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|  | <p style="text-align: center;">Executive 11 November 2013</p> <p style="text-align: center;">Report from the Director of Regeneration and Growth</p> |
| <p>For Action</p> | <p style="text-align: right;">Wards affected: Kilburn</p> |
| <p>South Kilburn Regeneration: Decentralised Energy System</p> | |

APPENDICES 1 & 3 ARE NOT FOR PUBLICATION

1. Summary

- 1.1 This report concerns the proposed procurement of an Energy Supply Company ('**ESCo**') to deliver the South Kilburn decentralised energy system to install, manage and maintain the system and deliver heat to all properties developed as part of the regeneration of South Kilburn (referred to as '**the Project**').
- 1.2 This report seeks Executive's approval to alter the procurement process in respect of the Project as required by Contract Standing Orders 88 and 89 and seeks approval to procure an ESCo to deliver the Project through a competitive procedure similar to the Competitive Dialogue procedure (as set out in the Public Contracts Regulations 2006).
- 1.3 The report also seeks Executive approval to award a consultancy contract to Parsons Brinckerhoff Ltd to project manage the delivery of the project, advise on and provide commercial and strategic financial advice in respect of the Project.

2. Recommendations

- 2.1 That the Executive note progress made on the South Kilburn Decentralised Energy System Project.
- 2.2 That the Executive approve the Strategic Director of Regeneration and Growth to undertake a competitive procurement procedure (similar to the Competitive Dialogue procedure (as set out in the Public Contracts Regulations 2006) to procure an Energy Supply Company ('**ESCo**') to deliver the Project.
- 2.3 That the Executive approve the evaluation criteria as set out in this report which will form the basis for evaluation of the bids and the ultimate selection of the ESCo to deliver the Project. Further, that the Executive approves the Strategic Director of Regeneration and Growth to develop the detailed evaluation methodology and respective weightings to be applied to the evaluation criteria, within the parameters of the evaluation criteria set out in this report, prior to recommencement of the procurement process.

- 2.4 That the Executive award a consultancy contract to Parsons Brinckerhoff Ltd to project manage the delivery of the project, advise on and provide commercial and strategic financial advice in respect of the project.

3. Project Background

- 3.1 The delivery of the South Kilburn Regeneration Programme needs to, in accordance with The Greater London Authority (GLA) London Plan and Building Control Regulations, deliver a localised sustainability strategy, to ensure new and future developments achieve a 40% carbon reduction by 2013 and potentially zero carbon by 2016.
- 3.2 The GLA has actively encouraged the development of an estate wide energy centre. The decentralised energy scheme will incorporate one energy centre generating heat through a district-wide combined heat and power (CHP) plant. Electricity is also generated through capturing usable heat that is produced in this process. To meet heating demand at peak times especially in winter, centralised boilers are also installed in the energy centre. The hot water generated is pumped through pipes in the ground to each building (this is referred to as the primary heat network). Heat exchange units are also installed within the buildings to enable the heat to be taken from the network. Each property drawing heat from the heat pipe is metered for heat consumption (for hot water and central heating) and the occupant pays for this heat accordingly.
- 3.3 As part of the decentralised energy supply scheme, an ESCo will be formed to install, manage and maintain the system and deliver heat to all the properties developed by the Council as part of the regeneration of South Kilburn. The ESCo will deal with billing and collection of payments from residents. The Council will procure an ESCo which will be operated by a private company.
- 3.4 It is envisaged the Project will deliver;
- a) Lower energy costs for residents (*based on average consumption use*)
 - b) A district heating solution that is no more costly to developers than individual block heating solutions
 - c) CO2 savings contributing towards the levels required by the London Plan and the Building Regulations
 - d) A means to achieve higher Sustainable Code Levels in the future
 - e) A technically sound and reliable energy centre
 - f) A high standard of customer service to residents
- 3.5 To date the majority of the developments that have been brought forward as part of the South Kilburn Regeneration Programme have been built out to achieve Code for Sustainable Homes Level 3 with a commitment to retrospectively connect up to the decentralised energy scheme. Upon connection to the decentralised energy scheme the developments Code for Sustainable Homes will increase from Level 3 to Level 4, ensuring compliance with the GLA London Plan and Building Control Regulations. Through the development's Section 106 Agreements the Local Planning Authority has secured a standard connection charge fee per property. The connection charges secured will fund retrospective connection of these properties up to the decentralised energy system.

