

NORTH SOMERSET COUNCIL DECISION

DECISION OF: COUNCILLOR JAMES TONKIN EXECUTIVE MEMBER FOR PLANNING & TRANSPORT

WITH ADVICE FROM: DIRECTOR OF DEVELOPMENT AND ENVIRONMENT AND HEAD OF STRATEGIC PROCUREMENT



DECISION NO: 20/21 DE 110

SUBJECT: PROCUREMENT PLAN: LEGAL SERVICES FOR THE HOUSING INFRASTRUCTURE FUND PROGRAMME OF WORKS

KEY DECISION: NO

REASON: CONTRACT STANDING ORDERS DO NOT DEEM PROCUREMENT PLANS AS KEY DECISIONS

1.0 BACKGROUND:

1.1 Minute No. COU 41 dated 25 June 2019 approved the Housing Infrastructure Fund (HIF) commissioning plan.

1.2 The report noted the nature of the HIF enabling infrastructure work consisting of the construction of Banwell bypass, on-line highway improvements, strategic capacity improvements to utilities, flood management and new secondary school places at Weston Villages and requires several contracts to deliver the works identified.

1.3 A positive announcement was received from the Ministry of Housing, Communities and Local Government (MHCLG) on the 01 November 2019 awarding North Somerset Council the full HIF bid of £97.1M.

1.4 The core objectives will be:

- To deliver infrastructure that maximises, underpins and de-risks associated housing development in the shortest possible timeline;
- To deliver infrastructure that is affordable and provides good value for money;
- To deliver infrastructure that meets the needs of all stakeholders including developers and local communities; and
- To minimise environmental impacts and maximise opportunities for sustainable travel and biodiversity net gain.

1.5 Additionally the report noted the requirement to appoint legal services to provide essential and wide-ranging land procurement expertise on behalf of the council on land assembly associated with the Banwell Bypass works.

2.0 DECISION: To approve the procurement plan.

3.0 REASONS:

3.1 To enable the Council to competitively procure the appointment of a legal team with necessary skills, expertise and resources to advise and support the Council to successfully deliver the Banwell Bypass and associated infrastructure enabling works which meets the programme requirements of the HIF bid.

4.0 INTRODUCTION

4.1 The HIF programme requires the construction of Banwell Bypass Works to commence no later than late 2022 (and for all necessary consents to be in place to allow such commencement) and completion and opening on or before the 31 March 2024.

4.2 Following its successful bid to the Homes and Communities Agency (Homes England), the Council has secured (subject to approval of commercial heads of terms and completion of a Grant Determination Agreement, based on those heads), capital funding of £97,067,550 (HIF funding) as a contribution towards the delivery of the HIF Enabling Infrastructure Works.

4.3 The HIF funding, summarised below, will enable the delivery of critical infrastructure in support of housing delivery:

- Banwell Bypass: a new highway to the north of and bypassing Banwell Village providing key relief for local communities and improved access for local businesses;
- Public realm improvements within Banwell Village
- On-line highway improvements complementary to the bypass and essential to increase capacity within the surrounding network including at J21
- Strategic utility upgrades to provide enough capacity to enable new housing developments
- Flood mitigation measures for the Banwell Bypass coordinated with the proposed development, and;
- A 900-place secondary school.

4.4 The route of Banwell Bypass is safeguarded alignment within North Somerset's adopted Local Plan. The Development Management Policies Plan was adopted in July 2016 which provides further surety of the scheme in local planning policy. The new secondary school will be developed on land already secured under a S.106 planning agreement.

4.5 The programme of works is at an early stage; design work was undertaken to support the HIF bid, which included work to Full Business

Case including supporting evidence and documentation in line with the requirements of The Five Case Model; The Strategic Case, The Economic Case, The Commercial Case, The Financial Case and The Management Case.

4.6 The council is currently preparing its new Local Plan and will shortly be publishing a revised timetable for its preparation through a revised Local Development Scheme.

4.7 The HIF scheme requires land assembly, planning approval and the likelihood of a CPO public inquiry and/or planning inquiry.

5.0 COMMISSIONING PLAN

The commissioning plan was approved at the council meeting on 25 June 2019 COU 41.

