

# Internal Audit Services Report

## Better Queensway Highways Scheme

Reference Number: 20/51

Date Issued: August 2021

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## Better Queensway Highways Scheme

### Background

The Better Queensway project is a transformational housing-led town centre regeneration project in the centre of Southend. It is focussed on delivering better housing and a better place, with a focus on high quality design, a high standard of development and environmental sustainability. The project aims to deliver a new mixed-use redevelopment for the area adjacent to the town centre that requires regeneration for the benefit of both people and place. The project includes property and infrastructure works that aim to transform the site of approximately 5 hectares. The Council's plans for the site include the demolition of the existing 441 dwellings (mainly spread across 4 tower blocks) to deliver up to 1,760 units of mixed-tenure accommodation (including re-provision of the 441 affordable homes and a further increase on this number), commercial space and highway infrastructure development envisaged to increase connectivity across the site and to address noise and pollution levels.

As the project developed, in March 2017 Cabinet approved a process to appoint a preferred project partner. This included a set of proposed Better Queensway objectives / requirements being agreed in principle as a set of underpinning statements to be included in procurement documentation. This included minimum criteria and expressed preferences.

Following consultation with a wide range of stakeholders that took place between October and December 2017, a report was brought to Cabinet in February 2018 to obtain approval to commence the procurement. This report reiterated the minimum criteria and included the 12 objectives for the scheme (of which the Highways scheme was 1) and the 8 objectives for the approach to be taken with the partner that would be appointed through the proposed procurement.

This report confirmed that bidders for the project were required to meet the minimum criteria and failure to do so would result in exclusion from the procurement process. The minimum criteria were:

- demolition of the towers
- provision of a minimum of 441 affordable homes
- equivalent tenancy terms and conditions under an assured tenancy for existing Queensway tenants who return to the site.

The Council sought proposals from the market to design a solution to meet its objectives over a period of 30 years. The Council was not prescriptive about the form of the partnership, but anticipated that it would enter into a partnership joint venture under which a contractor would be appointed to carry out the demolition, preparation, design, build, finance, operation and maintenance of new residential units, commercial units, public spaces as well as highway works under that arrangement.

As can be seen from what the project is trying to achieve and deliver this is a highly complex, multi-faceted project of a huge scale that is the largest regeneration project the Council has undertaken for many years, aiming to genuinely transform this area of Southend. The ambitions for the project are also only marginally financially viable as demonstrated by the Council's successful bid to obtain £15m of Marginal Viability Funding from the Government's Housing Infrastructure Fund to support the scale and cost of the infrastructure to deliver the ambitions for the whole scheme.

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In view of the complexities of both developing the project and procuring a joint venture partner, the Council engaged external specialists to manage and oversee the project. This included extensive legal, financial, project development and delivery expertise as well as external specialist audit work aimed at supporting the Council's Corporate Procurement team. This thorough due diligence approach to manage and oversee the project aimed to supplement and optimise the council's in-house capacity and expertise, as well as supply independent challenge and assurance over project and procurement processes.

Progress has been made resulting in the procurement of a joint venture partner with equal share in the Porters Place Southend-on-Sea Limited Liability Partnership, the development of a Business Plan for the LLP to deliver the scheme, Council's landlord consent, hybrid outline planning consent for the whole scheme and a detailed planning consent for the highways infrastructure works in place.

### Objectives of the audit work

In relation to the specific concerns raised by councillors regarding the highways scheme element of the Queensway regeneration development and the options for the underpass and / or roundabout to determine whether:

- appropriate procurement processes were followed by officers ahead of the recommendation to councillors in February 2019 regarding the appointment of the preferred bidder for the 50/50 joint venture **(Objective 1)**
- the arrangements for sharing and reporting on the evolution of the Queensway highway's proposed alignment were appropriate to support an informed decision-making process by councillors **(Objective 2)**
- the Council has opportunities to improve arrangements that support decision making processes for the other significant projects the Council is involved with, that contribute to the council's overall aim of 'providing the best possible service to residents and other stakeholders' **(Objective 3)**.

### Executive Summary

#### Procurement process (Objective 1)

As part of agreeing the final parameters for procuring a 50/50 Joint Venture partner to deliver the Better Queensway Regeneration scheme in February 2018, councillors also agreed the procurement would include an indicative highways scheme of four lanes through the underpass that would be subject to the procurement dialogue process. Because of the marginal viability of the whole project, this approach allowed for the highways alignment to be optimised and at the same time maximise land available for the development. It was clear that bidders were not to be excluded from the process if they failed to adopt the preferred alignment, in whole or in part. The dialogue procurement approach approved by Councillors was that adopted.

However, the preferred indicative highways alignment was erroneously referred to as being a minimum requirement in certain key procurement documents in March 2018, and as such the procurement documents published were contradictory to what had been agreed during the February 2018 cycle of meetings.

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This had the potential to mis-inform bidders about the Council's requirements, although clarification was provided during dialogue with potential bidders. The circumstances, timing of and reasons provided for withdrawal by potential bidders indicate that misunderstanding of the Council's requirements in respect of the highways scheme was not the reason for any of the potential bidders withdrawing from the procurement process. In addition, legal advice obtained and followed during the dialogue process resulted in a comprehensive and appropriate process being applied, supported by the Council's procurement team.

### **Reporting and sharing the evolution of the proposed highway alignment (Objective 2)**

The governance structure established for ensuring oversight of the project by councillors was sound, with a Sponsoring Group comprising the most senior councillors and officers which was supported by an officer led Programme Board.

