

LONDON BOROUGH OF RICHMOND UPON THAMES**CABINET MEMBER: LEADER AND CABINET MEMBER FOR STRATEGY AND PARTNERSHIPS****DATE: 27 APRIL 2009****LEAD OFFICER: ASSISTANT DIRECTOR OF ENVIRONMENT****SUBJECT: THE TWICKENHAM RIVERSIDE SITE – RESULTS OF THE PROCUREMENT PROCESS****WARDS: TWICKENHAM RIVERSIDE****KEY DECISION?: YES****IF YES, IN FORWARD PLAN?: YES****Special Circumstances:**

The Chair is of the opinion that although this report had not been available for at least five clear days before the Cabinet meeting, nonetheless it should be considered now so that the next stages of procurement may proceed in a timely fashion should Cabinet decide wish to go ahead with any of the proposals. Publication of the report was delayed particularly to ensure that the decision of the Tender Evaluation Panel and the full report of the consultation results were available for Cabinet at this meeting.

1. PURPOSE OF THE REPORT

- 1.1 The report provides a summary of progress on the procurement process for a development scheme and developer for the Twickenham Riverside site since key decisions were taken by Cabinet in April 2008.
- 1.2 It describes the three tenders that have been received as the result of the procurement process, the recommendations from the evaluation panel on the tenders and the results of the public consultation in respect of the three sets of proposals. It makes recommendations as to the way forward and describes the next steps should the Cabinet select any of the tenders.

2. RECOMMENDATIONS

- 2.1 **That Cabinet notes its previous policy decisions in respect of this site described at paragraphs 3.1 to 3.8 of this report.**
- 2.2 **That with those previous decisions in mind, Cabinet decides whether or not it wishes to proceed to the next stages of procurement with any of the three prospective developers and their schemes.**

If Cabinet decides to proceed with one of the schemes it is recommended that:

- 2.3 It supports the views of the tender Evaluation Panel as described at paragraphs 3.32 to 3.37 of the report (and within the relevant appendices) and agrees to proceed to the next stage of procurement with Countryside Properties.**
- 2.4 It delegates the formal procurement decision, to award a contract via a Contract Award Notice to Countryside Properties, to the Leader and Cabinet Member for Strategy and Partnerships, subject to a satisfactory report from officers in respect of final negotiation and clarification of their tender in line with the European regulations and to there being no major new concerns of officers about the River Centre Business Plan at that point.**
- 2.5 It agrees that officers should commence the final negotiations in respect of the detailed terms of the Development Agreement with Countryside Properties, in line with the broad heads of terms described at paragraphs 3.45 and 3.46 of this report and delegates the decision formally to complete this Development Agreement to the Assistant Director of Environment in liaison with the Head of Legal and Electoral Services and the Leader & Cabinet Member for Strategy and Partnerships.**
- 2.6 That Cabinet approves a further budget of up to £75k for consultant support and other costs associated with the next steps for the scheme through to commencement on site.**
- 2.7 That Cabinet requests that officers produce an update report in respect of progress on the scheme at six monthly intervals.**

3. DETAIL

Previous Cabinet Decisions

- 3.1 Cabinet of October 2006 decided to proceed with a scheme that included a River Centre operated by the Environment Trust for Richmond-upon-Thames operated, following a process of consideration of a range of community based bids for a use of part of the site that was called the Twickenham Challenge.**
- 3.2 Cabinet of March 2007 agreed its broad landowning priorities for uses at the site, including the need for the scheme to be viable and to have:-**
 - the River Centre on part of the site with its basic construction costs funded by the scheme itself rather than through grants.**
 - a scheme of high quality design, of a scale and density that are appropriate for the sensitive location.**
 - re-provision of play facilities permanently within, or close to, the development site.**

- public open space forming an important element of the scheme
 - an “adjusted” affordable housing content through exploration of off-site provision.
 - exploration of options that move traffic permanently away from the river frontage, but with an acceptance that this might not ultimately be practically possible.
 - exploration of the scope for re-arrangement of the business and resident car spaces that are currently within the Council owned land and the wider T1 area (T1 being the planning brief designation of the site and its immediate vicinity).
- 3.3 Cabinet of March 2007 also agreed the process by which consultants would be appointed to assist officers in the preparation of a Development Brief against the above landowning priorities.
- 3.4 Cabinet of 14 April 2008 received a report that described the process through which the Development Brief had been drafted, and the 3 stage means by which consultation had been undertaken. A description of this process was included in the report and is repeated as **Appendix 1** of this report for ease of reference.
- 3.5 The report described the “Preferred Option” that in plan and text form was to be the Development Brief’s main component. This “Preferred Option” included the need for :-
- high quality public open space
 - landscaping improvements to the riverfront suitable for markets and events
 - trees retained or replaced where retention is not possible
 - a New Environment Trust River Centre close to the Eel Pie Island footbridge
 - public café and public toilets provided within the River Centre
 - re-providing the children’s play space adjacent to the River Centre
 - a mix of housing that delivers a viable scheme
 - new houses along widened service road – up to 3 storeys
 - new mixed housing along Wharf Lane – up to 4 storeys
 - houses likely to have integral garages and smaller units may be car free
 - contemporary housing design respecting local character
- 3.6 This “Preferred Option” was the main element of the Public Exhibition held at York House ahead of the April 2008 Cabinet via which the views of the public were sought using Questionnaires. **Appendix 2** is a further extract from the 14 April 2008 Cabinet report that describes how the Exhibition was held and the analysis of the Questionnaires.
- 3.7 It also describes the Cabinet’s response to the most significant issues and concerns that were raised via this part of the consultation, including questions of principle around:
- Why does there need to be any “enabling” residential development at all?
 - Why is the scheme not all open space?
 - Why does the scheme include a River Centre?
- and questions of detail around:
- Why is the “enabling” residential or commercial development as