- 3.6 An air quality assessment, which was undertaken in December 2011, confirmed a preferred location for the energy centre within the Gloucester House and Durham Court development site. On 20th May 2013 the Executive approved an award of contract to Feilden Clegg Bradley Studios LLP to lead a design team to secure full planning approval (RIBA Stage D+) for the redevelopment of Gloucester House and Durham Court. Feilden Clegg Bradley Studio's design proposals for the site will include the provision of an energy centre. It is envisaged the future redevelopment of Gloucester House and Durham Court, if approved by the Executive, will incorporate the development of an energy centre to shell and core.
- 3.7 South Kilburn residents were invited to a consultation event on 24th September 2012 which provided an opportunity to have any questions they may have regarding the Project to be answered by technical experts. Three consultation events and three resident design workshops have been held with residents regarding the redevelopment of Gloucester House and Durham Court. At each event information on the decentralised energy centre has been made available to residents.

4 Procurement Process

- 4.1 On 18th July 2011 the Executive agreed to authorise officers to take preparatory steps with a view to procuring an EU compliant contract with a prospective energy supplier to bring forward this decentralised energy system for South Kilburn.
- 4.2 On 30th July 2011 a Prior Information Notice was published in the Journal of the European Union (OJEU) to alert potential bidders. On 17 October 2011, the Executive authorised officers to invite tenders for the decentralised energy contract following the restricted procedure. As there are many suppliers within the market and it is not feasible to issue an Invitation to Tender to each, a two-stage tendering process in which the Council invited interested suppliers to undergo a pre-qualification assessment was undertaken. Subsequently, a concession notice was published in OJEU on 13 December 2011. The Council received 22 expressions of interest. All 22 parties were sent a Pre Qualification Questionnaire (PQQ).
- 4.3 A total of 7 organisations responded and submitted a PQQ in accordance with the deadline on 30th January 2012. The completed PQQ were carefully evaluated based on submitted Contact and Administrative Information, Sub-Contracting and Consortia, Professional Conduct, Economic and Financial Standing, Insurance, Resources, Health and Safety, Quality Assurance, Equality, Environmental Considerations, Sustainability and Carbon Emissions, Business Continuity, Experience and References.
- 4.4 The three organisations (**'the bidders'**) as set out at Appendix 1, that passed the mandatory selection criteria and scored the highest were shortlisted to be Invited to Tender (ITT) in a competition to deliver the Project.
- 4.5 In preparing the ITT, officers identified that additional external technical and legal advice would be required to support the delivery of the Project. Specialist energy sector advisors were required to support the Council's internal project team to enable, in line with best practice, a commercial and viable project to be delivered that secures best value.
- 4.6 Pinsent Masons LLP solicitors have now been appointed to advise on the tender process, form of tender and tender documentation to ensure EU Procurement Regulations are complied with. Pinsent Masons will also prepare the concession agreement to be entered into between the Council and the ESCo (once procured).

