

Part A

**Report to:** Cabinet

**Date of meeting:** Monday, 28 November 2022

**Report author:** Executive Director of Place

**Title:** Town Hall Quarter - New Neighbourhood - Selection of Preferred Bidder

## **1 Summary**

- 1.1 As part of its ambition to ensure Watford builds on its reputation as a thriving, diverse and creative town, Watford Borough Council (the Council) has recognised the potential of the area around the Town Hall to deliver an exciting, major regeneration programme. The Town Hall Quarter (THQ) programme will transform this location, securing a thriving new quarter with new homes, employment, and public space, which will be underpinned by a revitalised creative, cultural and heritage offer.
- 1.2 In January 2021, upon initiation of the Town Hall Quarter programme, Cabinet authorised officers to progress a competitive dialogue procurement process to find a private sector development partner, with whom the Council could establish a joint venture (JV) vehicle to develop the land around the Town Hall. This is referred to as the THQ New Neighbourhood Project (NNP).
- 1.3 Feasibility work during 2019 and 2020 had confirmed the opportunity to deliver significant regeneration of this area, making use of the under-utilised surface car parking and reclaiming land used for highways, to build new homes, to improve the quality of the public realm and provide a much better environment for pedestrians.
- 1.4 Through competitive dialogue, a preferred bidder has now been identified: Mace Developments Limited (Mace). This report recommends progressing contractual negotiations with Mace alongside preparation of an initial business plan with a view to incorporating a Limited Liability Partnership (LLP), in which the Council and Mace will each have 50% interest.
- 1.5 Mace have presented proposals, which meet the Council's objectives both in terms of vision for the Town Hall Quarter and partnership approach for working with the Council to deliver the scheme. Dialogue on legal matters suggests that a contractual arrangement is capable of being agreed between the parties. It is therefore recommended that Mace is appointed preferred bidder.
- 1.6 Mace and the Council have agreed to pause detailed work on a business plan and

proposed development due to current uncertainty in the market. However, the Council supported by Mace would undertake a limited programme of work to understand operational requirements and reduce uncertainty as to the extent of abnormals that may impact costs, to allow the partnership to move forward as soon as market conditions become less problematic. It is then expected a programme of activity would develop a first business plan for the joint venture and finalise legal documentation for approval by Cabinet.

- 1.7 It is intended to report back to the Cabinet in 12 months as to progress, or earlier should market conditions stabilise. It is noted that progress updates are provided to the Town Hall Quarter Member Steering Group on a monthly basis.

## 2 Risks

### 2.1

<b>Nature of risk</b>	<b>Consequence</b>	<b>Suggested Control Measures</b>	<b>Response</b> (treat, tolerate, terminate or transfer)	<b>Risk Rating</b> (combination of severity and likelihood)
Procurement challenge	Inability to progress contractual negotiations with Mace  May have to repeat procurement	Procurement has followed due legal process  Preferred bidder provides an opportunity for objections to be made and refuted	Tolerate	2 x 2 = 4
Continued economic uncertainty	Inability to invest in and commence regeneration scheme	Monitor economic parameters and review scheme viability  Liaise with Homes England to consider potential funding opportunities in light of market conditions	Treat	3 x 3 = 9
Mace not committing to the process	Scheme is able to proceed, however, we do not have a development partner	Assurances at a senior level have been made  Regular reviews with Mace agreed as	Treat	3 x 3 = 9

		part of the preferred bidder status		
		Alternative options analysed		
Negotiations with Mace fail	Final terms acceptable to both parties cannot be reached	Council could instigate another procurement process or seek to use it's other JV	Treat	4 x 3 = 12

### 3 Recommendations

- 3.1 To select Mace Developments Limited as preferred bidder for the Town Hall Quarter New Neighbourhood Project
- 3.2 To authorise the Executive Director of Place, in consultation with the Mayor and Chief Executive, and providing regular updates to the Town Hall Quarter Member Steering Group, to progress resolution of the delivery programme, complete contractual negotiations and prepare an initial business plan and to bring these back to Cabinet for ratification and recommendation onto Council.
- 3.3 To authorise the Associate Director of Property and Asset Management to continue land assembly negotiations with other landowners across the site, to provide regular updates to the Mayor, Chief Executive and Member Steering Group, and to revert to Cabinet for authorisation for any acquisitions.
- 3.4 To agree to the Regeneration Team continuing to work with other public and private sector bodies to consider the regeneration plans for this area of Watford, working within existing budgets and providing regular updates to the Mayor, Chief Executive and Town Hall Quarter Member Steering Group.

