

OFFICER DECISION FORM

DECISION TO BE TAKEN BY: DIRECTOR OF LAW AND CORPORATE SERVICES

KEY DECISION YES

DIRECTORATE: LAW AND CORPORATE SERVICES

WARDS AFFECTED: BIRKENHEAD AND TRANMERE

SUBJECT:

ARRANGEMENTS WITH WIRRAL GROWTH COMPANY FOR DELIVERY OF BIRKENHEAD PRIMARY SUB STATION.

1.0 DECISION:

The Director of Law and Corporate Services has approved the Council entering into a development funding agreement and any other necessary associated legal agreements with Wirral Growth Company LLP (WGC) to allow the delivery of a primary substation on land to the rear of Europa Pools on Conway Street, Birkenhead.

2.0 REASONS FOR THE DECISION

- 2.1 In July 2021, the then Economy, Regeneration and Development Committee agreed the formal Site Development Plan (SDP) for Phase 1 of Birkenhead Town Centre. The plan has been developed by WGC in accordance with the prescribed process set out in the relevant Partnership Agreement that the Council and WGC have entered into. The Committee approved the delivery of Phase 1 of the SDP which has resulted in the construction of the two new office buildings, Mallory and Irvine and the plan also included for an investment in a new primary substation to be sited behind Europa Pools on Conway Street.
- 2.2 This is required because as WGC was formulating the utility infrastructure plan needed to support the SDP, it supplied Scottish Power Energy Networks (SPEN) with a load schedule that would be generated from the new office scheme as well as an estimate of the on-going power requirement needed to support future phases of town centre redevelopment. SPEN has confirmed that the office project could be served from its existing high voltage network but that would then take it to capacity and before any further development could take place in the town centre the local network would have to be upgraded through the provision of a new primary substation.

3.0 STATEMENT OF COMPLIANCE

3.1 The recommendation is made further to legal advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. It is also compliant with equality legislation and an equality analysis and impact assessment has been completed. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

4.0 DECLARATION OF INTEREST

4.1 None

Signed:

Officer:

Title: Director of Law and Corporate Services

Date: 18 June 2024

A list of background papers on this issue is held with:

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REPORT TITLE:	ARRANGEMENTS WITH WIRRAL GROWTH COMPANY TO DELIVER PRIMARY SUB STATION.
REPORT OF:	DIRECTOR OF LAW AND CORPORATE SERVICES

REPORT SUMMARY

This report sets out a proposal for the Council to enter into a funding agreement with Wirral Growth Company LLP (WGC) to allow it to procure, via a specialist contractor Ameen Utilities Limited, the delivery of a primary sub-station in Birkenhead Town Centre. Scottish Power Energy Network (SPEN), the electricity provider for the region has advised that the network in and around Birkenhead is operating at capacity and without the investment in a new primary substation the network will be unable to support future demand for electricity that will be generated from the implementation of projects drawn from the Council's on-going regeneration plans for the area.

The project is ready to be delivered and when operational, the primary substation will help to support investment in a range of new developments that when completed will help to create a regenerated town centre which is a long-standing priority for the Council as reflected in the Wirral Council Plan 2023-2027 and the Birkenhead 2040 Framework. The recommendations contained in this report directly support the key priority within the Council Plan to "Continue our ambitious regeneration programme through increased investment, jobs and new businesses throughout the borough", It also supports the people focused regeneration theme of the Council plan.

This matter affects the ward of Birkenhead and Tranmere. This is a key decision given that the value is more than £500,000.

RECOMMENDATIONS

The Director of Law and Corporate Services is recommended to give approval to the Council entering into a development funding agreement and any other necessary associated legal agreements with Wirral Growth Company LLP to allow the delivery of a primary substation on land to the rear of Europa Pools on Conway Street, Birkenhead.

SUPPORTING INFORMATION

1.0 REASONS FOR RECOMMENDATIONS

- 1.1 The new substation is required because as WGC was formulating the utility infrastructure plan needed to support the Site Development Plan for Phase 1 of the Birkenhead Commercial District, it supplied SPEN with a load schedule that would be generated from the new office scheme as well as an estimate of the on-going power requirement needed to support future phases of town centre redevelopment. SPEN has confirmed that the office project could be served from its existing high voltage network but that would then take it to capacity and before any further development could take place in the town centre the local network would have to be upgraded through the provision of a new primary substation.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 The Council could decide to delay investment in the Town Centre electricity network and/ or wait to see if a private sector developer emerges who would be prepared to make this investment as part of a specific scheme. Given the cost of the infrastructure required (circa £7.535m) and the fact that returns on investment property in the town are still sub-commercial this is not considered to be a feasible option, particularly given the need to drive forward Town Centre regeneration. The project is critical to the delivery of the regeneration programme, the emerging Local Plan and the Birkenhead 2040 framework and so it has been decided to deliver it on the basis that is set out in this report.