5 Procurement of Consultants

- 5.1 On 20th August 2013 the Decentralised Energy Consultants Brief was issued to three selected high quality consultancy practices. The brief stated that the tender evaluation will be determined and the contract awarded on the basis of the evaluation matrix set out at Appendix 2 of this report. Overall 50% of the marks were awarded for price and 50 % for quality.
- 5.2 Tenders from two organisations (Appendix 3) were submitted on time and these were evaluated by officers in accordance with the evaluation matrix set out at Appendix 2. Details of the price and quality evaluation results are set out at Appendix 4. Following the evaluation of the tender submissions, the bid from Parsons Brinckerhoff Ltd has been identified as the top scoring tender. Executive approval is sought to award a contract to Parsons Brinckerhoff Ltd to project manage the delivery of the project, advise on and provide commercial and strategic financial advice in respect of the project.
- 5.3 Pinsent Masons have advised that, in order to deliver the Council's objectives set out in Section 3.4, it is appropriate for the Council to adopt an approach in the next stage in the procurement process which facilitates dialogue with bidders on a limited number of key commercial issues relating to the Project. It is anticipated that this dialogue, which is not permitted under the current restricted procedure, will enhance the deliverability of the Project and enable the Council to ensure that the contractual arrangements for the Project meet all of its needs as well as delivering best value.
- 5.4 Executive approval is sought to amend the procurement process to a competitive procurement procedure (similar to the Competitive Dialogue procedure (as set out in the Public Contracts Regulations 2006) to procure an ESCo to deliver the Project.
- 5.5 The OJEU Notice published on 13th December 2011 did not state if the Council intended to use a restricted or competitive OJEU process. The procurement process can therefore be amended without issuing a new OJEU Notice.
- 5.6 The original selection process, undertaken through the evaluation of completed pre-qualification questionnaires, remains fit for purpose as the process is the same no matter whether a restricted or competitive dialogue procedure is adopted. No new selection process is required and the original shortlisted bidders can be invited to commence a dialogue with the Council. Approval to amend the process to a competitive procurement procedure (similar to the Competitive Dialogue Procedure (as set out in the Public Contracts Regulations 2006)), in accordance with Contract Standing Orders 89 and 90, is now sought from the Executive in order that work can commence on the development of new tender rules and award criteria.
- 5.7 On 6th March 2013 Officers met with the bidders to discuss a number of key aspects of the Council's requirements to ensure that once the procurement process recommences it is undertaken as quickly and efficiently as possible. On 25th May 2013 the Council wrote to the bidders advising them of the delay in commencing the next stage of the procurement process and confirmed the Council's intention to amend the procurement process to a competitive procedure.
- 5.8 The Council is committed to delivering the Project and is determined to get the procurement process right to ensure best value for all. With this in mind, the Council is proposing a streamlined approach to the dialogue process in order to keep costs and timescales to a minimum.

5.9 In accordance with the Contract Standing Orders 89 and 90 amended pre tender considerations have been set out below for the approval of the Executive.

| | Requirement | Response | | | | | | | | | | | | | | | | | | | | | | | | |
|--|------------------------------------|--|----------------------------|------|---------------|--------------|---------------------------|-----------------|------------------------------|-----------------|--|------------------|--------------|-----------------|---|----------------------------|---|--------------------|--|---------------|---|------------|--|----------------------------|--|-----------|
| | The nature of the service | Design, Installation, Operation and Maintenance of the decentralised energy system in South Kilburn | | | | | | | | | | | | | | | | | | | | | | | | |
| | The estimated value | £10m - £15m | | | | | | | | | | | | | | | | | | | | | | | | |
| | The contract term | 40 years with a 25 year break clause | | | | | | | | | | | | | | | | | | | | | | | | |
| | The tender procedure to be adopted | Competitive procedure (similar to the Competitive Dialogue procedure (as set out in the Public Contracts Regulations 2006) | | | | | | | | | | | | | | | | | | | | | | | | |
| | The procurement timetable | Indicative dates are: | | | | | | | | | | | | | | | | | | | | | | | | |
| | | <table><tr><th>Milestone</th><th>Date</th></tr><tr><td>PIN published</td><td>30 July 2011</td></tr><tr><td>Market Engagement meeting</td><td>06 October 2011</td></tr><tr><td>Executive approval to tender</td><td>17 October 2011</td></tr><tr><td>OJEU Notice published and adverts placed</td><td>13 December 2011</td></tr><tr><td>PQQ returned</td><td>30 January 2012</td></tr><tr><td>Shortlist drawn up in accordance with the Council's approved criteria</td><td>8th March 2012</td></tr><tr><td>Executive Approval to alter the procurement process and approval of the evaluation criteria</td><td>11th November 2013</td></tr><tr><td>Issue Invitation To Participate in Dialogue (ITPD)</td><td>February 2014</td></tr><tr><td>Issue Invitation to Submit Outline Solutions (ISOS)</td><td>April 2014</td></tr><tr><td>Issue Invitation to Submit Detailed Solutions (ISDS)</td><td>End April 2014 May 2014</td></tr><tr><td>Issue Invitation to Submit Final Tender (ISFT)</td><td>June 2014</td></tr></table> | Milestone | Date | PIN published | 30 July 2011 | Market Engagement meeting | 06 October 2011 | Executive approval to tender | 17 October 2011 | OJEU Notice published and adverts placed | 13 December 2011 | PQQ returned | 30 January 2012 | Shortlist drawn up in accordance with the Council's approved criteria | 8 th March 2012 | Executive Approval to alter the procurement process and approval of the evaluation criteria | 11th November 2013 | Issue Invitation To Participate in Dialogue (ITPD) | February 2014 | Issue Invitation to Submit Outline Solutions (ISOS) | April 2014 | Issue Invitation to Submit Detailed Solutions (ISDS) | End April 2014 May 2014 | Issue Invitation to Submit Final Tender (ISFT) | June 2014 |
| | | Milestone | Date | | | | | | | | | | | | | | | | | | | | | | | |
| | | PIN published | 30 July 2011 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Market Engagement meeting | 06 October 2011 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Executive approval to tender | 17 October 2011 | | | | | | | | | | | | | | | | | | | | | | | |
| | | OJEU Notice published and adverts placed | 13 December 2011 | | | | | | | | | | | | | | | | | | | | | | | |
| | | PQQ returned | 30 January 2012 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Shortlist drawn up in accordance with the Council's approved criteria | 8 th March 2012 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Executive Approval to alter the procurement process and approval of the evaluation criteria | 11th November 2013 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Issue Invitation To Participate in Dialogue (ITPD) | February 2014 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Issue Invitation to Submit Outline Solutions (ISOS) | April 2014 | | | | | | | | | | | | | | | | | | | | | | | |
| | | Issue Invitation to Submit Detailed Solutions (ISDS) | End April 2014 May 2014 | | | | | | | | | | | | | | | | | | | | | | | |
| Issue Invitation to Submit Final Tender (ISFT) | June 2014 | | | | | | | | | | | | | | | | | | | | | | | | | |

