

<b>Meeting Name:</b>	Cabinet
<b>Date:</b>	22 July 2024
<b>Report title:</b>	GW1 - Southwark Construction New Homes Programme 2022-2026 Procurement Strategy
<b>Cabinet Member:</b>	Councillor Helen Dennis, New Homes and Sustainable Development
<b>Ward(s) or groups affected:</b>	All
<b>Classification:</b>	Open
<b>Reason for lateness (if applicable):</b>	Not Applicable

## **FOREWORD – COUNCILLOR HELEN DENNIS, CABINET MEMBER FOR NEW HOMES AND SUSTAINABLE DEVELOPMENT**

As set out in the accompanying New Homes Update, Southwark has been at the forefront of delivering new council homes and across our extensive programme, we have to date managed to deliver 79% council housing, achieved through borrowing against future income due to the Housing Revenue Account (HRA). 3,000 new council homes have either been completed or are on site. Southwark Construction has built up a huge amount of capacity and expertise, and are currently overseeing direct delivery projects as well as a number of development agreements (DAs).

With over 17,500 households on our waiting list for social rent homes, doing nothing is not an option. The escalating housing crisis will worsen across the country if we cannot deliver social housing at the scale which is required, but given the high cost of borrowing and the pressing investment needs of our existing stock, we are proposing to bring forward the next batch of new homes schemes solely via development agreement (DA), to minimise up-front costs to the council and reduce the repayment burden on the Housing Revenue Account (HRA).

Following a soft market testing exercise and drawing on our own experiences working with development partners, we are proposing the procurement of at least two development partners through a two-stage competitive dialogue process, to work with us to deliver new homes across a number of sites from our existing pipeline which will form 'lots', delivering on our requirements as a council, and constituting a strong proposition for potential partners. The list of sites to be included in the lots will be published after the summer. This report does not presume what will come back to us as 'offers' on each of the lots and there are various points in the process outlined where we can decide not to proceed before any DA is finalised.

We will continue to review our options for housing delivery on an ongoing basis and in addition to this exercise, we may bring forward additional proposals that will allow us to increase our stock. Working through development agreements will mean an increased proportion of homes being made available for private sale in order to fund the council homes. However we will continue to do all that we can to maximise council housing delivery including through our use of grant, S106 and other receipts. We have also built up an important and well-tested model of resident engagement through the establishment of Resident Project Groups (RPGs) on individual schemes and we will ensure that any new projects put Southwark residents at their heart.

## **RECOMMENDATIONS**

### **Recommendations for the Cabinet**

That the cabinet:

1. Approve the procurement strategy, as detailed in paragraphs 51 to 119 to appoint development partners for mixed tenure housing schemes, including council homes and key worker homes, across at least two lots for use until 31 March 2031, using the following routes in line with the council's Contract Standing Orders (CSO) which includes:
  - a. A restricted procurement strategy or competitive dialogue, compliant with procurement regulations, in line with the Public Contract Regulations (PCR) (2015) or Procurement Act (PA) (2023), is adopted as set out in paragraphs 53 to 70 to award development agreements for at least two lots of New Homes Packages.
  - b. In lieu of a payment for the land, a pre-determined policy compliant percentage of affordable housing, including council homes and key worker homes, would be returned to the council upon completion reflecting our investment and scheme viability with the developer partner retaining the private housing, under a long lease term of up to 999 years. Other benefits, financial or otherwise may be received in addition subject to scheme feasibility and viability.
2. Note that this report affords the council a route to market by leveraging its land holdings and utilising Greater London Authority (GLA) Affordable Housing Programme Grant and other potential grant sources, such that the council can present an attractive package of opportunities to the market, in return for the delivery of new affordable homes and potentially other benefits.
3. Note that failure to make decisions on this programme in a timely fashion will hinder the ability of the council to meet target start on site dates, set by the GLA Affordable Housing Programme, which in turn would threaten a potential allocation to the council of over £116m.

4. Note that subject to the performance of the development partnership, and at the discretion of the council, further sites could be added in the future (up to 2031) which would be subject to separate approval via the IDM.
5. Note that the development agreements will include procurement of works to deliver new homes in lieu of land payment and include lease arrangements as set out in paragraph 162 to 168e.
6. Note that the initiation of the procurement exercise outlined in this Gateway (GW) 1 report and the financial position throughout all milestones, is subject to the approval of the feasibility budget by Housing Revenue Account (HRA) Recovery Board and the Strategic Director of Finance.

### **Recommendations for the Leader of the Council**

That the Leader:

7. Delegate the final approval via IDM to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing, the Strategic Director of Finance and the Strategic Director of Planning and Growth, to agree the lotting strategy (including consideration for a portfolio approach), and subsequent approval of the final package of sites within the New Homes Packages on completion of the site due diligence exercise detailed in paragraphs 22 to 28; the delegation is subject to the sites meeting the selection criteria set out in paragraphs 24 and 36 and on the basis that there are clear exit routes pre-contract and post-contract.
8. Delegate the final approval for the preferred procurement route for at least two outlined lots in recommendation a to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing, the Strategic Director of Finance and the Strategic Director of Planning and Growth, with the further sites added in the future (up to 2031) at the discretion of the council and subject to a further IDM approval.
9. Delegate the Gateway (GW) 2 contract award decision, through one of the procurement options outlined in recommendation 1a and inclusive of the approval to divest the land for the lease, disposal or acquisition (where required), and only where award is at no additional cost to the Council, to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing, the Strategic Director of Finance, and the Strategic Director of Planning and Growth, for programmatic reasons which are set out in paragraph 89 to 92.
10. Delegate to the Cabinet Member for New Homes and Sustainable Development in consultation with the Strategic Director of Housing, in consultation with the Strategic Director of Finance, the disposal of land (including grant of leases) and acquisition of land (if there is to be any sub-

lease back to the council of affordable units and other space) in consultation with the Head of Property.

## **REASONS FOR RECOMMENDATIONS**

11. The reasons for the recommended procurement approaches are detailed in paragraphs 14 to 39 of this report.

## **ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

12. The alternative options considered for this procurement are set out in paragraphs 51 to 61b.

## **POST DECISION IMPLEMENTATION**

13. Once the recommendations within this report have been approved:
  - a. The procurement will not be initiated until the approval of the budget (see recommendation 10).
  - b. The procurement exercise will be undertaken in line with the plan outlined under the heading “Procurement project plan (key decisions)”.
  - c. The award of the contract will be subject to a GW2 under delegated approval (see recommendation 9), except if there is any cost implication to the Council (disregarding the procurement related budget – see paragraph 156). If there is any cost implication to the Council (specifically requiring additional capital borrowing) that becomes apparent as essential during the procurement exercise, then the GW2 will need approval via cabinet.
  - d. The contract management and monitoring will be undertaken in line with the approach outlined in 148 to 151.

## **BACKGROUND INFORMATION**

14. Southwark leads the way nationally in the delivery of new council homes, bold investment at scale over the past nine years has delivered quality homes to meet local need with a programme of over 3000 new homes completed or on site.
15. The ‘Routes to 11,000 – a new council homes strategy for Southwark’ was approved in April 2020; it sets out the Southwark Construction mission statement and the council’s priority to deliver 11,000 new homes by 2043. Under this strategy, 2,500 new homes started on site since March 2022, with a commitment to start 1,000 further homes by 2026, delivering a mix of tenures, with potential to include new Keyworker Homes, in addition to other affordable products.

