

## **Committee: Cabinet**

**Date: 11 November 2019**

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

## **Subject: Morden Town Centre Regeneration**

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

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### **Recommendations:**

That Cabinet on the 11<sup>th</sup> November 2019 resolves to;

- A. Note the area identified for the regeneration of Morden Town Centre as shown at Appendix 1, which has also been published as draft Site Allocation Mo4 Morden Town Centre Regeneration Zone in the council's Local Plan Stage 2 consultation.
- B. Recommend that Council accept the Greater London Authority Land Fund grant of £54.5m on behalf of the LLP, and authorise the Director for Environment and Regeneration to finalise the terms and conditions with the GLA.
- C. Note that a requirement of the GLA Land Fund grant, either by the council or as part of a LLP, is subject to the outcome of a residential ballot.
- D. Delegate authority to the Director for Environment and Regeneration in conjunction with the Cabinet Member for Regeneration, Housing and Transport to enter into and establish a Limited Liability Partnership (LLP) with Transport for London (TfL) to procure a third party development partner to jointly deliver the regeneration scheme.
- E. Delegate authority to the Director for Environment and Regeneration to:
  - a. appoint officer representatives to the LLP Board and any other related body; and
  - b. review and approve LLP Business Plans.
- F. Note the steps outlined in this report for the procurement process and eventual appointment of a third party development partner under a development or joint venture agreement.
- G. Authorise the Director for Environment and Regeneration in line with the council's Contract Standing Orders to prepare and issue invitations to tender through TfL's Procurement Team for the appointment of a joint venture third party development partner to develop out the scheme.
- H. Note the increase of the following funds as Merton's equity in the LLP to enable the delivery of the regeneration, subject to scrutiny and final Cabinet approval in the budget:
  - a. £1m capital bid for Morden regeneration.

- I. Delegate authority to the Director for Environment and Regeneration and the Director of Corporate Services, in collaboration with the Cabinet Member for Regeneration, Housing and Transport to approve a resource plan from next year for the project, to be utilised until the terms and conditions of the GLA Land Fund are finalised.
- J. Delegate approval to the Director for Environment and Regeneration in conjunction with the Cabinet Member for Regeneration, Housing and Transport to include additional sites or properties required to assist in the delivery of the scheme.
- K. Note that a further report will be brought to Cabinet prior to the appointment of the preferred third party development partner.

## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This paper provides an update to Cabinet on work to date including the following:
- The Morden Town Centre Regeneration Zone boundary;
  - A significant number of due diligence items undertaken to de-risk the site prior to procurement;
  - GLA Land Fund bid, with associated terms and conditions;
  - Negotiation and agreement of a Limited Liability Partnership (LLP) with Transport for London (TfL);
  - A selected OJEU procurement route;
  - Use of TfL's procurement team to administer the OJEU procurement process on behalf of the LLP;
  - Capital funding required for this project; and
  - Land assembly for this project.
- 1.2. This paper also requests approval for a number of items required to progress the project forward, specifically to enable the council to take the scheme through an OJEU competitive dialogue procurement process early in 2020 to select a suitable third party development partner to develop the scheme in collaboration with the council and TfL.
- 1.3. The regeneration of Morden town centre is a key priority for the council and officers have been working in partnership with TfL to facilitate the delivery of comprehensive regeneration within Morden town centre, which will stand as an exemplar of sustainable development while achieving the shared project objectives.
- 1.4. However, the council and TfL do not own the entire area and there are in excess of 350 different leasehold and freehold ownerships.
- 1.5. To this end, the council has been successful in receiving an allocation of £54.5m from the Greater London Authority's (GLA) Land Fund to assist with the assembly of land within Morden town centre.
- 1.6. Final confirmation of the Land Fund monies is subject to the GLA's approval of the project business plan and financial appraisal. The GLA would, as per the grant conditions, perform an observer role in the procurement process for the third party development partner (TPDP).
- 1.7. Prior to the selection of a TPDP, the council and TfL will enter into a suitable legal agreement to facilitate the joint working arrangement. It is currently envisaged that this is likely to take the form of a Limited Liability Partnership (LLP) and will be governed by the terms of an LLP agreement.
- 1.8. The members of the LLP will be representatives from the council and TfL. Following the agreed selection of a TPDP, through the procurement process, the LLP will in turn enter into a joint venture (JV) arrangement with the selected TPDP. This JV entity will then be responsible for developing the whole town centre in a phased manner.
- 1.9. The current project programme indicates that the development could start on site in 2023 and be completed over a 10 year construction period.

