

HELENSBURGH CHORD REFERENDUM AND PROCUREMENT

1. SUMMARY

- 1.1 The purpose of this Report is to advise members of the position both in relation to the recent referendum and current tendering exercise recently conducted regarding the proposed works to be carried out under the Helensburgh CHORD project.

2. RECOMMENDATION

That Members note the results of the referendum and thereafter consider how to progress with the improvement works to be carried out under the Helensburgh CHORD project taking into account the detail contained in this Report.

3. DETAIL

- 3.1 The contract for the works to be carried out under the Helensburgh CHORD Project requires to be awarded in accordance with Scottish Public Procurement Legislation ("the Legislation").
- 3.2 In relation to this contract, in the original procurement, the Procurement Team received requests for further information and other queries from the tenderer whose tender was placed second in the tender assessment process.
- 3.3 As a result of this and after taking legal advice from the Council's external legal advisers, Brodies Solicitors, Edinburgh it was agreed that the Council notify the bidders that the original tendering process was terminated and the contract be re-tendered using the open tendering procedure and to do so within the shortest time-scale possible and in such manner as minimises the risks to the Council of a possible challenge at the tender award stage of the process.
- 3.4 The revised tender was issued on 3 April 2012 with a return date of 10 May 2012.
- 3.5 The evaluation of the tenders began on 11 May 2012 with a view to having the tender report signed off by the Executive Directors of Customer Services and Development & Infrastructure Services accordingly, week commencing 21 May 2012.
- 3.6 It was anticipated that the tender award can be made in early summer 2012 if there were no challenges to the tender process.
- 3.7 However, on 22 May 2012 at the Council meeting, the following motion was passed:-

Whilst the Public Realm Improvement (PRI) Project in Helensburgh under the CHORD Programme is generally welcomed there has been considerable disquiet, concern and protest regarding the design of Colquhoun Square. To achieve better community support for the Project as a whole the Council agrees to a review of the proposed design of Colquhoun Square before issuing the Intent to

Award on the tender. There is a public desire to remove the road bend, to increase the proportion of green space and to re-locate the bus stops.

Council officers are instructed to bring forward for informal consultation at least three alternatives: the current proposed design and at least two other alternatives incorporating the three issues above. After incorporating suggestions from the consultation into the alternatives the most acceptable design will be chosen by an informal referendum at a central location in Helensburgh at the earliest possible date.

The detail procedures for the informal referendum are delegated to the Director of Customer Services in consultation with the Chair and Depute Chair of the Helensburgh PRI Project Board. The arrangements to ensure a decision is reached and enacted in a reasonable time-frame within the constraints of reasonable notice are delegated to the Director of Development and Infrastructure Services in consultation with the Chair and Depute Chair of the Helensburgh PRI Project Board.

- 3.8 As a result of this new instruction from the Council, the Executive Directors were not in a position to proceed with the intention to award. The Bidders were advised of this new instruction and the Council's intention to present three options to the Helensburgh and Lomond community and through an informal consultation/referendum seek the most acceptable design. The bidders have been notified of the time-scales involved and that they will have the outcome of the consultation/referendum given to them after this Council meeting of 28 June 2012

4. DETAIL – Detailed Design Options and Options Appraisal.

- 4.1 Following consultation with the Chair of the Helensburgh CHORD Project Board, Councillor James Robb, residents in Wards 9 Lomond North, Ward 10 Helensburgh Central and Ward 11 Helensburgh and Lomond South, aged 18 or above will be eligible to cast their vote on the following three options, details of which are attached as Appendices 1, 2 and 3.

- Option 1 Existing design
- Option 2 Existing road layout (as per Option 1 – existing proposal), changes to planting and to the proportion of green space v paved space.
- Option 3 Straight road through the Square with Bus Stops relocated into Colquhoun Square, changes to planting and to the proportion of green space v paved space.

Options Appraisal

- 4.2 Each option has been assessed in terms of Impact, Deliverability, Affordability and Risk to assist both the voters in selecting their preferred option and the Council in considering how to progress the improvement works once the results of the referendum are known. In undertaking the assessment the views of the Council's Procurement Team, Legal Planners, and Road and Amenity Services officers was sought. In terms of Procurement and legal advice, the advice of the Council's external lawyers, Brodies was also sought, and is detailed in 4.5 – 4.11
- 4.3 The following table, details the various option appraisal assessments of design options 1, 2 and 3.