16. In 2022 unprecedented inflation increases placed significant cost pressures across the council's HRA portfolio including Southwark's new homes programme, these pressures started to take effect and nearly all schemes on site are facing significant cost increases. The funding that the council would have expected to have available to take forward the future pipeline is now needed to cover costs in the committed programme. This is outlined in a March 2023 cabinet report titled '*Southwark Construction Strategic Plan*' (see background documents for further reference).
17. Changes in the economy, not just inflation, but associated issues of interest rates, Brexit and war in Ukraine have exacerbated build costs, this is in the addition to the significant changes to the sector that also adversely affect the availability of finance and affordability of schemes. Namely; 7% rent ceiling in 2023/24 has reduced the council's rental income by approximately £10m per annum; changes to Building Safety and Fire regulations have significant cost implications to Southwark due to the size of its housing stock and number of tall buildings; availability of skills and labour; and, balancing carbon Net Zero and enhanced energy efficiency standards with financial parameters and growing housing need.
18. A September 2023 cabinet paper projected an HRA deficit of £13.8m, resulting in a review of the new homes programme in which some 'uncommitted' schemes were paused, to be reviewed again when affordability allowed. This procurement strategy therefore responds to these financial pressures and seeks to leverage council assets to continue to increase housing supply that meets local need, albeit in a more limited fashion which takes account of the economic downturn. The procurement strategy is based on the development of sites owned by the council, and sets out how development partnerships will play a more prominent role in delivering the next tranche of new council homes, with potential for Keyworker Homes alongside them. Outside of this programme, new council homes may still come forward via other routes, including acquisition or other forms of partnerships. Notably, the delivery of new homes on the Abbeyfield Estate will also be considered independently of this programme.
19. Whilst Southwark's new build programme has, to date, predominately been achieved through direct delivery, based on a mixed financial model that combines HRA borrowing, S106 receipts and GLA funding, there are several schemes in the current programme that are already successfully being delivered through development agreements. These include Cherry Gardens, 345 Southwark Park Road, Aylesbury Estate, Tustin Estate and Manor and Braganza. These are all mixed tenure schemes where the shared ownership and private sales properties contribute to the viability of the project and deliver much needed council homes.
20. The council would be entering into an agreement with a developer to provide the pre-construction works, housing and associated infrastructure including public realm on the site. The intended route for Southwark Construction is via a long lease (to be confirmed as part of the

development agreement, but likely to be a minimum of 250 years to 999 years) rather than sale of land, subject to the site and scheme conditions that minimise the risk to the council.

21. Development agreement structures and subsequent leases, include options whereby the provision of affordable housing to Southwark Construction could effectively become 'works in kind' in lieu of payment for the land. Such arrangements are common in the affordable housing market. Any such arrangements will be checked by both legal and tax specialists for regulatory compliance.
22. A shortlist of potential opportunities will be grouped into at least two lots for development agreements to take to market: New Homes Package for approval via IDM, as detailed in paragraph 7.
23. Potential lots, currently sitting within Southwark Construction's wider programme, will be carefully reviewed and not all sites will be taken forward. Those that are will depend on the outcome of due diligence, cost analysis and soft market testing that is ongoing, but will conclude ahead of the procurement exercise.
24. The criteria for which the sites will be selected to take to market against will be approval by all internal officer stakeholders at the Delivery Programme Board and with the Head of Property. This will include which option delivers the optimal number of affordable homes, with the minimal long-term cost to the council. The criteria will also measure the programme dates within which the sites will be delivered and those that can maximise funding streams such as the GLA grant. External advisors will be involved in assessing the criteria with officers to ensure a commercial view is taken. Findings from above will be instructed via the Lead Member by way of IDM report.
25. All confirmed sites will be reviewed by the Delivery Programme Board prior to any tendering exercise following advice from Finance, Legal, Procurement and Property. Schemes will be grouped together in lots for procurement purposes to ensure that tenders are attractive to bidders and, where possible, efficiencies are delivered.
26. Viability analysis, feedback from market engagement with developers, analysis of comparative site readiness and external commercial advice will then be combined to determine an optimal lotting strategy that maximises the agreed objectives. This analysis may also rule in and rule out certain sites.
27. Resident engagement will be highlighted as a key priority for any potential development partnership, and residents will be consulted, in line with the Charter of Principles, throughout the design (where applicable) and construction phases.

28. New sites and opportunities may also be added to the programme up to 2031 via IDM. In future and subject to the performance of the development partnership, and at the discretion of the council other sites could be added to the packages. Development agreements will allow for this provision, but any site substitution or addition will be subject to adherence to the council's decision-making processes and will require suitable approval.

### **Summary of the business case/justification for the procurement**

29. The council has committed to the delivery of 11,000 new homes by 2043. This procurement exercise will build on the progress made to date and enable the progression of the development programme in line with both the council's commitments and budget.
30. A development agreement is a legal contract with an obligation on the developer to procure construction works and if required, other associated activities on behalf of the council. The requirement for the council to directly fund works is negated satisfying current budget pressures whilst also enabling ongoing new homes to be built for residents.
31. The council's contribution to the partnership is a transfer of an interest in the land in the form of a long lease and grant funding, potentially from the GLA (directly to the council) and other sources to help pay for the affordable housing homes. The developer would then be responsible for funding the development in its entirety, thus reducing risk to the council, as this is transferred to the development partner. The recommendation to award the contract will be based on a developer that can maximise the number of affordable homes within a policy compliant scheme, cost neutral to the council.
32. The Development Agreement contracts will also feature suitable protective clauses regarding termination (tied to the leasing of the land) in the event that a developer failed to bring a scheme forward in a contractually compliant manner. Overage clauses will also be utilised.
33. The council's direct expenses would be limited to include the cost associated with any necessary early site investigations, vacant possession costs, ongoing security costs, internal fees and costs associated with running the procurement exercise.
34. The procurement of any early site investigations would be undertaken separately in line with the council procurement rules. A proposed budget, encompassing requirements noted above, is being prepared for consideration by HRA recovery board.
35. The council's development agreement will be carefully crafted to build on best practice and lessons learnt from schemes that are currently on site or completed (paragraph 19). It will also draw on previous experience from agreements that were not fulfilled, ensuring the council avoids development partners not fulfilling their obligations, in particular there will

be a restriction on the number of sites connected to one developer. The delivery of new affordable homes will be required to meet the council's standards in terms of specifications and key processes to ensure positive resident experience and that the maintenance and management of the new homes aligns to the council mainstream housing service functions.

36. The strategic objectives of the new home development agreements are aligned to the council's priorities and will be assessed as part of the tendering process when choosing to take the sites to market and during the selection process:
  - a. Maximise the number of council homes that meet the needs of Southwark residents across all sites in line with planning policy;
  - b. Build quality new homes that meets the standards set out in the Authority's employers requirements and design guide;
  - c. Commitment to place making and contributing to the sustainability of local areas and communities;
  - d. Put residents at the heart of new development in their area;
  - e. Genuine partnership working, transparency and highest ethical standards throughout the lifetime of the partnership; and
  - f. Contribute to the council's 2030 carbon neutrality objective.
37. Development agreements provide a balance between the risks and costs associated with direct delivery whilst providing a degree of control over the design and delivery.
38. In the case of a development agreement, the terms of the contract and lease can be set out to allow for a level of control and involvement suitable to the council's prevailing requirements.
39. While some obligations prescribed in the terms of the development agreement could limit the value of the land, they will allow the council to retain control over the delivery of the project as well as provide certainty over the quality and speed of construction. All potential obligations specified in the contract will need to be carefully considered to balance areas of control the council wishes to maintain against potentially negative viability impacts which could reduce the appetite of the market to bid for these opportunities.

