

REPORT TITLE: STATION APPROACH CARFAX SITE – PURCHASER
SELECTION PROCESS

23 OCTOBER 2019

REPORT OF CABINET MEMBER: CLLR ANNE WEIR, CABINET MEMBER FOR
LOCAL ECONOMY

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WARD(S): ST PAULS / ST BARTHOLOMEW

PURPOSE

On 18 September 2019 Cabinet approved the arrangements for the marketing and selection process to be undertaken to find a purchaser for the Carfax redevelopment site at Station Approach. This report provides further details of the proposed process to address the amended recommendation made at that Cabinet (CAB3172) 'that detailed arrangements for the purchaser selection process for disposal are subject to a further report to Cabinet, having considered the specific comments of the Scrutiny Committee in this regard'.

The council's original strategic objectives for implementation of this project are to:

- Achieve greater economic performance from land uses
- Maintain or improve the City Council assets
- Improve the aesthetic and environmental impact of the area

The emerging new council plan will have significant emphasis on tackling the challenges of the climate emergency, and this is a very important factor in the purchaser selection process. The council aims to ensure that this development is an exemplar sustainable office development, transforming the station area of the city and setting a regional benchmark in carbon neutral employment space.

RECOMMENDATIONS:

1. That the further detail of the marketing and selection process based on the disposal methodology for selection of a site purchaser of the Carfax site as set out in this report is agreed.
2. That the selection criteria set out in Appendix 1 are approved, with delegation given to the Strategic Director - Place to make minor amendments to finalise in consultation with the Cabinet Member for Local Economy.
3. That the project risks (and risk mitigation measures) set out in Appendix 2 are noted.

IMPLICATIONS:

2 COUNCIL STRATEGY OUTCOME

- 2.1 Successful regeneration of the Carfax site is central to delivering high value, private sector employment opportunities to support several themes in the Council Strategy (2018-20). It will be a landmark exemplar of sustainable office development in the heart of the city and act as a regeneration catalyst for other development and enhancements, as well as being of wider economic benefit to the city and district.

3 FINANCIAL IMPLICATIONS

- 3.1 The financial implications of the project were set out in detail in CAB3172.
- 3.2 The recommended selection criteria address the value of the capital receipts, or rental streams offered by prospective purchasers, alongside the non-financial benefits of the scheme. Demonstration of achieving best financial consideration will be a critical part of the selection process and decision.
- 3.3 Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land with the caveat that an authority must not do so for a consideration less than the best that can be reasonably obtained i.e. the best achievable price in the open market. If the Council can demonstrate that value is being received in other ways that justify the monies foregone to the public purse it may dispose of land at less than best consideration with the consent of the Secretary of State for Housing, Communities and Local Government. The recommended sale process will create competitive tension between parties and therefore an assurance that best consideration is being achieved.
- 3.4 In order to assess best consideration, the submissions will be compared based on their Net Present Values (NPVs); i.e. comparing the various offers of initial capital receipt and the future geared rent arising from tenant leases receivable over the life of the lease.
- 3.5 In addition to best consideration, other factors will be taken into account, including the financial robustness, financial deliverability and detail of the financial offer; for example, the level of deposit, overage terms and lease gearing.

4 LEGAL AND PROCUREMENT IMPLICATIONS

- 4.1 The Council has statutory powers to bring forward regeneration under the general power of competence provided for in Section 1 of the Localism Act 2011, and has powers to dispose of land under Section 123 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1990.

