

# Agenda

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## Scrutiny Committee

Date: **Wednesday 20 January 2016**

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Time: **6.15 pm**

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Place: **St Aldate's Room, Town Hall**

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For any further information please contact:

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# Scrutiny Committee

## Membership

<b>Chair</b>	Councillor Craig Simmons
	Councillor Tom Hayes
	Councillor Van Coulter
	Councillor Roy Darke
	Councillor James Fry
	Councillor Andrew Gant
	Councillor Sam Hollick
	Councillor David Henwood
	Councillor Jennifer Pegg
	Councillor Ben Lloyd-Shogbesan
	Councillor Linda Smith
	Councillor Sian Taylor

The quorum for this Committee is four, substitutes are permitted.

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# AGENDA

Pages

1 APOLOGIES FOR ABSENCE

2 DECLARATIONS OF INTEREST

3 POTENTIAL CALL IN OF THE CITY EXECUTIVE BOARD DECISION ON THE OXPENS REVISED DELIVERY STRATEGY

7 - 18

Contact Officer: David Edwards, Executive Director, Regeneration & Housing  
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Background Information
<p>The City Executive Board will be asked to consider the report which proposes a revised delivery strategy for the Oxpens development at its special meeting on 14 January 2015.</p> <p>This <b>provisional</b> meeting of the Scrutiny Committee has been scheduled in case that City Executive Board decision is called-in.</p>
Why is it on the agenda?
<p>For the Scrutiny Committee to hear any call-in of the City Executive Board decision on the Oxpens Revised Delivery Strategy.</p> <p>If the Scrutiny Committee is required to review the City Executive Board decision in light of any new representations. The Scrutiny Committee, on a majority, can decide to:</p> <ol style="list-style-type: none"><li>1. support the decision, which can then be acted on immediately; or</li><li>2. send the decision back with its comments to the City Executive Board who will then take a final decision.</li></ol>
Who has been invited to comment?
<p>The following Board Members and officers have been invited to attend the meeting to answer the Committee's questions:</p> <ul style="list-style-type: none"><li>• Councillor Price, Board Member Corporate Strategy and Economic Development</li><li>• Councillor Turner, Finance, Asset Management and Public Health</li><li>• Councillor Hollingsworth, Planning, Transport and Regulatory Services</li><li>• Peter Sloman, Chief Executive</li><li>• David Edwards, Executive Director, Regeneration &amp; Housing</li><li>• Nigel Kennedy, Head of Financial Services</li><li>• Lindsay Cane, Legal Services Manager</li></ul>

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#### **4 MINUTES**

The Minutes from 12 January 2016 will be circulated as a supplement to this agenda.

**Recommendation:** That the minutes of the meeting held on 12 January 2016 be APPROVED as a true and accurate record.

#### **5 DATES OF FUTURE MEETINGS**

Meetings are scheduled as followed:

2 February 2016

7 March 2016

5 April 2016

All meetings being at 6.15 pm.

#### **6 MATTERS EXEMPT FROM PUBLICATION**

If the Committee wishes to exclude the press and the public from the meeting during consideration of any of the items on the exempt from publication part of the agenda, it will be necessary for the Board to pass a resolution in accordance with the provisions of Paragraph 21(1)(b) of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 on the grounds that their presence could involve the likely disclosure of exempt information as described in specific paragraphs of Schedule I2A of the Local Government Act 1972.

The Committee may maintain the exemption if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

### **PART TWO** **MATTERS EXEMPT FROM PUBLICATION**

#### **7 CONFIDENTIAL APPENDICES - POTENTIAL CALL IN OF OXPENS REVISED DELIVERY STRATEGY**

19 - 30

## **DECLARING INTERESTS**

### **General duty**

You must declare any disclosable pecuniary interests when the meeting reaches the item on the agenda headed "Declarations of Interest" or as soon as it becomes apparent to you.

### **What is a disclosable pecuniary interest?**

Disclosable pecuniary interests relate to your\* employment; sponsorship (ie payment for expenses incurred by you in carrying out your duties as a councillor or towards your election expenses); contracts; land in the Council's area; licences for land in the Council's area; corporate tenancies; and securities. These declarations must be recorded in each councillor's Register of Interests which is publicly available on the Council's website.

### **Declaring an interest**

Where any matter disclosed in your Register of Interests is being considered at a meeting, you must declare that you have an interest. You should also disclose the nature as well as the existence of the interest.