### **Market considerations**

40. The council's development programme contains a range of scheme sizes. Officers therefore need to ensure that they target the appropriate developers for each of the schemes and that the schemes represent an attractive offer to these developers.

41. With significant growth in the construction market in London, there is competition for developer services. However, given the scale of Southwark's ambitious housing building programme, many developers will see working on these developments as an attractive opportunity. There is still a very high demand for construction services, with many London boroughs engaging in the development of affordable housing along similar lines (namely Development Agreement packages).
42. The country is currently experiencing relatively high inflation, and this is impacting the pricing of schemes currently being tendered. The impact for the council over the next 24 months is likely to be that the market is more competitive, and developers are more selective in terms of the projects they wish to take on. This means that it will be important for Southwark Construction to have a route to market that is robust enough to adapt to changes in the market conditions.
43. The procurement will go through a tender review and award process which includes the scheme sign off by the Managing Director for Southwark Construction before it proceeds to a GW2, which has been requested to be delegated to the Cabinet Member for New Homes and Sustainable Development, in consultation with the and the Strategic Director of Housing and the Strategic Director of Finance. Proposals will be assessed against the criteria set out in paragraph 36 and if it deemed at this point that the criteria are not being sufficiently met, the council may decide not to proceed. Scrutiny against a list of pre-determined expectations will continue throughout the procurement process.
44. The approach to lotting the site packages has been market tested with a range of developers. This engagement explored not only the approach to viability and the potential approaches to tenure distribution, but also maximising market interest through intelligent packaging of sites likely to appeal to as broad a range of developers, and those best suited to different as, as possible. This included consideration of site locations; private sales values; scheme quantum, density and building typology; and site constraints.
45. The lotting strategy will carefully consider how to achieve a balance in the sites within the respective lots. This is to ensure there isn't skewed demand from the market towards a single lot.
46. Commercial advisers are reviewing the approach to tenure distribution across the possible sites. Initial analysis suggests that some of the sites, due to their smaller size or constrained nature, may not be able to accommodate all forms of tenure (private, intermediate, and social) on a single site at once. In such circumstances it may be necessary to allow the market to propose wholly private and shared ownership, or wholly social schemes (depending on the setting). These sites would have to be taken forward together in a portfolio approach, in order to demonstrate overall policy compliance. This is further explored in paragraphs below.

47. To do otherwise and require all forms of tenure on every single site may impact scheme efficiency (especially considering new regulatory requirements concerning second stair cores to buildings over 18m) and have a potentially considerable negative impact on market interest. To rebalance, it may be necessary to link the sites in planning tenure mix terms, so that the policy is achieved in the lot overall but not necessarily on an individual site basis.
48. Taking this further, allowing a 'portfolio' approach to tenure across the lots may also bring efficiencies. By providing more private in higher value locations and more social elsewhere, overall, the value of the lot can be maximised. This supports greater viability which can be fed into greater delivery of affordable housing overall, and give the developer partner the flexibility necessary to maximise value where it can, to cross-subsidise the more difficult sites and make sure these latter are nevertheless delivered.
49. The council will also maintain another mechanism of control over this process via its role as the Local Planning Authority. The chosen developer, in conjunction with the client-side Southwark Construction team, will need to coordinate a careful planning submission approach that justifiably presents a case for a portfolio approach and the offsite provision of affordable homes from some sites. This would be controlled through developer pre-applications and where necessary planning performance agreements.
50. Taking into account the recommendations of external advisers, and in order to ensure that the process remains efficient, this cabinet paper requests that the Cabinet Member for New Homes and Sustainable Development will, in consultation with the Strategic Director of Housing and the Strategic Director of Finance, approve the proposed 'portfolio' strategy, as per recommendation 7, and as set out in the preceding paragraphs.

## **KEY ISSUES FOR CONSIDERATION**

### **Options for procurement route including procurement approach**

51. The current procurement regulations that are anticipated to apply to this procurement exercises are the Public Contract Regulations 2015, which will be replaced by the Procurement Act 2023 from the date of implementation (currently planned for 28 October 2024). A procurement route is needed to identify suitable development partners, and these options are explored below.

### **Do Nothing**

52. The council has the option to do nothing and therefore not undertake this procurement exercise but doing so will directly contravene the stated commitments to deliver high-quality council homes given that the current financial position of the HRA precludes any further direct delivery due to

unaffordability. Doing nothing could be pursued until such a time where the funding position changes and then other options such as a Joint Venture or site by site delivery could be considered, however they are not currently noted as part of this report as the council is not currently in this position.

### **Outline of Procurement Options # 1 – Open (single stage) /Restricted (two stage) PCR Compliant Tender**

53. An open / restricted PCR compliant tender process will offer the council access to the full market and allows the council to be able to demonstrate value for money. This is a route Southwark Construction has successfully used to procure developers for a wide array of projects since 2017.
54. An open tender would allow any firm interested in bidding for the opportunity to do so. The council and its agents would need to evaluate all bids in a single stage and announce a winner from this single stage of tender evaluation. The typical stages of an open procedure in the Development Agreement context would be:
  55. An invitation to tender resulting in the appointment of a bidder who will sign a development agreement with the council.
  56. A restricted variation, sometimes known as a two-stage tender would utilise a two-stage process to filter the number of bidders able to bid for the formal opportunity at the tender stage. The minimum allowed number to be considered in the second round is three, unless the council can prove that a second stage with less than three suppliers still provide genuine competition.
  57. The restricted procedure includes a selection stage where interested parties are invited to submit an expression of interest and the council is able to shortlist candidates using selection criteria which evaluate the candidates' professional capacity, technical ability and economic and financial standing.
  58. The Crown Commercial Service has mandated the use of the CCS Standard Selection Questionnaire for public services and supplies contracts, and for public works contracts an alternative selection questionnaire called the Common Assessment Standard is available.
  59. The council would likely need to allow a minimum of 30 days for bidders to respond to the selection stage and then another minimum of 30 days for the second tender.
  60. A key point of note under the restricted procedure is that negotiation with tenderers is not permitted. Where discussion and negotiation with bidders is required to ensure that appropriate solutions are obtained and/or bidders "buy-in" to the opportunity - a process that allows such input rather than one that prohibits negotiation may be better suited.

61. The typical stages of restricted procedure in a Development Agreement context are:
  - a. A form of Selection Questionnaire used to filter the eligible bidders down to a limited number (ideally three)
  - b. An invitation to tender resulting in the appointment of a bidder who will sign a development agreement with the council.

### **Outline Of Procurement Options # 2 - Competitive Dialogue (two stage)**

62. Another potential option for this procedure is to undertake a PCR compliant competitive dialogue procedure.
63. In common with the restricted procedure noted between paragraphs 53 to 61b this procurement procedure uses a two-stage filtering process drawing on a form of Selection Questionnaire. Only those tenderers who meet the selection criteria and who are shortlisted by the council will be invited to dialogue (in accordance with the selection criteria set out in the SQ).
64. The Guidance Note on the Competitive Dialogue and Competitive Procedure with Negotiation (appended to the Sourcing Playbook) is provided by Government to help guide public sector bodies. Whilst compliance with the Sourcing Playbook is only mandatory for central government departments (and their executive agencies and non-departmental public bodies), it does represent best practice and provides useful information for structuring the dialogue sessions.
65. Whilst competitive dialogue does have a reputation for elongating the procurement process, this doesn't necessarily have to be case. The SQ stage still needs to be 30 days; however, public bodies are able to set their own time limits for the second stage.
66. Once the shortlist has been determined, the council will then send out its Invitation to Participate in Dialogue and commence dialogue with the tenderers until it is able to identify a suitable solution which meets its requirements (as specified in the procurement documents). Whilst there is no set format that the dialogue must follow, it is usually made up of a series of meetings with each tenderer to discuss key aspects of the procurement (such as financial submissions, technical solutions and legal terms and conditions).
67. It is also worth noting that where it has been set out in the Contract Notice and in the tender documents, the council is able to structure the dialogue in successive phases and is permitted to further shortlist the tenderers throughout the course of the procurement (although the council will need to ensure that it maintains competitive tension throughout the process).

