

DELEGATED DECISION - REPORT

26th April 2019

Subject:	Riverside Development - Canterbury
Director/Head of Service:	Caroline Hicks - Head of Property & Regeneration
Decision Issues:	These matters are within the authority of the Chief Executive.
Classification:	This report is open to the public.
CCC Ward(s):	Northgate
Summary:	This report details the council's decision making, following previous council decisions relating to the Riverside development.
To Resolve:	To forward fund and retain ownership of the commercial element of the Riverside scheme in accordance with previous council decisions.
Next stage in process:	To enter into new documentation, or amend any existing legal documentation, necessary to complete the transaction.

SUPPORTING INFORMATION

1. Introduction

At Policy and Resources committee on November 26th 2018 (confirmed on the same day by full Council), a number of resolutions were made in connection with the proposal for the council to forward fund and retain ownership of the commercial element of the Riverside scheme, as set out below:

1. To authorise officers to negotiate the transaction and terms for the forward funding and retained ownership of the commercial element of the Canterbury Riverside scheme, providing that the total cost of the transaction is at or below the limit specified in the report at Section 7.
2. That the Chief Executive be given delegated authority, in consultation with the Chairman of the Policy and Resources Committee, to determine that the terms are satisfactory and that there is sufficient certainty that all the residential units will be delivered as affordable, and to agree a final transaction price within the total cost limits specified in the report at Section 7, and any necessary amendments to the Development Agreement.
3. That if he does not consider that the terms available are satisfactory, the Chief Executive be authorised to reject the offer and determine the most appropriate course of action, including the possibility of termination of the existing Development Agreement.
4. If the transaction proceeds:

- a. To authorise the Deputy Chief Executive to decide the most financially advantageous funding arrangements for the transaction.
- b. To authorise the Head of Legal Services in consultation with the Deputy Chief Executive to enter into new documentation or amend existing legal documentation necessary to complete the transaction, including the issuing of any Voluntary Ex Ante Transparency (VEAT) Notices considered necessary to mitigate risks.
- c. To agree that the Head of Property and Regeneration instruct professional advisers to assist with the acquisition and future management of the commercial scheme.
- d. That the revenue and capital budgets for 2019/20 be amended to reflect the proposed intervention and associated costs, loan repayments and income.
- e. That the Treasury Management Strategy be amended to reflect the proposed purchase and associated borrowing costs.

The detail in the report below is intended to inform the Chief Executive in making the decision detailed at point 2 above.

2. Detail

- 1. To authorise officers to negotiate the transaction and terms for the forward funding and retained ownership of the commercial element of the Canterbury Riverside scheme, providing that the total cost of the transaction is at or below the limit specified in the report at Section 7.**

Officers have now concluded negotiations with the council's development partner Linkcity (LCY) and agreed final terms, as documented in the legal agreements, resulting in an investment of £23,068,000. This is within the limit set out in section Section 7 of the report.

- 2. That the Chief Executive be given delegated authority, in consultation with the Chairman of the Policy and Resources Committee, to determine that the terms are satisfactory and that there is sufficient certainty that all the residential units will be delivered as affordable, and to agree a final transaction price within the total cost limits specified in the report at Section 7, and any necessary amendments to the Development Agreement.**

The terms of the final settlement, as detailed in the Deed of Variation to the Development Agreement, the Funding Agreement and Lettings Agreement (appended to the Development Agreement) have been reviewed by the Deputy Chief Executive, Head of Legal Services and the Head of Property and Regeneration in consultation with our external advisors, who are satisfied with the terms. The recommendation, therefore, is that the Chief Executive, in consultation with the Chairman of the Policy and Resources Committee, should consequently approve them.

Negotiations between LCY and their residential development partner are at an advanced stage and are expected to be concluded shortly.

Officers have received correspondence from LCY's residential development partner

expressing its intention to include the residential component of the scheme in its programme as 100% affordable. To this end the scheme underwent some redesign, with large penthouse apartments being scaled down, to sizes more appropriate for affordable housing schemes and the associated revised drawings were subsequently submitted to and approved by the Local Planning Authority.

Furthermore, the Finance Director from LCY's residential partner recently visited the site and gave verbal assurances that it was the organisation's intention to deliver the scheme as 100% affordable, funded through their partnership with Homes England - requiring them to deliver 4,300 homes over the next 5 years, of which 1,600 must be affordable.

The proposed amendments to the residential lease(s) give further comfort around the intention to deliver the residential component as affordable housing, in a split between social rented and shared ownership accommodation.