If you have a disclosable pecuniary interest, after having declared it at the meeting you must not participate in discussion or voting on the item and must withdraw from the meeting whilst the matter is discussed.

### **Members' Code of Conduct and public perception**

Even if you do not have a disclosable pecuniary interest in a matter, the Members' Code of Conduct says that a member "must serve only the public interest and must never improperly confer an advantage or disadvantage on any person including yourself" and that "you must not place yourself in situations where your honesty and integrity may be questioned". What this means is that the matter of interests must be viewed within the context of the Code as a whole and regard should continue to be paid to the perception of the public.

\*Disclosable pecuniary interests that must be declared are not only those of the member her or himself but also those of the member's spouse, civil partner or person they are living with as husband or wife or as if they were civil partners.

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**To:** City Executive Board

**Date:** 14 January 2016

**Report of:** Executive Director Regeneration and Housing

**Title of Report:** Oxpens Revised Delivery Strategy

### Summary and Recommendations

**Purpose of report:** To provide an update and seek approval for an amendment to the strategy.

**Key decision** Yes

**Executive lead members:**

- Cllr Bob Price, Board Member for Corporate Strategy and Economic Development
- Cllr Ed Turner, Board Member for Finance, Asset Management and Public Health
- Councillor Alex Hollingsworth Board Member for Planning & Regulatory

**Policy Framework:** Corporate Plan - vibrant & sustainable economy; Core Strategy 2010; West End Area Action Plan 2008; Regeneration Framework 2010; Oxpens SPD 2013

**Recommendations:** That the City Executive Board resolves to:

1. Note the contents of this report;
2. Authorise a collaboration with Nuffield College to create an appropriate joint venture vehicle through which the Oxpens strategy can be delivered, on the basis that Nuffield College would act as an investor in the vehicle and in recognition of Nuffield's position as a key landowner in the development area, as set out in this report;
3. Delegate authority to the Executive Director, Regeneration and Housing, in consultation with the Chief Executive, s151 Officer and Monitoring Officer, to agree the terms of the Council's entry into such a joint venture vehicle;
4. Authorise (if required) the placement of an appropriate VEAT notice in regard to the proposed collaboration with Nuffield College;

5. Agree to the commencement of an appropriate competitive procurement exercise to select a developer joint venture partner to become a Member of the proposed joint venture vehicle
6. Delegate authority to the Executive Director, Regeneration and Housing to agree terms for the acquisition of land at Oxpens, as described in this report, in consultation with the Chief Executive, s151 and Monitoring Officers;
7. Delegate authority to the Chief Executive, in consultation with the Leader, to appoint directors to the joint venture company.

## **Appendices**

- Appendix 1 Risk Register
- Appendix 2 Land Ownership Plan
- Appendix 3 NOT FOR PUBLICATION Commercially Sensitive (Para 3, Sch 12A LGA 1972)
- Appendix 4 NOT FOR PUBLICATION Legal Privilege (Para 5, Sch 12A LGA 1972)

## **Background**

1. In October 2015 CEB approved a report authorising the acquisition of railway lands in order to combine the site with the City Council's adjoining landholdings, promote a mixed-use scheme and seek a private sector partner to undertake a comprehensive scheme of development.
2. Central Government has now confirmed the disposal of railway lands (owned by LCR: London and Continental Railways) at Oxpens to the Council on the basis of an unconditional sale for a fixed price.
3. Nuffield College and the Council have discussed the potential for a joint venture, including capital investment, in the West End. As the two predominant land owners in the area we are in a unique position to collaborate to deliver the vision set out in the West End Area Action Plan and, by jointly master-planning our assets, to ensure the efficient and effective delivery of development and infrastructure and optimisation of land values.
4. The terms set out by Central Government for the transfer of the railway lands have changed since the previous CEB report and now require a higher initial payment, but Central Government's requirement to share in future returns from the development (planning overage) is removed (unless the site is traded without planning permission where there is a requirement for a profit share). Nuffield College is prepared to invest jointly with the Council to acquire the railways lands and move forward the development on Oxpens in partnership, including seeking a private sector investor for the development. This collaboration is supported by Central Government and the Secretary of State for Communities and Local Government as identified in the City Deal.



