**COUNCIL – 16 JULY 2013**

**BUS STATION SITE – REVISED DEVELOPMENT AGREEMENT**
**REPORT OF DEPUTY CHIEF EXECUTIVE (COMMUNITY DIRECTION)**

Hinckley & Bosworth Borough Council
*A Borough to be proud of*

**WARDS AFFECTED: ALL WARDS**

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## 1. PURPOSE OF REPORT

1.1 To report on the current position on the Development Agreement with Tin Hat Regeneration Partnership and Sainsbury's Plc, following the Council decision on 13 November 2012 to agree variations to the Agreement and following recent announcements from Sainsbury's Plc.

## 2. RECOMMENDATIONS

2.1 That Council note the feedback from the Tin Hat Partnership Regeneration Company and Sainsbury's Plc with regard to the proposed revised Development Agreement, along with the independent commercial advice to the Council.

2.2 That Council agree the variations to the Development Agreement as set out in the report, and delegate the Chief Executive, in liaison with the Leader and Executive Lead for Finance, to conclude negotiations of a formal Deed of Variation.

2.3 That, subject to agreement to the above recommendation, Council note the proposal and welcome the delivery programme which will seek to secure the completion of the whole scheme, including supermarket, shops, car park, bus station, cinema and family restaurants and public realm improvements by spring 2015.

2.4 That Council consider and agree the revised commercial terms, financial implications and risks, as set out in the report.

2.5 That Council consider and approve a supplementary capital budget of £4,500,000 to reflect the Council's capital investment in the Bus Station scheme.

2.6 That Council delegate authority to the Deputy Chief Executive (Corporate Direction), in consultation for the Executive Lead for Finance, to amend the profile of this capital budget, should it extend over financial years without the need for additional supplementary or carry forward requests

2.7 That Council approve, in principle, a short term rolling loan facility of up to £7,000,000 to the Tin Hat Partnership.

2.8 That Council approves an amendment to the Treasury Management Policy to allow up to £7,000,000 of loan monies to be held with the Council's own bank for a maximum of 2 weeks to manage any delays that may occur with the arrangements.

2.9 That Council approves an amendment to the Treasury Management Policy to increase the Council's Authorised Limit by £18,250,000 to reflect the potential need for borrowing associated with the Bus Station and the Leisure Centre scheme.

2.10 That Council approve the set up of all interest payable/receivable budgets (including MRP – "Minimum Revenue Provision"), arising as a result of these transactions

## 3 BACKGROUND TO THE REPORT

3.1 This report is not for publication and the public and press will be excluded from the meeting during the discussion thereon, due to the sensitive commercial information contained within the report and background document. However, a press statement will be issued by the Council covering the outcome of the decision on this item, together with the proposed delivery arrangements.

## 4. THE CHALLENGE

4.1 It is useful to remind Members of the key challenges and problems which the Council has committed to be addressed by the comprehensive redevelopment of the site for a new retail and leisure scheme. These can be summarized as follows:-

- The area covered by the CPO order is generally of poor environmental quality, both in terms of building form and open spaces, though it occupies an important Town Centre gateway location.
- The built environment on the site is generally in a poor state of repair;
- The existing land is underused (and unused in parts) and includes open car parking, semi derelict factory units, outdated retail provision, a poor quality bus station/terminus, unattractive public realm – all of which are a clear threat to the long term viability of the Town Centre;
- The land is positioned between the heart of the Town Centre and local residential area but has poor connections and linkages to and from each of these; and
- The site contains a tired, run down bus terminus area which gives a negative perception of the town to visitors.

4.2 In addition to the above, the site has experienced uncertainty for well over a decade, which has impacted on local investment in the area.