Briefings by officers to councillors were done at significant junctures in the process and the Sponsoring Group was the key place for senior councillors to be kept up to date. This took place on a regular basis, and the Sponsoring Group have confirmed that they understood the proposals in Swan Housing's tender submission in respect of the highways scheme, that included the road through the underpass being raised to ground level.

The error made in certain key procurement documents in March 2018, where the Council's originally agreed indicative highways scheme was wrongly described as a minimum requirement, was repeated in subsequent formal reports to Cabinet (February 2019) and the Shareholder Board (December 2019 and June 2020) which covered the features of Swan's proposed highways scheme, as it evolved.

This had the potential to be misunderstood by councillors and cause confusion over the original intention, approved in February 2018, for the highways solution to be part of the procurement dialogue process.

Descriptions of the features of Swan's proposed highways scheme have not been consistently clear with important details not necessarily highlighted within the body of reports, but sometimes only contained in detailed supporting document sections of reporting.

However, it was clear in the February 2019 meeting cycle report that councillors were not approving Swan's proposals for the overall project or the highway scheme at that stage and were only approving the appointment of Swan Housing as the Council's partner for the whole project. As such, the subsequent reference in the June 2020 Shareholder report that councillors had approved the scheme in February 2019 was inaccurate. The overall proposals for the scheme were approved by councillors in the Final Proposals through the June 2020 Council meeting cycle.

### **Going Forward – project support arrangements to support decision making processes (objective 3 (also see Appendix 1))**

Robust arrangements that demonstrate transparency and accountability are key to support a proper decision-making process and maintaining trust between councillors and officers. The Council's values and behaviours strongly align to these attributes as well as recognising the need to adapt and change in the interests of continuous improvement. As such, lessons learnt from managing the most complex regeneration project the Council has undertaken for many years is important for councillors and

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officers to embrace in working to deliver the Council's overall vision of 'working to make lives better'.

The Council established significant external support and challenge arrangements for this complex, marginally viable project and the procurement of a joint venture partner, but there are circumstances that could be explored further to determine learning points that may strengthen the clarity and continuity around reporting so that decisions are clearly understood. These are detailed in Appendix 1.

### Scope

The investigation examined each of the seven questions and concerns raised by Councillor Davidson in the letter to the Leader of the Council dated 22<sup>nd</sup> December 2020 regarding the decision-making process for the Better Queensway scheme.

### Findings

#### Question 1

Why was retention of the four lane highway through the Queensway underpass and other mandatory requirements 'downgraded' as a minimum master planning requirement prior to Swan Housing's second/interim submission in November 2018?

#### Findings

The above question is referring to a change in the narrative used in two specific procurement documents published at the OJEU Invitation to Submit Detailed Solutions (ISDS) stage published in March 2018, compared to the narrative contained in the subsequent Invitation to Submit Refined Solutions (ISRS) documents published in November 2018.

The specific documents at ISDS stage were 'ISDS Volume 2 – Evaluation questions' and the associated 'Highways Design and Principles document'. The specific document at ISRS stage was 'ISRS Volume 2 - Evaluation Questions'.

Interviews with officers in the Programme Office has confirmed that the inclusion of a bullet point making '**Delivery of the mandatory requirements within the Better Queensway Highways Design and Principles Document**' a minimum masterplanning requirement in the 'ISDS Volume 2 – Evaluation questions' was "incorrect and an oversight", as this was not consistent with the approach that had been agreed by Cabinet and Council in February 2018. The report to Cabinet stated at paragraphs 4.18 and 4.19 that:-

*'It should be noted that this highways alignment [the preferred indicative highways alignment] is not a minimum requirement and bidders will not be excluded from the process should they fail to adopt the preferred alignment, in whole or in part. This would enable the highways alignment to be optimised and at the same time maximise land available for the development.'* (para 4.18)

*'The preferred indicative highways alignment will be subject to the dialogue process, allowing for refinements and evaluation of the result against the Council's preferences and requirements. One of the requirements will be that the detailed design, once the partner has been appointed, must be done in partnership and*

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*together with the Council's highways team so as to ensure close working on a key piece of infrastructure.'* (para 4.19)

It should be noted that the approach outlined above from the February 2018 Cabinet report in respect of dialogue around an indicative scheme, was the one that was adopted during the ISDS dialogue sessions with prospective partners.

The Programme Board's governance responsibilities, described in its terms of reference, includes '*Approving Programme, signing off relevant documentation*'. In respect of the procurement documents it is clear from the minutes of the meeting on 12 March 2018, in the lead up to the OJEU publication, that the Board undertook this role and individually examined and signed off procurement documents, including the 'ISDS Volume 2 – Evaluation questions' document. The Highways Design and Principles Document is not listed in the minutes as a document that was approved.

It has not been possible to confirm that the specific version of the documents approved by the Programme Board were those that were finally published in order to determine for the 'ISDS Volume 2 – Evaluation questions' document whether:

- the bullet point included in respect of delivering the mandatory requirements of the Highways Design and Principles document was missed amongst the significant amount of other information being considered at the time; or
- the document was amended in error after the approval process had been completed.

It has been confirmed that the Council did subsequently remove the minimum master planning requirements (in respect of 'Delivery of the mandatory requirements within the Better Queensway Highways Design and Principles Document') that had been included in the original 'ISDS Volume 2 – Evaluation questions' when 'ISRS Volume 2 – Evaluation questions' was published on 28 November 2018.

