

<b>Item No.</b> 9.	<b>Classification:</b> Open	<b>Date:</b> 19 September 2017	<b>Meeting Name:</b> Cabinet
<b>Report title:</b>		Canada Water Regeneration	
<b>Ward affected:</b>		Rotherhithe and Surrey Quays	
<b>Cabinet Member:</b>		Council Mark Williams, Regeneration and New Homes	

## **FOREWORD - COUNCILLOR MARK WILLIAMS, CABINET MEMBER FOR REGENERATION AND NEW HOMES**

This report updates and sets out our revised approach for the commercial agreement between the council and British Land which will underpin and enable the delivery of 3,500 new homes – including affordable homes, thousands of new jobs, new public space, an increase in shopping choice and a wide range of leisure and cultural uses. We are clear that the regeneration at Canada Water must deliver benefits for both existing and future residents of the area and our wider borough.

This report also sets out a recommendation to consult with local residents on how by working with British Land we can potentially better manage the plaza and Canada Water itself, this will be subject to further consideration by cabinet before any agreement. The report also instructs officers to work in partnership with British Land to create a social regeneration charter for the Canada Water area in partnership with our residents as set out in the Social Regeneration cabinet report also being considered at this cabinet meeting.

## **RECOMMENDATIONS**

That Cabinet:

1. Agree the revised heads of terms for a development agreement as set out in Appendix 3.
2. Agree that British Land (BL) should undertake public consultation on options for entering into a long term arrangement for the management of various areas of public realm so as to secure investment and a sustainable future for these important local assets and to report back as part of work on agreeing the final development agreement for Canada Water.
3. Instruct officers to work with BL to create a social regeneration charter for the Canada Water area as outlined in paragraph 25-26 below, for incorporation in the development agreement being finalised with BL.
4. Note the request from BL that the council will support the regeneration project with the use of its powers under section 203 of the Housing and Planning Act 2016 subject to satisfaction of the relevant legal requirements and a further specific cabinet approval.

## BACKGROUND INFORMATION

5. On 17 November 2015 cabinet agreed the heads of terms for an agreement with British Land (BL) for the development of land at Canada Water. This report explains how it is proposed to change the heads of terms and seeks cabinet's authority to proceed.
6. After several years of concerted activity by the council and our partner BL, generously supported by local people in thousands of hours of direct community involvement, proposals for the comprehensive renewal of the central Canada Water area are crystallising rapidly. The emerging plan envisages around 3,500 new homes, thousands of new permanent jobs, an improved retail offer and a range of community facilities as well as extensive public realm.
7. BL's masterplan is progressing well and it is anticipated will be submitted for planning in the spring of 2018. This will set out the framework for the scale and nature of development across the central area, as well as specific, detailed proposals for the first phase of construction.
8. In parallel with this officers have continued to negotiate an agreement to allow council owned land to be part of the transformation. By creatively exploiting the council's property holdings and by forging a business like and constructive relationship with BL, provisional agreement has been reached on an innovative and unique form of contract. This will allow the council to retain a long term interest in the entire development area (even land where the council currently has no interest) with the opportunity to create a high value investment vehicle that will allow Southwark to benefit financially long into the future from the development.
9. The agreement covers three main sites: the former Print Works (PW); the Surrey Quays Shopping Centre (SQSC); and, the Mast Leisure Centre (MLC) as shown on the plans within Appendix 1. All of this land is owned freehold either by the council or BL and all of the council freehold land (other than some small miscellaneous sections of amenity land and highway) is occupied by BL under a number of leases.
10. The original heads of terms envisaged BL surrendering their current leases over PW and SQSC and the grant of two new long head leases. From these, individual plots would be sub-let for development in phases over several years in accordance with the masterplan for the entire area. It was further envisaged there would be a collaboration agreement between the council and BL to manage the development interface between MLC and the rest of the development area.
11. With the old model, the council would have had the right to invest in the development according to a formula linked to its underlying ownership position. As this varied from site to site (from zero interest on MLC to having half the ownership of PW) it meant having different arrangements for different sites, which led to an overly complex development agreement and a 'lumpy' investment profile where the council would have a significant financial interest in parts of the development but no interest in others.
12. The new arrangement is based on the principle of the council and BL pooling their ownership and sharing equally the risks and reward of the development.

Under the arrangement the masterplan will distribute development across the whole area in the most logical way irrespective of ownership. The council will then have the right to invest in individual development plots on a side by side basis with BL up to a maximum level, derived from the council's overall ownership share of all three sites (referred to as the blended ownership share). The arrangement is very flexible for the council that will also have the right on a plot by plot basis to sell its share in the plot land to BL.

