To: City Executive Board

Date: 10th November 2010

Item No:

Report of: Head of Corporate Assets

Title of Report: Development of Land at Barton/Next Steps

Summary and Recommendations

Purpose of report: To provide Members with an update of progress in relation to bringing forward the above site, to give Members a detailed understanding of the options consideration and appraisal that has been undertaken, to seek specific agreement to the proposed delivery vehicle and the commencement of required procurement processes, and to seek agreement to matters in relation to the provision of community infrastructure, levels of affordable housing, and the like.

Key decision? Yes

Executive lead member: Cllr Ed Turner – Finance, Assets and Strategic Planning

Report approved by: Melbourne Barrett – Executive Director City Regeneration

Finance: Jackie Yates

Legal: Lindsay Cane

Policy Framework:

- More Housing, better Housing for all
- Stronger and more inclusive communities
- Improve the local quality of life
- Reduce crime and anti-social behaviour
- Tackle climate change and promote environmental resource management
- Regeneration Framework
- Oxfordshire Local Investment Plan (with HCA)

Recommendation(s):

That the City Executive Board:

1. Note the contents of this Report:
2. Agree the principle of the proposed delivery vehicle, being the establishment of a joint venture vehicle between the Council and an infrastructure fund provider.
3. Approves the commencement of a bespoke competition leading to the identification of a suitable infrastructure fund partner, as set out in the report, with a report back to CEB before any decision is made or commitment given.
4. Agree that the Council (as landowner) confirm the minimum requirement for affordable housing be set at 40% (and with that 40% being 100% social rented) and authorise the entry into of discussions with the Local Planning Authority with a view to achieving that requirement, as a result of the exceptional infrastructure costs of this project, and noting that HCA grant towards these costs cannot be guaranteed in the current climate
5. Subject to agreement by the Local Planning Authority, agree the principle of there being “priority” and “secondary” lists of required planning obligations, to be delivered subject to viability considerations.
6. Agree that 4 and 5 above be subject to the inclusion of appropriate mechanisms and checks and balances to ensure that the Council in its capacity as a partner in the Joint Venture, uses best endeavours to deliver at least 50% affordable housing (80% social rented, 20% shared ownership) and delivery of additional “secondary” planning obligations, through the possible opportunities described in this Report, and subject to viability and affordability considerations. Elected members have emphasised the priority of reaching at least 50% affordable housing if this is viable.
7. Confirm that housing development on the site between the period 2013-16 be built to Code of Sustainable Homes level 4, and after that date to code level 6, subject to the prevailing regulations.
8. Agree the continued exploration of the opportunity to introduce “higher value” uses into the development proposals.

Executive Summary

1. In order to meet the Council’s objectives regarding the outputs from the Land at Barton, it is necessary to engage with a delivery partner. In order to do this, it is imperative that the project presented to potential partners is viable and capable of delivery.

2. In the current property market, which is fragile for wider economic reasons, delivery partners target those opportunities which are most capable of delivering them a return. Where there is uncertainty regarding delivery, or the prospect that there will be a pro-longed negotiation to create viability, there is reluctance for parties to bid, and if they do; large risk premiums are charged. In short, creating certainty of delivery is key.

3. Barton is a large infrastructure led project which requires significant upfront funding before returns through the sale of land or houses can be made. In the current market these projects are more challenging to deliver due to their cash flow profile, i.e. large amounts of funding are required upfront and with returns only able to be delivered in the medium term and at uncertain dates. Hence, investors need to be even more convinced that this type of scheme is viable before committing to spend the money required to deliver the site.

4. As a consequence, they will take care to analyse the specific risk factors of a project, which in the case of Barton can be summarised as:

- **Technical issues/ abnormal costs**, e.g. landfill/remediation costs, transport provision including providing road access off the A40, undergrounding of electricity cables, removal of pylons, etc.
- **Section 106 requirements**, especially the need to deliver a school.
- **The lack of HCA grant** being available for social housing – partners will not, at present, assume that any level of grant is guaranteed. In the past, the HCA would have been in a strong position to support some of the costs of this project, but its budget has been sharply reduced in the Comprehensive Spending Review.
- **Percentage of affordable housing** in light of above factors.

5. Our consultants, having analysed the project in great detail, advise that due to the abnormal costs involved, the lack of grant for social housing, together with a normal S106 package and 50% affordable housing result in the site having a negative development value. They further advise that to make the scheme viable either a reduced level of affordable housing (40% which will be 100% social rented), a much reduced S106 package (potentially prejudicing the community facilities provided) is agreed, or a retail or other higher value use is permitted on the site. They conclude that of these the key variable is the level of affordable housing as it is understood that the majority of the S106 requirements are necessary for the regeneration benefits associated with the site, and the Council is not able, at this time, to commit to a significant retail or other high value use on the site.

6. Therefore, unless the Council commits to a minimum level of affordable housing of 40% or to a district centre anchored by a supermarket (which could drastically reduce the amount of housing available), there will be very limited interest from the market, and what interest there is will be highly caveated on achieving viability through a prolonged negotiation around affordable housing levels. This will significantly delay the delivery of housing on the site.

7. Unless the Council approach the market on the basis of a viable proposal, delivery of the project will be compromised. This, in short, means proposing to the market a project with 40% affordable housing provision or alternatively incorporating retail provision at a significant scale (over and above local retailing provision), which although helpful to overall scheme viability reduces by a significant proportion the number of residential dwellings the site can

deliver. On the assumption of an 8 acre land take for retail provision, this would reduce the number of residential units by around160.

8. The delivery structure proposed has sought to ensure that if, in the future, viability of the site changes through market shifts, increased availability of HCA funding, good design or by incorporating more valuable uses etc., the level of affordable housing can increase beyond the minimum set.

9. The structure is predicated on the Council putting its land into a joint venture with an infrastructure provider who will secure its investment against the value of the land. The Joint Venture will then service the site and sell plots of land to housing builders. By having a financing partner engaged in this way, it is expected that land values will be maximised through less expensive sources of financing than traditional routes and these increased levels of land value can be re-invested into the scheme to increase levels of affordable housing (or other outputs as the Council deem important). The structure will also allow for OCC to retain a higher degree of control over how the site is delivered.

10. The exact detail of how that will work will emerge through the procurement and will be presented to CEB in the next report as part of the decision making process. In principle the suggested vehicle will have flexibility to inject further investment into JV which may come from profits generated, prudential borrowing, grant received etc. This additional investment could then be used to support the development of additional levels of affordable housing.

11. Assuming that securing planning permission for a district centre would be unacceptably time consuming, it is recommend that in order to deliver the housing required at Barton in the timescales required, the Council adopt the structure set out in this report and to ensure that this is achievable, a viable project is presented to the market predicated on a minimum level of 40% affordable housing. As noted in paragraph 9, if additional public funding is forthcoming, or if any increase in land values occurs, this proportion can be cascaded upwards.

Background

12. At its meeting of 31st March 2010 City Executive Board approved the continuation of work to bring forward the site at Barton for residential development as soon as possible. This report is now seeking approval to the preferred development vehicle, and to the commencement of the procurement of an appropriate delivery partner. Also to seek guidance and confirmation in relation to the provision of community infrastructure and affordable housing levels etc. in the context of the overall viability of the project and required timing of delivery. The site is as shown edged black on the attached drawing as Appendix 1. The Council’s land amounts to some 36 hectares (90 acres).

13. For the avoidance of doubt, when what might be construed as “planning issues” are discussed in this report and any related decisions made, the Council is doing so in its capacity as landowner of the site and not as the planning

authority. The Council will at all times maintain strict separation between its land owner and planning authority roles in relation to this project.

14. As with any other land owners or key stakeholders the Council will be making appropriate representations through the ongoing Area Action Planning (AAP) process that will lead to the delivery of a viable and sustainable scheme. The proposed timing of the delivery partner procurement will also allow the preferred partner, in due course, to contribute appropriately into the AAP process. This is considered an essential aspect.

15. It is not intended to substantially repeat in this report any of the information that was provided in the 31st March 2010 report, which is referenced as a background paper.

16. Members will recall that in June 2009 the City Council and the Homes and Community Agency (HCA) jointly appointed consultants to undertake feasibility work with a view to supporting the site's allocation for residential development within the emerging Core Strategy. That consultancy team comprised:

    - Knight Frank, who provided development appraisal and property related advice, also acting as Lead consultant;
    - LDA Design, advising on planning/master planning issues;
    - Peter Brett Associates (PBA) providing engineering, technical and highway related input; and
    - Pinsent Masons who provided (limited) legal support.

    That consultancy work involved sufficient due diligence required to support the site allocation through the planning process.

17. Through the preparation of the project brief, six options were selected by the development team, on the basis that they represented a broad range of potential development scenarios, requiring different levels of intervention and delivering a range of possible development outcomes. The costs in terms of access arrangements and site servicing were considered by PBA and Knight Frank, providing an initial view on anticipated development costs and revenues, as well as housing mix and types. LDA assessed site capacity for each option, based upon known site constraints and the land area to be included within each option.

18. The principal options tested were as follows:

Option	Description	Council Land Available for Housing	Possible number of residential units
A	**Retain sports pitches and allotments; access only through the Barton estate to the Green Road Roundabout**	**16.43 ha**	**822**

B	Relocate both sports pitches and allotments and remove substation; access only through the Barton estate to the Green Road Roundabout	**23.08 ha**	**1,154**
C	**Relocate sports pitches and retain allotments; access through an at-grade junction on the A40 and secondary access through Barton**	**19.62 ha**	**981**
D	Relocate both sports pitches and allotments; access through an at-grade junction on the A40 and secondary access through Barton	**19.33 ha**	**966**
E	Relocate sports pitches and retain allotments; access through a left in, left out junction, a bus bridge to Northway with secondary access through Barton	**18.82 ha**	**941**
F	Retain sports pitches and relocate allotments; access through a left in, left out junction and a bus bridge to Northway with secondary access through Barton	**15.33 ha**	**766**

19. Three of the options were essentially discounted because they would have required disruption and relocation of the existing allotments, and more detailed appraisal work has continued based on a variant Option A (which additionally allows for access onto the A40) and which retains the existing sports pitches and allotments left in situ, and Option C that retains the allotments but would require a relocation of the sports pitches. Elected members have made it clear they would expect that the sporting facilities available would need to be enhanced were such a relocation to take place, bringing a benefit to the local football clubs. Elected members and especially ward members have emphasised the undesirability of moving pitches and asked for full consideration to be given to keeping them in their current location.