- 1.10. By developing the town centre in phases, the council will be able to ensure, as far as practically possible, that the local businesses within the town centre continue to trade throughout the construction period.
- 1.11. External advice received, in addition to extensive soft market testing with potential developers, has resulted in the project team decision that the most appropriate procurement route for this scheme is the OJEU competitive dialogue procedure.
- 1.12. This will enable the council and TfL to select a development partner that is not only capable of delivering such a large scale phased project, but also one that shares our vision.
- 1.13. It is recommended that due to their extensive experience in development related procurement and available resources, TfL's procurement team be used to administer and manage the procurement process, on behalf of the council and TfL as the LLP. Representatives from both the council and TfL will be heavily involved in drafting the necessary OJEU documents, undertaking the relevant evaluation processes and ultimately selecting the best bidder through the dialogue stages.
- 1.14. In accordance with the land assembly strategy, the council will be required to put forward all of its landholdings within the Morden Regeneration Zone boundary, while also managing the leases and tenancies of all Council owned freehold land.
- 1.15. Capital funding will be required from the council, identified through the following sources:
  - i. £4.3m TfL allocated Local Implementation Plan (LIP) funding – currently held by TfL on the council's behalf, available for spending on land assembly in Morden town centre;
  - ii. £5m allocated in the current Merton Council Capital Programme 2019-2023 for 'Morden Area Regeneration'; and
  - iii. A further £1m bid for Morden regeneration.
- 1.16. It should be noted that during the past year, officers from the council and TfL have learned through soft market testing with numerous developers and consultants advising on development, that the regeneration of Morden town centre provides one of the largest opportunities for development in London outside of zones 1 and 2. It presents a unique opportunity to revitalise one of Merton's town centres and set a precedent for the many other London town centres that have good public transport facilities but face complex land assembly issues.
- 1.17. This report provides details on the steps to begin the process of selecting and appointing a development partner.
- 1.18. The purpose of this report is to inform Cabinet of the work undertaken to date, to set out the forthcoming workstreams and to ensure members are aware of the associated risks and benefits.

## 2 DETAILS

### Background

- 2.1. The regeneration of Morden town centre is a comprehensive scheme to provide a vibrant new town centre with c.2,000 new homes across the 8.1 hectare site, together with 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, commuters and other town centre users.
- 2.2. On 15th January 2018, Cabinet resolved the following:
- i. That a joint venture option be the most appropriate delivery vehicle structure for Morden.*
  - ii. That officers be authorised to negotiate a Scheme Delivery Agreement with TfL for an appropriate joint venture structure to deliver the regeneration of Morden Town Centre.*
  - iii. That the Memorandum of Understanding, set out in the exempt Appendix B, between the 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 be noted.*
  - iv. That the procurement of a Project Management Consultant to coordinate and advise on the preparatory works for the procurement of a development partner be noted.*
- 2.3. Since then, the council and TfL have worked together to solidify an agreed way forward, undertaken a number of due diligence works required to enable the scheme to be launched to procurement, successfully applied for funding to assist with the land assembly and progressed the scheme to a point where it is ready to be taken to the market to find a suitable development partner.

### Morden Town Centre Regeneration Zone Boundary

- 2.4. The area identified for the regeneration, as shown in Appendix 1, consists of land bounded by Morden Hall Road, Aberconway Road, Kenley Road and the public right of way at the rear of Windermere Avenue.
- 2.5. This area is 8.1 hectares in size and contains a mixture of retail, commercial, residential, leisure and transport uses, including the Morden underground station and bus standing area.
- 2.6. The identified boundary has been published in the draft Merton Local Plan as Site Allocation Mo4 – Morden Regeneration Zone, thus identifying it as a potential development site in planning terms.
- 2.7. For the purposes of the OJEU process the development boundary may be drawn wider than the Morden Town Centre Regeneration Zone boundary as during the procurement, additional sites within close proximity to this boundary may also be identified as being required in order to deliver the scheme. The final development site boundary will therefore be informed by

the procurement process and will also be subject to approval from the Director for Environment and Regeneration in collaboration with the Cabinet Member for Regeneration, Housing and Transport.

### Due Diligence

- 2.8. Since the Cabinet decision in January 2018, a significant amount of work has been undertaken by officers including the following necessary due diligence items to de-risk the site prior to procurement:
- i. Land assembly strategy and CPO advice;
  - ii. Communications and engagement plan;
  - iii. Commercial, viability and quantity surveyor advice on build costs;
  - iv. Town centre retail and leisure needs assessment;
  - v. Site wide development framework, including key design principles, development testing, streetscape design parameters and key vision images;
  - vi. Technical assessments including air quality, arboricultural, car parking, ecology, heritage, flood risk, noise and vibration, utilities, geo-environmental, topographic surveys and decking and crane requirements; and
  - vii. Sustainability assessments including healthy streets, building performance, green and blue infrastructure and district heating options.

### GLA Land Fund

- 2.9. The council and TfL have been successful in receiving an allocation of £54.5m from the GLA Land Fund to assist with the land assembly required for the regeneration. The project team is currently awaiting the terms and conditions from the GLA.
- 2.10. Final confirmation of the Land Fund monies is subject to the GLA's approval of the LBM/TFL business plan and financial appraisal of the project.
- 2.11. The GLA would, as per the grant conditions, perform an observer role in the procurement process to secure a third party development partner (TPDP).
- 2.12. A considerable amount of work has been undertaken in preparing the information submitted to the GLA including:
- The financial appraisal (covering the costs of delivering the scheme and the income from development);
  - The funding commitments from LBM and TFL that include land and financial investment;
  - The land assembly strategy;
  - Soft market testing with prospective development partners to determine levels of interest in the scheme and to verify presumed values from development;

- The governance of the project;
- The commercial relationship between LBM and TFL;
- The commercial arrangement with a private sector development partner;
- The resource plan for staffing and operating the project;
- The planning framework for guiding the project through the planning process and supporting compulsory purchase of land and property; and
- The community engagement and consultation that has taken place to date.

2.13. The GLA funding will enable third party land to be acquired either by negotiation or through a compulsory purchase process.

