

Item No.	Classification: Open	Date: 23 April 2021	Meeting Name: Strategic Director of Finance and Governance
Report title:		Gateway 3 – Variation Decision Manor and Braganza Development Agreement	
Ward(s) or groups affected:		Newington	
From:		Head of Regen - Capital	

RECOMMENDATION(S)

1. That the Strategic Director of Finance and Governance approves a variation to the Development Agreement for Manor Place and Braganza with Durkan Limited (Durkan) to incorporate an additional payment of £4,913,782.08.
2. That the Strategic Director of Finance and Governance notes that £1.2m of this cost is provided by a grant from the Greater London Authority (GLA), resulting in a net payment from the council of £3,713,782.08.
3. That the Strategic Director of Finance and Governance notes that approval of this variation report is subject to the approval of the acquisition of 13 intermediate units as further detailed in paragraph 22.

BACKGROUND INFORMATION

4. The development covers two linked sites in the Newington Ward near Kennington Tube Station.
5. On the 19 February 2019 the Strategic Director of Place and Wellbeing approved the disposal of the lease of both the Manor Place and Braganza sites and acquisition of the sub lease of 20 council homes and four commercial units at the Manor Place site through a development agreement (DA) with Durkan. Both leases will be for a period of 250 years.
6. The development across both sites were set to deliver the following new homes:

	<i>Social</i>	<i>Intermediate</i>	<i>Private</i>	<i>Total</i>
<i>Manor Place</i>	20	8	28	56
<i>Braganza</i>	0	5	28	33
<i>Total</i>	20	13	56	89
<i>Percentage</i>	22.47%	14.61%	62.92%	100%

7. A separate report that is to be considered in conjunction with this report recommends the purchase of the 13 properties, so that 10 can be delivered as additional council homes for social rent, and 3 will be intermediate affordable homes owned by the council. If the proposals across both linked reports are agreed then the revised tenure mix across both sites will be as follows:

	<i>Social</i>	<i>Intermediate</i>	<i>Private</i>	<i>Total</i>
<i>Manor Place</i>	30	0	26	56
<i>Braganza</i>	0	3	30	33
<i>Total</i>	30	3	56	89

Percentage	33.71%	3.37%	62.92%	100%
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8. The development will also deliver commercial units for the council at Manor Place that are proposed to be a GP Surgery, a Pharmacy and a Café, along with a separate office space at Braganza that Durkan will retain.
9. Under the original terms of the DA the council was set to receive the 20 social rented homes and the commercial units, but not the 13 intermediate or 56 private sale homes, which would be retained by Durkan.
10. The current DA is signed, but remains conditional as Third Party Wall/Access Agreements with neighbours surrounding the Braganza site remain unresolved – largely as a result of COVID-19. Once all of the conditions in the DA have been discharged, the DA is considered unconditional, and then neither party can exit the agreement without fulfilling their commitments.
11. Planning permissions for both sites was set to expire on January 29 2021, so work to preserve permissions by achieving start on sites was carried out in January 2021.
12. Until the DA becomes unconditional the council is spending c.£20k per month on site security across the Manor and Braganza sites.

Viability Issues

13. On 5 October 2020 Durkan informed the council that they were concerned about project viability based on an updated appraisal they had completed.
14. Progress on the project throughout 2020 was seriously delayed by COVID-19, and these delays contributed to issues with the viability of the current scheme were caused by:
 - Volatility in the housing market making forecasting sale prices when the scheme is delivered increasingly difficult.
 - The Registered Provider bid for the intermediate units significantly reduced.
 - Construction costs have increased.
 Additional information on the viability of the scheme is provided in the closed part of this report
15. All of the figures were reviewed by an independent QS on behalf of the council to ensure their accuracy.
16. As the DA remained conditional, Durkan have the ability to walk away from the DA. The council carried out negotiations with Durkan to work out the best way to proceed to take advantage of the work that both parties have completed so far, and to deliver a positive outcome for the local area.

Durkan's Negotiated Proposal

17. Following extensive negotiations on how to solve the viability issues the council and Durkan have agreed (subject to this approval) that an additional payment is made to Durkan of £4,913,782.08.
18. This amount accounts for all of the additional costs that were caused by COVID-19 delays, increased construction costs, regulation changes, changes in working practice to account for COVID-19, and volatile property values.