| | Requirement | Response | |
|------|--------------------------------------|---|--------------|
| | | Evaluate Tenders | August 2014 |
| | | Executive Approval for Award of Contract | October 2014 |
| (vi) | The evaluation criteria and process. | <p>Shortlisted bidders were selected in accordance with the Council's Contract Procurement and Management Guidelines namely the Pre Qualification Questionnaire and thereby meeting the Council's financial standing requirements, technical capacity and technical expertise.</p> <p>A panel will evaluate the Final Tenders against the following core award criteria;</p> <p>Financial Qualitative Technical Deliverability</p> <p>An indication of the considerations which may be taken into account when evaluating the core award criteria are set out below:</p> <p><u>Financial</u></p> <p>Connection Charge</p> <p>Customer heat price</p> <p>Pricing formula</p> <p>Tariff Structure</p> <p>Commercial benefits if use exceeds projected demand or profits exceed expectations</p> <p>Management of default and customer debt</p> <p><u>Qualitative</u></p> <p>Customer Service / Customer care</p> <p>Contractual terms and conditions</p> <p>Contractual structure of the ESCo and delivery model</p> <p>Management of reputation of Brent Council</p> <p>Added Value</p> <p>Maintenance proposals – response times</p> <p><u>Technical</u></p> | |

| | Requirement | Response |
|--------|---|--|
| | | <p>Security of supply and heat supply resilience</p> <p>System efficiency</p> <p>Noise, vibration and air quality impacts</p> <p>CO₂ reduction potential</p> <p>Technology risk/guarantee</p> <p>Design and build quality</p> <p>Metering approach</p> <p><u>Deliverability</u></p> <p>Risk Management</p> <p>Programme</p> <p>Project Management</p> <p>Management and maintenance of hot water/energy supply</p> |
| (vii) | Any business risks associated with entering the contract. | <p>The following business risks are considered to be associated with entering into the proposed contract:</p> <p>Future viability of the South Kilburn Regeneration Programme.</p> <p>Insolvency and breach of contract which could result in a requirement for the Council to step in and run the concession contract.</p> <p>Complexity of contract (various elements which are design, build, service, maintenance).</p> |
| (viii) | The Council's Best Value duties. | The Project was advertised in OJEU. The evaluation criteria will encourage higher capital contribution from suppliers, lower customer heat price and better customer services through open competition thus providing value for money for the council. |
| (ix) | Any staffing implications, including TUPE and pensions | None specific |
| (x) | The relevant financial, legal and other considerations | See Sections 7. |