5. In October 2015, CEB authorised the creation of a wholly owned investment vehicle and the commencement of a competitive exercise to secure a joint venture partner to become a Member of such a vehicle. (CEB 15 October 2015 Recommendation No.3). It is now proposed that the investment vehicle is set up jointly with Nuffield College, and that a competitive exercise is subsequently undertaken to secure a private sector joint venture partner to provide investment and move forward a comprehensive development scheme. The joint venture vehicle would be a limited liability company.

### **Priority**

6. The Oxpens development is a strategic priority in the Oxford City Deal and the Oxfordshire Strategic Economic Plan unlocking major private sector investment and jobs as well as delivering significant wider benefits, including:
  - essential business space and accommodation for new and growing enterprises and services which require links to the universities and service economy
  - city centre regeneration linked to major investment committed at the railway station and Westgate (£500m redevelopment now under construction)
  - transport improvements and flooding infrastructure which are essential to enable the city's economy to grow
  - providing a platform for wider regeneration including employment areas near the station and Osney Mead, and supporting redevelopment around Frideswide Square
  - providing new market and affordable housing (over 300 homes), and visitor accommodation.

### **Collaboration Agreement**

7. Nuffield College and the City Council have recognised an opportunity for a partnership arising from the unique combination of our respective positions as the predominant landowners in the area, our shared values, and our collective ambition to regenerate the area. This collaboration will be formalised both in a collaboration agreement and in the terms of a joint venture agreement to enable delivery of sites across the West End in accordance with the West End Area Action Plan and supplementary planning documents including the Oxpens Masterplan SPD. The joint objectives for the collaboration are as follows:
  - To craft a joint vision for a mixed-use social science and business quarter that connects major individual sites across the city centre west end.
  - To increase the supply of city centre housing for key workers, college graduates and those in need of affordable housing.

- To promote University spin-outs and multidisciplinary approaches to innovation<sup>1</sup>, for social and economic benefits
  - To deliver high quality developments in accordance with the West End Area Action Plan.
  - To optimise the value of our landholdings, subject to any legislative or legal requirements.
  - To identify joint investment opportunities and spin-out projects.
8. The partnership is for investment as opposed to procuring goods or services and therefore does not require the Council to undertake a competitive selection process compliant with EU procurement regulations. The proposed partnership with Nuffield College is considered by the Council to be consistent with the Council's procurement requirements as Nuffield College is in the unique position as the predominant landowner in the area with the exclusive ability to work with the Council to create a mixed-use social science and business quarter that connects major individual sites across the city centre west end. This includes the facility to masterplan, transfer uses and deliver sites within a comprehensive development programme, including acquiring or exchanging interests in sites. There will be a competition on the open market for the developer investor partner in due course.

### **Collaboration Projects**

9. It is intended that the following initial projects will be undertaken. Other projects can be added by mutual agreement subject to future CEB reports as necessary.
- Production of an integrated masterplan for the Nuffield Island Site- Jam Factory - Oxpens- Westgate areas, building on the established planning framework and individual masterplans already in place
  - To invest in the Oxpens site and seek potential further opportunities in the West End area for joint working and further investment (subject to CEB & Council approvals).
  - To seek to apply social science expertise into the Oxford 'Smart Cities' programme.

### **Timing & Way Forward**

10. The Council proposes to acquire the railway lands jointly with Nuffield College and to plan and promote mixed-use development of the site in combination with the Council's adjoining land holdings. Nuffield College has confirmed (subject to contractual detail and procedural matters) that it is prepared to enter into a 50–50 JV partnership with the Council and will invest half the cost of the acquisition of the LCR land.
11. Following acquisition of the LCR land, a competitive process will be undertaken for a private sector partner. The development will then

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<sup>1</sup> Multidisciplinary approaches to innovation involve a wide range of different types of professionals coming together to solve problems and improve processes.

proceed with planning permission sought, strategic infrastructure being installed, and onward sale of plots for development of housing and commercial properties.

