

To: Cabinet
Date: 9 February 2022
Report of: Executive Director for Development
Title of Report: Development Of Land At South Oxford Science Village (Land South Of Grenoble Road) - Delivery Vehicle and Land Option

Summary and recommendations	
Purpose of report:	This report seeks agreement for the Council to enter into a joint venture Limited Liability Partnership with Thames Water and Magdalen College, as the three land owners of the land allocated for redevelopment off Grenoble Road, known as the South Oxford Science Village site, and in doing so, to commit the land for development.
Key decision:	Yes
Cabinet Member:	Councillor Ed Turner, Deputy Leader, Statutory - Finance and Asset Management and Councillor Alex Hollingsworth, Cabinet Member for Planning and Housing Delivery.
Corporate Priority:	Enable an inclusive economy; Deliver more, affordable housing; Support thriving communities; and Pursue a zero carbon Oxford.
Policy Framework:	Council Strategy 2020-24

Recommendation(s): That Cabinet resolves:	
1.	To delegate to the Director for Development, in consultation with the Cabinet Members for Finance and Asset Management and Planning and Housing Delivery, the Head of Law and Governance and Head of Financial Services, the agreement to create a limited liability partnership with Magdalen College, Oxford, and Thames Water, its incorporation, and the agreement of the detailed drafting of the LLP agreement and any ancillary documents, and entering into it and any ancillary documents on behalf of the Council.
2.	To delegate to the Director for Development, in consultation with the Cabinet Members for Finance and Asset Management and Planning and Housing Delivery, the Head of Law and Governance and Head of Financial Services, the decision, following the receipt of advice, whether to pursue an option or conditional contract, the final drafting of any such option or contract, the granting of any such option or contract, or the entering into agreement on any

such option or contract which commits the Council's land, within the SOSV allocation, to be available to be drawn down by the LLP when the land is needed for development. This will include ensuring the requirements of S123 of the Local Government Act 1972 are met and that any disposal is for the best consideration that can reasonably be obtained or otherwise in compliance with the requirements of section 123.

3. To recommend to Council the establishment of a revenue budget of £556k, to enable the work to bring the site forward for development, and for internal and external resources its business. Where appropriate and agreed with the Head of Financial Services the costs will be capitalised and the appropriate budget vired from revenue to capital in line with the capitalisation.
4. To recommend to Council a loan of up to £500k to be made to the LLP to cover the council's share of running the LLP (% share based on % land ownership within the allocation) to be repaid with interest on terms agreed with the Head of Financial Services. The appropriate capital and revenue budgets to be established, to be agreed with the Head of Financial Services, based on the LLP Business Plan and Budget.

Appendices

Appendix 1	Risk Register (confidential)
Appendix 2	Delivery Vehicle Table (confidential)
Appendix 3	Collaboration Key Principles (confidential)

Introduction and background

1. The Council owns land south of Grenoble Road, to the west of Sandford Brake substation, which has long been identified as within an area with potential for development. The promotion of the land has been pursued, latterly through the South Oxfordshire Local Plan (SODC LP). The land, together with adjacent land in the ownership of Thames Water (TW) and Magdalen College Oxford (MDC) (together Landowners), has now been allocated in the adopted SODC LP for a mixed use development including approximately 3000 homes (2480 within the local plan period of 2020 to 2035, expansion of the Oxford Science Park, site for a park and ride and supporting infrastructure.
2. The Council's ownership of part of the allocated site, currently in agricultural use, enables it to participate in a development that will deliver housing that will contribute to meeting the City's housing needs as well as providing employment and job opportunities and facilities accessible to residents of Oxford. The SODC LP also identified the opportunity for the development to contribute to the regeneration of Blackbird Leys. The development of the land would therefore be consistent with the objectives of the Council and in addition provides the potential for a return to the Council.
3. In October 2021 the Cabinet considered a report regarding the options for bringing forward development for the site and agreed to seek a master developer to develop the land in partnership with the other Landowners. The key principles of collaboration

with the other Landowners were also agreed with the details delegated to the Director for Development in consultation with the Cabinet Members for Finance and Asset Management and Planning and Housing Delivery, the Head of Law and Governance and Head of Financial Services for final agreement.

4. Following on from the October report further work has been done on identifying the form of delivery vehicle that is most appropriate and the approach that is needed to ensure the development opportunity meets the regeneration aims of the Council and is attractive to the market. This report sets out the options considered and recommends the approach to formalising the arrangements with the other Landowners. This would enable the procurement of a master developer who would be responsible for taking forward the SOSV site to development.