6. Delivery Approach

- 6.1 The Council intends to procure an ESCo and enter into a 40 year concession agreement with a 25 year break clause. The Council will grant the ESCo exclusivity over the development area contained in the South Kilburn Regeneration Programme for the period of the concession agreement. The Council will be required to stipulate, through development agreements, on all future developments bought forward as part of the South Kilburn Regeneration Programme, that the appointed delivery partner is required to enter into a connection agreement with the appointed ESCo.
- 6.2 The connection agreement will require the delivery partner to pay a specified one off connection fee per property (to be set through the procurement process) to secure connection to the decentralised energy system. The delivery partner will agree the terms and conditions of the connection agreement directly with the ESCo. It is envisaged the connection agreement will stipulate one connection charge to achieve a 20% reduction in carbon. Bidders may also be asked to stipulate another connection charge to assist achieving zero carbon. Although the delivery partner will be contractually required to enter into a connection agreement, they will not be contractually required to use heat from the decentralised energy system.
- 6.3 The ESCo will be responsible for installing the energy centre, the primary network which includes pipes that carry the heat to the developments and heat exchange units within the developments. The concession agreement will require the ESCo to connect up to all existing and new Council led residential developments within the South Kilburn regeneration area. The ESCo will not be required to connect up to non residential developments or non Council led residential developments however the ESCo can, if appropriate, agree terms to supply heat to such developments as well. The ESCo will be responsible for managing and maintaining the system and delivering heat.
- 6.4 A connection fee for the residential units already developed as part of the South Kilburn Regeneration programme, secured and held by the local planning authority through S106 contributions, will be used to fund the ESCo connection up to all the existing residential developments already built out as part of the South Kilburn Regeneration Programme.
- 6.5 The ESCo will enter into individual billing agreement with each individual residential household. The ESCo will take all debt risk and be responsible for billing management and customer care. This Project will restrict the ability for alternative heat suppliers to contract with the residents for the period of the concession agreement. The Council will be responsible, through the concession agreement, for monitoring performance and ensuring the ESCo delivers a high standard of customer care.
- 6.6 In order to achieve the Council's aim of delivering lower cost energy to residents it is the Council's intention to negotiate a discount pricing formula with an annual review mechanism for different uses against fixed and standard charge during the dialogue process. If the Council is unable to negotiate a minimum cost reduction for all households (as against the equivalent cost of gas) officers will revert to the GLA on the basis that the project is unviable, and seek alternative arrangements to meet the GLA's London Plan Energy Requirements.
- 6.7 Officers will report back to the Executive on the overall structure of the concession agreement upon completion of the procurement process prior to seeking approval for award of contract.

7. Risks & Issues

- 7.1 There are a number of inherent risks associated with the delivery of the South Kilburn Decentralised Energy Project , including but not limited to the following:

| Risk/Issue | Mitigation Action |
|--|--|
| <u>Viability:</u> | |
| The capital cost of installing the decentralised energy centre and primary heat network may increase the estimated connection charge fee potentially compromising the viability of future developments within the South Kilburn Regeneration area. | Stipulate a requirement for the ESCo to provide one connection charge to achieve a 20% reduction in carbon within their submission. Bidders may also be asked to stipulate another connection charge to assist achieving zero carbon. Assess the impact of the connection charges on the viability of future developments through the tender evaluation process to ensure that they are no more than the cost of an on site energy solution thus not compromising the future viability of developments in South Kilburn. |
| <u>Deliverability:</u> | |
| There is a risk that the South Kilburn developer partners may not agree to the terms of the connection agreement with the ESCo to enable existing development to connect up to the decentralised energy centre | The Council will consult South Kilburn developer partners on a Connection Agreement Template and agree a template with the ESCo during the dialogue process |
| <u>Reducing Low Cost Energy:</u> | |
| There is a risk that the cost of heat may not deliver real cost savings to residents as the savings can only be measured against average consumption use and not all South Kilburn residents use an average amount of heat. | The Council will endeavour to negotiate a discount pricing formula with an annual review mechanism for different uses against fixed and standard charge during the dialogue process to ensure the impact of the project on the identified protected groups is minimised. If the Council is unable to negotiate a minimum cost reduction for all households (as against the equivalent cost of gas) officers will revert to the GLA on the basis that the project is unviable, and seek alternative arrangements to meet the GLA's London Plan Energy Requirements. |
| <u>Achieving Carbon Zero:</u> | |
| There is a risk the decentralised energy may not be able to assist in achieving zero carbon due to limited size of energy centre which will restrict the method of generating heating. | Engage the GLA and establish if off site allowable solutions can be considered in order to achieve zero carbon targets |