6.0 REQUIREMENT

6.1 The HIF funding is for the delivery of critical infrastructure to enable the delivery of new communities to support sustainable housing growth. The Programme of works shall achieve the following:

- The HIF infrastructure Works must be completed within the HIF bid budget of £97,067,550. This is the maximum sum of HIF funding and cannot be increased under any circumstances.
- Must comply with all statutory processes
- Must be acceptable in design and construction (incl. programme) to all key stakeholders
- Must minimise or eliminate disruption on the local community
- Aim to achieve net zero carbon impact during design and construction
- Secure biodiversity net gain for the development
- Complete all works by March 2024
- Enable active travel to integrate the new community
- Achieves the most Social Value contribution possible from the programme
- Maximise efficiency in the design and construction for the programme

6.2 The scope of works required from the legal services contract will include the following:

- Support, review and advise on the application for planning permission to construct and operate the Scheme;
- Development of Heads of Terms and ultimately legal contracts for appropriate land acquisition;
- Undertake and advise CPO preparation, making and confirmation through all relevant formulation and statutory process stages;
- Negotiation, preparing and completion of legal documentation in connection with the Banwell Bypass Works, including statutory orders and consents e.g.

Road Classification Orders, Side Road Orders, Traffic Regulation Orders, Stopping up / Diversion orders;

- Direction of and liaison with appointed Land Agent;
- Support the Council and the wider professional team in the planning process and Order making stages, including at Public Inquiry;
- Support all other Statutory Orders and consents, including Road Classification Orders, Side Roads Orders and Traffic Regulation Orders;
- Provide Counsel services to advise on key elements of the Statutory processes and advise on Statutory Tests including representing NSC at any Public Inquiry;
- Attendance at project team meetings and any other meetings as required

6.3 To de-risk project delivery and to ensure the project is fully compliant with all statutory processes and procedures it is essential that early appointment of the legal team is undertaken at the earliest opportunity.

6.4 Early engagement of the legal support is required to advise on many formulation and sensitive areas, and the Council will seek the appointment of a legal team to commence service delivery in December 2020.

6.5 In order to submit the HIF full business case significant work was carried out on scoping the requirements of the legal services. This has enabled the project team to compile the specification for the tender documents. The council's Legal Services team has also checked and had input into the specification and tender documents.

6.6 Additionally, lessons learnt from both South Bristol Link legal workstream and MetroWest legal workstream has fed into and informed the specification, scope and duration of each process identified within the legal specification.

For example, the SBL legal contractor has been consulted with to ensure we have an appropriate and comprehensive specification to cover the types of services required, whilst being mindful not to over-specify. They were also consulted on regarding the tasks and hours required that were actually invoiced so that we use a realistic pricing schedule for bidders to bid against.

7.0 TENDER PROCESS

7.1 The Council will undertake a competitive tender exercise using the Open (1 stage) Procedure.

7.2 The scheme is highly complex as the Bypass works is approximately 3.6km in length and will intersect land of multiple landowners. It is essential that a consistent and integrated approach is adopted in relation to the relevant tasks such as engaging with those affected by the proposals. The legal and land services will be interlinked through-out the project and early market engagement has led to the recommendation that they are tendered separately because of insurance issues, but at the same time, and that the land agent is managed by the

legal appointment; this position has also been informed by previous CPO development and delivery experience.

7.3 This single control by the legal lead provides an opportunity for a more joined-up seamless undertaking with clearer and more transparent accountability.

7.4 The client retains an active overseeing role but is removed from the chain of supply and therefore of being culpable and liable for the information exchanges. This reduces risk of delay and the requirement for in-house management resource.

7.5 The length of this contract is 5 years with the option to extend by a further 2 years.

7.6 In the main, and due to the nature of the workstream it is difficult to determine the length of each task (though soft marketing testing has gone some way to getting as close as possible to establishing the services required and the most suitable way to charge for the work). It was agreed that NEC4 Professional Services Contract Option E (time charge) was the most suitable option. The use of option A (activity schedule) was considered however given the difficulty in knowing how long some of the tasks will take e.g. compulsory purchase orders, the team has opted for option E. Using both option A & E was not selected as this would require amendments to the core Conditions of Contract, mainly due to the different mechanisms for payment i.e. some of the defined terms have differing definitions between the different Main Options which could get complicated to evaluate and administrate. The contract manager would still have a Compensation Event process so he or she can control and understand costs but that would be based upon the sums tendered against the estimated hours.

7.7 This approach has been defined by external and internal engagement and feeding in lessons learn from previous major projects to ensure a robust, accountable and consistent approach is applied to the programme and through to the projects being delivered by HIF.

8.0 RECOMMENDATION

8.1 Recommendation to proceed with the Open Procedure NEC PSC Option E.

8.2 The contract term will be for 5 years with a possible extension of 2 additional years. This will ensure the council has continuity of service throughout the pre-construction, construction and post construction phases.