68. Following the identification of the preferred bidder, the council is able to carry out final negotiations with the successful bidder to confirm financial commitments or other terms contained in the tender by finalising the terms of the contract, as long as this does not materially change the essential aspects of the procurement and does not risk distorting competition or causing discrimination.
69. The typical stages of competitive dialogue procedure in a Development Agreement context are:
  - a. A form of Selection Questionnaire used to filter the eligible bidders down to a limited number (ideally 3)
  - b. An Invitation to Participate in Dialogue is sent out to bidders resulting in a discretionary number of dialogue sessions with the shortlisted bidders whereby all bidders work through rounds of dialogue to help work towards a solution to the council's requirements.
70. The result of dialogue will be an appointment of a bidder who will have worked up the best solution. This bidder will then sign a development agreement with the council.

### **Proposition for Procurement Route**

71. Consultation with the council's commercial specialist, Montagu Evans, and procurement and legal advisors, Trowers & Hamblins, has culminated in a recommendation to undertake a competitive dialogue procedure. Whilst Competitive Procedure with Negotiation was considered, this process would ultimately result in a longer tender process and would focus on improving the commercial position of the parties in the context of the Initial Tenders, leaving minimal room for this to be improved upon. It was recommended that a competitive procedure with negotiation would not provide a full enough Initial Tender for the council to improve upon in negotiations.
72. Reasons for this recommendation, which Southwark Construction has acknowledged and accepts on the merits proposed, are as follows:
  - a. A doubt that the council or the bidders will be able to successfully conclude and submit final bids on a comprehensive pipeline of development sites under a "take it or leave it" approach such as the restricted procedure.
  - b. Likewise, given the inherent complexity of delivering a range of challenging sites the opportunity to mutually work through and towards a solution in a productive way that will deliver high-quality schemes.
  - c. Viability may present as an issue on several of the sites and even across the lots as a whole. By working constructively with

- d. The market through a dialogue processes the council can ensure there is sufficient mutual interest to work to a solution, which may on the surface 'scare' the market away.
- e. Potential weakness of the competitive dialogue route, such as the perception that it can be a comparatively elongated process, can be addressed via the design of lean timetable whereby the parameters of what is open for dialogue are pre-selected and highly targeted to fit in with the councils' expectations.

73. It is recommended that the competitive dialogue is structured to a lean format, taking advantage of the flexibility around mandated timings afforded to the council when undertaking competitive dialogue.

74. Having noted the above, Southwark Construction still believe that it's prudent to have some flexibility within the potential procurement route and as such have recommended cabinet agree (see paragraph 8) to delegate approval of the final procurement strategy to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing and the Strategic Director of Finance.

**Identified risks for the procurement -**

Table 1 - Outline of Key Programme Risks

Ref.	Procurement Risk	Likelihood	Risk Control
1	Insufficient interest from developers	Low	Officers will undertake some soft market testing to understand the level of interest from developers. This will be sent to roughly 20 developers with questions composed by Montagu Evans, based on industry experience and following consultation with the council on its expectations for the agreements.
2	Quality of submitted tender proposals do not meet the council's expectations	Low	Officers will ensure comprehensive project briefs that are clear and without ambiguity are produced. Tenders will be rigorously assessed during the evaluation stage. Further supporting information can be found from Paragraph 100 to 119.
3	Development costs challenge viability and a	Medium	Officers will ensure that all necessary surveys and land valuations are

Ref.	Procurement Risk	Likelihood	Risk Control
	planning compliant scheme cannot be achieved		<p>undertaken to identify any associated risk to the development cost profile.</p> <p>A draft agreement with objectives and requirements will form part of the tender packs so that minimum expectations are clearly set.</p> <p>Developers will contractually be subject to viability testing at key milestones to deliver policy compliant schemes, with proportional delivery mechanisms to deliver council homes at key milestones.</p> <p>Taking a 'portfolio approach' and allowing flexibility in tenure distribution between sites will also reduce this risk, whilst maximising value and/or affordable housing delivery.</p>
4	The affordable homes delivered by the scheme is not considered value for money	Low	<p>If a planning compliant scheme is not achievable there will be a go/no-go review point before the development agreement becomes unconditional.</p> <p>Sustaining an ongoing programme of new homes, even at a reduced volume, continues to increase affordable housing supply, in a time of considerable resource constraint for the HRA, in the borough and make best use of council assets in the medium term. This mechanism will also allow Southwark to utilise over £100m of external GLA grant that would otherwise be at risk of being allocated to other boroughs.</p>
5	Challenges to procurement outcome	Low	<p>Officers will ensure a robust procurement process in line with PCR 2015 /PA 2023 and will liaise closely with the council's procurement and legal departments.</p> <p>Appointment of external expertise to support the process including external legal team and surveyors.</p>
6	The developer partner or key	Medium	Officers will undertake financial and credit checks to ensure that only

Ref.	Procurement Risk	Likelihood	Risk Control
	suppliers cease trading, goes into administration / liquidation		<p>financially healthy companies progress.</p> <p>If required, the developer will be required to hold a performance bond (for each site within the lot) / a parent company guarantee to mitigate this risk. This will be complimented by suitable termination clauses within the agreement tied to the leasing arrangements.</p> <p>Officers will review capacity and raise any concerns and seek an appropriate route for managing this risk via regular contract management and partnership arrangements.</p>
7	Failure of a procurement process and having to choose between working with a less than ideal developer or re-tendering the project.	Medium	<p>Due diligence will be completed before process is launched inclusive of market testing.</p> <p>Officers will ensure that due consideration is given to the nature of the long-term relationship through the tender process and that the tender returns are rigorously assessed.</p> <p>Evaluation criteria will be appropriately weighted and stress tested.</p>
8	Achieving vacant possession is protracted	Medium	<p>Understanding of site use has been undertaken as part of due diligence and phasing. Officers work closely with housing services in relation to resident engagement, communicating the local offer and rehousing where required.</p> <p>In addition, sites within the lots will be arranged, in mutual agreement with development partners in orders that facilitate additional time for sites that have potentially complex issues regarding VP including party wall or existing occupiers</p>

Ref.	Procurement Risk	Likelihood	Risk Control
9	Risk that procurement process becomes protracted	Medium	Due diligence is completed prior to procurement exercise launching (including site surveys and assessment of vacant possession required). The preferred restricted two stage procurement sets out a clear timetable for both the council and bidders. Appointment of external expertise to support the process including external legal team and surveyors.

