

Committee: Cabinet

Date: 15 January 2018

Wards: Merton Park, Ravensbury, St Helier and Canon Hill

Subject: Delivery of the regeneration of Morden town centre

Lead officer: Director for Environment and Regeneration Chris Lee

Lead member: Cabinet Member for Regeneration, Environment and Housing, Councillor Martin Whelton.

Contact officer: Assistant Director - Sustainable Communities, James McGinlay

Reasons for urgency: The Chair has approved the submission of this report as a matter of urgency to ensure that the agreed programme set out in the Memorandum of Understanding between Merton Council and Transport for London can be adhered to. If it is not progressed at this time, there would be delays to the targeted start for the delivery of the scheme and the council would fail to adhere to the timetable set out with TfL and in funding bids to government.

Recommendations:

- A. Approve the recommendation from officers that a joint venture option is the most appropriate delivery vehicle structure for Morden.
 - B. Authorise officers to negotiate a Scheme Delivery Agreement with TfL for an appropriate joint venture structure to deliver the regeneration of Morden town centre.
 - C. Note the Memorandum of Understanding (within exempt Appendix B) between Merton Council and Transport for London, which sets out how the two parties will collaborate on the preparatory works for the procurement of a development partner.
 - D. Note the procurement of a Project Management Consultant to coordinate and advise on the preparatory works for the procurement of a development partner.
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1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. The regeneration of Morden town Centre is a key priority for the council.
- 1.2. The council (LBM) is working with Transport for London (TfL) to secure a development partner to undertake the comprehensive regeneration of the town centre.
- 1.3. The council and TfL have jointly appointed the consultants GL Hearn to provide advice on:
 - Structuring of LBM / TfL partnership
 - Governance and resourcing
 - Appropriate procurement process
 - Due diligence and soft-market testing
 - Land assembly

- 1.4. Following a review of various delivery options and soft marketing testing with potential development partners, GL Hearn recommended that a joint venture structure will be the most suitable for the delivery of the regeneration in Merton and that, in the absence of a suitable procurement framework, an OJEU procurement process would be required. GL Hearn's report is attached as (exempt) Appendix A.
- 1.5. The following steps need to be taken in order to start the procurement process in September 2018:
- LBM and TfL to enter into an agreement, such as a Memorandum of Understanding (MoU) (exempt Appendix B), which sets out how the two parties will collaborate on the preparatory works for the procurement of a development partner and clarifies that both parties agree to equally share the costs of the necessary due diligence work prior to the appointment of a development partner.
 - LBM and TfL to enter into a Scheme Delivery Agreement which will set out the roles and responsibilities of each party during and after the procurement of the development partner; addressing matters such as the type of procurement exercise that is to be entered into; the preferred legal structure of the Morden Town Centre delivery vehicle; the parties' interests and obligations with respect to the vehicle's financial, legal, operational, and governance arrangements and the roles and responsibilities of each party during the planning, construction, and operational phases of the scheme.
 - LBM and TfL to appoint a Project Management Consultant to coordinate and advise on the preparatory works for the procurement of a development partner.
 - LBM and TfL to carry out the necessary due diligence work, with the Project Management Consultant taking the lead to ensure this is completed on time, within the budget and in accordance with the regulations.
- 1.6. The programme shows that over the following 6 - 8 months the necessary due diligence work will be carried out, the procurement documentation will be prepared and the details of the Scheme Delivery Agreement will be finalised, so that the procurement of the development partner can commence in September 2018.

2 DETAILS

Background

- 2.1. The regeneration of Morden Town Centre is a comprehensive regeneration scheme to provide a vibrant new town centre with a significant number of homes across the 8.1ha Morden Housing Zone site, an expanded and improved retail offer, modern business spaces, new and expanded bus infrastructure and a significantly improved public realm for the benefit of existing residents, businesses and commuters.
- 2.2. Until now, the delivery of the scheme was hampered by post-2008 market conditions and the absence of a joined-up approach by the major land owners: TfL and LBM.
- 2.3. Within the Morden Housing Zone there are approximately 350 land interests of which 125 are freeholds. TfL own the freehold ownership of the majority of the land to the north of London Road (the land surrounding Morden Underground Station), which measures approximately 2.5ha and consists of 15 titles. LBM own the freehold ownership of the majority of the land to the south of London Road (within the Abbotsbury Triangles), which measures approximately 1.4ha and consists of 43 titles.
- 2.4. In 2016, LBM and TfL jointly appointed a team of architects, engineers and cost consultants to carry out a detailed feasibility study for the Morden Housing Zone site. They found that a 1,800 to 2,000 housing unit mixed-tenure scheme with new retail facilities and significant transport and public realm upgrades, is feasible and potentially viable. This is consistent with the draft London Plan (policies SD6 - SD10).