9.0 Timescales

9.1 The following indicative timescales and actions have been created for the procurement of these services, which may be subject to change and do not currently take into account any delays associated with COVID-19 impacts:

Task Name	Duration	Start	Finish
Prepare Tender Documents	8 weeks	June 2020	July 2020
Publish Tender	0 weeks	August 2020	
Tender submissions and evaluation	8 weeks	August 2020	Mid Oct 2020
Contract award approval & Alcatel period	6 weeks	Mid Oct 2020	end Nov 2020
Award of contract	0 week	December 2020	December 2020

10.0 Governance

10.1 Full council approved the Housing Infrastructure Fund (Forward Fund) Grant Heads of Terms with conditions report on the 16 June 2020, however, the GDA between Homes England and the council will not be approved until the Executive meeting on the 29th July 2020..

10.2 This procurement plan will be taken to Executive Member, with advice from the Director and Head of Procurement, for approval before the procurement is undertaken. The procurement will not be allowed to commence until the Emergency Executive meeting has agreed the final GDA terms. The contract award report will be approved by the Director advised by the S151 Officer and Head of Procurement. As it is a key decision it will appear on the council's forward plan and be subject to the call-in periods, in line with the council's Contract Standing Orders.

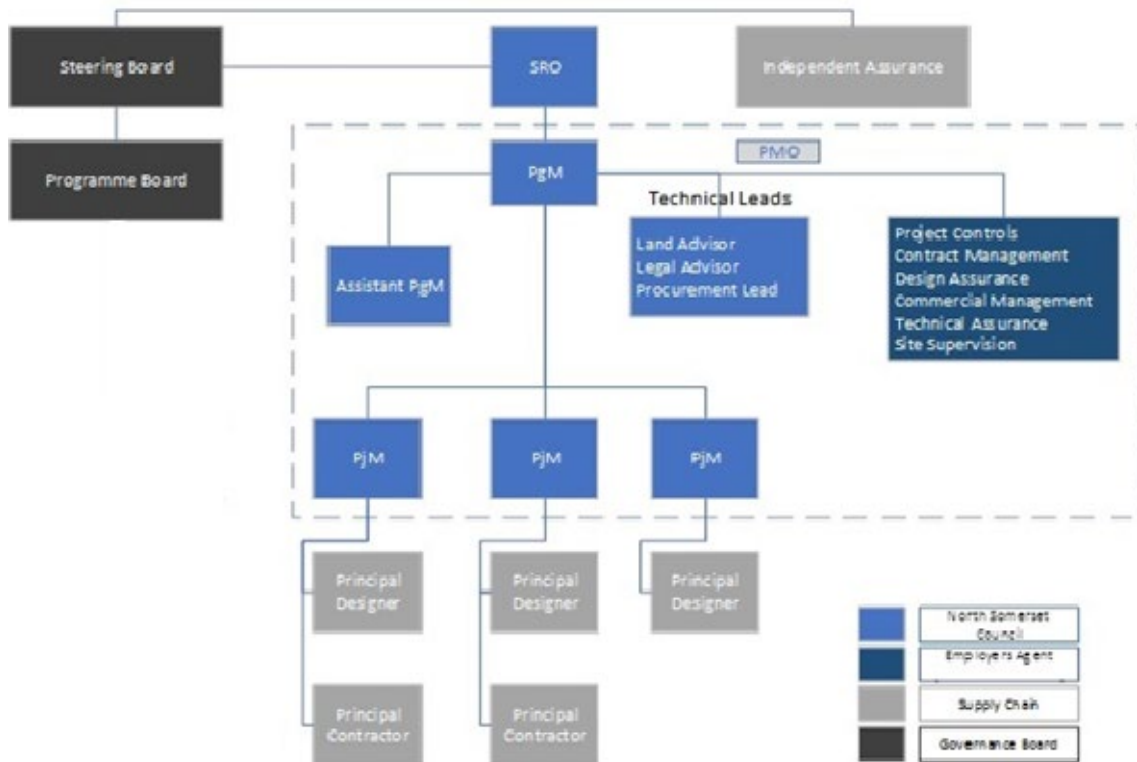
10.3 HIF Programme Board will be formulated to steer, direct, co-ordinate and oversee the delivery of the programme in line with the council's approved major projects delivery team structure and delivery framework. The Board authorises a Programme Plan and project plans to be delivered by the Programme Management Team and authorises strategic decisions or seeks authority for key strategic decisions from the council. The Board considers Highlight and Exception Reports, changes to the projects Risk Register, key deliverables as defined in the Plans and the contractor's social value and environmental commitments.

