

Report of: Asset Management and Regeneration

Report to: The Director of City Development

Date: 30 January 2016

Subject: Proposed Invocation of Contract Procedures Rules 8.1 and 8.2 for the Appointment of Legal Advisors on the Merrion House Project.

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	City & Hunslet	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number: Appendix number:		

SUMMARY OF MAIN ISSUES

1. The report seeks approval to Invoke Contract Procedure Rules (CPRs) 8.1 and 8.2 to retain Pinsent Masons to continue to represent the City Council in its legal proceedings with Town Centre Securities (TCS) in respect of the proposed refurbishment of Merrion House and the new build extension. The report details the background to Pinsent Masons' original appointment via a mini competition from solicitor's on the Council's call off contract for external legal services existing at the time and, sets out the reasons for seeking approval to Invoke CPRs 8.1 and 8.2 and, the consequences if the proposed action is not approved.

RECOMMENDATION

2. The Director of City Development is requested to approve the Invocation of Contract Procedure Rules 8.1 and 8.2 to appoint Pinsent Masons to provide on-going legal advice on the Merrion House project without the need for inviting competitive tenders for the commission.

1 Purpose of this report

- 1.1 The purpose of this report is to seek the Director of City Development's approval to Invoke Contract Procedure Rules 8.1 and 8.2 to appoint legal advisors to provide on-going legal advice on the Merrion House project without the need for inviting competitive tenders for the commission.

2 Background information

- 2.1 In 2011, following a 'mini competition' from solicitors on the Council's call off contract for external legal services, the City Council appointed Pinsent Masons LLP to provide a range of legal advice in respect of the proposed refurbishment of Merrion House. In particular, the legal advisors were retained to advise the Council in completing the Agreement for Lease and Lease; negotiating collateral warranties in favour of the Council; reviewing and advising on the construction contract and other development documentation and, the terms for the Council's acquisition of 50% of the completed development.
- 2.2 Pinsent Masons' initial commission effectively came to a conclusion when the Agreement for Lease and all supporting documentation between the Council and Merrion House LLP was completed in October 2013.
- 2.3 Subsequently, in February 2014, the Director of City Development approved an Invocation of CPR 7.1 to authorise the appointment of Pinsent Mason to provide ongoing legal advice to the City Council on the Merrion House project without inviting a competitive tender for the commission. The Merrion House project team considered it essential that the same legal company who had advised the Council in the preparation and completion of the Agreement for Lease and Lease between the Council and Town Centre Securities (TCS) should advise the Council in any variations to such legal documentation

3 Main issues

Reason for Contracts Procedure Rules Waiver

- 3.1 It has become apparent that on-going legal advice on the Merrion House project is required for example, to advise on proposed amendments to the Agreement for Lease arising from the need to revise the agreed drawings, plans and building specification (attached to the Agreement for Lease) arising as a consequence of agreed value engineering savings identified by both TCS and the City Council to achieve a budget compliant scope of works. In addition the legal advisor will be required to advise on the Deed of Variation required as a consequence of such changes, as well as advising as to the implication of such changes on the building contract to be agreed with the preferred contractor.
- 3.2 In order to secure the required legal advice, an approach was made to the Council's Department of Corporate Governance who advised that in this instance it would be more appropriate to continue to receive legal advice from the solicitors involved in the project to date. Accordingly, subject to the approval of the Director of City Development, it is proposed to appoint Pinsent Masons to provide on-going legal advice and assistance to the Council without the need for inviting competitive tenders for the commission.

- 3.4 The client project team remains of the view that it is essential that Pinsent Masons be retained to act on behalf of the Council. Given their considerable background knowledge of the project in general and, specifically, their knowledge of the Agreements concluded with TCS, the form of building contract to be concluded with the contractor for the works and consultant responsibilities, the Merrion House project team are of the view that it would be inappropriate to consider changing the Council's legal advisors at this stage of the project.

Consequences if the proposed action is not approved

- 3.5 If the proposed action is not approved, then the alternative course of action would be to seek to appoint an external legal practice from the Council's existing legal framework agreement or to competitively tender the commission to external legal consultants. Both courses of action have the potential to delay the project, as legal advice is required now to address a number of issues raised by TCS sufficient that the contract for the main building works can be let at the beginning of March 2016. The Director of City Development should note that it would take time for any new legal advisor to become familiar with the legal documentation and the changes that are needed, with the consequential risk that issues may be overlooked that have cost and programme implications for the Council.

Advertising

- 3.6 The Director of City Development should note that Pinsent Masons were originally appointed in 2011 following a mini competitive tender of solicitors on the Council's call off contract for external legal services.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 The Business Improvement Property Sub Board has been consulted and is supportive of the recommendation contained in the report

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 There is no expected impact on the protected equality characteristics and, therefore, it is not applicable for an EIA or screening form to be completed at this time.

4.3 Council Policies and City Priorities

- 4.3.1 The proposed refurbishment of Merrion House and the development of a new build extension are in line with Council Policy and Best Council Plan priorities for an efficient and enterprising Council.

4.4 Resources and Value for Money

- 4.4.1 It is proposed to establish a further budget of up to £10,000 exclusive of VAT for fees associated with the provision of on-going legal advice for the Merrion House project. The Director of City Development should note that CPR 8.1 relates to procurements valued at or over £10,000, but below £100,000. However, it is not envisaged that expenditure on the provision of on-going legal advice will be anywhere near £100,000, but approval to Invoke CPR 8.1 and 8.2 means that if the envisaged fee level of

£10,000 was to be breached, then further approval to Waive Contract Procedure Rules would not be required.

- 4.4.2 Funding for the fees for the on-going provision of legal advice on the Merrion House project will be funded from existing budget provision, Capital Scheme No. 16256/PC1/000.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 The Council's Procurement Unit has advised that it would be lawful for the Council to Invoke CPR 8.1 and 8.2 in these circumstances provided that the Director of City Development is satisfied that there are compelling reasons to do so.
- 4.5.2 The Director of City Development should note that CPR 8.1 and 8.2 states 'where no appropriate Independent Service Provider, exclusive supplier, existing provider or approved framework agreement exists, competition in the form of three written tenders will be invited for procurement with an estimated value at or over £10,000 but below £100,000.
- 4.5.3 The proposal contained in the report constitutes a Significant Operational Decision and is not subject to Call In.

4.6 Risk Management

- 4.6.1 There is a risk that the budget to be made available to meet the anticipated legal costs will be insufficient. This risk will be mitigated by continually reviewing the nature of the advice and actions to be undertaken to ensure that the most appropriate level of resource is allocated to the required tasks.

5 Recommendation

- 5.1 The Director of City Development is recommended to approve the Invocation of Contract Procedure Rules 8.1 and 8.2 to appoint Pinsent Masons to provide on-going legal advice on the Merrion House project without the need for inviting competitive tenders for the commission.

6. Background documents¹

- 6.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.