

Cabinet – 13 March 2013

Phoenix 10 Project

Portfolio: Councillor Adrian Andrew, Deputy Leader, Regeneration

Related Portfolio: Councillor Chris Towe, Finance and Personnel

Service: Regeneration – Development and Delivery

Wards: Pleck

Key decision: No

Forward plan: Yes

1. Summary

- 1.1 At its meeting on 23 January 2013 Cabinet noted that negotiations between the Homes & Communities Agency (HCA) and the prospective purchaser of the Phoenix 10 site had ceased and agreed to support the review of delivery mechanisms for the project. Cabinet also agreed to receive a detailed report on the preferred delivery model at this meeting.
- 1.2 The Council engaged consultant, DTZ, to advise on the review of options for delivering the project and these options have been the subject of discussions between the Council, the HCA and other key stakeholders.
- 1.3 This report invites Cabinet to consider the options and approve the preferred, most timely and cost effective delivery mechanism for the reclamation and development of the site.
- 1.4 The preferred delivery mechanism consists of the Council acquiring the HCA land and procuring a specialist contractor to undertake the reclamation of the site. It is proposed that the cost of the work is met by borrowing against future business rate uplift anticipated to be generated in the Black Country Enterprise Zone. Reclamation will enable the Council to promote the disposal and development of the site which will create jobs and economic growth.
- 1.5 The report presents a series of principles that will guide the process for the reclamation and development of the site. The project represents the single most complex regeneration scheme in Walsall at this time and in order to make real progress, particularly in respect of its key role within the Enterprise Zone, cabinet are asked to support the broad direction of travel to ensure delivery.

2. Recommendations

- 2.1 That Cabinet notes the recommendations made following work undertaken by DTZ to review possible options for delivering the reclamation and development of the Phoenix 10 site (located off Darlaston Road/Reservoir Place), with the conclusion being that option 3 is the most appropriate option.
- 2.2 That Cabinet agrees to progress negotiations with the Homes & Communities Agency (the 'HCA') to acquire the HCA's land interest, as indicated on plan no. EMPS 3753, on terms to be agreed at its meeting on 24 April 2013.
- 2.3 That Cabinet approves undertaking a procurement process for technical project management support to assist delivery of the project and delegates authority to the Executive Director Regeneration to award the contract.
- 2.4 That Cabinet approves undertaking a procurement process for a contractor to undertake the reclamation works for the combined Phoenix 10 site by comprehensive ground excavation subject to final approval from Cabinet to award the contract.
- 2.5 That Cabinet endorses the submission of a formal request to the Black Country Local Enterprise Partnership Board for financial support for the reclamation of the Phoenix 10 site from anticipated business rate uplift in the Black Country Enterprise Zone.
- 2.6 That Cabinet agrees to receive reports to future meetings which:
 - a) outline the proposed detailed arrangements for funding the reclamation of the Phoenix 10 site.
 - b) seek approval to appoint a specialist reclamation works contractor.
 - c) outline for agreement the detailed terms for the Council's acquisition of the HCA land.
 - d) seek the necessary approvals to progress the Phoenix 10 project once the above recommendations have been acted upon.
 - e) outline the arrangements for securing the disposal and development of the site and the management of any subsequent capital receipt

3. Report detail

Context

- 3.1 The Phoenix 10 site, located off Darlaston Road/Reservoir Place, is the key development opportunity in the Darlaston part of the Black Country Enterprise Zone. The main 37 acre site is located to the east of the M6 motorway and is comprised of the former IMI Copper Works, owned by the Homes & Communities Agency (HCA), and adjoining Council owned land formerly used as a tip, while the HCA also owns other former IMI land amounting to 7 acres on the west side of the M6 motorway, accessed from the main site via a tunnel. The successful delivery of the project will make a positive contribution to Walsall's employment

land supply. The borough currently has an inadequate supply of readily available employment land and this serves as a constraint on investment and job creation. Bringing such a large area of land back into productive use can therefore make a significant contribution to economic growth and employment in the borough while also enhancing the local environment.