large as is proposed?

- Why can't the traffic flow around the site be altered in a way that allows greater pedestrian access to the river?
- What will the River Centre do and will it be financially sustainable in the long term?

3.8 Having had due regard to these issues and in particular the suggested responses to the above questions as described in Appendix 2, Cabinet of April 2008 approved the Development Brief with the "Preferred Option" as its basis and agreed the marketing and procurement process via which the Brief would be used to procure prospective schemes and developers.

Procurement of Prospective Developers

3.9 This marketing/procurement process duly commenced in the Spring of 2008 and has been undertaken in line with the European level Public Procurement requirements. In particular it has followed the Competitive Dialogue and (for the final stages) the Negotiated Procedures that are a part of the Public Contracts Regulations.

3.10 The Competitive Dialogue process is a relatively new part of the regulations and has been used for this scheme as a result of the expressed Cabinet desire of April 2008 to test thoroughly that the housing/commercial elements of schemes are minimised and the public sector elements maximised.

3.11 The procurement process has effectively fallen into three stages. The first was an Expressions of Interest stage that was undertaken soon after the April 2008 Cabinet decisions. The basis of this was a contract notice in the Official Journal of the European Union and an advertisement within the property press that very broadly described the site and the Council's requirements and it sought interest in the completion of a formal pre-qualification questionnaire (PQQ) for the next stages of the procurement.

3.12 Eleven companies formally expressed interest in the site at this stage via the completion of a full and acceptable PQQ. These responses were formally evaluated by a panel of members, officers and consultants in late summer 2008 and this decided that five companies would be taken to the next stage of the process.

3.13 This next stage was in effect the competitive dialogue stage which was initiated by what is formally called the Invitation to Participate document (ITPD). The five short-listed companies were:

- The Osborne Group
- Quad/Elmer Construction
- Countryside Properties
- Rydon Construction Ltd
- Grainger Plc

Each of these received the ITPD document. This detailed the Council's requirements for the site via a copy of the development brief and a description of the process by which we would entertain the receipt of proposals. The last two of the five companies withdrew from the process at this point and ahead

of any actual meaningful dialogue in respect of how they would approach the site.

- 3.14 The three remaining companies fully participated in the dialogue process that involved rounds of meetings with officers and consultants through the winter of 2008/09. The dialogue effectively refined the initial thoughts of each developer until a point was reached in early 2009 at which officers/consultants felt comfortable to enter into the more formal tender stage of the process. This was initiated by the issuing of a formal Invitation to Tender document (ITT) to the three remaining companies in early February 2009 with a deadline for receipt of the final formal tenders of early March 2009.
- 3.15 Each of the three remaining firms did formally submit a tender along with the required accompanying exhibition material by the required deadline. All three tenders did not comply strictly with the formalities required by the ITT for the submission of a tender and hence were what the Public Contracts Regulations 2006 describe as irregular tenders. Where all the tenders are irregular tenders, the Regulations allow the Council to discontinue the competitive dialogue procedure and to use another procedure called the negotiated procedure in the Regulations. The Council discontinued the competitive dialogue procedure and used the negotiated procedure in order to continue the process in accordance with the Regulations.
- 3.16 The exhibition panels provide a useful summary of each proposal that Cabinet Members have already seen but they have also been left in the Members Room for information ahead of the Cabinet meeting. They will be available on the night of the Cabinet meeting itself in the Salon. However, a broad brush description of each of the schemes is as follows:

Countryside

- Traffic movement around the site similar to the approved Development Brief
- Some of the car parking at the front of the site alongside the river is removed to the rear, others are rearranged within a re-landscaped embankment
- The River Centre building is on two main stories at the site's south east corner with a small area at a third floor.
- 32 houses and flats arranged to the rear of the site adjacent to a rearranged service area and along its Wharf Lane flank
- Housing is three stories in height plus basement, though relative to the river, it rises higher towards the eastern end of the site
- New open space is graded and rises from near to the embankment level at the western Wharf Lane side of the site to being at two storey level, above the River Centre, at its eastern flank
- New river-themed playground located to the centre of the site close to a ground floor River Centre café/restaurant
- Parking for the housing elements of the scheme is below the houses and flats themselves

