



City of Westminster

# Cabinet Member Report

**Decision Makers:** Councillor Matt Noble, Cabinet Member for Regeneration and Renters

**Date:** 2 August 2024

**Classification:** Part Exempt

*Appendix B is declared as exempt from publication as (i) it contains information relating to the financial or business affairs of a particular person (including the authority holding that information) under paragraph 3 of Schedule 12A of the Local Government Act 1972, (ii) it contains information in respect of which a claim to legal professional privilege could be maintained in legal proceedings under paragraph 5 of Schedule 12A of the Local Government Act 1972; (iii) and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

**Title:** Ebury Bridge Estate Renewal – Phase 2  
Main Contractor Pre-Construction Services Agreement (PCSA)

**Wards Affected:** Knightsbridge & Belgravia

**Policy Context:** The proposed development will collectively help to contribute to Westminster City Council's (WCC) commitments to a Fairer Westminster, specifically: Fairer Housing (Greener Affordable Housing to support the needs of residents), Fairer Environment (low energy targets that will help contribute towards Westminster becoming Carbon Neutral by 2030), Fairer Communities (enable all our communities to share in the economic prosperity of the area, through protecting and enhancing the unique heritage of the neighbourhood) and Fairer Council (demonstrated by engaging

residents and local stakeholders in a comprehensive consultation process).

**Key Decision:**

Yes

**Financial Summary:**

The Pre-Construction Services Agreement (PCSA) has a contract value of up to £5.632m with McLaren Construction Limited. The report also seeks budget spend of £7.295m to cover £5.632m for PCSA and Design Contract, £1.01m to cover Enabling Works and further overall budget approvals as set out within the confidential Part B – Financial Implications.

Total budgets of £302m are held across the HRA and General Fund for the delivery of Ebury Phase 2. PCSA costs of £5.632m will be funded from the HRA Business Plan budget until a final decision is taken on delivery route at the end of 2024.

**Report of:**

Debbie Jackson, Executive Director of Regeneration, Economy and Planning (REP)

## 1. Executive Summary

- 1.1. The regeneration of the Ebury Bridge Estate will provide more affordable housing and bring about the long-term physical, economic and social sustainability of the neighbourhood.
- 1.2. In October 2021 Westminster City Council (WCC) received approval from the Local Planning Authority to their hybrid planning application for a mixed-use development of the Ebury Bridge Estate. This included a detailed planning consent for the construction of Buildings 7 & 8 (to be built in Phase 1) and outline consent for the remaining elements of the scheme including the remaining seven buildings (reference: 20/04366/COOUT) (Original Planning Permission). Construction of Phase 1 of the scheme is currently underway with residents set to return to new homes in 2024.
- 1.3. The hybrid planning application for Ebury Phase 1 & 2 was originally approved on 6 October 2021, with the amended application approved on 21 July 2023.
- 1.4. The Non-Material Amendment (NMA) for Ebury Phase 2 was approved and engrossed in May 2024, which included an updated S106 Unilateral undertaking. The NMA application covered the following changes:
  - Incorporation of buildings 2 and 3 into the Phase 2 boundary
  - Incorporation of second means of escape to buildings 1, 2, 3, 4, 5, and 6 resulting in adjustments to all building footprints.
  - Minor adjustments to the balconies on buildings 1, 2, 3, 4, 5, and 6 including:
    - Introduction of recessed balconies to buildings 1, 2, and 3 rather than protruding balconies on the rear facades.
    - Minor changes to balcony dimensions of buildings 5 and 6.
  - Removal of the basement on buildings 2 and 3.
  - Increased maximum building heights of buildings 5 and 6 (building 5 circa 3.5m increase, building 6 Circa 1m), to accommodate improved building maintenance unit, safer means of rooftop access, and adjustment to plant strategy.
  - Change to location of community centre (moved from building 5 to building 1). This still achieves a quantum of 158sqm of D1 use.
  - Associated changes including ground floor uses, buildings 1, 2, 3, 4 entrance positions, landscaping, and amenity.
- 1.5. The proposed appointment of McLaren Construction Limited (McLaren) as the Council's main contractor to deliver services under a Pre- Construction Services Agreement (PCSA) sought within this report. The recommended contract award is consistent with the capital budget approved by a meeting of the Council on 8 March 2021.
- 1.6. The tender submission deadline closed on 5 June 2024 with four bids received. McLaren submitted the most economically advantageous tender with a total evaluated score of 81.4%. This report seeks to recommend awarding the following contract to McLaren:

Deliverables	Contract Value
PCSA Services for Ebury Phase 2	£5,631,708

- 1.7. The total value of contract and the commercial exposure this report is subject to is £5,631,708. Please refer to 'Appendix B – EXEMPT Financial Implications' for the full financial breakdown as it relates to this appointment.
- 1.8. As part of the tender exercise, bidders were also asked to provide fixed costs for the following elements of the Main contract which WCC are not contractually bound to proceed with until the Main Works Contract are awarded through separate governance process after PCSA period in 2025/26.
- Frame and Sub-Structure
  - Fixed preliminaries
  - Construction Stage Design Fees
- 1.9. This report also seeks to update the Cabinet Members on:
- An Outline Business Case will be presented to Cabinet Members in November 2023 to provide an update on the scheme's current viability position.
  - A Full Business Case will be presented at the end of the PCSA period, with all scheme costs to complete Phase 2 for approval ahead of entering into the Main Works Contract.
- 1.10. The proposed commencement date of the PCSA contract is 2<sup>nd</sup> September 2024, upon conclusion of the standstill period. The anticipated end date of the contract is September 2025.
- 1.11. The terms and conditions will be a Pre-Construction Services Agreement incorporating the Council's amended terms prepared by Trowers and Hamblins LLP.

## 2. Recommendations

That the Cabinet Member for Regeneration and Renters:

- 2.1. Approves entering into the following contract with the successful bidder, McLaren Construction Limited (Company registration number 05377750) for a total contract award of £5,631,708.
- 2.2. Approves budget spend of £7.295m which has been requested for the below items:
- A sum of £5.632m to cover PSCA & Design contract.
  - A sum of £1.001m to cover Enabling works contract.

- Further overall budget approvals are set out within the confidential Part B - 'Appendix B of this report.
- 2.3. Delegates authority to the Executive Director of Regeneration Economy and Planning to approve the budget spend contained in confidential Part B together with entering any such agreements or contract amendments as required.
  - 2.4. Delegates authority to the Executive Director of Regeneration, Economy and Planning to approve and enter into statutory agreements, utility agreements and property documents (including but not limited to leases, warranties, substation leases, wayleaves, licences, deeds of easement, asset protection agreements, section 104 agreements, section 185 agreements and section 278 agreements) in connection with ancillary works or services required to facilitate the construction works at Ebury Phase 2.
  - 2.5. Notes that the PCSA will make reference to the fixed costs as per Section 1.8 of the report, but that there is no contractual commitment by the Council to give instructions to McLaren in respect of these costs.

### **3. Reasons for Decision**

- 3.1. The approvals are required to progress the delivery of the Ebury Bridge Estate regeneration in accordance with WCC's commitment to the renewal of the site. The approvals will enable a contractor to be appointed and progress the RIBA Stage 4 detailed design works.
- 3.2. The overarching objective of regenerating Ebury Bridge Estate is to create a comprehensive renewal that brings about physical, economic and sustainable change that creates additional homes and improves the lives of residents, businesses and visitors alike.
- 3.3. The proposed redevelopment of Ebury is in line with the Council's ambitions for a Fairer Westminster and aims to deliver on the following objectives:
  - Re-provision of existing homes and explore opportunities to deliver high quality new homes of all tenures.
  - Construction of high quality and energy efficient sustainable new buildings which utilise cutting edge design and technological innovation.
  - Improvement to place shaping including play space, bio-diverse green space and enhancement of the public realm including increasing permeability and connectivity with the canal and surrounding areas.
  - Promoting a safer and vibrant neighbourhood, which encourages positive community interaction.
  - Enhancing community assets and maximising impact through linking to wider provision in the surrounding area.
  - Encouraging and facilitating strong public participation from the community in the design and development of the scheme.
  - Increasing opportunities for employment and business growth and initiatives.

