

To: City Executive Board

Date: 27April 2015

Report of: Executive Director for City Regeneration and Housing

Title of Report: Oxpens Delivery Strategy

Summary and Recommendations

Purpose of report: To provide an update and seek approval to establish a private sector investor partnership and development delivery vehicle.

Key decision Yes

Executive lead members: Cllr Bob Price, Board Member for Corporate Strategy, Economic Development and Planning and Cllr Ed Turner, Board Member for Finance, Asset Management and Public Health

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:

1. Note the contents of the report.
2. Establish an investment vehicle with a private sector partner to include an agreement with the Department for Transport/Cabinet Office (DfT/CO) for the acquisition of the railway lands.
3. Approve the principle of direct sale of relevant Council Land to the investment vehicle, subject to formal valuation.
4. Delegate to the Executive Director for City Regeneration and Housing the authority to publish a Voluntary Ex Ante Transparency (VEAT) Notice in the Official Journal of European Union (OJEU), enter into an appropriate Heads of Terms document, and subsequently the Members Agreement for a Limited Liability Partnership commercial vehicle, based on the principles set out in this

report following consultation with the Council's s.151 Officer and Monitoring Officer.

5. Grant project approval for the Oxpens Delivery project as set out in this report.

Appendices

Appendix 1 Risk Register

Appendix 2 Equalities Impact Assessment

Appendix 3 Land Ownership Plan

Appendix 4 **NOT FOR PUBLICATION Legal Privilege (Para 5, Sch 12A LGA1972)**

Appendix 5 **NOT FOR PUBLICATION Commercially Sensitive (Para 3, Sch 12A LGA 1972)**

Background

1. The Oxpens site, strategically located between the railway station and Westgate redevelopment, represents one of the most significant development opportunities in Oxford city centre and has the potential to make a valuable contribution to the life and economy of the city. The Council wishes to see comprehensive redevelopment of the site.
2. Comprehensive redevelopment and regeneration of the Oxpens site is underpinned by a substantial policy framework including the Core Strategy (adopted March 2011), West End Area Action Plan (June 2008) and Oxpens Masterplan SPD (November 2013).
3. The Oxpens development is a strategic priority in the Oxford City Deal and the Oxfordshire Strategic Economic Plan and unlocks 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 starting in 2015);
 - 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.
4. This report sets out the proposed partnership approach to delivering the site to meet economic growth and wellbeing objectives. (See also

previous CEB and Council reports dated 3rd July 2014 and 14th July 2014).

City Council and DfT land ownership

5. The overall site comprises approximately 8.34 hectares (20.6 acres) of land in multiple ownerships. The combined City Council and DfT land accounts for over 80% of the site with the remainder being under 6 different ownerships. The DfT land is held by an agency, London and Continental Railways (LCR). See land ownership plan at Appendix 3.
6. The City Council officers, in discussion with the portfolio holder, have reached an agreement, in principle, with DfT and Cabinet Office for the sale of the railway lands into a new partnership vehicle owned jointly by the City Council and a private sector investor. The private sector investor is a developer whom London and Continental Railways has selected, and has been subject to due diligence by the City Council. The principles of the partnership vehicle are similar to those adopted at Barton, where the Council has a successful partnership with Grosvenor Developments.
7. This investment partnership will assemble the remainder of the Oxpens site, including the Council's ownerships, adopting a comprehensive approach to development that will enable environmental improvements including clean-up of contamination from previous railway uses and the implementation of a flood capacity improvement scheme agreed with the Environment Agency. The development needs to accommodate an existing deep sewer and fund new infrastructure. These benefits could not be delivered if the landholdings were brought forward for development in isolation, The area would be sterilised for many years, blocking the regeneration plans for the Westgate-Oxpens-Station area, and the proposals for strengthening beneficial links to Osney Mead employment area, as set out in the West End Area Action Plan, Oxpens SPD and Oxford Economic and Growth Strategy.
8. The principal terms for the joint venture partnership are in compliance with policy, public law and procurement regulations and will see the partnership take ownership of the railway lands and proceed with the comprehensive development of the Oxpens site. This approach also accords with the ambitions for the wider Oxford station redevelopment and the Ministerial commitments set out in the Oxford City Deal.

Oxpens Delivery Route - Investor Partnership

9. The proposal is for the creation of a partnership with the preferred bidder who has been placed in an exclusive rights position by LCR, following a competitive bidding process. This will take the form of a Limited Liability Partnership (LLP), its role being to assemble land, provide infrastructure and dispose of plots for development. The Council will be a 50-50 partner in the joint venture partnership, which is

a private sector company and will act in a commercial manner. The Council's motivation for entering into the LLP is to deliver physical regeneration supporting the social and economic wellbeing of the City and its residents.