20. More recently officers determined a need for the Council to commission its own independent advice (as opposed to the joint arrangements with HCA). This was because that in anticipation of the need to possibly negotiate a commercial joint venture arrangement with the HCA, the existing joint appointment was not appropriate; it was also felt that it represented an opportunity to peer review work undertaken to date, and for the Council to obtain its own independent advice as a landowner.

21. On that basis King Sturge, property consultants have recently been appointed through a competitive process, and Eversheds, to provide legal support and input.

22. It should be noted that all of the work undertaken by King Sturge (and Eversheds), and the detail that appears later in this report, has been modelled on the variant Option A, to essentially create a baseline position against which other options can be compared. Although Option C requires the relocation of the pitches at increased cost, which in principle would seem to be physically achievable, it does give the potential to provide additional residential units and access (highway) related benefits.

23. It is also the case that Leisure colleagues have some legitimate logistical/management concerns regarding pitch relocation which would need to be considered, qualified and appropriate conclusions drawn before any decision is made.

24. The Council has recently had completed by PBA an environmental Phase II report, including geo-physical, remediation, remediation strategy and cost estimate aspects. The results of the detailed investigation confirm that under Option A, any fill on site can be left in situ and covered with imported top soil, and the costs associated have been built into the appraisal. Costs and logistical issues associated with fill removal for Option C remains work in progress. This is also a critical aspect of pre-marketing due diligence which will serve to de-risk the opportunities.

Highway/Access Issues

25. As part of the initial and ongoing appraisal work PBA were commissioned to consider and advise on preferred and achievable highway and access solutions. This has been an extremely technical piece of work, which has been undertaken in part with the County Council as Highway Authority.

26. PBA initially modelled six potential solutions as set out below:

1	**An at-grade signal controlled junction to the A40**
2	An at-grade left in left out junction to the A40
3	An at-grade signal controlled roundabout
4	An all-vehicle access bridge across the A40
5	A bus-only access bridge across the A40
6	An access via Barton Estate

27. The final PBA technical note concludes Option 1 to be the preferred Option, as it would deliver more benefit than the others “in terms of the extraction of existing and development generated trips from the Barton estate and the Headington roundabout, and in terms of potential to provide further pedestrian and cycle connections across the A40, promoting non-car accessibility to Northway”. This option has now been “signed off” by the County Council highway authority and will factor into the AAP process appropriately. This highways related aspect appears for information only and will not figure further in this Report, beyond the fact that costs associated are modelled into the appraisal work that has been undertaken.

Report

28. The City Council’s ultimate goal as landowner is to achieve a vibrant and sustainable new housing community on its land at Barton. The earliest possible delivery of sustainable housing has been the key driver, and is supported by the following aims and objectives:

28.1. Provide an enabler for regeneration and promote social inclusion in the adjoining Barton and Northway Estates;

28.2. Provide a residential development including a range of complementary uses to serve the new and existing communities;

28.3. Provide improved transport links across the A40 at Barton to improve integration of any future development with the wider community;

28.4. Promote sustainable modes of transport and to minimise the impact of traffic by encouraging walking, cycling and the use of public transport;

28.5. Achieve holistic regeneration and create an exemplar development;

28.6. Encourage a low carbon lifestyle; and

28.7. Ensure that 'best consideration' for disposal of the site is achieved in both monetary and social terms.

29. The local development framework (LDF) draft Core strategy identifies the Barton site as one of four strategic sites, central to the delivery of housing and employment requirements of the City. These strategic sites have been identified due to their sustainable location and potential to assist in the regeneration of existing adjoining neighbourhoods.

Scheme Delivery Consideration - Key Challenges

<u>Site remediation –</u>

30. In June 2009 PBA carried out an initial Phase 1 desk study of the site and provided indicative budget costs for landfill removal, within a range of between £7.5m - £18.5m. The costs were significantly caveated as there are a number of factors that can significantly affect the cost including, but not limited to, the actual volume of material to be removed, the nature of material, types of contaminants present, excavation, sorting of the excavated material into categories, re-use of material on site, availability of and distance to a suitable landfill site, etc. A more detailed site investigation has very recently been completed by PBA suggesting that remediation costs are more likely to be in the order of £2.1m. In order to establish the base case position for the King Sturge financial model this figure has been used on the basis that for the option being tested, the recreation grounds and allotments will be retained in their current form and location.

<u>Provision of Education Capacity to serve the new community -</u>

31. A scheme of this scale will need to provide for an increase in education capacity as set out in the Planning Obligations Supplementary Planning Document (adopted April 2007). The document states:

"Developments likely to generate demand for more school places will be expected to contribute towards enhancing education facilities where these are insufficient to support the development. This may include contributions or the allocation of land (or both) to enable schools to be built or extended…. The costs of providing and equipping a new school will be calculated using the County Councils adopted Primary and Secondary School briefs and Government advice".

31. Oxfordshire County Council has confirmed that an education facility in the form of a primary school will be required in bringing the land at Barton forward for development.

32. The requirement for a primary school will have a direct impact on land value based upon cost and timing of delivery. For the purposes of the viability analysis we have adopted a cost of £7m for a 1.5 form entry primary school. This is an indicative cost provided by the County Council. The County has prepared a position statement in respect of the education provision. Appropriate levels of costs have also been included for other educational requirements.

33. It should be noted that the County Council have agreed to provide a letter of support for this project. That letter of support will helpfully acknowledge that given the likely costs of the development and the current economic climate that there will be a need to consider innovative and flexible ways of providing the necessary infrastructure. The letter of support provides position statements on education, transport and social and community infrastructure (from a County Council perspective) that will be required. This is considered essential in providing the greatest amount of certainty in the investment partner procurement process. There is close and productive working with County Council colleagues, facilitated through the existing West End Partnership governance arrangements. The position statements will be approved by the Chief Executive and Leader of the County Council, County Council Members will also be informally consulted on them. It should be noted that ultimately it will be for the Joint Venture partner to negotiate the basis of the S106 education provisions as part of the wider planning application in due course.

<u>Affordable housing requirement and delivery -</u>

34. As Members will be aware, the Council's planning policies require a minimum of 50% of the proposed dwellings in any development to be affordable units, with 80% of that requirement being social rented and 20% shared ownership. The current policies provide provision that if a developer can very clearly evidence that a development is not viable at that level, then there is an opportunity to negotiate the social housing provision down to a level that makes the development viable. There have been only very few instances where less than 50% housing has been accepted and certainly nothing in terms of development on the scale proposed within Barton. Each case is considered by Planning colleagues on its merits and any particular decision in this respect cannot be considered to have created a precedent upon which future decisions might be based.

35. The viability modelling undertaken by King Sturge explores the surplus/deficit position when 50% affordable housing, with an 80/20 split, is assumed as part of a wider development, and the overall impact it has on viability if this percentage is reduced. Given the uncertainties regarding availability of housing grant described above, the appraisals undertaken by King Sturge assume there is no housing grant available.

Houses and Communities Agency (HCA) -

36. Members should be aware that discussions with the Homes and Communities Agency (HCA) have been continuing. In short, the HCA advise in relation to the Barton project that they are in principle very keen to assist the City Council in delivery, and hope to work closely with the Council in the future to meet shared aims and objectives. They recognise that the site is a key priority for the City and Oxfordshire, and has been identified as one of the priority projects within the Local Investment Plan (LIP).

37. Given the current uncertainty surrounding HCA funding, they are currently unable to provide any details of the form and/or timing of any HCA funding or investment.

38. However, they do confirm that in the HCA's enabling role they are keen to remain involved in the project and where appropriate can continue to offer support and assistance through planning, procurement and marketing processes.

39. Suffice to say, the delivery model proposed in this report is sufficiently flexible to allow HCA participation at some point in the future should it become feasible. Whilst the full impact of the Comprehensive Spending Review is currently unknown, it is speculated that the funding available for the HCA's capital funded programmes over the 2011/2014 period will be significantly cut, and could be within the region of 30% less than the previous three year spending programme.

Highway/Transportation considerations -

40. The Report has commented on the highway options and likely outcome above. The finally agreed solution, and the costs of implementing that solution, potentially will have not insignificant impact on the form and density of development that the site will be capable of accommodating.

Other adjoining land holdings (Scottish & Southern Energy) -

41. Scottish & Southern Energy (SSE) own an area of land, as shown hatched on the attached plan, extending to some 3.95 ha (9.76 acres) which sits in the middle of the site fronting the A40. Part of the site is in the location of the Headington substation and the operational importance of this facility means it

must be retained. SSE have also indicated that they need to retain some of their surrounding land so as to allow for the substation's future expansion, such that approximately 50% of their current landholding is surplus to requirements. Access to their existing substation will remain via the A40, although this could be moved to provide an alternative entrance as part of the overall scheme.

42. At a meeting held with SSE representatives (from both their Property and Operations teams) it was confirmed that, in principle, they have Board approval to dispose of their surplus land for its inclusion in a wider development, subject to achieving "best consideration".