Delivery Vehicle

5. The SODC LP seeks 'an agreed comprehensive masterplan' for the allocated site and as such there is a need to work with the other Landowners to bring forward a comprehensive development. The Cabinet report in October 2021 set out the options for delivering the development of the site and it was agreed to seek a master developer partner as providing the best approach for the development of the site.
6. The advice from commercial advisors is that the Landowners should work together and formalise their arrangements so there is a single joint venture vehicle for potential master developers to negotiate and deal with. To continue with three separate Landowners is likely to be less attractive to the market because of the risk of differing priorities and timescales.
7. A review of potential options for the delivery vehicle was undertaken by the Council's legal advisors. This has been undertaken on the basis that the landowners will form a special purpose vehicle (SPV)/joint venture (JV) on a commercial basis (although the development would also deliver regeneration benefits) that will then be responsible for contracting with a master developer to secure the development of the site. In considering the options the requirements of the other Landowners, as well as those of the Council, need to be taken into account.
8. The following options were identified;
 - Company limited by Shares
 - Company limited by Guarantee
 - Cooperative or Community Benefit Society
 - Limited Liability Partnership
9. A table summarising some of the key elements of each approach is attached at appendix B (confidential).
10. Following discussions with the other Landowners a Limited Liability Partnership (LLP) was identified as the preferred vehicle. The benefit of this option is that the Members of an LLP can own and operate the LLP with flexibility and it is tax transparent (meaning that the Members of an LLP which carries on its business with a view to profit are subject to tax on their shares of any profits generated by the LLP, instead of the LLP being taxed. For these reasons it is commonly used in similar circumstances. An LLP structure is therefore recommended for the SOSV joint venture between the Landowners.

11. The Council's legal advisers have identified that the relevant powers on which the Council will be relying in participating in the LLP and the development and regeneration of the site are:
 - the Investment Power under section 12 of the Local Government Act 2003;
 - the Incidental power under section 111 of the Local Government Act 1972; and
 - the general power of competence under section 1 of the Localism Act 2011.

LLP agreement principles and Heads of Terms

12. There is high level agreement between the Landowners regarding the principles of the collaboration and the LLP agreement, which are now set out in draft Heads of Terms. Subject to formal approval by each organisation, these will inform the detailed drafting of the final LLP agreement.
13. The collaboration principles previously agreed between the Landowners (see appendix 3 and/or Cabinet report October 2021) are proposed to be incorporated into the LLP agreement. This will be central in guiding the future development and the activity of the LLP.
14. It is proposed that the LLP has a Board with 2 representatives from each of the Landowners, 6 in total. The Board would be responsible for key strategic decisions, whilst a working group would be formed to carry out day to day roles. These details will be embedded in the LLP agreement.
15. Some key decisions will be reserved for the Member Landowners i.e. the Cabinet or Shareholder Committee in the case of the Council. These will need to be set out in the LLP agreement. It has already been agreed that the appointment of the master developer will be reserved to the Landowners, and the business plan, budget and the submission of the initial site-wide planning application have been proposed. The final list of the matters reserved for the Landowners' decisions will be agreed and set out in the LLP agreement.
16. All formal LLP decisions are proposed to be made on a unanimous basis i.e. all three Landowners must agree. As such, it will be necessary to have a dispute resolution mechanism should there be any decisions that the Board or Members cannot resolve. Ultimately, this will probably include a mechanism for one or more organisations exiting the LLP should agreement not be possible. This is standard practise for such joint venture working arrangements.
17. The LLP will need an initial injection of funds from the Members to be solvent and to be able to operate. The budget for the LLP has yet to be set however the principle has been established that the costs, as well as future value, will be shared between the Landowners based on their % share of the allocated site. For the Council it is important that funding to the LLP does not give rise to any Subsidy Control implications and this will require the Council ensuring that any investment in the LLP or funding to the LLP is provided on commercial terms (whether loan finance or equity).
18. The aim is to complete the drafting of the agreement of the LLP with a target for the end of February 2022, prior to a master developer being procured, although each party will need to go through appropriate governance to enable the agreement to be entered into. The LLP will need to have been incorporated (and so the terms of the LLP agreement agreed) prior to any master developer appointment. Delegation of the

detailed drafting and agreement of the LLP agreement is therefore sought to avoid delay to the procurement of a master developer.

