise.

Scope, phasing and structure

18. **Contract term:** The contract term would be structured so as to ensure that there is sufficient time to deliver the redevelopment of the entire estate, it is anticipated that this will be c. 20 years with extension provisions for up to 10 years.
19. **The Area:** Appendix 2 provides a plan of the area to be covered by the partnership, which includes the entire estate with the exception of sites 7 and 1a, as defined in the Aylesbury Area Action Plan (AAP), as these sites are already under development.
20. **Phased development:** The development will be undertaken in a phased manner:
 - Phase 1 will include sites 1b and 1c.
 - Subsequent phasing of development sites will be on the basis of a Master Programme to be developed as part of the procurement process and agreed with the partner taking into account re-housing, infrastructure constraints, and the remaining life / investment requirements of the existing blocks.
 - The intention is for each phase (or site) to proceed when agreed and only when financially viable having also taken into account the partner's performance and delivery against milestones on previous phases (see paragraph 35). Phases (or sites) will be subject to separate conditions precedent (such as funding, planning, consents, and vacant possession).
21. **Property approach:** The approach to the transfer of property would be that as each site comes forward for redevelopment, once all the conditions precedent have been met and the site is vacant with a planning consent in place for a viable

scheme, at that point the council would grant a long lease of that site.

22. The length of term of this long-term lease will be subject to discussion during the procurement process, however, it is envisaged that it will be for a minimum of 250 years. It will contain short term construction obligations for the partner to develop the site in accordance with the approved consent and long term post construction obligations in terms of the ongoing use and management of the site (for example the use of the site to provide an agreed number of social rent homes and to keep the buildings and grounds in good condition).
23. A lease on these terms would enable developers to provide security to prospective funders, and draw on external finance which is essential for the delivery of this regeneration programme.
24. The long lease would offer the council suitable protections and enforcement rights (including recovery of possession in the construction phase where there is a failure by the developer to start or complete works). In relation to affordable housing, the agreed housing association (registered provider "RP") would take an underlease from the developer.
25. The council will ensure that its "best consideration" obligations on the disposal of land are covered through the procurement competition and the assessment of bidders' financial proposals on land value, including an agreed overage mechanism which would enable the council to benefit from future profits on sales.
26. **Requirements for developments:** The agreement will stipulate core requirements that must be met by the partner, these are the key development principles established in the AAAP. However, their inclusion in the development agreement will give them further weight, and strengthen the council's ability to ensure that the core aspirations established in the AAAP are delivered:
 - Tenure mix:
 - Phase 1: minimum 50% units to be affordable units; of which, 75% to be social rent units (at target rents); and 25% to be intermediate products; minimum 30% of all units (whether private or affordable) to have three bedrooms or more.
 - Subsequent phases: minimum 41% units in each phase to be affordable units, but such that at any time, cumulatively across whole development there is a commitment to build out a minimum of 50% of affordable units; of which, 75% to be social rent units (at target rents); and 25% to be intermediate products; minimum 30% of all units (whether private or affordable) to have three bedrooms or more.
 - Unit sizes: all affordable units must meet Parker Morris +10% as a minimum and include outside space.
 - Tenure blind: the development will need to adhere to tenure-blind principles i.e. it should not be possible to distinguish visually between properties with different tenures externally.

It should be noted that these requirements will make the Aylesbury redevelopment exceptional in the overall context of the development of affordable housing in London with the adherence to target rents and the high percentage of these social rented units in the overall development mix. However, they are a logistical necessity to ensure that the council is able to re-house the

existing Aylesbury residents, and ensure that the council can deliver its vacant possession obligations.

27. In addition, two other core requirements will be established:

- Nominations rights for affordable housing: to be in line with the overarching Southwark Housing Association group (“SOUHAG”) agreement prevalent at the time of lettings, unless agreed otherwise between the parties. This will secure 100% nominations rights on all social rent units, the council will also seek to ensure that there is a first refusal nomination right for relets while there is still a need to rehouse existing Aylesbury tenants. It should be noted that the council has agreed with the South-East London Housing Partnership (“SELHP”) that the Aylesbury is excluded from the sub regional nominations process on the grounds of regeneration (this is consistent with other estate regeneration schemes in the partnership area, and is in recognition of the need to ensure rehousing of existing residents).
- Tailored intermediate product: the council will seek to ensure that any intermediate products are offered initially to Aylesbury leaseholders, and that the range of products are structured to be affordable and attractive for them. The council will also seek to ensure that such products are available for as long as there is a need to support Aylesbury leaseholders to find new homes.

Partner obligations

28. **Pre-development obligations (prior to phase 1):** The partner will be required to meet certain pre-development obligations before they can commence development of any site within phase 1. The key pre-development obligation will be to secure a planning consent for the whole of phase 1. It is envisaged that this will be a hybrid application, with detailed consent for the initial development site and the tall building envisaged on this site, and outline consent for the remainder of the site. In addition, the partner will be required to finalise key regeneration strategies, including marketing/communications strategy, economic strategy and area transition strategy (including approach to interim usages, security of sites pending demolition/development), based on detailed proposals submitted as part of their bid during procurement. It is not envisaged that the partner will be responsible for the management and maintenance of the existing estate, however, depending on the area transition strategy agreed, the council may wish to agree that the partner takes some responsibilities linked to the existing estate at some point during the lifetime of the partnership.