Interviews with officers in the Programme Office have identified that progressing the procurement was agreed at both Programme Board and Sponsoring Group meetings. Examination of documents has confirmed the following:

- Sponsoring Group minutes from 10 October 2018 capture that the Group was updated on the recent outcomes of the ISDS process and that '*an additional stage known as 'Refined Solution' was to be incorporated into the process to offer opportunities for the bidder and the Borough to work towards the next submission*'
- Programme Board minutes during November 2018 show that meetings were focused on updating the board about the procurement and Swan Housing's overall scheme proposals at ISDS stage. Board minutes for 13 November 2018 state '*The procurement proceeds based on the scheme at present.*'

The specific detail shared and / or the challenges made at these meetings regarding the highways scheme specifically is not recorded, as the minutes are generalised around the whole of Swan Housing's proposed scheme. A presentation made on 20 November 2018 (before issuing ISRS documents on 28 November 2018) to the councillors on the Sponsoring Group, Chief Executive, Partnership Board Members, Better Queensway Project Management Office and Better Queensway External Advisors entitled 'Initial Solution Swan Housing' included the following regarding Swan's proposed highways solution:

*'Queensway highway brought up to street level (4 lanes)' and a slide entitled 'Meeting our requirements / aspirations' compares the minimum requirement of*

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*'Addressing the Queensway highway' with 'How this was addressed' as 'New highways scheme bringing the Queensway up to street level (4 lanes)'*

The clarity of the proposed highways scheme included in this presentation is re-enforced by one of the councillor's pre-meet questions submitted:

Question:

*'Road - Street level? Expected? Are those Zebra Crossings I can see on slide 4? How does this work with traffic flows? Is this set in stone?'*

BQ Team Response:

*'Indicative drawings and all areas still being worked on until submission date. Need to consider with road coming up to grade how the severance issues is dealt with.'*

Interviews with the councillors that were part of the Sponsoring Group have confirmed that they agreed that the Programme Office continue with the procurement undertaking further work on the scheme proposed by Swan Housing, including their solution for the highway. The following points summarise the discussions with councillors:

- they were clear about Swan's proposed solution regarding the highway and although they were not in favour of it and did not like it they did want the overall procurement to proceed in the knowledge that the highways proposal was not yet being approved, was one element of a much bigger package and would be discussed further later in the process
- the main focus of discussions at this time were around the level of affordable housing Swan Housing's proposed solution was providing
- they had taken on board that the whole scheme needed to be considered as a package "in the round" and there was likely to be a need for some compromises to be made.

The Programme Office assessed that there were minimal potential legal risks linked to the removal of the minimum requirement in respect of the highways scheme, at this stage of the procurement, by referring to previous advice obtained from the project team's external legal advisors in August 2018 when three of the four bidders had withdrawn, leaving Swan Housing as the single bidder. The advisory note references the Office of Government Commerce / HM Treasury Guidance on Competitive Dialogue issued in 2008 as containing '*relevant guidance on market failure and single bidder situation*'. The highways scheme proposed by Swan Housing was assessed as being a failure of the market to provide the Council's preferred indicative scheme (as had been included in the ISDS stage of the procurement), and that it would still be reasonable to proceed with the procurement, based on HM Treasury guidance:

*'However, a procurement should not automatically be stopped as a result of market failure. The Contracting Authority should carry out a thorough review before deciding on the way forward. If it concludes that it is not possible to take appropriate additional action to secure value for money the procurement should be halted at that point.'*

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### Conclusions Question 1

The evidence obtained confirms that prior to the ISRS stage of the procurement process the minimum masterplanning requirement in respect of the highways scheme was removed from the procurement process, but that:

- it should not have been included in the original procurement documentation, as this was not the approach agreed by Cabinet and Council in February 2018, which approved the Council's highways scheme to be indicative, rather than mandatory
- legal advice indicated that this was an appropriate approach to take
- Swan Housing's proposed highways scheme at that time was transparent to the Sponsoring Group and the Programme Board
- continuing the procurement process was, from the circumstances identified, informally approved by some members of the Sponsoring Group and formally agreed by the Programme Board.

The Programme Board could have better documented formal consideration, challenge and record of deliberations and rationale in support of the decision, that being based on the grounds of market failure, to remove the previously stated minimum masterplanning requirement to deliver the mandatory requirements within the Highways Design and Principles Document from the procurement documents at the ISRS stage.

### Question 2

Who authorised this, despite Cabinet receiving assurances in September 2018 that "The Council's agreed position on Queensway has not changed at all – retention of the 4 lanes is clearly set out as a mandatory requirement in the Better Queensway procurement documents"?

### Findings

This question is asking about the authorisation for the removal of the minimum masterplanning requirement in respect of the mandatory requirements within the Highways Design and Principles Document at the second stage (ISRS) of the procurement process, as considered in question 1 above.

With regard to the authorisation to remove the highway minimum masterplanning requirement from the ISRS procurement documents:

- Interviews with officers within the Programme Office and Sponsoring Group identified that, as Swan Housing's overall solution (including the highway) started to emerge, the steer provided to senior officers by the external expert legal advice was that the procurement could progress. Reference to this was confirmed in minutes from Programme Board on 6 August 2018; '*the process should continue...*' and minutes of the meeting on 13 November 2018 '*the procurement proceeds based on the scheme at present....*' (also referenced in question 1 above)
- Minutes of the Sponsoring Group on 10 October 2018 indicate that the group was '*updated on the recent outcomes of the ISDS process*'. The content of the update is not known but a subsequent briefing entitled 'Initial Solution Swan Housing'



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jointly delivered on 20 November 2018 to members of the Sponsoring Group and the Partnership Board included slides on Swan Housing's solution for the highway ie. 'Queensway highway brought up to street level (4 lanes)' and 'New highways scheme bringing the Queensway up to street level (4 lanes)'. The answers provided to councillor pre meet questions, ahead of the briefing, included the following response to a question referring to the highway solution '*Indicative drawings and all areas still being worked on until submission date. Need to consider with Road coming up to grade how the severance issues is dealt with*' (also referenced in question 1 above).