#### Further information:

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#### Report approved by:

Donna Nolan, Chief Executive

## 4 Detailed proposal

### Background

- 4.1 This report seeks cabinet approval to appoint a preferred bidder for the NNP, which is part of the THQ Programme, following a competitive dialogue procurement process.
- 4.2 The Cabinet decision in January 2021 authorised officers to proceed with the procurement of a development partner for the NNP via a competitive dialogue procedure under the Public Contract Regulations using the delegated authority to the Mayor in consultation with the Member Steering Group and the Executive Director of Place to approve the following elements of the procurement process, namely: the project objectives, the selection criteria, the evaluation criteria and the short-list of tenderers selected to proceed to invitation to participate in the dialogue.
- 4.3 The recommendations authorised the Associate Director of Property and Asset Management to undertake commercial negotiations with the landowners across the site to acquire their land interests and integrate those buildings and land into the proposals to undertake comprehensive development of the Town Hall Quarter site, and if terms are agreed to either enter option agreements or subject to Council approving expenditure of the necessary funding undertake those acquisitions.



4.4 The Town Hall Quarter site area under consideration concerns land that is bounded by Rickmansworth Road (on the southeast side), A411 (on the north east side), Peace Prospect and Hyde Road (on the north west side) and the boundary between the Colosseum and the Peace Hospice (on the south west side) (see plan). Over 50% of the land is owned by the Council and most of the rest of the land is owned by other public sector organisations (Hertfordshire County Council and the NHS). The proposals exclude any changes to the Leisure Centre or the Library Building that both sit within the defined boundary.

4.5 Subsequent to the January 2021 Cabinet Decision, the Mayor in consultation with the Member Steering Group agreed:

- Project Objectives;
- Selection Criteria for tenderers and then selection of tenderers; and
- Evaluation Criteria for the procurement process.

4.6 The Project Objectives cover Placemaking, Delivery and Commercial criteria and are as follows:

***Placemaking***

- to achieve redevelopment of the area and contribute to the Council's wider regeneration ambitions as part of the Town Hall Quarter programme, including promoting investment and growth in Watford, securing transition to a low-carbon economy and supporting the cultural and creative sectors;
- to deliver a vibrant and attractive new neighbourhood with high quality residential development that sets an exemplar for other developments in Watford town centre;
- to deliver high quality homes with a mix that recognises the housing challenges faced by Watford;
- to make more efficient use of land and buildings, improving service delivery of the existing functions on the site through re-provision and potentially co-location, and introducing new and complimentary uses alongside;
- to enhance the Conservation Area and frame existing heritage buildings with high quality new buildings that stand the test of time, using architecture and massing to transition to the surrounding areas;
- to deliver new activated public realm that represents a complementary addition to Watford High Street, providing appropriate linkages through the site, promotes greater outdoor dwell-time with the potential for outdoor cultural uses and activities, and gives clear priority to pedestrians and minimises any land that is visibly given up to car parking or servicing;
- to embrace explicitly strong environmental and sustainability standards in accordance with the Council's commitments and climate and ecological emergency declarations;

### **Delivery**

- to secure the support of local residents and stakeholders through engagement best practice, recognising the high-profile nature of the proposed development and being attentive to public opinion and the stakeholder views;
- to deliver social value through the design, planning and construction processes;
- to programme and phase the development to maximise value, and minimise disruption to and allow continuity of existing uses (especially the Colosseum);
- to secure a supply chain to work under the Joint Venture based on value for money – delivering transparency and balancing price and quality for maximum benefit
- to deliver the entire project within 10 years;

### **Commercial**

- to be commercially viable without the need for subsidy (other than Homes England grant for affordable housing, if applicable);
- to deliver according to a business plan that takes a phased approach to delivery which will manage the joint venture risk profile to meet market demand;
- to make optimal use of the available land in order to maximise value;
- to ensure that proposals for commercial land uses are fully supported by appropriate market and other relevant information; and
- to allow the Council to make a significant contribution towards the regeneration of the Town Hall and Colosseum using its share of returns from the vehicle.