10.4 The Senior Responsible Owner (SRO) acts as the lead for the overall programme representing the various stakeholders and Board. The Head of Major Projects is responsible for chairing Programme Board meetings. The Programme Manager is responsible for preparing highlight reports. The SRO will ensure that the programme and inherent projects progresses in-line with the respective Plans and that the outputs agreed by the Board are achieved.

10.5 The Programme Board comprises the following membership:

- **Head of Major Projects and Senior Responsible Owner (chair)**
- **Board members (decision making)**
 - Project Sponsor
 - Head of Major Projects
 - Peoples and Communities Representative

- Development and Environment Representative
- Legal Representative
- **Board members (advisor)**
 - Finance
 - Planning Policy
 - Programme and projects managers
 - Procurement Manager
 - Legal



10.6 At the first formal meeting of the Board the following will be submitted for approval:

- Programme Board Terms of Reference;
- Programme delivery manual, risk register, programme, cost estimate;
- Delegated powers for change approval;
- Environmental and Social Strategy.

10.7 The Programme Delivery Team will represent North Somerset Council providing the functions as shown above and will be responsible for the delivery of the Programme's outputs and benefits to cost, time and quality.

10.8 The Council and the appointed Employers Agent will develop a series of performance metrics. Performance shall be assessed on a project-level basis but with sub-sets for the ECI Contractor and Employers Agent. The principles of the performance management approach will be developed during production of the

tender documentation for the ECI Contractor procurement and will focus on three areas:

1. Performance against project brief (i.e. how well we are progressing against required outputs)
2. Behavioural performance (e.g. collaboration)
3. Contract management performance.

11.0 MARKET / SUPPLIERS

11.1 The project team has undertaken soft market testing in the form of informal engagement with existing and recently used suppliers, to gauge market appetite for the proposal and to offer views as to the specification, tasks involved and duration of tasks which make up the pricing schedule.

11.2 The feedback from existing & recently used suppliers is that the scope and nature of the proposal is very attractive as it is a large, high value, high profile project. They have also confirmed they have the capacity and capability to deliver, this will be formally tested during the procurement process, but does provide comfort that the offer is market appropriate and effective in securing the requirements of the specification.

12. SOCIAL VALUE AND SUSTAINABILITY

12.1 The tender will include a question on social value (10% of the quality weighting) in accordance with the council's social value policy. The social value question will seek bidders' tangible and specific commitments in relation to the social value outcomes:

- Increased employment to local people
- Reducing negative and promoting positive environmental impacts
- Supporting schools and life-long learning

12.2 The tender will include a question on the carbon management approach and innovation to demonstrate key understanding, commitment and tangible deliverables. A carbon advocate role will be required to assist the project team in developing project processes, protocols and metrics in the measurement and management of carbon reduction.

12.3 The supplier will report on the progress of its social value and carbon commitments alongside all other KPIs.

13.0 EVALUATION

13.1 A single stage competitive tender is advocated for these services. This will balance both the ability to ensure best value whilst still adhering to demanding programme delivery timescales.

13.2 For the tender stage, bidders will have to give demonstrable evidence of experience of the specialisms needed and their proposals on how they will deal with areas including, CPO public inquiry, land owner engagement, environmental legislation etc. A weighting of 50% price and 50% quality will ensure the correct and appropriate balance of quality versus price. Knowledge of the market has led to this decision as, generally speaking the day rates for the various legal personnel required eg Partner, solicitor etc are comparable between organisations. The focus, therefore, is to ensure we get the best quality team on board who have the experience and expertise that we need, which is very specialised.

13.3 The project team will provide clear scope and specification with set deliverables and expected durations for the bidders to tender against.

13.4 The pricing schedule will be set out so that the bidders will quote set fees for specific deliverables, as the project team requires cost certainty and clarity on what the costs will be throughout the life of the contract. There will be weekly meetings with the legal services provider and land agent during the contract to keep track of delivery and the budget.

13.5 The evaluation panel will consist of legal representatives, the HIF programme manager, external support and be moderated by procurement.