- Responsible Procurement ensuring ethical treatment and consideration and mitigation of environmental impacts.
- 3.4. By having the ability to enter into ancillary statutory and utility agreements with third parties, this will be beneficial to the Council in:
- Facilitating the construction works and reducing risk to the overall programme.
  - Avoiding potential programme delays, which could delay the eventual Practical Completion (PC) of the scheme, which could lead to additional costs being incurred if the project is extended.
  - Avoiding potential reputational risks, in the event that residents are unable to move into their new homes at the PC date.

#### **4. Background, including Policy Context**

- 4.1. The Ebury Bridge Estate is one of the five priority estates identified in the Council's Housing Renewal Strategy (2010) as needing significant improvement and investment.
- 4.2. In line with the Council's Fairer Westminster Vision, the overarching objective of regenerating Ebury Bridge Estate is to create a comprehensive renewal that brings about physical, economic and sustainable change that creates additional homes and improves the lives of residents, businesses and visitors alike.
- 4.3. This proposal will help meet the Council's objectives for the regeneration which include:
- The regeneration should be a Council-led;
  - The Council should retain long term ownership of the estate;
  - The regeneration should produce a range of tenures or ladder of opportunity for people on different incomes to live and work in central London; and
  - Delivering the regeneration in a sensitive and inclusive way, setting a standard for quality and place-making for this important Westminster neighbourhood.

#### **5. Procurement**

- 5.1. The route to market selected was the Crown Commercial Services Framework RM6088 Lot 7.2 High Rise Residential South-East England. This Framework was selected as it included 12 suppliers with specific expertise in high-rise residential projects.
- 5.2. The first stage in the procurement was an Expression of Interest (EOI) sent to all framework suppliers, which closed on 22 January 2024.
- 5.3. The suppliers who expressed interested were invited to the 'Sifting' stage which took place in late January where suppliers were invited to submit experience statements to be evaluated in order to reduce the number of suppliers to invite to tender for the PCSA services which at the Council's discretion subject to

agreed costs could potentially led to a contract award for the main building works.

- 5.4. Following conclusion of the Sifting stage, four contractors were shortlisted and invited to tender
- 5.5. Four suppliers were invited to a tender on 15<sup>th</sup> March 2024, with a submission date of 5 June 2024.
- 5.6. The evaluation methodology was the Most Economically Advantageous Tender (MEAT) made up of Quality (67.5%) and Commercial (32.5%).
- 5.7. Four responses were received from the following firms on the closing date, with the final Technical and Commercial scores achieved shown below:

Supplier	Technical Evaluation Score (62.5%)	Commercial Evaluation Score (37.5%)	Moderated Score (Technical + Commercial)
McLaren	51.3%	30.1%	81.4%
Wates	41.7%	31.8%	73.5%
Sisk	38.3%	34.8%	73.2%
Bouygues UK	38.3%	32.4%	70.7%

- 5.8. The four responses were checked for completeness, with all bidders submitting compliant tender responses, which were formally evaluated and moderated on 2 July 2024. The evaluation panel comprised of:
  - Commercial Manager, Procurement and Commercial Services (Moderation lead and commercial evaluation)
  - Director of Development
  - Head of Development
  - Development Delivery Manager
  - Senior Commercial Manager
  - Head of Responsible Procurement and Supply Chain Management
  - Senior Commercial Officer (Social Value)
  - Senior Commercial Officer (Carbon)
- 5.9. McLaren were the most economically advantageous tender and are subsequently recommended.
- 5.10. The Council's Fairer Westminster vision was heavily promoted with suppliers, with five questions relating to Responsible Procurement comprising a total of 16.5% of the Technical Criteria.