### Key / Non-Key Decisions

75. This report deals with a key decision.

### Policy Framework Implications

76. The new homes delivered through the Southwark Construction Programme are in line with the council's principles and vision for a new housing strategy which is aimed at increasing the availability, affordability, and quality of homes in the borough.
77. These procurement exercises support the council's Fairer Futures Commitment – homes for all. The new homes will play a key role in assisting the council achieving its target of building 11,000 new council homes by 2043.
78. This procurement exercise will be subject to the Fairer Future Procurement Framework (FFPF). Each lot within the competitive tender process undertaken will ensure that the council is receiving value for money and delivering added social value.
79. The long-term housing vision for the borough sets a clear policy direction for the council that directly impacts the delivery of the new homes set out in this report. The vision comprises four overall principles:
80. The council will use every tool at our disposal to increase the supply of all kinds of homes across Southwark.
81. The council will demand the highest standards of quality, making Southwark a place where you will not know whether you are visiting homes in private, housing association or council ownership.
82. The council will support and encourage all residents to take pride and responsibility in their homes and local areas.

83. The council will help vulnerable individuals and families to meet their housing needs and live as independently as possible.
84. In September 2023, the 2023 Southwark Land Commission Land for Good Report was published, which highlighted the following recommendations:
  - a. Put social purpose at the heart of land use
  - b. Map what's there and what isn't
  - c. Take control of our land and assets
  - d. Defend and extend affordable accommodation for all
  - e. Cherish our natural capital and decarbonisation of our land
  - f. Give the community real power and voice
  - g. Disrupt the status quo to unlock bigger changes.
85. The procurement strategy set out in this report enables the council to take forward several sites which will provide a significant number of council affordable homes, inclusive of a London Plan policy to deliver 50% affordable homes on planning policy compliant schemes (currently a minimum position of 35% social rent and 15% intermediate), with the councils own target to date being delivery of 50% council rent homes on HRA land. This will contribute to the agenda of putting social purpose at the heart of council owned land use, taking control of council owned assets, and extending affordable housing for all. It will deliver new homes to modern sustainability standards, contributing to the decarbonisation agenda on council owned land and enable community voice through the council's consultation process.
86. An external commercial advisor will collate updated viability testing of the sites, utilising appraisal analysis of the latest capacity studies and assessment of applicable market development assumptions and any known abnormal costs. This will establish a baseline of viability per site including whether each is capable of delivering policy-compliant levels of affordable housing, and if not the level of viability gap to do so, and alternatively the level of affordable housing that is the maximum viable. This will include reflecting the latest affordable housing grant utilisation advice from GLA – noting that this has a window when it can be applied, and this will need to relate to the stage of the site in planning. This will be reviewed and where suitable constructively challenged by the Head of Property.
87. With this baseline established it will be possible to determine in-principle packages of sites that are viable overall, potentially with cross-subsidy between them. This cross-subsidy could be managed by Southwark as

landowner or passed to a development partner through lotting. It may also be possible to maximise outcomes overall (value and/or affordable housing delivery) by allowing flexibility in tenure distribution between the sites (a 'portfolio approach').

88. It should be noted that implementation of the forthcoming Procurement Act 2023 will potentially introduce significant changes to the way the council undertakes procurement exercises. The programme indicates that the procurement will start during the current regulations and therefore the current regulations will apply throughout the process.

### Procurement Project Plan (Key Decisions)

Activity	Complete by:
Enter Gateway 1 decision on the Forward Plan	02/10/2023
DCRB Review Gateway 1	28/05/2024
CCRB Review Gateway 1	21/03/2024
HIB/BRB Review Gateway 1 (if housing)	27/06/2024
CMT Review Gateway 1	04/06/2024
Brief relevant cabinet member (over £100k)	12/06/2024
Notification of forthcoming decision — Cabinet	12/07/2024
Approval of Gateway 1: Procurement strategy report	22/07/2024
Scrutiny Call-in period and notification of implementation of Gateway 1 decision	31/07/2024
Completion of tender documentation	29/07/2024
IDM Site Lotting Allocation Publication	02/09/2024
Publication of Find a Tender Service Notice	02/09/2024
Publication of Opportunity on Contracts Finder	02/09/2024
Closing date for receipt of expressions of interest	06/09/2024
Completion of short-listing of applicants	17/09/2024
Invitation to tender	24/09/2024
Closing date for return of tenders	31/01/2025
Completion of any clarification meetings/presentations/evaluation interviews	21/02/2025
Completion of evaluation of tenders	07/03/2025

<b>Activity</b>	<b>Complete by:</b>
Forward Plan (if Strategic Procurement) Gateway 2	31/03/2025
DCRB Review Gateway 2:	15/04/2025
CCRB Review Gateway 2	24/04/2025
Brief relevant cabinet member (over £100k)	23/04/2025
HIB/BRB Review Gateway 2 (if housing)	22/04/2025
CMT Review	23/04/2025
Notification of forthcoming decision	17/04/2025
Approval of Gateway 2: Contract Award Report	25/04/2025
End of scrutiny Call-in period and notification of implementation of Gateway 2 decision	07/05/2025
Debrief Notice and Standstill Period (if applicable)	02/06/2025
Contract award	03/06/2025
Add to Contract Register	04/06/2025
TUPE Consultation period (if applicable)	N/A
Place award notice on Find a Tender Service	09/06/2025
Place award notice on Contracts Finder	10/06/2025
Contract start	06/06/2025
Initial contract completion date	06/06/2031
Contract completion date – (if extension(s) exercised)	N/A

89. This GW1 report will be followed by the resultant GW2 reports. The timeline above is indicative in respect of the first anticipated award.
90. This report is seeking the cabinet's approval to delegate the GW2 decisions to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing and the Strategic Director of Finance (see recommendation 9) issue final instructions via an IDM report. The delegation is subject to the sites meeting the selection criteria set out in paragraphs 24 and 36. The delegation is important to ensure that the risks to market conditions and access to funding are possible to manage within the programme timescales.
91. Given the anticipated continued high inflation and high competition for developer services delegation of approval for the final chosen procurement

route (recommendation 8), final lotting packages (recommendation 7) and award of contracts (recommendation 9) to the Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing, and the Strategic Director of Finance, will considerably assist in ensuring that the schemes are approved in a timely manner, in line with industry standards and mitigating any negative impacts on viability. The schemes will not be able to progress to contract award without strict checks on viability, current resources and full assessment of market risk and there will be clear exit routes should the contracts not meet the key objectives pre-contract and post-contract.

92. The rationale for this delegation is to align with the current market conditions in the construction industry timescales and to adhere to grant funding timescales. As such, the delegation set out in the report will allow officers to progress contracts to meet the programme dates and will also allow the council a go/no go option ahead of any contract award.

### **TUPE/Pensions implications**

93. Not applicable as the schemes being considered do not have existing contracts.

### **Development of the tender documentation**

94. A new development agreement and associated schedules will be produced for the sites to be delivered as 'development agreements'.
95. There is a standard set of tender packs that were put together in anticipation for previous procurement that did not come to fruition. These will be reviewed (by project team, legal, and procurement) and adapted for the procurement activities outlined in this report.
96. Project Officers in Southwark Construction will work with the commercial advisor consultant to include the scheme specific information within the tender packs.
97. The tender packs, Invitation To Tender (ITT) questions and price/quality/social value evaluation criteria will all be reviewed as part of a process with legal and procurement team prior to the tender commencing.
98. The tender documents will usually include:
  - a. Selection Questionnaire / Expression of Interest and guidance document (if required)
  - b. Instructions To Tenderers
  - c. Development agreement contract documents, amendments and terms and conditions

- d. Employers Requirements
- e. Scheme details including;
  - i Site information
  - ii Project drawings
  - iii Project plan
  - iv Relevant surveys & reports
  - v Tender evaluation methodology
  - vi Contract Sum Analysis Template/Template Appraisal
  - vii Form of Tender and necessary undertakings and certificates
  - viii Compliance table.