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| <u>High Quality Customer Care:</u> | |
| There is a risk that residents may receive a poor standard of customer care and bad debt management as this Project will restrict competition in the market. | Include KPI's for Utility Customer Care Standards within both the concession agreement and customer care standards in the connection agreement template. Through the dialogue process the Council will try to negotiate higher level of customer service and a considered bad debt management strategy (trickle feed, cut off etc). |
| <u>Property:</u> | |
| There is a risk that the Council may not have all the required powers and rights of access to enable the installation of the infrastructure required to connect the energy centre to the developments. | Undertake a full property review and potentially use Compulsory Purchase Order (CPO) powers to secure new rights required to enable the delivery of required infrastructure. |
| <u>Insolvency or Default</u> | |
| There is a risk that the Council maybe required to step in and run the ESCo if the ESCo becomes insolvent or they fail to meet their contractual obligations | Ensure the concession agreement is underpinned by a suitable security package (e.g. parent company guarantee and/or performance bond) to guard against performance failure along with a detailed mechanism to enable the Council to retender and procure a replacement ESCo (at the cost of the defaulting ESCo). Further, the Council may seek to mitigate the risk of insolvency through financial covenant protection. |
| <u>GLA Policy Requirements:</u> | |
| If the Project is not viable there is a risk that the Council will be unable deliver London Plan and Building Control Regulations requirements to achieve Code for Sustainable Homes Level 4 on the existing developments. | Develop a viable delivery strategy for increasing the Code for Sustainable Homes Level from Level 3 to Level 4 on existing developments. |

7.2 The conditions set out in the Concession Agreement will aim to mitigate some of the identified risks by cascading as much risk as possible down to the ESCo whilst simultaneously allowing the Council to stipulate the overall framework of the agreement to ensure the Project delivers real benefits to residents on the ground and provides them with a high standard of customer care.

7.3 Through the dialogue process, officers hope to secure a commitment from the ESCo to deliver employment and training opportunities for local South Kilburn residents.

8. Financial Implications

- 8.1 The table below summarises the indicative Project budget which is forecasted to be spent over 2013/14 and 2014/15.

| South Kilburn Regeneration Programme | £ |
|---|------------------|
| Forecast Expenditure | |
| Site Surveys | 20,000. |
| Legal Advice | 100,000. |
| Design Advice | 20,000. |
| Professional Advice | 50,000. |
| Project Management, Financial & Commercial Advice | 180,000. |
| Consultation | 5,000. |
| Total Forecast Expenditure | £375,000. |

- 8.2 The forecast expenditure includes provision within the Professional Advice and Project Management, Financial & Commercial Advice headings for the recommended award of a consultancy contract to Parsons Brinckerhoff Ltd to manage the delivery of the project, advise on and provide commercial and strategic financial advice in respect of the project as per paragraph 2.4 above.
- 8.3 The Estimated Value of £10m - £15m stated in the table at 4.14 above refers to the value of the concessions that would be available under the proposed contract in respect of the operation of the decentralised energy system in South Kilburn.
- 8.4 The financial model for South Kilburn is for the regeneration scheme to be self financing. The Council should be able to progress the scheme on an on going basis within the cash envelope generated from on going disposals, provided it remains committed to ring fencing these receipts into South Kilburn. This delivery strategy has been agreed and endorsed by the Homes and Communities Agency.
- 8.5 The resource envelope for taking forward the South Kilburn Regeneration Programme in 2013/14 and beyond is determined by the level of the capital receipts to be secured from the disposals of long leases of land. The Project budget is allocated within the 2013/14 – 2014/15 South Kilburn Regeneration Programme Budget and will be met from the capital receipts secured through the disposal of land.
- 8.6 Oversight of this Project is provided by an officer board that regularly monitors progress and reviews updated costs plan information. In the event of any cost overruns on this Project, the board will review all possible options in order to bring the cost plan back into budget. In the event that this is not possible, then any cost overrun will sought to be met from within existing Regeneration and Growth budgetary provision.
- 8.7 The on going costs associated with monitoring the delivery of the Project, for the period of the concession contract, will be met from within existing Regeneration and Growth budgetary provision.