- 4.2 This is a land disposal not a procurement exercise. CAB 3172 (28 August 2019) and 3188 (18 September 2019) reports have given significant detail on the legal implications which is not repeated here.
- 4.3 This report expands on the assessment approach detailed in CAB 3188.
- 4.4 The marketing pack will set out the questions to be asked of prospective purchasers by reference to the criteria, and will include the draft agreement for lease (“AfL”) and lease. Under these documents, the purchaser will be subject to certain negative covenants to ensure that (so far as consistent with procurement law) the various commitments made under the competitive process are captured. In particular, it will be lawful to bind the purchaser to follow the outline planning consent and only depart from that with landowner (i.e. Council) permission. Equally, and for example, the AfL and lease may refer to the purchaser’s submitted programme, design approach, sustainability and approach to carbon neutral, stakeholder engagement plan, as well as their financial offer and funding solution.
- 4.5 The Council may not exercise decisive influence over the purchaser’s approach, or seek to enforce the carrying out of specified works. But the Council has a legitimate interest, particularly since it has other land holdings in the City, in maximising the quality of the scheme and of the land value payment to be made; this, as indicated, may be done by suitably incorporating the successful purchaser’s commitments in the sales documentation.
- 4.6 A further report will be brought to Cabinet in accordance with Recommendation 4 of Cabinet report 3188 which stated that “the Strategic Director – Place be required to bring a report to Cabinet for a decision on the disposal of the site to a purchaser once the marketing and selection process has been completed”.

5 WORKFORCE IMPLICATIONS

- 5.1 Project management will be led by the Council’s Head of Programme and project team, supported by contracted consultants. Significant input from the Council’s legal and financial teams will be required, supplemented, where appropriate, by external advisors.

6 PROPERTY AND ASSET IMPLICATIONS

- 6.1 The report sets out in Appendix 1 the assessment criteria to underpin the approved approach for a competitive selection process for the disposal of the Carfax site in accordance with the decision taken at Cabinet on 28 August 2019 (CAB 3172) for a long leasehold disposal, subject to terms and conditions, and 18 September 2019 (CAB 3188) on the Purchaser Selection Process.

7 CONSULTATION AND COMMUNICATION

- 7.1 Scrutiny Committee on 14 August 2019 made comments on the report to Cabinet 28 August (CAB 3172) that set out the options and then recommended route for disposal of the Station Approach site. The Committee explored a range of matters in particular seeking a reserve value for the site disposal and reviewing marketing in light of uncertainty in the commercial property market in late 2019/early 2020.
- 7.2 These matters were considered by Cabinet on 28 August 2019 and are addressed in the risk register. The purchaser selection process was considered at Cabinet on 18 September 2019 (CAB3188) and the comments raised at this meeting are addressed in Section 11 of this report: Supporting Information.
- 7.3 A cross party group of Council members has met with the Council's advisors and contributed to the development of the assessment criteria.

8 ENVIRONMENTAL CONSIDERATIONS

- 8.1 The marketing pack and selection criteria will address the Council's objectives to support a low carbon economy. The BREEAM method of assessing the building design and impacts will be used to measure and test design proposals. The previous report to Cabinet on 28 August 2019 (CAB 3172) gave significant detail on this aspect of the project and that is not repeated here. It is intended that this development will be a regional exemplar of carbon neutral development.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 An Equalities Impact Assessment (EqIA) scoping process has been undertaken for the project in its entirety. The EqIA scoping identified potential impacts for people with physical impairments or health problems. Through liaison with accessibility and disability groups, the work on the public realm design within the Carfax scheme has addressed these impacts related to accessibility needs.

10 DATA PROTECTION IMPACT ASSESSMENT

- 10.1 None required at this stage of the process. However data protection is ongoing and will be continuously re-evaluated, in particular throughout the selection process; and a secure dataroom will be hosted by JLL to ensure compliance with data protection requirements.

11 RISK MANAGEMENT

- 11.1 This project has a full risk register which is managed by the Head of Programme.

11.2 Key risks for the leasehold disposal process are listed below. The full detail for these risks is included as Appendix 2.

