

Report title	Canalside South – Selection of Preferred Developer	
Decision designation	AMBER	
Cabinet member with lead responsibility	Councillor Stephen Simkins Acting Leader of the Council	
Key decision	Yes	
In forward plan	No	
Wards affected	All Wards	
Accountable Director	Richard Lawrence, Director of Regeneration	
Originating service	Regeneration	
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Report to be/has been considered by	Regeneration Leadership Team	3 July 2023
	Strategic Executive Board	11 July 2023
	Cabinet Member for Inclusive City Economy	19 July 2023
	Cabinet Member for Environment and Climate Change	20 July 2023

Recommendations for decision:

The Cabinet is recommended to:

1. Acknowledge, endorse, and approve the selection of the landowning partnership's (City of Wolverhampton Council and Canal & River Trust) development partner following the evaluation process of best and final bids and in accordance with the final commercial terms and recommendations of the appended Transaction Report.
2. Authorise entering an exclusivity period with the development partner on the terms outlined in the report.
3. Authorise the Council to enter into a Collaboration Agreement with Canal & River Trust.

4. Delegate authority to the Deputy Leader: Inclusive City Economy in consultation with the Chief Operating Officer, s.151 Officer and Director of Regeneration to finalise all necessary legal agreements to affect the land transaction based on the terms outlined in this report.

Recommendations for noting:

The Cabinet is asked to note:

1. That 'best and final' bids were requested from shortlisted underbidders in accordance with updated technical information, pre-application planning advice. Legal and commercial assurance and advice received to date has ensured a robust evaluation process has been undertaken to satisfy s.123 of the Local Government Act 1972.
2. That the preferred bidder has been agreed between the partners (City of Wolverhampton Council and Canal & River Trust) following a detailed evaluation and assessment process.
3. That the process undertaken has enabled shortlisted underbidders to submit best and final offers following the completion of site due diligence, intrusive investigation, design development and planning feedback.
4. That a draft development agreement is in place that will enable expedited exchange and completion (on a subject to planning basis only) thereby ensuring that adherence to the original forecasted programme is maintained.
5. Vacant Possession (VP) will be provided in accordance with the timescale set out by the developer following receipt of planning approval to enable the implementation of development. This will require suspension of all interim activities and uses for the site to enable this important scheme to progress unimpeded.

1.0 Purpose

- 1.1 The purpose of this report is to update Cabinet on the completion of the sale and marketing process undertaken at Canalside South following the recent announcement that the previous preferred developer, Legal & General Modular Homes, has closed its modular homes production factory.
- 1.2 Following an assurance review, supported by external legal and commercial advice, the two shortlisted bidders have been invited to submit best and final offers in order to reflect the extent of due diligence and planning engagement undertaken to date.
- 1.3 This report provides an overview of the bidding process. This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.

2.0 Background

- 2.1 On 28 July 2021 a report was taken to Cabinet seeking to approve the partnership approach (alongside Canal & River Trust) as joint landowners and the marketing of the Canalside South site in order to seek a development partner. The Canalside South area is formed of a collection of formal industrial sites prominently visible on the approach into Wolverhampton City Centre and is one of the Council's key priorities for residential-led mixed use regeneration.
- 2.2 The main site owners, which include the Council and the Canal & River Trust, have come together to form a partnership to bring forward the development of Canalside South under the auspices of a Collaboration Agreement which reflects the need for transformational regeneration across ownerships to drive placemaking principles and associated residential values. Collectively the partners have assembled a 17.5-acre development opportunity which positions Canalside South as one of the most significant city centre residential opportunities in the region.
- 2.3 The Cabinet report also secured delegated authority to relevant elected members and officers to progress contractual agreements with the preferred bidder once the marketing process had been concluded. Having concluded the marketing process the partners entered into an exclusivity period in November 2022 to enable further due diligence work and exchange of contract (subject to planning) with Legal & General Modular Homes. During this period Legal & General Modular Homes undertook significant work on ground conditions, engagement with third parties (e.g. Network Rail) and design development. Reflecting the good progress made by Legal & General Modular Homes the initial term proposed for the Exclusivity Agreement was extended until May 2023.
- 2.4 Following recent announcements that Legal & General Modular Homes has ceased production at its factory in Selby, Yorkshire (detailed in section 4), the preferred developer position held by Legal & General Modular Homes became invalid on the basis that it could not fulfil and comply with the original sale terms.

- 2.5 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 2.6 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 2.7 The revised marketing exercise has provided a transparent and compliant approach, and this report provides an update on the corresponding revisions to the process and selection of the development partner.