Quad/Elmer

- Traffic movement around the site markedly changed via the construction of a new service road to the full length of the back of the development site, including a brand new section in Council owned land at the eastern side of the site
- Car parking significantly rearranged through the construction of a basement car park for all current spaces and the spaces required by the scheme itself
- Seven large three storey houses (plus basements) and eight flats within a four storey block, all at the rear of the site rather than through any use of the Wharf Lane flank
- Open space that is a combination of that created at the front of the development site, that created over what would now be a re-located roadway and that created from re-arranged embankment space
- A River Centre at the site's south east flank on three main storeys including a basement level that surrounds a sunken garden at a point that is currently a part of the embankment.
- A playground that is relocated to a part of the current embankment close to the new River Centre. The café of the River Centre is at first floor level.

The Osborne Group

- Traffic movement for this scheme is similar to the Development Brief requirements
- Car parking is broadly speaking as existing though a number of spaces are relocated from the front of the site to the rear to create a break through to the river
- The funding for the scheme is generated via three commercial restaurant units at ground floor level and twenty four flats on three stories above this, all in one four storey block at the rear of the site
- Car parking for the users within this block is beneath the block itself
- Most of the new open space is arranged in a formal terrace styled in front of the block
- The River Centre is placed end on to the river between the new playground and the new terraced open space
- A new playground is placed at the far south east corner of the site, divided from the formal open space by the River Centre building.

3.17 The Open Space provision percentages for each of the 3 schemes have been presented by each of the developers in different ways. We have undertaken our own calculations using the scheme plans and our view is that, in terms of the open space included within the development site alone, the respective percentage of site area for properly useable open space is 42% for Countryside, 15% for Quad/Elmer and 53% for Osborne.

3.18 Quad/Elmer argue that this an unfair way of presenting their scheme given its approach to use of the roadway to the front of the site for new open space naturally leads to relatively low use of the development site itself for open space. We have also looked at the figures in an alternative way, taking open space as a percentage of a wider area that includes the embankment and roads. On this alternative basis our view, taking a wider development area that takes in roadways and the embankment to the front of the site, is that the percentage of properly useable open space that results from the schemes is 47% for Countryside, 42% for Quad/Elmer and 46% for Osborne.

3.19 Further detail on the relative features of the 3 schemes is attached as **Appendix 3**.

3.20 The tender documents include a significant amount of detail beyond that which is shown on the exhibition panels and beyond that summarised above. This extra level of detail includes full information on the physical and financial aspects of each of the proposals, including:

- The developer's views on anticipated construction costs
- Estimated sale values
- Required levels of profit

Most of this information is commercially sensitive and is therefore included as **Appendix 1 of the confidential report that is later on the agenda**.

Public Exhibition/Consultation

3.21 The tender proposals were displayed at an exhibition held for 7 days from 9 - 15 March 2009 at the Civic Centre. We have estimated that over 1,000 people attended the event with around 900 questionnaires completed at the event or received via post afterwards and by the (extended) return deadline of 30 March 2009.

3.22 A full analysis of the Exhibition Questionnaire results has been prepared by Urban Practitioners, our consultants for this part of the process, and this is attached as **Appendix 4**.

3.23 In summary, a total of 916 forms were returned, many of which were accompanied by extensive supplementary comments which generally expanded on the responses made to the various questions. In order for these responses to be validated, respondents were required to supply their postal address. A total of 19 forms (2%) did not include a postal address and have therefore not been included in the analysis. A total of 897 duly made forms have therefore been analysed. This is a significant response rate for a consultation of this type and shows the level of interest that there is in the future of the site.

3.24 It is stressed that the main purpose of the Council's consultation and its Exhibition Questionnaire has been to seek public and community views on the proposals contained within the three schemes, all of which have been produced in response to the key decisions already taken by Cabinet referred to at the start of this report.

3.25 Nevertheless, the comments box within the consultation questionnaire has allowed free form comments of any type and has therefore provided an opportunity for those against any of the three proposals to raise objection. Many respondents took this opportunity and registered their in-principle objection to any of the three proposed schemes, mostly doing so by stating "none of the above" or similar at the comments box. Members will see at Appendix 4 that this applies to 51.8% of the validated questionnaires.

3.26 Many of those who registered an in-principle objection also provided a response to some or all of the specific questions that were asked of each

scheme. In very nearly all cases these scores were the very lowest and this therefore has had the effect of pulling the aggregate scores downwards for each of the responses to each of the three proposals. The analysis of the scoring for the individual questions has therefore been presented at Appendix 4 in two ways, i.e. with and without those who have registered an in-principle objection in order that Members can differentiate between those that have offered a relative view between the schemes and those that have not.