43. King Sturge have entered into discussions with SSE's Property advisors to seek agreement to draft Heads of Terms for disposal of their land to feed into the marketing process. The land is not essential to the development as a whole, and it could be left for a delivery partner to negotiate a position with SSE. SSE have indicated that they would offer a "letter of support" for the inclusion of their land holding. It is proposed that this is sought prior to marketing of the land. The Council will ensure that its position is fully protected on whatever basis the matter moves forward with SSE. On the basis of discussions undertaken to date it looks unlikely that detailed terms for the inclusion of their land within the development will be achieved prior to commencing the delivery partner procurement exercise.

44. The inclusion of the SSE land would result in the provision of an additional 50-100 residential units.

Undergrounding Electricity Cables

45. The site is traversed by five overhead electricity cables suspended from poles at appropriate heights for farm land, which will need to be re-aligned/buried underground. Discussions have taken place with SSE who have in the past confirmed that it would be possible to bury the power lines in order to accommodate development. SSE have also provided an estimate of costs for doing so which have been built into the appraisal.

46. It is understood, that if the routes of the power lines crossing the site were rationalised and diverted away from their existing alignment, say into one corridor to minimise impact upon the developable area, the costs would increase according to the length of the required routes, but would undoubtedly be beneficial from a development point of view. Actual costs would be subject to confirmation by SSE. The Council is in the process of obtaining further legal advice on the rights held by SSE in relation to the overhead lines. Again, it would be proposed to endeavour to agree principles with SSE prior to marketing.

47. SSE have made it clear that their Property and Operations considerations are two distinct businesses, and matters are likely to be progressed with them as two sets of separate and largely unrelated discussions.

Section 106 contributions

48. There are a number of Section 106 contributions attributable to the future development of the land at Barton in accordance with the Council's planning obligations Supplementary Planning Document (SPD). (Adopted April 2007) Contributions are expected towards items such as primary and secondary education, community facilities, libraries, museum, social and healthcare, indoor and outdoor sports facilities, allotments and open space, public art etc.

49. The whole issue of Section 106 contributions will require careful consideration, and especially with regard to their relationship with scheme viability. The market will accept that the level of development proposals certainly require contributions towards community infrastructure and on the basis confirmed under the Community Infrastructure Levy (CIL) regulations that came into force in April 2010.

50. However, it is likely that certain requirements will deserve to be prioritised with others placed in a secondary list that can be classified as "appropriate" subject to clarification on viability. As viability of the scheme is a major issue, and this is clear from the modelling work King Sturge have completed, it would be proposed to give potential partners a clear steer on the key priority obligation elements, and those that can be considered relatively less crucial.

51. In consultation with planning colleagues it would be proposed that a statement should be made available to the bidding parties prior to commencement of marketing. An appropriate letter of comfort similar to that to be obtained from the County Council, and as described above, will be obtained from the Local Planning Authority for inclusion with the marketing pack. It would be expected that any proposals/agreement here would emerge in due course through the AAP processes and adoption.

<u>Delivery of Code for Sustainable Homes (CSH)</u>

52. Since 1st May 2008 it has been mandatory to have a code rating for all new homes in England. The code is a sustainability standard above and beyond building regulations for all new domestic property. The objective is to reduce CO2 emissions resulting from fuel usage in domestic housing for lighting, heating and power. Compliance with the code minimises impact on the environment. A star rating of code levels 1-6 determines the overall sustainability of a new home, each representing a decrease in carbon emissions and an increase in sustainability standards across 9 areas, leading to a "zero carbon home" at code for sustainable homes level 6.

53. At present the standard is set to a mandatory CSH level 3 for all new development increasing to CSH level 4 in 2013. The goal currently is to achieve zero carbon dwellings by 2016 (albeit further guidance is awaited in this respect). Members will be aware that the City Council's approach to the Council house new build development that is currently in construction, and which was supported by HCA funding, is to achieve CSH level 4.

54. The cost of providing level 6 over and above level 4 is estimated to be in the order of £20k per unit, which is significant, and with there currently being little

market evidence of a “green premium” i.e. a willingness for people to pay more to live in and/or own such properties, it is a major drain on scheme viability. For the purposes of the King Sturge model it has been assumed that CSH level 4 will apply for the period 2013-16 and CSH 6 from 2016 onwards. This adds a total additional cost of c£6.2m over and above constructing purely to CSH level 4.

Title/Occupational Tenancies

55. The Council has a good title to its land. At present there are three leasehold titles on the agricultural land at Barton. It will be essential to ensure vacant possession prior to commencement of development. There are a number of agricultural tenants that will need to be displaced in order to secure vacant possession. There is a strategy in place to deal with this.

Property Market Issues

56. As an integral part their appraisal King Sturge have been requested to provide a commentary on the current residential/development market and the impact that may have on the selection of the preferred delivery vehicle. Given the significance of this aspect the following has been reproduced verbatim from their consolidated report.

57. “The recession has brought an end to the long property investment boom that has helped revitalise many cities and challenging sites across the UK over the past decade. The boom was fuelled by cheap credit, a bubble in the property market and significant and readily available public funding. Property development and regeneration over the next ten years is expected to be very different and cities will need to step up and play a more significant role alongside the private sector in bringing difficult sites forward.

58. Despite the comparative strength of the Oxford market to other areas of the UK, it is not immune from the national pressures of:

- ***Affordability*** – where residential prices will in the future be constrained by informal and regulatory controls of mortgage lenders with a greater emphasis upon income multipliers and loan to value ratios.

- ***Consolidation of mortgage providers*** – where there will be reluctance amongst lenders to commit to more than a minority of mortgages in individual projects. The consolidation of the mortgage lenders, for example Santander, will exacerbate this problem.

- ***Turnover/Volume of residential sales*** – as buyers are more cautious there has been a knock on affect on scale and phasing of development. The phasing of large scale projects such as Barton is critical in terms of holding costs.

- ***Reluctance from banks to lend on speculative developments*** - where banks will seek to ensure that developers have sufficient profit margins within their appraisals, typically around 25%, to protect their loan. Profit levels of this scale will impact negatively upon residual land values and those parties who have equity will be looking for significant returns on their investments.

59. Recovery of the economy will not remove the fundamental shifts of the housing finance market which will put a short, medium and long term pressure on the viability of large scale projects such as the site at Barton.

60. It is important to highlight that large infrastructure projects such as Barton are significantly different to smaller projects primarily due to differing cash flow profiles for large regeneration projects which are dependant upon upfront infrastructure and take considerably longer to become cash flow positive. There is a much smaller market for such sites, limited to cash rich developers and house builders who, with the lack of 3rd party debt, have significant balance sheets. A consequence of this is organisations are very particular about which schemes to bid for and opt for the least risky, i.e. ones with limited infrastructure requirements and solid planning positions, even outline permission in place. Without these attributes, purchasers will apply large risk factors in their appraisals, if they bid at all. Consequently, we believe there is little chance of OCC disposing of this site unconditionally to a house builder in its present state – certainly with the risk associated with the level of affordable housing required in the emerging policy which contributes to the scheme being unviable on a simple residual appraisal".

61. The table below shows the headline figures of a development appraisal for the land at Barton. Based upon high upfront infrastructure costs and 20% return to a developer the residual shows a negative land value:

Gross Development Value	£148.5m	822 housing units, 50% affordable split and 80/20 social rent/shared ownership
Build Costs	(£107.37m)	including fees and s106 of £14.68 m
Infrastructure Costs	(£22.2m)	including fees
Finance Costs	(£3.5m)	
Profit to Developer	(£25.2m)	20% profit on cost
Net Land Value	(£9.77m)	

Procurement issues -

62. In offering the site to the market the Council will wish to exercise a fair degree of control in relation to the form and content of the development, delivery timetable etc. In such circumstances it is generally felt not to be sufficiently robust to rely on planning related powers to ensure that the City Council as a landowner gets what it requires. Under such circumstances, and in the context of European Procurement considerations, such an approach will generally mean that the transaction is no longer regarded as a land disposal deal, but as a "works" contract. Given the value of the "works" the requirement for a full OJEU process will undoubtedly be triggered.

63. Based on the soft market testing undertaken, the advice of King Sturge and Eversheds is that the property market at present is extremely volatile, cost conscientious and generally very reluctant to enter into resource intensive, complex and lengthy OJEU processes on schemes of this nature, unless the full costs for the bidders are underwritten. Even if this is the case there are, in their view, many private sector investors/developers in the market that will not enter into such competitions, including developers/investors which they feel we would wish to attract to the Barton opportunity i.e. those with long-term "patient capital" (essentially parties who are prepared to take a longer term view on a return on their investment), and those which are not trader/developer type organisation. On that basis, through their qualitative and quantitative analysis, King Sturge clearly recommend that a non OJEU route is taken to procure a co-investment joint venture partner to provide the necessary infrastructure funding and delivery of serviced sites to developers, i.e. a bespoke competition approach.

64. Officers also asked that King Sturge consider the opportunity to use the HCA delivery Partner Panel Guidance, as this would potentially offer a more simple method of procuring a development (as opposed to an investor) partner, as it would avoid the need to enter into an OJEU procurement process (that process having been satisfied as part of setting up the partner panel by the HCA, which is effectively a framework arrangement). Having considered its suitability the view is that use of the panel would restrict access to the required wide range of potential partners who are not on the panel, and in effect create an extremely limited market place which may not lead to the best solution for the Council to deliver the land at Barton.

