

BARNESLEY METROPOLITAN BOROUGH COUNCIL

**Report of the Director of
Legal and Governance**

Action Taken under Paragraph B6 of the Responsibility for Executive Functions – Officer Delegations Contained in the Council Constitution

1. Purpose of Report

To inform Cabinet of action taken as a matter of urgency under Paragraph B6 of the Responsibility for Executive Functions – Officer Delegations contained in the Council Constitution.

2. Recommendations

That the action taken under Paragraph B6 of the Responsibility for Executive Functions – Officer Delegations, as contained within the Appendix attached to the report, be noted.

3. Background

Individual actions taken following consultation with the appropriate Cabinet Spokesperson are detailed by Cabinet Portfolio in the Appendix to this report. In accordance with Paragraph B6 of the Responsibility for Executive Functions – Officer Delegations contained in the Council Constitution these actions are reported into the next available Cabinet meeting.

4. Implications

There are no local area, crime and disorder, financial, employee or human rights implications arising directly from this report.

5. Background Papers

Decision notices of action taken under Paragraph B6 of the Responsibility for Executive Functions – Officer Delegations contained in the Council Constitution available for inspection in the Council Governance Unit, subject to the notice not containing personal information as defined by the Data Protection Act 1998 or exempt information as described in Schedule 12A of the Local Government Act 1972.

6. Appendices

Appendix 1 – Decision Taken by Executive Director

Appendix 2 – Copy of Report Containing Details of Decision

Officer Contact: Craig Rogerson

Telephone No: 773425

Date: February 2016

**Action Taken under Paragraph B6 of the Responsibility for Executive Functions –
Officer Delegations Contained in the Council Constitution**

	<u>Date of Decision</u>
1. <u>Appointment of a Development Management Organisation – Better Barnsley Scheme</u>	26 th February, 2016
(i) Approving the appointment of Turner and Townsend, and associated partners, as the Council's Development Management Organisation, together with a revised budget of £2.479m required as a result of the increased cost; and	
(ii) Authorising the Director of Legal and Governance to complete any necessary contract documentation relating to the appointment of Turner and Townsend and the resulting funding partner.	

BARNSELY METROPOLITAN BOROUGH COUNCIL

This matter is a not Key Decision within the Council's definition and has not been included in the relevant Forward Plan

Report of the Executive Director Place

APPOINTMENT OF A DEVELOPMENT MANAGEMENT ORGANISATION FOR THE BETTER BARNSELY TOWN CENTRE SCHEME

1. Purpose of report

- 1.2 To provide an update on the appointment of a Development Management Organisation (DMO) to deliver the new retail and leisure facilities within the Better Barnsley scheme, and to seek approval to release additional capital resources as a result of prices provided through the tender process.

2. Recommendations

It is recommended that:

- 2.1. **Cabinet approves the revised budget of £2.479M to enable the appointment of Turner and Townsend, and associated partners, as the Council's Development Management Organisation (DMO).**
- 2.2. **The Director of Legal and Governance be authorised to complete any necessary contract documentation relating to the appointment of Turner and Townsend and the resulting funding partner.**
- 2.3. **Cabinet notes the updated project governance arrangements for phase 1 and phase 2 as a result of the appointment of the DMO.**

3. Introduction

- 3.1. In July 2015, Cabinet approved the procurement of a Development Management Organisation (DMO) to secure private sector investment to deliver new retail and leisure units in the Better Barnsley Scheme.
- 3.2. The report also set out the justification for appointing a DMO to lead on the development of retail and leisure on the plots created as a result of the demolition undertaken as a result of Better Barnsley Phase 1. As a result of the report, NPS were appointed to manage the procurement process, advised by CBRE who were retained as strategic advisors to the project. The process began in October 2015 with the launch of the procurement prospectus at an event at CBRE's offices in London in front of an audience of organisations who might be interested in tendering for the work.
- 3.3. Following a robust procurement process, the selection panel interviewed three potential DMOs in early February. As a result of this exercise and an assessment of the quality and price elements of each respective tender, the panel have selected a preferred DMO. However, their appointment is conditional upon the release of additional capital resources to ensure there is sufficient budget to pay for the anticipated total cost of the DMO's work.

