

Decision by Portfolio Holder



Report reference: PLS-005-2019/20

Date of report: 25 October 2019

**Epping Forest
District Council**

Portfolio: Planning

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Democratic Services: J Leither

Subject: Procurement of consultant support to go out to Proposed Main Modifications Consultation for the Local Plan

Decision: That, in accordance with paragraphs 5.2(c) and 5.5(c), the Procurement Rules be waived to appoint consultants to assist the Council with the Proposed Main Modifications Consultation required as part of the Epping Forest District Local Plan Independent Examination.

ADVISORY NOTICE:

*A Portfolio Holder may not take a decision on a matter on which he/she has declared a Pecuniary interest.
A Portfolio Holder with a non-pecuniary interest must declare that interest when exercising delegated powers.*

I have read and approve/~~do not approve~~ (delete as appropriate) the above decision:

Comments/further action required: None

Signed: Cllr J Philip

Date: 30th October 2019

Non-pecuniary interest declared by Portfolio Holder/ conflict of non-pecuniary interest declared by any other consulted Cabinet Member:

None

*Dispensation granted by Standards Committee:
Yes/No or n/a*

N/A

Office use only:

Call-in period begins: 31st October 2019

Expiry of Call-in period: 7th November 2019

After completion, one copy of this pro forma should be returned to Democratic Services IMMEDIATELY

Reason for decision:

The hearing sessions for the Independent Examination of Epping Forest District's Local Plan concluded on 11 June 2019. The Inspector wrote to the Council on 02 August 2019 with her initial advice as to what further Main Modifications (MMs) are required (beyond those identified during the Hearing Sessions) and articulating where additional work will need to be done by the Council to establish their precise form.

The Council has digested the Inspector's comprehensive and helpful advice and has responded (letter dated 11 October 2019) providing an outline of the Council's proposals for progressing the work necessary to finalise the MMs and an indicative timetable to assist with programming the remainder of the Examination.

Upon finalisation of the schedule of proposed MMs the Council is required to conduct a Sustainability Appraisal and Habitats Regulations Assessment of the effects of the MMs. The Council is then required to coordinate a six week consultation on the MMs and associated Sustainability Appraisal and Habitats Regulations Assessment.

In Order to deliver the MMs Consultation, the Council will require external consultant support to deliver specialist technical input and to supplement in-house professional Officer resource within the Planning Policy Team.

Options considered and rejected:

Option – to pursue competitive tendering to prepare for the MMs Consultation.

It is neither practical nor desirable to seek alternative quotes for this work, as the Council has existing relationships with the consultants involved and the nature of the work is an extension to previous work that has already been carried out.

Option – to not commission any consultant support to prepare for the MMs Consultation

If no consultant support is commissioned, the Council could risk failure of the Local Plan at Independent Examination which would have serious implications for the Council and may result in government intervention.

Background Report:

1. Hearing Sessions for the Independent Examination of Epping Forest District's Local Plan concluded on 11 June 2019. The Planning Policy Team has since been preparing a schedule of proposed MMs required to make the Local Plan sound and therefore fit for adoption. Many of proposed MMs were discussed at the Examination hearing sessions which ran from February 2019 to June 2019.
2. Further to the hearing sessions, the Inspector wrote to the Council on 02 August 2019 with her initial advice as to what further MMs are required (beyond those identified during the Hearing Sessions) and outlining where additional work will need to be done by the Council in order to establish the precise form of some of the MMs.
3. The Council has digested the Inspector's helpful and comprehensive advice and provided a response (letter dated 11 October 2019) which sets out how the Council proposes to progress the work necessary to finalise the MMs. The Council's response included an indicative timetable to assist with programming the remainder of the Examination.
4. In Order to deliver the MMs Consultation, the Council will need to commission external consultant support to deliver specialist technical input and to supplement the in-house professional Officer resource given vacancies within the Planning Policy Team. Consultancy support is specifically required to undertake further Habitats Regulation Assessment (HRA) work at the request of the Inspector, including in relation to the effects of air quality on the integrity of the Epping Forest Special Area of Conservation (EFSAC) as well as to conduct a Sustainability Appraisal and Habitats Regulations Assessment on the effects of the MMs. Consultancy support is also necessary to revise

Appendix 6 of the Local Plan. Given the nature of the support needed, it is neither practical nor desirable to seek alternative quotes at this stage. To do so would introduce unnecessary delay and would not be efficient given it is the particular consultants expertise that is required to support their original evidence studies.

5. Following the finalisation of the schedule of proposed MMs the Council is required to conduct a Sustainability Appraisal and Habitats Regulations Assessment of the effects of the MMs. The Council is then required to coordinate a six week consultation on the MMs and the associated Sustainability Appraisal and Habitats Regulations Assessment. Once this process is complete, the Inspector will finalise her report, having regard to consultation responses, and, assuming that the Inspector finds that the Plan is sound, it will then be presented to Full Council for adoption.
6. Table 1 sets out the scope of work to be commissioned in order to deliver the MMs consultation and the cost of this work.

Table 1: Consultant support breakdown

Consultant	Topic	Scope of work	Total cost (Est. & excl. VAT)
ECC/Ringway Jacobs	Transport Assessment	Surveying & modelling work scoped in accordance with Inspector's advice	£50,500
AECOM	Habitats Regulations Assessment (HRA)	Further HRA work at the request of the Inspector and Habitats Regulations Assessment on the effects of the MMs	£60,000*
AECOM	Sustainability Appraisal (SA)	SA of the effects of the MMs	£23,060
Peyto Law	Legal	Local Plan Solicitor	£25,000
TOTAL			£158,560

* HRA components of the work have included a contingency factor in order to provide flexibility regarding the number of scenarios that may be required pending agreement of the methodological approach with the Local Plan Inspector and with Natural England as the relevant statutory body.