- Discussions with councillors on the Sponsoring Group confirmed that they were clear about Swan's proposed solution regarding the highway at this stage and although they were not in favour of it and did not like it, they did want the procurement to proceed in the knowledge that the highways proposal was not yet being approved, was one element of a much bigger package and would be discussed further later in the process.

The reference to assurances in September 2018 relates to e-mail correspondence referred to in Councillor Davidson's letter to the Leader of the Council in December 2020, where Cabinet members were given the following assurances regarding the Queensway highway scheme:

*'The Council's agreed position on Queensway has not changed at all – retention of the 4 lanes is clearly set out as a mandatory requirement in the Better Queensway procurement documents.'*

In respect of the reference to the September 2018 e-mail above the:

- email content is accurate in that the inclusion of a minimum masterplanning requirement in respect of the mandatory requirements within the Highways Design and Principles Document had been included in the procurement documents and was still included at that time. However it was not identified that this was not consistent with the Council's agreed position for the approach to the procurement approved in February 2018
- ISDS submission deadline for bids was 14 September 2018. Swan's actual proposed scheme which evolved at dialogue sessions would not have been formally confirmed until the bids had been formally evaluated. The Sponsoring Group was informed of the outcomes of the ISDS process on 10 October 2018.

### Conclusions to Question 2

The e-mailed response provided to members regarding the highway scheme in September 2018 was, given the timeline of the procurement process, accurate at the time.

There is evidence that the overall scheme proposed within Swan Housing's initial solution, including the highways scheme, was known by the appropriate parties (see also question 1) and that the Programme Office was expected to proceed with the procurement of a partner on the basis of the scheme that was emerging at that time, in the knowledge that the scheme itself would be further developed and agreed at a later stage.

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The specific removal of the erroneous minimum masterplanning requirement for the highways included in the ISDS procurement documents from the ISRS version made the procurement approach consistent with the approach approved by the Council in February 2018. Unlike the ISDS stage when the Programme Board did record their approval of the procurement documents, the Programme Board could have better documented formal consideration, challenge and record of deliberations and rationale in support of the decision, that being based on the grounds of market failure.

### Question 3

Why wasn't Cabinet made aware of this change and why did approval for such a change not go through the Council process?

### Findings

Councillors have identified their concerns regarding amendments to the procurement documents in respect of the mandatory requirements within the Highways Design and Principles Document at the ISRS stage of the procurement process, through examination of procurement documents published through OJEU following approval at the February 2018 Cabinet. The findings detailed in question one above has identified anomalies between the narrative approved by councillors through the February 2018 report to Cabinet and Council and the narrative for the highways scheme included in the ISDS set of documents published in March 2018, concluding that the inclusion of the minimum masterplanning requirement was an error. The audit review findings for this subsequent question need to be considered in that context.

Councillors approved the final parameters for the procurement to secure a partner for the Better Queensway regeneration project in February 2018 through the Cabinet and Council cycle. Those parameters included the following in relation to the highways scheme:

- inclusion of the council's preferred indicative highways alignment (recommendation 2.2, with appendix 4 to the report showing that alignment in a diagram)
- updated objectives to be used as the basis of the procurement (recommendation 2.7 and paragraphs 7.3 of the report objective 4).

The reference in recommendation 2.2 to the inclusion of the preferred indicative highways alignment is further explained in paragraphs 4.18 to 4.22.

- *'It should be noted that this highways alignment is not a minimum requirement and bidders will not be excluded from the process should they fail to adopt the preferred alignment, in whole or in part. This would enable the highways alignment to be optimised and at the same time maximise land available for the development' (para 4.18)*
- *'The preferred indicative highways alignment will be subject to the dialogue process, allowing for refinements and evaluation of the result against the Council's preferences and requirements. One of the requirements will be that the detailed design, once the partner has been appointed, must be done in partnership and together with the Council's highways team so as to ensure close working on a key piece of infrastructure' (para 4.19)*

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- *'The Council has committed to retaining two lanes in each direction through the Queensway but is proposing that bidders be given the flexibility to consider the four lanes through the underpass for intelligent highway technology which can adapt to vehicle flows on that part of the network.'* (para 4.22)

As such councillors were asked to approve that:

- the approach to be used for the procurement to allow for the highways scheme to be developed during the procurement's dialogue process, as this would also allow consideration of other aspects of the wider Queensway regeneration scheme to be considered alongside the highway scheme. Councillors did not approve a highways scheme and / or any minimum requirements for the highway scheme, but did approve a preferred indicative highways alignment
- the indicative scheme approved for inclusion in the approach to the procurement detailed the Council's preferences, as voiced by councillors during the full Council meeting in the April 2017 Cabinet cycle ie. *'Members note that it is proposed to retain two lanes in each direction through the underpass.'* (Minute 951). This was also referred to in the background section of the report to Cabinet in February 2018 (para 3.7).

### Conclusions Question 3

As councillors did not approve the inclusion of a specific highways scheme as a minimum masterplanning requirement for the procurement as part of approving the progression of the procurement in February 2018, the correction of the error that had been made by including the highways as a minimum masterplanning requirement in the procurement documents did not require further Cabinet approval in November 2019, as the change made brought the approach to the procurement back into line with the approach approved by Cabinet in February 2018.