- Change in commercial market including post Brexit
- Programme risks in relation to governance, resourcing and contingency
- Delivery decisions
- Process for site disposal challenge
- Changes to design through delivery
- Selection of suitable purchaser
- Financial returns
- Phasing of works
- Evaluation process governance
- Capacity for assessment of purchasers and governance reporting requirements overlapping pre-purchase
- Planning application decision challenge

11.3 These matters have been considered in the development of the assessment criteria.

12 SUPPORTING INFORMATION:

12.1 The strategic objectives for the Station Approach project build on those in the Business Justification Case (CAB2864 20 March 2017) and were confirmed in the Outline Business Case approved by Cabinet (Station Approach) Committee CAB3144(SA) on 25 March 2019 (and which also informed the consideration of OS225). These are set out below:

12.2 Strategic Objectives:

- Achieve greater economic performance from land uses
- Maintain or improve the City Council assets
- Improve the aesthetic and environmental impact of the area

12.3 A scheme meeting these objectives will deliver a transformative, exemplar office-led regeneration of the area around the station, ensure the enhancement of the economic vitality of the city and wider District for the future; offering new, improved employment opportunities, whilst also creating an improved gateway with enhanced connectivity to the city centre.

12.4 The Strategic Objectives for the scheme therefore create a framework for establishing the assessment criteria set out in this report.

12.5 At the Cabinet meeting on 18 September 2019 (CAB3188), the following amended recommendation was approved 'that detailed arrangements for the purchaser selection process for disposal are subject to a further report to

Cabinet, having considered the specific comments of the Scrutiny Committee in this regard’.

- 12.6 The recommended assessment criteria have been developed with the assistance of advice from JLL, the Council’s Strategic Placemaking Advisors, and Brown Jacobson, the Council’s legal advisors.
- 12.7 These assessment criteria are attached as Appendix 1 and expand on the methodology already approved by Cabinet (18 September 2019 CAB 3188). The overall approach is set out below.

Timetable:

- 12.8 The marketing period commences on 31 October 2019 at the South Coast Commercial Property Show. This is a regular regional event, forming one of the leading property events in this region and provides a highly appropriate platform for the marketing launch of the Station Approach disposal. Marketing will also be carried out through established national, regional and local platforms, including the property press, web-based marketing and mailing.
- 12.9 Submissions must be received by 17 January 2020 and it is expected a report will be made to Cabinet in March 2020 to recommend a preferred purchaser.
- 12.10 Following negotiations and finalisation of legal documentation, it is anticipated that the selected purchaser will be contracted in late spring 2020. This timetable is important in relation to the EM3 LEP requirement for the awarded grant for the Carfax site preparation works, including archaeological excavation, to be spent by 31 March 2021.

Assessment Process

- 12.11 The Assessment Criteria, are grouped in 5 key themes:
- Financial – Provides a financial return which, as a minimum, meets the Council’s obligation to secure best consideration.
 - Deliverable – Can be delivered to a Programme which meets the Council’s objectives for kick-starting regeneration opportunities in the Station area, and which utilises the EM3 LEP Grant.
 - Sustainable – Delivers an exemplar carbon neutral, office-led mixed use scheme including high quality Grade A office space, supporting uses and public realm.
 - Demonstrable (track record/experience) – Evidences relevant experience and track record of team, including securing a high level of stakeholder support by effective stakeholder engagement as part of the continuing planning process.
 - Commercial – Provides acceptable responses to the draft legal documentation, without unclear or unacceptable caveats.

- 12.12 Criteria in these areas have been developed linked to achieving best outcome from the disposal linked to the stated objectives set out in the Outline Business Case for Station Approach. These have been regularly reported in subsequent cabinet reports on this development (CAB 3144, 25 March 2019) as set out in earlier in this report.
- 12.13 In addition to capturing the above objectives, submitting parties will be assessed on track record, including team, for delivering comparable projects, demonstration of approach to sustainable travel, planning, stakeholder engagement, securing tenants and risk.
- 12.14 A key part of the Council's assessment of bids relates to the track record and experience of submitting parties for delivering high quality development schemes of comparable size and type. The comments of the Regional Design Panel are very important and as part of the development process, it is considered that the purchaser should engage in with that panel. The Council is taking legal advice on how this can be robustly incorporated in the Agreement for Lease for disposal of the site.

