

<b>Mr Hunt, Cabinet Member for Finance and Resources</b>	<b>Ref No: FR 09 (19/20)</b>
<b>August 2019</b>	<b>Key Decision:</b> Yes
<b>Procurement of Commercial Property Agent</b>	<b>Part I</b>
<b>Report by Executive Director Resources</b>	<b>Electoral Division: All</b>
<p><b>Summary</b></p> <p>This report seeks approval by the Cabinet Member for Finance and Resources to commence the procurement process for the provision of a Commercial Property Agent.</p> <p>The County Council commenced a programme to acquire commercial investments following approval of its Asset Management Policy and Strategy in August 2018. It has since acquired two commercial investment properties for revenue return one in Crawley, in November 2018 and one in Hove, in February 2019.</p> <p>Procurement of a Commercial Property Agent is now proposed via a mini competition from the Homes England Property Professional Services Framework. The Agent will advise the County Council on the acquisition of additional property for its investment portfolio and manage the portfolio, including provision of advice on performance, lease renewal negotiations and rent review negotiations.</p>	
<p><b>West Sussex Plan: Policy Impact and Context</b></p> <p>The County Council's West Sussex Plan set outs its ambition to minimise the burden of local taxation, delivering the best outcomes for residents with the money it spends, whilst living within its means. To do this the Council needs to find new and innovative ways of creating additional revenue to maintain and improve standards in the delivery of essential public services. The County Council aims to take a strategic approach to generate sustainable income streams and providing opportunity for capital growth by investing in commercial property.</p>	
<p><b>Financial Impact</b></p> <p>It is anticipated that the Commercial Property Agent will propose a fixed fee for ongoing advice and management of the existing portfolio, and this fee will be funded through the rental income from the portfolio. Fees for acquisition will be based on a percentage of the purchase price and be capitalised in the acquisition costs. Fees for disposals will be based on a percentage of the sale price and be deducted from the capital receipts. The total value of the contract will depend on the total capital funding allocated for commercial investment by the County Council.</p>	

## **Recommendations:**

### **That the Cabinet Member endorses:**

1. The commencement of the procurement process for the provision of a Commercial Property Agent services contract for a period of 3 years, with the County Council having the option to extend the contract for a further period of up to 6 months (maximum contract period 3.5 years) subject to satisfactory contract performance, review of consultants' capacity, and/or a major review of the professional services needed or the portfolio; and that
2. Authority is delegated to Director of Property and Assets to award the contract to the bidder submitting the most advantageous tender in terms of quality and price.

## **PROPOSAL**

### **1. Background and Context**

- 1.1 The County Council aims to take a strategic approach to generate sustainable income streams and providing opportunity for capital growth by investing in commercial property.
- 1.2 WSCC has successfully acquired two commercial investment properties for revenue return. The first in Crawley in November 2018 and a second in Hove in February 2019.
- 1.3 The total expenditure on agents to date has been £292,500 before VAT through direct procurement.
- 1.4 The Council has an approved capital allocation of £50m to acquire property for commercial investment and revenue return. To date approximately £35m has been spent on two investments, leaving £15m to invest during 2019/20 to 2020/21 to achieve the anticipated rental income. The Council will be considering increasing this fund in 2020/21 for investments through 2020/21 to 2021/22, subject to approval by Full Council of the future Capital Programme. There also may be other opportunities for the procured agent to provide commercial letting services on other assets owned by the County Council.

### **2. Proposal Details**

- 2.1 Procurement of a Commercial Property Agent is now proposed via a mini competition from the Homes England Property Framework, OJEU reference No 2018/ 005-007230. (Formerly the Homes and Community Agency Technical Panel Property).
- 2.2 The Agent will introduce and recommend additional property for the portfolio and manage the acquisition process; manage the existing portfolio and any new properties acquired, including provision of advice on the market,

performance, lease renewal negotiations, commercial lettings and rent review negotiations; and where appropriate, and subject to the County Councils agreement, dispose of property in the portfolio. The current portfolio comprises two properties acquired to date, Churchill Court in Crawley and City Park in Hove. The terms of the contract will ensure the agent does not commit WSCC to any purchases without authority.

- 2.3 It has been identified that there are a good number of suppliers on the framework, that are able to deliver the service and operate in the market at an appropriate national and regional level to ensure the County Council has access to a good range of commercial investments
- 2.5 The contract will be awarded to the bidder submitting the most economically advantageous tender to ensure delivery of best value for money services.
- 2.6 It is proposed that the contract period should be for 3 years with the option to extend for periods up to a further 6 months.
- 2.7 It is also proposed that authority is delegated to the Director of Property and Assets to award the contract to the bidder submitting the most advantageous tender in terms of quality and price. A further forward plan entry and decision report will be published as appropriate.
- 2.8 It is anticipated that the contract could start as early as January 2020 but by the 1st April 2020 at the latest.