### **Advertising the contract**

99. As a PCR 2015 compliant tender process is being followed the contract will be advertised by way of an official notice that will be published on the Find a Tender Service and Contracts Finder as required.

### **Evaluation**

#### **Procurement Option # 1 - Open (single stage) / Restricted (two stage) PCR / PA Compliant Tender**

100. As an open tender would allow any interested parties to bid in a single stage. The council and its agents would then evaluate all bids and announce a winner from this single stage of tender evaluation.
101. A two stage, restricted tender process will follow the same process of a single stage process, which may result in the developer entering into an overarching delivery agreement.

#### **Selection Questionnaire (SQ) (PAS 91) – For Restricted Processes**

102. The purpose of the SQ is to create a shortlist of organisations who have demonstrated that they have sufficient technical capacity and financial and economic standing and ability to be invited to tender. In order to determine sufficient financial and economic standing, and technical capacity and ability, SQs will be evaluated in accordance with the criteria as set out in a standard SQ.

103. Following a restricted process applicants will need to pass an initial compliance stage of Pass/Fail questions which include:
- a. Company Information
  - b. Financial Information
  - c. Convictions
  - d. Public Contract Regulations
  - e. Health and Safety.
104. Tenderers will then need to pass an economic and financial standing, this will involve a credit check, an assessment of profitability and liquidity, and a review of any charges and judgements. In order to receive an overall pass, tenderers will need to satisfy the following:
- a. A good credit score and credit rating
  - b. An acceptable level of financial risk for the council.
105. Finally, tenderers will also need to answer several method statements/case studies as part of the technical section, which will be based on experience.
106. The top three bidders for each lot will be invited to submit a tender. If any other bidder is within five percent of the third highest bidder, at the council's discretion they will also be invited to tender.

### **Invitation to Tender (ITT)**

107. The quality assessment will be undertaken through the provision of method statements which will be used to evaluate applicants against the key quality criteria. Minimum pass marks can be used where required.
108. The quality assessment will include a number of method statements based on criteria including:
- a. Delivery of the Schemes including the Commercial Model
  - b. Design, Quality & Value for Money
  - c. Legal Agreement
  - d. Capacity & Resourcing
  - e. Health/Fire Safety
  - f. Project Specific Question.

109. The social value assessment will be assessed in compliance with the current procurement and social value framework or policy. The council will endeavour to ensure the social value commitments and method of assessment provide best value to the council and its residents.
110. For the price assessment tenderers will be asked to provide a land value offer, supported by appraisal evidence and cost estimates.
111. At this stage the commercial advisor, in consultation with legal consultants, will take responsibility for reviewing:
  - a. Content and completeness of the subcontract tender package prior to issue to tender.
  - b. Programme and phasing.
  - c. Viability of scheme.
  - d. Contract Sum Analysis, in full, in order to establish value for money for each build contract for the delivery of each phase, with supporting scheme appraisals and evidence including cost plans.
112. The aspects of the financial submission will be weighted based on the maximum points awarded to the tenderer with the highest land value (to deliver the highest number of affordable homes), with each remaining tenderers' price being awarded a score based on the percentage difference between their submission and that of the most competitive.
113. Approaches to overage may also be tested.
114. The submitted tenders will be evaluated and scored by a panel, likely to be comprised of members from the:
  - a. External Commercial Consultant Advice
  - b. Strategic Lead
  - c. Project Manager
  - d. Programme Co-ordinator
  - e. Supporting internal colleagues from relevant services
115. The internal panel inclusive of the Head of Property plus external commercial consultancy advisor will recommend the highest scoring tenderers of each lot for award through a GW2 to enable the contracts to be entered into.

## **Procurement Option #2 - Competitive Dialogue (Two-Stage)**

116. Like the restricted process, SQ responses submitted as part of the selection stage are reviewed. Tenders will need to meet the predetermined selection criteria set out in the SQ. A minimum of three suppliers will then be shortlisted and invited to dialogue based on their adherence.
117. Dialogue with shortlisted parties will then commence and continue until a suitable solution, whereby requirements can be met, is found. Each tenderer will be evaluated on a result of these dialogues. This will likely be made up of a series of meetings discussing key aspects of the procurement and will be guided by the Competitive Dialogue and Competitive Procedure with Negotiation Guidance Note, appended to the Sourcing Playbook.
118. Once these conversations have created an acceptable solution, a preferred bidder will be identified, based on their offered solution, and associated appraisal calculations (linked to land value receipt offer). If it is in the parties' interest, final negotiations may continue by finalising the terms of the contract, as long as this does not change the essential aspects of the procurement.
119. Following finalised agreement of terms, two developers, one for each lot, can be appointed on this basis.

## **Community, equalities (including socio-economic) and health impacts**

### **Community impact statement**

120. The Public Sector Equality Duty requires public bodies to consider all individuals when carrying out their day-to-day work, in shaping policy, in delivering services and in relation to their own employees. It requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. The council's consultation with residents on the 11,000 council homes programme has been specifically designed to be inclusive of all the borough's communities and provide a range of mechanisms to provide residents with the opportunity to engage.
121. Southwark is a borough with high levels of deprivation, low-income levels and high levels of housing need. Southwark's Housing Strategy to 2043 identifies that the supply of affordable housing in the borough outstrips demand. There is a demand for larger properties for younger families, many of whom are experiencing overcrowding.
122. Cabinet has agreed a new vision for the future housing strategy including a principle to use every tool at its disposal to increase the supply of all kinds of homes across Southwark, with Southwark Housing Strategy 2020 promoting and prioritising the delivery of council housing, Keyworker Homes and community-led housing.

123. The proposals to increase the supply of affordable, good quality homes will benefit households in need from all Southwark communities and will increase the housing options available for older people and people with disabilities.
124. Residents will continue to be consulted with during the design phase and will continue to be engaged during the life of the projects as outlined in the Charter of Principles agreed by cabinet.

### **Equalities (including socio-economic) impact statement**

125. Pursuant to section 149 of the Equality Act 2010, the Council has a duty to have due regard in its decision-making processes to the need to:
  - a. Eliminate discrimination, harassment, victimisation or other prohibited conduct.
  - b. Advance equality of opportunity between persons who share a relevant protected characteristic and those who do not.
  - c. Foster good relations between those who share a relevant characteristic and those that do not share it.
126. The relevant protected characteristics are age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The Public Sector Equality Duty also applies to marriage and civil partnership, but only in relation to (a) above.
127. Equalities aspects will be assessed in advance of the negotiation process. The EIA will be included as an appendix in the Gateway 2 report.
128. Successful suppliers will be required to adhere to the council's equality and diversity policies.
129. The new council homes will be available to people on the council's housing waiting list as established in the council Housing Allocation Policy for the contract period. The council's equality and diversity policies will be adhered to during the letting process.

### **Health impact statement**

130. The provision of new quality homes provides a positive impact on health inequalities, as the new homes will be designed to current quality and space standards that will contribute towards addressing health inequalities.
131. All new homes for social rent will be allocated to existing residents/those in housing need in the borough, residents who are living in overcrowded conditions, or unsuitable housing will benefit. In addition to this rent levels are set at council rent, that are lower than London Affordable rent levels and market rent levels making them genuinely affordable.

132. Health and wellbeing are further addressed by providing residents with individual balconies for outdoor space, along with communal landscaping.
133. Many of the schemes will also see ancillary features installed within adjacent landscape such as children's play space or improved foot/roadways helping to encourage active lifestyles.
134. The proposals to increase the supply of affordable, good quality homes will benefit households in need from all Southwark communities, and will increase the housing options available for older people and people with disabilities.