7. ECC/ Ringway Jacobs & AECOM

EFDC has a professional relationship with Scott Wilson/URS/AECOM for both the SA and HRA areas of work stretching back to 2009. The company name has changed over time but the individuals involved have remained predominantly the same, and continue to be leaders in their field. An initial SA Scoping Report (containing HRA screening) was completed by Scott Wilson in 2010. An interim SA Report (containing further HRA scoping) was completed by URS in 2012 to support the publication of the Issues & Options: Community Choices consultation document.

8. A comprehensive approach was taken to site selection, incorporating the requirements of the SA and HRA regulations including an assessment of each of the potential sites that could be allocated for residential development at an early stage which then fed into the detailed analysis of possible development sites. Further to this, a formal screening analysis in accordance with the Habitat Regulations accompanied the Draft Local Plan at the Regulation 18 consultation stage and an HRA was prepared to support the

publication of the Regulation 19 Local Plan Submission Version (LPSV). An updated HRA was then produced to support the submission of the LPSV to the Secretary of State for Examination to reflect judgements that had been laid down by the Court of Justice of the European Union (CJEU) following the publication of the LPSV.

9. Working with the partners across the Housing Market Area (HMA), EFDC took a lead in commissioning an assessment of the impacts on air quality arising from increases in traffic movements from the development of new homes. This is required as Epping Forest is designated as a Special Area of Conservation (SAC), and is known to be in an unfavourable condition, in part due to poor air quality. EFDC has a statutory responsibility, as competent authority, to provide evidence to support the Main Modifications to the Local Plan with regard to the likely future effect of the Local Plan, including the sites allocated within it, on the SAC in this regard. In addition, the Local Plan Inspector, in her Advice Letter to the Council dated 2 August 2019, requested that further analysis be undertaken in relation to the HRA, with a particular focus on air quality. This analysis will need to be informed by further traffic modelling. Ringway Jacobs have undertaken the bespoke traffic modelling work that has informed previous iterations of the HRA. This work is a key piece of evidence to satisfy the Local Plan Inspector of the robustness of the approach that the Council is taking and to support the next steps towards the adoption of the Local Plan.
10. EFDC has retained an ongoing relationship with AECOM and Ringway Jacobs as part of the work being undertaken at both the District and Housing Market Area levels. Given this longstanding and ongoing relationship, it is neither practical nor desirable to seek quotes for the final stages in these areas of work from alternative providers. Approval is therefore sought to waive Procurement Rules to allow the award of contracts without competitive quotation. As the SA, and HRA areas of work are within AECOM and Ringway Jacobs, approval is therefore sought to waive the Procurement Rules in respect of the value of work awarded to a single organisation. Table 1 outlines the current value of work to be undertaken by Aecom and ECC/ Ringway Jacobs in respect of the SA and HRA.
11. **Peyto Law**
Peyto Law has been appointed as the Council's solicitor for the Local Plan Examination process and it is paramount that this support continues for the remainder of the Examination. It is therefore requested that the Peyto Law contract is extended until June 2020 at an estimated further cost of £25,000. The Procurement Rules give bands for Contract Categories between: 1. £25,000 - £50,000 and 2. £50,000 - £250,000 - for both a minimum of three tenders should be invited. Authority is sought pursuant to the Council's Procure Rules, to waive paragraph 2.9 which requires three written quotes for contract category 2 contracts (between £50,000 to £250,000) be obtained to permit Peyto Law to continue to provide support to the remainder of the Local Plan Examination.
12. The Planning Policy Team is currently finalising the complete Resource Plan for the delivery of the MM Consultation. The delivery of the MM consultation will require further input from Ove Arup and Partners, particularly in order to revise Appendix 6 and potentially Infrastructure Delivery Plan matters. This will be the subject of a further Portfolio Holder report very shortly once the value of this additional work is confirmed.

Procurement Rules – sections to be waived

13. Given the nature of the work to be commissioned and the existing relationship with all consultants, it is neither practical nor desirable to seek further competitive quotes. In accordance with paragraphs 5.2(c) and 5.5(c) of the Procurement Rules, all consultants

included in Table 1 are most appropriately placed to deliver this further element of work due to their history of producing work for the Council to support the Local Plan.

14. Having determined that the existing relationship and nature of the work to be commissioned under the paragraphs identified above, authority is sought to waive Procurement Rules (2016) paragraphs 2.9 and 10.1, both in relation to seeking quotes via competition.

Resource Implications:

Funding for this work falls within current agreed budgets to support the Local Plan Examination. Consultant fees are in line with original tenders, and the budgetary position will continue to be monitored.

Legal and Governance Implications:

Independent Examination is a statutory element of the Plan making process and will dictate whether the Local Plan is adopted.

The details of the approach taken in respect of the Procurement Rules (2016) is set out within the report above.

Safer, Cleaner and Greener Implications:

Preparation of the Local Plan is in accordance with the Council's approach to the "Safer, Cleaner, Greener" agenda.

Consultation Undertaken:

Corporate Procurement Officer

Background Papers:

None

Impact Assessments:

N/A

Risk Management:

The Examination of the Local Plan is the key stage in the Local Plan process and will dictate whether the Local Plan is adopted. The Planning Policy Team will work closely with consultants to manage the preparation of this work.

Key Decision Reference (Y/N): N

Equality Analysis:

The Equality Act 2010 requires that the Public Sector Equality Duty is actively applied in decision-making. This means that the equality information provided to accompany this report is essential reading for all members involved in the consideration of this report. The equality information is provided at Appendix 1 to this report.