3.0 Marketing and Bid Evaluation process

- 3.1 The partners (CWC and CRT) appointed Avison Young to undertake a full open marketing exercise for their respective land interests. Avison Young advised on a staged marketing approach to achieve the required outputs of;
 - i. maximising the regeneration benefits.
 - ii. enhancing the quality of the eventual scheme.
 - iii. optimising the scheme to the marketplace; and
 - iv. ensuring commercial returns to the partners are maximised.
- 3.2 In line with the agreed marketing and disposal strategy, the freehold interest in the disposal site was formally offered for sale on the open unrestricted market on a conditional (subject to planning) basis by informal tender to attract a suitable development partner.
- 3.3 A multi-staged marketing process was launched at Business Week in September 2021. This saw expressions of interest from nearly 50 separate parties, with 10 formal offers submitted and ensuing shortlisting to a final two bidders.
- 3.4 Legal & General Modular Homes were selected as the partners preferred bidder on the basis of strength of financial offer alongside strong environmental credentials (e.g. carbon net zero), balance of tenure and social value commitments including delivering local labour and supply chain opportunities, enhancing skills and employability, creating apprenticeships, promoting cohesion and activity within the community, and supporting health and wellbeing.
- 3.5 During the exclusivity period, Legal & General Modular Homes undertook significant intrusive surveys, due diligence, third party engagement and pre-application design development with costs amounting to c.£300,000. Legal Agreements were substantially completed during this exclusivity period between the parties respective legal advisors.
- 3.6 Reflecting the positive progress being made, the landowning partners agreed to extend the exclusivity until May 2023 to enable completion of legal documents and for geo-technical information to be returned.

4.0 Revised process – ‘Best and Final offers’

- 4.1 As detailed in paragraph 3.1, the partners commercial advisors have designed a further process (with supporting input from the partners external legal advisors, ratified by CWC Legal Services) to seek ‘best and final offers’. This revised process sought to capitalise upon the enhanced baseline of site information following the work undertaken by Legal & General Modular Homes and retain momentum to the process whilst ensuring any risk of challenge is minimised and that Best Value can be demonstrated by the partners commercial agents.
- 4.2 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 4.3 The timeline and key stages for the best and final offers process were as follows:
- 29 June 2023 – Confirmation letters issued to bidders seeking ‘best and final’ offers setting out process, timeline and additional information.
 - W/C 10 July 2023 – Developer meetings with CRT and CWC officers;
 - 18 July 2023 (5pm) – Submission of ‘best and final’ offer with accompanying proposals to Avison Young.
 - 19 July 2023 – Vendors evaluation and review of bids by CWC / CRT officers.
 - 20 July 2023 – presentation of best and final bids to CWC / CRT Leadership.
 - 21 July 2023 – Avison Young transaction report

5.0 Selection of preferred bidder

- 5.1 Shortlisted bidders were issued with three documents as follows:
- Canalside South informal tender instructions and bid proforma (dated July 2023) – see appendix 1
 - Canalside South – Evaluation Criteria – see appendix 2
- 5.2 The evaluation criteria, jointly formulated and agreed with both landowning partners to reflect the shared vision and aspiration for the development, can be summarised as follows:
- **Design (40% overall)** – comprised of sub-headings around high-quality design (15%), scheme connectivity (5%), interaction with the canal (5%), proposed scheme accommodation (5%), sustainability (5%), and additional or complementary uses (5%).
 - **Price (30% overall)** – comprised of deposit on exchange (2.5%), capital receipt (£) and overages (20%), level of affordable housing (policy) (2.5%), Technical abnormal development and S106 financial contribution allowances (5%).

- **Delivery (30% overall)** – contract milestones (15%), Corporate Social Responsibility (CSR) (5%), funding (10%).

6.0 Bidder A offer

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7.0 Bidder B offer

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8.0 Evaluation of alternative options

8.1 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.

9.0 Reasons for decisions

9.1 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.