Table 1 – Option Appraisal Assessment of Design Options 1,2 and 3

	Option 1	Option 2	Option 3
Impact – on approved external funding (SPT £350k – 175k 12/13 and 13/14 and S75)	SPT funding - minor impact based on timescales below. S75 Agreement – no significant impact	SPT funding - pressure to draw down SPT funding of £175k in 12/13 based on timescales below. S75 Agreement – no significant impact	SPT funding - likely loss of SPT funding for 12/13 which may impact on future year funding. Section 75 Agreement - no significant impact.
Deliverability – *Timescales estimated start and finish dates	If approval given to proceed on 28 June, estimated site start – November 2012, completion November 2013 – January 2014. Range linked to decision on retendering of current exercise.	If approval given to proceed on 28 June, estimated site start November 2012 – January 2013, completion February – April 2014. Range linked to decision on retendering of current exercise.	If approval given to proceed on 28 June, estimated site start March – May 2013, completion May – July 2014. Range linked to decision on retendering of current exercise.
Deliverability – statutory matters (secured Planning and TTRo's)	1. Planning approval secured. 2. No impact on TRO. 3. TTRO for works will require to be extended due to delay in site start.	1. No impact in secured planning approval. 2. No impact on TRO. 3. TTRO for works will require to be extended due to delay in site start.	1. Planning permission required. 2. No impact on TRO. 3. TTRO for works will require to be extended due to delay in site start.
Deliverability – requirement for further consultation with Emergency services, Utility providers and Transport operators	None	None	Yes, planning requirement.
Affordability – delivered within budget	Based on returned tender rates, project is affordable.	Based on returned tender rates, project is affordable.	Based on returned tender rates, project is affordable.
Affordability – future impact on maintenance revenue budget	Less impact on maintenance budget than options 2 and 3 due to more paved space.	Higher impact on maintenance budget than option 1 due to increased soft landscaping areas.	Higher impact on maintenance budget than option 1 due to increased soft landscaping areas.
Affordability – approximate comparison of costs across options	Option 1 £60k more expensive than Option 2 and £116k more expensive than Option 3	Option 2, £60k less expensive than Option 1 but £56k more expensive than Option 3	Option 3, £116k less expensive than Option 1 and £56 less expensive than Option 2

Risk – impact on secured external funding	Low	Medium	High
Risk – impact on proposed winter festival	None as work in Square would not start until after Festive season.	None as work in Square would not start until after Festive season.	None as project will not start until March 13.
Risk – impact on current tender exercise	Legal advice to Re-tender	Legal advice to Re-tender	Legal advice to Re-tender
Risk – delays to site start due to need for further consultation with Emergency services etc.	None	None	Yes
Risk – impact on affordability if need to re-tender	If re-tender required risk of fewer tenderers possibly resulting in less competitive returns.	If re-tender required, risk of fewer tenderers possibly resulting in less competitive returns.	If re-tender required, risk of fewer tenderers possibly resulting in less competitive returns.
Risk – reputational risk to Council	Medium - High	Medium - High	Medium – High

***Timescales** Option 2 allowed 4/6 weeks for design team revised drawings/tender documents plus 12 weeks to retender

Option 3 allowed 12 weeks for planning approval, 4/6weeks for design team to revised drawings/tender documents plus 12 weeks to retender.

4.4 As mentioned above Legal advice was sought from the Council’s external Legal advisors Brodies Solicitors, Edinburgh on the matter of the informal consultation/referendum. The full advice note from Brodies is attached as Appendix 4. Their advice is as summarised below:-

4.5 *The issue of delay and tender validity will arise where Option 1 is adopted following the public consultation. As this Option is based on the current tender, no changes would be required to the specification of works, although issues may arise as a result of the delays to the process. The procurement risk exists because a losing bidder can argue that the outcome of the tender may have been different had the competition been run on the basis of a later start date. There is also a risk of a challenge coming from outside the pool of bidders, arguing that the delay is a material change to the opportunity originally advertised, and therefore there is now a new opportunity which they are being denied the opportunity to bid for.*

4.6 *Adoption of Options 2 or 3 following the public consultation will result in changes to the current tender specification.*

4.7 *The changes envisaged, namely changes to the contract commencement date and potential changes to the specification are such that they form the essential terms of the contract.*