### Question 4

Why weren't any other parties who expressed an interest during the procurement process invited to submit tenders with the 'revised' set of mandatory requirements?

### Findings

The above question is referencing that potential bidders withdrew from the procurement at different stages of the procurement process. For clarification, a total of five bidders were considered at Selection Questionnaire stage. Of these:

- One bidder failed the Economic and Financial Standing tests as part of the Selection Questionnaire stage, so their technical responses were not evaluated, and they were excluded from the procurement at this stage
- One bidder withdrew on 18 June 2018 and notified the Council that *'after careful consideration we feel that due to current bidding activity and live project workload we would not be able to provide the level of service and input a project of this scale and complexity deserves'*
- One bidder withdrew on 29 June 2018 identifying that the viability of the whole development hinged on a long-term partnership. This meant that a successful offer would need a partner for the Council willing to commit directly to long term participation and that rather than waste resources on both sides on an uncertain

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outcome it was better to withdraw at this point, as being involved for the long term was not their preferred way of operating

- One bidder withdrew on 25 July 2018 based on their overview of the project and deciding that the risks and costs associated with progressing the project outweighed the realistic likelihood that the project would be able to deliver the profit margins that they sought and therefore it would not be viable for them. They did present an analysis of their anticipated costs for the whole scheme and the cost of the highways element of the project was not identified as a significant factor to the potential overall shortfall from their targeted profit margin.

From the above it is clear that the withdrawal from the procurement process by each of the potential bidders that withdrew was for reasons other than the minimum masterplanning requirement in respect of the highways and therefore the revision to the minimum masterplanning requirements would not have caused them to change their decision.

The Council sought legal advice on progressing with one bidder (dated 5 August 2018 see also question one above) at this stage of the procurement. The advice provided was:

*'There is no requirement in the Public Contracts Regulations 2015 to automatically halt a procurement process because there has been a market failure or a single bidder situation has arisen. Regulation 66(2) states that "in the final stage, the number [of tenders] arrived at shall make for genuine competition in so far as there are enough tenders, solutions or qualified candidates." We believe that the caveat at the end of Regulation 66(2) is helpful in the situation that the Council now faces, as it anticipates that there may be situations where there is not a sufficient number of candidates / solutions to invite at the final tender stage'.*

*'We also refer to guidance issued by HM Treasury which contains relevant guidance on market failure and single bidder situations. In particular, it states "However, a procurement should not automatically be stopped as a result of market failure. The Contracting Authority should carry out a thorough review before deciding on the way forward. If it concludes that it is not possible to take appropriate additional action to secure value for money the procurement should be halted at that point. In considering whether the procurement should continue, the reason for the market failure should be examined closely. If the failure is due to systemic problems in the market, an alternative procurement route would not resolve it. In this case the Contracting Authority would probably want to consider if it could protect its position while allowing the procurement to continue."*

The above situation and advice to undertake a thorough review, led to the Council introducing an additional stage to the procurement process: the Refined Solution stage 'to offer opportunities for the bidder and the Borough to work towards the next submission' (Sponsoring Group minutes 10 October 2018) and to ensure that 'the Council were assured of best value through the tender process' (Tender Report for the Procurement of a Partner for the Better Queensway Regeneration project (inclusive of Public Contract Regulations Reporting Requirements)).

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### Conclusions Question 4

The decision to continue the procurement with the one remaining bidder did not compromise the procurement process as:

- it was clear that the three bidders remaining after the Selection Questionnaire stage, did not withdraw based on the original erroneous requirement for the procurement to deliver the Council's minimum masterplanning requirement in respect of the mandatory requirements within the Highways Design and Principles Document, citing other reasons for their withdrawal from the process
- the Council introduced a further stage to ensure, based on the legal advice provided, it undertook a thorough review, was protecting its position and ensuring that value for money for the whole scheme could be demonstrated.

### Question 5

Why did the February 2019 Cabinet report contain no mention of the significant differences between the proposed highways alignment approved by Council in February 2018 and Swan Housing's highways proposals submitted in their final tender bid?

### Findings

The narrative commentary element of the formal report made to Cabinet in February 2019, that was prepared to inform a decision to appoint Swan Housing as the Council's partner to deliver the Better Queensway programme, could have been clearer about what Swan Housing were proposing for the highway and underpass. The report stated that: 'Addressing the Queensway highway – New highway scheme developed for the procurement process that retains the 4 lanes (2 in each direction) as per the Council's requirements.' However the main body of the report was not explicit that the proposal being brought forward as part of the bid submission did not fully meet the expectations of the Council's preferred indicative highways alignment that had been agreed by the Council in February 2018. This was an omission of clarity that did not help to support a fully informed decision-making process.

However it was clear in this report that councillors were not approving Swan's proposals for the overall project or the highway scheme at that stage, and were only approving the appointment of Swan Housing as the Council's partner for the whole project, with the proposals for the whole scheme, including the highways, to be developed by the 50/50 joint venture between the Council and Swan, from the base position provided by the Swan tender submission.

Examination of documents and interviews with officers has identified the following:

- The table used in appendix 2 (Part 2) of the February 2019 Cabinet report entitled 'Meeting our Requirements' compares the Council's original 12 objectives for the Better Queensway scheme approved by members in February 2018 (table at para 7.3) with Swan Housing's proposals for how those objectives could be met within a financially viable scheme. The original objective for the highway being:

*'The Council requires the delivery of a revised highways scheme serving the Better Queensway site in line with the requirements as set out in the Descriptive Document with all adopted roads continuing to be maintained by the Council'*

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- This table has been consistently used since March 2017 as the format for detailing the overall objectives for the scheme with the original March 2017 content being amended and approved by members in February 2018 when approving the procurement process to proceed
- The table referred to above in appendix 2 (Part 2) of the February 2019 Cabinet report includes under '*How objectives met*' the following reference '*The scheme developed for the procurement meets the requirements set out in the descriptive document and Highways Design and Principles document.*' This was misleading as the Highways Design and Principles document refers to the original indicative scheme of '4 lanes through the underpass to be retained' which was not the proposed scheme that Swan Housing were providing as a solution within their tender submission.

