

	<p><b>Policy and Resources Committee</b></p> <p><b>16 December 2015</b></p>
<p style="text-align: right;"><b>Title</b></p>	<p><b>Procurement activity to support the Development Pipeline including the establishment of a Council Wholly Owned Housing/Property Company (WOC)</b></p>
<p style="text-align: right;"><b>Report of</b></p>	<p>Commissioning Director Growth and Development</p>
<p style="text-align: right;"><b>Wards</b></p>	<p>All</p>
<p style="text-align: right;"><b>Status</b></p>	<p>Public</p>
<p style="text-align: right;"><b>Urgent</b></p>	<p>No</p>
<p style="text-align: right;"><b>Key</b></p>	<p>Yes</p>
<p style="text-align: right;"><b>Enclosures</b></p>	<p>None</p>
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<p><b>Summary</b></p>
<p>This report seeks approval for procurement activity in 2015/2016 for technical and specialist support, due diligence work and tax and legal advice in support of the Development Pipeline including the establishment of a wholly owned housing/property company (WOC) as a delivery vehicle.</p>

<p><b>Recommendations</b></p>
<p><b>1. That Committee approve the waiver of Contract Procedure Rules to appoint Wragge, Lawrence Graham and Co LLP as legal advisors for the Development Pipeline and the establishment of the WOC.</b></p>
<p><b>2. That Committee authorise the commencement of procurement exercises to deliver technical advice necessary to support the Development Pipeline including the establishment of the WOC</b></p>

**3. That Committee authorise the procurement of tax advice for the property WOC from existing framework supplier KPMG**

**4. That Committee note the business case for the wholly owned housing/property company will be submitted to Policy and Resources Committee in early 2016, recommending that Full Council approve the WOC.**

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 The London Borough of Barnet is proposing to embark upon an ambitious programme of new build mixed-tenure housing development on Council and Housing Revenue Account (HRA) land across the borough to support Barnet's housing need.
- 1.2 On 9 July 2014, the Assets, Regeneration and Growth Committee approved the creation of a Development Pipeline, making use of council owned land to enable the council to benefit directly from any uplift in land values associated with developing sites, rather than simply seeking a capital receipt through disposal on the open market. Subsequently on 8th September 2014 the Assets Regeneration and Growth Committee approved in principle to progressing development opportunities initially at five sites on General Fund land (Tranche 1). These sites are expected to create almost 300 homes, of which approximately 40% will be affordable.
- 1.3 The Chartered Institute of Housing carried out a review of potential delivery options and recommended that the best outcomes would be achieved by the Council establishing a wholly owned housing/property company (WOC) to develop sites itself. Further Legal and financial advice will establish the best structure to adopt.
- 1.4 The Council has the powers to form a WOC under Section 1 of the Localism Act 2011.
- 1.5 The WOC will provide an alternative delivery mechanism for developing new homes across all tenures within Barnet that will complement the planned development through the HRA. The objective of the WOC is to develop property for affordable rent, private rent and market sale to increase housing supply and maximise the council's land resources, whilst also providing income to the Council's General Fund.
- 1.6 On 15th September 2015 the Strategic Commissioning Board agreed to support the principle of establishing a WOC, subject to further detailed legal and tax advice. Specialist legal and technical support is also required to support the delivery of Tranche 1 developments and inform the WOC business case which will be considered by Policy and Resources Committee in early 2016. This report therefore seeks permission to proceed with the procurement of this advice.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 Following on from the advice received from the Chartered Institute of Housing, Wragge Lawrence Graham and Co LLP were requested to provide initial advice on the options available to the Council with regards to establishing a wholly owned subsidiary company (WOC) to develop mixed tenure housing. Wragge Lawrence Graham and Co LLP possess specialist experience in establishing delivery vehicles, having advised a number of local authorities, and are currently providing the Council with legal advice on the Brent Cross South regeneration project. The advice was based on a fee of £25,000. The fee rates reflect the competitively tendered rates for the Brent Cross South regeneration project.
- 2.2 To provide continuity of advice, it is now proposed that Wragge, Lawrence Graham and Co LLP are appointed to provide the necessary legal advice and support in preparing the business case, and subject to Council approval in January 2016, in establishing the wholly owned company.
- 2.3 On 7<sup>th</sup> September 2015, the Assets Regeneration and Growth Committee approved the entering into of a pre-construction agreement for Tranche 1. The procurement of technical and legal advice will help maintain momentum for these schemes.
- 2.4 The principle of establishing a wholly owned development company was not discussed until early this year, therefore, procurement in relation to this was not included in the 2015/16 Procurement Forward plan approved by Policy and Resources Committee in January 2015.