- 3.4. This report sets out the outcome of the DMO procurement process, along with a recommendation to release additional capital resources as a result of the market tested prices received.

4. Consideration of alternative approaches

No Appointment

- 4.1. As Cabinet already agreed to the rejection of alternative approaches to appointing a DMO, outlined in the Cabinet report of July 2015, the only alternative approach now available is to not appoint any of the prospective DMOs identified through the procurement exercise.
- 4.2. No appointment would be made on the basis that the prices presented exceed the previously estimated value budgeted for in the July 2015 report. The result of this decision would be a significant delay in the Council's ability to proceed with phase 2 of the Better Barnsley scheme and would cast major doubts within the development market of our ability to deliver a commercially acceptable scheme and attract private sector investment. A further process would need to be followed to retender the work, however as the work was promoted via the MIPIM UK property event, promoted directly with the leading DMO organisations in the UK via the CBRE event and via the YOR tender procurement portal, it is highly unlikely DMO organisations would retender for the work if their current price has been rejected.
- 4.3. It is strongly recommended not to proceed with this approach.

5. Proposal and justification

- 5.1. The proposal is to agree to the appointment of the preferred DMO and to release additional capital resources in order to ensure there is sufficient budget available to cover the proposed costs of the work.

Results of the Procurement Exercise

- 5.2. The procurement of the DMO followed a two stage process. Firstly upon release of the procurement prospectus in October 2015, the Council received five pre-qualification questionnaire (PQQ) responses. These were assessed by the following selection panel:

- David Shepherd – Service Director Economic Regeneration
- Jeremy Sykes – Service Director Property and Assets
- Mark Lynam – Head of Service Economic Development
- Andrew Osborn – Group Leader Regeneration Projects

- 5.3. The PQQ responses were assessed and all five were invited to tender, with a deadline of the 25th January 2015. Of the five invited to tender, three provided returns. These three organisations were:-

- Henry Boot Developments
- Turner and Townsend with Queensberry Real Estate
- Rivington Land.

- 5.4. All three organisations, along with providing their tender response, were invited to present to the panel in early February 2016. Following the assessment of the presentations, along with the tender and pricing responses, the prospective DMOs were scored as follows:

	Score	Total Quality Scores 60%	Pricing 40%	Total	Ranking
Henry Boot Development	171.00	34.20%	40.00%	74.20%	2
Rivington Land	212.08	42.42%	25.75%	68.17%	3
Turner & Townsend	270.25	54.05%	30.67%	84.72%	1

5.5. The total price for each of the prospective DMOs is as follows:

- **Henry Boots**
£1,794,612.60
- **Rivington Land**
£2,433,965
- **Turner & Townsend**
£2,213,128.75

5.6. It is therefore the recommendation of the selection panel that the Council appoint Turner and Townsend along with their partners Queensberry. This partnership DMO presents the Council with the best opportunity to secure not only the successful development of phase 2 of the Better Barnsley scheme but also private sector investment into the scheme along with the realisation of the Council's potential future return on investment identified in the July 2015 Cabinet report.

5.7. Turner and Townsend are a large internationally recognised multi-disciplinary firm who specialise in project management. They will be the lead contractor for this project but will partner with Queensberry Real Estate (QRE) who will lead on the retail and leisure lettings along with securing the necessary private sector investment. QRE are arguably the UK's leading organisation who deliver DMO services, with a strong track record in the recent delivery of similar schemes across the country. These include Newport, Bath, Belfast and Guildford.