### **Climate change implications**

135. Projects procured through this GW1 process will comply with Building Regulations Part L that addresses the conservation of fuel and power, and guarantees eco-friendly efficient properties and minimise carbon emissions, as part of a drive towards a greener future.
136. The new homes will work towards achieving carbon neutral and sustainability requirements in line with the council's 2030 carbon neutral policy. The council will build energy efficient homes that will exceed Building Regulations and provides methods for which the occupants have full control over their energy usage.

### **Social Value considerations**

137. The Public Services Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the wellbeing of the local area can be secured.
138. Social Value will be considered as part of the procurement as outlined in paragraph 137 to 138.

### **Economic considerations**

139. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, partners and developers engaged by the council to provide works or services within Southwark pay their staff at least the LLW.
140. The 11,000 new homes programme is a strategically important undertaking for the council and its benefits are expected to be realised in several ways, including the recruitment of qualified staff, retention of staff and an improved service delivery to the council.
141. It is expected that payment of the LLW by the successful partners for these contracts will result in quality improvements for the council. These should

include a high calibre of multi-skilled operatives that will contribute to the delivery of works on site and will provide best value for the council. It is, therefore, considered appropriate for the payment of LLW to be required.

142. The successful partners will be expected to meet the LLW requirements and contract conditions requiring the payment of LLW to all employees and operatives, which will be included in the tender documents.
143. Following contract awards, the suppliers will be required collect data on employment status of their staff and any sub-contracted operatives and confirm payment of LLW. All quality improvements and any cost implications will be monitored as part of the contract review and management process.

### **Social considerations**

144. The new housing will provide high quality affordable housing for local people in need of accommodation. Social rented homes will be allocated via Choice Based Lettings as set out in the council's Housing Allocation Policy.
145. The new social rented homes will be let at council rent levels.

### **Environmental/Sustainability considerations**

146. By investing in high-quality, well-designed buildings and estates the council aim to achieve positive impacts which will benefit the environment and increase the stock of environmentally friendly buildings within the borough.
147. As part of the design development process, there will be a requirement for environmental assessments to be completed, with a view to identifying what impact would be caused by any proposed development.

### **Plans for the monitoring and management of the contract**

148. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
149. The project clienting, including the management and administration of the developer appointments, will be run and resourced through Southwark Construction. Performance of the developer teams will be subject to constant scrutiny and monthly formal review including reviews on cost, quality and programme. The officer client team will use several mechanisms for monitoring and controlling the financial and programme performance of these contracts, including:

- a. Strategic cost plan, which will be regularly reviewed and updated as required
  - b. Regular financial statements
  - c. Review viability model at key milestones
  - d. Risk and issues log
  - e. Key Performance Indicators (KPIs) for key objectives including social value measures
  - f. Quality and change control for Southwark Council managed social homes
  - g. Maintain partnership meetings and business cases for future sites.
150. Overall programme performance resides with the Delivery Programme Board, chaired by the Strategic Director of Housing and comprising representation from council governance and strategic services.
151. Annual contract monitoring reports per scheme/project will be presented in line with CSO's.

#### **Staffing/procurement implications**

152. The staff resources deployed to this procurement is sufficient to meet the proposed timetable.
153. The project will be resourced by existing staff, within existing budgets.
154. Officer time relating to the management of this project is funded from HRA capital budgets.

#### **Financial implications**

155. For construction (works) contracts, the council's end user status will be clarified in relation to Domestic Reverse Charge (DRC) in the Gateway 2 report and advice sought from Finance as required.
156. The anticipated costs to the council in advance of the procurement are being approved by the Housing Revenue Account Budget Recovery Board as set out in recommendation 6. This is a phased budget predicated on the achievement of distinct milestones linked to governance checkpoints.
157. The report is requesting approval for a procurement strategy, there are no financial implications arising directly from the report's recommendations.
158. SDLT and VAT advice will be taken for the lease arrangements.

159. Land appropriation costs for transfers from the General Fund to the HRA will need to be considered within the development of a programme feasibility budget, financed from the HRA. The value of the land being appropriated to the HRA will result in an effective transfer of debt between the general fund and the housing revenue account equal to the value of the land which will increase the interest payable by the HRA on its debt.
160. As per paragraph 46, an external commercial advisor will update viability testing of the sites utilising appraisal analysis of the latest capacity studies and assessment of applicable market development assumptions and any known abnormal costs. The outcome of this exercise will ensure that lots are optimised and help to maximise affordable housing return and minimise any potential costs to the council.

### **Investment implications**

161. The cost of this contract will not have associated financial charges beyond those outlined in paragraph 156. However, transactions will occur in the form of land transfer under a long lease (e.g., a disposal), which will have an impact on the council's assets.

### **Legal implications**

162. The lease arrangements will be agreed in the development agreement with the external legal advisors and in consultation with the in-house legal property team. The intention is to retain the freehold and set up lease arrangements for the developer to build and sell homes.
163. Key milestones – before proceeding – all parties expectations are met (not limited to but in particular reference to the delivered number of units and viability of scheme, connected to planning).
164. There will be a process to test viability (currently on a site-by-site basis) to provide assurance that a minimum planning compliant scheme can be achieved.
165. There will be a Land sale agreement, utilising a leaseback of returned units with the contract dictating design and number (and types) of affordable housing output leased back to the council.
166. The development partner will need to provide bids to deliver deliverable schemes that meet the council's minimum expectations in terms of tenure mix and ideally number of family homes per scheme.
167. The development partner will have to present a programme for delivery of the overall lot as part of the bid process with the detailed phasing of construction to be provided at the developer's discretion.

168. As the council will retain the freehold, the principles regarding the long-term maintenance and management agreements will be stipulated within the development agreement appendices. The general principles apply:
- a. Council to retain management and maintenance of affordable housing; Social Rent and possibly the Shared Ownership homes;
  - b. Private developer to retain management and maintenance of private homes under a lease arrangement;
  - c. Design of blocks and cores to minimise service charge costs to affordable units;
  - d. Scheme specific plans to be set out at tender stage and mechanisms within development agreement to enter into land, lease, management and maintenance agreements when the deal is unconditional; and
  - e. Adoption of a suitably amended version of the council's Employers Requirements to ensure the detail component specification are delivered and therefore in line with expectation and service arrangement for long-term management and maintenance.

### **Consultation**

169. Residents will continue to be consulted with during the design phase and will continue to be engaged during the life of the projects as outlined in the Charter of Principles agreed by cabinet.

### **Other implications or issues**

170. None identified.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Strategic Director of Finance REF: [H&M 24/014]**

171. This report asks cabinet to approve the procurement strategy, as detailed in paragraphs 52 - 73 of this report, to appoint development partners for mixed tenure housing schemes for the next phase of the Southwark Construction Development Programme.
172. It is critical that the pursuance of this strategy does not add revenue costs to the Housing Revenue Account, which is already under significant financial distress. As is reported elsewhere on the agenda for this meeting, the HRA overspent by £16m in the previous financial year, necessitating a draw-down on reserves and unprecedented borrowing for the Asset Management programme. The council has a plan to recover the position, and cash limits have been set in order to achieve this, therefore any revenue costs associated with the delivery of this next phase of the new

homes programme could only be contained by making compensating savings from tenant facing services, including repairs and maintenance budgets. Three key financial risks to the proposed approach include:

- The preliminary one-off costs relating to any developments which are subsequently aborted are charged to the HRA (and unbudgeted).
- The cost of appropriating land from the General Fund to Housing purposes would result in an unbudgeted revenue cost to the HRA. When land is transferred from the General Fund to Housing for the construction of new homes, a corresponding debt (to reflect the council's borrowings) is transferred to the HRA balance sheet and the associated interest payments are payable by the HRA.
- The risk that the council finds itself in a position in future years whereby additional capital is required in order to complete the delivery of these developments.