Delivery Options

- 2.5. In light of the findings of the feasibility study, LBM and TfL jointly commissioned GL Hearn in July 2017 to advise on partnership structuring, public sector governance and a route-to-market for the regeneration of Morden Town Centre.
- 2.6. As illustrated in the table below GL Hearn established that the two parties share many priorities for the development of the site, which, together with the assessment that the scheme's viability is currently challenging, was considered by GL Hearn to have a considerable bearing on the assessment of the suitability of the various potential delivery structures for the scheme.

London Borough of Merton	Transport for London
High quality scheme	High quality scheme
Participation in long-term value creation growth	Creation of long-term revenue stream
Creation of revenue stream	High volume of housing
Provision of >40% affordable housing	High share of affordable tenure
Comprehensive Delivery	Improvements to transport infrastructure
Strong collaboration with TfL / GLA	Long-term project involvement
Collaborative approach to masterplan with developer	Integrated delivery approach
Exemplar for London	Delivery of MTS / Healthy Streets
	Excellence in design and sustainability
	Economic and social development

- 2.7. GL Hearn identified 12 potential structures for the venture and analysed the pros and cons of each option. They concluded that a joint venture (JV) structure, with (probably) an associated Competitive Dialogue OJEU procurement process would be the most suitable solution. Furthermore, they recommended that the joint venture should have a 50/50 controlling split between the development partner and one of the public bodies. A Scheme Delivery Agreement would set out the degree of influence and guarantees of outcomes for the passive partner – in their view, LBM.
- 2.8. The details of the pros and cons for each of the options are set out in the report in exempt Appendix A but the main reason(s) for the rejection of the non-JV options can be summarised as follows:
- Option 1 **Do Nothing**: no long-term income / value benefits, no security of delivery or control over comprehensive development.
 - Option 2 **Landowners dispose of freehold**: no long-term income / value benefits, no security of delivery or control over comprehensive development.
 - Option 3 **Comprehensive land sale structure**: no security of delivery or control over comprehensive development.
 - Option 4 **Phased land sale structure**: no security of delivery or control over comprehensive development.
 - Option 5 **Comprehensive Development Agreement**: High upfront costs for Competitive Dialogue OJEU + poor viability, no collaborative masterplanning.
 - Option 6 **Phased Development Agreement**: no security of delivery or control over comprehensive development.

- Option 7 **Overarching Joint Venture (50% Development Partner with active Development Manager role / 50% TfL &-or LBM with passive role + land)**: some potential.
- Option 8 **Overarching Joint Venture (50% Development Partner with active Development Manager role / 50% TfL &-or LBM with passive role + land + funds)**: some potential.
- Option 9 **Overarching Joint Venture (50% Development Partner with passive role / 50% TfL &-or LBM with active Development Manager role)**: insufficient expertise & funding in public bodies to deliver.
- Option 10 **Three way Joint Venture Company**: unattractive to market due to potential for delay in decisions.
- Option 11 **Direct Delivery by TfL & LBM Joint Venture**: insufficient expertise & funding in public bodies to deliver.
- Option 12 **Direct Delivery by TfL or LBM (or relevant vehicle)**: insufficient expertise & funding in public bodies to deliver.
- 2.9. The table in exempt Appendix C provides further analysis of each of the options above, including references to resources, budgets and risks.
- 2.10. Besides substantial land interests, both LBM and TfL also have other influences to bear on the delivery of the scheme. TfL has its transport authority functions and LBM, as the Local Planning Authority, will have control of the strategic 'Local Plan' policies and the assessment of any planning applications. Importantly, LBM also has its discretionary powers for the making of any necessary Compulsory Purchase Orders (CPOs) should they be necessary.
- 2.11. Officers presented the findings of the GL Hearn report to the Sustainable Communities Overview and Scrutiny Panel at their meeting on 2 November 2017. The panel members noted the scale, impact and opportunities of this regeneration scheme and advised that LBM should maintain sufficient control of the project, by means of an active share in the JV.
- 2.12. GL Hearn's reference to market concerns about the perceived inability of councils in general to make timely decisions are noted but can be mitigated through appropriate parameters within a JV business plan, which would limit the council's decision making involvement to certain strategic matters. This could address these concerns about decision making and resourcing, and warrant further exploration.
- 2.13. GL Hearn's recommendation for a JV structure is accepted but LBM and TfL officers will be exploring various JV options over the next 6 - 8 months, ensuring that the Scheme Delivery Agreement between LBM and TfL strikes the right balance between control over the development and exposure to risk for both parties, while still being acceptable to potential development partners.