12. It should be noted that the Government's changes to planning policy regarding brownfield sites, permitted development and affordable housing, may mean changes that impact on the site across the period of the development. To mitigate the potential impact the Council will, as a partner in the investment vehicle, have certain matters reserved for reference back to (elected) Members, in particular, affordable housing policy. The baseline scheme for development will be in accordance with the Oxpens Masterplan SPD and deliver a sustainable mixed-use scheme including affordable housing in accordance with policy. It is recognised that over the lifetime of the development the scheme may need to flex and compromises between the partners may be required if circumstances change. The partnership will contain deadlock and dispute resolution processes as a last resort, similar to those in the Barton LLP agreement.
13. The private sector partner would take an interest in the investment vehicle, alongside the Council and Nuffield and hence dilute the initial 50:50 partnership. The final terms will be subject to negotiation and would be remitted back to CEB for approval, but are expected to incorporate the following principles:
  - The private sector partner will expect to become a 50% partner (and is unlikely to accept less) in exchange for providing funding, with the Council and Nuffield each holding 25%. However, agreement between all the parties will be required, or reference to resolution process as referred to above.
  - The Council's adjoining land will be sold to the investment vehicle for development at an agreed price subject to an independent valuation and a minimum price payable.
  - The private sector partner may partially refund the Council's initial cost of acquiring the railway lands (if required) - with the balance of the land value together with any development uplift being returned to the Council and Nuffield as development takes place.
  - There will be a profit share agreement between the parties.
  - The partners may have the opportunity to acquire elements of the completed development - for example the Council may have an interest in the affordable housing.
  - The intention is to have a new private sector partner in place within six months of the acquisition of the railway lands.

The detailed financial terms and business plan negotiated with the private sector partner will be subject to CEB and Nuffield College approval.

14. The Council has taken independent advice from leading property advisers JLL who has also carried out initial market testing with major

private sector developers. This has demonstrated that there is significant interest in the wider Oxpens site from developers of excellent standing, who have proven track records in bringing forward large, complex regeneration sites, combining housing and commercial elements.

### **Delivery and Development Programme**

15. It is anticipated that infrastructure development could start on site in 2017 with the support of Local Growth Fund (LGF) monies already secured.

### **Legal and Procurement Issues**

16. **Powers:** The City Council is entering into the project for the purposes of regeneration and economic growth exercising the General Power of Competence in Section 1 of the Localism Act 2011, and all other relevant powers
17. **Procurement:** Pinsent Masons solicitors have provided procurement advice to the Council. See [NOT FOR PUBLICATION] Appendix 4
18. Pinsent Mason advises that a joint venture structure must meet the Public Contracts Regulations (“PCR”) requirements if one of the partners is appointed to provide works or services. The proposed joint venture with Nuffield is, however, an investor partnership. In accordance with the Regulations, therefore, provided that Nuffield College is not appointed to provide works or services for the development, it is the view of the Council that their appointment to the JV falls outside of the PCR. To ensure maximum public transparency, however, consideration will be given as to whether the publication of a VEAT notice in regard to Nuffield’s appointment will assist the process.
19. **State Aid:** Provided that the Council enters into the vehicle on terms on which a private sector participant would accept then the Council can lawfully participate in the vehicle without State Aid arising. It will be necessary to keep a watching brief over this as terms are finalised.
20. **Competition:** Nuffield College, the proposed initial partner, is in an exclusive position to support delivery the West End Area Action Plan (which includes sites at Oxpens, Jam Factory, Island site and Worcester street car park) following a recent transfer of Christ Church assets to Nuffield. This opportunity arises from the unique combination of our positions as predominant landowners in the area, our shared values, and our collective knowledge base. There is no other investor that can offer this combination of attributes. As such, it is considered that any competition the Council could undertake at this point would add no value to the process. The Board is therefore asked to waive such of the Council’s contract rules as may apply by agreeing the appointment of Nuffield College as an investment partner in the proposed JV without a formal competitive selection process.

21. The selection of a private sector investor developer partner will require a form of competition.
22. The form of the vehicle will be a limited company, in accordance with the provisions of the Localism Act 2011.
23. The joint venture vehicle will not be a Public Body, or a 'Contracting Authority' as defined under public law, and would not discharge any of the statutory functions of the Council.
24. The joint venture aims to bring about social, economic and physical regeneration and is commercial, operates in normal market conditions, aims to make a profit and bear the risk of its activity - no losses can be met from the public purse.
25. Following sale of all landholdings and completion of development, the Joint Venture will dissolve unless agreed otherwise.
26. The Council's Legal Team has been consulted on this project and the Draft Heads of Terms for the Oxpens Delivery Partnership have been prepared on the basis of advice provided by Pinsent Mason lawyers and JLL property advisors.
27. Internal Governance. An Internal Board will be established to oversee the project comprising Directors, s151 Officer, Legal Officer, Planning, Housing and Property officers.