Process for assessment:

- 12.15 Submissions will be receipted by the Council's strategic advisors.
- 12.16 Submissions will be reviewed by the Strategic Director - Place, Strategic Director – Resources, S 151 Officer and Head of Programme supported by the Council's Strategic Placemaking Consultants (JLL) and Legal Advisor (Browne Jacobson).
- 12.17 A key task will be to verify the financial offer in the submission. In order to assess best financial consideration, the submissions will be compared based on their Net Present Value (NPV), i.e. comparing the offers of capital receipt and the future lease income over the life of the lease.
- 12.18 Assessment will also be made against the agreed criteria and if necessary, clarifications will be sought from a party at this time.
- 12.19 The Council may choose to invite all or some short listed parties to make a presentation of their submission to a Presentation Panel. In addition to the officer team the Cabinet Chair for Local Economy, 1 Ward Councillor, 2 Administration Members and 2 Opposition Party Members will form the Presentation Panel.
- 12.20 The Council is under no obligation to pursue any negotiation with any party but may choose to seek clarification at any part of the process in order to secure the best outcome for the Council.
- 12.21 The Strategic Director - Place has delegated authority to bring forward a report with a recommended preferred party/parties to a future Cabinet. All parties will be advised on the outcome of the process.

Associated documentation

12.22 A Marketing Pack is being prepared, led by the Council's Strategic Placemaking Consultants JLL, with legal input as appropriate. The Marketing Pack will include:

- Details of the site development opportunity,
- A 'dataroom' of all relevant technical background documents, including the Outline Planning Consent and all planning application and background technical documents and responses submitted,
- The information within the Assessment Criteria document referenced in this report, and attached as Appendix 1,
- A suite of legal documents to include the Draft Agreement for Lease (AfL) and Lease.

13 OTHER OPTIONS CONSIDERED AND REJECTED

13.1 This report provides further detail to the Cabinet report (3188) considered on 18 September, and no further options have been considered or rejected.

BACKGROUND DOCUMENTS:-

None

Previous Committee Reports:-

CAB3188	Station Approach - site disposal process	18 September 2019
Planning Committee	Land East Of Station Road, Winchester, Hampshire. (Case number: 19/00601/OUT)	12 September 2019
CAB3172	Station Approach Proposals for Delivery and Further Public Realm Development	28 August 2019
SC009	Station Approach - Proposals for Delivery and Further Public Realm Development	14 August 2019
CAB3144(SA)	Station Approach – Outline Business Case and associated matters	25 March 2019
OS225	Station Approach - Outline Business Case and Associated Matters (less exempt appendices)	20 March 2019
CAB3101(SA)	Economic Appraisal and Business Case Preparation	18 December 2018
CAB3083(SA)	Station Approach Update	4 October 2018
CAB3055(SA)	Station Approach – Update Report	12 July 2018
CAB3021(SA)	Station Approach - Public Realm Strategy and Masterplan Framework	27 February 2018
CAB3001(SA)	Station Approach – Update	28 November 2017
CAB2959(SA)	Station Approach – Appointment of Design Team	14 August 2017
CAB2864	Station Approach – RIBA Plan of Works Stages Documentation	20 March 2017
OS157	Station Approach – End Stage review report for the competitive dialogue process	30 November 2016
CAB2852	Station Approach - Procurement Process Update	17 October 2016
CAB2829	Station Approach - The Way Forward	7 September 2016

Other Background Documents:-APPENDICES:

Appendix 1: JLL Assessment Criteria

Appendix 2: Station Approach Risk Register for Disposal Process

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Risk Number: 15		Risk Owner: Project Executive				
Risk Title: Change in commercial market including post Brexit						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Change in commercial market Potential occupiers do not sign up for pre-lets of an appropriate level of office space prior to commencement of the development. Economic uncertainty due to Brexit	Purchaser does not commence scheme. Required financial return for the Council is not met Delay in project programme. Changes to the programme and scope of the project incur additional fees. Impact on the interested businesses. Impact on the local economy. Impact on the Medium Term Financial Strategy.	1. Maintain political support to move project forward and prevent delays. 2. Continued economic and political monitoring. 3. parties for the site to demonstrate how they will secure prospective occupiers , e.g. by way of pre-lets or non binding expressions of interest. A competitive process to secure a purchaser will provide assurance of genuine demand for the site. The outline planning application route will also b stimulate further market interest. 4. - It will be expected that parties and the selected purchaser undertake market testing to ensure demand and do so regularly to ensure demand continues. Equally, they will engage with those retailers who have expressed an interest. Because of the significant uncertainties of a Brexit deal and the increased risk of no deal or an early general election, it is not possible to mitigate or quantify every possible outcome. So while mitigation can help to reduce the impact, it is not possible to mitigate entirely against these risks.	Likely	Major	2	£££ - ££££
Further actions		Target date	Residual Risk Score			
Market the site and ensure parties pursue and demonstrate suitable occupiers Market testing (by the purchaser working with the Council) should also be undertaken to ensure continuing demand. Trend: Increasing		Q3 2019	Likelihood	Impact		
			Likely	Major		

Risk Number: 27		Risk Owner: Project Executive				
Risk Title: Programme risks in relation to governance, resourcing and contingency						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Pressure on delivery timescale (e.g. LEP Grant).	Pressure put on project programme removes contingency from disposal and delivery stages; risks to resource availability and programme	Ensure the purchaser has a risk register to monitor and manage risks to avoid them becoming issues. Manage all parties' expectations for delivery timescales. Identify issues with relevant parties when they occur, and flag impacts on programme. Seek advice on any governance process changes.	Likely	Major	2	££
Further actions			Target date	Residual Risk Score		
Engage in review process from new administration and identify where changes to scope/timetable would impact negatively on programme and benefits to be realised. Trend: Increasing			Q2 2019	Likely	Moderate	

Risk Number: 28		Risk Owner: Project Executive				
Risk Title: Delivery decisions						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Decision on delivery Council's insurance does not cover chosen delivery option insurance requirements	Council takes development route which increases the risks to the Council and requires increased insurance limits and indemnities. Risks not covered by insurance Insurers impose conditions for increase capital spend WCC need to identify a new risk insurer	Mitigation - Advice form the Council's internal and external risk advisors has been obtained to set the current insurance limits. The Council has cover for public liability and employer's liability and can decide to increase this if after a risk re-assessment this is required.	Unlikely	Major	3	££
Further actions			Target date	Residual Risk Score		
Whilst unlikely, if a review of the risk assessment identified a need to increase insurance limits, the Council has the option of requesting contractors to increase insurance cover. Get Council's insurer to assess risk and advise on how to manage May need to expand premiums or insure any additional risks. Trend: No change			Q3 2019	Unlikely	Low	

Risk Number: 73		Risk Owner: Project Executive				
Risk Title: Process for site disposal challenge						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Disposal of the site via land disposal rather than a procurement process is challenged	Delay to project Additional cost to address challenge Negative publicity	<p>Appropriate legal advice obtained. The procedural steps below are proposed to mitigate these risks:</p> <ul style="list-style-type: none"> • Ensuring there is a fully documented audit trail to justify the transaction being undertaken outside of the PCR. • Conducting the competitive process to select a purchaser in a manner which clearly demonstrates the intention to enter into a land transaction. • Ensuring that the legal agreement entered into satisfies the relevant tests for being a land sale and is therefore not a contract for works or services. • If/when an agreement with the selected purchaser is successfully negotiated, giving due consideration to publishing a "Voluntary Ex Ante Transparency" (VEAT) notice in the Official Journal of European Union (OJEU), describing the nature of the agreement to be entered into and the reasons for not publishing an OJEU Contract Notice. <p>Ensure the disposal is on terms which follow legal advice</p>	Unikely	Major	2	££
Further actions			Target date	Residual Risk Score		
				Likelihood	Impact	
Trend: Increasing			Q2 2019	Highly Unlikely	Major	