## 5. RATIONALE FOR THE SCHEME

5.1 Members should be reminded that the regeneration of the Bus Station site has been a key corporate priority of the Council for a number of years. To address the challenges identified above, the scheme will provide a significant opportunity to improve the area by:-

- providing a major employment opportunity in a sustainable location, creating new investment opportunities and over 600 new jobs;
- providing retail, leisure and other facilities for the local community to meet identified need and help sustain the vitality and viability of the Town Centre;
- contributing to the growth and improvement of the town Centre with new quality retail and leisure facilities, leading to improved investor and visitor confidence in Hinckley;
- assisting in preventing the identified leakage of spend out of Hinckley to competing centres, to underpin the viability of the Town Centre;
- vastly improving the amenity of the area for those who work and live in the vicinity of the site;

- restoring community pride in the area;

- addressing the existing Town Centre transport issues by providing an improved bus station for the Town, together with enhanced public parking provision;

- bringing significant improvements to the built environment and landscape of the Town Centre;

- creating/enhancing pedestrian and cyclist routes through the site and enhancing its linkages with the rest of the Town Centre; and

- creating new areas of landscaping, public art and open space to improve the environmental and public amenity of the area.

5.2 To bring forward the site for redevelopment, a Development Brief was published in November 2007 to invite expressions of interest from suitably qualified development partners. The Council sought, through the brief aspirations, a flagship and comprehensive proposal for the sustainable redevelopment of the Bus Station site.

5.3 The Council outlined in the brief its clear ambitions for the bus station site as follows:

- Significantly improve the retail shopping offer
- Deliver a new state of the art multi-screen cinema
- Secure a high quality development with landmark buildings
- Achieve a fully sustainable development enhancing the public realm

5.4 As Members will be aware, the Tin Hat Regeneration Partnership was approved as the Council's preferred Development partner for the redevelopment of the Bus Station site in Hinckley at the Council meeting held on 8 July 2008. Since that time, significant progress has been made towards the redevelopment of the site despite the challenging economic conditions, particularly for the retail industry, which has been experienced both locally and nationally.

5.5 On the 31 June 2009, a Conditional Development Agreement and a Compulsory Purchase Order Indemnity Agreement were entered into between the Council and the Tin Hat Partnership with Wilson Bowden Developments acting as guarantor to both agreements. The main terms of the agreements and variations were reported to Council on 13 November 2012.

5.6 Since the signing of the agreements, the Tin Hat Regeneration Partnership has entered into pre-lease agreements with Sainsbury's in respect of the food store and Cineworld in respect of the Cinema. It is also in advanced negotiations with family restaurant chains.

5.7 Outline planning permission for the development were granted on 18 January 2011. As it was not possible to acquire the entirety of the site through private negotiation, on 18 January 2011, the Council approved a Compulsory Purchase Order for the site. A Public Inquiry was held in November 2011 and, on 2 April 2012, the Hinckley & Bosworth Borough Council (Hinckley Bus Station) Compulsory Purchase Order 2011 was confirmed by the Secretary of State.

5.8 Council, at its meeting on 13 November 2012, agreed to a Deed of Variation to the Development Agreement, on the basis of difficulties Tin Hat Regeneration Partnership were experiencing with securing early sign up of all the retail tenants due to the economic difficulties. It was therefore concluded at that stage that the development would be in two stages, with the initial stage being the food store, the Cinema, the family restaurants, the Bus Station and public realm improvements, with the remainder of the retail units coming forward as a second stage. The Deed of Variation was never signed due to the subsequent shift in stance by Sainsbury's.

5.9 The position has moved on considerably since the Council meeting in November, the implications of which are set out below, along with proposals for revised variations to the Development Agreement, financial implications and risks.

## 6. SAINSBURYS POSITION

6.1 A letter was received from the Chief Executive of Sainsburys plc dated 29 April 2013, confirming Sainsbury's would not be progressing with their interest in the scheme due to the proposal by Tin Hat Regeneration Partnership to phase the scheme, and due to more general concerns arising from a planning decision taken in Bicester from another Planning Authority over a competitor's scheme.

6.2 Since this, further correspondence and meetings have taken place between senior Officers of the Council, Tin Hat Regeneration Partnership and Sainsburys. This has resulted in an agreed position to move forward with the comprehensive scheme, as granted outline permission in 2011.

6.3 Sainsburys Board are meeting in July to confirm the company's renewed contractual commitment to the scheme and this will be reported verbally to the meeting.

6.4 Set out below are the key components of a proposed variation to the Development Agreement to reflect the position that has been reached with Tin Hat Regeneration Partnership and Sainsburys. Members should note that Officers have secured independent commercial advice from DTZ, a nationally renowned firm of commercial surveyors, to assist in negotiating the Council's position. In addition, the Council's independent valuers Sturgis, Snow and Astill have provided an independent review of the proposition.