Soft Market Testing

- 2.14. GL Hearn carried out soft market testing to assess whether there was appetite in the market for a large-scale regeneration scheme in Morden town centre, involving a complex site assembly exercise, and to gauge reaction to the delivery and procurement structures that were considered.
- 2.15. Meetings were held with a range of large scale developers.
- 2.16. The detailed findings of the soft market testing are set out in part 7 of the GL Hearn report (exempt Appendix A) but in summary they found that: *‘Overall, the tone of response across the five meetings gives us a high degree of confidence that there will be strong interest from the key players in the market for this opportunity, provided that the structure and process put in place are considered workable and they can see a clear route through to delivery’*.

Due Diligence and Procurement

- 2.17. GL Hearn has advised that it is likely that the development partner will be charging a development management fee to the JV and that this amount will necessitate the use of OJEU procurement procedures.
- 2.18. Further legal advice is needed on this matter and whether existing procurement frameworks, such as those set up by TfL or the GLA, would be suitable.
- 2.19. As indicated in the MoU, details of the parties’ involvement in the procurement process will be set out in the Scheme Delivery Agreement.
- 2.20. Neither TfL nor LBM currently have the capacity to manage the work needed for the preparation of the necessary due diligence information and procurement documentation. It has therefore been agreed that project management consultants, with a proven track record of delivering complex development procurement projects, be jointly appointed by TfL and LBM.
- 2.21. GL Hearn has provided some advice on likely due diligence works that will be needed prior to the procurement. The scope and depth of due diligence works are largely dependent on the type of procurement process that will be chosen. Further research will therefore be done on the necessity and scope for each piece of work.
- 2.22. LBM and TfL have been successful in receiving joint government funding of £260,000 as part of the One Public Estate (OPE) fund, to cover the costs for the abovementioned Project Management Consultants and any necessary due diligence works. This funding will be received in January 2018 and spent in accordance with the OPE agreement.

Land Assembly

- 2.23. Subject to further legal advice, it is very likely that the council will have to use its discretionary CPO powers under the Town and Country Planning Act to deliver the envisaged comprehensive redevelopment of the town centre.
- 2.24. Leading counsel, Mary Cook QC, has advised that for certainty of CPO success, the forthcoming revised Local Plan should clarify that all the land within the Morden Housing Zone boundary will be part of a comprehensive regeneration scheme and that the council would be willing to use its discretionary CPO powers, if needed.
- 2.25. The GL Hearn report clarifies that such a commitment would provide sufficient comfort to bidding development partners who would (typically) provide protection in terms of risk and financial exposure, by means of a CPO indemnity agreement.
- 2.26. It should be noted that the discretionary nature of LBM's CPO powers provides the council with a substantial amount of control over the delivery of the project: *'Put simply, if the Council does not support the proposed developer it cannot be obligated to raise powers.'* (exempt Appendix A, paragraph 4.49)
- 2.27. GL Hearn have estimated the land assembly costs and these are referenced in the confidential appendix. The Valuation Office Agency has reviewed GL Hearn's Property Cost Estimate and found that the methodology was appropriate and that the findings are reasonable, considering the scope of their brief.
- 2.28. LBM and TfL have assisted the GLA in their bid for government funding as part of the Housing Infrastructure Fund – Forward Funding, to fund all the Morden Housing Zone land assembly costs, the new bus terminus, public realm works (new plaza and cycling infrastructure) and demolition & initial site works. The outcome of this funding bid will be known in 2018.
- 2.29. It is evident that the market is confident the regeneration of Morden town centre would be a viable scheme given that the parties who participated in the soft market testing expressed their *'strong interest'* without having been provided with any of LBM and TfL's viability information.