Viability considerations -

65. As part of their appraisal King Sturge have comprehensively considered the related viability opportunities and issues, which are summarised below:

Consideration	Issues
1. HCA injection of funding. The HCA could inject funding either as housing grant as and when the houses are built or invest money as equity into the project (either as a JV partner or as a third party funding body). This equity would effectively swap future grant for affordable housing into cash for upfront infrastructure delivery.	The HCA have little funding available at present and are unable to commit to any funding in a timeframe that would enable the Council to procure a delivery partner who could input into the AAP programme. Any HCA funding has therefore been discounted at this stage although the recommended legal structure will be flexible enough to incorporate it in the future should it become available.
2. Introduce higher value uses to develop the site. Promoting early wins which have a high land use value into the project may help recover infrastructure costs quickly. High value uses could be such things as a food store, student accommodation, hotel etc. Also the possibility of having the majority of the affordable housing in early phases of development which could then be block sold to a registered social provider.	Some higher value uses may be politically or in planning terms unacceptable. An initial phase of purely affordable accommodation may lead to problems with the market housing saleability of future phases. The land take for such higher value uses will reduce the number of housing units able to be delivered.
3. Private sector funding by developers. The likely return profile for a developer (as opposed to an investment partner) will mean that the initial money injected will take a long time before it is repaid and there will be a significant risk premium attached to this funding.	The approach is unlikely to be deliverable in the current market where developers and funders require a shorter term return on their capital, and funding for speculative development is difficult to secure.
4. Potential borrowing by the Council. The Council could potentially use prudential borrowing to inject funding into the project. This is inexpensive finance (although costs were raised by 1% at the CSR) but there is an issue of when and	This may be politically/financially unacceptable/ for the Council. Again the legal structure will be sufficiently flexible to allow this to happen in the future.

Consideration		Issues
	how this is received back.	
5.	Engaging with a private rental property fund. This structure aims to meet significant demand for rental properties providing a medium (7-10 years) investment opportunity for products focused on a range of rental markets (families, sharers, singletons and pre-buyers). This is a new concept which has been promoted by the likes of Savills, Aegon and Berkeley Group, and deals have recently been signed elsewhere in the country.	As this is a relatively new concept, the Funds are not yet populated, nor has there been a product of this nature delivered. The legal structure of the infrastructure fund proposals (9 below) does not preclude the engagement with a private sector rental property fund.
6.	Consider including other City Council sites within the Barton disposal where the other sites produce a quicker return on capital could mean that the two (or more) sites cross-subsidise each other.	After full consideration it is felt that there are no other suitable available sites in the Council's ownership which could produce early returns to cross-subsidise Barton's early infrastructure requirements.
7.	Change the make-up of affordable housing. This could be done by increasing the percentage of market housing and/or changing the 80-20 socially rented/shared ownership split and making assumptions around the availability of housing grant.	Such an approach may be unacceptable politically, but will have a significant impact on scheme delivery/viability and the financial consequences.
8.	Tax increment financing model (TIF). This approach aims to ring fence the tax take within the Barton scheme and use this as a method for repaying the prudential borrowing by the Council or repaying the private sector investment in the infrastructure over time. The idea is that there is greater security over this funding through the likely tax take which will improve the financing rates available	Whilst seemingly supported at Central Government level primary legislation may be required to implement this. There are also proposals regarding a short-term ring fencing of tax take (Council tax) to local authorities in relation to new build housing schemes, although this remains to be confirmed.
9.	Infrastructure fund. There are infrastructure funds in the market prepared to inject capital	This structure centres around the exact return requirements needed by the fund. It is critical

Consideration	Issues
upfront to receive a longer term return, possibly through a stake in the housing, possibly through the TIF model described above.	for this model that the scheme is viable over the medium term.
10. Energy providers. It is possible to get energy providers to fund the infrastructure (associated with energy provision) for a capital sum, providing they get a long term income stream from the energy provision for the site. The procurement of such a partner would require a full OJEU procurement process but this can be undertaken following the appointment of a delivery partner.	The Council through King Sturge have instructed Inventa Partners to establish the financial feasibility of this provision by testing it in the market place.
11. Community infrastructure provided by public sector. In order for the scheme to be viable this approach requires an agreement with the Planning Authority to prioritise S106 contributions. In this way a viable scheme can be taken to the market, but the socio-economic outputs and wider regeneration benefits (through S106 payments) can be secured if the scheme is viable over the longer term as it becomes de-risked.	This approach requires the planning authority to take a view on requiring certain Section 106 items at the outset. The King Sturge appraisal sets out their view as to what land value could be generated and what could be potentially reinvested back into the phases of the project to deliver the Section 106 outputs.
12. Change sustainability requirement. Consider the code for sustainable homes requirements placed on the development of this site. The additional cost for delivering code 6 (over code 4) is circa £20k per dwelling.	The King Sturge viability appraisal sets developing at CSH level 4 for the period 2013-2016 and at level 6 beyond that date. Development at this level would not be a barrier to future entry by the HCA.

Planning Consideration

66. King Sturge have undertaken as part of their commission a full planning review and have considered the consequences of the coalition government's changes and proposed changes to the planning system. It is their view that the optimum method for securing an appropriate planning permission will be a hybrid planning application comprising of outline details for the whole site and detailed

matters relating to highways, other essential infrastructure and an identified first phase of development.

67. The application will need to be determined in accordance with an up to date local planning policy framework, and a programme agreed that allows the joint venture investor partner involvement in the examination of the AAP, planning application preparation, determination and a start on site to the required timescales. King Sturge are also of the opinion that the planning application for the site is likely to require an Environmental Impact Assessment, and in that context, and to ensure a start on site in 2013, the work associated with this and seasonal ecological surveys will need to be carefully programmed.

DELIVERY STRUCTURE OPTIONS

68. The following potential delivery options have been established and modelled as part of the appraisal work to find an optimum delivery solution these are:

- Early land disposal; essentially selling the freehold of the site in the short term to a developer with no obligations beyond those imposed through planning;
- Contractual Development Arrangement; entering into a form of development agreement with a development partner in the short term
- Partnership with the HCA. Could involve the HCA providing funding to help finance the infrastructure of the site.
- Co-investment joint venture partnership - to provide necessary infrastructure funding and the delivery of serviced sites to house builders;
- Co-investment joint venture partnership – as above but also providing the right for the investor to provide development management services (i.e. a third party who will manage the development process) to the joint venture to enable the site to be fit for development and delivered.
- Prudential Borrowing (which may fit into any one of the preceding three options or may operate on a stand alone basis). This could involve the Council using Prudential borrowing to fund the provision of work needed to take the site through the planning process before selling service plots to the market; may involve the Council co-investing cash and land alongside its private sector partner in the co-investment joint venture partnership.

69. These options have been considered by reference to the required outputs and objectives of the Council, the application of European procurement rules and any procurement risk strategy, and the high level pros and cons of each option including the legal structure necessary for delivery.

70. A qualitative analysis of the delivery structures has then been undertaken by applying a weighted evaluation model addressing the following criteria:

The criteria for the qualitative analysis adopted were:

- The extent to which the Council's aims and objectives (as set out in paragraph 28 above) will be met

- Control – the Council's ability to influence the nature of the scheme over and above the general statutory planning process.

- Value for money/Social objectives – whether the delivery option is an enabler for regeneration and social inclusion for the adjoining estates.

- Reinvestment of receipts – The ability for the Council to reinvest the funds from the JV company back into the project.

- Widest market exposure – The ability to attract a high level of interest on a commercially deliverable basis and to ensure 'best consideration'.

- Timescale for delivery met, (ideally a start on housing construction before the end of 2013) and whether there is a need for an OJEU compliant procurement process.

- Cost transfer – minimising set up costs for the delivery structure.

71. A full analysis of the appraisal process and outcomes is provided within the King Sturge Viability, Delivery and Procurement report (background paper 3) and it is not intended to repeat that level of detail in this report.

72. Details of that analysis are set out in the King Sturge/Eversheds non technical report which is appended to the confidential 'Exempt from Publication' addendum to this report, and a summary of that analysis is set out below:

Option Analysis - Qualitative							
Option	OCC Objectives meet	OCC Control	VFM/Social Objectives	Reinvest-ment of Receipts	Widest Market Exposure	Timescale for Delivery met	Cost Transfer
Early land disposal	**X**	**X**	**X**	**X**	√	**X**	√
JV – infrastructure funding Model	√	√	√	√	√	√	√
JV – DM services	√	√	√	√	√	**X**	√
Contractual Development Arrangement	√	√	√	√	√	**X**	**X**
Prudential Borrowing	√	√	√	√	**X**	**X**	**X**
Partnerships with Energy Providers	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Partnership with the HCA	√	**X**	√	√	**X**	**X**	**X**

73. To summarise:

73.1. **Early land disposal** – It is unlikely that the market at present will pursue the development opportunity on an unconditional basis given the uncertain planning position and level of upfront infrastructure required. Any offers would be at existing use value with a small element of hope value. It does not meet the Council's requirements particularly in terms of accelerating development and retaining control over the development site (except through the planning process). There is a much greater risk of the site being land banked until such time as the associated risks are reduced and the scheme is seen to become viable by the developer and/or until market conditions improve.

73.2. **Co-investment JV partnership for infrastructure only** – This option sees the Council invest its land alongside an infrastructure fund provider and is considered the most suitable option to deliver the project and the Council's requirement. It enables the Council to take a true partnership stake, thereby being able to control/ influence the direction of developments and share in value created. This option also allows the potential participation of Private Rental Sector Initiative type funds. In terms of timescales it does not require an OJEU process and can be set up in time for the delivery partner to feed into the AAP process. A joint venture of this nature will allow the Barton site to be delivered in line with the timeframes required by the Council.

73.3. **Co-investment JV with Development Management Services** – This option meets all the Council's requirements for the same reasons as the infrastructure fund. However, because it requires an OJEU process, it will take at least 12 months longer before the JV partnership is formed, as Development Management Services are also being procured at the same time. This will mean that the Development Partner is unlikely to be able to feed into the AAP process. On that basis the timetable for delivery could be delayed by a further 1-2 years with a start on site not commencing prior to 2015. It is considered that this route may also impact on the number/quality of potential bidders, given the perceived market issues with the full OJEU process.