## 7. TIN HAT REVISED PROPOSAL

7.1 In light of the correspondence and meetings with Sainsburys Tin Hat have returned to the original proposal (in terms of scheme design and build programme) to largely that agreed prior to 13th November 2012. The only difference is the retention of the Territorial Army Building. This is not considered significant and independent legal advice from Linklaters has advised that that this is a minor variation that will not affect the contract with Sainsburys.

7.2 The key elements of the scheme that will be delivered in line with the original proposals include a new supermarket, cinema, 560 space car park, family restaurants, retail units, new bus station and public realm improvements.

**Programme**

7.3 Following detailed discussions with Tin Hat Partnership and their renewed commitment to the early delivery of the scheme, the following key activities are programmed:-

- Council decision on revised Development Agreement July 2013.
- Submission of Reserve Matter Planning applications autumn 2013.
- CPO acquisition (General Vesting Declarations) from autumn 2013.
- Works start on site from spring 2014.
- Completion of scheme summer 2015.

## 8. DTZ INDEPENDENT ADVICE

8.1 DTZ have been commissioned to provide advice that covers both this development and to give an overview of the current market and conditions affecting schemes of this nature across the country. DTZ are well placed to provide this advice as they are a national commercial practice surveying consultancy involved with a number of similar schemes. Their detailed advice is set out in **Appendix 1** to this report and key extracts are included below.

8.2 DTZ advice is clear in that very few retail schemes are currently happening nationally. In fact, for the first time in four decades, no significant Town Centre scheme opened in 2012, with only one scheme opening in the UK in 2013 (Trinity, Leeds – opened March 2013). To stay ahead of the curve and secure the delivery of the major mixed use retail and leisure scheme on the Bus Station site, DTZ advise that the Council should secure the opportunity now afforded by Tin Hat Partnership, having a contract with Sainsbury's as a key anchor, lined up a cinema operator (which will help attract other leisure/restaurant operators) and having secured an external funding partner.

8.3 DTZ highlight the challenges facing developers over securing adequate funding for regeneration schemes in the current economic climate. Members should be reassured that the practice of local authorities accepting reduced payments for land receipts to facilitate major regeneration schemes in the current economic climate "is widespread". By further investing in the scheme, the Council will also help underpin the schemes' viability and help secure its early delivery, for the wider economic benefit of the town and surround area (see 8.5).

8.4 Furthermore, as will be noted in the Finance section of this report, the Business Rates generated from this scheme will pay back the investment in the Leisure Block, Block C of £4,500,000 in 10 to 12 years.

**Local Authority Investment in Town Centre Development**

8.5 The combination of viability and funding issues confronting town centre development, along with the limited availability of public sector grant funding, has led to an increasing number of local authorities carefully examining their role in supporting development delivery. This is manifesting in a variety of ways, including reduced land receipts or land investment where the returns are linked to development profitability (e.g. in the form of "performance" based ground rents or premiums), direct investment or development where local authorities are acquiring land or completed buildings (either on a pre let or pre sale basis) or in some, albeit limited instances, where the public sector is taking the role of developer.

8.6 Whilst the reduction in the land receipt for HBBC is significant, this pattern of reduced payments for local authority land is widespread, particularly amongst other councils who are currently seeking to promote large scale retail led town/city centre regeneration schemes. Large reductions or nominal land receipts are also by no means limited to those areas/locations which, unlike Hinckley, are less affluent or where local economic conditions remain weak. In such poorer centres viability remains very challenging, despite negligible land costs.

8.7 Within a sample of those centres where DTZ is currently advising other local authorities, including Shropshire Council (Shrewsbury), Wiltshire Council (Salisbury), Rochdale Borough Council, Lichfield District Council, Portsmouth City Council and Cheshire West and Chester Council, all of which are seeking to promote large scale town centre retail schemes, the levels of guaranteed land receipts have diminished significantly and in some cases they have disappeared altogether, in order to sustain prospects for viable development and scheme delivery. This has involved examples of where ground rents have been reduced, or fixed at nominal levels, and Secretary of State consent has been sought (and received) for land disposals at less than Best

Consideration or where the local authority has taken an equity stake, with their land receipt derived from priority overage arrangements (invariably in combination).