- 3.27 The analysis also includes a description of the pattern by which questionnaires were received by the Council. In broad terms and through the exhibition period the ratio of in-principle objections versus full views expressed was approximately 40:60. This changed to approximately 55:45 in the time that was allowed after the exhibition up to the original deadline for responses of 27th March. This ratio jumped however to 88:12 in the last (extended) day of consultation mainly effectively because a batched set of returns was received on Monday 30th March.
- 3.28 This last batch of returns was received after a 'Saturday Swinging Fun Day' party arranged by the Friends of Twickenham Riverside and held at the temporary café and playground within the site on Saturday 28th March. The invitation to this event included reference to:
- "Imminent threat at Twickenham Riverside to build luxury housing across whole area"
 - "Closing/demolishing new playground and café in June this year"
- 3.29 Members will need to come to their own conclusions as to the impact that these inaccurate statements have had on the returns received by the Council. The returns on the last day have been included in the core data for the analysis. However the analysis of the consultation has included a paragraph that describes what the percentage of "in principle objections" would have been had the last batch of returns not been received. This is 42.5%.
- 3.30 Appendix 4 details the relative views of those who have expressed a view across the 3 proposals. Members will see that for most questions in respect of the scheme, the Quad/Ellmer scheme scores a little way ahead of the Countryside proposals which in turn scores a long way ahead of the Osborne proposal. Countryside Properties lead in one category. Osborne lead in none. The score average for Quad/Ellmer across all questions asked is 2.34 including all duly made objections and 3.27 where 'in-principle' objections have been excluded. The corresponding average scores for Countryside are 2.22 and 3.05 and for Osborne 1.89 and 2.50.
- 3.31 Taking the specific question around public open space as an example, another way of expressing these scores is to say that, in response to this question (excluding in-principle objections), 73% of those responding on the Quad/Elmer scheme thought it dealt with these issues Very Well, Well or Fairly with the corresponding figures for Countryside and Osborne being 65% and 45%. Similar pattern applies to most of the specific questions when viewed in this way and this is detailed in Appendix 4.

Procurement Evaluation Panel

- 3.32 The detailed information in respect of the physical elements of the schemes and of the financial elements of the proposals were all used in the formal

evaluation of the schemes required the Public Procurement Regulations as undertaken through April 2009 by a formal Evaluation Panel. This Panel consisted of a combination of key members and officers and representatives of the Environment Trust for Richmond-upon-Thames with a range of consultants advising. The Members on the panel were Cllrs Lourie, Elengorn, Knight, Carr and Wilson.

3.33 The evaluation criteria used by the Panel, in summary, were as follows:

- Overall quality of response to the Objectives including minimising the extent and nature of the development required to fund the River Centre and public open space.
- The delivery of an innovative sustainable development with the emphasis placed on reducing its carbon footprint.
- Quality of public and open space to be delivered.
- Quality of architecture and design to be delivered in this sensitive location.
- Approach taken towards parking and servicing of site.
- Response to flood risk issues.
- The measures for ensuring that the works are designed and constructed to the high standards of quality required by the Council.
- The additional value that the bidder will bring to the works both during the design and construction of works.
- The measures for working effectively with all stakeholders and the local community and for ensuring effective leadership and co-ordination of the development team
- The measures for ensuring a speedy start, progressing effectively speedily and successfully and accommodating any changes in circumstances
- Clarity of financial proposals
- Robustness of development appraisal assumptions
- Developer profit margin
- Funding proposals

3.34 The summary of the Panel's evaluation against these criteria is attached as **Appendix 2 of the confidential report that is later on the agenda**. Members should read this in order to understand the full rationale by which the Panel reached its conclusions but, in summary, it arrived at a score for each tender proposal out of 100 as follows:

- Countryside – 72 out of 100
- Quad/Elmer – 59 out of 100
- The Osborne Group – 51 out of 100

The breakdown of this is that Countryside scored the highest score on their own in 6 out of the 14 evaluation criteria, equal highest with Quad/Elmer in respect of 2 of the criteria, equal highest with Osborne for 1 of the criteria and equal highest with Quad/Elmer & Osborne for 4 of the criteria. Osborne were the highest score on their own in respect of one of the criteria.

3.35 The Evaluation Panel had received a summary of the results of the Public Exhibition/Consultation process (that is described above) and a draft version of the consultation report within its evaluation sessions and had due regard to these in line with the statement within the Questionnaire that "the Council will

use the results of this questionnaire to inform their decision on the selected bidder...”.

- 3.36 In other words it was very clear to the Panel that the Quad/Elmer scheme consultation scores were above those for Countryside for 5 out of 6 of the consultation questions when arriving at its conclusions. The Evaluation Panel had a range of discussions in respect of this and other aspects of the consultation results and ultimately concluded that they did not affect their view on which of the schemes should be recommended to Cabinet. This was particularly because of the number of evaluation criteria for which Countryside were ahead of Quad/Elmer and the considerable gap between the Countryside and Quad/Elmer scores in aggregate terms.
- 3.37 The very clear and unanimous decision of the Evaluation Panel was therefore a recommendation to proceed to the next stages of procurement with Countryside.