2.14. A condition of GLA funding that involves the redevelopment of estates that comprise of, or had previously comprised of, affordable rented accommodation, is that a ballot of residents in the area takes place. The map attached as Appendix 2, shows the 37 houses that were developed as part of the St Helier Estate. Further conditions are not yet known, but will be evaluated to understand any risks to the council and how these can be mitigated.

2.15. One of the conditions set out by the GLA is based on a successful resident ballot of 37 homes within the Morden Regeneration Zone boundary that form part of the St Helier Estate. The drawdown of any of the Land Fund requires a positive outcome from the resident ballot (currently programmed to take place in 2022) and requires at least 50% of residents to vote in support of the proposal. No drawdown of funds is permissible without a successful ballot and no funds can be drawn down beforehand.

2.16. Officers are currently in discussions with communications consultants that have managed successful resident ballots, to develop an extensive communications strategy for this resident ballot, to ensure it aligns with the overall project engagement strategy and allows collaboration and key stakeholder engagement.

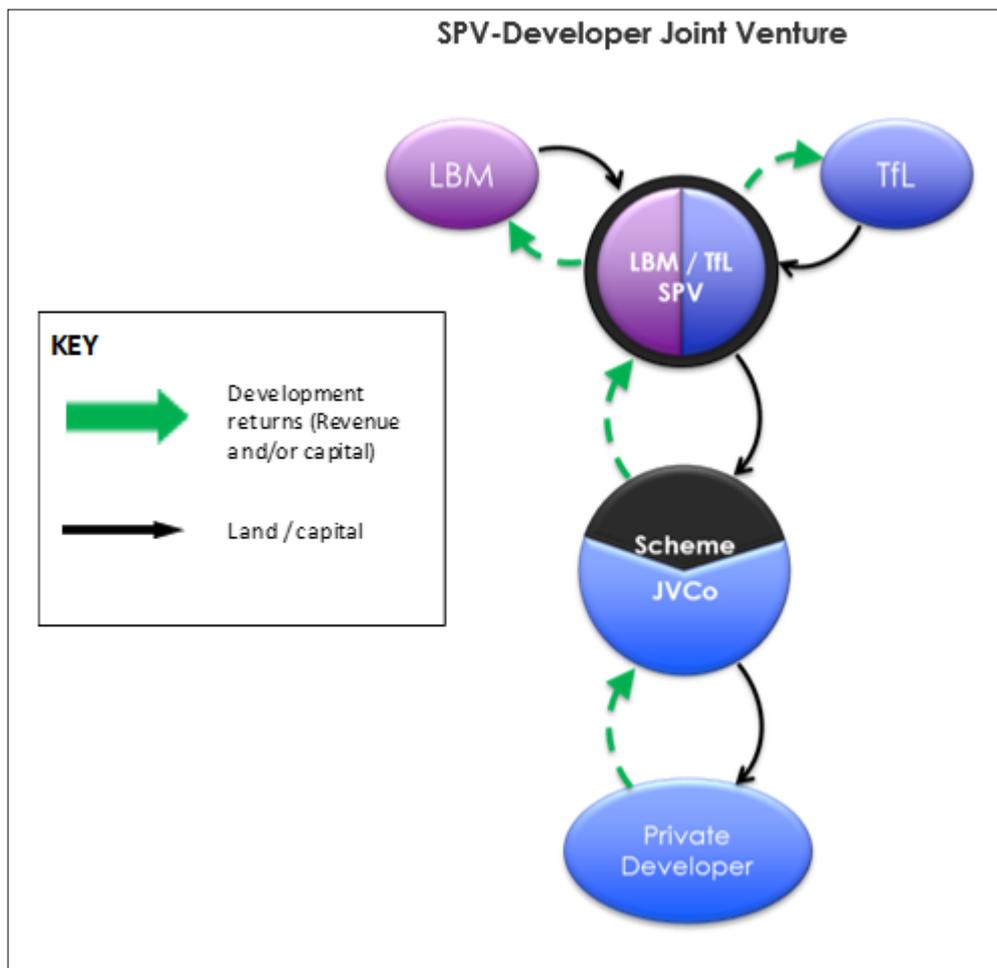
2.17. A failure to secure any GLA funding will present a risk to the project. Given the high land assembly costs, it is expected that bidders will want to see how the council and TfL proposes to mitigate this risk. The following options will need to be considered:

- i. Seek external funding elsewhere; or
- ii. Require the bidders to demonstrate how they can fund the land assembly.

#### LLP Formation

2.18. The structure of the commercial relationship between the council and TfL is a fundamental component for the successful delivery of the regeneration. Due