- 5.11. The procurement process included resident involvement in the evaluation. The bidders presented their social value and community engagement approach to a panel of four members of the Ebury Community Futures Group, who scored presentations. The scores contributed to the responsible procurement score of bidders. The resident panel was supported by the Commercial Manager, Procurement Services and other Council officers from the Procurement and Commercial Services and Development Services teams.
- 5.12. The Main Contractor tendered services will be presented for endorsement by the following Governance boards as per the dates set out below:
- Capital Review Group (CRG) – Tuesday 30 July
  - Commercial Gate Review Board (CGRB) – Wednesday 31 July

## **6. Financial Implications**

- 6.1. This report recommends the decision to enter into a Pre-Construction Services Agreement (“PCSA”) with McLaren Construction Limited (company number 05377750) for a period of 12 months from September 2024 to September 2025 (the “PCSA Period”).
- 6.2. The total value of the PCSA £5,631,708 which included a value for other subcontractor designs and surveys. (note the VAT rate is assumed to be 0%).
- 6.3. The report also requests approval to spend of £7.295m to cover the PCSA award of £5,631,708, plus enabling works of £1,001,000 and other budget approvals as set out within confidential Part B.

### Budget Position

- 6.4. The current assumption in the Capital Strategy is delivery of Ebury Phase 2 through Westminster Housing Developments Limited (“WHDL”), with the HRA making viability gap payments to WHDL to reflect the high percentage of affordable homes in this phase.
- 6.5. WHDL is wholly owned and funded by the Council, meaning any investment is budgeted within the General Fund as a development loan to WHDL, with repayments being made once private homes are sold.
- 6.6. Therefore, both the General Fund and the HRA hold a capital budget allocation for Ebury Phase 2. The total of this allocation is £302.7m over the next 4 years to 2027/28.
- 6.7. The final preferred delivery route for Phase 2 is still being decided. There are other alternative options to WHDL being considered, including HRA delivery (as per phase 1), or General Fund delivery with an HRA contribution. These are still under internal discussion at the time of the PCSA award. An Outline Business Case will be brought forward before the end of 2024 that finalises the delivery



route with clear rationale. If WHDL is the preferred route, this will allow time for legal documentation for the transfer of the scheme to be finalised in time for the award of the main construction contract in September 2025. At this point, a reconciliation exercise will be undertaken between WHDL and the HRA, with the HRA being reimbursed for any additional costs it has incurred pre- transfer.

- 6.8. The HRA has a budget allocation of £15m for 24/25. This is sufficient to cover the PCSA including contingency of, to a value of £5.63m, Whilst the purpose of this budget when it was originally set was to fund the viability gap payments to WHDL, these payments would have been utilised by WHDL to fund PCSA costs on their side. Therefore, the budget is still being used for its original purpose, albeit in the HRA directly rather than through WHDL whilst a decision on delivery route is made. As a result, there is no risk of increased unaffordable debt within the HRA Business Plan.
- 6.9. Please refer to 'Appendix B – EXEMPT Financial Implications' for the full approval to spend breakdown.