## **FACTORS TAKEN INTO ACCOUNT**

### **3. Consultation**

- 3.1 The Member for Southwater has been consulted as advisor to the Cabinet Member for Finance and Resources. WSCC Procurement Board approved the proposed sourcing strategy. WSCC Finance and Legal Services teams have also been consulted in the drafting of this report.

### **4. Financial (revenue and capital) and Resource Implications**

- 4.1 It is anticipated that the Commercial Property Agent will propose a fixed fee for ongoing advice and management of the existing portfolio, which will be met from the rental income generated, whilst fees for acquisition and disposal of assets will be based on a percentage of the purchase or sale price of the asset.

#### **4.2 Revenue consequences of proposal**

The revenue costs associated with this procurement will be funded from the rental income received from the whole portfolio and can therefore be met from existing resources.

#### **4.3 Capital consequences of proposal**

Fees payable on acquisition can be capitalised as part of the overall cost of the acquisition and are recognised within the current capital allocation and reflected in business cases presented for approval. Fees payable on disposal of an asset are deducted from the capital receipt achieved and are allowed for within current projections for receipts available to fund the capital programme. There are therefore no additional capital requirements or impacts on funding available as a result of this appointment.

The remaining capital budget approved at County Council is shown below.

	Current Year 2019/20 £m	Year 2 2020/21 £m	Year 3 2021/22 £m	Year 4 2022/23 £m	Year 5 2023/24 £m	Total £m
Capital budget	10.000	5.063	0	0	0	15.063
Change from Proposal	0	0	0	0	0	0
Remaining budget	10.000	5.063	0	0	0	15.063

## 5. Legal Implications

- 5.1 The Council has the legal powers to purchase land and can do so for investment purposes pursuant to section 12 of the Local Government Act 2003 and the Localism Act 2011. The Council also has the legal power to dispose of land for "best value" pursuant to section 123 of the Local Government Act 1972. The disposal in this case would be by way of a lease/tenancy of the commercial properties with the rental amount generating an income for the Council. Providing the rental amount is at market value there would not be any state aid implications.
- 5.2 Purchase and disposal of Council owned land is not subject to the Council's Standing Orders on Procurement and Contracts nor the Public Contracts Regulations 2015 ("PCR 2015") as leases are not public services or works contracts. The contract for the Commercial Property Agent would however be a public services contract and as such is subject to the Council's Standing Orders on Procurement Contracts and as the total anticipated value of the contract meets or exceeds the EU threshold for services, currently £181,302, will also be subject to the rules of PCR 2015.
- 5.3 Standing Orders permits the Council to procure and award a contract, that is at or above the services threshold, by way of calling off from a framework agreement that has been compliantly procured by another contracting authority and in which the Council has been named as permitted to use the framework agreement. The OJEU notice sets out that the framework agreement is available to all Local Authorities to use. The framework agreement commenced on 18 June 2018 for a period of 4 years, any call off contract made under the framework agreement should not generally exceed the period the framework agreement by more than 12 months.

- 5.4 Legal Services will need to review the framework agreement and call off contract terms and conditions before the mini competition can be carried out, to ensure the terms and conditions meet the Council’s Standing Order requirements and are acceptable to the Council.
- 5.5 It is not considered there will be any TUPE implications on commencement of the proposed contract.

**6. Risk Assessment Implications and Mitigations**

	<b>Risk</b>	<b>Mitigating Action</b>
1	Insufficient interest in the contract from suppliers – failure to procure a contractor	Use of existing frameworks with suppliers already procured to undertake this work.

**7. Other Options Considered (and Reasons for not proposing)**

- 7.1 The County Council has the option to do nothing and continue to manage the portfolio in house and continue to use agents that introduce property to the Council under a single tender waiver process. This option has been discounted because as the portfolio grows the Council requires specialist advice on investment. The County Council does not have the appropriate level of in-house skills or experience of this market to give reassurance to Elected Members that the portfolio is managed to maximise the value of the investments.
- 7.2 Another option considered is that the County Council carry out its own procurement exercise rather than a mini-competition from a framework agreement. The advantage of doing its own procurement exercise is that the Council wouldn’t be limited to the four year framework period, but it would take more time.

**8. Equality and Human Rights Assessment**

- 8.1 The successful bidder will be required to demonstrate they adhere to the County Council’s Equalities duties.

**9. Social Value and Sustainability Assessment**

- 9.1 The proposal will bring economic benefits to the County Council by increasing investment in the economy. Each acquisition is subject to a sustainability assessment prior to acquisition of the asset.

**10. Crime and Disorder Reduction Assessment**

- 10.1 Not applicable

**Richard Ennis**  
**Executive Director Resources**

**Contact Officers: Elaine Sanders, Head of Assets, 033 022 25605**