SUBJECT: ISLINGTON LAND DISPOSALS FRAMEWORK FOR AFFORDABLE HOUSING

1. Synopsis

1.1 This report outlines the Council’s process for the establishment of an Islington Land Disposals Framework for Affordable Housing and seeks appropriate authority for the proposed appointments to the framework contract following a procurement process which commenced in March 2012 and is due to be concluded in May 2012.

2. Recommendation

2.1 To delegate authority to the Corporate Director of Housing and Adult Social Services to appoint organisations to the Land Disposals Framework for Affordable Housing agreement, in consultation with the Executive Member for Housing.

3. Background

3.1 The Council has identified six priorities, linked by the overarching priority of fairness, to take forward over the next four years as set out in the Corporate Plan 2011-14. One of these priorities is to help everyone in Islington to have a decent, suitable and affordable place to call home. Increasing the supply of decent, genuinely affordable homes particularly for families, with fewer overcrowded and under-occupied homes, will be key measures of our success in achieving this priority.

3.2 In delivering these outcomes a number of key actions have been identified which include making best use of Council-owned assets and financial resources to deliver new homes for social rent. This will be particularly important in securing an ongoing supply of new homes for social rent given the reduced support from central government. A key project for helping to deliver more affordable homes is the development of a Land Disposals Framework for Affordable Housing which would enable agreed Council-owned sites to be offered to suitably qualified partners with the principal objective of maximising the number of homes, particularly for social rent, alongside other priorities which could include improved community provision or other benefits for the wider community.
3.3 The Council has invited expressions of interest from suitably qualified organisations to become a member of its Land Disposals Framework for the disposal of land for the development of affordable housing and for carrying out associated services. All members of the Framework will be offered the opportunity to tender for identified sites/packages of sites in Islington that the Council decides to dispose of to help deliver much needed new affordable housing, particularly for social rent in the borough.

3.4 In order to be eligible for appointment to the Framework, organisations have been required to demonstrate that they can meet specific criteria related not only to the development but also to the long term management of the affordable homes and to the provision of associated services. The overall objective of this procurement exercise is to identify organisations that will be willing to work with the Council to develop housing that meets the priority needs of Islington residents, including family sized homes for social rent to help tackle overcrowding.

3.5 The overall objectives of the framework proposals are as follows:

- To enable the disposal of sites to a range of partners to work with the Council to successfully progress the development of affordable housing and associated facilities.
- Increase housing in the borough which meets the main affordable housing priorities of the Council, particularly family sized homes for social rent.
- The consistent delivery of high quality management services for residents of affordable homes and community facilities developed on former Council owned sites.
- The establishment and maintenance of long term and constructive partnerships with the Council.

3.6 The Council’s Procurement Rules are designed to support legal compliance and deliver best value to our residents. The Procurement Rules require a full public tender when expected spend exceeds £100,000 in any one service area.

3.7 The estimated value of the framework contract is up to £35,000,000. The contract will run for a period of four years from May 2012 to April 2016.

3.8 Delegated authority is requested for making the appointments to Land Disposals Framework for Affordable Housing to ensure that the Framework is in place by May 2012 in order to progress any agreed disposals in a timely manner, including Beaumont Rise which was recommended for disposal through the Framework at the meeting of the Executive in March 2012.

4. Development of the Framework

4.1 A Contract Advertisement was placed on 5th March 2012 specifying the use of a Restricted Procedure for the procurement. The Restricted Procedure is in two parts: an application pack called a Pre Qualification Questionnaire (PQQ) to shortlist those organisations who qualify to be invited to tender, and the tender itself. The tender will be evaluated according to the following criteria:

- 25% Housing Development
- 25% Housing Management
- 20% Partnership Working
- 20% Cost/Pricing
- 10% Equalities.
The PQQ included a number of questions to establish the suitability of organisations who submitted expressions of interest in being appointed to the Framework. The key areas covered in the PQQ were as follows:

- **Headline Questions**: These are considered to be ‘Show Stopper’ questions setting out the minimum requirements for the tender. If the organisation is unable to answer ‘Yes’ to all of these questions, they would not progress to the next stage of the process and are advised not to complete the remainder of the questionnaire.

The Headline questions included in the PQQ are:

1. **Is your organisation or Consortium a Registered Provider, monitored and regulated by the Tenant Services Authority or equivalent Government/EU organisation?**
2. **Can your organisation demonstrate that it has successfully delivered a range of housing developments from site acquisition through to practical completion in the last two years?**
3. **Will your organisation be able to provide a housing management office in Islington or a neighbouring borough (City of London, Camden, Hackney or Haringey) that can be visited by tenants within a year of completion of development on that site?**
4. **Is your organisation willing to work with the council to deliver new schemes on disposal sites, with the affordable housing comprising of rented units (at Target Rents) and Shared Ownership tenures only?**
5. **Will your organisation enter into a legally binding undertaking not to re-let any properties built on council disposed sites for Affordable Rent or otherwise convert or dispose of homes without the express written consent of the council?**

- **Contract Specific Questions**: Housing Management including performance, Housing Development priorities and experience
- **Financial Information**
- **Business: Professional and Business Standing**
- **References**
- **Policies and Insurance**
- **Health and Safety**
- **Equal Opportunities**
- **Environmental Management.**

The deadline for expressions of interest through submission of a completed PQQ was Tuesday 27th March at noon. All of the PQQ responses were evaluated within two weeks and the qualifying organisations invited to submit a tender for appointment to the Framework – Invitation to Tender Stage (ITT).

The ITT was issued on Tuesday 9th April 2012 and indicated that tenders would be evaluated in line with the award criteria weightings, as set out above in paragraph 4.1.