4.7 The Project Objectives communicated to tenderers what the Council’s aspirations are for the NNP and have been key to the assessment of bidders’ proposals. The Project Objectives were used to inform the formulation of appropriate Evaluation Criteria for scoring submissions. The Evaluation Criteria for the procurement process were agreed as follows:

Question No.	Evaluation Criteria	Tier 1	Tier 2
<b>Price</b>			
1a	Commercial Offer: Overall Financial Offer	<b>40%</b>	<b>14%</b>
1b	Commercial Offer: Assumptions		<b>12%</b>
2	Development Management Fee		<b>8%</b>
3	Commercial Offer: Funding Proposal		<b>6%</b>
<b>Quality</b>			
4	Scheme Concept and Design	<b>60%</b>	<b>14%</b>
5	Delivery Strategy		<b>10%</b>
6	Skills and Capabilities		<b>7%</b>
7	Partnership Approach		<b>7%</b>

8	Risk Management		5%
9	Legal/Commercial		12%
10	Social Value		5%

### **Procurement Process**

4.8 The Council received seven expressions of interest during the Selection Questionnaire stage. From these, the Mayor and Member Steering Group agreed to the invitation of three organisations to participate in dialogue.

4.9 The dialogue process was separated into three stages:

- initial discussions followed by submission of Preliminary Proposals, which were reviewed by the Council and its advisers with feedback provided to tenderers;
- submission of Detailed Proposals, which were provided draft scores alongside feedback against the Council's objectives; and
- a Final Tender.

4.10 All organisations submitted Preliminary Proposals. However, after detailed negotiations, two decided to withdraw from the dialogue process. Neither were able to identify a development strategy that was capable of meeting the Council's stated Project Objectives.

4.11 In consultation with the Mayor and the Member Steering Group and following legal advice, officers were authorised to continue dialogue with the remaining organisation, Mace, as the sole tenderer through the Detailed Proposals and to Final Tender.

4.12 When Council officers were satisfied that a submission met with the Council's Project Objectives, then a Final Tender was requested. Mace were the only party to submit a Final Tender

### **Assessment of Mace Proposals**

4.13 Mace has presented a scheme proposal that meets all the Council's stated Project Objectives.

4.14 Key components of the Mace scheme are new homes, a hotel, new health facility to replace the Avenue Clinic with potential to include a wider range of health services, some supporting retail / food & beverage to support the new development and activate the central pedestrian avenue through the site, and provision of car parking and improvements to the public realm.

4.15 These concepts will be developed into firmer proposals through the preparation of an initial business plan, which would form the basis of the future joint venture.

- 4.16 Council officers, with the support of retained advisers Montagu Evans, Browne Jacobson and Grant Thornton, assessed the Mace proposals against the pre-agreed Evaluation Criteria. The detailed scoring is provided in the accompanying Part B report by Montagu Evans. The Mace submission achieved a total score of 66%.
- 4.17 The Mace proposals have sufficiently good scores across all the different categories to give the Council confidence that Mace would be a strong development partner for this scheme. None of the scores fall below minimum thresholds.

### **Scheme Delivery and Next Steps**

- 4.18 With a steep rise in construction costs, and inflation generally, any scheme with high quality place making objectives that requires the delivery of the full mix of housing will inevitably be challenging from a viability perspective. Scenario testing through the procurement process has indicated that, in the current economic climate, there are high viability risks associated with the Mace scheme. As a consequence, the Council and Mace have agreed that it would be prudent not to commence detailed scheme development immediately. Rather, both parties will monitor and regularly review the economic situation over the next 12 months. As soon as there is greater confidence in the scheme viability, and in consultation with the Mayor and Member Steering Group, then both parties will be in a position to proceed with the formation of the joint venture LLP and adopt an initial business plan (based on work carried out in the interim period).
- 4.19 As the Council would be liable for fifty percent of the costs of taking the proposals forward into detailed plans, officers in consultation with the Mayor and the Member Steering Group consider that, given the current economic climate, it is sensible to delay detailed work until it is more certain that a successful and viable project can be progressed through to fruition.
- 4.20 In the meantime, the Council supported by Mace have agreed to undertake a limited programme of work to understand future operational requirements, explore with other public sector bodies grant availability and reduce uncertainty as to abnormal costs. Updates will be regularly provided to the Mayor and Member Steering Group.
- 4.21 When the market conditions have stabilised it is envisaged that both parties would conclude the work necessary to establish a joint venture, namely:
- to conclude legal negotiations for all the contractual documentation necessary for the establishment of the LLP;
  - to prepare an initial business plan;
  - to agree a detailed delivery programme for the scheme.
- 4.22 In parallel with the procurement process, the Council has engaged with key



landowners across the site, including Hertfordshire County Council (HCC) and NHS. The NHS proposals would see the Avenue Clinic re-provided in more suitable premises. HCC owns land beside the Library, which would be required to deliver the scheme. HCC is also the transport authority and the envisaged regeneration plans would involve removing part of the gyratory around the current Avenue car park.

- 4.23 The Associated Director of Property and Asset Management will continue to engage with the key landowners with a view to progressing the initial support into firm land acquisition arrangements. He will regularly update the Mayor and Member Steering Group on progress. Authorisation will be sought from Cabinet to complete any acquisitions.