19. As part of the negotiations with Durkan, the council ensured that an independent Quality Surveyor (QS) reviewed all of the cost information submitted and determined that the information provided was accurate.
20. The amounts set out in this revised offer are based on an amendment to the current planning application to remove the requirement to preserve the building façade at Manor Place.
21. The GLA have committed to providing £1.2m grant funding towards the delivery of this scheme.
22. As well as the additional payment agreed by Durkan, the council have also agreed to purchase the 13 intermediate units being delivered across both sites for £4,334,000, and supported by an additional GLA grant of £1.084m. This is being considered in a linked delegated report that is being considered by the Director of Regeneration. The approval of the recommendations in this variation report are therefore subject to the approval of the acquisition report, and vice versa. More information on this unit purchase is included in the closed part of this report.
23. As the GLA have committed to provide £2.284m grant funding towards the new affordable housing which results in a total Housing Revenue Account capital contribution of £211,024 per new affordable home, or £207,127 per new social rented home.
24. As this contribution of cash from the council means we have taken on a greater proportion of development risk, Durkan have agreed that the overage proportion due to the council should be increased from 33% up to 50%. Overage is a payment paid to the council if the total sales value of all of the private homes exceeds an agreed amount, the above change will mean that if any money is made over the agreed limit, 50% of that is paid to the council.
25. There is no change in the land value, and the council will still receive £3.95m for the General Fund.
26. In addition to the social housing the scheme will also deliver commercial units at Manor Place to the Council with a value of £2,844,841 for the HRA.
27. This revision to the DA set out in this report, and the purchase of additional social units being considered in a report to the Director of Regeneration were both considered by the Housing Investment Board in December 2020 who supported this approach.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

28. As set out above

Reasons for Variation

29. This variation allows for the original 20 social homes on the Manor Place site to continue, as well as the purchase of 13 extra homes to provide ten new social homes

and three intermediate homes is being considered in the linked report set out in paragraph 22 above. Together these reports will contribute 30 council homes towards achieving council targets to deliver 11,000 new council homes by 2043, including 2,500 by 2022.

30. The additional council investment is required to ensure that the development is able to proceed. Without this investment the council will not be able to develop the Manor and Braganza sites with Durkan as the scheme would prove unviable, and the council would have to either re-procure or directly deliver the development ourselves. These options are considered in paragraph 32 and 33 below.

Future Proposals for this Service

31. Subject to the recommendations of this report being agreed, work would continue to deliver the developments on both the Manor Place and Braganza Workshops sites as quickly as possible.

Alternative Options Considered

32. Based on the current situation with Durkan there are four options which were considered:

1. Do nothing
2. Re-procure a new development partner
3. Deliver the sites ourselves
4. Invest as recommended in this report

33. The pros and cons of each option is set out in the table below:

Options	Details	Pros	Cons
1. Do nothing	<ul style="list-style-type: none"> - No change is made to the DA - The development will remain unviable for Durkan to deliver - Durkan have ability to exit the DA as it remains conditional 	<ul style="list-style-type: none"> - No investment required. 	<ul style="list-style-type: none"> - No new homes are delivered. - 30 council homes are not delivered. - 4 commercial units are not provided for the council. - The derelict buildings remain to be secured by the council.
2. Re-Procure	<ul style="list-style-type: none"> - Exit DA with Durkan, - Allow the planning permission to expire on both sites, - Re-procure a new development partner - Submit a new planning application 	<ul style="list-style-type: none"> - Involves no significant capital investment from the council 	<ul style="list-style-type: none"> - No guarantee that scheme will be viable with new partner - Will lead to further delays of at least a year - Involves planning risk as new application required
3. Direct Delivery	<ul style="list-style-type: none"> - Exit DA with Durkan - Agree development budget - Procure contractor - Directly develop site 	<ul style="list-style-type: none"> - Gives the council more control over the process going forward. - Allows the council to achieve maximum value from its land 	<ul style="list-style-type: none"> - Requires investment of at least £26m - Significant sales risk - All development risk with the council - Delay of 6-9 months

4. Invest – Recommended Option	<ul style="list-style-type: none"> - Approves the proposal as set out in this report 	<ul style="list-style-type: none"> - Deliver 30 new social homes for less per unit than direct delivery - Maintains land value - Limits risk to council - Provides 50% of overage if property market is positive 	<ul style="list-style-type: none"> - Requires Investment of £7.13m of council capital money - Transfers £2.3m of grant funding from the GLA to Durkan.
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Identified risks for the Variation