Option/Contract

19. For a master developer it will be essential to show that the development land will be available to them when required. However, to transfer the land to the LLP, and then to transfer it on to the master developer, would have tax implications (in particular in the form of additional SDLT liability). Consideration has therefore been given to granting options, or conditional contracts, to the LLP that would enable the drawdown of the land from each of the Landowners in parcels when needed, or to direct its disposal to end purchaser housebuilders / developers. While the principle is the same from a Landowner perspective, the merits of options vs conditional contracts is based on their tax efficiency. Advisors for each of the Landowners are currently reviewing the alternatives with a view to making a recommendation. Delegation is therefore sought for the decision on whether an option or a conditional contract is the right approach, which will be based on forthcoming technical tax advice.
20. The Council has power to dispose of land under Section 123 of the Local Government Act 1972, but it must not do so for “a consideration less than the best that can be reasonably obtained”. This could be interpreted as being the best price achievable in the open market. For the SOSV site the following has been considered;
 - The approach is to work with the other Landowners within the allocation site to deliver a comprehensive scheme to enable an efficient approach to the delivery of the site. An equalisation of costs and values based on % land ownership has been agreed and will be incorporated into the LLP agreement.
 - Consideration has been given to the best approach to bring the site forward seeking to balance risk and reward and from this the master developer approach has been identified as the preferred approach to bringing forward the site (see October 2021 Cabinet report).
 - A minimum land value has been identified, based on financial modelling and consideration of benchmarks to protect the landowners from having to dispose of land at a low value. This was approved by Cabinet in October 2021.
 - The procurement of the master developer will be undertaken through a procurement exercise that will enable the market to be tested.
21. Delegation is sought to agree the detailed wording of the option / conditional contract following completion of negotiations and the receipt of final advice from the Council’s Commercial and Legal advisors. This will also need to include ensuring the requirements of S123 are met.

Budget for SOSV

22. Pursuing the allocation of the site and work to progress development of it has to date been funded from the Council’s reserves in the order of £987k The use of which has been previously agreed by Council. An amount of £390k is remaining in the reserve. The project is moving to the next stage whereby there will be further on-going financial commitments for the development of the site, including those linked to the formation of the LLP and the procurement of a master developer. Therefore, there is the need to consider how this phase will be resourced.

23. The level of work required by Council staff will increase as the project moves to the next phase and there is a need to ensure the LLP, master development procurement and the development of proposals for the site meet the Council's needs. Currently 1/3 of a Grade 11 Regeneration Manager is funded by the project and this is not considered to be sufficient going forward. Funding for a fulltime Grade 11 post is sought to enable the project to be taken forward. Additional property, legal and finance input is also sought equivalent to 0.6 of a Grade 11 post. Budget is sought for these posts over three years to cover the period whilst the LLP is established, the master developer is procured and planning proposals are developed for the site. The identification of the budget over three years facilitates recruitment on fixed term contracts. Beyond this period of time the need for additional staff resource will be reviewed.
24. In addition to staff resource the Council is also being supported by specialist consultancy support, particularly commercial and legal advice. Other specialist advice includes for example dealing with National Grid and SSE regarding wayleaves and tax advice. The advice is needed for the establishment of the LLP, where each landowner is separately represented. It is anticipated that this work will continue into the next financial year.
25. In addition to consultant support directly to the Council, there is some consultancy support that is needed for the landowners working collaboratively to progress the project. This includes project management, the procurement of the master developer and technical advice. These costs, although commissioned by one of the landowners the costs are shared between the landowners based on % share of the site allocation. Once the LLP is entered into it is anticipated that it would incur these costs but whilst there is a target of drafting the agreement by February 22 it is not anticipated that the LLP will be established until the landowners are ready to appoint the master developer. This will enable any minor changes necessary to meet with the master developer agreement. Next financial year there is therefore going to be a need to fund a share of the work needed to progress the project ahead of the LLP being formed.
26. In the light of the need for consultancy support outlined above in 2022/23 additional £100k is sought to be added to the existing budget.
27. Once the LLP is formed it will need working capital to operate. Once appointed the master developer will pursue and fund a planning application for the site (anticipated end 2023) and there will be a period of time whilst an application is developed, submitted and determined. Receipts to the LLP and then Landowners would be dependent on the bids received but are unlikely to occur until there are land deals post planning. The LLP will have a business case and identify a budget needed to enable it to operate. The Council would need to fund a share of the costs and therefore an initial loan of up to £500k with interest is sought, subject to the terms being agreed by the Head of Financial Services. The amount of working capital required would be dependent on the business plan and cash flow analysis of the LLP and the arrangement with the Master developer. Draw down of the loan will be based on this analysis and for illustrative purposes this has been shown over a 3 year period in the table below.
28. The LLP once formed will have a Board that will require two representatives of each Landowner. These representatives will have a key role in ensuring the work and decisions of the LLP meet the objectives and deliver the business plan and therefore it is anticipated that as far as the City Council is concerned these resources will need

