

REPORT OF  
The Strategic Director for Place  
TO  
Procurement Board  
ON  
14<sup>th</sup> September 2022

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TITLE: Approval for an Exception to Contractual Standing Orders to enable One Heritage Tower Limited to award a contract for public realm works on Council owned land adjacent New Bridge Street, Greengate.

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RECOMMENDATION:

That the Procurement Board approves an exception to Contractual Standing Orders as permitted within the City Council Constitution for the reason(s) highlighted in the table below to enable One Heritage Tower Limited to procure public realm works to provide a riverside walkway on Council owned land in advance of the grant of a lease, as an element of the works contract for delivery of the consented residential development One Heritage Tower, as detailed in the table below:

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Detail required	Answers
<b>Title/Description of Contracted Service/Supply/Project</b>	Public realm works to provide improved riverside walkway on Council owned land as an element of the works contract for delivery of One Heritage Tower residential development.
<b>Name of Successful Contractor</b>	Midgard Limited
<b>Supplier Registration Number</b> <i>(to be supplied by Corporate Procurement)</i>	<b>05718686</b>
<b>Type of organisation</b> <i>(to be supplied by Corporate Procurement)</i>	Private Limited Company
<b>Status of Organisation</b> <i>(to be supplied by Corporate Procurement)</i>	SME
<b>Contract Value</b>	c.£364,000   Choose an item.
<b>Contract Duration</b>	Works programmed at end of 4 year build programme.

<b>Contract Start Date</b>	01/12/2022
<b>Contract End Date</b>	01/11/2026
<b>Optional Extension Period 1</b>	
<b>Optional Extension Period 2</b>	
<b>Who will approve each Extension Period?</b>	Choose an item.
<b>Contact Officer (Name &amp; number)</b>	
<b>Lead Service Group</b>	Choose an item.
<b>Reason for CSO Exception</b> <i>(select all that apply)</i>	<input type="checkbox"/> The goods / services / works are only obtainable from one provider and there is no other provider available to allow genuine competition <input type="checkbox"/> The execution of works or the supply of goods or services is controlled by a statutory body <input checked="" type="checkbox"/> Delivers Best Value to the Council <input type="checkbox"/> Special education, health or social care contracts, if it is considered in the Council's best interests and to meet the Council's obligations under relevant legislation <input type="checkbox"/> The execution of works or the supply of goods and services is required so urgently as not to permit compliance with the requirements of competition <input type="checkbox"/> Security works where the publication of documents or details in the tendering process could prejudice the security of SCC and Salford residents <input type="checkbox"/> Procurements made through, or on behalf of, any consortium, local authority, statutory or similar body, provided that tenders or quotations are invited and contracts placed in accordance with national or EU legislation.
<b>Funding Source</b>	Choose an item.
<b>Ethical Contractor</b>	<input type="checkbox"/> Mayor's Employment Charter <input type="checkbox"/> Committed to sign up to the Charter <input type="checkbox"/> Accredited Living Wage Employer

**EXECUTIVE SUMMARY:**

The purpose of this report is to request an exception to Contractual Standing Orders to enable One Heritage Tower Limited to award a contract for delivery of public realm works to provide a riverside walkway as approved under planning application ref 19/74205/FULEIA, in advance of the grant of a lease of the land to One Heritage Tower Limited.

The reasons why an exception is requested are as follows:

- One Heritage Tower Limited are developing the land in their ownership under an approved residential planning consent (subject to completion of a Section 106 Agreement), to include improvements to the walkway land fronting the river required as a planning condition, which they are going to lease from the Council.
- One Heritage Tower Limited will be appointing a contractor to develop this area with the inclusion of the walkway land. The walkway works, at a cost estimated at £364,000, will be included in one works package as part of One Heritage Tower Limited's tender process to appoint a contractor.
- An exception to CSO's for works to the walkway land will offer value for money for the Council as the developer will be undertaking the public realm works at its own expense and by undertaking a tender process for the full scheme with the walkway works included the developer will secure economies of scale and only be dealing with one contractor.

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#### BACKGROUND DOCUMENTS:

Report to Property & Regeneration Briefing on 25th October 2021 seeking approval of lease terms to One Heritage Tower Limited.

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#### KEY DECISION: Yes

\*Yes – if total value of contract (i.e. value over full cycle of contract including any potential extension period) is greater than £350,000 or if it will have a significant impact on two or more wards or if it is deemed to be novel or contentious

NB: This item must have been on the Forward Plan for 28 days before the report is submitted to Procurement Board and the decision is made. Contact Claire Edwards Senior Democratic Services Officer 793 2602 for advice)

\*No – if the value of the decision is between £150,000 and £349,999

NB: whether it is a Key Decision or not, this item must be put on the Forward Look to ensure it is picked up as an agenda item for the required Procurement Board meeting. Please give full title of report as stated in this report and also include whether it is a Part 1 or Part 2 report. Contact your Strategic Director's PA for advice.