3.0 BACKGROUND INFORMATION

- 3.1 The Phase 1 Site Development Plan for the Birkenhead Commercial District was considered by Economy Regeneration and Development Committee in July 2021 and it recommended to Policy and Resources Committee that it be approved. Paragraph 3.4 of the relevant report stated.

“ Phase 1 of the SDP will see the construction of two office buildings (A1 and A2) on the former site of Milton Pavements which has now been demolished and cleared. The larger of the two offices A1 (Measuring 89,591 sq.ft) will be occupied by the Council while Building A2 (58,175 sq.ft) will be let on the open market to commercial tenants. The new buildings will be Wired score gold rated, constructed to Building Research Establishment Environmental Assessment Method (BREEAM) Excellent standard and have been designed to secure an EPC rating of A. The offices will sit within a high-quality public realm that will provide new pedestrian routes through Birkenhead. A new primary sub-station will also be constructed on Council owned land to the rear of Europa Pools to future proof the power supply within the master plan area.”

- 3.2 In July 2021 Policy and Resources Committee subsequently approved the Phase 1 Site Development Plan
- 3.3 Policy and Resources Committee resolved in March 2022 to approve the Heads of Terms for the amendment of various legal documentation between the Council and WGC and, amongst other matters, authorised the Director of Law and Governance, in consultation with the Director of Regeneration and Place to finalise the associated legal documentation, on terms that are substantially in accordance with the Heads of Terms that were annexed to the report. The heads of terms provided amongst other matters as follows:

“The Primary sub-station works will be delivered as part of phase 1 [of the BCD]... The LLP's contribution to the delivery of the Primary substation and associated works will be capped at £3.113m as per the appraisal. In the event that the final cost of this element of phase 1 is less than £3.113m then the surplus available for distribution will increase accordingly. In the event the final cost is in excess of £3.113m then the Council must pay the additional cost from its share of the surplus.”

- 3.4 Funding for this project was included in the Quarter Q2 Capital Monitoring Report Policy and Resources Committee of 8 November 2023. This was approved at full Council on 4 December 2023

3.5 The primary substation design and cost work has taken longer than anticipated but is now complete and has an anticipated project commencement date of June 2024. The tender review cost report found at the exempt Appendix 1 of this report describes the procurement route that was followed by WGC that will allow the primary substation to be delivered in the most economically advantageous way that is procurement compliant. This involved procuring a specialist contractor Ameon Utilities Limited to manage and deliver the overall project for a guaranteed fixed price sum with the works being made up of 'contestable' and 'non-contestable elements'. 'Non contestable' are those costs that have to be delivered directly by SPEN such as the transformers that sit within the primary substation building while 'non-contestable' elements are items such as the cabling, ducting and trench works from the Point Of Connection (POC) to the primary substation which can be delivered by Ameon.

3.6 As the attached tender report states the original estimated cost for the substation in 2019 was circa £3.133m which was to be met from the surplus profits realised from the Phase 1 office scheme but as the project developed SPEN advised that their original estimate for the works would have to increase significantly due to a variety of factors beyond their control which included:

- The construction of a substation/building compound that was outside the original cost tender of £3.113m. This work has now been costed at £961,393;
- Material price increase for cables in the sum of £778,577;
- Leisure Centre car park re-surfacing and changes to the rear car park area in the sum of £257,377;
- Inflation price increase for switchboards and substation equipment in the sum of £142,175; and
- Revision to EU regulations regarding transformer specifications in the sum of £139,403

3.7 The matters referred to in paragraph 3.5 and 3.6 of this report resulted in Ameon providing a fixed price quote for the works (including contestable, non-contestable and associated professional fees) in the sum of £7.163m This figure has been independently assessed as providing the most financially beneficial solution to ensure that the project is delivered on time and to budget. The build programme to complete the works is estimated to be 80 weeks.