5.8. Although further work will be required once appointed to confirm the likely delivery timescales and key milestones, the DMO proposed that within 18 months of appointment the following minimum requirements for future funding partners will be met:

- Draft building contract with suitable contractor.
- Full planning permission.
- Agreements for lease exchanged with sufficient tenants (circa 60%+ of revenue).

They expect negotiations with potential funders to be ongoing throughout planning and into quarter 1 of 2017 with a view to entering a conditional agreement by quarter 2 of 2017.

5.9. Queensberry propose to work within the current development context set by the approved phase 1 scheme, but recognise that in order to secure the step change in the town centre that the Council requires, a number of key anchors will need to be secured in order to ensure the scheme is commercially attractive. These target anchors will be identified early on by Queensberry with a view to securing these within the early phases of the project. This includes the cinema operator who is considered key to the overall scheme as they will attract the food and beverage operators and further smaller complimentary leisure offers. It

is therefore proposed to begin to include Queensberry in the ongoing discussions with cinema operators.

- 5.10. However, before appointment can be confirmed authorisation is required to release additional capital resources to ensure there is sufficient budget to cover the costs presented above. Any delays in the appointment of the DMO presents significant risk to the authority's ability to deliver the Better Barnsley scheme. It is therefore important to appoint now in order to:-
- Make the earliest possible start on the delivery of phase 2 of the Better Barnsley project.
 - Prevent any delays to the phase 1 main contractor programme as there would be clear benefits of the DMO and main contractor working closely together to bring both phases together. This could result in cost savings to the overall programme.
 - Avoid duplicating costs/making mistakes on phase 1 that need to be rectified once DMO on board.
 - Keep to existing timetable approved by Cabinet.
 - Ensure Better Barnsley scheme is prominently marketed at MIPIM Cannes to the international investor community.
- 5.11. The Cabinet report of July 2015 estimated that the cost of the procurement exercise along with the work of the DMO would be approximately £1.4m. As such this amount was allocated within the Jobs and Business Plan budget for this purpose. This estimate was based upon work undertaken by CBRE at the time based upon the known size of the phase 1 scheme and standard industry rates for DMOs. It was estimated that the cost of employing the DMO would be circa £500,000. This figure is still accurate as all three of the responding DMOs estimated between £400,000 and £500,000 for this part of their price. However, whilst it was possible to reasonable accurately estimate the cost of employing a DMO, it is much more difficult to accurately estimate the associated professional fees. The cost of these were estimated to be in the region of £700,000 to £900,000, however the costs presented by each of the three DMOs is significantly higher.
- 5.12. This cost increase is not surprising given this original range was difficult to quantify as we had no comparables. Each scheme across the country is different and therefore incurs different professional fees. As the scheme requires extensive professional input, it wasn't possible to stress test these assumptions with more accurate data on the current fees within the professional market at the time. However, it was anticipated that the price for this element of the work may increase the overall fee and this was flagged within the Jobs and Business Plan update report presented to Cabinet in January 2016. This report outlined the need to review the overall budget for the DMO once the tender returns had been assessed, as the Council had gathered more information about the likely price for this work during the procurement process and during conversations with prospective DMOs.
- 5.13. It should also be noted that a number of the prospective DMOs highlighted the difficulty in providing a fixed cost for some of the professional service fees, namely letting agent fees. This is because these fees are contingent upon the size and type of letting being made. In addition the DMO's have had to base design and structural/civil engineering costs on an estimated size of the final amount of new retail and leisure that will be provided. Again this will be significantly influenced by the final size/design requirements of the retail and leisure occupiers secured. As a result they could increase or decrease during the lifetime of the project.
- 5.14. Following receipt of the tender returns, NPS have thoroughly reviewed the pricing from each prospective DMO and have issued a number of clarifications to ensure the price is as competitive and robust as possible. All these clarifications have now been satisfied. As such the price from each party is as competitive as it can be with no further opportunity to engineer costs down.