Each of the tenderers have been given 3 weeks to complete their responses with a deadline for submission of Tuesday 1st May 2012. The Council has not set a limit as to the number of organisations that can be appointed to the Framework.

A verbal update will be provided at the meeting of the Executive as to the number of completed ITT forms received and to progress with the evaluation of those submissions.
5. Implications

5.1 Financial implications
There are no direct financial implications of this report. The Land Disposals Framework does not guarantee the disposal of any sites to any individual organisations, and the Council will continue to assess the disposal of each site through the framework under its existing obligations to achieve best consideration from its assets.

5.2 Legal Implications
The Council has power to dispose of land for housing purposes (see further below). The Council also has power to enter into contracts for the management of housing stock and associated community facilities and services under section 1 of the Local Government (Contracts) Act 1997 on the basis that such services are properly required for the discharge of the Council’s functions. The Executive may provide Corporate Directors with responsibility to award contracts with a value over £500,000. Delegated authority is being sought in order to ensure that the framework is established by May 2012 and work for the first disposal of sites starts in June 2012.

The Public Contracts Regulations 2006 (the Regulations) do not apply to the disposal of land (Regulation 6(2)(e)). However it is now established (Auroux v Commune de Roanne, Case C-220/05) that procurement rules may apply to a mixed contract involving disposal of land and performance of works and/or services as may be the case in development agreements. A “planning exception” to procurement rules has been identified in recent European case law. The Muller case (Case C-451/08) has clarified that the pursuit of the public interest through the mere exercise of ordinary planning powers does not create a public contract. However, where the Council gains a pecuniary interest (i.e., a direct economic benefit) through such a transaction it is likely to be caught by the procurement rules.

In examining what constitutes direct economic benefit the European Court of Justice in Muller stated that holding a legal right over the use of works so that they can be made available to the public may amount to a direct economic benefit (paragraph 51). This is also the view adopted by guidance from the Office for Government Commerce (OGC) (PPN 12/10, 30 June 2010, paragraph 54).

In relation to the transactions that are the subject of this report, disposal of land subject to the nomination rights to be retained by the Council is likely to amount to a direct economic benefit. In addition the management agreements in relation to care and support which will entail payment made by the Council for services provided by organisations will clearly amount to the receipt of direct economic benefit for the Council giving rise to a public contract.

Accordingly the framework agreement is being procured in compliance with the principles underpinning the Regulations and the Council’s Procurement Rules and competitive tendering procedure with advertisement is being used. The estimated value of this framework agreement is above the threshold for application of the Public Contracts Regulations 2006 (currently £173,934). The management of housing stock, community facilities and associated services are services that fall within Part B of the Regulations. Although Part B services do not need to strictly comply with the provisions of the Regulations, there is a requirement under EU rules for part B services to comply with the principles of equal treatment, non-discrimination and fair competition. The Council’s Procurement Rules require contracts over the value of £100,000 to be subject to competitive tender.

On completion of the procurement process qualifying organisations may be appointed to the framework agreement. Subsequent disposal of sites and associated services must be carried out in accordance with a fair and transparent process specified within the terms of the framework agreement.

The award of contracts pursuant to the framework will involve the disposal of Council owned sites to organisations on the framework. The title to each such site will need to be investigated in due course but the general position regarding disposal is set out below.
The Council may dispose of its surplus non housing sites for affordable housing developments pursuant to Section 123 of the Local Government Act 1972 under which the Council must, except with the Secretary of State’s consent, obtain best consideration for the sale.

(1) The Council may dispose of surplus housing sites with the consent of the Secretary of State (section 32 of the Housing Act 1985). The Housing General Consent 2005 Consent (amended 2011) paragraph 3E gives consent to the Council to dispose of any land held for the purposes of Part II of the Housing Act 1985 for the best consideration that can reasonably be obtained.

(2) The Secretary of State has also issued a General Consent under Section 25 of the Local Government Act 1988 for the disposal of land to registered providers of social housing. Under this Consent the Council may provide financial assistance or gratuitous benefit to a registered provider by, amongst other things, disposing of land at less than best consideration for development as housing accommodation provided certain conditions are satisfied.

(3) The Council must normally obtain best consideration in order to satisfy its fiduciary duty to Council tax and rent payers.

A disposal to a developer with a requirement for affordable housing provision in line with planning requirements is likely to satisfy the requirement to obtain best consideration. However, where an enhanced requirement for affordable housing is sought in respect of sites the Council will need to be satisfied that the benefits of securing additional affordable housing in the borough justify the receipt of less than best consideration for those sites.

5.3 **Environmental Implications**
An Environmental Impact Assessment was completed for this exercise and did not identify any negative impacts from the implementation of this process.

5.4 **Equality Impact Assessment**
An Equality Impact Assessment was completed on 16 October 2011.

b) The EIA identified that there would be no differential impacts. This decision was made because the disposal of Council-owned sites for affordable housing will enable the provision of much needed homes, family-sized homes and smaller homes for those under-occupying social housing, helping to tackle overcrowding, a top priority for the Council, as recommended by the Fairness Commission.

The EIA will be published and can be accessed on the Islington website.

6. **Conclusion and reasons for recommendations**

6.1 The Council is in the process of procurement process which will enable suitable organisations to be appointed to a Land Disposals Framework for Affordable Housing by the end of May 2012.

6.2 This report sets out the objectives of this procurement exercise and the expected outcomes and requests that authority be delegated to the Corporate Director of Housing and Adult Services to make the appointments to the Framework, in consultation with the Executive Member for Housing.

6.3 Once the Framework is in place the Council would be able to commence its disposals programme to enable delivery of more affordable housing on Council-owned sites designated for this purpose through the framework.

**Appendices**
- Appendix A - Exempt

**Background papers:** (available online or on request)