### **Financial Issues & Due Diligence**

28. The Council has sufficient financial resources to meet its share of the cost of acquiring the LCR land. Budgetary provision has already been made for a variable investment with a maximum exposure of £8.4m. (Full Council 7 December 2015)
29. Timeframes for receipts: Returns will be linked to a payment mechanism as yet to be agreed and reported back to CEB.
30. Further details are provided in [NOT FOR PUBLICATION] Appendix 3.
31. Legal, Property and Technical Fees: These were covered in the CEB report dated 15 October 2015 and approved as part of the project budget in by Council on 7 December 2015. The estimated fee expenditure is £370k.

### **Environmental Impact**

32. The land is on the Council's Prioritised list under Part 2A of the Environmental Protection Act 1990 and an intrusive investigation will be required as a condition of planning for any proposed change of use.

Remediation will be required to make the land suitable for residential use. The Council has already received desktop assessments on the potential ground conditions and has made allowances for ground works in its financial assessments.

33. The project provides the opportunity to remediate or remove the historic landfill on the site and to improve the flood capacity of the Oxpens area.

### **Equalities Impact**

34. The Initial Assessment is that the contents of this report do not lead to any unjustifiable differential impact on relevant groups. The project will provide an important means to deliver new private and affordable housing and commercial spaces in support of economic development and the creation of new jobs.

<b>Name and contact details of author:-</b>
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Name <b>Fiona Piercy</b>
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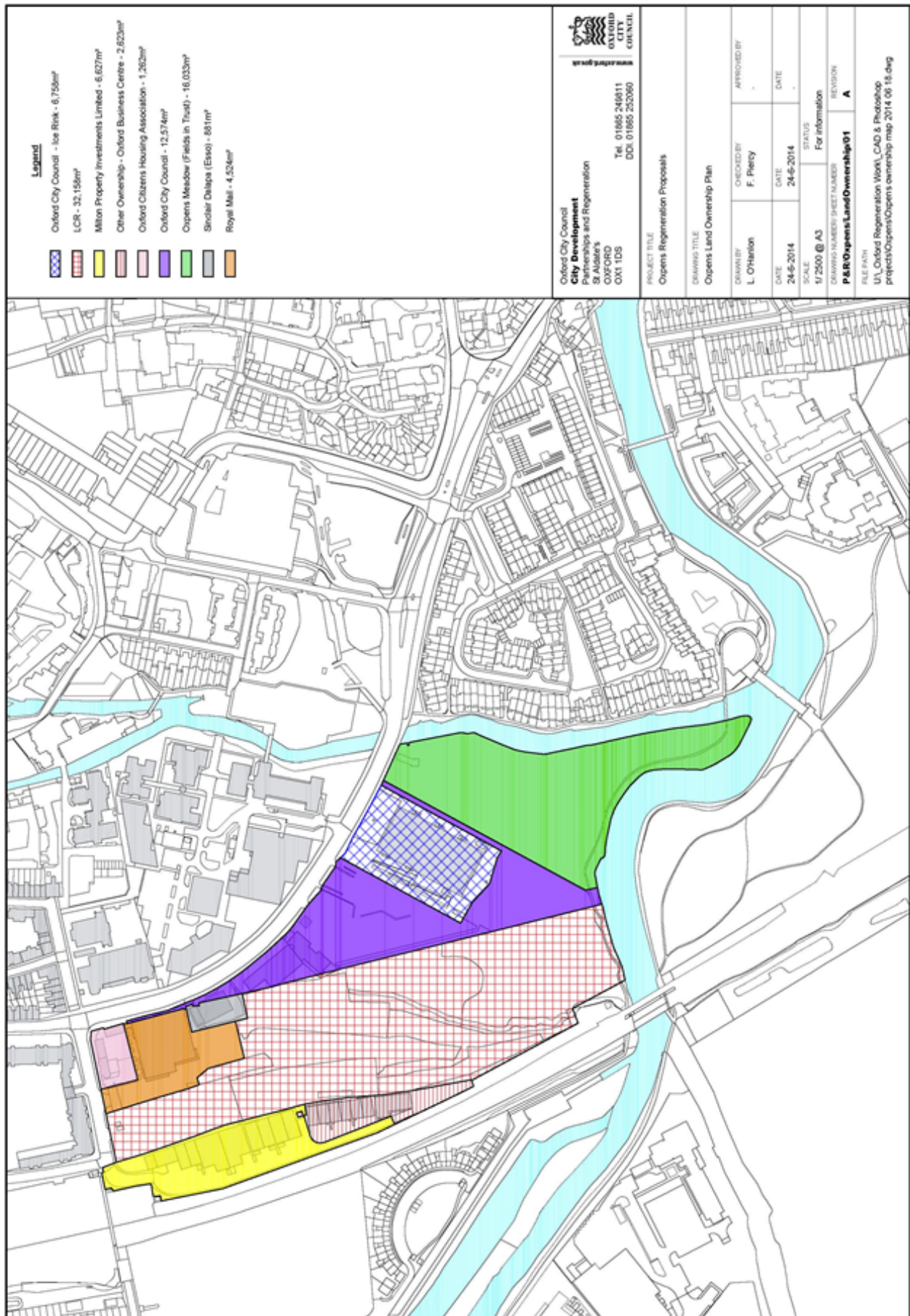
**Background Papers:** None