Memorandum of Understanding

- 2.30. The MoU in exempt Appendix B sets out LBM and TfL's shared vision, principles and objectives for the delivery of the regeneration of Morden town centre. Thereafter it sets out our commitment to collaborate as equal partners on a programme that will progress the scheme to its next major milestone: the formal start of the procedures for the procurement of a development partner by September 2018.
- 2.31. The collaborative works include:
- The procurement of a Project Management Consultant
 - The drafting of a Scheme Delivery Agreement

- The completion of any necessary due diligence work
- 2.32. The MoU commits both parties to appropriately resource the project with personnel and to fund 50% of the costs of the collaborative works set out in the MoU. Both parties will however utilise any external funding, such as the OPE funding (see paragraph 2.22), prior to expending internal funds.
- 2.33. The MoU will be superseded by the Scheme Delivery Agreement and any other necessary agreements when formal procedures for the procurement of a development partner, starts.

3 ALTERNATIVE OPTIONS

- 3.1. In order to progress the next stages of the scheme, the council is required to make an informed decision to approve the recommendation from officers that a joint venture option is the most appropriate delivery vehicle structure for Morden.
- 3.2. Refer to paragraph 2.8 above, (exempt) Appendix C and sections 3 and 4 of the GL Hearn report in (exempt) Appendix A for the various alternative delivery mechanisms.
- 3.3. If LBM choose not to collaborate with TfL on the delivery of the regeneration of Morden town centre, the aims of the Mayor of London's Housing Zone and the council's adopted Local Plan strategy, for comprehensive regeneration of the town centre, would not be delivered.
- 3.4. The property cost estimates for the various plots in the GL Hearn report, illustrate the cost difference for different parts of the site. The delivery of optimal quantum of housing and associated new infrastructure and public realm, relies on the 'marriage value' of the sites to cross fund the development of the most costly parts of the site.
- 3.5. Some development might be possible on the respective TfL and LBM owned sites but it is likely to be at a much reduced scale, substantially reducing the council's ability to deliver its adopted vision for a revitalised town centre with improved public realm and retail offer and to meet its housing target, and it would result in a piecemeal development, not representative of best value across the town centre.
- 3.6. With reference to the assessment in exempt Appendix C, it is clear that a joint venture structure is the most appropriate way of delivering the regeneration of Morden town centre. However, there are many elements that need to be assessed and agreed with TfL before a development partner can be appointed.

4 CONSULTATION UNDERTAKEN OR PROPOSED

- 4.1. The regeneration of Morden will form part of the council's Local Plan and is therefore included in the numerous public consultation measures that were approved by Cabinet on 16 October 2017. The first consultation stage of the borough-wide Local Plan review is taking place between 31 October 2017 and 8 January 2018, which includes a specific section on Morden.
- 4.2. Previous consultation undertaken, indicates strong local support for the regeneration of Morden and further engagement with land owners, residents, businesses and the wider community will continue to take place throughout the development process.

5 TIMETABLE

- 5.1. The timetable below indicates when the tasks associated with the MoU will be carried out:
 - Jan/Feb 2018 appointment of Project Management consultants
 - Jan - Jun 2018 (6 months) drafting of Scheme Delivery Agreement
 - Jan - Jun 2018 (6 months) due diligence works
 - Jun – Jul 2018 preparation of tender documentation
 - Aug 2018 Members to consider draft agreements and procurement documentation. Reports also to be presented to the Capital Management Board and the Procurement Board.
 - Sep 2018 launch procurement for development partner
 - Summer 2019 Members to consider recommended development partner