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#### DETAILS:

##### **1.0 Background**

- 1.1 The Council has freehold title to a strip of land fronting the River Irwell off New Bridge Street, acquired in 1991 for provision of a section of riverside walkway.
- 1.2 The development plot adjacent to the riverside walkway was the subject of a planning application in 2019 for a residential development comprising 545 apartments, with public realm improvements that include the existing riverside walkway. The application was subject to minor amendments that were considered by Planning Panel in October 2021 and were minded to approve, subject to completion of a Section 106 Agreement to secure planning obligations.
- 1.3 A proportion of the river-facing elevation of the proposed residential tower over-sails the Council's ownership along the river frontage and proposed amendments to the basement level will also extend into the Council's ownership. The developer has sought to regularise this proposed occupation and delivery of enhanced public realm works by way of negotiation of lease terms.
- 1.4 The amended scheme, as consented, will see delivery of significant improvements to the riverside walkway, a key aim of the Greengate Regeneration Strategy 2018, by way of planning condition. To facilitate the delivery of the public realm improvements, including a dedicated permitted route for public access along the river frontage, and transfer future maintenance liability for the walkway to the developer, terms have been agreed for an Agreement for Lease followed by the grant of a long-leasehold interest in the walkway land to the developer, One Heritage Tower Limited.
- 1.5 The Agreement for Lease will not be entered into until a Section 106 Agreement securing the provision of the public realm works has been completed and a planning decision notice issued.

## **2.0 Why an exception is requested**

- 2.1 An exception and waiver to the Council's contractual standing orders is requested in relation to the procurement of works on Council owned land in advance of the lease being completed.
- 2.2 Lease terms have been agreed on the basis of the heads of terms approved at Property & Regeneration Briefing on 25<sup>th</sup> October 2021, by way of an Agreement for Lease to enable conditional access to undertake development, with a lease being granted on completion of the public realm works. As the public realm walkway land is owned by the Council at the time the works are to undertaken, the developer should conform to the Councils Contractual Standing Orders to procure a contractor to undertake the public realm works.
- 2.3 As the developer owns the adjacent development site it makes sense to obtain an exception to CSO's for the public realm walkway, which can then be included within the developer's whole works package. The developer

will then be managing one contractor and ensuring value for money is obtained. An exception is therefore required for the works to the walkway land only.

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**KEY COUNCIL POLICIES:**

Regeneration, Greengate Regeneration Strategy 2018.

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**EQUALITY IMPACT ASSESSMENT AND IMPLICATIONS:-**

Not applicable.

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**ASSESSMENT OF RISK:**

Low. The works will be undertaken at One Heritage Tower Limited's cost under a building licence and Agreement for Lease. The works will not be commenced until a Section 106 Agreement has been completed and the lease will only be granted on delivery of the public realm works to an agreed timescale and specification.

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**SOURCE OF FUNDING:**

Works to be funded by developer, One Heritage Tower Limited.

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**LEGAL IMPLICATIONS:** Supplied by Tony Hatton, Shared Legal Service

Ordinarily when commissioning contracts for the procurement of goods, services or the execution of works the Council as a 'contracting authority' must comply with the Public Contracts Regulations 2015 (PCR) as well as the provisions of its own Contractual Standing Orders (CSO's), Financial Regulations and the duties of Best and Social value. In addition, the PCR require that contracting authorities treat candidates equally and in a non-discriminatory way and act in a transparent manner, failing which the award of a contract may be subject to legal challenge.

In exceptional circumstances the Council may dispense with strict compliance of its CSO's, and the report sets out the reasons for the request for the exception, in accordance with paragraph 3.1 of CSO's. Whilst exceptions may be authorised by an approval from the Procurement Board, there is still a risk of challenge from aggrieved providers if the usual tender process has not been followed on the basis that it ought to have been advertised and put out to competition.

The risk of challenge increases with the value and duration of a proposed contract being awarded. The report sets out the reasons for the need to enter this contract, the benefits and value to the Council, and also states the reasons for the request for exception, such as offering value for money as the developer will be undertaking the

public realm works at its own expense and by undertaking a tender process for the full scheme, and with the walkway works included the developer will secure economies of scale and only be dealing with one contractor..

Whilst the value of the works in the report are below threshold the PCR require that contracting authorities treat candidates equally and in a non-discriminatory way and act in a transparent manner, failing which the award of a contract may be subject to legal challenge.

The Council is also under a best value duty to carry out its functions economically, efficiently and effectively with the objective to achieve value for money in all public procurement. The Council has considered the circumstances in this matter and concluded that the recommendation to permit the developer to award the contract as part of the whole works package to be of least risk and of most benefit to the Council.

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#### FINANCIAL IMPLICATIONS:

Supplied by: David R Mills – Interim Strategic Finance Manager –  
david.mills@salford.gov.uk

There is a premium payment on commencement of a 999 year lease term with respect to this land, and the developer will be undertaking the public realm works at their expense.

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#### PROCUREMENT IMPLICATIONS: Supplied by: Deborah Derbyshire x 6244

As with any exception there is always the risk of challenge but in this case the risk is relatively low. As the walkway is owned by the Council and will be leased to the developer on completion of works, with rights reserved to the Council for public access to the walkway, it makes sense for the developer to include the walkway within the full scheme of works by appointing one contractor through their own procurement process which will ensure that SCC obtain value for money. By approval of the exception from the Procurement Board the report will therefore comply with the contractual standing orders.

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#### HR IMPLICATIONS: Supplied by:

Not applicable.

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#### CLIMATE CHANGE IMPLICATIONS: Supplied by:

Considered as part of the earlier report to Property & Regeneration Briefing approving lease terms.

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OTHER DIRECTORATES CONSULTED:

Regeneration.

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CONTACT OFFICER: John Nugent, Development Surveyor, Property Services

TELEPHONE NUMER: 0161 779 6072

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WARD(S) TO WHICH REPORT RELATE(S):

Blackfriars and Trinity.

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