- to the complex nature of the opportunity, any agreed commercial basis will have to retain a layer of flexibility.
- 2.19. The Director of Environment and Regeneration and Assistant Director of Sustainable Communities, alongside the project team meet regularly with senior officers from TfL to enable an open and transparent decision making process for the project workstreams. This is known as the Morden Regeneration Senior Officer Meeting.
  - 2.20. Throughout the negotiations, the council has made it clear they wish to be an active participant throughout the scheme.
  - 2.21. The council is the majority land owner of the two parties, and will also play a key role as the Local Planning Authority and as the CPO Authority, should compulsory purchase powers be required.
  - 2.22. TfL are a key stakeholder in the scheme, as the transport and highway authority and majority landowner of the land to the north of London Road within the regeneration boundary, which includes the underground station and associated buildings.
  - 2.23. The consultants, Avison Young, were appointed with a joint duty of care to the council and TfL to provide advice on the most suitable delivery structure and commercial arrangement.
  - 2.24. The agreed way forward is that the council and TfL will form a LLP and enter into an agreement, which will capture the commercial relationship between the parties, governance procedures and dispute resolution mechanisms.
  - 2.25. Should any event occur which may compromise any of these aforementioned factors, then there may be scope for the preferred structure to be re-evaluated.
  - 2.26. As shown in the figure below, the LLP will enter into a joint venture partnership with the development partner, once they have been appointed and it will be this body that delivers the regeneration of the town centre.
  - 2.27. The LLP will provide its landholdings to the JV for its share of equity and retain the option to provide additional capital investment for increased equity in the scheme.
  - 2.28. It is anticipated that the LLP will need to be in place before entering into the joint venture arrangement with the selected development partner on the advice received from consultants and soft market testing that a developer is unlikely to contract with two separate public bodies.
  - 2.29. A 50:50 equity split has been agreed between the council and TfL to ensure that both risk and reward is shared. The equity split within the LLP has been based on an equalisation across the whole site of the parties' respective existing landholdings and a financial contribution, the level of which will be determined to ensure the equity investment of both the council and TfL, into the JV, is equal.
  - 2.30. All profits of the LLP deriving from the JV and the project, will be allocated between the parties in accordance with this agreed 50:50 equity split.



### Selection of an OJEU Procurement Route

- 2.31. Development Agreements between a Public Body (such as the council or TfL) and a development partner can either fall within the definition of a “public works contract” under the Public Contracts Regulations 2015 or can be a pure land disposal. Where a development agreement is a “public works contract”, it will fall within the scope of the 2015 Regulations and must be publicly procured using an OJEU process. Where it can be structured a pure land disposal, it will be outside of the scope of public procurement law and the contract can be entered into without an OJEU process.
- 2.32. In general, a determinative factor of whether an agreement constitutes a “public works contract” is the existence of any detailed and specified requirements imposed by the Public Body on the development partner. Public works contracts only arise if the developer has an enforceable contractual obligation to carry out the required works. This is likely to be the case for the Modern Town Centre regeneration as both the council and TfL will require delivery obligations and will be receiving an economic benefit by way of long term income streams from completed properties in lieu of land receipt. Therefore the procurement of a development partner for this scheme must be undertaken via an OJEU compliant process. This includes either a full OJEU process or by utilising a framework panel that has already been procured

through an OJEU process. The GLA's London Development Panel 2 is an example of this.

2.33. The table below identifies the four types of procurement procedures provided for in the Regulations.

Type	Description and relevance for this project
OJEU Open Procedure	<p>Under which all interested parties may respond to the OJEU advert by tendering for the contract.</p> <p>This option is generally not used for Development Agreements as there is no pre-selection process and every party is entitled to submit a tender. It is therefore more appropriate for procuring goods and materials where the exact specification is known at the outset.</p> <p>It is not considered appropriate for this scheme.</p>
OJEU Restricted Procedure	<p>Under which a selection is made of those parties who respond to the advert (PQQ) and only they are invited to submit a tender for the contract.</p> <p>This option can be used for Development Agreements as you have the ability to "pre-qualify" bidders based on their financial standing and technical or professional capability, so as to narrow the number permitted to submit tenders. However, the restricted procedure is only appropriate where you are able to specify your entire requirements and as such tenderers will be able to deliver a fully priced bid without the need for any negotiations whatsoever. Therefore, it is not appropriate in this instance as the overall scheme is far too complex and will require "negotiations" to take place.</p>
OJEU Competitive Dialogue	<p>Under which following a selection process, the council enters into dialogue with potential bidders, to develop one or more suitable solutions for its requirements and on which chosen bidders will be invited to tender.</p> <p>This option can be used for Development Agreements, however one of the great frustrations for public authorities and bidders alike has been the inability to enter readily into competitive commercial negotiations to identify effective solutions for complex procurement projects, such as major development schemes.</p> <p>The competitive dialogue procedure is best used for complex projects where substantial dialogue is</p>

	<p>required or where an element of negotiation may be required at preferred bidder stage.</p> <p>One of the changes introduced by the 2015 Regulations is that the term “negotiation” at preferred bidder stage is expressly used. Such negotiation can be carried out in order to confirm financial commitments or other terms in the tender” on the proviso that this “does not have the effect of materially modifying essential aspects of the tender“. This negotiation at preferred bidder stage is not available with the Competitive Procedure with Negotiation as it is not possible to negotiate after submission of final tenders, which makes this option more preferable for complex projects.</p>
<p>OJEU Competitive Procedure with Negotiation</p>	<p>Under which a Council may select one or more potential bidders with whom to negotiate the terms of a contract.</p> <p>The changes made introducing this negotiation option introduced two new grounds for justification:</p> <ul style="list-style-type: none"> <li>a) Where needs cannot be met without the adaptation of readily available solutions; and</li> <li>b) Where the contract includes design or innovative solutions.</li> </ul> <p>This option provides greater flexibility at the negotiation stage to allow a contracting authority to tailor its tender to meet its particular requirements. A contracting authority is for instance able to accept initial tenders without any negotiation, if it has reserved the right to do so in the contract notice or the invitation to confirm interest (where it has used a PIN as a call for competition). Alternatively, the negotiation can be run in successive stages, to allow for dialogue with bidders and/or to amend elements of the tender provided that there is no change to award criteria or the contracting authority’s advertised minimum requirements. Once final tenders are submitted, no further negotiation or clarification of the tender submission is permitted.</p> <p>Flexibility in the rules makes it easier for bidders to negotiate to resolve commercial ambiguities and to offer better solutions. However, it is also open to contracting authorities to choose to accept initial bids without further negotiations.</p>
<p>LDP2</p>	<p>A land procurement panel set up by the GLA to accelerate the delivery of housing in London by</p>