13.6 The price weighting will be 50% Price and 50% Quality. Price and quality assessment will score the following:

- **Price:** Based on the submission of resource schedule. The lowest total price will receive the maximum score of 100% and the prices of all other tenders will be expressed as a percentage of the maximum score.
- **Quality:** Quality will be assessed against the project outputs, behaviours and project management including assessment on the following topics.
 1. Business capability and resource
 2. Professional expertise
 3. Commercial offering
 4. Project team
 5. Track record
 6. Carbon advocacy and Social Value contribution

Quality will have a weighted score of 50% and will be evaluated in accordance with the following scoring guidelines:

Score	Classification	Award Criteria
5	Excellent	A response that inspires confidence; specification is fully met and is robustly and clearly demonstrated and evidenced. Full evidence as to how the contract will be fulfilled either by demonstrating past experience or through a clear process of implementation.
4	Good	A response supported by good evidence/examples of the Bidders' relevant ability and/or gives the council a good level of confidence in the Bidders' ability. All

		requirements are met and evidence is provided to support the answers demonstrating sufficiency, compliance and either actual experience or a process of implementation.
3	Satisfactory	A response that is acceptable and meets the minimum requirement but remains limited and could have been expanded upon.
2	Weak	A response only partially satisfying the requirement with deficiencies apparent. Not supported by sufficient breadth or sufficient quality of evidence/examples and provides the council a limited level of confidence in the Bidders' ability to deliver the specification.
1	Inadequate	A response that has material omissions not supported by sufficient breadth and sufficient quality of evidence/examples. Overall the response provides the council with a very low level of confidence in the Bidders' ability to deliver the specification.
0	Unsatisfactory	No response or response does not provide any relevant information and does not answer the question.

13.7 The evaluation scores will be moderated by the evaluation panel, facilitated by Procurement, to ensure a consensus and to provide agreed scoring and feedback for each bidder.

Any bidder scoring 0 will be excluded from the evaluation.

The evaluation panel may wish to hold clarification interviews if it assists in their decision making

13.8 A template will be provided for the purposes of providing a pricing model for resource allocation. This will help ensure that all bidders are providing a response that is equally comparable.

14.0 CONTRACT MANAGEMENT

14.1 The use of Key Performance Indicators (KPIs) will be used as a tool to measure performance of the supplier. These will be based around the core principles of time, cost and quality but will also link back to the quality element of the original submission.

14.2 Monthly bespoke reports will be produced by the supplier to monitor their progress against the key criteria in addition to the measurement requirements that form part of the NEC contract.

14.3 Weekly meetings will be organised and chaired by NSC Major Projects team staff to ensure that quality and progress of Legal works is sufficient and meeting contract and project needs.

14.4 The progress of the project will be summarised in a highlight report and presented to the Project Board. The project and contract management approach will be formalised through the project delivery manual.

14.5 The project and board structure will be undertaken in accordance with the agreed Major Projects and Technical Services project management and board protocols and processes.

15.0 FINANCIAL IMPLICATIONS

15.1 Costs

The total cost estimate for the legal service contract is £1.7m.

15.2 Funding

Funding for this procurement will be provided by the Housing Infrastructure Fund (FF) awarded by MHCLG. The Council are in the process of obtaining approval and finalising the GDA with Homes England. A report was taken to Full Council on 16 June 2020 and received unanimous support, however, the GDA has not been finalised yet, but will be approved at the Executive meeting on 29th July 2020. Nominally, the grant can be received by North Somerset Council incrementally from August 2020.

It should be additionally noted that report sought approval to increase the Capital Programme by £97,067,550, the total HIF grant from Homes England, this was ratified. All procured services for this scheme will be funded from the capital budget once the grant determination agreement is signed.'

16.0 LEGAL POWERS AND IMPLICATIONS

16.1 Heads of Terms are to be agreed between the council and Ministry of Housing, Communities and Local Government (MHCLG). The Heads of Terms will define the responsibilities on the Council and MHCLG for the HIF Funding.

16.2 The terms and conditions of these documents will be flowed down to the Contractor through the Contract where relevant and necessary to protect the interests of the council.

16.3 Any procurement undertaken will be procured in line with Public Contract Regulations 2015. The Contract will use NEC Professional Services Contract Option E time charge.

16.4 Subsequent works inherent in this procurement proposal will require the exercise of functions (and use of applicable Acts as defined within CSO) of the local planning authority, mineral planning authority, local highway authority, local education authority and housing authority.

17.0 CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS

17.1 As part of the aim to encourage innovative solutions to carbon reduction, it is proposed that a sustainability toolkit be developed to identify sustainability outcomes to be achieved. This is to be developed in collaboration with the supply chain and the purpose specified to put tangible metrics against sustainability into the project as goals.