73.4. **Contractual Development Agreement** – This structure is also capable of meeting the Council's requirements. The Council would enter into a traditional development agreement with a development partner under which sites are drawn down as development pre-conditions are satisfied. It is likely that the process will trigger an OJEU procurement process (on the basis that the Council will wish to control the site to a greater extent than just using planning powers) and will take up to 12 months longer to procure a delivery partner. The inability to feed into the AAP process as above will potentially delay commencement on site for a further 1-2 years. Control through this arrangement may be more difficult to secure than through a true JV partnership. Additionally, this model would not put the Council's land interest and an investor's finance into a fund – thereby potentially making it more difficult to raise third party finance against those assets.

73.5. **Use of the Council's prudential borrowing powers such that the Council effectively delivers the scheme** – This approach will provide a number of benefits to the Council, including Council investment into the scheme, control over the site and the financial benefits of receiving all the land value on the sale of serviced plots. It would probably require the Council to procure development management services through an OJEU procurement process (assuming the financial thresholds are reached). Whilst this may be capable of being managed to suit the Council's timeframe (as potentially the procurement of purely development management services may be less complex than that required for a co-investment JV partnership with Development Management Services, or a contractual development agreement) it would mean the Council assuming all of the financing, property market and delivery risk of servicing the site prior to sale.

Risks associated with this route include:

- Site is on the Balance Sheet and thus recourse to the Council in the event of default;
- Likely to involve significant upfront costs for the Council in relation to planning and additional due diligence;
- A public sector led approach may not optimise the commercial potential of the site in terms of land use mix and configuration, and there is a risk that when the site is sold to the market there is a delay in delivery until the developers have secured a suitable alternative planning consent.

This route could potentially delay on site delivery by a further 2-3 years. The structure will need a prudential borrowing requirement of c£19 million. This option will be used as a 'comparator' in evaluating submitted bids based of the investor model.

73.6. **HCA Partnership** – The HCA have confirmed that they cannot provide any funding to help deliver the site at present. This option has, for that reason therefore, been discounted as it would unlikely be deliverable in required timescales. The intended infrastructure funding partnership route will enable HCA funding to be injected in the future if it becomes available. As stated above, the HCA are supportive of this approach.

73.7. **AAP Related Aspects** - King Sturge consider that it is essential that, in order to provide planning certainty and to meet the Council's timetable, a preferred developer is given the opportunity to participate in the preparation and examination of the AAP. If not involved, they suggest that there is a considerable risk of severe delays being incurred at a later stage regarding planning permission being granted and housing delivered, i.e. there is a risk that the developer would want to rework the scheme which would have a knock-on effect on the overall timetable for an on-site start date of 2013.

Based upon the current AAP timetable (described more fully in paragraph 103) a developer partner would ideally need to be on board by May 2011. This is not possible if a full OJEU procurement process is to be entered into.

Whilst there may be some opportunity for small adjustment to the AAP timetable, any significant delays would not be possible and in any event would not be consistent with maintaining complete separation of the Council's land ownership role and planning function.

74. From the analysis the results identify the joint venture route with an infrastructure fund provider as the most suitable to meet the City Council's objectives, one which enables the Council to retain control over the development opportunity (through the detail contained within the business plan of the joint venture), provides best value for money, offers the flexibility to reinvest/recycle any capital receipts and where the timescale for commencement of delivery in 2013 is met as a result of not needing to undertake an OJEU procurement process. The model will also be flexible enough to enable the injection of prudential borrowing and to facilitate the direct build and/or management of the social housing by the Council should it so wish, subject to viability/risk considerations.

Quantitive Analysis –

75. As described above, King Sturge have tested for the viability analysis a variant of Option A, which is based on an outline scheme retaining both the sports pitches and allotments in their current location. Analysis of a further Option C, which involves relocation of the sports pitches, but potentially delivers other benefits is work in progress, the viability of which can be fully tested once the full outcome of the Phase 2 site investigation (which has recently been completed) is finalised and a detailed scheme layout produced.

76. In modelling the base case two approaches were used, that of a

- traditional contractual development arrangement; in this scenario the developer takes a 20% profit on cost leaving a substantial deficit position in relation to land value, and

- co-investment partnership with an infrastructure funding partner. The purpose of the fund is to enable development of the Barton site by carrying out infrastructure works, obtaining planning consent and selling serviced sites, probably in four phases, to third party developers.

77. A third option was also considered being prudential borrowing by the Council itself either in part or in whole, to fund the infrastructure works. In this scenario the Council would still need to go through an OJEU process to procure development management services and would be exposed to significant risk in a direct development role. For those reasons this option has been discounted.

78. The full details of the quantitive analysis undertaken is contained within both their full viability, delivery and procurement report attached as a background paper and the consolidated report. It is not proposed to repeat level of detail in this report, but the approach adopted is summarised as follows.

79. The following table sets out the key assumptions for the appraisal model (Council land only):

Item	
Total number of dwellings	822
Affordable Housing %	50% (411 units)
Socially Rented %	80% (329 units)
Shared Ownership %	20% (82 units)
Remediation/Landfill	£2.1m
S106 Contributions incl School (£7m)	£14.68 m
CSH Level 6 (£20,675 per unit from 2016)	£6.2 m
HCA Grant	-
Energy Centre	£1 m

80. The model assumes a start on site date of December 2013 following the appointment of a delivery partner and on the basis that a satisfactory planning consent has been first obtained.

81. Using the above base assumptions the model, under all scenarios returns a negative land value. It is only when these base assumptions are varied, i.e. through reducing the amount of affordable housing, reducing S106 contributions and/or introducing higher land values, that the appraisal starts to go positive. It is clear from the viability analysis that introducing a food store into the scheme to assist the delivery of upfront infrastructure costs shows a positive position, which would enable the delivery of 50% affordable housing. The land take for such a proposal though would have the effect of reducing the number of affordable units by between 50 to 75. As described earlier in the report it would

be impossible to confirm that aspect with any certainty in the required timescale.

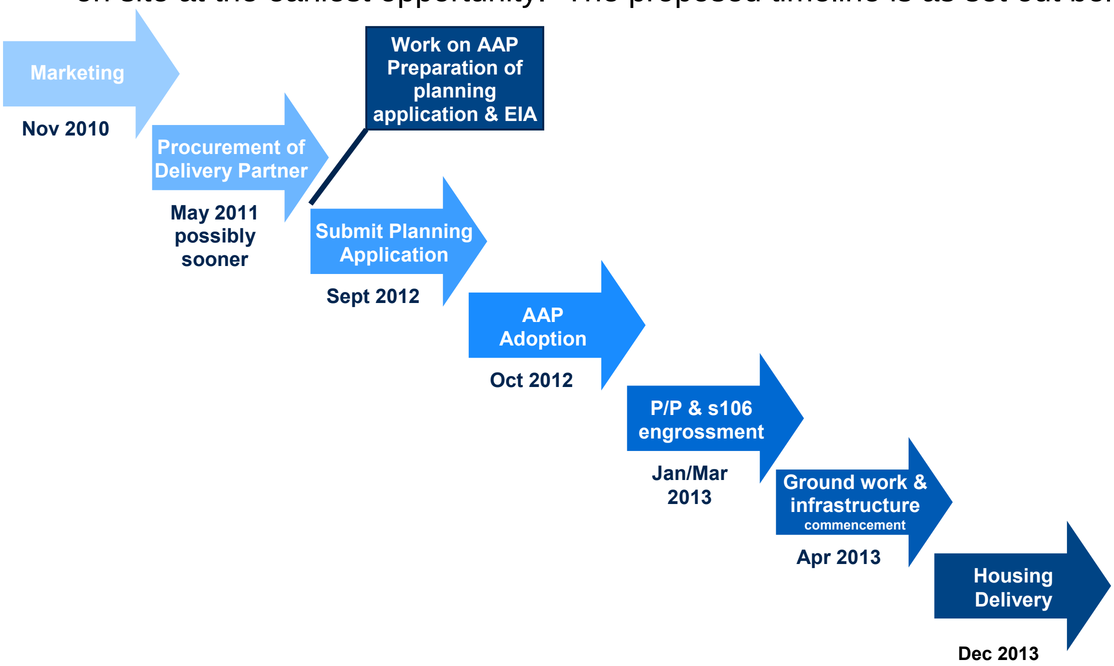
82. Alternatively, the reduction in the amount of affordable housing content within the scheme from 50% to 40% (100% social) assists in the surplus/deficit position, enabling the potential of additional receipts to be recycled back into the scheme and also the delivery of the full S106 package. The same is the case for the reduction in the S106 contributions. If the S106 contributions are reduced to zero the scheme is capable of delivering 50% affordable housing.

83. Clearly the analysis presents the hypothetical extremes of the various options tested. It would be clearly theoretically possible to mix and match the various options, e.g. providing lower than a 50% level of affordable housing and/or a reduced S106 package etc.