## **7. Legal Implications**

- 7.1. Section 32 of the Housing Act 1985 grants a local authority the power to dispose of land held by the local authority with the consent of the Secretary of State (subject to limited exceptions such as letting on a secure or introductory tenancy which do not apply here). The Secretary of State has issued a number of consents for the purpose of section 32, pursuant to powers in section 34 of the Housing Act 1985. General Consent A of the General Housing Consents 2013 under Section 32 of the Housing Act 1985 (General Consent) was issued under those and other powers.
- 7.2. Paragraph A.3.2 of the General Consent provides a local authority may dispose of vacant land. Paragraph A.3.1 of the General Consent provides that a local authority may dispose of land for a consideration equal to its market value. Paragraph 8 of the General Consent permits local authorities to dispose of vacant land and assets that are not dwellings at any price determined by the local authority. So long as the disposals covered by this report fall under the General Consent, specific consent is not required.
- 7.3. This report seeks approval of the Cabinet Member to delegate to the Executive Director of Regeneration Economy and Planning the power to approve and enter into statutory agreements, utility agreements and property documents in connection with ancillary works required to facilitate the construction works at Phase 2 of the Ebury Bridge Estate.
- 7.4. Under paragraph 3.3 of Chapter 3 of the Council's Constitution, a Cabinet Member may delegate their executive functions to an officer. The delegation to the Executive Director of Regeneration Economy and Planning to execute ancillary documents is justified for expeditious execution of various documents

required to give effect to the decision and for efficient use of Cabinet Member time.

### The PCSA and associated service costs Contract Award

- 7.5. The recommendation in this report is seeking approval of a contract award to appoint McLaren Construction Limited (Company Regn No: 05377750) (the Contractor) under a Pre-Construction Services Agreement (PCSA) in respect of services required for the Council to deliver Phase 2 of the Ebury Bridge Estate development scheme (the Scheme).
- 7.6. The procurement to appoint the Contractor was undertaken via the Crown Commercial Services Framework for Construction Works and Associated Services Lot 7.2 High Rise Accommodation South England (the Framework)
- 7.7. The report sets out the procurement strategy undertaken in accordance with recommendation endorsed and approved by the Council in January 2024 leading to the recommended contract award. The Framework has been set up in accordance with regulation 33 of the Public Contracts Regulations 2015 (the PCR) published on the former Official Journal European Union (now Find a Tender) under Contract Notice 2019/025-054274 due to expire on 28 October 2026. The Council is permitted access and use of the Framework and can award a call-off contract by way of a mini competition to appoint a suitable contractor for the Scheme.
- 7.8. The Council is a best value authority by virtue of section 1 of the Local Government Act 1999 (the Act) and section 3 of the Act sets out the general duty for a local authority to obtain best value when procuring a public works contract. The Council should aim to secure continuous improvement in carrying out its statutory functions, having regard to a combination of economy, efficiency, and effectiveness.
- 7.9. The PCSA is for a period of twelve (12) months with a contract award value of £ 5,631,708 (excluding VAT).
- 7.10. The Council must use the Framework's call-off terms and conditions to award a call-off contract as required by regulation 33(4) of the PCR. The Framework terms state that the Council can incorporate any amendments or modify such versions of the JCT standard form construction contract suitable for its project. The contractual documents published with the Council's Invitation to Tender expects the Contractor to enter the Council's JCT standard form PCSA with its amended terms and where discretion is exercised, subject to main build costs being agreed a JCT Design and Build also with the Council's amended terms.
- 7.11. This report states that the Council will observe a voluntary standstill period. However, there is no mandatory requirement to observe a standstill period for a call-off contract procured under the Framework nor is there is a requirement to publish a Contract Award Notice in accordance with Part 2 of the PCR. However, the Council must publish this public contract award on Contracts

Finder as required by Part 4, chapter 7 under regulation 108(1)(b) with at least the following information:

- a) the name of the contractor;
- b) the date on which the contract was entered into;
- c) the value of the contract.

7.12. Given the value of the contract, the PCSA when executed on behalf of the Council should be signed by at least two authorised officers of the Council or made under the common seal attested by at least one officer in accordance with the Council's Contract Standing Order 36.1(5).

## **8. Carbon Impact**

8.1. Ebury Phase 2 will propose a high performing sustainable development that seeks to minimise the Carbon Impact in line with the Council's commitment to becoming carbon neutral Council by 2030 and carbon neutral City by 2040.

8.2. The Ebury Bridge Estate development is a high performing sustainable development that utilises ground and air source heat pumps for the generation of all heating and cooling in the development. In addition, it provides infrastructure for electric car charging across all car parking provision in accordance with statutory requirements. As well as this, the development it is a low car development due to its proximity to public transport links and connectivity.