	<p>making it faster, easier and cheaper for public land owners to bring forward land for development.</p> <p>It established a framework of 29 developers, which can be used to procure any housing led development.</p> <p>This option does not currently allow a joint venture or special purpose vehicle between a panel member and a third party. It also does not permit participation in dialogue with potential bidders during the end to end procurement process, which offers limited scope for bidders to fully understand the complex nature and requirements of this scheme.</p> <p>The panel consists predominantly of housebuilders and registered providers, with only a handful of master developers who would be able to undertake a regeneration of this size and scale.</p>
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- 2.34. The council and TfL have undertaken two rounds of soft market testing over the past year and have received commercial and legal advice on procurement procedures, with a decision made that the most appropriate way forward would be to undertake an OJEU competitive dialogue process.
- 2.35. This process is currently shown in the project programme as an 18 month process, from when the notice is published, to the appointment of a development partner, including the council's governance process and the completion of all legal documentation.
- 2.36. Prior to the appointment of the selected development partner, both the council and TfL will be required to take the details of the recommendations through their respective governance processes.
- 2.37. The council and TfL have been advised on the costs associated with this procurement process. Further details are available in the Finance section in this report.

#### Administration of the OJEU Procurement Process

- 2.38. Given that the council and TfL are working in partnership to deliver this scheme, there are three options available to administering the OJEU procurement process on behalf of the LLP:
- i. The council's procurement team; or
  - ii. TfL's procurement team; or
  - iii. Appoint external consultants.
- 2.39. It should be noted that the administration process would involve the following, carried out in liaison with the Morden project team, including both council and TfL officers (including the council's procurement and legal teams):

- i. Drafting the documents required for publication of the OJEU notice;
- ii. Management of the Standard Selection Questionnaire (SSQ) and evaluation stage;
- iii. Drafting and publication of final Invitation to Submit Outline Solutions, manage clarification and circulate responses;
- iv. Management of the bidding stage;
- v. Overseeing the ISOS evaluation stage;
- vi. Drafting and publication of Invitation to Participate in Dialogue (ITPD);
- vii. Overseeing the dialogue process;
- viii. Drafting and publication of Invitation to Submit Final Tender (ISFT);
- ix. Management of ISFT stage; and
- x. Drafting and publication of notification letters with collated feedback.

Option	Details
The council's Procurement Team	<p>The council's procurement team has recent experience in undertaking OJEU procurements for goods, services and works, such as the waste collection and open spaces contracts.</p> <p>The team does not have sufficient experience in joint venture development projects, nor does it have the resources in house to operate a project of this scale.</p>
TfL's Procurement Team	<p>TfL's procurement team has recent experience in delivering large and complex OJEU competitive dialogue and joint venture projects, with contract values in excess of £1billion.</p> <p>There would be a cost for this service to both TfL's property department and the council, which would be split on a 50:50 basis.</p> <p>TfL have identified the resource needs for this project would include a procurement lead officer, a procurement support officer and a procurement director to oversee and offer support as required, in addition to other junior members of the team.</p> <p>The process would be managed through the Procontract portal to enable a clear audit trail for the entire process.</p> <p>Both parties would have access to the TfL Award evaluation system to enable all returned tenders to be accessed and evaluated jointly by the project team.</p>
External Consultants	<p>This option would come as an additional cost to the council and TfL and would provide a similar level of expertise, resource and advise that is currently available through the TfL procurement team.</p>

- 2.40. Subject to a formal agreement, it is recommended that given the resources and experience within TfL's procurement team, that this option is pursued for the administration of the OJEU procurement process.

#### Land Assembly

- 2.41. Within the regeneration boundary there are approximately 350 land interests of which 125 are freeholds as shown in the table below (source dated 2018).
- 2.42. The council and TfL both have substantial land interests within the regeneration boundary (refer to Appendix 3).
- 2.43. 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.
- 2.44. TfL own the freehold ownership of the majority of the land to the north of London Road, which measures approximately 2.5ha and consists of 15 titles. This includes a substantial amount of operational land surrounding Morden Underground Station.

	Type	Number
<b>Freehold</b>	Residential	39
	Retail	71
	Office	2
	Other - carpark, garage, leisure etc	13
		<b>125</b>
<b>Leasehold</b>	Residential	40
	Retail	62
	Office	7
	Other - carpark, garage, leisure etc	6
		<b>115</b>
<b>Long Leasehold</b>	Residential	21
	Retail	36
	Office	3
	Other - carpark, garage, leisure etc	6
		<b>66</b>
<b>Tenants</b>	Residential	<b>44</b>
<b>Total</b>		<b>350</b>

- 2.45. The council has received strategic land assembly and CPO advice, to understand and quantify the risks to the project. Advice on mitigation strategies has also been received.