**Appendix 1 – Risk Register Oxpens Delivery Strategy**

Risk ID	Risk						Corporate Objective	Gross Risk		Current Risk		Residual Risk		Owner	Date Risk Reviewed	Proximity of Risk (Projects/Contracts Only)
Category -000- Service Area Code	Risk Title	Opportunity/Threat	Risk Description	Risk Cause	Consequence	Date raised	1 to 6	I	P	I	P	I	P			
CEB-001-R&H	Investor Agreement	Threat	Failure to secure investor partner	Differing objectives, unattractive terms	Delays in delivery	Oct 15		4	4	4	3	4	3	R&H (DE)		6 mths
CEB-002 – R & H	LGF Funding	Threat	Funding Terms not met	Lack of Investor agreement	Delays in delivery whilst new partner sought.	Jan 15		4	4	4	3	5	3	R&H (DE)		6 mths
CEB-003-R&H	Site conditions	Threat	Cost increases arising from unduly high abnormals	Abnormals above that anticipated	Longer development period, reduced returns	Jan 15		5	5	4	4	4	3	R&H (DE)		
CEB-004-R&H	Market Changes	Threat	Downturn impacts on returns	Property Market & economic cycles	Return on investment reduces	Jan 15		3	3	3	3	3	3	R&H (DE)		3-5yrs
CEB-005-R&H	Market Changes	Opportunity	Upturn impacts on returns	Property Market & economic cycles	Return on investment increases	Jan 15		3	3	3	3	3	3	R&H (DE)		3-5yrs
CEB-006-R&H	Land assembly	Threat	Unable to agree terms with adjacent landowners	Unrealistic expectations	Delays & exercise of CPO powers incurs additional cost	Jan 15		4	4	4	3	4	3	R&H (DE)		1mth-3 years

Risk ID	Risk Title	Action Owner	Accept, Contingency, Transfer, Reduce or Avoid	Details of Action	Key Milestone	Milestone Delivery Date	%Action Complete	Date Reviewed
001	Investor agreement	R&H (FP)	Accept & aim to reduce	Negotiate and agree, early testing, alternative approach	Soft market testing Agree draft heads of terms	Dec 15	10%	
002	LGF Funding	R&H FP	Accept & aim to reduce	Complete investor agreement.	Engrossed documents	Nov/Dec 16	0%	
003	Site Conditions	R&H	Accept & aim to reduce	Site investigations. Desktop research.	Complete desktop studies. Complete	September 2014	100%	
003	Site Conditions	LLP	Accept & aim to reduce	Site investigations. detailed	Complete intrusive investigations	Spring 2016	0%	
004	Market downturn	R&H (FP)	Accept	Defined level of investment capped relative to baseline land value.	JLL RLV appraisal	Dec 2015	100%	
004	Market downturn	Finance (NK)	Accept	MRP to be made should value of land drop below investment value	Annual Monitoring	Oct 2015	0%	
006	Land Assembly	R&H (FP)	Accept & aim to reduce	In principle agreement on railway land.	Finalise acquisition.	Jan 2015	80%	
006	Land Assembly	R&H (FP)	Accept & aim to reduce	Complete negotiations with relevant landowners.	Finalise position.	Summer 2016	50%	





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# Agenda Item 7

By virtue of paragraph(s) 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

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of the Local Government Act 1972.

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