29. **Obligations linked to phase 1:** The partner will be required to meet certain milestones relating to the development of the remainder of the estate, in parallel with the implementation of phase 1, for example, the partner may need to meet these obligations before being able to drawdown certain development sites within phase 1. The obligations will include (a) preparing an Implementation Master Plan (which will set out how the development will be implemented, including phasing / site batching, infrastructure/ utilities delivery, sustainability/energy and transport (public transport and parking) and Master Programme; and (b) submitting an application and then securing outline planning consent on at least 50% of the remaining estate. During the procurement process, the selected partner will have had to prepare an Implementation Strategy, which will include sufficient information to satisfy the council that the selected partner has the right approach to develop out the detail at this stage. Their Implementation Master Plan and Master Programme will be required to be developed in accordance with

their submitted Implementation Strategy.

30. **On-going partnership obligations:** Following the completion of phase 1 and the linked obligations set out above, it is envisaged that the partner will continue to meet the following obligations:
- Annual review and update to the Implementation Master-Plan and Programme
 - Preparation and delivery of annual updates to the regeneration strategies outlined above; and
 - Obtaining planning consents for subsequent phases
31. **Ongoing development:** Subject to the partner fulfilling its obligations it will have the right to draw-down further development sites. The partner's right to bring forward each site/phase, will be linked to long-stop dates in the Master Programme, as well as to partner performance (see below). If a site is deemed not to be viable, the parties may consider options to improve viability. Ultimately the council will have the right to market or undertake development outside the partnership in cases where the partner is unable to satisfy the agreed viability criteria or is otherwise unable or unwilling to fund or deliver the site/phase.

Council obligations

32. **Vacant possession:** The council will be obliged to deliver vacant possession of sites. However, this obligation will be structured in such a way that the council's obligations will be linked to the partner's obligation to deliver as a minimum (a) a pre-agreed level of units at target rent to re-house existing Aylesbury tenants; (b) a range of housing products that meet the needs of existing Aylesbury leaseholders. The approach of the partner to meet these reciprocal obligations, in addition to providing additional support for re-housing, for example, providing additional off-site supply suitable for tenants or leaseholders, will form part of the procurement process. The agreed approach to vacant possession would be captured in a decant protocol as part of the development agreement.
33. **Statutory consents:** The council will be responsible for any necessary statutory consents which only it can obtain, including those relating to land disposal. Examples may include stopping up and adoption of the roads. Responsibility for planning consents, however, will rest with the partner.

Performance management

34. **Value for Money (VfM):** Obtaining VfM will be a key requirement. Costs for all services delivered through the partnership (both those linked to general obligations and site delivery, including costs for obtaining vacant possession and development costs) will be subject to benchmarking or market testing, in accordance with pre-agreed principles.
35. **Key Performance Indicators (KPIs):** A KPI regime will be developed with the objective of encouraging and incentivising the performance of the partner. This will include target milestones and long-stop dates for all phases and sites in its contractual arrangements with the partner. Other KPIs will cover other aspects of the partner's performance, including for example resident involvement and cost control. The council would envisage that non-achievement of KPIs could lead to the partner not being able to recover elements of their costs incurred and

not being permitted to draw down further phases of land. Ultimately, it could also lead to termination.

Step-in rights and assignment

36. It is envisaged that the council's partner will comprise a developer and a housing association (registered provider "RP") and possibly additional developer or housing RP parties. The consortium may form a new legal entity (either a company or more likely a limited liability partnership) to act as the council's partner. The agreement will be structured so that there is flexibility within the consortium arrangements so that in the event one party defaults, the other party can step-in to enable the project to be successfully delivered. In the event that the partner proposes such a change to the consortium the council would want to reserve the right to approve, for example, a new RP partner where the existing RP has not been successful in their bid for HCA funding.

Parent company support

37. Parent company guarantees which guarantee the entity's performance will be required for any special purpose vehicle or any joint venture company set up for the purposes of delivering the project or where a partner is part of a corporate group. Alternative forms of security may also be sought, such as performance bonds, as appropriate to the structure of the successful partner.