10.0 Financial implications

- 10.1 The final sales terms are subject to conclusion within the timeframe of the exclusivity agreement and will be subject to an Individual Executive Decision Notice (IEDN); for which delegation is sought in this report. Final terms will be progressed during the initial 3-month exclusivity agreement period (subject to extension if required). Effectively this transaction is a conditional land sale agreement, sold on a long lease basis which will fall away on phased completion.
- 10.2 At the end of the exclusivity period, it is anticipated that sale contracts will have exchanged based on an offer only, save only as planning approval which will be a conditional of sale. At this point our commercial advisors will provide s.123 valuation report giving assurance to the s.151 officer that the council has achieved Best Consideration under s.123 of LGA 1972.
- 10.3 Work undertaken to prepare legal agreements during the exclusivity with Legal & General Modular Homes has enabled issue of draft agreements as part of the 'best and final offers' process which mitigates the need for any significant re-negotiation or re-drafting of agreements as bids have been informed by these draft agreements.
- 10.4 Key activities during the Exclusivity Agreement period will be the conclusion of legal documents (sale agreement and any ancillary agreements) and progression of detailed design towards planning submission. The Council has in place both external legal (Pinsent Masons) and commercial (Avison Young) support (working closely with in-house teams) to provide advice to enable the conclusion of these activities. These commissions have been pre-procured with established budget lines in place (CWC legal costs are

being funded from the 'Walsall to Wolverhampton' approved budget funded from the Regeneration Reserve).

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- 10.7 The exclusivity agreement specifies the “buyer” will be contributing a maximum of £15,000 towards legal costs. A full reconciliation of legal costs will take place with the £15,000 buyer contribution being split proportionately between costs incurred by the Council and legal costs incurred by Canal & Rivers Trust. Again, internal legal costs of the Council are funded through an approved service revenue budget funded from the Regeneration reserve. The approved revenue budget is considered sufficient to complete the full transaction, including costs of all advisors.
- 10.8 This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
[HM/24072023/M]

11.0 Legal implications

- 11.1 As detailed in the body of this report, the contractual terms of a contract for sale with a preferred developer have substantially been prepared and have accompanied the 'best and final offers' bidding stage.
- 11.2 A short exclusivity agreement is proposed to finalise these agreements and reflect any design development changes as part of ongoing pre-application engagement. Exclusivity Agreements are usually for short periods of time to enable the parties to focus their attention to the matter in question. Here a 3-month period with scope to extend the period beyond three months is recommended for approval. The nature and length of the agreement is commonplace in transactions of this nature.
- 11.3 The Council's Legal Services in conjunction with an external law firm has been involved in preliminary discussions relating to the contractual terms of the proposed disposal and a draft form of Exclusivity Agreement ensuring that it contains the Council's boilerplate provisions.
- 11.4 Pursuant to Section 123 of the Local Government Act 1972 ('the Act') the Council may dispose of land held by it in any manner it wishes, subject to certain caveats. Under that Act, the Council also has a statutory duty to ensure that the Council does not dispose of land for a consideration less than the best that can reasonably be obtained. The Council carried out an open market exercise and has commissioned its commercial advisors to prepare a market valuation report, marketing and transaction report and a letter specifically addressing Section 123 of the Act.

- 11.5 The Council will be obliged to provide the site with Vacant Possession and free from encumbrances with all future liability and insurances for the land and property (in the sales demise) the responsibility of the incumbent beneficial landowner once the land has been drawn down.
- 11.6 As this matter progresses the Council will need to ensure its continued compliance with its Constitution, procurement, subsidy control laws and other relevant statutory instruments. The Council has appointed an external law firm, which has to date provided advice relating to the procurement and governance structure of the transaction. The other areas of law will need to be at the forefront of this transaction as it progresses.
- 11.7 The Council's Legal Services will continue to provide legal advice and support throughout this transaction. [JA/21072023/E]

12.0 Equalities implications

- 12.1 The City Centre Area Action Plan has been informed by an Equality Analysis which assessed the potential effects of the policies on different types of people.
- 12.2 An initial Equalities Impact Assessment been undertaken. Engagement with the Equalities, Diversity and Inclusion team will continue to ensure that on this initiative pays due regard to the three aims of the Equality Duty.

13.0 Schedule of background papers

- 13.1 Cabinet – 28 July 2021- [Canalside South- Delivery Strategy update](#)
- 13.2 IEDN – 18 October 2021- [Canalside South- Marketing Update](#)
- 13.3 IEDN – 21 September 2022 – Canalside South – Selection of Preferred Development Partner

14.0 Appendices

- 14.1 Appendix 1- Canalside South informal tender instructions and bid proforma (dated July 2023)
- 14.2 Appendix 2 – Canalside South – Evaluation Criteria A
- 14.3 Appendix 3 - This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 14.4 Appendix 4- This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 14.5 Appendix 5 - This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.
- 14.6 Appendix 6 - This section is PRIVATE – exempt from publication under Schedule 12A of the Local Government Act 1972 (as amended), Part 1, Paragraph 3.