Project Timeline/Implementation -

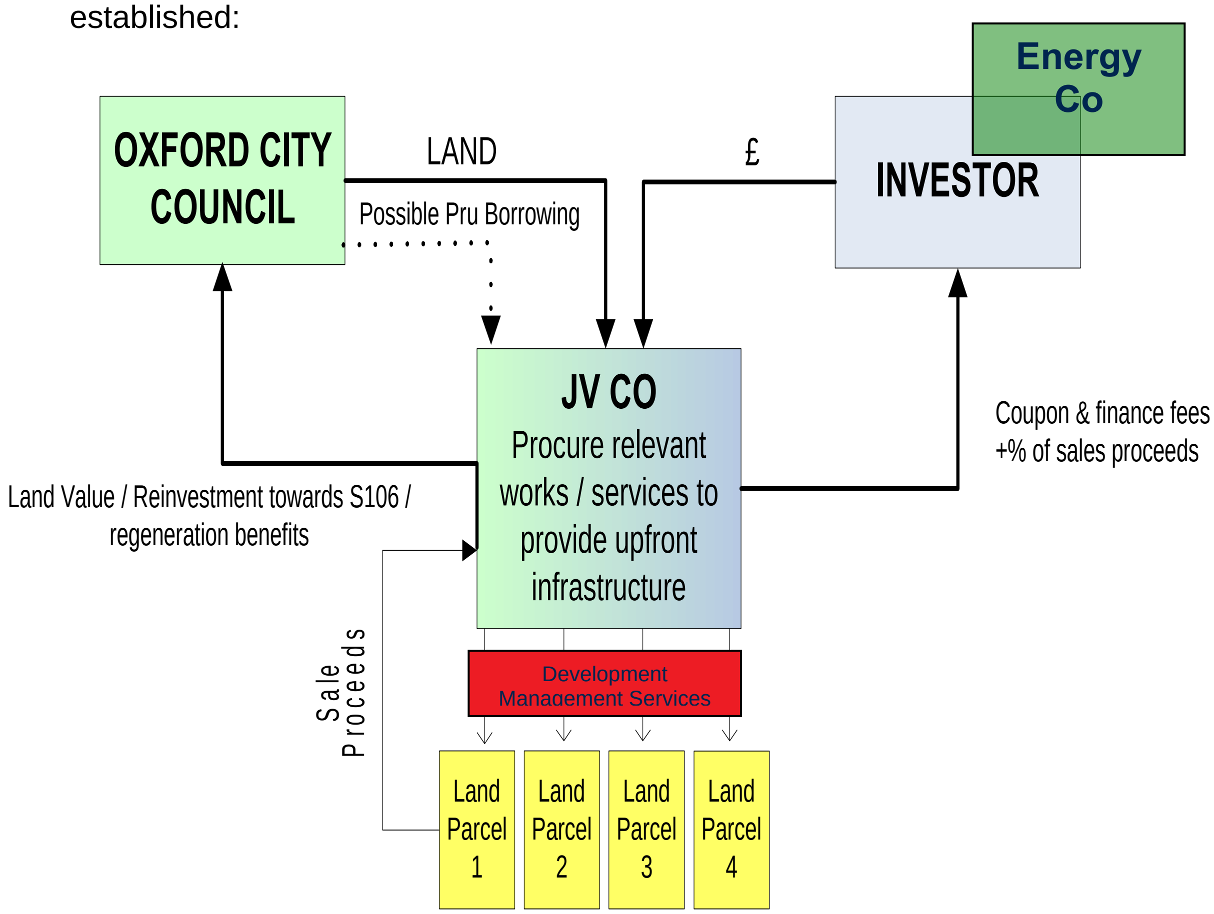
84. The timeline for project delivery as set out above is challenging and the issues as set out in this report need clear decisions if the proposed housing start on site is to be achieved by the end of 2013. Members should be aware that any delay will mean that that timescale is immediately prejudiced.

85. It is King Sturge's recommendation to the Council that following a non OJEU route will enable a partner to be appointed at the earliest date, and to allow input into the planning process for the Area Action Plan at the appropriate time. This is the vehicle to secure the delivery of the commencement of development on site at the earliest opportunity. The proposed timeline is as set out below:



The Joint Venture (JV) and its objectives

86. The diagram below sets out how the structure of the Joint Venture may be established:



Details of the co-investment partnership for infrastructure funding route

The Joint Venture Vehicle and its objectives

87. Advice has been taken from both King Sturge and Eversheds in relation to the most appropriate vehicle through which to structure the joint venture, and the resource and other implications for the Council in participating in such an approach. It is the case that much of that detail will not emerge until detailed negotiations commence and are concluded as part of any procurement process. The JV is likely to be modelled on a 50:50 split so that it is not seen as a local authority influenced company, but that will not mean that the Council can simply be “out voted” or that land profits will be distributed in the same proportion. The financial appraisal undertaken by King Sturge is on the basis of 75% of any residual land value accruing to the Council, although as stated above this detail will not be finalised at this stage.

88. Once established the Joint Venture operates as a private organisation, undertaking investment and commercial activity for reward. As such it will not be a ‘Contracting Authority’ and sits outside of the OJEU regulations in relation to procurement activities.

89. The Council will be represented on the Board of Directors of the JV. As Directors, Members will be charged with acting in the best interests of the company. Any Council officers acting as Directors are required to act in the best interests of the company but should not be put in a position that such

actions could be in detriment to the Council. Efforts will be made to try and mitigate as far as possible Council officers being placed in such a position.

Resourcing the Joint Venture –

90. The Joint Venture partnership will fulfil a number of functions, including:

- Land assembly – e.g. negotiating the position with SSE and ensuring vacant possession
- Master planning assuring a detailed master plan in conjunction with the local planning authority
- Planning – working up a planning application to be submitted when the AAP is adopted
- Infrastructure provision
- Quality control
- Management of open space
- Disposal of service plots
- Communications
- Marketing
- Financial and risk management

91. Eversheds advise that in a structure of this type it would be usual for the local authority to appoint two/three individuals to sit on the Board of the Joint Venture. If the Joint Venture vehicle is a company, those individuals will be Directors and have duties/responsibilities under the Companies Act 2006.

92. The City Council would need to consider whether it will want more regular interaction with the JV vehicle, i.e. over and above Board participation. If so the Council may then need to consider the establishment of sub-groups or project teams which will liaise with the Development Manager etc. They advise that this type of liaison is typical in most developments.

Options and taxation analysis –

93. In the infrastructure fund model Eversheds consider that the JV is likely to be either structured as a company or a partnership (and in that case a limited partnership or a limited liability partnership). The primary difference between company and partnership structures is that a company will be subject to corporation tax on its profits, leaving only its net profits available for distribution to shareholders. A partnership is a tax transparent vehicle, and profits and gains of the partnership accrue directly to partners. Eversheds consider that a partnership structure therefore avoids this additional layer of taxation and should be more efficient to the Council.

94. They further advise that from their experience investors are happy to invest via a partnership structure. Stamp Duty Land Tax (SDLT) will also need to be considered in detail. A charge to SDLT will typically arise regardless of the JV structure. In the case of a company this SDLT charge will be based on the consideration payable (or on the market value of the land in certain

circumstances put into the JV). In the case of a partnership this SDLT charge would be based on the other partners' interest following the transfer and the market value of the land at the date of transfer. SDLT will be payable by any subsequent purchaser of a serviced site, although structures may be available to mitigate the overall SDLT costs.

95. The Council will also need to carefully consider the tax implications of any proposed structure.

96. It is envisaged that a structure whereby the Council puts its land in at day one will be preferred, as the Joint Venture vehicle would then have security over the site and would be able to raise relatively inexpensive funding against the land. There will be no requirement for any form of corporate guarantees from the Council, and in this way the Council's liability will be limited to the land it has transferred into the Joint Venture vehicle.

97. The general objectives and vision of the Joint Venture vehicle will be set out within the legal constitutional documents which will incorporate the pre agreed site specific business plans, and which would be based on the Council's requirements.

98. More detailed advice is contained within the appended Consolidated report, although it is the case that further work will be required to be done in this respect should the matter proceed. Members should be reminded that at this stage they are approving the principle of the structure and authorising the commencement of the procurement process. They are not committing the Council to anything, with the outcome of the procurement process being reported back to CEB at a point in the future for consideration.

Area Action Plan Process and Timetable

99. Under the umbrella of the Core Strategy, this site will be considered in detail in an Area Action Plan (AAP). The AAP will form part of the Local Development Framework for Oxford and will set a framework for the development of the Land at Barton strategic site and consider its links with the existing areas of Barton and Northway. Opportunities for regeneration in Barton and Northway will also be part of the AAP

100. The AAP approach provides planning certainty for the site, allows constructive community involvement in the development of plans, involves a rigorous testing of the evidence at planning examination and allows the Council to retain significant planning control over the site however it is developed in the future. An AAP would also give opportunity to affect change in the existing communities of Barton and Northway.

101. The current timetable for the production of the AAP though to Adoption is as follows:

· Develop issues with community/stakeholders: January - June 2010
· Consult on Issues document: June - July 2010
· Produce Preferred Options document: Sept 2010 - Feb 2011

- Committees: Mar 2011
- Consult on Preferred Options document: March - mid April 2011
- Produce Proposed Submission Document: March 2011 - late July 2011 sign off
- Committees: Sept - Oct 2011
- Consult Proposed Submission Document: Oct - Nov 2011
- Finalise Submission Document: Nov - Dec 2011
- Submit the AAP: Jan 2012
- Hold examination hearing sessions: May 2012
- Receive Inspector's Report: Sept 2012
- Adopt DPD: Oct 2012

102. The AAP will contain a set of policies specific for the AAP area which may differ to some degree from City wide policies if required in order to achieve the objectives of the Plan, such as a vibrant and vital new community. In addition the Local Planning Authority will have to demonstrate that its AAP policies and proposals are viable and capable of delivery. It is anticipated by the Local Planning Authority that, in line with recent similar documents prepared by other authorities, the affordable housing policy target will need to be quite sophisticated in order to be responsive to viability issues. As such it is likely that consideration may be given to including provision in the policies to recouping any initial reduction in target if improving financial conditions arise during the course of the life of the Plan.

Level of Risk

103. In terms of the risks associated with a venture of this nature, a detailed risk analysis will accompany the Report back to CEB in due course. A commentary on the principle risk issues arising and possible/likely mitigation is as detailed below. Much of this will be addressed through detailed negotiation with the preferred investor partner.