- 2.46. Subject to the finalisation of terms and conditions, the following sources of funding have been committed to the project to enable land assembly:
- i. £54.5m GLA Land Fund;
  - ii. £10.3m LBM investment; and
  - iii. £20m TfL investment.
- 2.47. 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.
- 2.48. Landowner discussions and further land referencing will need to be undertaken to understand the exact detail of current ownerships, tenancy status, easements and other property interests involved.
- 2.49. At the appropriate time, it is likely that a Council resolution will be required to agree, in principle, to use its compulsory purchase powers. If terms to acquire all the necessary land interests and new rights by agreement cannot be achieved in a reasonable timescale, then compulsory purchase powers might have to be used.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The Council could choose not to proceed with the procurement launch for a third party development partner. This option is not recommended as the regeneration of Morden Town Centre is of a high priority to the council. The procurement of a development partner is the required next step to enable the regeneration to progress forward.
- 3.2. The Council could choose not to accept the GLA Land Fund grant. This option is not recommended as this funding is required to assist in the delivery of the Land Assembly Strategy. Should the funding not be available for the project, then this risk would be passed wholly onto the potential development partner, likely resulting in less of a return to the council.
- 3.3. Other external funding options for the project have also been explored and applied for. The council applied for Housing Infrastructure Fund (HIF) in 2017/18, which was unsuccessful, largely as the benefit cost ratio for the project was compared against other national schemes that did not involve significant land assembly.

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. Merton Council have carried out a number of consultations with the local community since 2008 to understand local priorities and how the regeneration could be brought forward:
- i. 2008/9 'More Morden' consultation leading to Cabinet adoption of the 'vision for Morden';
  - ii. 2011 'vision for Morden' incorporated into Merton's adopted Core Planning Strategy,

- iii. 2013 public consultation on Morden Station Planning brief, which was adopted in 2015;
  - iv. 2011-2013 various stages of the Sites and Policies Plan, which included a number of site allocations within the subject area, and was adopted as a Local Plan document in 2014;
  - v. 2015 consultation survey garnering 1,265 responses, following a variety of different methods of public engagement to publicise the survey and providing an overview of the pros and cons of the town centre and suggestions for improvements.
- 4.2. In January 2018, Merton Council circulated a questionnaire to the general public regarding the Town Centre regeneration and the new draft Local Plan. Responses to all questions showed an overwhelming level of agreement for the principles set out in the questions (between 75% - 89% for each area).
- 4.3. Public consultation on the draft policies and site allocation for the Morden Town Centre Regeneration Zone ran from 31 October 2018 to 6 January 2019, with all responses received available on the council's Local Plan webpage.
- 4.4. In October 2018, the council and TfL organised a series of focus groups and pop up events in Morden, involving local stakeholders, councillors, residents, businesses and key users of the town centre.
- 4.5. In January 2019, local school children were involved in a workshop asking their views on what they would like to see for the future of Morden Town Centre.
- 4.6. Officers are considering options for appropriate future consultation exercises over and above the statutory planning consultations.

## 5 TIMETABLE

- 5.1. This report is to be considered by Cabinet on 11 November 2019 and Council on 20 November 2019.
- 5.2. The table below shows the current project programme overview.

TASK	DATE
<b>TfL and LBM governance process and approvals</b>	
LBM – Cabinet	11 November 2019
LBM - Council	20 November 2019
TfL - CDAG	21 November 2019
<b>Launch of the procurement for development partner</b>	Early 2020
<b>Appointment of preferred development partner</b>	Spring 2021
<b>Submission of planning application</b>	Spring 2022
<b>Start on site</b>	2023
<b>Completion of development</b>	2033

## 6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 6.1. It is estimated that the scheme as a whole including regeneration will have a Gross Development Value of circa £1b and will take approximately 10 years to complete. The proposed Limited Liability Partnership (between Merton and TfL) and subsequent Joint Venture (between the LLP and a development partner) will be separate legal entities, and therefore during the formation of these organisations the financial implications for the council and its statutory functions, and its function within the JV companies will be determined.

### Land Assembly

- 6.2. The council and TfL both have substantial land interests within the regeneration boundary. In total there are approximately 350 land interests (of which 125 are freehold) within this boundary.
- 6.3. In accordance with the land assembly strategy, the council will be required to put forward all of its landholdings within the regeneration zone boundary while also managing the leases and tenancies of all Council owned freehold land.

### Intermediate Use

- 6.4. A meanwhile use document has been drafted which sets out guidance to accompany the land assembly strategy ahead of the selection of a development partner. Should the council decide to acquire retail or residential properties ahead of the appointment of the selected development partner, this strategy can assist in identifying the types of meanwhile uses that could be implemented to ensure the town centre remains vibrant and open for business throughout the construction phases.
- 6.5. No costs in relation to meanwhile uses have been included in the figures in this report, it is envisaged that utilising assets whilst they are waiting to be regenerated will help to mitigate the overall costs of the scheme.

### Joint Venture Regeneration

- 6.6. The redevelopment will be undertaken by a joint venture comprising the LLP (LBM and TfL, who will split any liability equally) and a development partner. The LLP will undertake the OJEU procurement exercise to select the development partner. The LLP shareholding in the JV will ultimately be determined by the market response during the procurement exercise.
- 6.7. Once the preferred partner has been selected, the LLP will in turn enter into a joint venture arrangement with the selected development partner and that entity will be responsible for undertaking the entire development in a phased manner.
- 6.8. Through the competitive dialogue the council may be able to explore options to own property within the new development, if it wishes to.