The River Centre and its Business Plan

- 3.38 Members are aware that the Environment Trust for Richmond upon Thames' Business Plan for the River Centre part of the scheme has been subject to scrutiny by the Finance and Strategy Overview and Scrutiny Committee and its successor committee, the Co-ordination, Finance and Performance Commission.
- 3.39 These Committees have now received four reports in respect of the scheme, in April 2008, November 2008, March 2009 and April 2009. Members are urged to consider in particular the public report to the April 2008 Co-ordination, Finance and Performance Commission (and its appendix) which is at the following link:
<http://modern.gov.richmond.gov.uk/ieListDocuments.asp?CId=439&MId=2044>
and to the Business plan related sections of the risk section of this Cabinet report, written by the Director of Finance and Corporate Services.
- 3.40 The April 2009 Co-ordination, Finance and Performance Commission was particularly concerned to hear of the withdrawal of the potential relationship with the Richmond Adult Community College (RACC) that had emerged through the latter part of 2008. Officers had themselves raised concerns in this respect and had suggested to the Trust the need for progress in the replacement of RACC by an alternative education partner or partners for the operation of the building ahead of this Cabinet meeting and ahead of the point at which commitments need to be made to contracts with developers.
- 3.41 It can be confirmed to Cabinet that the Environment Trust for Richmond upon Thames has made progress on the educational elements of the scheme and a summary of the work done on this is attached as **Appendix 5**. The schedule included as a part of this Appendix highlights the work that has been done since the March report to the Commission as well as describing the broad strategy in this respect. An April 2009 report to the Commission led to issues being raised around the Trust's experience of schemes of this type and their ability to manage the wide ranging nature of the development process and operation. The need for new Trustees with appropriate experience has already been addressed by the Trust and will be pursued by them at appropriate stages of development of the scheme.

- 3.42 The proposed property arrangements with the Environment Trust for Richmond upon Thames will require the eventual approval of Cabinet and a decision in respect of the agreement for lease by them in this respect is being targeted to be made around the autumn of 2009. However the Cabinet needs to be aware now of the likely Heads of Terms for these arrangements so that they are fully aware of their nature ahead of commitment to contract with any developer.
- 3.43 The likely terms for an agreement for lease between the Council and the Environment Trust for Richmond-upon-Thames (or whatever vehicle is established by the Trust for the River Centre) are as follows:
- Lease to be granted once the building is complete and to be for 35 years
 - Lease to be for the River Centre building as constructed on the Council's behalf by its chosen developer to a Council-agreed specification
 - Lease to be at a peppercorn rent
 - Lease to contain requirements on the Trust to provide specific approved services from the building
 - Lease to contain requirements for compliance with planning legislation
 - Lease to allow sub-letting of the café/restaurant element of the building to provide a cross-subsidy to the Trust's operational costs for the rest of the centre
 - Lease to have break clauses that allow the Council to re-enter the building should the Trust fail or fail to deliver a significant proportion of the approved services
 - Lease to have a break clause that allows the Trust to hand back the building to the Council for any reason
 - Trust to undertake internal repairs, Council external.
 - The agreement for the lease would cover the process by which the Trust establishes the vehicle for the River Centre.
 - Trust be responsible for business rates or the securing of relief from rates payable.
- 3.44 To clarify, Cabinet is not being asked to approve fully these terms and conditions at this stage and it will receive a full report on this issue of the lease between the Council and the Trust around September/October 2009.

Outline Terms of Development Agreement

- 3.45 If it wishes to proceed Cabinet is, however, being asked to take decisions on the selection of a developer with whom the Council will enter into a contract to deliver a planning permission for the approved tendered scheme, to construct that scheme should it receive planning permission and to hand over to the Council (as part of the Council's retained freehold) the completed River Centre building, open space and infrastructure improvements.
- 3.46 A contract of this nature is called a Development Agreement. An outline of the proposed development agreement was included as part of the tender documentation given to each prospective developer at the ITT stage. They are, in summary, as follows:
- The Council will retain the freehold of the whole site

- The developer will be required to work up the tendered scheme into more detailed plans and specifications to be approved by the Council (in liaison with the Trust in respect of the River Centre)
- The developer will be required to seek a planning permission for the approved scheme
- The developer will be allowed reasonable timescales to go through this planning process but the contract will be conditional on a permission being obtained (and will have a long stop date at which point the Agreement terminates if permission has not been obtained)
- The developer will be required to commit to Parent Company Guarantees
- Should a planning permission be obtained the developer will be required to construct the approved scheme and to commence this within six months of grant of a permission
- The developer will be required to make contributions to the Council for its Section 106 requirements and for the improvement of the embankment to the front of the development site.
- The contract will contain requirements for the completion and handover of the public and community elements of the scheme ahead of full completion of the residential/commercial elements.
- Upon practical completion of the whole scheme the developer will be given a long lease (999 years) of the housing/commercial elements of it, including any necessary rights of access, at a nominal rent/fee.