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

- 3.1 Selection of a legal advisor through a mini competition was considered, however, to maintain consistency of advice it would be preferable to appoint Wragge Lawrence Graham and Co LLP. Wragge, Lawrence and Graham and Co LLP are specialist legal advisers in this area of work.
- 3.2 Under the Public Contract Regulations 2015, legal services are subject to the 'Light Touch Regime' and do not need to be competitively procured unless the contract value is more than £625,000

## **4. POST DECISION IMPLEMENTATION**

- 4.1 The necessary legal work to support the delivery of Tranche 1 of the Development Pipeline and the creation of the WOC business case will commence.
- 4.2 It is expected that a report will be taken to Policy and Resources Committee and full Council in early 2016 seeking approval of the business case for the establishment of the housing/property wholly owned company.

4.3 Procurement of technical support will be accessed through use of the Homes and Communities Agency (HCA) framework multi-disciplinary panel.

## **5. IMPLICATIONS OF DECISION**

### **5.1 Corporate Priorities and Performance**

5.1.1 The Council's Corporate Plan (2015-2020) sets out how residents will benefit from a responsible approach to regeneration, with thousands of new homes built and job opportunities created, this includes identifying a pipeline of sites to build new homes that residents need and to increase revenue streams.

5.1.2 Barnet's Health and Wellbeing Strategy recognises the importance of access to good quality housing in maintaining Well-Being in the Community.

5.1.3 Affordable housing is highlighted in Barnet's Joint Strategic Needs Assessment (JSNA) as one of the top 3 concerns identified by local residents in the Residents' Perception Survey.

5.1.4 The establishment of a delivery vehicle/WOC is consistent with the Council's Housing Strategy 2015 – 2025 objectives to build mixed tenure housing on council land, to increase the supply of housing in the borough and to maximise the Council's assets.

5.1.5 Delivery of the new homes will be monitored through the Development Pipeline Partnership Board which is chaired by the Commissioning Director, Growth and Development.

### **5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

5.2.1 The legal support contract will be capped at £150,000 and the length of the contract is envisaged to be delivered within a year.

5.2.2 The procurement of the technical advice to support the Development Pipeline will be undertaken using the HCA Partners framework, multi-disciplinary and property panels. This has the advantage of offering value for money and reduced risk to the Council. The rates have already been competitively tendered and all organisations on the panel pre-qualified through OJEU procurement, which established the HCA Partners framework. The contracts expected to be procured are set out in the table below.

5.2.3 Tax advice will be procured using the Council's call off contract with existing framework supplier KPMG.

5.2.4 The costs for the Development Pipeline related procurement activity is set out below:

Activity	Anticipated contract value
Legal support (Wragge, Lawrence, Graham and Co)	£150,000
Site assessments and financial modelling	£50,000
Tax advice and business planning	£60,000
Creation of financial systems	£15,000
<b>Total</b>	<b>£275,000</b>

The initial WOC work which includes the costs identified in the table above will be funded from reserves, up to £500,000 with a view to capitalise if possible. These costs will be recoverable from the WOC if it proceeds.

### 5.3 Social Value

5.3.1 The Council will seek to provide employment opportunities for local people and opportunities for small and medium enterprises through the procurement of the construction contracts for the delivery of development pipeline schemes.