- 6.9. All LLP residual land value and development profit, through the JV, will be re-invested into the scheme, as required, in order to provide the LLP's stake in the scheme, subject to the market outcome of the procurement process.
- 6.10. Any land acquired by the council in advance of the JV will be ultimately transferred to the JV Company.
- 6.11. The financial benefit to the council will be through the JV in the form of dividends.

#### Limited Liability Partnership

- 6.12. A 50:50 equity split has been agreed between the council and TfL to ensure that both risk and reward is shared. The equity split within the LLP has been based on an equalisation across the whole site of the parties' respective existing landholdings and a financial contribution, the level of which will be determined to ensure the equity investment of both the council and TfL into the JV is equal.

#### Financial Implications for Merton

##### Capital

- 6.13. The current approved capital programme includes £5m for Morden Area Regeneration. In addition, £4.3m Local Implementation Plan (LIP) funding is currently held by TfL on the council's behalf. This is not currently reflected in the council's budgets, but it has been agreed in principle and will be formalised through the LLP.
- 6.14. As part of the Business Planning Process for 2020-2024 a further £1m is being bid for to increase Merton's match funding total up to £10.3m. This bid is subject to scrutiny and Cabinet approval in the budget. This will result in an increase in debt charges of £33k for the next 30 years.
- 6.15. In addition to this, the Authority will also need to transfer its property interests in the regeneration site. Any additional property interests purchased within the regeneration area would also need to be transferred.
- 6.16. If the value of the current landholdings and capital resource is insufficient to fund the council's 50% share of the LLP contribution into the scheme, the Authority could be asked to contribute further. This will be confirmed through the procurement exercise.

##### Required Funding

- 6.17. Negotiations are currently underway with the GLA and TfL to conclude the terms and conditions of the Land Fund and LIP funding. Appendix 4 sets out the current resourcing commitment to the scheme for 2020/21. While revenue budgetary provision exists to offset the projected costs of £448k for 2019/20, until the terms and conditions of the GLA Land Fund are finalised, it is unclear which of the £829k costs for 2020/21 will be covered by the sums currently set aside by Merton. Members are being asked to delegate

authority to the Director for Environment and Regeneration and the Director of Corporate Services in collaboration with the Cabinet Member for Regeneration, Housing and Transport to approve a resource plan from next year for the project, which is to be utilised until the terms and conditions of the GLA Land Fund have been finalised.

#### Additional Income from the Regeneration

- 6.18. The development will bring in a substantial amount of Community Infrastructure Levy (CIL) funding for the council, in addition to Section 106 planning contributions deemed necessary for the development to be delivered.
- 6.19. While it is recognised that the regeneration of the town centre will result in overall increases of council tax and business rates to the council, the phased manner in which the scheme will be developed over the 10 year period will also result in some losses in early phases. None of these are currently built into the MTFS.

#### Accounting for the Scheme

- 6.20. With regards to the council's statutory duty to obtain best value under s123 of the Local Government Act 1972 when assets are sold, the council will have had to go through a transparent marketing process culminating in an OJEU compliant procurement exercise to obtain a bidder and development partner for the regeneration of Morden Town Centre.
- 6.21. Strict accounting regulation and standards need to be adhered to in accounting for assets and investments. The configuration of legal documentation and funding agreements will impact on accounting treatment e.g. whether or not the GLA funding will need to be passported through Merton's Accounts. The magnitude of these transactions are likely to impact on the Authority's income and expenditure account and balance sheet and must be reflected in future financial planning (e.g. prudential indicators such as the capital financial requirement, the operational boundary and the authorised limit) and accounting for income and expenditure. As additional information becomes available this will need to be incorporated into financial planning documentation and accounted for appropriately.

## **7 LEGAL AND STATUTORY IMPLICATIONS**

### LLP and Procurement

- 7.1. Sharpe Pritchard has been appointed to provide the council with bespoke legal advice on setting up the LLP, joint venture, CPO and procurement matters and is currently working alongside TfL's appointed legal team on the LLP details.
- 7.2. The procurement process will be overseen by the council's legal advisors, which will involve advising on and approving the procurement documents and managing the dialogue process.

- 7.3. The procurement will need to be conducted in compliance with the CSOs and the Public Contract Regulations 2015 and all procurement documents and the dialogue process should be drafted and conducted with oversight by legal.
- 7.4. Any grants to be received will be reviewed by legal to ensure compliance with the state aid rules where applicable.
- 7.5. Property lawyers will be consulted to ensure compliance with any relevant property law legislation.

#### Resident Ballot

- 7.6. Section 105 of the Housing Act 1985 requires consultation with secure tenants on any proposals to improve or demolish any properties let under secure tenancies. The adoption of the GLA Resident Ballot Guidance including the Landlord Offer, other engagement with residents (including that which has taken place already) and the ballot itself will satisfy the requirements of section 105.
- 7.7. Legal advice will be obtained to show that the council is able to carry out this ballot under local government powers (including the General Power of Competence) and there are no legal issues arising from the council restricting its legal capacity to arrange and undertake a ballot in accordance with the GLA Guidance. The Council will appoint an Independent Body to oversee the ballot process in accordance with the GLA guidance.
- 7.8. Under the Equality Act 2010 the council will have to undertake a full Equality Impact Assessment, (EIA), in respect of a ballot to be undertaken in accordance with the GLA Guidance which includes consideration of the Public Sector Equality Duty under section 149 of the Equality Act 2010.
- 7.9. No specific issues arise under the Human Rights Act 1998 and any issues of potential discrimination under Article 14 have been considered by the EIA addressed above.
- 7.10. As with any function undertaken by the council, it must ensure it does so in accordance with public law principles.