Background

- 3.2 As a result of previous use both the HCA and Council land is polluted and as such significant reclamation work is required prior to any development taking place. It had been anticipated that all the land would be sold to a private company in order for them to undertake this reclamation work and discussions between the HCA and a prospective purchaser regarding the former IMI Copper Works site reached an advanced stage. However, at its meeting on 23 January 2013 Cabinet was informed that these negotiations had ceased as the prospective purchaser was no longer able to agree one of the conditions of the draft agreement with the HCA relating to a guarantee of delivery. In this context Cabinet was also advised that professional property advisors DTZ had been jointly tasked with reviewing the project by the Council and HCA in order to consider alternative means of progressing the reclamation and development of this key site.
- 3.3 DTZ's commission required them to assess the possible reclamation solutions for the site and determine which of these would represent the most suitable option. Furthermore DTZ were tasked with making a recommendation on the most appropriate means of securing the reclamation and development of the site.

Reclamation Options

- 3.4 In order to clarify the preferred reclamation method DTZ commissioned Wardell Armstrong to review three possible options for the main 37 acre site:
- 1) Do minimum – undertaking the minimum requirements for remediation works necessary to satisfy the Environment Agency's ongoing concerns in relation to polluted groundwater associated with the HCA land and deal with contamination on the Council's land.
 - 2) Grout and Cap – the remediation of surface soils, treatment and stabilisation of known mineshafts/mineworkings and addressing polluted groundwater by pumping.
 - 3) Ground excavation – the excavation of made ground and natural materials (including incidental coal reserves) to remove all mineshafts/mineworkings and enable the treatment of polluted groundwater.

Wardell Armstrong's review considered the timescale, cost, risks and outcome of each reclamation method and concluded that option 3 provides the most appropriate means of dealing with the ground engineering issues for the Phoenix 10 site for the following reasons:

- It is considered the most comprehensive solution by the Environment Agency.
- The approach to the treatment of both known and unknown mineworkings, and groundwater mean that a viable development site can be created. Options 1 and 2 would result in issues relating to the ability to provide appropriate warranties. Option 3 would therefore result in the most marketable site.

- The timescale for reclamation would be no longer than options 1 and 2.
- The costs of reclamation are comparable to option 2 but these can be mitigated by coal revenues.
- The treatment of groundwater in relation to options 1 and 2 creates a run off liability of up to 15 years which would clearly impact on future market interest.

Due to the location and size of the additional 7 acre site it would not be feasible to employ option 3 for reclamation. On this basis Wardell Armstrong recommend that the land is initially capped to prevent infiltration of surface water. To provide a development platform there would be a need to treat mineshafts/mineworkings.

Proposed Delivery Mechanism

- 3.5 Based on the outcome of this work DTZ undertook feasibility work to assess the likely development quantum resulting from reclamation comprising ground excavation. In order to do this DTZ commissioned architects to produce an indicative layout for the site that would reflect likely market demand and quantity surveyors to assess the costs of that scheme. This work allowed DTZ to produce a financial model which considers the costs and values associated with the reclamation and development of the site and the total business rates that can be generated. Using this model DTZ were then able to consider the most appropriate means of moving the project forward.
- 3.6 DTZ's advice concludes that the site is delivered through a contract for works for the reclamation followed by developer procurement given that the costs associated with reclamation are likely to preclude a developer led reclamation and delivery route. It is advised that the reclamation and delivery of key infrastructure items is funded through the prudential borrowing model supported by business rates uplift across the Enterprise Zone, any possible grant support, and the reinvestment of capital receipts from the disposal of the site. Further work is currently being undertaken to understand the development potential of the 7 acre site to clarify the extent of reclamation works that would be carried out to enable future use but it is suggested that these would be funded through the same means.
- 3.7 The procurement of the developer phase is in the early stages of feasibility but it is considered that a development agreement will need to secure longer term involvement from the Council to ensure that the investment through the business rates is protected beyond the conventional mechanism for the collection of business rates. There are a number of means by which the Council can maintain its involvement and these will be considered in the next phase of work.
- 3.8 Following completion of the DTZ report there have been detailed discussions between the Council and the HCA to agree a way forward, particularly in relation to securing public sector led reclamation of the site. It has been agreed that the most suitable means of securing the reclamation of the site is for a procurement process to be undertaken to appoint a specialist contractor to carry out the works. During the course of the discussions the HCA has requested that the Council takes lead responsibility for managing this contract, given the opportunity that exists to borrow against funds anticipated to be available via business rate uplift in the Enterprise Zone. On this basis it is proposed that the Council would acquire the HCA landholding, as shown on plan no. EPMS 3753, in due course.