6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

General

- 6.1. LBM and TfL have been successful in a joint bid for government funding of £260,000 as part of the One Public Estate (OPE) fund for the costs of the Project Management Consultants and the expected due diligence works.
- 6.2. A commitment is set out in the MoU that both parties will appropriately resource the project with personnel and fund 50% of the costs of the necessary due diligence works. Both parties will however utilise any external funding, such as the OPE funding, prior to expending internal funds.
- 6.3. GL Hearn has advised that the scope and depth of due diligence works are largely dependent on the type of procurement process that will be chosen. The procurement process is again, to some extent, dependent on the details of the delivery structure that will be decided as part of the forthcoming negotiations of the Scheme Delivery Agreement. The Project Management Consultant will provide advice on the necessary due diligence works and on the scope for each piece of work required, which will greatly influence the cost for this part of the project.
- 6.4. Under the subheading 'Option Agreement', in paragraphs 4.74 - 4.82 of the GL Hearn report in exempt Appendix A, a number of possible mechanisms

are suggested that would ensure that the JV would get access to the land when necessary and that the council would be able to secure a fair return on its landholdings. These options will be considered as part of the Scheme Delivery Agreement.

- 6.5. The Housing Infrastructure Fund bid, which will address the estimated land assembly costs, the costs of some major infrastructure items and the costs of the site preparation works, would de-risk the project and enhance its attractiveness to the market. If the bid is unsuccessful, these costs would mainly be borne by the development partner and recovered through increased development value. Any CPO costs could be funded by a JV development partner up front and recovered in a similar way over a phased development.

Capital

- 6.6. The approved capital programme contains £5million to provide match funding for Merton’s contribution as shown in the table below. This funding will match TfL’s contribution for major scheme works in Morden.

Financial Year	2018/19 £000s	2019/20 £000s	2020/21 £000s
Transportation Enhancements	1,000	3,000	1,000

7 LEGAL AND STATUTORY IMPLICATIONS

- 7.1. At this stage, the council is not required to enter into any legally binding agreements. The MoU in exempt Appendix B sets out LBM and TfL’s shared vision, principles and objectives for the delivery of the regeneration of Morden town centre, and our shared commitment to meet the costs of the preparatory works as equal partners. However, once the Scheme Delivery Agreement has been negotiated, it will provide a formal legal agreement between the council and TfL on the preferred legal structure of the scheme, the roles and responsibilities of the parties and further details on the way forward.
- 7.2. The South London Legal Partnership have been advising officers on the content of the MoU and they will continue to provide legal advice with regards to the Scheme Delivery Agreement negotiations and on matters relating to the (likely OJEU) procurement procedures.

8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

- 8.1. The regeneration of Morden will form part of the council’s Local Plan, which contains planning policies to improve community cohesion and are subject to Sustainability Appraisal / Strategic Environmental Assessments and Equalities Impact Assessments.

9 CRIME AND DISORDER IMPLICATIONS

- 9.1. The regeneration of Morden will form part of the council's Local Plan, which contains planning policies to improve community cohesion and are subject to Sustainability Appraisal / Strategic Environmental Assessments which also consider matters of crime and disorder.

10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

- 10.1. As set out in the body of this report.

11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

- 11.1. The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within all the appendices to this report and they are therefore exempt from publication:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

- A. GL Hearn report
- B. Memorandum of Understanding
- C. Analysis of Delivery Options

12 BACKGROUND PAPERS

- 12.1. Pollard Thomas Edwards feasibility study (2017)
- 12.2. Merton's adopted Core Planning Strategy (2011)

Appendix A – GL Hearn Report (Commercially Sensitive Information)

Exempt or confidential report

The following paragraph of [Part 4b Section 10 of the constitution](#) applies in respect of information within this appendix and it is therefore exempt from publication:

Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Members and officers are advised not to disclose the contents of the appendix.

Appendix B – Memorandum of Understanding (Commercially Sensitive Information)

Exempt or confidential report

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Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Members and officers are advised not to disclose the contents of the appendix.

Appendix C – Analysis of Delivery Options (Commercially Sensitive Information)

Exempt or confidential report

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Information relating to the financial or business affairs of any particular person (including the Authority holding that information).

Members and officers are advised not to disclose the contents of the appendix.