### 5.4 Legal and Constitutional References

5.4.1 Council Constitution, Responsibility for Functions, Annex A – The Policy and Resources Committee has responsibility for:

- the overall strategic direction of the Council including Corporate Procurement (including agreement of the Procurement Forward Plan and agreeing exceptions to CPRs)
- authorising procurement activity within the remit of the Committee and any acceptance of variations or extensions if within budget in accordance with the responsibilities and thresholds set out in Contract Procedure Rules.

5.4.2 Council, Constitution, Contract Procedure Rules Section 15.1 states that "All applications for a waiver of these Contract Procedure Rules must be submitted to Policy and Resources Committee.

5.4.3 The Council has the legal power to take these actions. The principal powers are:

- sections 1 and 4, Localism Act 2011 (the general power of competence and the obligation to trade through a company) – relevant to a WOC
- section 95, Local Government Act 2003 (the power to trade through a company) – relevant to a WOC, and
- section 12, Local Government Act 2003 (the power to invest for any purpose relevant to its functions or for the purposes of the prudent management of its financial affairs) – relevant to an LLP
- section 111(1), Local Government Act 1972 (the power to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any functions) – relevant to an LLP.

### 5.5 Risk Management

- 5.5.1 The main risk is a delay to the establishment of the WOC and to delivery of the first homes if the commencement of procurement is delayed. The legal and tax advice and technical support are essential in developing the business case and business plan and to ensure the WOC achieves the best outcomes for the Council.
- 5.5.2 The risk of challenge to the future procurement process will be mitigated by following the standard procurement process with officers ensuring the process complies with Contract Procedure Rules and procurement law.
- 5.5.3 These risks will continue to be assessed and managed in accordance with the Council's project and risk management methodologies.

## **5.6 Equalities and Diversity**

- 5.6.1 A full equalities impact assessment was completed for The Housing Strategy 2015-2025 which identified that the Strategy would have a positive impact on all sections of Barnet's Community.
- 5.6.2 New housing delivered by the WOC will be built to the Lifetime Homes standard and 5% of new homes will be fully wheelchair accessible.

## **5.7 Consultation and Engagement**

- 5.7.1 Consultation on all Development Pipeline schemes would be undertaken on an individual basis. This will include, but not be limited to, statutory consultation undertaken as part of the planning process. Each development project will be expected to produce a full Consultation and Engagement Plan that will be used to demonstrate how the council has consulted with its citizens at various stages of the project life cycle. A library of evidence for the findings will be kept by the project team.
- 5.7.2 Consultation and engagement on schemes will also be monitored by the Development Pipeline Programme Board.

## **5.8 Insight**

- 5.8.1 The Council's Housing Strategy, which identifies the need for new affordable homes, is supported by a comprehensive evidence base, including a Housing Needs Assessment and a study of affordability carried out by the Council's insight team.

## **6. BACKGROUND PAPERS**

- 6.1 Assets Regeneration and Growth Committee, 9 July 2014, Strategic Asset Management Plan  
<http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7960&Ver=4>.
- 6.2 Assets Regeneration and Growth Committee, 8th September 2014, Strategic Asset Management Plan  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7885&Ver=4>
- 6.3 Assets Regeneration and Growth Committee, 8 September 2014, Barnet Development Pipeline  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7885&Ver=4>
- 6.4 Assets Regeneration and Growth Committee, 16th March 2015, Barnet Development Pipeline – Tranche 1  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=7887&Ver=4>
- 6.5 Assets Regeneration and Growth Committee, 1st June 2015, Barnet Development Pipeline  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8309&Ver=4>
- 6.6 Assets Regeneration and Growth Committee, 7th September 2015, Barnet Development Pipeline, Tranche 1 – Moxon Street  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8310&Ver=4>
- 6.7 Council, 20 October 2015, Report of Housing Committee – Housing Strategy and Commissioning Plan  
<https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=162&MId=8340&Ver=4>