- 3.9 Business rate uplift generated in the Enterprise Zone is retained by the Local Enterprise Partnership (LEP) for use on economic priorities in the sub-region. In view of this it will be necessary to secure approval from the LEP Board that anticipated business rate uplift will be made available against which the Council will be able to borrow to fund the reclamation works at Phoenix 10. In this context it should be noted that at its meeting on 26 September 2012 the LEP Board agreed that the priority for use of business rate uplift would be supporting the delivery of Enterprise Zone sites. It is recommended that a detailed report on the funding implications will be presented to a future meeting but if the LEP Board does not agree to the use of business rate uplift to support the reclamation costs then it is not expected that the Council would proceed with any acquisition of the HCA land, and would need to consider how it addresses its own landholding.
- 3.10 Given that there appears to be a mechanism for the Council to fund the reclamation works it is recommended that Cabinet approves the commencement of a procurement process to appoint a specialist contractor to reclaim both the Council and HCA land. External legal advice may be required to support the process of producing any contract for these works. A future report to Cabinet will seek approval to appoint the contractor.
- 3.11 The reclamation of the site will be a highly complex task and project management support is required to advise on the technical issues that will arise. As such there will be a need to immediately begin a separate procurement process for this support so that assistance can be provided on preparation of the planning application and procurement of the specialist contractor.
- 3.12 As previously stated it is expected that the land owned by the HCA will transfer to the Council in due course. On this basis negotiations will be required with the HCA to agree the terms of this land transfer. The land owned by the HCA is heavily polluted given its previous use as a copper works. The Council therefore needs to be satisfied that it does not acquire any unnecessary or unreasonable environmental liability. This will be negotiated with the HCA before the land is acquired or any reclamation works are carried out but it is anticipated that any arrangement is likely to involve the HCA retaining historical liabilities relating to previous use and the Council being responsible for any future liabilities caused by activity on the site.
- 3.13 It is also proposed that a report is presented to a future meeting setting out the arrangements for securing the disposal and development of the site and the management of any subsequent capital receipt. The acquisition of the HCA land and its subsequent reclamation as part of the overall Phoenix 10 site will result in a significant land asset for the Council and as such there will be a need to consider the most appropriate means of managing this asset. An agreed delivery mechanism will be required to ensure that the site is developed and that it creates jobs and investment to support the local economy.

4. Council priorities

4.1 The Council has committed to focus on three priorities in the Corporate Plan and one of these is the economy. Supporting the delivery of the Phoenix 10 site will lead to economic growth and job creation.

4.2 The proposal for the Council takes a direct role in the reclamation of the site is line with the following objectives as set out in the Marmot Review:

- Give every child the best start in life
- Enable all children, young people and adults to maximise their capabilities and have control over their lives
- Create fair employment and good work for all
- Ensure a healthy standard of living for all
- Create and develop healthy and sustainable communities
- Strengthen the role and impact of ill-health prevention

Reclamation of the Phoenix 10 site would enable its future development which would have a positive impact on the lives of local people by creating new job opportunities and improving the appearance of the local environment by reclaiming derelict land.