173. Before proceeding with this approach, it will be necessary to demonstrate that it will have nil cost to the HRA or that compensating savings have been identified and are deliverable.

174. It is important to ensure an appropriate control framework is established from the outset to minimise the council's exposure to both financial and non-financial risks associated with entering into development agreements of this nature. It is also important to establish contractual provisions to enable the council to control the pace of any future development to ensure it remains affordable and ensures the sustainability of the HRA.

### **Head of Procurement**

175. This report seeks approval from Cabinet for the Southwark Construction New Homes Programme 2022-2026 Procurement Strategy procurement strategy to enter in to at least two (2) x Development Agreements for the schemes that will be recommended to the portfolio holder at no cost to the council and as detailed in recommendations / delegations and notes to Cabinet and the Leader in paragraphs 1 to 10.

176. Cabinet and the Leader are asked to note the procurement is detailed in paragraphs 51 to 74 and 94 to 119, the risks are detailed in paragraph 74 the impact on qualities, health and climate change are detailed in paragraphs 125 to 134, social value is detailed in paragraph 137 to 138, confirmation that London Living Wage will be paid is detailed in paragraph 139, management and monitoring of the contracts is detailed in paragraphs 148 to 151.

**Assistant Chief Executive – Governance and Assurance REF:  
[LEG/KM/KR/20240603]**

177. This report seeks the Cabinet's approval to the procurement strategy and other associated recommendations for the Cabinet and the Leader in relation to the Southwark Construction New Homes Programme for use until March 2031 as further detailed in paragraphs 1-10. By virtue of contract standing order 6.4.3(a) the procurement strategy decision should be taken by the Cabinet (as a strategic procurement) after consideration of the report by CCRB, and delegations should be approved by the Leader under Part 3 of the council's constitution.
178. The nature and value of these works are such that they are subject to the full tendering requirements of the Public Contract Regulations 2015 (PCR 2015). As noted in paragraph 1(a) the intention is that either a restricted or competitive dialogue process is undertaken following an advert in the Find a Tender Service. The tendering requirements of the PCR 2015 are therefore satisfied with either procurement option. Advice has been sought from the council's external legal advisers who have confirmed that the competitive dialogue process may be used.
179. Cabinet is advised that the intention is to appoint development partners under development agreements, which will have no cost to the council, except those procurement costs noted as paragraph 33.
180. The report recommends approval of a procurement strategy which, if successful, will lead to the council entering into development agreements whereby the council will dispose of its land by way of long lease, in order that the land can be developed for housing.
181. The Council has powers under s123 of the Local Government Act 1972 which provides that except with the consent of the Secretary of State, a council shall not dispose of land under that section, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained.
182. Pursuant to this section, when the sites are to be disposed of by way of long lease, the Cabinet Member for New Homes and Sustainable Development, in consultation with Strategic Director of Housing, the Strategic Director of Finance and Cabinet Member for New Homes and Sustainable Development, and the Head of Property, will need to be satisfied that the consideration for the grant of the lease represents best consideration.
183. Where the land being disposed of is housing land the Council has powers under s32 of the Housing Act for its disposal, which can only be effected with the consent of the Secretary of State. The 2013 General Housing Consents provide exceptions to the requirement for Secretary of State's consent. In the situation envisaged by this report General Consents A3.1.1 (disposal of land for market value) and A3.2 (disposal of vacant land) will

be of relevance. The Cabinet Member for New Homes and Sustainable Development, in consultation with the Strategic Director of Housing, the Strategic Director of Finance, and the Head of Property, will need to be satisfied that the consideration for the grant of the lease represents market value.

184. The report also envisages the acquisition of land (leaseback of affordable units) in some cases. The Council has powers to acquire land pursuant to s120 of the Local Government Act 1972 for the purposes of any of its functions under the Local Government Act or any other enactment, or for the benefit, improvement or development of its area.
185. In addition the Council has power to acquire land under s227 of the Town and Country Planning Act 1990 for any of the purposes set out in s226 of that Act, which purposes include facilitating the carrying out of development, re-development or improvement on or in relation to the land, or which is required for a purpose which it is necessary to achieve in the interests of the proper planning of the area in which the land is situated.
186. This report also seeks approval to a number of delegations (in respect of the award decisions, agreement of packaging of sites, and the agreement of final procurement route) to the Cabinet Member for New Homes and Sustainability, in consultation with the Strategic Director of Housing, and the Strategic Director of Finance, to facilitate an efficient procurement process and award of these contracts.
187. The Cabinet's attention is drawn to the Public Sector Equality duty (PSED General Duty) under the Equality Act 2010, which requires public bodies to have regard, when making decisions, to the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a relevant protected characteristic and those who do not share it. The Cabinet is specifically referred to the community, equalities (including socio-economic) and health impacts at paragraphs 130-134 setting out the consideration that has been given to equalities issues which should be considered when approving the recommendations in this report. As noted in paragraph 127, equality impact assessments are to be undertaken once sites have been identified, further details of which will be given in the gateway 2 reports.

**Director of Exchequer (For Housing contracts only)**

188. This is not applicable.

**Head of Property**

189. The proposed arrangements to use Development Agreements and subsequent leases are widely used in the market to bring forward development, especially in respect of affordable housing.

190. The current market and financial pressures create an urgency in utilising delivery structures, other than self-delivery, to ensure the council can secure affordable homes on council owned land.

191. The proposed arrangements, subject to feasibility and viability, are likely to achieve that goal and the legal structures created will have sufficient control and provisions to ensure both delivery and also meet the requirements of best consideration.

#### **REASONS FOR URGENCY**

192. There are none.

#### **REASONS FOR LATENESS**

193. There are none.

#### **BACKGROUND DOCUMENTS**

<b>Background Documents</b>	<b>Held At</b>	<b>Contact</b>
Southwark Construction Strategic Plan (Cabinet Paper, Item 9)	Housing, Hub 3, Third Floor, 160 Tooley Street, London, SE1 2QH	Juliette Bartlett 02075253356
<a href="https://moderngov.southwark.gov.uk/documents/s112578/Report%20Southwark%20Construction%20Strategic%20Plan.pdf">https://moderngov.southwark.gov.uk/documents/s112578/Report%20Southwark%20Construction%20Strategic%20Plan.pdf</a>		

#### **APPENDICES**

<b>No.</b>	<b>Title</b>
None	

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Helen Dennis, New Homes and Sustainable Development	
<b>Lead Officer</b>	Hakeem Osinaike, Strategic Director of Housing	
<b>Report Author</b>	Juliette Bartlett, Strategic Lead, Southwark Construction	
<b>Version</b>	Final	
<b>Dated</b>	9 July 2024	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Finance	Yes	Yes
Head of Procurement	Yes	Yes
Assistant Chief Executive – Governance and Assurance	Yes	Yes
Director of Exchequer (For Housing contracts only)	N/a	N/a
<b>Contract Review Boards</b>		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
<b>Cabinet Member</b>	<b>Yes</b>	<b>Yes</b>
<b>Date final report sent to Constitutional Team</b>		9 July 2024