Risk	Mitigation
Ensuring correct choice of investment partner from covenant/reputation etc perspective at the outset of the joint venture partnership	Ensure clear brief and evaluation criteria when selecting partner. For example: financial robustness may be a pass/fail. Ensure that legal documentation contains the requirement of a suitable parent company guarantee.
Investment partner becomes insolvent during the course of the joint venture partnership	Legal documentation to contain continual monitoring and information measures on covenant strength during the life of the joint venture partnership. In the event of insolvency, the result may be that the joint venture partner is bought out of the joint venture vehicle (by OCC or a nominee of OCC) at a discount - thereby retaining control over the development. In an insolvency

	situation the joint venture vehicle is a better structure than the contractual development agreement as all contracts/intellectual property etc will rest with the joint venture vehicle and not the (now insolvent) development partner.
Investment partner breach	Legal documentation to contain robust default provisions. Any contracts the investment partner has with the joint venture vehicle will terminate if the investment partner defaults under any facet of the arrangement. Investment partner will be “at risk” for funding it is providing and may lose any priority right of payment in the event of breach. A breach may occasion the right for OCC (or a nominee of OCC) to buy out the investment partner at a discount - thereby retaining control over the development. Here the joint venture vehicle is a better structure than the contractual development agreement as all contracts/intellectual property etc will rest with the joint venture vehicle and not the (now insolvent) development partner.
Investment partner exit	The selection process and evaluation criteria will test the investment partner’s appetite for a long term relationship and the legal documentation will also contain lock in periods and restrictions on the transfer of joint venture vehicle interests.
OCC exit	OCC can retain the ability to exit but is likely to need to reciprocate the commitment to a long term relationship. Exit provisions usually involve pre-emption rights for the non-exiting partner.
Funder step in rights	Subject to the market, it is likely that third party funders will want a first charge over the assets and will want to be able to step in the event of joint venture vehicle default. Careful consideration will be required in the negotiation of the arrangements with such third party funders and how that sits alongside the investment partners’ funding profile and any deferred land receipts back to OCC.
Inability for the joint venture partnership to dispose of serviced plots due to market or other reasons	The returns to the JV are likely to be tiered so before the funding provider does not get its return, OCC's land value receipt will first be lost. It is important to note, however, that there will be no re-course to OCC corporately. Mitigation will be through the selection of a partner (and subsequently development manager) that has a track record and expertise to deliver robust, deliverable schemes. This will include analysing the market and phasing the development according to market forecasts to ensure receipts from the development are maximised. There will not be the ability for re-negotiating key deliverables such as percentage of affordable housing etc.

	once a minimum has been set and it is incorporated into the JV's business plan and legal structure.

104. A risk assessment has been undertaken and the risk register is attached at Appendix 2.

Climate Change / Environmental Impact

105. The development will need to consider the impact upon Bayswater Brooke, and in particular the water courses and the hydrology of the site. Measures to avoid and mitigate any potential impacts, such as sustainable drainage measures to prevent pollution of ground water may therefore be required.

106. The project provides an opportunity to remediate or remove the historic landfill on the site.

107. Residential units forming part of the development will be constructed to code of sustainable homes level 4 up to 2016, and at level 6 after that date, and otherwise in accordance with building regulation requirements.

Equalities Implications

108. The Barton Project will provide an important means to deliver new housing and act as an enabler for the regeneration and promotion of social inclusion in the adjoining Barton and Northway communities. It can be envisaged that this will assist in significantly addressing current inequalities affecting existing residents.

109. An Equalities Impact Assessment will be included in the report back which seeks to recommend the appointment of a joint venture partner.

Financial Implications

110. The proposed structure will provide an innovative new solution to the development of the infrastructure on the land at Barton. OCC has no experience of a joint venture of this type and further external advice regarding tax and accounting treatment will be sought as the project progresses and will be funded within the total project budget.

111. The model provided by King Sturge highlights that the project is not viable at a 50% social housing level. If the site provided 60% private houses and 40% social rented housing the expected ‘profit’ to Oxford City Council is £1.7M. This provides a financial contingency and elected members have made it clear that a priority is to increase the level of affordable housing if financially possible.

112. There are financial implications in setting up a JV which are incorporated into the £330k estimated fees costs as set out in paragraph 120 below. The procurement process will appoint an investor partner for the Joint Venture outside of the OJEU process. If the award was successfully challenged significant costs may be incurred in ensuing legal fees etc. Legal advice from

Eversheds however, is that the structure suggested mitigates this risk and that this is a low risk strategy.

Other Options for the Land at Barton

113. The option of OCC developing the infrastructure on the land has been explored and modelled by King Sturge. The assumptions in this model were 60% private housing, 40% affordable housing and an education payment of £7.0M for primary and £3.4M for secondary.

114. Although the analysis shows that it is possible for us to complete the project ourselves this would expose the Council to the full development risk. The joint venture structure helps to de risk the project and ensure that the project is fully and professionally resourced with experts in this field.

115. To fund this development ourselves Oxford City Council would be required to borrow £19M at an estimated interest rate of 2.12% (before the spending review). The spending review confirmed that Oxford City Council can continue to prudentially borrow but rates have increased to 1% above the UK Gilts rate.

116. A further ‘do nothing’ option has been considered by officers. Oxford City Council could keep the land and wait for economic conditions to improve. The land could be sold at an appropriate time with a resultant capital receipt or developed at a later date either by the Council or in a JV structure. Officers are fairly certain that a direct sale now would result in the land being ‘banked’ by a large developer for development or sale at a later date when economic conditions improve resulting in no affordable housing within the preferred timescale.

117. The Council has identified £487,000 from CLG/ HCA funding to take the Barton scheme forward. This is in addition to the circa £467,000 (subject in part to final CLG approval) expended by the HCA working in partnership with the Council to bring the scheme forward as summarised in the table below:

Work Undertaken	Fees paid by		TOTAL	Comments
	HCA	OCC		
Work to support site allocation in core strategy	£300,000		£300,000	Completed
Further due diligence by LDA, PBA and formal valuation	£167,500		£167,500	Funding subject to final CLG approval
OCC due diligence relating to flood risk and land contamination		£47,000	£47,000	Completed
Consultancy to		£110,000	£110,000	Committed

support viability testing and procurement options through King Sturge and Eversheds				
Joint Venture partner procurement		£330,000	£330,000	Estimated cost
TOTAL	**£467,500**	**£487,000**	**£954,000**	

118. Fees have and will be incurred in bringing this complex project forward. Initial fees incurred are in relation to securing the site's allocation within the emerging Core Strategy, more recently in terms of undertaking essential pre-marketing due diligence and subsequently will be the costs associated in undertaking investment partner procurement. These costs have/will be met through a mix of HCA support and by the City Council through the utilisation of growth points funding.

119. A more detailed breakdown of the costs incurred to date is as follows:

- Work undertaken to support site allocation –
- Knight Frank Chartered Surveyors
- LDA Architects
- Pinsent Masons (title review)
- Peter Brett Associates
- HCA/EP pre-involvement market assessment

Total cost c£300k to be funded by the HCA

Further due diligence work

- Completion of LDA work
- Completion of PBA work
- Thames Water Utility & Service capacity study
- Scottish & Southern Energy capacity assessment
- Updated Thames Water and SSE utility studies
- Updated utility strategy (foul and surface water)
- Updated ecology survey
- Full topographical survey
- Tree survey
- Formal valuation
- Budget for marketing material and production

Total cost c£167.5k to be funded by HCA

120. Subject to approval of the recommendations contained within this report further fees will need to be incurred principally in relation to King Sturge and Eversheds to deal with all aspects of the investment partner procurement process, including the preparation and completion of all required legal documentation. It is anticipated that those costs will be in the order of £330k.

The Council will be endeavouring to recover as much as possible of that portion of total fee expenditure as it can as a condition of the procurement process, but at this stage it cannot be certain as to the extent of fees that can be recovered.

121. Fees have been agreed on a fixed basis, with an agreed breakdown of costs for each work package being set out. Abortive fees would be paid on the basis of work undertaken in accordance with the agreed schedule.

122. In order to maintain and to adhere to required delivery timescales, King Sturge/Eversheds have been instructed to proceed with preparation for the investor procurement process pending CEB consideration of the issues contained in this Report. The Council's fee exposure will not exceed £28k in that respect (and which is included in the £330k fee estimate for Joint Venture partner procurement detailed above).

123. Members should note that the actual and estimated fees as set out above totalling c£955k represents in the order of 0.7% of the total project value.

Legal Implications

124. The innovative procurement route suggested in this proposal is discussed in detail in the accompanying paper from Eversheds, and which is appended to the confidential 'Exempt from Publication' addendum to this report. While this Council has little direct experience of involvement in joint venture asset-backed vehicles of the type proposed, the Eversheds paper also describes the mechanisms by which the Council would be able to exercise an appropriate level of control over the joint venture. The paper also describes the statutory powers which authorise the Council to carry out these actions.

125. The statutory requirement to obtain Best Consideration in accordance with Section 123 of the Local Government Act 1972 will be fully considered in any report back to CEB.

126. Other Legal implications are as set out in the body of the report.

Conclusions

127. The conclusions to be drawn from the qualitative and quantative analysis undertaken by King Sturge and Eversheds are as follows:

- It is clear that the approach that the Council needs to consider to adopt is one that minimises the substantial costs associated with delivering required upfront infrastructure on the sites.

- To meet the objectives of the Council the preferred vehicle is a co-investment joint venture partnership for infrastructure only. It is considered possible for this structure to be delivered by way of a bespoke competition and without a need for a full OJEU process.