- 5.15. It is therefore recommended that Cabinet authorise the release of additional capital resources to ensure sufficient budget is available to meet the robust market tested price for this work. Further information on the proposed budget is outlined within the Financial Implications section.

Governance

- 5.16. As a result of the appointment of the DMO, the project management governance arrangements will be updated to reflect the benefits of ensuring that phases 1 and 2 of the Better Barnsley scheme are fully aligned.
- 5.17. Upon formal appointment, a phase 2 project board will be established which will include the DMO principles plus key officer leads. This will mirror the existing project board for phase 1. In addition an overall steering group, consisting of leads from the phase 1 and 2 boards, will be formed to oversee both phases to ensure:
- Alignment and relationships
 - Place making and community investment
 - Oversee change
 - Provide assurance
 - Leadership, collaboration and supportive culture.

6. Implications for local people / service users

- 6.1 The creation of new retail and leisure facilities will create significant job opportunities for the local people. The scheme will provide a number of part time and full time opportunities within the local economy and with a mix of employment opportunities help people find varied employment based upon their work life balances.
- 6.2 In the short term there could be some adverse impacts on existing businesses and potential redundancies as a consequence of the site assembly, demolition, refurbishment and redevelopment requirements of the proposed scheme.
- 6.3 There will be significant construction over a period of time which will cause some disturbance to the town centre. The scheme will be managed to minimise impact on existing businesses and the public including those businesses whose premises are close to the development area. Significant emphasis will also be placed on maintaining a vibrant town centre throughout any construction works. Central to this will be the development of a promotions and events programme to support retail footfall to the Town Centre. The selected DMO has committed to working with the Council on a joint communications and marketing strategy.

7. Financial implications

- 7.1 Members have previously agreed resources totalling £1.374M to fund the costs associated with the engagement of a Development Manager to deliver new retail and leisure units in the Better Barnsley Scheme, together with the associated professional fees including the costs of legal advice and procurement/tendering costs. These costs were funded from resources previously allocated to the Jobs and Business Growth Plan (Cab.26.8.2015/11 refers).
- 7.2 Following a procurement exercise conducted by Norfolk Property Services on behalf of the Council the tendered costs are higher than anticipated. The total costs associated with this project are now expected to be in the region of £2.480M, an increase of £1.106M. This cost is made up of DMO costs and professional fees of £2.225M and procurement/legal cost of £0.255M.

7.3 The 2016/17 budget papers included an updated reserves position. After increasing the Minimum Working Balance by £5M the available balances stand at £10M. This will be subject to a further review as part of an updated Medium Term Financial Strategy. To the extent that these balances are used to fund the additional costs identified at paragraph 7.2 above, the available balance to support a revised MTFs will reduce to £9M.

7.4 The full financial implications are shown in Appendix A.

8. Employee implications

8.1 There are no employee implications arising from this report.

9. Communications implications

9.1. The selected DMO will work with the Council on a joint communications and marketing strategy, along with the delivery of a branded scheme which will work with the existing Better Barnsley arrangements. This will include extensive engagement with key stakeholders and the delivery of a full events and PR programme to ensure trade in Barnsley is supported during the development process.

10. Consultations

10.1 Consultations have previously taken place with elected members via an all member briefing on overall progress with the Better Barnsley scheme and the next steps in terms of delivering new leisure and retail units.

10.2 Consultation has taken place with representatives from the Director of Finance, Assets and Information Services regarding the financial implications and Risk Management issues.

10.3 Consultations have previously taken place with representatives of the Director of Legal and Governance regarding the legal implications of any future procurement process.

11. Community Strategy and the Council's Performance Management Framework

11.1 The proposals in this report are consistent with Council's Corporate Plan 2012-15 as it directly contributes towards the aspiration of delivering a thriving and vibrant economy. A specific outcome of this objective is a vibrant town centre with clear linkages to the further outcomes of creating more and better jobs and increasing skills to get more people working.