Risk Number: 74		Risk Owner: Project Executive				
Risk Title: Changes to design through delivery						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Developer decides to change design within the outline consent	Impact on programme	Assess as part of selection process	Likely	Major	3	££££
Further actions		Target date	Residual Risk Score			
			Likelihood	Impact		
Trend: No change		Q1 2020	Unlikely	Moderate		

Risk Number: 75		Risk Owner: Project Executive				
Risk Title: Selection of suitable purchaser						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Sale of the leasehold to a 3rd party	Concerns raised over quality of the scheme Risk of not all economic benefits being delivered	Robust assessment as part of purchaser selection process Local Planning Authority decision making and through any future reserved matters application	Likely	Moderate	3	££
Further actions		Target date	Residual Risk Score			
			Likelihood	Impact		
Trend: No change		Q2 2020	Unlikely	Moderate		

Risk Number: 76		Risk Owner: Project Executive				
Risk Title: Financial returns						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Risk of loss on the sale of the Council's asset	The proceeds could be less than the value that the Council has invested in the site	Assessment as part of purchaser selection process to consider best consideration. Risk should also to be considered against regenerative benefits gained	Unlikely	Significant	3	££££
Further actions		Target date	Residual Risk Score			
			Likelihood	Impact		
Trend: No change		Q2 2020	Unlikely	Moderate		

Risk Number: 77			Risk Owner: Project Executive			
Risk Title: Phasing of works						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
LEP spend timescale requirements put pressure on suitable phasing of public realm implementation and Carfax site preparation works.	Impact on programme	Construction logistics Ongoing discussion with LEP	Unlikely	Moderate	4	£££
Further actions			Target date	Residual Risk Score		
				Likelihood	Impact	
Trend: No change			Q2 2021	Unlikely	Minor	

Risk Number: 78			Risk Owner: Project Executive			
Risk Title: Evaluation process governance						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Cabinet do not approve the evaluation criteria. project team resourcing risk, as resources are detracted away from the main stage objective to market the site.	Marketing material cannot be finalised in time for launch on 31 October 2019. Launch delayed.	Cross party meeting to take place before dispatch to discuss the process.	Likely	Moderate	1	££
Further actions			Target date	Residual Risk Score		
				Likelihood	Impact	
Trend: Increasing			Q4 2019	Unlikely	Moderate	

Risk Number: 79		Risk Owner: Project Executive				
Risk Title: Capacity for assessment of purchasers and governance reporting requirements overlapping pre-purdah						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Overlap of evaluation and Cabinet lead in times.	Report for required governance sign-off cannot be finalised in time for Cab March 11 2020. Resourcing risk	Flag to Head of Programme to raise at Project Board	Highly likely	Major	2	££
Further actions			Target date	Residual Risk Score		
Re-evaluate programme for governance sign-off Trend: No change			Q1 2020	Likelihood	Impact	
				Unlikely	Major	

Risk Number: 80		Risk Owner: Project Executive				
Risk Title: Planning application decision challenge						
Causes	Consequences	Current Controls	Current Risk Score		Risk Proximity	Financial impact
			Likelihood	Impact		
Planning Permission is challenged	Risks to Council's reputation. Delay in project programme. Changes to the programme and scope of the project incur additional fees Impact on the interested businesses. Impact on the local economy. Impact on the Medium Term Financial Strategy	1. Address Cllrs concerns through follow-up cabinet report process, to give additional confidence in process	Unlikely	Significant	1	£££
Further actions			Target date	Residual Risk Score		
Wider Council strategy needed for areas of concern such as tree removal from the site. Trend: No change			Q3 2019	Likelihood	Impact	
				unlikely	Major	