Financial principles / implications of contract

38. There will be no contract price for this agreement. Instead, the agreement will establish the means by which the council satisfies its obligation to obtain best consideration for the disposal of land (even if such value is zero), and how development costs and returns are to be calculated. The agreement will incorporate both commercial terms and a base financial model, under which these and other key financial elements of the agreement will be regulated.
39. The partner is constrained by what they can develop as set out in paragraphs 26-27 and will be required to expend significant financial resources in meeting their obligations, prior to receiving any returns through the sale of property. For example, the partner will need to carry the costs of funding planning consents, design development, construction costs and marketing units. This will be in addition to the costs of bidding for the opportunity, which will be significant. The partner will receive all sales proceeds up to a level which generates a pre agreed profit. Any additional profit will be shared between the council and the partner on a basis to be agreed; this profit sharing mechanism is termed overage.
40. The council's financial advisors (Grant Thornton) have assessed the financial viability of the overall development, and concluded that if the sale value of the private housing increases by an average of 3% per annum in excess of the cost of developing them, the scheme moves into surplus over its lifetime with no net public sector investment required. Based on historical trends since the second world war, there is a reasonable expectation that such increases will occur and may be exceeded, as the general market improves, the redevelopment progresses and the Elephant & Castle regeneration is completed.
41. However, the council's financial advisors (Grant Thornton) have concluded that there will be the need for public sector investment over the first ten years, which would then be expected to be recouped over the remainder of the development

programme. The financial analysis indicates that public sector investment of c. £25k per affordable unit and upfront investment in site assembly, demolition and infrastructure totalling c. £10 m / annum over 10 years will be needed. It should be noted that the material financial assumptions in the financial model developed by Grant Thornton have been tested through the land transfer of site 7 (1-50 Wolverton) and have been demonstrated to be prudent.

42. The council is in dialogue with the HCA/GLA regarding the investment needs of the programme. The HCA/GLA regard the project as a priority and are working with the council to find a viable solution. The council has already made provision in its current 5 year housing investment programme of c. £5m / annum (i.e. a commitment of £25m over 5 years). This means that in the event that the negotiations with the HCA/GLA are unsuccessful, the council has sufficient funds to provide the necessary additional investment required to make phase 1 viable, assuming that social housing grant would be available to meet the £25k per unit, but that no further work could be carried out on site assembly for any other phase, which would lead to a significant delay in the delivery of those future phases.
43. The extent to which that the bidders can develop a funding strategy which reduces the need for public sector investment, while still meeting the council's requirements will form a key part of the procurement. Given current market conditions early phases are likely to have a low or nil residual land value. In the event that viability testing determines positive a residual land-value for individual phases, it is proposed that this will be used to contribute to the upfront costs of future phases, as long as this is necessary.
44. If any additional profit is generated by the scheme (i.e. overage on sales values), it is proposed that the council will commit to using its own sales overage to contribute to the upfront costs of future phases, with a mechanism to be agreed on overage release if and when the overall project moves into surplus. The council would try to secure that the successful partner agreed to a mechanism for a proportion of its overage to also be used to facilitate further development.
45. The council expects that the partner will spread the cost of meetings its obligations and its bidding costs against future development. It is expected that cost recovery will be calculated on a phased schedule to be pre-agreed with the council and not be fully recoverable against phase 1. The council will be seeking that such costs are recovered through the partner's profit and not as a direct cost, to eliminate the need for complex validation process for these costs.

Section 3: Procurement Strategy

Options for procurement route including procurement approach

46. As set out in Appendix 1, the proposed development partnership approach is being recommended as preferable to the alternative site-by-site approach.

Proposed procurement route

47. External legal advice has been taken from Nabarro with regard to the most appropriate procurement route for this contract. On this basis, it is proposed that this opportunity be procured using the EU negotiated procedure. Under the Public Contracts Regulations 2006, the use of this route is permitted where it can be demonstrated that the nature of the works or the risks attaching to them, do

not permit prior overall pricing and that this is exceptional.

48. The proposed Aylesbury development partnership does not permit prior overall pricing for various inter-related factors, including:
- The uncertain scale of the contract: The overall extent of the contract to be awarded will require negotiation with bidders, since whilst the council is able to identify a need for redevelopment of the area of the estate to be covered in this contract, it will be advantageous to consider proposals for phasing, mechanisms for agreeing potential up-scaling or down-scaling of the development, as well as the extent to which e.g. community and other facilities are in scope;
 - The nature of the contract: It will not be fully clear what form of contract would best meet the council's requirements since this will depend on market responses to the council's regeneration and financial objectives. This includes the length of the contract;
 - Market conditions: The fragile nature of the developer and funder market, makes it impossible to judge likely overall pricing. The council needs to be able to seek proposals on the basis of the scheme being financially viable in overall terms but the means by which that is achieved cannot be established with any precision at the outset;
 - Choice of partner: The council's choice of partner may be a developer, a registered provider, or combination of these. Since the council will not wish to close down the opportunity for this to be established through negotiation, and since the ultimate decision will be a factor in determining price, no overall pricing model is capable of being established in advance; and
 - Risks in the contract: The approach to pricing will depend on significant factors such as planning consents, viability, and general economic factors. Equally, the council will need to determine, through negotiation, the balance to be struck between developer return, land value, and overage. All of these factors will go to matters of pricing which cannot be established in advance.
49. The proposed Aylesbury development partnership is an exceptional case insofar as there are no readily identifiable comparison projects, from which overall contract pricing may be established. Whilst other large scale housing regeneration schemes have been pursued in London, the Aylesbury Estate has exceptional characteristics, both as to its size and having regard to the complexity of site assembly. This exceptional complexity stems from the extremely unusual (if not unique) configuration of the estate as a series of large longitudinal blocks which results in there being no vacant land for a first phase development and produces a requirement to fund higher site assembly costs clearing larger plots at any one time than seen elsewhere. Site assembly is therefore likely to be uniquely out of step with market re-provision generating a particular need for development stability and partnership working.