10. There are key advantages in retaining a stake in the landholding through a partnership vehicle, rather the Council going it alone to develop the whole site, or by direct sale on the open market including:
 - The ability to ensure comprehensive development in accordance with adopted policies
 - Cost efficiencies on infrastructure and contaminated land remediation, and common servicing across the site.
 - Being party to the LLP will enable the Council to have a say over what scheme is submitted for planning
 - The Council will be able to share in any uplift of land values.
 - The ability to draw down private sector investment for land assembly and/or to indemnify the Council against CPO costs, if proved necessary.

Land Assembly, Activities and Disposal

11. Railway Lands. LCR's preferred bidder will acquire the land through an LLP of which the Council will be a 50% partner. The City Council will input funds as loan stock to the LLP to contribute to the acquisition of assets.
12. Council Land. The Council's developable interests (excluding Ice Rink) will transfer to the LLP post receipt of outline planning permission by way of a direct unconditional sale. The Council will sell its interests with the benefit of vacant possession by exercising relevant break clauses in the property leases at the appropriate time.
13. For the avoidance of doubt, Oxpens Meadow does not form part of the land transfer described above; use of the land is protected by a Deed of Covenant in favour of the Fields in Trust. The Deed allows for re-profiling of the meadow for the flood remediation scheme.
14. Remainder of the site: The Council has had discussions with other landholders and these interests will be brought into the development either by negotiation and mutual agreement, or failing this through Compulsory Purchase Order (CPO), subject to resolution.
15. Upon receipt of planning permission and completion of strategic infrastructure, fully/partially serviced plots will be sold by the LLP. The Council will receive a share of distributable profits.
16. The Railway Lands will transfer directly into the LLP. The LLP will undertake the necessary preparatory work and secure outline planning permission for the comprehensive development of the whole

Oxpenssite. With planned Local Growth Fund support, the LLP will advance the planning permission and implementation of infrastructure to include essential drainage works, land remediation and the extension to Becket Street. The earlier provision of the advanced infrastructure framework provides the platform for reducing risk, encouraging values and potentially increasing the pace of delivery. These benefits will also potentially extend across the wider area, including the masterplanproposals for Oxford Station.

Delivery and Development Programme

17. The Railway Lands have remained vacant for many years and the surrounding area has not realised its economic potential. The OxpensMasterplan SPD has been the catalyst to unlock the area's economic potential. Returning the Oxpens area swiftly to beneficial economic use is a key objective of the Council and Government in the City Deal.
18. The Partners have prepared a draft project delivery programme. The programme has taken into consideration the timing of adjacent developments at Frideswide Square and the Westgate Centre. Site investigation works will begin immediately following transfer of the railway lands. Subject to the investigations a planning application for enabling infrastructure will be made in late 2015. This would allow flood remediation works to start in Spring 2016 and the Becket Street extension to start on site in Spring 2017. The draft programme is set out below.

Agreement with DfT and Govt.	March 2015
CEB/Council approval	April 2015
Land Transfer (LCR)	May 2015
On-site investigations and enabling	June 2015
Enabling Infrastructure Planning Application: Flood Capacity Scheme	Late 2015
Start on Site – Flood Capacity Scheme	Spring 2016
Main Scheme Outline Planning Permission achieved	Summer 2016
Start on Site –Becket Street Extension	Spring 2017
Initial Phase Reserved Matters Planning Permission achieved	Autumn 2016
Anticipated Land Transfer (City Council)	2017
Start on site- residential/commercial buildings	2017

Table 1 Project Programme Headlines (Draft)

Legal and Procurement Issues

19. 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.
20. Following a competitive bidding process carried out by LCR (an agency of DfT), a developer was identified as the preferred bidder and placed in an exclusive rights position to acquire the railway lands. The principle of the sale has been approved by the LCR Board. The City Council proposes to form a joint venture partnership with the approved preferred bidder.
21. Procurement: PinsentMasons solicitors have provided procurement advice to the Council. See Appendix 4 NOT FOR PUBLICATION.
22. Pinsent Mason advises that the joint venture structure meets Public Contracts Regulations requirements. The joint venture is an investor partnership. In accordance with the Regulations, neither the vehicle nor the Council's partner in the vehicle can provide works or services for the development which might otherwise be construed as a public works contract.
23. 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.
24. Competition: The proposed partner is in an exclusive position. It would be simply impossible to carry out the proposed scheme without their active involvement. It is therefore considered that the general requirements for competition as required under the Public Contracts Regulations would not apply to the formation of the vehicle.
25. OJEU: Based on advice from Pinsent Masons the Council does not consider that the arrangements it is proposing would fall within the requirement to have issued an OJEU contract notice or run a competition prior to entering them. The Council will, however, post a Voluntary Ex Ante Transparency Notice in the OJEU.
26. The form of the vehicle will be a Limited Liability Partnership (LLP) which has flexibility and taxation benefits over a Limited Company, including in respect of its constitution, decision-making and profit retention. In addition, an LLP is a tax transparent structure which means that any surplus is taxed in the hands of the individual partners. This results in significant tax mitigation for the Council. On this basis there are legal and value for money considerations which make this the preferred practical approach.

