**COMHAIRLE CONTAE ÁTHA CLIATH THEAS  
SOUTH DUBLIN COUNTY COUNCIL**



**MEETING OF SOUTH DUBLIN COUNTY COUNCIL**

**Monday, 10th September 2018**

**Proposed Disposal of land at Kilcarbery, Dublin 22 to Adwood Limited of 702 Kilshane Drive, Northwest Business Park, Ballycoolin, Dublin 15 D15E670.**

South Dublin County Council (SDCC) developed a preliminary masterplan for a site at Kilcarbery and it was brought before the elected members of the Clondalkin Area Committee on the 18th January 2017 and was noted. At a Special Meeting of the Council on the 18th April 2017 the process to be embarked upon in relation to the site was presented and was adopted and approved.

On the 26th April 2017, SDCC sought expressions of interest to develop the 72.8 acres/29.46 ha. site at Kilcarbery, Dublin 22 in accordance with the preliminary masterplan. The successful economic operator would be responsible for the delivery of infrastructure enabling works (including a road junction, a spine road, a pumping station and rising main) and housing. The enabling works which will be funded through the Local Infrastructural Housing Activation Fund (LIHAF). The required housing tenure mix for the site is 30% social housing, to be sold by the economic operator to SDCC and 70% private residential units. The estimated capacity of the site was 892 units.

A two stage procurement process commenced involving a multi-disciplinary project board led by South Dublin County Council. The initial stage was to identify experienced consortia with a track record and experience/capacity to deliver a scheme of this scale. Nine economic operators submitted expressions of interest and these were shortlisted down to four to progress to the second stage- the competitive dialogue stage.

In September 2017 the second stage of the process commenced with the remaining four economic operators. Considerable design work by the economic operators to develop the masterplan into a full designed scheme capable of being evaluated and costed was carried out. This stage concluded with the submission of tenders by three of the short listed economic operators – one having withdrawn.

Following the above process the Project Board has recommended that Adwood Limited is the preferred economic operator who propose to construct 975 housing units, of which 294 of them will be for social housing, and the enabling works subject to planning permission. The whole process from commencement of the masterplan to recommending award of tender including complex technical and legal development has taken over two years.

Accordingly, I recommend that SDCC dispose of lands at Kilcarbery to Adwood Limited subject to the provisions of Section 183 of the Local Government Act 2001 as follows:

1. SDCC is the freehold owner of the development site and will issue a building licence to Adwood Limited. Title to the private residential units will transfer from SDCC upon completion of the units or phases of the development. Title to the social units will not transfer.
2. That the economic operator and SDCC shall use all reasonable endeavours to obtain planning permission pursuant to the provisions of the Planning & Development (Strategic Housing Development) Regulations 2017.
3. The Economic Operator shall prepare a draft Environmental Impact Statement (EIS) for the Development and shall submit the draft EIS to SDCC for approval within two months of the signing of the development agreement. Not later than 10 Working Days after SDCC receives the draft EIS, SDCC shall notify the Economic Operator in writing whether it approves the draft EIS. SDCC shall give reasons if it does not approve the draft EIS. If SDCC requires modification of the draft EIS or seeks to impose conditions on its approval or rejects the draft EIS, it shall set out its reasons in writing and shall in good faith endeavour to agree any changes or alterations it believes are required with the Economic Operator. If SDCC does not approve the draft EIS, the Economic Operator shall submit a revised draft EIS to SDCC for approval.
4. The Economic Operator shall prepare the draft Planning Application taking into account the masterplan and the preliminary planning reports for the development site and SDCC’s Development Plan 2016-2022 and shall submit it to SDCC for approval within four months after the date of the signing of the development agreement (or within such later period as SDCC may, at its discretion, agree).Owever
5. Not later than one month after SDCC receives the draft Planning Application, SDCC shall notify the Economic Operator in writing whether it approves the draft Planning Application (such approval not to be unreasonably withheld or delayed). SDCC shall give reasons if it does not approve the draft Planning Application. If SDCC requires modification of the draft Planning Application, or seeks to impose conditions on their approval or rejects the draft Planning Application, it shall set out its reasons in writing and shall in good faith endeavour to agree any changes or alterations it believes are required by the Economic Operator.
6. For the purposes of complying with the requirements of the Planning & Development (Strategic Housing Development) Regulations 2017, the Economic Operator shall, while it is preparing the draft Planning Application for submission to SDCC also consult with An Bord Pleanála, and shall deliver to SDCC, with the draft Planning Application, the Opinion issued by An Bord Pleanála confirming its view that the Planning Application constitutes a reasonable basis for an application pursuant to the Planning & Development (Strategic Housing Development) Regulations 2017 and that no further consideration or amendment to the draft Planning Application is required.
7. Within seven Working Days after receiving written approval to the Planning Application from SDCC, the Economic Operator shall submit the Planning Application to An Bord Pleanála in accordance with the requirements of the Planning & Development (Strategic Housing Development) Regulations 2017 and shall use all reasonable endeavours to obtain the Planning Permission as soon as practicable.
8. The Economic Operator shall pay all appropriate fees in respect of the Planning Application and shall thereafter take all reasonable steps to obtain the Planning Permission, including dealing in a timely manner with any requests from An Bord Pleanála in connection with the Planning Application.
9. On or before the fifth Working Day after the day on which the Economic Operator shall receive formal written notice from An Bord Pleanála of the decision to grant or to refuse planning permission on foot of the Planning Application (the "Decision") the Economic Operator shall deliver a copy of the Decision to SDCC.
10. Once planning permission has been obtained, SDCC shall permit the Economic Operator to enter on to the Development Site, in Phases in accordance with the Phasing Map (see attached) and Economic Operator’s Timetable below, on foot of licences (the "Licence") for each Phase, each such licence to be provided by SDCC for a period of 9 months from the date of the grant of Planning Permission to enable the Economic Operator carry out the Development in accordance with the Plans, the Economic Operator’s Timetable, and the Planning Permission. The programme for delivery is four years following planning permission as set out below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| ECONOMIC | OPERATOR’S | TIMETABLE |  |  |  |
|  | Phase 1 | Phase 2 | Phase 3 | Phase 4 |  |
|  | **2020** | **2021** | **2022** | **2023** | **TOTAL** |
| Social | 73 | 105 | 66 | 50 | 294 |
| Private | 95 | 217 | 195 | 174 | 681 |
| TOTAL | 168 | 322 | 261 | 224 | 975 |