Identified risks for the procurement

50. Appendix 3 sets out the key risks and proposed mitigation with regard to both procurement and service delivery. As set out above in Section 2, it is likely that a parent company guarantee will be required for this contract.

Policy implications

51. The regeneration of the Aylesbury estate is a key priority, identified in the Leader's ten fairer future promises and the corporate plan. The council adopted the Aylesbury Area Action Plan in 2010, which is the key document that sets out the detailed vision for the area and provides the planning policy framework.

Procurement Project Plan (Key Decisions)

Activity*	Complete by:
DCRB review	April 2012
CCRB review	April 2012
Approval of Gateway 1: Procurement strategy report (this report)	May 2012
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	May 2012
Issue Prior Information Notice in OJEU	July 2012
Hold a bidder information day	Sep 2012
Final evaluation criteria agreed by Director of Regeneration	Sep 2012
OJEU notice	Sep 2012
Stage 1: Combined Pre qualification questionnaire (PQQ) and outline proposal submission	Nov2012
Stage 1 evaluation and preparation for Stage 2	Jan 2013
Stage 2: Detailed proposals submission (max 3 bidders)	May 2013
Stage 2 evaluation and preparation for Stage 3 (inc. forward plan for Cabinet decision).	Jul 2013
Stage 3: Best and Final offer submission (max 2 bidders)	Sep 2013
CCRB review	Oct 2013
Stage 3 evaluation and Cabinet decision to appoint preferred partner and to award contract within agreed commercial and financial parameters.	Oct 2013
Contract negotiation	Feb 2014**
Approval of Gateway 2: Contract Award report	Mar 2014
Alcatel Standstill Period (if applicable)	Mar 2014
Scrutiny Call-in period and notification of implementation of Gateway 2 decision	Mar 2014
Contract award and start	Apr 2014

Activity*	Complete by:
Contract completion date	Apr 2034
Contract completion date – (if extension(s) exercised)	Apr 2044

* This plan has been developed to be robust, efficient and deliverable. The time period allowed for each stage will be reviewed on an on-going basis by the council, and where appropriate with shortlisted bidders. Any opportunities for shortening the time period allowed, whilst still ensuring a robust, efficient and deliverable programme will be taken.

** It should be noted that the risk of an extended contract negotiation period is identified as a major risk, see Appendix 3.

TUPE/Pensions implications

52. At this stage, due to the nature of the project, no TUPE/Pensions implications have been identified, legal advice will be taken as necessary should any implications be identified subsequently.

Development of the tender documentation

53. Tender documentation will be developed by the Aylesbury regeneration team with input from housing, legal, corporate finance, procurement and economic development. Advice regarding the strategy for provision of early years, medical facilities and community facilities will be taken from children's services, the PCT, the Creation Trust and other groups as appropriate. Due to the size and complexity of this procurement, extensive input will also be required from external financial/commercial, legal and technical advisors. The procurement timeline above has been structured to allow sufficient time for the preparation of documentation and the gathering of background documentation. The key document will be the invitation to submit detailed proposals, which will be issued in January 2013, giving 7-8 months preparation time.

Advertising the contract

54. The contract will be formally advertised in the Official Journal of the European Union. However, in addition adverts will also be placed in the Estates Gazette and key regeneration publications in order to give the market as much notice as possible of this opportunity. A bidders day will be held in September 2012. This event will give additional information to interested parties on the council's requirements, priorities and intended process.

55. The nature of this opportunity is such that local small businesses and social enterprises will not have the necessary skills, experience and capacity to tender. However, it is expected that there will be significant local opportunities generated in the supply chain after appointment of the partner. To this end, the partner's proposed approach for ensuring that opportunities to tender for this business are maximised amongst small businesses, ethnic minority businesses and social enterprises based in Southwark, will be assessed during the procurement.

Evaluation

56. The pre-qualification questionnaire will focus on financial and technical capacity and will include an assessment of:

- The financial strength of each of the entities in the bid including where relevant the strength of the parent company. This will be undertaken using standard ratio analysis plus thresholds in terms of turnover and scale relative to the proposed development. There will be a pass/fail evaluation in relation to the latter to ensure that the developer is of an appropriate size.
- Technical capacity and track record and in particular experience of the delivery major mixed tenure high density housing schemes.
- Capacity to manage affordable housing of the scale and type envisaged. It will be a pass/fail criteria that the bidder must include one or more housing associations with appropriate management capacity.

57. A draft set of evaluation criteria are provided in Table 2. It is recommended that the Leader authorises delegates authority to the director of regeneration to agree the final evaluation criteria. The final evaluation criteria is likely to be adjusted for the outline and full submissions. Some elements are also likely to attract pass/fail assessments, and others are likely to have a minimum threshold. The final criteria will be published with the OJEU notice.