to be Directors or Head of Service. As the Council has a number of companies there is a need to ensure sufficient funding to enable input at a senior level. Capitalising salary costs may release revenue budget to provide some element of backfill for the time required by such staff to undertake this role.

29. The following budget is sought:

Item	Budget		
	2022/23	2023/24	2024/25
LLP Board Representatives x2	£32,000	£32,000	£32,000
1FTE Regeneration Manager	£75,000	£75,000	£75,000
0.6FTE Property, Legal, Finance	£45,000	£45,000	£45,000
Consultant support	£100,000		
LLP Loan (up to £500k)	£200,000	£200,000	£100,000
Total	£452,000	£352,000	£252,000

30. It is recommended that £1.056m is added to the budget over 3 years to cover costs until receipts are received from the development. Whilst these costs will essentially be revenue in nature the probability is that they can be capitalised, albeit they will need to be funded by borrowing or capital receipts. Any funding or other support to the LLP will need to be compliant with Subsidy Control laws. A Subsidy Control Bill is currently making its way through Parliament and so the Council will need to take a watching brief to ensure continuing compliance with Subsidy Control laws.

31. The potential return to the Council was set out in a confidential appendix to the October 2021 Cabinet report. This budget, alongside the original budget of £1.38m (of which £643k formed the budget 2020/21) from the Council's reserves is considered to be an acceptable investment to realise the development and regeneration potential from this asset.

Alternative Options Considered

32. The October 2021 Cabinet report considered the options for developing the site. This report has identified the potential options for the delivery vehicle that the landowners could choose and around options for the site. If one of the options was not pursued it would be difficult to achieve a comprehensive development and the site is less likely to be attractive to the market without a single entity to work with.

33. Options with regard to the land have included the land being passed to the LLP but this would be less tax efficient than the use of an option or conditional contract and therefore it was discounted.

34. If the option was taken not to identify budget to maintain momentum on bringing the site forward it would risk not being able to proceed or decisions being taken without adequate knowledge and scrutiny, which would not be in the best interests of the council.

Other implications

Financial implications

35. A budget of £1.38m was originally established from reserves for the project. From this the 2021/22 budget for the SOSV project was £643k with £350k budgeted to spend during the current financial year from the earmarked reserve. As the project moves to the next phase of work it is anticipated that the remaining budget will be required to meet consultant and staff costs for advice to the Council in the setting up of the LLP.
36. Looking ahead additional staff costs are sought and further budget for three years and consultancy costs for 2022/23 totalling £556k as set out above.
37. A budget of up to £500k is also sought for loans to the LLP once established, subject to the Head of Financial Services being satisfied of the need and terms of the loan.

Legal issues

38. There are a number of legal issues arising from the report. The legislation that enables the Council to participate in an LLP for profit as been identified as well as the need for the Council to ensure that it is able to achieve best value in committing to dispose of any land.
39. The Council can enter into a special purpose vehicle under the provisions of:
 - section 12 of the Local Government Act 2003 (“LGA03”) (the “Investment Power”);
 - section 111, Local Government Act 1972 (“LGA72”) (the “Incidental Power”) (where it does not have a duty to act); and
 - section 1 of the Localism Act, (the “General Power of Competence”).
40. The Investment Power allows the Council to invest for any purpose relevant to any of its functions or for the purposes of the prudent management of its financial affairs. The Incidental Power authorises the Council “to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions”. Finally the General Power of Competence enables the Council to participate in an LLP for the purposes of regeneration.
41. The detailed drafting of the LLP agreement and option/conditional contract is yet to take place but it is important that the detailed provides appropriate safeguards for the Council. The Council is being advised by external legal and tax advisors appointed to provide specialist advice. Legal advice is ongoing to support the work.