1. The License or Licences (as appropriate) will be renewed by SDCC for further 3 month periods (or such other period to be determined by SDCC) provided the Economic Operator is in compliance with all its obligations contained herein.
2. Unless otherwise agreed by SDCC, the development shall be carried out in accordance with the Phasing schedule set out above. The Economic Operator shall only be entitled to be granted a licence to commence work on a subsequent Phase as provided for in the Phasing Map if SDCC is satisfied that:

Not less than 50% of the Units in the Phase under construction are at eaves level or beyond;

Any Economic Operator’s Consideration required to be paid to that date pursuant to development agreement has been paid in full;

The Development Bond for that subsequent Phase has been delivered to SDCC;

SDCC has granted a Licence to the Economic Operator for the relevant Phase; and

No more than two Phases may be underway in the Development at any one time.

1. If the Economic Operator proposes to commence work on a subsequent Phase, it shall notify SDCC in writing no more than ten (10) Working Days before the date of anticipated commencement of such work, identifying the subsequent Phase. SDCC’s Architect shall, as soon as practicable thereafter, inspect the Units in the Phase under construction and satisfy itself that 50% or more of the Units in the Phase under construction are at eaves level or beyond. The decision of SDCC’s Architect shall be final and binding in this regard.

1. If SDCC’s Architect is satisfied that 50% or more of the Units in the Phase under construction are at eaves level or beyond, then, subject to compliance, the Economic Operator shall be entitled to commence work on the said subsequent Phase provided however that work on the subsequent Phase shall not progress beyond completion of ground-floor slabs, road substructures and underground pipework until all the units in the preceding Phase are roofed and fully closed-in. In this regard, SDCC shall be entitled to issue a notice requiring the Economic Operator to cease work on the subsequent Phase if it is satisfied that the Units in the preceding Phase are not all roofed and fully closed-in and/or that works in the subsequent Phase have progressed to completion of ground-floor slabs, road structures and underground pipework. If SDCC issues such a notice, the developer shall immediately cease work on the subsequent Phase until such time as SDCC notifies the Developer that the units in the preceding Phase are roofed and fully closed-in.
2. The Economic Operator shall not be permitted to have access to the Development Site or any part thereof for the purposes of commencing the works in any Phase until all payments required to be paid as part of the Economic Operator’s Consideration to that date pursuant to development agreement have been paid in full to SDCC and SDCC is furnished with and confirms in writing that it is satisfied it has been provided with the following documents:

A certified copy of the executed Building Contract including all appendices thereto;

The Development Bond, duly executed, for the Works;

Certified copy appointment of the Project Supervisor Design Process;

Certified copy appointment of the Project Supervisor Construction Stage;

Certified copy appointment of the Design Certifier;

Certified copy appointment of the Assigned Certifier;

Certified copy email/s of notice/s of validation confirming submission of the commencement notice/s for the Works in accordance with the Building Control Regulations;

Copy Fire Safety Certificate (s) for the Works in the Phase;

All insurances as required pursuant to Clause 10;

The Health & Safety Plan; and

Certified copies of the Forms AF1 and AF2 duly completed and lodged with the Health and Safety Authority.

1. Title will transfer following satisfactory compliance and completion within the phasing as set out under the Building Licence.
2. That the consideration due to SDCC by Adwood Limited (the Economic Operator) is €38,000,000 payable as follows :-
   1. 10% (€3.8m) of the Economic Operator’s Consideration, on the execution of the Development Agreement.
   2. 5% (€1.9m) of the Economic Operator’s Consideration within 10 working days of the date of the grant of planning permission.
   3. 5% (€1.9m) of the Economic Operator’s Consideration not later than one Working Day before the date on which the Economic Operator is to be permitted to enter onto part of the development site for the purposes of commencing the development.

(d) 26.6% (€10,108,000) of the Economic Operator’s Consideration eighteen months from the date on which the Economic Operator was permitted to enter onto the development site for the purposes of commencing the development.

(e) 26.6% ( €10,108,000) of the Economic Operator’s Consideration 30 months from the date on which the Economic Operator was permitted to enter onto the development site for the purposes of commencing the development.

(f) The balance (€10,184,000) of the Economic Operator’s consideration 42 months from the date on which the Economic Operator was permitted to enter onto the development site for the purposes of commencing the development.

1. A social employment clause is set out in the agreement covering the period commencing on the date of grant of planning permission up to the date of practical completion of the development.
2. No agreement enforceable at law is created or is intended to be created until an exchange of contracts has taken place.
3. That the above proposal is subject to the necessary approval being obtained in order to allow the signing of the agreement with Adwood Limited.

**D. McLoughlin**

**Chief Executive**