5. Risk management

5.1 There is a risk that the procurement process will not identify a contractor to undertake the reclamation works. However, initial market testing has concluded that there are suitably experienced contractors in operation who would be capable of carrying out the work.

5.2 There is a risk that the LEP board will not agree use of business rate uplift for reclamation of the site. However, the LEP board has already agreed that the priority for use of the uplift will be to assist the delivery of the EZ sites and funding the reclamation of the site is in line with this decision.

5.3 There is a risk that there will be insufficient business rate uplift generated to meet the costs of reclamation. However, initial calculations have been undertaken which suggest that the level of uplift should be of a scale to enable the costs to be met.

5.4 There is a risk that the reclamation works will result in environmental liabilities for the Council. However, this risk can be mitigated by ensuring that this issue is addressed in detail through any sale and purchase agreement with the developer and the contractual arrangements with the reclamation contractor.

5.5 There is a risk that the Council and the HCA are unable to agree terms for a land transfer. However, initial discussions indicate that the principle of such a transfer is acceptable to both parties.

5.6 There is a risk that the reclaimed Phoenix 10 site will not generate significant investor demand and therefore jobs and economic growth will not be generated. However, very recent work undertaken by DTZ on the likely market demand for the Black Country Enterprise Zone sites suggests that Phoenix 10's size and location would make it an attractive proposition to potential developers,

particularly given the profile generated by Enterprise Zone status. This work also emphasises the importance of taking action to make sites available for immediate development in order to facilitate business growth.

6. Financial implications

- 6.1 The costs associated with achieving the reclamation of the site will be significant and will be confirmed in a future Cabinet report. The likely financial model for any Council contribution to meeting these costs would be through the prudential borrowing model supported by anticipated business rates uplift across the Enterprise Zone, possible grant support, and the reinvestment of capital receipts from the disposal of the site.
- 6.2 The cost of DTZ's options assessment and any associated sub-consultant work has been shared equally between the Council and HCA. There are no immediate financial implications resulting from this report. The individual costs associated with progressing the project will be set out in future reports.
- 6.3 Any future sale of the reclaimed land would initially generate a capital receipt for the Council.

7. Legal implications

- 7.1 The Council will need to follow its Contract Rules and any legislative requirements, including the Public Contract Regulations 2006 (as amended) in relation to the procurement of a reclamation works contractor.
- 7.2 The Council will need to ensure that the sale and purchase agreement protects it from any unnecessary or unreasonable environmental liability in respect of the land
- 7.3 The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 are likely to apply given the size and nature of the site, meaning any planning application for reclamation works and development would have to be supported by an Environmental Impact Assessment.
- 7.4 The development of the former IMI Copper Works site for employment uses would be in accordance with the Black Country Core Strategy and the specific saved policy for the site (JP4.2) in Walsall's Unitary Development Plan. The development of the adjoining Council owned land will be required to comply with planning policy and this will include the retention and improvement of open space. Both sites are also within the mineral safeguarding area (MSA) identified in the Core Strategy, and any development on a site of their size within the MSA is required to consider the feasibility of "prior extraction" of minerals, in accordance with Policy MIN1.

8. Property implications

- 8.1 The reclamation of the Council's land will create an asset while the acquisition and reclamation of the HCA land will generate an additional asset for the Council.
- 8.2 Any future sale of the reclaimed land would initially generate a capital receipt and remove maintenance liabilities.

9. Staffing implications

There will be a need to commit staff resources to progress the procurement processes.

10. Equality implications

At this stage of the proposal there are no immediate equality implications. Equality analysis, legal requirements and good practice issues will be considered throughout the project, and include engagement and consultation when needed.

11. Consultation

Officers have been providing regular updates to a group of local representatives on the position in relation to the Phoenix 10 project. It is intended that a formal Project Delivery Group will be established in due course to act as a means of ensuring that the local community are advised of progress moving forward.

Background papers

None

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