27. The LLP 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.
28. The partnership 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. The partnership is a dedicated vehicle jointly owned, which would acquire the railway lands, and progressively draw down the Council's land interests, and acquire third party interests where required.
29. Following sale of all landholdings and completion of development, the LLP will dissolve, unless agreed otherwise.
30. 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 and agreed with the JV partner on the basis of advice provided by Pinsent Mason lawyers and Jones Lang LaSalle property advisors.

Financial Issues & Due Diligence

31. The technical studies show that a comprehensive scheme is potentially viable, but marginal based on current knowledge. A Local Growth Fundbid of £3.5m through the LEP has been agreed. This to provide supporting infrastructure including:
 - Flood Remediation scheme
 - Becket Street extension strategic elements
 - Contaminated land remediation
32. The initial Loan Stock invested in the LLP will be £2.0m. The amount of the Council's initial investment takes cognisance of an appraisal and residual land valuation of the site prepared by JLL. This sum is identified in the Capital Programme Budget for 2015/16 that was agreed at full Council on 18th February 2015.
33. Additional loan stock investment of £2m will be required to meet the obligations of the LLP 18 months post set up and transfer of the railway land. The Council can decide to increase its loan stock at that time by identifying additional funds from its own resources and budgeting for them. Alternatively the partner will provide the additional loan stock.
34. The Council will make available its non-developable landholdings at Oxpens Meadow to enable the flood capacity improvement scheme.
35. Future Opportunities. Additional opportunities for further investment in the LLP may arise, including additional land acquisition; these would be subject to separate reports.

36. For its investment, the City Council will receive a 50% share of any net profits that may arise, including from increased certainty or land value uplift having first reflected overage to previous landholders (including itself where applicable). If there is no profit or change in land value ingredients (i.e. value/cost/profit allowance) then the return will be finance interest at 6.5%p.a. on the share of costs incurred together with the repayment of the share of costs themselves. The anticipated life of the LLP is 5-7 years. An indicative financial model is indicated in Appendix 5 [NOT FOR PUBLICATION].
37. The Council will demonstrate that it has achieved best consideration on its own land by obtaining an independent professional valuation confirming that the price paid by the LLP is the highest that could reasonably be achieved had the land been sold on the open market. A minimum land value will apply. The disposal will satisfy the requirements of Section 123 of the Local Government Act 1972 for 'best consideration'.
38. The LLP is a tax transparent structure with any tax liabilities arising being the responsibility of the individual partners, not the vehicle itself.
39. The LLP will appoint an auditor. The City Council will lead on this process.
40. The Council has undertaken financial due diligence in respect of the investor partner in accordance with the Financial Regulations.
41. The City Council and Partner will have a 50-50 split of control over the Partnership (deadlocked), irrespective of the level of investment made by each partner.
42. Timeframes for receipts: Returns will be linked to sales of land plots. The programme currently anticipates first sales in 2017/18. This will be subject to a detailed business plan that will be agreed between partners and reported back to CEB.
43. Legal, Property and Technical Fees: The CEB and Council reports of 3rd July 2014 and 14th July 2014 respectively identified a total estimated cost £370k of which an initial budget of £320k was established to progress the first stages, wholly funded from New Growth Points grant. The anticipated process for appointment of a partner has changed from the earlier CEB report and the overall estimated fee cost has reduced, therefore the additional £50,000 budget is not required at this time, this being subject to review if there are any alterations to the planned delivery route.

Oxpens Delivery Strategy legal, property, technical fees			
Total Estimated	Revised Estimate	Spend/Committed to date	Approved Budget (NGP)
370k	320k	114k	320k

44. Internal Governance. An Internal Board will be established to oversee the project comprising Directors, s151 Finance Officer, Legal Officer, Planning, Housing and Property officers.
45. Staff Resources: The project will require nomination of at least 2 director-level staff to the LLP Board plus 2 dedicated delivery officers from the Regeneration & Housing Directorate, although it is not anticipated that this would not involve full time deployment; there is flexibility in the arrangement such that the LLP may draw down increased resource from the private sector partner, this being reflected through an equalisation mechanism. It is therefore anticipated that staff budgets put in place as part of the 2015/16 budget planning process will cover the resource required.

Environmental Impact

46. The site area 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 uses.
47. The project provides the opportunity to remediate or remove the historic landfill on the site.

Equalities Impact

48. 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.

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Background Papers: None

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