Through conversations with Homes England, Council officers have also been provided with further comfort that the intention is for this scheme to be delivered as 100% affordable, funded by Homes England grant through their partnership with LCY's residential partner.

However, to provide as much certainty as possible, it is recommended that the Chief Executive should take the decision to sign the Deed of Variation to the Development Agreement and associated Funding Agreement but to only exchange completed documents with LCY, effectively completing the transaction, at the point LCY complete their legal agreements with their residential partner. This is to ensure that the legal and financial risks to the Council are minimised.

- 3. That if he does not consider that the terms available are satisfactory, the Chief Executive be authorised to reject the offer and determine the most appropriate course of action, including the possibility of termination of the existing Development Agreement.**

As above, officers consider that the terms are satisfactory, and so the Chief Executive is recommended to approve them. This has also been verified by external advisors.

- 4. If the transaction proceeds:
 - a. To authorise the Deputy Chief Executive to decide the most financially advantageous funding arrangements for the transaction.****

Financial modelling has been undertaken to investigate the different potential approaches to funding the commercial component through the use of conventional borrowing, including the costs/impacts of those different approaches. This will be kept under continuous review so that the most advantageous arrangements are adopted at the appropriate time.

- b. To authorise the Head of Legal Services in consultation with the Deputy Chief Executive to enter into new documentation or amend existing legal documentation necessary to complete the transaction, including the issuing of any Voluntary Ex Ante Transparency (VEAT) Notices**

considered necessary to mitigate risks.

The Head of Legal Services in consultation with the Deputy Chief Executive will enter into the new documentation and will amend any relevant existing documentation necessary to complete the transaction on the terms agreed and at the price agreed.

In accordance with the Public Contracts Regulations 2015, the council previously issued a Voluntary Ex Ante Transparency (VEAT) Notice to notify the market of the proposed changes to the Development Agreement. Subsequently, both the 10 day challenge period for ineffectiveness and further 20 day period for a damages claim against the council have both now passed. During that 30 day period the council received no correspondence or indication of a prevailing challenge or claim.

The Council has however been advised by its legal advisers that any claimant technically still has a further seven days, after the 30 day claim period, to notify the council of any proceedings they have issued against it. However, that advice, reiterated by the council's commercial advisers, also stated that it would be highly unlikely and unusual for the council not to have heard from any potential claimant within the 30 day period, given the significant cost of a claim and likelihood that any claimant would want to try and gather as much information as possible prior to lodging a claim with the courts.

Given the above advice and lack of any correspondence from any third party in response to the VEAT notice, the risk of proceedings being issued, in the seven days following the 30 day damages claim period, is very low. However, the recommendation to delay the completion of the transaction until LCY complete their deal with their residential partner, should further eliminate any risk of the council being subject to a damages claim - given this is likely to occur after the additional seven day period. The only residual risk which would remain would be the outside possibility of a claim being made with adequate justification to persuade a court that there were compelling reasons for a claim to be submitted outside of the prescribed claim periods.

- c. To agree that the Head of Property and Regeneration instruct professional advisers to assist with the acquisition and future management of the commercial scheme.**

This resolution will be actioned on an ongoing basis.

- d. That the revenue and capital budgets for 2019/20 be amended to reflect the proposed intervention and associated costs, loan repayments and income -**

This resolution will be actioned once contracts have been exchanged and the deal has been completed.

- e. That the Treasury Management Strategy be amended to reflect the proposed purchase and associated borrowing costs**

This resolution will be actioned once contracts have been exchanged and the deal has been completed.

6. Conclusions

As detailed in the report, the Deputy Chief Executive, Head of Legal Services and the Head of Property and Regeneration have reviewed the proposed terms of the deal, negotiated between council officers and the council's development partner Linkcity, for the forward funding and retained ownership of the commercial component of the Riverside development.

Having reviewed those terms and the total cost of the transaction, and in accordance with the previous decisions taken by the council, officers are satisfied that the transaction cost is within the limits set, that the terms are acceptable and that there is sufficient certainty that all the residential units will be delivered as affordable.

As such, it is therefore recommended that the Chief Executive, in consultation with the Chairman of the Policy and Resources Committee, should take the decision to sign the Deed of Variation to the Development Agreement and the Funding Agreement - although the legal documentation should not be exchanged and therefore the deal completed, until such time as Linkcity enter into their legal agreements with their residential partner.

Contact Officer: Richard Hall
Telephone: 01227 862046

Job Title: Regeneration Programme Manager