- Before the market is approached on this basis the proposition needs to be presented as commercially viable and the position with regards to affordable housing etc made as clear as possible:

    a. The Council as land owner should ask the Local Planning Authority to accept a minimum 40% affordable housing on the site and this must be set out in the marketing document. This would be on the basis that there are appropriate mechanisms in place to enable the recycling of profits, and any future grant, back into the project, to enable delivery of 50% or more affordable housing

    b. The Council as land owner should ask the Local Planning Authority to accept that it may not be possible to meet all S106 contributions that might be suggested, and to provide a statement setting out key priority S106 contributions which will be required.

    c. The Council should ask the Local Planning Authority to make a statement as to the acceptability of retail uses within the marketing documentation, subject to retail capacity studies being undertaken by the joint venture.

    d. The position that residential units will be constructed to the code of sustainable homes level 4, and after 2016 to level 6 should be confirmed.

    e. It should be noted that in going to the market in this way the Council is not committing to any firm position, and that further approvals from CEB will be sort once the exact details of market offerings are known. It can be anticipated that it will also be possible to test some of the viability issues through this procurement process.

Next Steps

128. To take this project to the next stage which will be the marketing for the procurement of an investment delivery partner, there are a number of issues that need to be resolved. These are as fully set out in Section 11 of the King Sturge Consolidate report, but can be summarised as follows below:

- A clear statement relating to the provision, timing and costs for the delivery of a primary school to be obtained from the Education Authority.
- Confirmation of the costs associated with landfill remediation.
- A letter of support from SSE for the inclusion of their land holding as part of a wider development.
- A clear statement that outlines the minimum level of affordable housing.
- A clear statement setting out key priority S106 contributions.
- A statement clearly setting out the sustainability requirements for the development
- Confirmation/implementation of a strategy to secure vacant possession of the site.

- A statement setting out the importance of the priority employment and neighbourhood centre initiatives for the scheme.
- Approval and support to set up a joint venture partnership which will involve the procurement of an infrastructure fund provider.
- Approval and support for procuring a delivery partner by following a non OJEU process of procurement by way of a bespoke competition.

129. At the same time our retained consultants will continue to work up the viability and feasibility of Option C.

Recommendation(s):

That the City Executive Board:

1. Note the contents of this Report.

2. Agree the principle of the proposed delivery vehicle, being the establishment of a joint venture vehicle between the Council and an infrastructure fund provider.

3. Approves the commencement of a bespoke competition leading to the identification of a suitable infrastructure fund partner, as set out in the report, with a report back to CEB before any decision is made or commitment given.

4. Agree that the Council (as landowner) confirm the minimum requirement for affordable housing be set at 40% (and with that 40% being 100% social rented) and authorise the entry into of discussions with the Local Planning Authority with a view to achieving that requirement, as a result of the exceptional infrastructure costs of this project, and noting that HCA grant towards these costs cannot be guaranteed in the current climate.

5. Subject to agreement by the Local Planning Authority, agree the principle of there being "priority" and "secondary" lists of required planning obligations, to be delivered subject to viability considerations.

6. Agree that 4 and 5 above be subject to the inclusion of appropriate mechanisms and checks and balances to ensure that the Council in its capacity as a partner in the Joint Venture, uses best endeavours to deliver at least 50% affordable housing (80% social rented, 20% shared ownership) and delivery of additional "secondary" planning obligations, through the possible opportunities described in this Report, and subject to viability and affordability considerations. Elected members have emphasised the priority of reaching at least 50% affordable housing if this is viable.

7. Confirm that housing development on the site between the period 2013-16 be built to Code of Sustainable Homes level 4, and after that date to code level 6, subject to the prevailing regulations.
8. Agree the continued exploration of the opportunity to introduce "higher value" uses into the development proposals.

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List of background papers:

1. CEB Report dated 31st March 2010, Land at Barton – Possible Disposal Opportunity
2. Knight Frank Financial Viability Report Phase 1 (June 2009 version 2)
3. Viability, Delivery and Procurement Report prepared by King Sturge/Eversheds October 2010
4. Planning Synopsis Report King Sturge August 2010
5. Baseline Data Review Report prepared by King Sturge October 2010
6. King Sturge/Evershed, Non Technical Report – Land at Barton, Oxford, October 2010

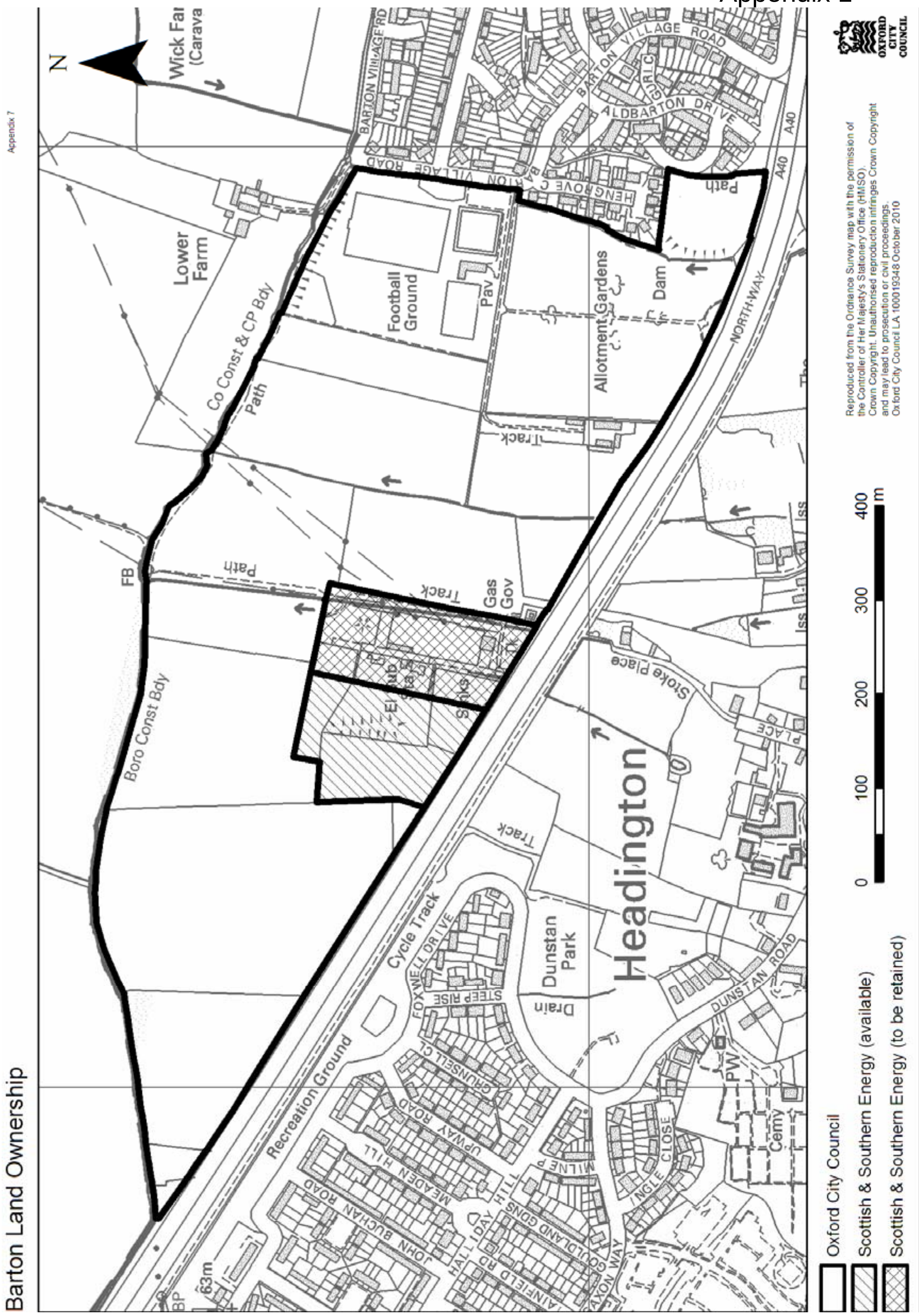
Appendices

1. **Site Plan**
2. **Risk Register**
3. **Exempt from Publication content**

Version number: 9

Reference: King Sturge/Eversheds, Non Technical Report Land at Barton, Oxford, October 2010

Appendix 1



Barton Land Ownership
Appendix 7
N
Oxford City Council
Scottish & Southern Energy (available)
Scottish & Southern Energy (to be retained)
0
100
200
300
400
m
Reproduced from the Ordnance Survey map with the permission of the Controller of Her Majesty's Stationery Office (HMSO).
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Oxford City Council LA 100019348 October 2010
OXFORD CITY COUNCIL
Headington
Lower Farm
Football Ground
Allotment Gardens
Dunstan Park
Recreation Ground
Cycle Track
Boro Const Bdy
Co Const & CP Bdy
NORTH WAY
A40

Appendix 2

Land at Barton

Risk ID	Risk						Corp Objec-tives	Gross Risk		Residual Risk		Current Risk		Owner	Date Risk Reviewed	Proximity Risk (Proje Contrac Only)
Category 000 – Service Area Code	**Risk Title**	**Oppor-tunity Threat**	**Risk Description**	**Risk Cause**	**Consequences**	**Date Raised**	**1 to 6**	**I**	**P**	**I**	**P**	**I**	**P**			
CEB-001-CA	Unsuccessful Procurement Process	T	Failure to secure sufficient number of bidders	The market is not receptive to the proposal as presented.	The Council has to consider repackaging the proposal and/or proceeding utilising an alternative delivery vehicle. There would be delay in the procurement process.	27/10/201	1	4	3	3	2			S Sprason		
CEB-002-CA	Unsuccessful Procurement Process	T	Failure to secure sufficient quality of bidders	The proposal as presented is considered to have too great a risk in commercial terms and/or not to show a sufficient rate of return.	The Council has to consider repackaging the proposal and/or proceeding utilising an alternative delivery vehicle. There would be delay in the procurement process.	27/10/201	1	4	3	3	2			S Sprason		