### **Project Governance**

- 4.24 The project will be managed via a dedicated Project Board reporting into the Town Hall Quarter Programme Board, chaired by the Chief Executive. This will allow risks, issues and any potential changes to be actively managed and, where necessary, escalated with a full understanding of any implications. Political oversight will be maintained by a Member Steering Group, chaired by the Elected Mayor and in place since the initiation of the programme, which will continue to allow ongoing progress reporting and feedback from Members.
- 4.25 The proposed delay in commencement of major investment in the scheme represents a means to manage the commercial risks, allowing the Council, with Mace's support, to gain a better understanding of key abnormal costs and to allow current market uncertainties to dissipate. Agreeing to a regular review process between parties will allow the Council and Mace to progress contractual negotiations and initial business planning as soon as market conditions are favourable. There remains a residual risk that a contract cannot be agreed or that Mace withdraw, in which case the Council would review how best to deliver the project, depending on the circumstances at the time.
- 4.26 As soon as the Council and Mace Developments agree to commence work towards setting up the LLP JV and preparation of an initial business plan, then it is estimated that this work will take around 6 months to complete.
- 4.27 Officers, in consultation with the Mayor and the Member Steering Group, will continue to monitor the key risks identified and develop further the mitigating actions.

## **5 Financial**

- 5.1 Over the last 9 months, the economic climate for development activity has changed. Energy costs and global supply chain challenges have caused a spike in inflation of constructions costs. Further the well-publicised cost of living crisis is being

compounded by increases in interest costs. These changes in market conditions create uncertainty and reduce the confidence in scheme viability. To this end, it is prudent for the Council and Mace to agree that no significant investment will be made in the project until market conditions are seen to stabilise. This will, however, allow the Council, with Mace's support, to further investigate key project risks to provide a more robust platform to work from when preparing the initial business plan.

- 5.2 The Shared Director of Finance comments that there is budget within the current capital programme of £184k in 2022/23 and £100k in 2023/24 to progress the THQ NNP. Any expenditure outside of these approved amounts will be subject to approval by full Council, including future JV costs. This includes costs that will be converted into future loan notes. It is noted that the Cabinet decision in January 2021 required additional budget approval for any land acquisition costs.
- 5.3 It should be noted that any costs incurred prior to the setting up of the joint venture are at the Council's risk and, should the NNP not proceed, will be a call on reserves as the Council is unable to charge abortive costs to the Capital Programme.

## **6 Legal Issues (Monitoring Officer)**

- 6.1 Legal advice has been obtained throughout from Browne Jacobson LLP.
- 6.2 The January 2021 Cabinet report addressed the legal advice obtained from Browne Jacobson LLP in relation to the procurement process which has now been followed.
- 6.3 That report also confirmed that Section 1(1) of the Localism Act 2011 contains the "general power of competence" for local authorities, defined as "the power to do anything that individuals generally may do" and which expressly includes the power to do something for the benefit of the authority, its area or persons resident or present in its area. As such, Browne Jacobson confirm that this power may be relied on to carry out the scheme, including as now recommended in this report.
- 6.4 As further background, the January 2021 decision was premised on the fact that the recommended delivery structure as a limited liability partnership (LLP) is not a commercial purpose. Forming a LLP remains lawful; where the purpose of the Council is predominantly a commercial purpose, a company structure would be required.
- 6.5 Other statutory powers were referenced in the January 2021 report, namely Section 111 of the Local Government Act 1972 (which enables the Council to do anything which is calculated to facilitate, or is conducive to or incidental to, the discharge of any other of its functions, whether involving expenditure, borrowing or lending money, or the acquisition or disposal of any rights or property) and powers under the Housing Act 1985 to provide housing accommodation (being a legitimate function to which section 111 would attach). The recommendations in this report are similarly

supported.