There is some mitigation in that the Highways Design and Principles document was required to accompany the indicative scheme included in the procurement documents published in March 2018. Amongst other things it contains specific engineering regulations and technical requirements that would need to be included and delivered if the highways scheme was to proceed in accordance with the indicative solution. As Swan Housing's proposed scheme submitted differed from this, some technical elements of the Highways Design and Principles document became redundant. As such, some elements of the reference made in the February 2019 report to this document was not relevant.

In addition the table in appendix 2 also includes a column '*features of the preferred partners concept*' and for objective 4 regarding the highway this did more accurately describe the features of Swan's proposal as:

- '*Four lanes from town centre to seafront retained*
- '*Raises the Queensway underpass to ground level throughout*
- '*Recognises traffic flow requirements whilst seeking to improve permeability across the site.*'

Therefore information about Swan Housing's proposal to remove the underpass was included within the documentation, but this was contained within the detail and was not clearly highlighted to the reader of the report. It is worth noting that at this time the focus of attention was on the housing type and numbers and that may have contributed to this oversight.

### *Councillor briefings*

More detailed information about Swan Housing's proposed highways scheme was shared with councillors via confidential briefing presentations to members of Cabinet and another to all councillors (both on 4 February 2019). The briefing to members of Cabinet contains the following specific references to the highways scheme:

Slide 5 – 'Swan's Refined Solution Submitted Scheme':

*'Queensway highway brought up to street level (4 lanes)'*

(content included on a slide with other aspects of the whole scheme)

Slide 9 – 'Queensway Highway':

*'Queensway brought up to grade'*

- '*4 lanes preserved*'
- '*No underpass*'

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Slide 10 - 'Meeting our requirements and expectations'

A table containing '*our minimum requirements*' which included:

*'New Highways scheme bringing the Queensway up to street level (4 lanes).'* (The same slide was included in the 20 November 2018 presentation referred to in question 1 above).

The confidential all councillor briefing contained the following references to the highway scheme:

Slide 11 - 'Characteristics of the example scheme'

*'Retains the 4 lanes as per the Council's requirements'*

Slide 16 – 'Meeting our requirements and expectations'

A table containing '*our minimum requirements*' which included:

*'New Highways scheme bringing the Queensway up to street level (4 lanes).'* (The same slide was included in the 20 November 2018 presentation referred to in question 1 above).

#### Conclusions for Question 5

The format in Cabinet reports for presenting the key overall objectives required for the Better Queensway scheme has remained consistent since March 2017.

Councillors approved the approach to the procurement of a partner to proceed alongside the final wording for the scheme's 12 overall objectives in February 2018 and the same format and objectives are used in the February 2019 report Appendix 2 (part 2) to compare all 12 objectives to the proposals for a viable scheme submitted by Swan Housing.

The highway scheme proposed by Swan Housing as part of the procurement process was developed in line with the original approach approved by councillors in February 2018 ie. *'the preferred indicative scheme would be subject to the dialogue process, allowing for refinements and evaluation of the result against the Council's preferences and requirements.'* (paragraphs 4.19). The inconsistencies between the councillor approved approach for the highway in February 2018 and the subsequent inclusion of the minimum masterplanning requirement in respect of the mandatory requirements within the Highways Design and Principles Document in the procurement documents is covered elsewhere in this report.

The reference to the proposed scheme meeting the requirements of the Highways Design and Principles document in the February 2019 report has unfortunately perpetuated the error made in the original procurement documents and caused confusion for councillors who took it as read that Swan Housing proposals were in accordance with what had been set out in that document.

Although the narrative commentary element of the report could have been clearer, increased clarity was included in the table in Appendix 2 (Part 2) to the report that did include reference to the key features of Swan's proposals for the highway and underpass.

However the key elements of Swan Housing's proposed highways scheme had also been shared with councillors through briefings that did reference the key elements of the proposed scheme and what this would involve in respect of the highway and the underpass.

## Better Queensway Highways Scheme

### Question 6

Why did the Shareholder Board report of June 2020 claim that the Council approved Swan Housing's preliminary scheme in February 2019 when the report of February 2019 clearly stated: "it is important to note that this report does not make any recommendations to approve a specific scheme"?

### Findings

Examination of documents has identified the following:

#### *Cabinet report February 2019*

The stated purpose contained at the beginning of this report was to: *'inform Cabinet of the outcome of the procurement process and agree the appointment of a 50/50 joint venture (JV) partner to work with the Council to deliver the Better Queensway regeneration project (the Project) in accordance with the agreed objectives for the project. It is important to note that this report does not make any recommendations to approve a specific scheme.'* (para 1.1)

Recommendation 2.1, subsequently approved by councillors (minute 714) was *'That Swan Housing Association (Swan) is appointed as the preferred bidder, and subsequently the joint venture partner following the conclusion of the competitive dialogue process undertaken in compliance with the Public Contracts Regulations 2015'*

Further paragraphs of the report detail the following *'This report is not seeking approval of the submitted example scheme. The proposals which were submitted by Swan and were assessed by the Council's project team ("the Project Team"), do meet the Council's objectives, but it is important to note that the example scheme developed was produced by Swan alone in order to demonstrate their capabilities through the procurement exercise in an effort to be selected as the Council's partner. This proposal will not be the final scheme. The new 50/50 JV between the Council and Swan will now develop a scheme together and take it through a number of design and planning stages to develop an appropriate scheme for the site that meets the Council's requirements. This will build on the work already undertaken and will not be starting the design process again'* (para 3.14).