58. The council's standard weightings for evaluation are 70:30 price-quality. However, as described in paragraph 38, the nature of this contract is that there will be no overall price. It is currently envisaged that 60% of the weighting will be given to quality in this instance, as the quality of this contract will influence the physical, social and economic regeneration of this area. There are two key aspects of quality: design/technical quality and partnering quality (i.e. the ability of the partner to work with the council and the community to manage the redevelopment effectively and contribute to the socio-economic regeneration of the area). It is currently envisaged that 40% of the weighting be given to a combination of financial and commercial considerations. This will include the consideration that the bidder is offering for phase 1, their funding strategy for subsequent phase and their commercial offer.

59. The tender evaluations will be undertaken by officers with advisors. It is intended that meetings will be held with representatives of the Creation Trust (the resident led charity which leads on socio-economic regeneration activities on the estate and includes representatives of the four Aylesbury Tenants and Resident Associations) during the preparation of tenders to provide bidders with the opportunity to seek feedback on their proposals and to further understand community issues/perspectives. In addition, it is expected that open public community consultation will be held with regard to design proposals. However, these sessions will not be evaluated, and the evaluation will be solely on the basis of written submission. It may also be the case that resident representatives from the Creation Trust are involved in the detailed meetings with the bidders together with officers and advisors, but this will be subject of further dialogue with the Creation Trust prior to the commencement of procurement.

Table 2: draft evaluation criteria (outline and detailed proposals)

Criteria	Weighting	Indicative sub-criteria
Design & technical	30%	<ul style="list-style-type: none"> • Phase 1: detailed design • Phase 2-4: implementation strategy (inc. energy and other sustainability issues)
Partnering	30%	<ul style="list-style-type: none"> • Regeneration strategy (considering the fit within the wider context and links to other regeneration projects, particularly Elephant & Castle).

Criteria	Weighting	Indicative sub-criteria
		<ul style="list-style-type: none"> • Area/ housing management • Transition strategy • Economic benefits • Resident involvement and stakeholder consultation • Strategic marketing • Leaseholder offer • Partnership management
Finance & commercial	40%	<ul style="list-style-type: none"> • Phase 1: consideration • Phase 2 – 4: funding strategy and consequential public sector investment required. • Legal • Commercial robustness

Consortium additions during process

60. The procurement process will be structured to enable bidders to adjust the make-up of their consortium during the procurement process. This will recognise, for example, the possibility of a housing association (registered provider “RP”) attached to a consortium eliminated at an early stage in the process joining one of the remaining consortia. However, this will be subject to compliance with procurement law and will be subject to (i) re-submission of the consortium's pre-qualification questionnaire, and (ii) the council's discretion, having regard to the duty not to discriminate or act in an anti-competitive way in the procurement. Overall, the approach will balance the council's aim to secure the best possible partner against its duty to conduct a fair and transparent procurement. In cases where a bidding consortium seeks to introduce a new supply chain member, including for example an architect, a similar approach will apply (although compliance with procurement law will be less of an issue).

Community impact statement

61. An Equalities Impact Assessment was carried out as part of the AAAP, the nature of this contract does not alter the outcomes of that assessment, which is still valid. The overwhelming impact on local people will be positive from this contract. The realisation of the regeneration vision for the area will bring quality new affordable homes and an improved environment. However, in order to realise this ambition it will require the existing residents (tenants and leaseholders) of Aylesbury to be rehoused. This is a difficult and often stressful process for residents, many of who have lived on the estate for many years.

62. The housing department through the Aylesbury area housing office leads on the rehousing of the Aylesbury residents. The council is currently actively re-housing site 1b/1c. To date, 260 secure tenants have been re-housed and 34 leaseholders have voluntarily agreed to the council repurchasing their properties. The next phase for re-housing would be agreed with the Partner, as part of the procurement process.

63. Tenants are currently re-housed through re-lets of the council's 38,000 properties currently under secure tenancies, in addition to properties at target rent from housing associations. The availability of housing association properties at target

rents will diminish in the future due to the introduction of the new affordable rent regime. The impact of this has been modelled and it is anticipated that it will be possible to rehouse the tenants living in phases 1 off-site, but that for subsequent phases the partner will need to commit to providing a pre-agreed supply of units per annum at target rent in order that the Aylesbury becomes partly-self-supplying. Tenants are provided with homeloss payments and are given support to move home.

64. The council seeks to negotiate voluntary agreements for lease surrender or repurchase with leaseholders. The council recognises that many of the council leaseholders are not able to easily afford alternative residential accommodation in the local area. To this end, the council offers an enhanced rehousing package for affected homeowners. Subject to certain qualification criteria, they may be rehoused as a council tenant, a housing association tenant, or offered a suitable alternative property from the council on full or shared ownership terms. The council also provides a payment to compensate for disturbance, covers reasonable fees and provides help with moving.
65. The council recognises that even with this enhanced rehousing offer, many leaseholders are still highly reticent about agreeing to voluntary repurchase, to move to a shared-ownership property. To this end, the council has more recently sought to facilitate shared-equity type products that do not have a rental component, with levels of equity investment that are affordable. The council is of the view that it will be critical to securing as many voluntary repurchases as possible, that the partner tailors its intermediate product to the needs of the existing leaseholders. The ability of the partner to do this will form part of the evaluation.
66. On 9 February 2010, the council's then executive resolved to use its CPO powers under section 13 of the Local Government (Miscellaneous Provisions) Act 1976 to acquire land and new rights within the identified phase 1 of the Aylesbury regeneration project. The council will use its CPO powers for phase 1 of the development partnership, where it is deemed that it will not be possible to negotiate voluntary agreements for lease surrender or repurchase with all of the leaseholders in Phase 1b/1c (Bradenham, Chartridge, Arklow House and Chiltern).
67. As set out above, a key part of the procurement will be to assess the partner's ability to provide economic benefits to the area, this will include use of local supply chains and labour, in addition to training (such as apprenticeships).
68. The council will also seek the partner's commitment to London Living Wage.