3.8 The overall scheme will be project managed by WGC, in the same way that the new office scheme was delivered and factoring in the management and professional fee budget of £372,616. The total cost of the project is £7.535m. A draft development funding and management agreement(s) have been produced to provide the overarching governance and management of the project and subject to the recommendations in this report being approved these will be finalised by the Director of Law and Corporate Services

4.0 FINANCIAL IMPLICATIONS

4.1 The funding for the project is made up of a Growth Company Contribution of £3.113m which is part of the surplus profits made from BCD Phase 1 with the balance of funds £4.422m coming from the Council's 2024/25 and 25/26 Capital Programme.

5.0 LEGAL IMPLICATIONS

- 5.1 Ameon was selected to deliver the project using the fixed priced procurement route as set out in the Partnership Agreement between the Council and Wirral Growth Company on the basis that there is a limited supply of specialist contractors who can deliver specialist infrastructure works such as this and they were previously involved in other stages of Phase 1 of the BCD delivering the POC to the two new office buildings Mallory and Irvine.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 The contract management of the project will be managed by WGC and supported by existing staff from within the Council's Regeneration and Place Directorate and Neighbourhoods Services Directorate, supported by the Regeneration Programme Management Office.
- 6.2 Existing staff resources will be used for the internal project management and supervision of the construction of the scheme, supplemented by the external specialist support supplied through the Growth Company.
- 6.3 A detailed governance structure is in place for the delivery of the town centre projects and regular reporting as appropriate for projects of this scale is in place.

7.0 RELEVANT RISKS

- 7.1 The Council recognises that risk management is essential in good decision making and is a critical element of good governance. The Council continually develops its risk management processes to proactively and effectively manage risk.
- 7.2 The Council has established a Project Management Office (PMO) dedicated to the Regeneration and Place directorate. The PMO has oversight of the primary substation and will ensure that it aligns with the Council's corporate policy to managing risk.
- 7.3 A programme Risk Register has been developed, informed by individual Risk Registers for each project. These will be updated throughout the programme lifecycle through the Council's Regeneration Programme Management Office, in order to assist the Council in identifying, controlling and managing risk.

8.0 ENGAGEMENT/CONSULTATION

- 8.1 The project forms part of the original SDP Phase 1 for Birkenhead Town Centre and was approved as part of a wide-ranging engagement and consultation exercise.

9.0 EQUALITY IMPLICATIONS

- 9.1 The Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment (EIA) is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 Whilst there are no equality implications arising directly from this report, the associated actions arising from the delivery may need to assess any equality issues

and mitigate any negative impact that may emerge. Any associated EIA will be done at the earliest possible stage.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

- 10.1 The investment in the primary substation is inherently sustainable as it will lead to the redevelopment of brownfield land in Birkenhead Town Centre. At least one of these sites has been identified for a housing after use which will help to support the Council's Local Plan brownfield first approach.
- 10.2 Any new commercial development that is facilitated by the new primary substation will be constructed to British Research Establishment Environmental Assessment Method (BREEAM) Excellent standard which is the world's leading sustainability assessment for measuring commercial buildings.

11.0 COMMUNITY WEALTH IMPLICATIONS

- 11.1 Community Wealth Building reorganises local economies to be fairer and stops wealth flowing out of communities. Striving for a prosperous and inclusive economy where local people can get good jobs and achieve their aspirations, the Council aims to create an economy that benefits all of our residents and one which keeps money within Wirral. The Council's Community Wealth Building Strategy is a key part of how this is achieved and makes a major contribution to improving the economic, social and health outcomes of the borough.
- 11.2 The project will help to revitalise Birkenhead and the wider town centre to ensure that more wealth is invested and stays within our Borough.

REPORT AUTHOR: Marcus Shaw
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APPENDICES

Appendix 1 – Tender Review Report

Appendix 1 is exempt from publication pursuant to paragraph 3 of the part 1 of Schedule 12 A of the Local Government Act 1972 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) because it contains or refers to information relating to the financial and business affairs of contractors that have previously submitted bids and also contains information about intended direct awards to be conducted under the Pagabo Framework Agreement and the public interest in maintaining the exemption outweighs the public interest in disclosure.

BACKGROUND PAPERS

Council Plan 2023-2027

Birkenhead 2040 Framework

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Council Decision to approve the full business case for the Birkenhead Commercial District	24/2/2020
ERH Committee: Approval of Site Development Plan (SDP) for Birkenhead Town Centre	26 th July 2021
Policy and Resources Committee -Wirral Growth Company	March 2022