Subject to Cabinet's decision, priority will be given to the completion of the Development Agreement with a target date of July.

Planning Issues/risks

- 3.47 Members will see that the terms of the Development Agreement require the developer to take the lead on the planning application process as is typical for this type of scheme. Members are also aware from previous reports in respect of this scheme that officers have been striving to ensure that the Council's land-owning policies for the site, including the Development Brief the need for a viable scheme and the Linked-Site Strategy, are broadly in line with the Council as planning authority's objectives and requirements for this site and area. It will ultimately be necessary for the Planning Committee to consider the benefits of the scheme in the context of the statutory policies contained within the adopted UDP and the LDF Core Strategy.
- 3.48 The efforts to align the Council as land-owner with the Council's planning authority's policies have included the involvement of a range of planning officers, including policy, urban design and transport planning, in the procurement process to date.
- 3.49 Notwithstanding this Members need to be aware that the sensitivity of the issues for this site are such that officers cannot do anything other than mitigate the risks associated with the potential receipt of planning permission.
- 3.50 For example the process followed has done its best to remove the potential for third party involvement in the decision-making but officers cannot fully guarantee that this will be the case. Applications subject to "call-in" are normally restricted to those of national or regional importance. However as this site has a history of call-ins, including the application for the temporary

playground and café, it cannot be assumed that a public inquiry will not follow, particularly given the continuing high level of local interest.

Potential Programme

3.51 Each of the prospective developers has proposed a marginally different programme for the next steps from here onwards should any of them be chosen. It would be unfair and pre-judgemental therefore to be precise as to the dates of the next stages. However in broad terms the programme for the very next stages, would likely be as follows:

- May/early June 2009 – last negotiations and clarifications with the Cabinet's preferred developer
- Mid June 2009 – Cabinet Member decision to issue an Award Notice to the preferred developer subject to the formal clarification process having concluded satisfactorily (and subject to their being no major new concerns of officers about the River Centre Business Plan at that point)
- Immediately after the decision the Council must under Regulation 32 of the Public Contracts Regulations 2006 give notice of the decision to all organisations who submitted completed Pre-Qualification Questionnaires other than the successful tenderer, and observe a minimum standstill period of 10 days before taking action to implement the decision. If the standstill period expires without legal proceedings being taken by an unsuccessful organisation or organisation, then the Council can proceed to implement the decision.
- June/July – completion of the detail of the terms of the development contact using the Heads of Terms as described above as the base with signature in July
- July onwards – developer commences detailed work on the preparation of the planning application with a target to submit it by Autumn 2009
- September/October 2009 – Cabinet receives a report making recommendations in respect of the detailed terms of the Agreement for Lease for the River Centre between the Council and the Environment Trust for Richmond upon Thames

4. CONSULTATION

4.1 Cabinet will be aware of the duty to involve local residents, groups and businesses in decision making which came into effect on 1 April 2009. The body of the report explains the consultation undertaken in respect of the preparation of the Development Brief for the site (as reported to Cabinet in April 2008) and the more recent consultation in respect of the 3 developer proposals. Appendices 1 & 2 in particular detail the extensive community engagement and consultation which has taken place at earlier stages in the consideration of this development.

4.2 If Cabinet decides to proceed with any of the three schemes, the next major step in terms of public involvement will be the pre-planning application consultation that the chosen developer will be required to undertake in respect of their fully worked up proposals. This is a significant application and therefore this consultation will need to be undertaken with regard to the Council as local planning authority's Statement of Community Involvement.

Thereafter, there will be a further round of consultation that will be led by the Council's planning officers at the full planning application stage. A summary of each developer's tender proposals for community engagement is included in Appendix 3. A chosen developer will be asked to produce a consultation timetable as part of the next stage of the procurement process.