13. This model for the development agreement is considered to be far superior for a number of reasons. The council has not given up the freehold of any of its land and throughout the life of the agreement will have an interest in all of the area, even sites it currently has no interest in. The use of one blended ownership share for the entire agreement means the council will have the opportunity to invest in a larger number of plots over a longer period of time, giving rise to a smoother investment profile that it is considered will be easier for the council to manage. This approach also has the considerable practical benefit of being less complicated and therefore much easier to document and administer.

### **KEY ISSUES FOR CONSIDERATION**

14. To get to this point officers, supported by a team of external specialists, have been in detailed negotiation with BL on a range of points. The matters which for the purposes of this report are considered key are discussed below.
15. In the interests of full transparency, Appendix 4 includes a 'track change' version of the original heads of terms that show all of the changes along with explanatory comments.

#### **BL CW Holdings Ltd**

16. It is standard industry practice for developers to set up a special purpose vehicle to deliver a particular scheme. That is the case here and BL has confirmed that the development will be delivered through its wholly owned subsidiary BL CW Holding Ltd. This is not considered contentious and the documentation has been amended accordingly.

#### **Affordable housing**

17. There are no changes to the affordable housing requirements and BL will be required to deliver a planning policy compliant development.

#### **Council sign off of masterplan**

18. The revised heads of terms gives the council as landowner the opportunity to agree the masterplan prior to submission for planning consent. This is considered to be a key risk management tool for the council and removes the need for a rental shortfall account and the additional income provision.
19. When considering the final development agreement the council will have more certainty about its financial position and along with the new approach to a blended ownership position means the council will have more clarity over its financial position during the early stages of the development.

#### Lease structure and blended ownership share

20. The revised heads of terms are structured to include all three sites (PW, SQSC and MLC) in one new long head lease. The council will be the head lessee and shall receive consideration (either in the form of one off payments or as rent) based on the level of its investment into individual development plots; which are sub-leases carved out of the head lease area. The consideration receivable by the council will need to represent "best consideration" for the purposes of s123 Local Government Act 1972 and external advice has been and will continue to be taken as to how these requirements are being met.
21. The council's ability to share in development profit shall be limited to its underlying ownership position, calculated as a blend of the ownership shares of the three individual sites. It has been provisionally agreed the blended ownership shares should be 80:20; that is, for the purposes of making investment decisions and distributing profit under the development agreement the council is credited with having a base ownership position of 20% of the entire masterplan area.
22. This is a flexible agreement and as each plot comes forward for development the council will also have the option to sell out its interest in the plot to BL should it so wish.

#### Treatment of public realm

23. Cabinet previously agreed that some council owned land (shown on the plan within Appendix 2) outside of the main development agreement area would be subject to an estate management agreement. It has become clear that in order to ensure the level of investment needed to protect these important pieces of public space it will be necessary to enter into a more formal long-term arrangement.
24. To that end one of the recommendations in this report is that BL should undertake public consultation on the treatment of public realm, in particular around Canada Water Basin.

#### Social regeneration

25. The council is in the process of developing a social regeneration framework, which is defined as being a process that ensures the places where people live, now and in the future, positively shape life opportunities and wellbeing, reduce inequalities and create engaged communities. Creating a new town centre at Canada Water is a great opportunity to apply these principles and one of the recommendations for this report is that the council works with BL to create a social regeneration charter for the area.
26. The purpose of the charter will be to address social, economic and health priorities across the area. Phase one, which will commence on signing of the agreement will be a detailed analysis of the communities at Canada Water to identify key issues and the opportunities to significantly improve individual and community wellbeing through regeneration. The second phase will be for BL to formulate a programme of interventions designed to address issues identified in the research and analysis and to set targets including Southwark's social regeneration outcome indicators. BL will report on an annual basis through the development agreement administration systems on outcomes as assessed against key performance indicators with recommendations for further action. The

final phase will be an end of project review to assess the programme's success in achieving positive outcomes including improved health and wellbeing, for our residents.

#### Use of council's statutory powers

27. Cabinet is asked to note that BL has asked the council to support the regeneration project by making available its powers under s203 of the Housing and Planning Act 2016, which is a power available to local authorities to override easements and other third party rights.
28. This the council has done in other regeneration projects but the use of s203 powers is tightly controlled and limited by statute. Cabinet is therefore asked to note that it may be asked to make available this power when the project is sufficiently advanced subject to satisfaction of all statutory requirements and a separate cabinet decision. A detailed report on the legal and other implications of this will be provided to support any such request when the time comes.