8.3. WCC policy currently focuses on net zero in operation, with the requirement that major developments should be net zero carbon but where it is 'not financially or technically viable to achieve zero-carbon on-site, any shortfall in carbon reduction targets should be addressed via off-site measures or through the provision of a carbon offset payment secured by legal agreement'. The policy also outlines that the energy hierarchy should be followed, as per the principles of the Mayor of London's energy hierarchy.

## **9. Equalities Impact**

9.1. In the decision to enter into contracts for professional services up to a value of £5.632m for Main Contractor Services to support the PCSA on Ebury Phase 2, the Council must pay due regard to its Public Sector Equality Duty (PSED), as set out in Section 149 of the Equalities Act 2010 (the 2010 Act). The PSED provides that a public authority must, in the exercise of its functions, have due regard to the need to:

- Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the 2010 Act.
- Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it.
- Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 9.2. The development of the site will be designed to address the needs of a wide range of people. Across development schemes there are always likely to be a range of outcomes, some of which will be negative for some people; however, the development aspiration aims to maximise the positives for many people and for a longer period. An Equalities Impact Assessment (EQIA) is required to ensure that any detriment experienced by residents is not a result of their protected characteristic.
- 9.3. Consideration will be given to future recommendations and, if they go ahead, whether it is possible to mitigate any adverse impact on a protected group, or to take steps to promote equality of opportunity by, for example, treating an affected group more favourably.
- 9.4. Officers are mindful of this duty in making the recommendations in this Report. An EQIA will be updated throughout the progress of the project and incorporated into the contract management processes to ensure compliance with statutory duties, considering the impact on those with protected characteristics and how the design development, along with consultation with the community, will take these into account.

## **10. Consultation**

- 10.1. Ongoing, meaningful engagement with the local community underpins the delivery of the Ebury Bridge Regeneration scheme. Since the project was initiated in 2017, a dedicated onsite engagement team has been based on the estate to provide support to residents. This team also provides a direct interface between our contractors and the Ebury Bridge community and surrounding neighbours. The Tender process demonstrated that work undertaken by the chosen contractor will have consultation with Officers and Community Representatives at its heart.
- 10.2. The Ebury Bridge Community Partnership Group (CPG) has met monthly since October 2017. This is the strategic resident steering group that provides a strong community voice on key decisions throughout the project. The group has been consulted on the appointment of contractors, delivery routes, best value, changes in tenancy (Under Section 105 legislation) and will continue to play an important role as the project progresses. Should the appointment be approved, the chosen contractor will be instrumental in ensuring that there are opportunities for regular resident participation in design development, material choices for the CPG.
- 10.3. The Knightsbridge & Belgravia Ward Members were provided with a briefing note ahead of this report.

**If you have any queries about this Report or wish to inspect any of the Background Papers including details of appointments including the Multi-Discipline Consultant Team, please contact:**

Setareh Neshati [sneshati@westminster.gov.uk](mailto:sneshati@westminster.gov.uk)

**APPENDICES (EXEMPT FROM PUBLICATION)**

Appendix A – Ebury Phase 2 – Equalities Impact Assessment

Appendix B – EXEMPT – Financial Implications

**For completion by the Cabinet Member for Regeneration and Renters**

Declaration of Interest

I have no interest to declare in respect of this report

Signed: **MATT NOBLE**

Date: **14 AUGUST 2024**

NAME: **Councillor Matt Noble**

For the reasons set out above, I agree the recommendation(s) in the report entitled:

**Ebury Bridge Estate Renewal – Phase 2 Main Contractor Pre-Construction Services Agreement (PCSA)** and reject any alternative options which are referred to but not recommended.

Signed: **COUNCILLOR MATT NOBLE**

Cabinet Member for Regeneration and Renters

Date: **22 AUGUST 2024**