5 FINANCIAL IMPLICATIONS

- 5.1 The report seeks additional consultancy funding of up to £75k for support work through for the rest of the procurement process. The Development Agreement will include a match (ceiling of £75k) contribution to the Council's costs from the developer meaning that a total budget of £150k will be available. As before, the Council's contribution to this will be funded from the Project Development Fund. The Director of Finance and Corporate Services has made comments in respect of financial risk in the body of the report.
- 5.2 The contribution proposed to be made to the Council by each of the Developers is by way of delivery of infrastructure works, open space and the River Centre. This amounts to a cost met by the Developer of in excess of £4m in each case in return for a (varying between developer) area of land and building that will be transferred to a chosen developer via a 999 year lease at a nominal rent. The Assistant Director of Environment is satisfied that a proposed transaction of this nature with Countryside on the terms outlined in the body of the report would represent best consideration reasonably obtainable.
- 5.3 The proposed lease to the Environment Trust will be the subject of a future report to Cabinet. Cabinet should be aware that this includes the likelihood that the Council will be responsible for external repairs. An estimate of the the likely annual cost of such repairs has been undertaken for each scheme and they are each at around £8k per annum. A worst case scenario might increase this to circa £20k per annum. The first year would be covered by developer guarantees in any event. These types of cost would be absorbed within the Council's Maintenance of Assets (MOA) programme.
- 5.4 In addition Members should be aware that the Council's external auditors have received several public complaints in relation to the Council's handling of this development. The Auditors have identified costs of just under £17k to the end of 2008/9 for dealing with these complaints. Officers are currently in discussion with the Auditors in respect of this issue.
- 5.5 When excluding the additional consultancy funding referred to in 5.1, the budgets for consultancy work for the Council since decisions in March 2007 have been approximately £270k. In addition to this, Members should note that the officer time spent on the scheme has been significant and has an opportunity cost attached to it.

6. POLICY IMPLICATIONS/CONSIDERATIONS

- 6.1 The emphasis on sustainability elements for the scheme that is described in this report is in line with the Council's approach to this issue as stated in its framework for a Climate Change Strategy as approved by February 2007 Cabinet and as stated in the current Community Plan.

6.2 The tendered schemes have resulted from a procurement process that is in line with the Council's policies in respect of this site and in particular decisions made by Cabinet in December 2006, March 2007 and April 2008.

7. RISK ASSESSMENT

7.1 The Director of Finance and Corporate Services has consistently stated that, as with any scheme that involves starting a new business, there is a higher degree of risk during the development and start up phase. Such risk can be mitigated to a certain extent by the development of a robust business case that includes a variety of income streams, identifies any early commitment to funding and seeks to test the viability of the business case at different levels of activity. Nevertheless, until grant funding is actually generated, income streams confirmed and the business actually begins to achieve its objectives, a level of risk will remain. He also continues to make a number of comments on individual elements of the plan.

7.2 Officers have a view that the risk can broadly be broken down into two components; risk during the development phase and risks associated with the running of the River Centre. These issues and the current mitigation are considered in the table below:

Description of risk	Mitigation/comment
<p><u>Development Risk</u></p> <p>i) What happens if they don't get planning permission</p> <p>ii) The developer fails during the building of the scheme</p> <p>iii) What happens if the commercial side of the scheme fails for the developer i.e. they can't sell/rent the houses or retail units.</p> <p><u>Business Plan</u></p>	<p>All the developers involved are aware that any progress is subject to planning and this is a risk they bear and have taken appropriate specialist advice. Please also see comments contained elsewhere in the body of this report.</p> <p>A parent company guarantee will be required from the developer and the Council is investigating whether other security, such as a bond is necessary or practical.</p> <p>In this event the Council would have access rights to take control of the site and would be likely to procure another developer to complete the scheme. This would inevitably add delay and come at a premium to the original cost (which should be recoverable from the guarantees in place) but the development value/profit would revert to the Council.</p> <p>Financially this is at the developer's risk.</p>

<p>iv) Fit out and development costs. Costs of up to £770k are anticipated for the fit out and £257k for the development work. To date the Trust has secured funding of £150k. There is a risk that the necessary funding will not be obtained. An extended recession may impact on the sources of funding available.</p>	<p>The Trust has put together a funding team and a programme of fundraising events to supplement the development funding already obtained from City Bridge Trust. It is anticipated that once planning permission has been granted, further grant funding bids may also be successful.</p> <p>The Trust have already identified that until Planning permission is in place grant funders are unlikely to commit funds to the project. The Trust has approached 3 major grant funders and is undertaking preliminary registration work with each. A further 5 potential grant funders and a number of potential commercial and private funders, has been identified to develop over the next 12 months.</p> <p>This risk can only be properly mitigated through the achievement of significant funding post-planning. Ultimately in the event of failure to secure fit out the Council has step in rights to take over the centre, but would then obviously assume these risks themselves.</p>
<p>v) Restaurant income. The business plan assumes net income of £97k from the restaurant operations including a rent reduction based on the restaurant provider funding the initial fit out. This is 29% of the overall income of the Trust.</p>	<p>Restaurant income represents a significant part of the plan. Specialist advice has been taken and the figures are based on that advice and discussion with a local restaurateur. The value associated with potential restaurants is also reflected in one of the potential developer's bids. A long term agreement would be required with a restaurant provider to enable them to recoup fit out costs. The Council would need to approve the terms of any lease granted.</p> <p>The full impact and length of the recession is, however, as yet unknown and the income expected from events catering needs further development.</p>
<p>vi) Other operational / educational costs. Completely excluding the RACC figures from the existing plan (which had a net income of £36k in yr 2) the rest of the centre shows a net overall running cost of just over £50k across the whole period of the business plan</p>	<p>The Trust has already begun work with other educational providers that may well bring additional net income into the scheme. The major non-staffing costs involved in running the building have been reviewed by the Assistant Director of Environment and are considered reasonable. Several questions have been posed by officers on the staffing levels proposed and some changes made. The running of the centre is partly reliant on volunteers and the plan allows for resource</p>