Economic considerations

69. Local economic benefits will form a key part of the procurement. It would be expected that the successful bidder would as a minimum:
 - Advertise supply-chain opportunities in local press, and a range of publications to reach small businesses, ethnic minority owned business and social enterprises
 - Require their contractors/suppliers to engage with borough-wide employment programmes such as Southwark Works and Building London Creating Futures to support unemployed residents' access to training, skills and sustainable employment; and

- Require their contractors/suppliers to engage with apprenticeship schemes, and commit to providing a level of apprenticeship opportunities per annum.

Social considerations

70. As set out above, only large developers will be able to respond to this procurement process, however, through the evaluation of economic benefits it is expected that the successful partner will ensure that their supply chain opportunities are accessible to a variety of suppliers including SME's, BME's, women and disabled owned businesses and the voluntary and community sector.

Environmental considerations

71. The delivery of environmental standards required to secure planning consents will be tested through the design and technical part of the evaluation. It is expected that this will include elements such as: energy, water, transport, use of natural resources and waste. It is anticipated that the partner will have much greater opportunity to deliver environmental benefits through this long-term contract, than could be expected from partners secured through the alternative site-by-site implementation approach.

Plans for the monitoring and management of the contract

72. It is intended that a partnership steering group would be established, including senior representatives of the council, the partner and the Creation Trust. This steering group would act as the key forum for managing the contract and agreeing how to manage emerging challenges. On a day-to-day basis the Aylesbury regeneration team would act as the main contract management interface with the partner. The team includes a post of development partnership broker who would be the principal contract manager.
73. The contract will include a detailed performance management regime (see Section 1 for more details), which will place the onus on the partner to report on cost-benchmarking and key performance indicators (including resident satisfaction and delivery against milestones).
74. Where the council is making payments for the delivery of capital works (infrastructure and demolition primarily), these will be made according to a pre-agreed schedule of payments linked to milestones, and will be benchmarked to ensure value for money.

Staffing/procurement implications

75. The Aylesbury regeneration team has recently been reorganised and has 7 FTE posts. It is envisaged that during this procurement, approximately 80% of this resource will need to be focused on this procurement to ensure delivery.
76. Additional significant input will be required from housing, corporate finance, legal, procurement and economic development. These will be managed within existing resources. An allocation for the costs of internal legal has been included in the procurement budget.
77. A procurement project group will be established to oversee the procurement, this will be chaired by the Aylesbury project director, and include officers from

regeneration, procurement, housing, corporate finance, legal and economic development. External legal and finance advisors will be included in this group.

78. During the detailed proposal and BAFO stages of procurement a core negotiation group will be established with each of the shortlisted bidders to ensure that there is coordination across the various elements of the procurement and to tackle strategic multi-disciplinary issues. Each group will include senior representatives from the bidder, the Aylesbury project director, senior officers from the Aylesbury regeneration team, external advisors and other officers as appropriate to the agenda.

Financial implications of procurement

79. The costs of this procurement will be met from within existing budgets, through a combination of HRA and general fund sources. The total additional procurement costs are estimated to be up to £2.3m, spread over three financial years from 2012/13 through to 2014/15. These costs will be met through a combination of existing budgets and earmarked reserves, from HRA and general fund sources. It is recommended that any release from earmarked reserves to meet these additional costs of procurement should be approved by the finance director in consultation with the cabinet member for finance, resources and community safety.
80. Officers will manage the budget tightly: external advisors will be asked to fix elements of their work from the outset, with other elements of work being fixed as the programme progresses. The budget will be reconciled and re-cast at each key programme milestone, and reported through council financial reporting mechanisms.