17.2 All supply chain partners will play an active and key role in ensuring the council's ambition of carbon reduction and biodiversity net gain is secured and achieved through both as an active member of the project team and through as necessary application of statutory and non-statutory legislation in the design, development and delivery of the proposed infrastructure.

17.3 The procurement process will also challenge the bidders on their carbon footprint and how infrastructure can be delivered in the most sustainable way including project specific requirements around communications, meetings and also at an organisational level with their corporate approach and initiatives to sustainability, including the use of energy, transport, purchasing and staff. It is proposed to appoint a carbon advocate to help the project team realise its carbon reduction ambition and provide a framework for future projects.

Carbon reduction and management will be a key assessment component within the tender opportunity. The Council will seek to ensure that all parties across the value chain work collaboratively, towards a common goal to reduce carbon, so achieving the following outcomes;

- Reduced Carbon, reduced infrastructure cost;
- Promote innovation delivering benefits to society and communities;
- Carbon management will contribute to tackling climate change;
- Deliver more sustainable solutions.

18.0 CONSULTATION

18.1 Soft market engagement has been undertaken with legal firms to gauge capacity and capability for legal support and has helped inform this procurement plan, additionally engagement has been undertaken with internal stakeholders, including procurement, legal and project management and planning colleagues.

19.0 RISK MANAGEMENT

19.1 The following key procurement risks have been identified and mitigating actions proposed, as summarised below:

Description	Impact	Mitigation
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Objection to scheme from public causes delays	Delays to programme, cannot meet funding deadline	Procurement of legal services to manage stakeholder engagement, inform of key challenges to programme (E.g. CPO for land)
Funding approval is delayed, increasing costs through inflation	Additional cost that NSC have to find funding to cover	Legal support to ensure GDA is signed and HOT's are approved for NSC
Insufficient professional services cost allowance	Cost increase	Market engagement undertaken, benchmarked against similar sized project.
Insufficient/limited contractor capacity increases market prices	Limited returns or poor-quality increasing cost due to reduced competition	Early market engagement and soft market testing
Changes in legislation	Legal implications, cost increase and programme delay	Early involvement of legal specialists to undertake regular reviews of legislation
Land acquisition from Homes England and St Modwen is delayed	Access for surveys, enabling works and construction delayed, may miss longstop date	Early appointment and involvement of legal in discussions

20.0 EQUALITY IMPLICATIONS

Have you undertaken an Equality Impact Assessment? **Yes**

20.1 An initial screening exercise has been carried out as part of the HIF development business case process to identify protected characteristics that the Equality Act 2010 requires us to consider, in relation to the highway and school infrastructure.

20.2 The protected characteristics most pertinent to the highways scheme are age, disability and religion or belief. The school shares the same conclusions, with the addition of sex. Provisions will be made to maximise equality between those who share a protected characteristic and those who do not.

20.3 A full equality impact assessment will be undertaken as part of the highway and school development proposal.

21.0 CORPORATE IMPLICATIONS

21.1 The provision of key enabling infrastructure and educational facilities and the improvement of the transport network widely supports the Corporate Plan objectives in all areas of Prosperity and Opportunity, Health and Wellbeing and Quality Place.

22.0 APPENDICES

None

20.0 BACKGROUND PAPERS

HIF Report 16 June 2020 Full Council

<https://apps.n-somerset.gov.uk/Meetings/document/report/NSCPM-38-570.pdf>

HIF Commissioning plan:

<http://apps.n-somerset.gov.uk/cairo/docs/doc29685.pdf>

HIF business case development and submission approval

<http://apps.n-somerset.gov.uk/cairo/docs/doc28834.pdf>

<http://map.n-somerset.gov.uk/PoliciesMap.html> (Banwell Safeguarded alignment)

<https://www.gov.uk/government/news/government-investment-to-unlock-more-homes-across-england> (links to HiF announcements and all supporting MHCLG HIF documents)

<https://www.jointplanningwofe.org.uk/consult.ti>

HIF Bid Pro-Forma online form 03 December 2018

MHCLG HIF Forward Funding Business Case Guidance

HIF Forward Fund Business Case Questions

Exec Member Decision 18/19 DE341

Programme delivery manual, risk register and programme.

SIGNATORIES:

DECISION MAKER(S):



Signed:

Executive Member for Planning and Transport

Date: 19 August 2020

WITH ADVICE FROM:



Signed:

Director Development and Environment

Date: 17 August 2020

Signed:  Head of Strategic Procurement

Date: 17 August 2020