#### Policy implications

29. This report deals with a key step in delivering the council's aspirations for the regeneration of Canada Water. The main policy statement on this is the Canada Water Area Action Plan (AAP) and revised AAP adopted in 2015. The heads of terms are consistent with the council's ambitions for the area.
30. As explained above in paragraphs 25 and 26 the development partnership it is proposed to enter into with BL will also support the council's emerging approach to social regeneration.

#### Community impact statement

31. The public sector equality duty ("PSED"), at section 149 of the Equality Act requires public bodies to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation and to advance equality of opportunity and foster good relations between different people when carrying out their activities.
32. The heads of terms is a technical matter that of itself give rise to no particular equality implications. However the council will give consideration to the PSED at all stages of the development programme.

#### Resource implications

33. The resource implications arising from this decision will be officer time to conclude negotiation of the development agreement and funding for external specialists to support the process. All of this activity forms part of existing budgets and gives rise to no new resource implication.
34. If ultimately a development agreement is completed, any new resource requirements that may flow from this, for example funding to build a new leisure centre, will be the subject of separate, specific reporting.

#### Legal implications

35. Please see the report from the director of law and democracy below.

## **Financial implications**

36. External legal and internal recharges associated with the drafting of the detailed agreement will be met from Regeneration North budget.

## **Consultation**

37. There has been extensive internal consultation between officers in regeneration, legal services and finance. It is not considered appropriate or necessary to carry out public consultation on the heads of terms.

## **SUPPLEMENTARY ADVICE FROM OTHER OFFICERS**

### **Director of Law and Democracy**

38. Section 1 of the Localism Act 2011 grants councils a general power of competence whereby a local authority has power to do anything that individuals generally may do. However, that power does not enable a local authority to do anything which it is unable to do by virtue of a pre-commencement limitation. Section 123 of the Local Government Act 1972 is a pre-commencement statute which imposes limitations on the council's power to dispose of land.
39. The report refers at paragraph 20 to the council's obligation, set out in Section 123 of the Local Government Act 1972, not to dispose of land for a consideration less than the best that can reasonably be obtained. The report explains how independent expert advice will be taken to ensure that the council is obtaining best consideration for its land under the terms of the proposed transaction.
40. External legal advice has been sought which confirmed the council's ability to enter into negotiations with BL in respect of this development. This advice will be kept under review as the negotiations develop, and further advice sought before contracts are exchanged.
41. The cabinet will note the public sector equality duty (PSED) considerations detailed in paragraphs 31 and 32 above, and to have regard to the PSED consideration when making decisions

### **Strategic Director of Finance and Governance**

42. The strategic director of finance and governance notes the recommendation for the revised heads of terms for the development of Canada Water and the advantages of this simpler, blended ownership approach set out in paragraph 13. The Canada Water Heads of Terms (Appendix 3), section 4 and 5, sets out remaining areas under consideration before the exchange of the overarching agreement. These arrangements are designed in such a way to provide the council with the flexibility to consider the options as each plot comes forward to sell, retain the land interest or increase their investment in the development up to 20%.

## BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
New Southwark Plan –New & Amended Preferred Option Policies	Council website	
Current Local Plan		
<b>Link:</b>		
<a href="http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan">http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/local-plan</a>		
Canada Water Area Action Plan 2015	Council website	
<b>Link:</b>		
<a href="http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/area-action-plan">http://www.southwark.gov.uk/planning-and-building-control/planning-policy-and-transport-policy/development-plan/area-action-plan</a>		

## APPENDICES

No.	Title
Appendix 1	Development site plan
Appendix 2	Estate management plan
Appendix 3	Canada Water site plan revised heads of terms
Appendix 4	Track change version of heads of terms

## AUDIT TRAIL

<b>Cabinet Member</b>	Councillor Mark Williams, Regeneration and New Housing	
<b>Lead Officer</b>	Eleanor Kelly, Chief Executive	
<b>Report Author</b>	Jon Abbott, Head of Regeneration North	
<b>Version</b>	Final	
<b>Dated</b>	8 September 2017	
<b>Key Decision?</b>	Yes	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments Included</b>
Director of Law and Democracy	Yes	Yes
Strategic Director of Finance and Governance	Yes	Yes
Director of Health and Wellbeing	Yes	Yes
<b>Cabinet Member</b>	Yes	Yes
<b>Date final report sent to Constitutional Team</b>		8 September 2017