34. There are three key risks that remain for the DA with Durkan.
35. The first risk (R1) is whether the proposed amendment to the planning permission to alter the requirement to preserve the façade at Manor Place is accepted. The application to amend the approach to preserving the façade will be made in early April, and may take 13 weeks before a decision is made. Although work has taken place to prepare a good application no guarantee of approval can be given. However none of the payments to Durkan set out in this report will be made until after the issue with the façade has been concluded.
36. To mitigate this risk the council is in discussions with the planning department to define the requirements of the proposed planning amendment, and has worked with Durkan's heritage consultant and architect to prepare the amendment application.
37. The second risk (R2) relates to the remaining condition on the DA. This is the agreeing of third party wall and access agreements with residents in the properties that neighbour the Braganza Workshop site.
38. Over the course of 2020 this process was severely delayed by a number of factors stemming from the COVID 19 pandemic, but work to get the negotiations with the surrounding residents back on track are currently underway.
39. Design work so far indicates that most surrounding residents will not be negatively impacted by the development, which increases the chances of positive agreements being reached.
40. The third risk (R3) is that once the DA goes unconditional Durkan fails to complete the development. This was a risk in any event and the DA seeks to manage that risk by providing Durkan's funder with an opportunity to step in to Durkan's place and complete the development if the DA terminates before Durkan has completed the development.
41. In the event that the funder declined to step in the DA provides for the building lease to terminate which should enable the council to recover the site(s) and to the extent that any sums paid by the council to the developer exceeded the value of any work in progress on the site(s) (including the value of any warranties, planning and intellectual property which the council received the benefit of) the developer would be required to repay such amount to the council.
42. The above risks are summarised in the table below:

Risk No.	Risk Identified	Risk level	Mitigation
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R1	Planning Amendment to change approach to façade preservation	Low	Early engagement planning and with community groups. Clear evidenced application for the amendment made
R2	Remaining conditions on the DA remain unresolved	Low	Working closely with Durkan to engage with neighbouring residents as much as COVID 19 allows
R3	Durkan fails to complete development as set out in DA	Low	Work closely with Durkan to ensure development moves forward. DA includes provisions for the council to recover the site if the DA terminates.

Policy implications

43. Delivering 30 council homes will contribute towards the council target 11,000 by 2043 including 2,500 by 2022.

Contract management and monitoring

44. The council's contract register publishes the details of all contracts over £5,000 in value to meet the obligations of the Local Government Transparency Code. The Report Author must ensure that all appropriate details of this procurement are added to the contract register via the eProcurement System.
45. The management and monitoring of this contract is being managed by the Regen Capital team, and will report on its status as required.

Community Impact Statement

46. By contributing 30 new council homes and 3 new intermediate homes this decision will have a positive impact on the local community.

Social Value considerations

47. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. This proposed variation does not impact on any Social Value considerations of this procurement process.

Economic considerations

48. Details of the Economic Considerations were set out in the GW2 report that agreed the DA with Durkan, they are unaffected by the variation proposed in this report.

Social considerations

49. This variation increases the amount of social housing that the development delivers, going from 20 homes for social rent in the original DA to 30, and delivers three council owned intermediate homes, if this variation is approved.

Environmental/Sustainability considerations

50. There are no new implications as a result of this report.

Financial Implications

51. The total value of the variation recommended by this report is £4,913,782.08. £1,200,000 of this sum will be provided through a grant from the GLA, meaning that the remaining £3,713,782.08 will need to be provided from within the HRA as part of the Housing Investment Programme.

52. Of the total £4,913,782.08 variation, £1,183,273.33 has already been paid from existing project budgets to cover the CIL and s106 costs involved with starting on site, and an additional £603,285.75 has been spent developing the design of the scheme before Durkan came on board. This means that the remaining £3,127,223 (which includes the GLA grant amount) will need to be paid to Durkan. The costs will be charged to project codes R-5014-0000.1 and R-5014-0000.7 as appropriate.

53. The spend profile for this £3.13.m of additional spend set out in this GW3 report will be:

21/22	22/23	23/24	Total
£0.93m	£0.7m	£1.5m	£3.13m

Investment Implications (Housing Contracts only)

54. These implications are dealt with in the main body of the report.

Legal Implications

55. Please see legal concurrent at paragraphs 61-64.

Consultation

56. There are no specific implications.

Other implications or issues

57. There are no specific implications.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (H&M 20/168)

58. This report seeks approval from the Strategic Director of Finance and Governance to vary the development agreement for Manor Place and Braganza with Durkan Limited which will increase the overall cost of the project to £4.9m. This variation is subject to the separate approval by the Director of Regeneration in consultation with the Strategic Director of Housing and Modernisation to acquire 13 additional new homes across both development sites at a cost of £4,334,000 (concurrent reference H&M 20/167). The reasons for the variation are set out in the report, which has been considered by the Housing Investment Board, and the costs will be met from resources supporting the council's Housing Investment Programme.