Legal implications

81. Please see concurrent from the strategic director of communities, law & governance

Consultation

82. Consultation has taken place with the Creation Trust, which includes representatives of the four Tenant and Resident Associations on the estate. As part of this consultation exercise residents were given the opportunity to visit two other estate regeneration projects where long-term partnership have been established (Woodberry Down, Hackney and Kidbrook, Greenwich). The Creation Trust formally agreed to support the procurement of a long-term development Partner for the estate at its board meeting on 1 March 2012. As part of the consultation process, key concerns raised by the residents were discussed and the approach to their management agreed. This has been incorporated into the procurement strategy outlined in this report.
83. In addition, consultation has taken place with representatives of the HCA/GLA regarding this approach.
84. As set out in paragraph 59, residents will be involved in the procurement process and their feedback will inform the evaluation at each stage. The council will also ensure that the selected partner continues to involve residents and stakeholders at every stage, from initial design through to area/housing management. The partner's approach to resident involvement and consultation will form a key part

of the evaluation process, and their performance in this area will be a core part of the performance management framework in the contract. To this end, bidders will be encouraged to be innovative in this area and to deploy a range of mechanisms, including on-line mechanisms.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Housing Services

85. The strategic director of housing supports the redevelopment of the Aylesbury estate and considers the establishment of a longer term development partnership as being appropriate in achieving this priority objective and providing momentum to this initiative.
86. The development of an overall 'place' vision with the partner, building on the existing Aylesbury Area Action Plan, will be vital in securing support from the local community and ensuring a long term legacy. Enhancing the reputation of the area as a 'go to place' is important too. Improved transport should be a key focus within this, within the context of planned improved transport at Elephant and Castle. The strategic director of housing also supports the idea of seeking a partner with some more niche or specialist development skills, particularly developments with associated employment opportunities.
87. The strategic director of housing supports the proposed property structure with a long lease of the site rather than disposal of the freehold. The strategic director of housing recognises that the term of this lease will need to be considered carefully, ensuring that the partner is able to raise the necessary finance and achieve the necessary private sales, but this should be considered carefully to ensure that the most favourable term is secured for the council..
88. Securing sufficient number of affordable units is vital to meet the need of the local population. The strategic director of housing endorses target rents as the new 'affordable rents' are not considered to be appropriate for this circumstance, given the need to re-house existing tenants.
89. The strategic director of housing supports the focus on ensuring that the local community and stakeholders are fully involved in the procurement and regeneration process. It will be important to ensure that feedback is used to inform the evaluation process during procurement. It is also critical that the selected partner continues to keep the local community and stakeholders fully consulted and involved as the redevelopment progresses, using a range of mechanisms, such as an on-line facility. The strategic director of housing strongly supports this as being a key part of the evaluation process.
90. The strategic director of housing takes note of the commercial structure proposed in this report and is supportive of the proposed structure as opposed to the other options considered. The governance and management structure will be important to ensure that the council is able to manage and influence the partnership effectively. Furthermore, the precise terms of the legal agreement which deal with poor performance will need particular focus.
91. The production of a viable business plan for the estate is necessary and the council should secure open book access to this to ensure that it is securing the best deal and terms for the authority and community. The opportunity for re-investment of additional surplus with potential increasing asset values should be

reflected in any contract/agreement.

92. This partnership provides an opportunity to implement an innovatory model of local management that is recognised for its excellence. This regeneration provides the council with a unique opportunity to implement an innovatory approach to the management of area services, including housing, in the Aylesbury area. The strategic director of housing regards it as essential that the partner brings the necessary skills, as part of their consortium, to establish excellent housing, area and public realm management. An innovative co-ordinated approach is preferred. To this end, the housing representative on the procurement steering group will be focused particularly on this aspect of the procurement.
93. The strategic director recognises the importance of ensuring that the council is able to deliver on its vacant possession obligations within the partnership, and ensuring that the estate management services are delivered effectively through the redevelopment process. A dedicated Aylesbury management team has been established focused on these objectives.

Strategic Director of Communities, Law & Governance

94. This report seeks the Cabinet's approval of the procurement strategy to procure a partner for the Aylesbury Regeneration Development. Whilst there will be no contract price for the agreement, the nature of this project and public investment needed will result in the project being treated as a Strategic Procurement. The decision on the procurement of this partner is therefore reserved to the Cabinet.
95. As noted in paragraph 1, it is intended that the EU negotiated route be used to procure this partner. Whilst the draw down leases noted in paragraph 17 could be considered as land transactions (and thereby exempt from the EU tendering requirements), the overarching agreement is likely to be subject to those tendering requirements. It is therefore proposed that the council advertise this opportunity by way of a public procurement process through the Official Journal of the European Union (OJEU) in accordance with the Public Contracts Regulations 2006 (the "Regulations").
96. In usual circumstances either the open or restricted procedures would be used for procurements subject to the Regulations. Both are formal tendering procedures, but do not permit the council to enter into significant negotiations with interested parties. The Regulations also permit the use of the competitive dialogue process in certain circumstances, which allows discussions with bidders before tenders are submitted, but for the reasons noted below it is considered that the open, restricted or competitive dialogue routes are not appropriate for this project.
97. The Regulations also provide for use of the negotiated procedure which can be used only in limited cases, and specifically (and in exceptional circumstances) where the nature of the works or services to be carried out, or the risks attaching to them, do not permit prior overall pricing. In deciding to use the negotiated route, the Council must therefore be satisfied that this justification exists.
98. External legal advice has been sought to determine the circumstances under which the council might use the negotiated procedure, and it is considered justifiable due to following factors:

- **The uncertain scale of the contract.** The overall extent of the contract to be awarded will require negotiation with bidders, since whilst the council is able to identify a need for redevelopment of the area of the estate to be covered in this contract, it will be advantageous to consider proposals for phasing, mechanisms for agreeing potential up-scaling or down-scaling of the development, as well as the extent to which e.g. community and other facilities are in scope;
 - **The nature of the contract.** It will not be fully clear what form of contract would best meet the council's requirements since this will depend on market responses to the council's regeneration and financial objectives. This includes the length of the contract
 - **Market conditions.** The fragile nature of the developer and funder market, makes it impossible to judge likely overall pricing. The council needs to be able to seek proposals on the basis of the scheme being financially viable in overall terms but the means by which that is achieved cannot be established with any precision at the outset;
 - **Choice of partner.** The council's choice of partner may be a developer, a registered provider, or combination of these. Since the council will not wish to close down the opportunity for this to be established through negotiation, and since the ultimate decision will be a factor in determining price, no overall pricing model is capable of being established in advance.
 - **Risks in the contract.** The approach to pricing will depend on significant factors such as planning consents, viability, and general economic factors. Equally, the council will need to determine, through negotiation, the balance to be struck between developer return, land value, and overage. All of these factors will go to matters of pricing which cannot be established in advance.
99. The project is exceptional, insofar as there are no readily identifiable comparison projects, from which overall contract pricing may be established. Whilst other large scale housing regeneration schemes have been pursued in London, the Aylesbury Estate has exceptional characteristics, both as to its size and having regard to the complexity of site assembly. This exceptional complexity stems from the extremely unusual (if not unique) configuration of the estate as a series of large longitudinal blocks which results in there being no vacant land for a first phase development and produces a requirement to fund higher site assembly costs clearing larger plots at any one time than seen elsewhere. Site assembly is therefore likely to be uniquely out of step with market re-provision generating a particular need for development stability and partnership working.
100. The negotiated procedure will allow shortlisted bidders to put forward outline and then detailed proposals to the council for consideration. Bidders' proposals will be evaluated by the council at each stage against pre-published evaluation criteria and the successful bidders will then proceed to a final "best and final offer" stage. One of the key advantages of this route is that it enables flexibility throughout the selection process.
101. Given the size and complexity of this procurement, the council will be procuring external legal advisors to assist the council's in-house legal team.

Finance Director

102. This report is recommending the approval of the procurement strategy seeking a development partner for the Aylesbury Regeneration programme, noting that a further report will be submitted seeking approval for the appointment of the

preferred developer. It is also recommending that any releases from earmarked reserves to fund the costs of the procurement should be approved by the Finance Director in consultation with the Cabinet Member for Finance, Resources and Community Safety.

103. The financial implications of the report are noted. The financial risks and implications of the development contract are major and the council has committed resources in its housing investment programme to contribute to the land assembly cost of the first development stage. Additional financial commitments will be needed from other public sector organisations (the GLA and HCA) to progress the scheme. This commitment will be sought during the procurement to reassure the market that the scheme will be viable within the anticipated timescale.
104. The cost of the procurement will be significant but not disproportionate to a scheme of this scale and risk. It is acknowledged that by properly resourcing the programme team a successful procurement is far more likely with council risk exposure being mitigated. The cost of officer and advisor time will be met from identified budgets and where required through planned releases from reserves. Fixed pre-agreed quotations for external advisor services will be used wherever possible.

Head of Procurement

105. This report is seeking approval to procure a development partner for the Aylesbury Estate programme. This procurement will follow an EU negotiated route. Paragraph 11 describes what the partner will be required to deliver which will include both construction and housing management services.
106. With a contract of this nature EU regulations are deemed to apply. The report outlines the procurement options that have been considered and provides justification for the proposed negotiated route.
107. The approach to evaluation is outlined in paragraphs 56 - 59 with paragraph 58 confirming the high level weightings for evaluation being set at 60/40% in favour of quality which varies from the council's current guidance of 70/30% in favour of price. The report provides justification for this approach. Table 2 contains the draft evaluation criteria. The report is seeking the Leaders authority to delegate the approval of final evaluation criteria to the Director of Regeneration.
108. The procurement project plan contained in the report is both realistic and achievable. Paragraph 77 describes the governance arrangements that will be in place to support this procurement and the wider project and track progress overall.
109. An EU negotiated procurement process will require skilled and experienced resources. Paragraph 78 confirms a core negotiation group will be established which will include senior officers and external advisors.

BACKGROUND DOCUMENTS

Background Documents	Held At	Contact
None		

APPENDICES

No	Title
Appendix 1	Options appraisal
Appendix 2	Plan of Area to be included in partnership
Appendix 3	Risk Log

AUDIT TRAIL

Cabinet Member	Councillor Peter John, Leader of the Council	
Lead Officer	Eleanor Kelly, Deputy Chief Executive	
Report Author	Sara Waller, Aylesbury project director	
Version	Final	
Dated	3 May 2012	
Key Decision?	Yes	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Housing	Yes	Yes
Strategic Director of Communities, Law & Governance	Yes	Yes
Finance Director	Yes	Yes
Head of Procurement	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
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