CABINET
16 March 2021

***PART 1 – PUBLIC DOCUMENT**
NB Appendix PART 2 -EXEMPT

TITLE OF REPORT: CONTRACT PROCUREMENT RULES WAIVER REFERRAL

REPORT OF THE SERVICE DIRECTORS: LEGAL & COMMUNITY & RESOURCES (WAIVER – SERVICE DIRECTOR: COMMERCIAL)

EXECUTIVE MEMBER: EXECUTIVE MEMBER FOR ENTERPRISE AND CO-OPERATIVE DEVELOPMENT

COUNCIL PRIORITY: BUILD THRIVING AND RESILIENT COMMUNITIES / RESPOND TO CHALLENGES TO THE ENVIRONMENT / ENABLE AN ENTERPRISING AND CO-OPERATIVE ECONOMY

1. EXECUTIVE SUMMARY

1.1. The report refers to the attached Part 2 waiver (of rule 8) of the Council's Contract Procurement Rules relating to the appointment of the specialist services in order to continue investigations and urgent due diligence into a new purchase of a high value property with a view that this would be referred to Full Council for consideration post-election.

2. RECOMMENDATIONS

2.1. That Cabinet approves a waiver to the Council's Contract Procurement Rules to appoint the nominated specialist services as set out in the Waiver Report (Part 2 exempt Appendix A) without carrying out a tender exercise.

3. REASONS FOR RECOMMENDATIONS

3.1. The Council is required under the Council's Contract Procurement Rules to undertake certain procurement processes. Under certain circumstances set out under Rule 22, a waiver can be applied and in certain situations a waiver may be referred to Cabinet for approval by the relevant Services Directors for Legal and Community and Resources. Otherwise see Part 2 Appendix A.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 See Part 2 Appendix A.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1. This has been discussed with the Leader and Executive Member. The Deputy Leader has otherwise been involved in discussions and consideration of the potential new project. The Part 2 urgency provisions for the Waiver have been discussed with the Chair of Overview & Scrutiny Committee and his agreement to proceed was received as per Rule 5 (6) The Local Authorities (Executive Arrangements) Meetings and Access to Information) (England) Regulations 2012.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan, as the financial element / impact of the contract will be a matter for Full Council's determination.

7. BACKGROUND

7.1 See Part 2 Appendix A Waiver.

8. RELEVANT CONSIDERATIONS

8.1. The intent was to conduct a tendering exercise regarding Stage 2, however due to timescales and the schedule this is not possible. If this is to proceed, then Stage 2 services are required to progress this work urgently in order to make an informed decision on the next stage and potentially purchasing this property. Otherwise See Part 2 Appendix A.

9. LEGAL IMPLICATIONS

9.1 The Contract Procurement Rules (CPR) sets out four levels of contract procurement requirements depending on the value of the contract.

9.2 Rule 5.1 of the CPR states that the aggregate value of any contract should be calculated based on the total value of the consideration including any options for extensions or renewals. The appointment of the specialists (whose name will be published if the waiver is agreed and amount under normal contract and transparency procedures) for the proposed service, including any possible extensions after the approval of Full Council will be for a total value of c.£170k (although the figure may be higher dependent on any purchase price). Therefore, the procurement requirements set out in rule 8 of the CPR ought to apply, which would need to be waived as per Rules 22.2 or 22.3b).

9.3 Rule 22.4 of the CPR states that a waiver is justified if any of the below grounds apply:

a) the nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirements of Contract Procurement Rules is justifiable; or

b) the contract is for supplies, works or services that are required in circumstances of extreme urgency that could not reasonably have been foreseen; or

c) the circumstances of the proposed contract are covered by legislative exemptions (whether under EU or UK law); or

d) where it is in the Council's overall interest; or

e) there are other circumstances which are genuinely exceptional.

9.4 The Service Director: Commercial seeks to rely on rule 22.4(d) and (e) above as a justification for the waiver on the basis that a delay in appointing the specialist may result in either a missed investment opportunity or a less informed/bad investment decision and is demonstrated to be such that a departure from the requirements of Contract Procurement Rules is justifiable.

9.5 Legal will assist Officers with the contract if the waiver is approved and will ensure that the contract is properly executed and completed.

10. FINANCIAL IMPLICATIONS

10.1. The Service Director – Commercial currently has a budget of £16,000 to support any external investigations regarding potential property acquisitions or investments. This will cover the initial spend of £13,200. Subject to the waiver, a report will be presented to Full Council at its April 2021 meeting to consider continuing with the due diligence work beyond that point and approving the costs in relation to that. As detailed in paragraph 9.2 the costs up to the point of purchase completion are expected to be around £170k. If the property is ultimately purchased then a proportion of the costs will be treated as capital expenditure. If the property is not purchased then all costs incurred with be revenue expenditure. Otherwise see Part 2 Appendix A.

11. RISK IMPLICATIONS

11.1. At this stage, the only pertinent risk is that the costs associated with the initial contract might not lead to the progression of the project and the realisation of the associated potential benefits. However, this is outweighed by the need to have comprehensive information available to make an informed decision about committing to a substantial project that could provide an opportunity to achieve significant community, regeneration and financial benefits.

11.2. Any further reports regarding whether or not the Council should invest in the property will reference the risk implications associated with the project itself.

12. EQUALITIES IMPLICATIONS

12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

12.2. There are no direct equality implications arising from this decision.

13. SOCIAL VALUE IMPLICATIONS

13.1. The Social Value Act and "go local" requirements do not apply to this report, although would if this were an above threshold contract.

14. ENVIRONMENTAL IMPLICATIONS

14.1. There are no known Environmental impacts or requirements that apply to this report.

15. HUMAN RESOURCE IMPLICATIONS

15.1 There are no known Human Resource implications that apply to this report.

16. APPENDICES

16.1 Appendix A – Appendix PART 2 -EXEMPT [not for publication by virtue of paragraph 3 of Schedule 12A to the Local government Act 1972] Waiver Report including proposed project schedule

17. CONTACT OFFICERS

17.1 Jeanette Thompson, Service Director: Legal and Community (and Monitoring Officer)
jeanette.thompson@north-herts.gov.uk

17.2 Ian Couper, Service Director-Resources (and Section 151 Officer)
Ian.couper@north-herts.gov.uk

17.3 Steve Crowley, Service Director: Commercial
Steve.crowley@north-herts.gov.uk

18. BACKGROUND PAPERS

18.1 None other than those referred to in the report and Appendix.