11.2 The corporate performance framework monitors the vibrancy and health of the town centre by measuring footfall and the occupancy levels of retail units in the town centre. To enhance the measurement of the footfall element work is ongoing to procure a new recording system that will catch footfall at multiple locations across the town centre.

11. Tackling Health Inequalities

11.1 The creation of new jobs reduces overall worklessness which provides a significant contribution to addressing inequalities in health and developing a healthy productive workforce.

12. Climate Change & Sustainable Energy Act 2006

12.1 Action to improve the energy efficiency of buildings constructed as part of the project will help to reduce carbon emissions.

13. Risk Management Issues

- 13.1 There is a comprehensive risk register for the Better Barnsley project which is reviewed and updated on a regular basis. The prospective DMOs were asked to provide a full risk register within their tender return. This will be merged with our own Better Barnsley risk register upon appointed and managed through Turner and Townsend in consultation with our own risk management team.

14. Health & Safety Issues

- 14.1 None arising directly from this report although there is the need to ensure all relevant staff are trained up on health and safety issues.

15. Compatibility with the European Convention on Human Rights

- 15.1 There are no matters of relevance arising from this report.

16. Promoting Equality & Diversity and Social Inclusion

- 16.1 There is an understanding that anyone with disabilities can face all kinds of challenges using the town centre. The goal is that the finished scheme is a destination of choice for anyone with disabilities to visit, shop, eat and have the facilities they need to fully enjoy their day.
- 16.2 The Town Centre delivery team have put significant emphasis on consulting with local access groups as the scheme has developed to outline planning stage. There has been engagement with local disabled people to ensure that the re-developed town centre is fully accessible and the existing town centre remains accessible for the duration of the work period. This detailed work will continue as the scheme develops and detailed designs emerge for the new retail and leisure facilities created by the scheme.

17. Reduction of Crime & Disorder

- 17.1 The Council is collaborating with the Police to address anti-social behaviour across the town centre. Good, safe design principal will help and assist this work going forward.

18. Conservation of Biodiversity

- 18.1 There are no matters of direct relevance arising from this report.

19. Glossary

20. List of Appendices

Appendix A: Revised DMO Budget

21. Background Papers

Office Contact: Mark Lynam Telephone No: 2774	Date: 16/02/2016
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Report of the Executive Director - Place

FINANCIAL IMPLICATIONS

APPOINTMENT OF A DEVELOPMENT MANAGEMENT ORGANISATION FOR THE BETTER
BARNSELY TOWN CENTRE SCHEME

i) <u>Capital Expenditure</u>	<u>2015/16</u> £	<u>2016/17</u> £	<u>2017/18</u> £	<u>Future Years</u> £	<u>TOTAL</u>
Procurement/Legal Costs	255,000				255,000
Development Management Company Costs		2,224,250			2,224,250
	<u>255,000</u>	<u>2,224,250</u>	<u>0</u>	<u>0</u>	<u>2,479,250</u>
To be financed from:					
Prudential Borrowing approved as part of the Jobs and Business Growth Plan	-255,000	-1,119,000			-1,374,000
Call on Strategic Reserves	<u>0</u>	<u>1,105,250</u>	<u>0</u>	<u>0</u>	<u>1,105,250</u>

ii) <u>Revenue Effects</u>	<u>2015/16</u> £	<u>2016/17</u> £	<u>2017/18</u> £	<u>2018/19</u> £
	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

To be financed from:

	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
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Impact on Medium Term Financial Strategy

This report has no impact on the Authority's Medium Term Financial Strategy.

	<u>2015/16</u> £m	<u>2016/17</u> £m	<u>2017/18</u> £m
Current forecast budget gap	0.000	0.000	11.853
Requested approval	0.000	0.000	0.000
Revised forecast budget gap	<u>0.000</u>	<u>0.000</u>	<u>11.853</u>

Agreed by:  19/12/16 On behalf of the Director of Finance, Assets & IS