- 6.6 In relation to matters addressed in this report at paragraphs 4.11 and 4.12, Browne Jacobson LLP have advised that it is lawful for the Council to continue to make a contract award to Mace Developments Limited notwithstanding that the other bidders withdrew. The Public Procurement Regulations 2015 do not oblige a procuring authority to cancel a procurement process where (after inviting tenders from three bidders) only one bidder submits a final tender. The key consideration for the Council is whether that position enables the Council to properly assess whether the final tender represents value for money. The Council should also consider whether it would be better served (taking account of the delay and risk of a similar outcome) re-commencing the procurement or adopting an alternative course of action to deliver a scheme.
- 6.7 In making that judgement, it can be noted that the two bidders that withdrew did so after submission of preliminary proposals and therefore the Council has been able to make a market assessment of different scheme proposals (albeit not final tenders).
- 6.8 The Mace Final Tender did include a number of residual legal points (under the Members' Agreement, Land Agreement and Development Management Agreement). These remain to be fully settled but Mace are aware of the Council's position on these points and Browne Jacobson consider that none are regarded as being a barrier to concluding the documents referred to on acceptable terms.
- 6.9 When considering whether to adopt the recommendations of this report, the Cabinet will be exercising discretion and should therefore have in mind the following principles of administrative law:
- the decision must be within the Council's powers – and is advised that is the case;
  - all relevant information and consideration, including the Council's fiduciary duty to the Council tax payer, must be taken into account; and
  - all irrelevant considerations, including unauthorised purposes, must be ignored.

## **7 Equalities, Human Rights and Data Protection**

- 7.1 Under s149 (1) of the Equality Act the council must have due regard, in the exercise of its functions, to the need to –
- eliminate discrimination, harassment, victimisation and any other conduct prohibited by the Act
  - advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share them
  - foster good relations between persons who share relevant protected

characteristics and persons who do not share them.

- 7.2 The council carried out an Equality Impact Analysis (EqIA) for the wider Town Hall Quarter programme to support the January 2021 Cabinet Decision. Having had regard to the council's obligations under s149, it is considered that the recommendations set out in this report do not represent any new policy but a continuation of an existing decision. To this end, it is not necessary to update the EqIA at this time. At the next decision stage, when the Council is seeking to establish the proposed joint venture, then an initial business plan will have been prepared. It is at that point, when further detail will be available, that it will be appropriate to update the EqIA.
- 7.3 The previous assessment concluded that there would be no negative impacts, which could not be mitigated, associated with the Town Hall Quarter programme. It also made a number of recommendations that the Council will implement as the project progresses. The previous EqIA will be reviewed in the process of preparing the initial business plan for the proposed scheme and earlier recommendations taken into account
- 7.4 Having had regard to the council's obligations under the General Data Protection Regulation (GDPR) 2018, it is considered that officers are not required to undertake a Data Processing Impact Assessment (DPIA) for this report.

## **8 Staffing**

- 8.1 There are no additional staffing requirements to proceed with these recommendations at this time. However, it is recognised that there will be further resources required when this project proceeds forwards with detailed business planning, design and town planning work. For the moment, resources are already in place within the Property and Regeneration teams to progress interrogation of key project risks, engage with landowners, regularly liaise with Mace to monitor the economic climate and, at the appropriate time, to work with Mace to complete contractual negotiations and formulate the initial business plan.
- 8.2 When work progresses to prepare the initial business plan, then in anticipation of the incorporation of the joint venture, in liaison with the Mayor and the Member Steering Group, working arrangements including appropriate project and programme governance will need to be established to ensure proper oversight of Mace's development management activity.
- 8.3 It is assumed that project will be primarily resourced by the Property and Asset Management Team. The project management support required for the project is expected to reduce over the next 12 months. This provides an opportunity to redeploy resource to other projects within the programme such as the museum relocation and the community hub. The Programme Board and Member Steering Group will maintain an overview of the resourcing model.

## **9 Accommodation**

9.1 There are no accommodation implications associated with these recommendations.

## **10 Community Safety/Crime and Disorder**

10.1 Section 17 of the Crime and Disorder Act 1998 requires the council to give due regard to the likely effect of the exercise of its functions on crime and disorder in its area and to do all it reasonably can to prevent these.

10.2 Through regeneration of the land around the Town Hall and improving the public realm in the area, there is the potential to reduce potential for crime through embracing secured by design principles within the design process. These will be considered when the scheme is brought forward for planning determination.

## **11 Sustainability**

11.1 In July 2019, Watford Borough Council declared a climate emergency and made a commitment to achieve net carbon neutrality by 2030. As such, sustainability is woven into the fabric of the Town Hall Quarter programme. Detailed proposals will be developed as the scheme design is progressed towards preparation of a planning application.

11.2 In addition to the decarbonisation work to the Town Hall and the Colosseum already underway within the site, the new development provides the opportunity to deliver an exemplar scheme which champions energy efficiency, makes improvements in local ecology and uses more sustainable materials through the supply chain. The Council will also explore opportunities for energy generation.

11.3 There will be some demolition on the site and there will be some impact on the local ecology. But there is scope to mitigate all these effects and deliver general improvements.

## **Appendices**

- Part B - Montagu Evans – Procurement Summary Report

## **Background papers**

No papers were used in the preparation of this report.