9. Legal Implications

- 9.1 The estimated value of the decentralise energy system is higher than the EU threshold for a Public Works Concession Contract and its establishment is therefore governed by the application of the Public Contracts Regulations 2006 (the EU Regulations) as they apply to such contracts.
- 9.2 The Council's Contract Standing Orders state that contracts for supplies and services exceeding £250k or works contracts exceeding £500k shall be referred to the Executive for approval to invite tenders and in respect of other matters identified in Standing Order 89.
- 9.3 Officers are seeking approval from the Executive to amend the procurement process from the Restricted Procedure to a competitive procurement procedure, akin to the Competitive Dialogue process under the EU Regulations, so as to enable dialogue with the pre selected bidders, with the view to achieving the council's objectives as stated at paragraph 3.4 of this report. Members will need to satisfy themselves that the original OJEU Contract Notice was open enough to enable the Council to amend its tender process at this stage of the procurement.
- 9.4 Once the tendering process is undertaken, Officers will report back to the Executive in accordance with Contract Standing Orders, explaining the process undertaken in tendering the contracts and, if appropriate, recommending award.
- 9.5 In accordance with the EU Regulations, the Council will observe the requirements of the mandatory minimum 10 calendar standstill period before the contract is awarded.
- 9.6 Separate contracts for connecting to the decentralise energy system will be entered between the selected tenderer and the individual developers.
- 9.7 The selected tenderer will be required by the Council's contract to offer to each residential and non-residential occupier a standard Heat Supply Contract, which will include the following:
- Flexible Heat Tariffs (fixed and variable)
 - Standard Conditions of Service , including the compensation payable in the event of a failure to supply heat
 - Compliant procedure
 - Performance standards and response times
 - Market Price Comparator
 - Compliance with a Vulnerable Customer Policy (residential only)
 - Bad debt / failure to pay policy
 - Minimum duration and process to discontinue supply
- 9.8 The Council is also mindful of the potential State Aid implications of the Project and is seeking specialist advice on this issue. Pinsent Masons are advising on the risk that using the connection fees secured through S106 contributions, to fund the ESCo connection up to all the existing residential developments already built out as part of the South Kilburn Regeneration Programme could be deemed as State Aid. Their preliminary advice is that the use of a compliant, competitive bidding process to ascertain what the bidders would charge as a connection fee would create a good argument that there was no advantage, and thus no State aid. A no-aid argument is never without some degree of risk, however. Officers will continue to assess the state aid risk and report back to the Executive if the level of associated risk increases.

10. Diversity Implications

10.1 The South Kilburn Regeneration Programme aligns fully with the Council's Regeneration & Growth Objectives 'To deliver transformational change to the borough' and to provide 'Greater access to affordable housing'. This project will support the future delivery of the South Kilburn Regeneration Programme through delivering three of the GLA London Plan requirements: build efficiency, decentralised energy, & green agenda to reduce London's CO2 emissions to mitigate climate change.

10.2 The project also aligns with the Council's Health and Well Being Strategy which aims to *"Improve[ing] the economic, social and environmental factors which promote good health and wellbeing outcomes" by tackling one of the causes of fuel poverty*. The February 2011 *"Fuel Poverty and the impact it has on health"* Report by the Health Partnerships Overview and Scrutiny Committee Task Group identified fuel poverty is "the inability to afford to adequately heat the home". A household is said to be in fuel poverty if it needs to spend more than 10% of its income on fuel. The four main causes of fuel poverty are:

- Low income
- Size of home and under occupancy
- Price of fuel or the inability to access cheaper fuel
- Energy inefficient homes

Fuel poverty has a physical impact on the condition of homes if householders try to minimise their fuel bills. Inadequate heating can lead to some or all of the following problems:

- Condensation, dampness and mould growth
- Deterioration of the property
- Increased maintenance and repair costs
- Reduction of the asset value of the property

The aim of this project is to provide residents with lower energy costs, tackling one of the causes of fuel poverty.

10.3 There is a risk the project could have a negative impact on residents who move into new homes within the South Kilburn regeneration area from the following protected groups;

- Age
- Disability
- Pregnancy and maternity
- Race

An Equalities Analysis is set out at Appendix 5. The Council will endeavour to negotiate a discount pricing formula with an annual review mechanism for different uses against fixed and standard charge during the dialogue process to ensure the impact of the project on the identified protected groups is minimised. Another equality analysis will be undertaken once the procurement process is complete in order to clarify the full impact of the project on all protected groups prior to award of contract.

11 Staffing/Accommodation Implications (if appropriate)

11.1 There are no specific staffing or accommodation implications associated with the proposals contained within this report.

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