## **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. The regeneration of Morden Town Centre will form part of the council's Local Plan, which contains planning policies to improve community cohesion and will be subject to Sustainability Appraisals, Strategic Environmental Assessments and Equalities Impact Assessments at the appropriate times.

## **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. The Morden Town Centre Regeneration Zone forms part of the council's draft 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**

Appendix 1 – The Morden Regeneration Zone Boundary

Appendix 2 – The Resident Ballot Properties

Appendix 3 – LBM and TfL Land Ownership

Appendix 4 – Draft Resource Plan (2020/21) – Exempt

- 11.1. The following paragraph of Part 4b Section 10 of the constitution applies in respect of information within Appendix 4 to this report 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).

## **12 BACKGROUND PAPERS**

- 12.1. [Cabinet report January 2018](#) – Delivery of the regeneration of Morden town centre.

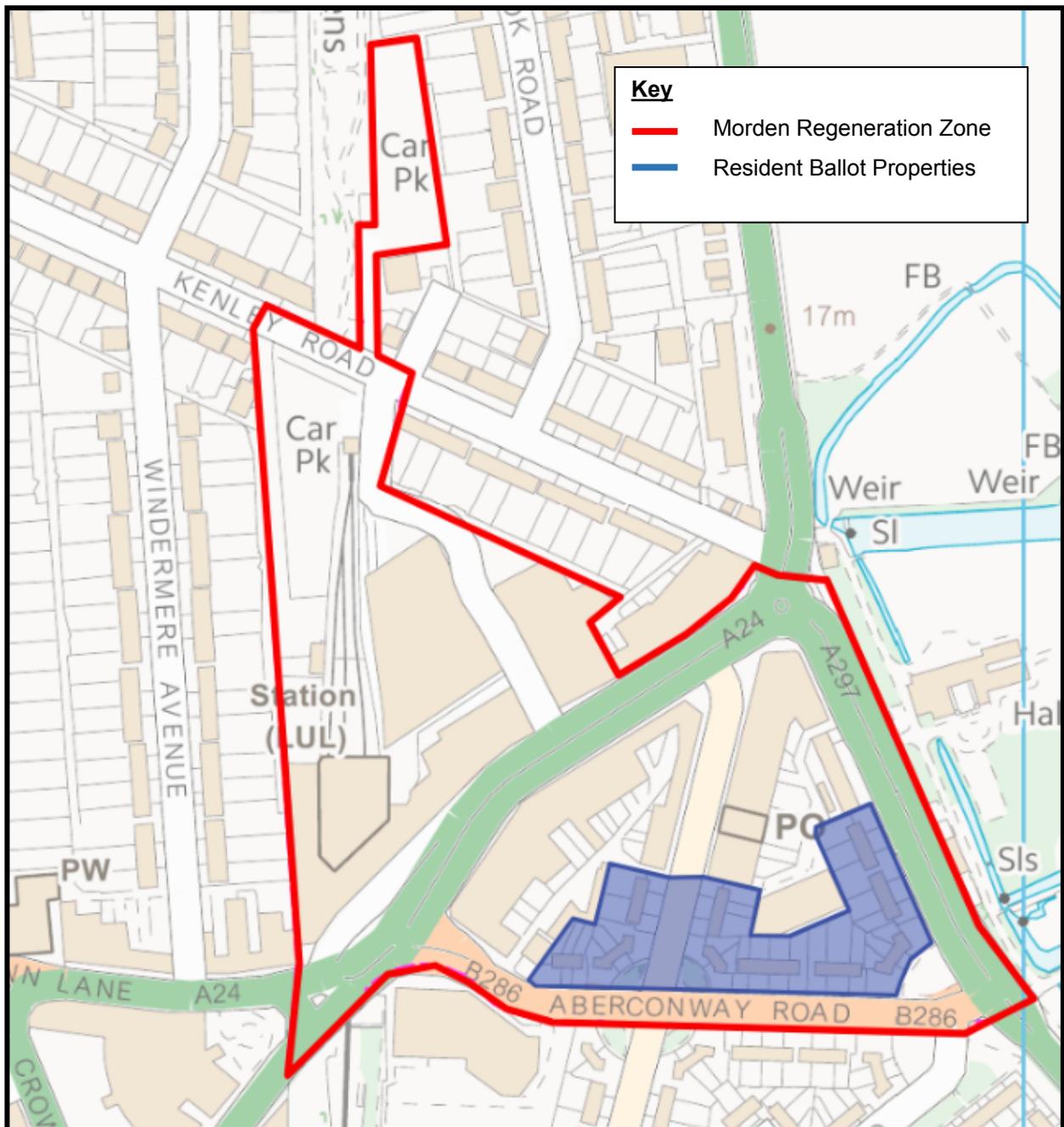
Site Mo4

Morden Regeneration Zone

Morden



**Appendix 2 – The Resident Ballot Properties (as of 2019)**



**Appendix 3 – LBM and TfL Land Ownership (as of 2018)**

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