Level of risk

42. The development of the allocated site will provide much needed housing, economic development and facilities. However, as the land is in three ownerships there is the need for the landowners to work collaboratively to be able to meet the policy requirement for a comprehensive development. Until there is an agreement between the landowners there is a risk that one of the landowners could choose not to commit their land. The formation of an LLP and the securing of options or conditional contracts for the drawdown of land will commit all the landowners, including the Council.
43. The approach to securing a development partner as a master developer reduces the risk to the landowners by ensuring an experienced partner is selected with a track record for delivery and suitable financial backing. However the development could

give rise to potential financial and reputational risk to the Council if problems with the development were to occur.

44. Whilst care has been taken to ensure the Council has been appropriately advised there remain risks in ensuring satisfactory completion of agreements, potential for landowners to change their positions, changes in the development environment (such as changes to planning policy), potential for unknown costs associated with developing the site and the appetite of the market to partner to deliver the site. There would also be reputational risks in failing to progress the development of the site as housing needs would not be met. These risks will continue to be monitored and managed.

Equalities impact

45. The Equality Act 2010 Section 149 places a duty on public authorities to have regard to the need to eliminate discrimination, harassment, victimisation, advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and foster good relations between persons who share a relevant protected characteristic and persons who do not share it. This report considers the establishing of a vehicle that would pursue the development of the Council's land in collaboration with adjacent land owners. The option of developing the Council's land independently has been rejected because of the policy requirement for a comprehensive scheme and risk of pursuing such an approach. No adverse impacts on any part of the community have been identified at this stage, however Oxford City Council will continue to consult with Legal Services to ensure all projects have due regard to the public sector equality duty.
46. The form of vehicle proposed, an LLP, will not be a public authority but it is controlled by its Members, of which the Council would be 1/3. Although the LLP will be responsible for developing the site through a master developer the proposals will be subject to consultation and scrutiny through the planning process which will ensure appropriate consideration of equalities issues.
47. The formation of the LLP is part of the process to bring about development of the site that will bring benefits such as additional affordable housing and employment opportunities. It is recognised that the future development of design proposals for the site, including the buildings and services to be provided, could give rise to equality impact issues. Given the proposal to work with other partners it will be strategically and sustainably important to ensure that equality is embedded and fully understood by all involved in the work undertaken at each stage of the project. The Council's accessibility champion has advised 'It is important to normalise these conversations and ensure all project groups make use of our Accessibility and Equality Champion to sense check strategy documents and proposals as they come across'.

Environmental Impact Assessment

48. This report is focused on the structures required to enable the land allocated in the South Oxfordshire Local Plan to come forward, rather than the detail of how the site will be physically developed. Proposals for the site including a planning application will be developed by the selected development partner.
49. Going forward there will be a need to balance the requirements to achieve a return for the Council and a good development, that is viable to deliver, and creates a location that is attractive and accessible, including the provision of affordable

housing, whilst minimising its environmental impacts and maximising the opportunities that can be derived from new development.

50. The vast majority of the site is within South Oxfordshire but was allocated to help address housing needs in the City. The site is located on the edge of Oxford where there are more opportunities for green and active travel, to and from the city, than other sites further from the city.
51. The Council owns less than 1/3rd of the allocated site and is working with other landowners to bring forward development. As such, the City Council does not have overall control and is unable to act alone in bringing forward its land ownership for development. Carbon and environmental considerations will be important factors to be considered in selecting a development partner and the design of the site and the infrastructure to support it, and the City Council continues to work with partners to promote this agenda. However, whilst partners have committed to meeting the planning policy requirements for the site, it may not necessarily be possible to go beyond these.

Conclusion

52. This report seeks approval for the next stage of work at SOSV to formalise the partnership arrangements with the other Landowners by forming an LLP. The agreement for the LLP will cover how the landowners will work together and also embed the collaboration principles that have been agreed. An option or conditional contract will provide certainty of the availability of the land. This will support the procurement of a master developer to undertake the development of the site. Delegation is sought for agreeing the details of the LLP and land agreement.
53. Further budget provision is sought to enable the planned work over the next three years to be undertaken and ensure there is sufficient staff resource to successfully progress the project and protect the Council's interest.

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Background Papers:

Report to Cabinet, 13 October 2021 – Development of Land at South Oxford Science Village (Land South of Grenoble Road)