- 4.8 *As such, it is our view that these changes would pass the materiality threshold. The lowest risk option is to re-procure.*
- 4.9 *It would be a very high risk just to re-negotiate with the current preferred bidder and a less risky approach would be to issue any revised specification to the existing ten tenderers to give each of them the opportunity to re-price. However, given the time which would be required to prepare a revised specification and to allow tenderers to prepare a response, the timescales are similar to re-running the procurement exercise.*
- 4.10 *As such, in the event that the works proceed on the basis of a revised specification, our advice would be for the Council to conduct a fresh procurement exercise.*
- 4.11 *The Council has no liability to tenderers for any costs either in relation to their tender preparation or as a result of any abandonment of the current tender process – this liability is explicitly excluded in paragraph 1.10.2 of the Invitation to Tender document.*

5. DETAIL – Referendum/Consultation Process

- 5.1 The following process was put in place to allow for the running of an informal referendum in Helensburgh regarding the works proposed for Colquhoun Square. (The results of which are detailed below.)
- An informal referendum took place between the hours of 8am and 8pm on Monday 25th June 2012 in the Main Hall, Victoria Halls, Helensburgh.
 - Persons eligible to vote in the referendum were residents of electoral wards 9, 10 and 11 in the Helensburgh and Lomond area of Argyll and Bute Council, who have attained the age of 18 on or before 25th June 2012.
 - Voters were asked to choose one of three options for the improvements, details of which were available from 18th June on line at <http://www.argyll-bute.gov.uk/helensburghchordreferendum>, and at Scot court House Helensburgh and Helensburgh Library. These were also displayed within the Victoria Halls on the referendum day.
 - It was also possible for interested parties to submit comments on the proposals at the Victoria Halls whether or not they chose to vote in the referendum. Comments could also have been made by post to the Executive Director of Customer Services, by <mailto:helensburghchordreferendum@argyll-bute.gov.uk> and on line at <http://www.argyll-bute.gov.uk/helensburghchordreferendum> to be received before close of poll.
 - If there was any doubt about the eligibility of any person to participate in the process due to age, residence or some other substantial reason, then polling staff could have sought evidence of eligibility to vote.
- 5.2 Over one thousand people visited the Victoria Hall in Helensburgh on 25th June to vote and record their views on the three Options for Colquhoun Square.
- 5.3 Design Option 3 with the straight road through Colquhoun Square and an increased proportion of green space was the favoured option.

The full result was:

Option 1 19%

Option 2 21%

Option 3 60%

- 5.4 The Turnout was: 1005, Spoilt ballots: 70, Option 1: 178, Option 2: 197, and Option 3: 560
- 5.5 Various comments have also been received in relation to the Options, as persons who were eligible to vote were given the opportunity to comment on the various Options on the day and by email, a summary of the aforesaid comments are attached at Appendix 5.
- 5.6 712 cards were issued for comments, 707 were returned and 123 email comments were received. In addition to the details contained in the appendix re comments received 215 people recorded a comment that they would have wished an option for no change on the ballot paper .It would seem that most of those people chose to support one of the options as there were only 70 spoiled votes
- 5.7 In addition to the email comments that were received, a small number of people indicated they were not able to attend the vote on 25th June but the voting preferences indicated by these people generally mirrored the voting pattern of those who did attend and vote .

6.0 CONCLUSION

The Council has now carried out a referendum on the various Options and taking the results into account together with the appraisal of these Options, Members will have to consider which Option to proceed with and thereafter note that the Bidders will have to be formally notified of their decision in line with the procurement process.

7.0 IMPLICATIONS

- 7.1 Policy The delivery of the CHORD programme fits with the Council's Corporate Plan, Single Outcome Agreement and approved Development Plan policy for town centre regeneration. The economic outcomes from these projects will contribute to the Government's Economic Strategy
- 7.2 Financial The Council has made available the sums requested as per the Council decision 29/09/11
- 7.3 Legal As set out in report.
- 7.4 HR none
- 7.5 Equalities An Equalities Impact Assessment has been completed for the project
- 7.6 Risk Reputational risk to the Council
- 7.7 Customer Service none

8.0 APPENDICES

Appendices 1, 2 and 3	Design options 1, 2 and 3
Appendix 4	Brodies solicitors legal advice note
Appendix 5	Comments from Referendum

Executive Director of Customer Services
Executive Director of Development and Infrastructure
28th June 2012

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