<p>vii) The Trust fails to be able to run the centre for one of the above or other reasons.</p>	<p>for their co-ordination.</p> <p>The agreement with the Trust would have a break clause based on failure /non-delivery of services. Aside from the above, the risks around this are being mitigated by ensuring that the business acumen of the Trust is as strong as possible. The need for new Trustees with appropriate experience has already been addressed by the Trust and will be pursued by them at appropriate stages of development of the scheme. If still there is a failure it would cause reputational damage and may involve Council needing to run the building for a time. The worst case risk in financial terms is that the Council incurs capital costs of fit-out (if failure occurs ahead of fit-out being done by the Trust) <u>and</u> the Council incurs a revenue cost of securing and internally maintaining the building whilst it is vacant. This annual cost might be in the region of £30k per annum for a high profile building of its type, dominated by security costs, plus an estimated £50k per annum for business rates payable by the Council.</p>
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7.3 In overall terms the Director restates his views that the financial risk has probably been addressed as far as it is possible to do so at this stage in the project and is unlikely to change significantly until planning permission has been achieved and the Trust can begin to realise, or otherwise, the targeted grant funding, restaurant agreement etc. As has also been recognised previously the current economic climate adds a further uncertainty to the project. Clearly if the Council decides to proceed it will need to take that decision in the knowledge of this risk and weigh that against its priorities and objectives for this scheme.

8. EQUALITY IMPACT/CONSIDERATIONS

The schemes all include detail in respect of accessibility in compliance with building control and planning requirements.

9. LEGAL IMPLICATIONS

9.1 The Council under Local Government (Contracts) Act 1997 can enter into binding contracts including Development Agreements with private bodies.

9.2 The Council, being a Contracting authority under the Public Contracts Regulations 2006 as amended, is obliged to use a procedure in those Regulations for procurement of the works contract for this project and the Council in April 2008 had decided to go ahead with a competitive bidding process for this regeneration project.

9.3 The Council was advised to follow the Competitive Dialogue procedure to develop various options for this regeneration scheme. The competitive dialogue process has been undertaken with active involvement of Legal

Services officers and external specialist legal consultants from Sharpe Pritchard, solicitors.

- 9.4 During the competitive dialogue various options have been developed and final bids by the short listed bidders have been invited. These final bids are irregular in terms of the very strict process requirements of the invitation to tender issued in the competitive dialogue process, but only in respect of minor matters. The Public Contracts Regulations 2006 as amended in any event allow for a change of procurement procedure from the Competitive Dialogue to a Negotiated procedure in these circumstances and this has been done in a way that ensures that the process we are following is compliant with Public Procurement Regulations.
- 9.5 The Development Agreement Heads of Terms have been drafted by Sharpe Pritchard, as part of the procurement process, and these are standard terms expected in a development agreement.
- 9.6 The Council is not bound to have any moratorium over its functions and duties prior to any elections and the decisions taken validly following a democratic process as well as the contracts entered into consequently are required to be honoured, subject to any exceptions under law. In a recent case Redcar & Cleveland BC [2008 EWCA Civ 746], the Court of Appeal has mentioned that decisions taken following a democratic process even in the pre-election period were valid and would be upheld.
- 9.7 The Council is also empowered to enter into the Development Agreement and a long term lease with the Environment Trust under its well being powers under the Local Government Act 1972 and the well-being powers in the Local Government Act 2000. This lease will be the subject of future Cabinet decisions, not for this Cabinet. However Cabinet in broad terms, so long as it is satisfied that it will be for the benefit of the Borough and its residents it can use its social, environmental and economic well-being powers, in conjunction with the powers of the 1972 Act to dispose of property, so long as the "undervalue" of the interest to be granted is less than £2m (above which Secretary of State consent would be required). A valuation report has been produced that indicates that is so and by some margin. This report will be updated for Cabinet as and when decisions proper are made on this matter, which the programme indicates will likely be around September/October 2009.

10. BACKGROUND DOCUMENTS:

Twickenham Riverside, Reports to Cabinet of September 2006, October 2006, March 2007, April 2008.

Appointment of Consultants delegated powers report of May 2007.

Reports to Scrutiny Committees, Finance and Strategy Overview and Scrutiny Committee of April 2008, Co-ordination, Finance and Performance Commission meetings of November 2008, March 2009 and April 2009.

Some of the documents referred to in this report are in part or as whole confidential, principally for commercial confidentiality reasons, including the ITPD, ITT and full Tender returns.

11. CONTACTS

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