#### *Shareholder Board report June 2020*

The purpose of the report was to *'provide an update on progress of the Better Queensway project. This report specifically deals with the submission of the 'final proposals' as appended to this report for Porters Place Southend-on-Sea LLP alongside the progress being made in respect of additional affordable housing. The report's purpose is to provide the Shareholder Board with clarity and assurance in regard to the progress update and final proposals to allow Members to fulfil their responsibilities'*.

Recommendation 2.2 approved by the Board was *'That information provided by the JV, as set out in section 5 and Appendices 1 - 3 of this report, is agreed as the 'final proposals' (as provided in the Initial Business Plan agreed in November 2019 "the Business Plan") prior to submission of the first planning application for the Better Queensway project'*.

Paragraph 4.9 of the report states *'The Highway scheme has not changed significantly from that approved when selecting our partner in February 2019 and remains at grade throughout as already agreed by the Council'*.



## Better Queensway Highways Scheme

### Conclusions for Question 6

The February Cabinet report 2019 and associated minutes are clear that councillors were asked to, and did only, approve the appointment of a partner to work with the Council to deliver the Better Queensway scheme. Councillors did not approve any specific scheme. This is reiterated in the purpose of the report and other detailed sections of the report.

The reference contained in the June 2020 Shareholder report that councillors approved the Highway scheme when selecting and approving the appointment of a partner in February 2019 is incorrect.

The June 2020 Shareholder report is a continuation of the approach agreed with councillors for the formal approval of the overall Better Queensway scheme, which has been described in Cabinet reports detailed elsewhere in this report, and builds on the approval, provided by the October 2019 Shareholder Board cycle, of the contents of the Initial Business Plan that contained the Joint Venture's proposal for the highway. Councillors went on to approve the Final Proposals at Cabinet and Council following the Shareholder Board meeting in June 2020, when they approved recommendation 2.2 of the report taken to that meeting- ie. *'That information provided by the JV, as set out in section 5 and Appendices 1 - 3 of the Shareholder Board Report, is agreed as the 'final proposals' (as provided in the Initial Business Plan agreed in November 2019 "the Business Plan") prior to submission of the first planning application for the Better Queensway project'*, and subsequently reinforced in December 2020 when they approved recommendation 2.1 of the report taken to that meeting ie. *'That the Business Plan at Appendix 1 and that contained at Appendix 3 be recommended for approval'*, which was supported by the Board and subsequently through the Council cycle of meetings.

### Question 7

Why did the procurement team, in written correspondence in June 2020, claim that retaining the Queensway Underpass was never a 'mandatory requirement' in the BQ procurement process?

### Findings

The written correspondence referred to above was in the form of an email that was provided by the Better Queensway Programme Office, rather than the procurement team, to address specific questions that had been posed by the Councillor.

The reason that the email response stated that retaining the Queensway Underpass was never a mandatory requirement was because of the approved approach to the procurement and design of a highways solution as explained in the response to question 1 above. Fundamentally this being that the Council had a preferred indicative highways alignment solution, but, as clearly articulated in the February 2018 Cabinet report seeking approval for the progression of the procurement, this alignment was the Council's preference, but was not mandatory and was to be subject to the dialogue process and that the detailed design would be developed in partnership with the Council's Highways team, following the appointment of a partner (see February 2018 Cabinet report paras 4.18 and 4.19 replicated above).

The answers provided in the email by the BQ Programme Office reflect the intended approach that was approved by the Cabinet and Council in February 2018.

## **Better Queensway Highways Scheme**

The confusion in approach has been caused by the inclusion of a minimum masterplanning requirement, in respect of the mandatory requirements within the Highways Design and Principles Document, as part of the procurement documents in error. So the Programme Office answered the question posed by the Councillor in respect of what was intended, approved and should have happened, rather than what actually did happen.

### **Conclusions Question 7**

Confusion has been caused by the inclusion of the minimum masterplanning requirement over the Highways Design and Principles Document within the procurement documents in error, with the answer to the councillor's question reflecting what was intended, approved and should have happened, rather than what actually did happen.

### **Reporting**

This report has been:

- discussed and agreed to be factually accurate with the Programme Manager – Better Queensway and the Director of Regeneration and Growth
- finalised with the Chief Executive and Deputy Chief Executive and Executive Director of Growth & Housing

The results of this audit work will be reported to the Audit Committee in September 2021.

## **Appendix 1: Learning Points and Action Plan**

### **Going Forward – project support arrangements to support decision making processes (objective 3)**

Robust arrangements that demonstrate transparency and accountability are key to support a proper decision-making process and maintaining trust between councillors and officers. The Council's values and behaviours strongly align to these attributes as well as recognising the need to adapt and change in the interests of continuous improvement. As such, lessons learnt from managing the most complex regeneration project the Council has undertaken for many years is important for councillors and officers to embrace in working to deliver the Council's overall vision of 'working to make lives better'.

The work that we have been asked to undertake has led to the findings reported above, but has also identified the following learning points and recommendations for improvement in the operations of future significant projects.