Head of Procurement

59. This reports seeks approval from the strategic director of finance and governance to vary the development agreement for Manor Place and Braganza with Durkan Limited to incorporate an additional payment of approx. £4.9m, of which £1.2m is funded from the GLA. The council's cost is therefore approx. £3.7m, however this is subject to the approval of the acquisition of 13 units as further detailed in paragraph 22 via the approval of another GW report.
60. The negotiations are detailed in paragraphs 17 to 27 and the risks are identified in paragraphs 34 to 42. Management and monitoring of contract are detailed in paragraphs 44 to 45.

Director of Law and Governance

61. This report seeks the approval of the Strategic Director of Finance and Governance to the variation of the development agreement in relation to Manor Place and Braganza, as further detailed in paragraphs 1-3. As the value of this variation exceeds £1m but is less than £10m, then the decision to approve this variation is reserved to the Strategic Director of Finance and Governance. As noted in paragraph 3, this approval is subject to the separate approval of the acquisition of 13 intermediate units by the Director of Regeneration.
62. The Strategic Director is advised that the parties can agree changes to the Development Agreement pursuant to clause 37.1.2 of that Development Agreement. However, any material change to an agreement after it has been executed raises a potential risk of challenge under the Public Contracts Regulations 2015 (the Regulations). Regulation 72 of the Regulations permit modifications to be made to contracts during their term in certain circumstances as noted below.
63. Regulation 72 permits modifications to be made to existing contracts on the below grounds:
- a. where the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen, the modification does not alter the overall nature of the contract and any increase in price does not exceed 50% of the value of the original contract (Regulation 72(1)(c));

Based on the information in the report this would permit the proposed change under the Regulations.

64. The subsidy control provisions in Article 3.3 of the Trade and Cooperation Agreement (as incorporated into UK domestic law by section 29 of the European Union (Future Relationship) Act 2020) permit public bodies (such as the Council) to give funding in respect of public service obligations, including the provision of social housing, provided such funding does not exceed the net cost of delivering the public service obligation.
65. Contract Standing Order 2.3 requires that no steps are taken to vary a contract unless the expenditure involved has been included in approved estimates, or is otherwise approved by the council. Paragraphs 51-53 confirm the financial implications of this variation.

Director of Exchequer (for housing contracts only)


66. n/a

Director of Education (for schools contracts only)

67. n/a

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature 
2021..

Date...10th May

Strategic Director of Finance and Governance
Designation

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see 'FOR DELEGATED DECISIONS' section of the guidance).

1. DECISION(S)
As set out in the recommendations of the report.
2. REASONS FOR DECISION
As set out in the report.
3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION
As set out in the report.
4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *

* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

6. DECLARATION ON CONFLICTS OF INTERESTS

I declare that I was informed of no conflicts of interests.*

or

I declare that I was informed of the conflicts of interests set out in Part B4.*

(* - Please delete as appropriate)

7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)*

The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.

I consider that the decision be made available for publication under Regulation 13(4).*

or

I do not consider that the decision be made available for publication under Regulation 13(4).*

(* - Please delete as appropriate)

* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

BACKGROUND PAPERS

Background Papers	Held At	Contact
Gateway 2 - Contract Award Approval Southwark Regeneration in Partnership Programme Lot A1 – December 2018	Regen Capital	Osama Shoush 07842616477
Link: http://moderngov.southwark.gov.uk/documents/s79950/Report%20Gateway%20%20Contract%20Award%20Approval%20-%20Southwark%20Regeneration%20in%20Partnership%20Programme%20Lot%20A1.pdf		
Gateway 2 – Supplemental Decision Amendment to Gateway 2 Contract Award SRPP Lot A1 – Manor Place/Stopford Road SE17 and 42 Braganza Street SE17 – Land Adjustment Clause	Regen Capital	Osama Shoush 07842616477
Link: http://moderngov.southwark.gov.uk/documents/s85909/Report%20Amendment%20to%20Gateway%20%20Contract%20Award%20SRPP%20Lot%20A1%20-%20Manor%20Place%20Stopford%20Road%20SE17%20and%2042%20B.pdf		
Housing Investment Board Report: Manor and Braganza – Investment Required December 2020	Regen Capital	Osama Shoush 07842616477
Link: n/a		

APPENDICES

No	Title
None	n/a

AUDIT TRAIL

Lead Officer	Bruce Glockling, Head of Regen - Capital		
Report Author	Osama Shoush, Housing Regeneration Programme Manager		
Version	Final		
Dated	27/04/2021		
Key Decision?	Yes		
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER			
Officer Title	Comments Sought	Comments included	
Strategic Director of Finance and Governance	Yes	Yes	
Head of Procurement	Yes	Yes	

Director of Law and Governance	Yes	Yes
Director of Exchequer (for housing contracts only)	No	No
Cabinet Member	Yes	No
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	No
Date final report sent to Constitutional/Community Councils/Scrutiny Team	27 April 2021	