## Appendix 1: Learning Points and Action Plan

	Learning point identified	Recommendation	Implemented by	When
R1	<p>Ensuring decisions approved by councillors are translated accurately into subsequent tasks and documents to deliver the right actions.</p> <p>Identify and capture the key elements of decisions taken by councillors, so that review processes can explicitly confirm that they have been accurately translated into subsequent tasks and documents.</p> <p>(Linked to the initial errors contained within procurement documents that differed in content from the procurement approach approved by councillors in February 2018).</p>	<p>Appoint a nominated member of the project team to capture and record key decisions and confirm and record that they have been accurately translated into subsequent tasks and documents.</p>	<p>Nominate officer from relevant projects teams.</p>	<p>Immediate</p>
R2	<p>Maintaining the consistency and accuracy of ongoing detailed narrative in formal reports to ensure continuity of actions approved by members through to delivery of the project.</p> <p>This is complex given the wide-ranging number of officers working on large projects from different areas of the organisation and the range of external specialist advisors also supporting the project.</p> <p>(Linked to the ongoing confusion over the agreed Council requirements for the Queensway highway, the consistency / clarity of narrative descriptions relating to Swan Housing's proposals for the highway scheme, and the confusion over when the highways scheme was approved).</p>	<p>For key strategic projects, that do evolve over the development of the project, identify and report explicitly on the key changes to plans and expectations that are made as a project moves through its life cycle.</p> <p>Appoint a member of the project team to specifically oversee the reporting process to challenge and / or confirm the continuity of detailed narrative between reports and the reporting of changes made.</p>	<p>Nominate officer from relevant projects teams.</p>	<p>Immediate</p>

## Appendix 1: Learning Points and Action Plan

	Learning point identified	Recommendation	Implemented by	When
R3	<p>Ensure there is appropriate scoping and coordinating of the roles of external specialists engaged to support projects to make sure there is a collective understanding of the benefits and outcomes to be realised alongside the work of the in-house project team and other council colleagues. This is particularly in relation to the robustness of the Council's more detailed processes and arrangements to deliver projects and other learning points described in this appendix (also linked to the scoping of external specialist audit work).</p>	<p>Identify and capture the key elements of external specialist support that is being utilised, what they are doing and where that fits, and the assurance the Council requires, so that review processes can explicitly confirm that their input has been accurately translated into subsequent tasks and documents.</p> <p>Appoint a member of the project team to oversee, challenge and confirm that the output / activity matches the terms of engagement / reference agreed with external specialist support.</p>	<p>Nominate officer from relevant projects teams.</p>	<p>Immediate</p>
R4	<p>Determine what constitutes proportionate record keeping for audit trail purposes to both support the knowledge transfer between officers and councillors as the project progresses, whilst also allowing the council to demonstrate the robustness of its processes should challenges be made.</p> <p>(Linked to the detailed findings section of this report regarding role of the Programme Board)</p>	<p>Identify the key records that support decisions made and demonstrate the implementation of those decisions and then keep those records safe and separate, using version control to provide clarity over what version has been used for what purpose.</p> <p>Appoint a member of the project team to oversee the requirements and maintenance of the project's detailed ongoing record keeping requirements.</p>	<p>Nominate officer from relevant projects teams.</p>	<p>Immediate</p>

## Appendix 1: Learning Points and Action Plan

	<b>Learning point identified</b>	<b>Recommendation</b>	<b>Implemented by</b>	<b>When</b>
R5	Identify where there are opportunities to work with councillors to explore and enhance the format used to formally report which would improve transparency to better support the decision-making process.	Review the current reporting templates with councillors to obtain their input on what they would expect to see in reports.	Future Ways of Working – Decision Making Workstream.	March 2022
R6	Need to overcome the tensions that exist when the Council works with commercial organisations and the ways that they operate and work, that are different from the disciplines required to work within the Council reporting and election cycles.	Plan and identify key decision making and reporting points in the annual timetable and secure the agreement of partners to deliver to the requirements of that timetable.	Nominate officer from relevant projects teams.	Immediate

### List of reference documents

#### List of documents that we have used in undertaking this work:

Various procurement documents including:

- Invitation to Submit Detailed Solutions (ISDS) OJEU documents March 2018 - 'ISDS Volume 2 – Evaluation questions' and the associated 'Highways Design and Principles document'
- Invitation to Submit Refined Solutions (ISRS) OJEU document published in November 2018 - 'ISRS Volume 2 - Evaluation Questions'.
- The Highways Design and Principles Document

Cabinet report and minutes 28 March 2017

Cabinet report and minutes 13 February 2018

Cabinet report and minutes 12 February 2019

Appendix 2 (Part 2) of the 12 February 2019 Cabinet Report

Terms of reference for the officer led Programme Board

Terms of reference for the Sponsoring Group

Programme Board (Officer led Group) meeting minutes during 2018 including 12 March 2018 and 6 August 2018

Sponsoring Group (senior officers and councillors) meeting minutes during 2018 including 10 October 2018

Briefings to councillors 23 March 2017, 2 November 2017, 5 December 2017, 5 February 2018, 5 June 2018, 20 November 2018 and 4 February 2019

Councillors pre-meet questions and officer responses re the 20 November 2018 briefing 'Initial Solution Swan Housing'

Better Queensway Advice Note: Sharpe Pritchard 5 August 2018

Bidder withdrawal letters dated 29 June 2018 and 25 July 2018

Bidder electronic withdrawal message via procurement portal 18 June 2018

Tender Report for the Procurement of the Better Queensway Regeneration Project (inclusive of public contract regulations reporting Requirements) – undated

Shareholder Board reports for 16 October 2019, 25 June 2020 and 16 October 2020

Better Queensway Programme Office e-mail June 2020