**HBBC Investment and Financial Return**

8.8 In this instance, the Council's land receipt is directly linked to the profitability of the overall scheme, with HBBC set to receive a 20% share of development profit after a developer's priority return of £5 million. The developer receives the remaining 80% which preserves a healthy commercial incentive for THP to maximize the return from the development and, combined with the priority return, it provides an overall margin commensurate with the development risks THP will carry (including construction overruns, land assembly, letting and funding risks in relation to Blocks A, B and D).

8.9 The Council is also providing a commitment to purchase the leisure block, Block C within the scheme. The financial payment for Block C is based on its current value, on which HBBC has sought independent advice from Sturgis Snow and Astill, with the payment to be made only when the construction of Block C is completed and once the lease of the Cinema to Cineworld UK has been granted. The agreed purchase price is £2,090,000. In addition, the Council will be responsible for meeting the fixed capital contribution towards the cinema's fit out costs (£2,050,000) and the letting costs associated with the remainder of the Block C. The total cost to the Council will be £4,500,000 (see 10.1 below)

8.10 HBBC will receive the rent from the Cinema after an initial 6 months rent free period. Cineworld are contracted to pay a rent of £131,250 per annum, although they receive the benefit of a 25% reduction until 2 ground floor units each totaling not less than 2,500 sq ft, are let. The tenant may also receive a 10% rent reduction, if the food store is not open for trading within 4 months after the access roads and car parks are open to the public. The risk of this is mitigated by a developer indemnity in favour of the Council, if the store opening is delayed as a result of their failure to deliver the food store to Sainsbury's, for the operator's fit out, on a timely basis. It is also in Sainsbury's commercial interest to trade from the store at the earliest opportunity, given their significant property outgoings (rent, rates and service charge).

8.11 The Council is responsible for letting the vacant ground floor restaurants and costs associated with this – these will include letting fees, tenant incentives and shortfalls in service charge payments, together with empty rates for as long as the units remain vacant. All of these risks/factors are reflected in the independent valuation

## 9. VARIATIONS TO DEVELOPMENT AGREEMENT

9.1 Due to the changes discussed in this document, the Development Agreement will need variations. The detail is discussed in the Legal and Financial Implication sections, but can be summarised as follows:

- Extension of the longstop date in the Development Agreement to the 31 July 2014;
- Following completion of construction and the granting of the lease to Cineworld, the freehold of Block C will be transferred to the Council and the Council will be responsible for letting the units in Block C;
- DTZ will act for the Council in letting Block C. It will be agreed that the letting will not be in competition with the letting of the remainder of the development,
- HBBC will require warranties from the main and sub contractors building Block C in favour of the Council;
- The Council will be undertaking a profit share arrangement with Tin Hat and will no longer be receiving a guaranteed £2.75m capital payment on completion of the development, the profit share will be 20% of any profit after the first £5 million from the disposal of the site.

- Tin Hat will contribute up to £90,000 towards the cost of consultants to the Council to verify the costs of developing the site.
- The Council will be providing a revolving loan facility of £7,000,000 to Tin Hat on terms outlined below.

10. **FINANCIAL IMPLICATIONS**

**Capital Cost**

10.1 The revised Heads of Terms outline that the Council will be required to make a total capital investment into the Bus Station scheme of £4,500,000. This is split as follows:

- £2,090,000 fixed price purchase of the free hold of the Leisure Block, "Block C". This payment will be made to Tin Hat Partnership on the Development Agreement becoming unconditional
- £2,050,000 fixed capital contribution incentive payment to the cinema provider
- £360,000 of costs relating to letting and legal fees of the rest of the leisure block excluding the cinema.

10.2 Any costs associated with the commission of external consultants by the Council (e.g. quantity surveyor, commercial practice surveyor and/or accountant) will be met by Tin Hat Partnership, up to the value of £90,000.

10.3 A supplementary capital budget request for £4,500,000 is therefore being made to Council to reflect the total investment that will be incurred on this scheme. This will be funded from borrowing as indicated below.

**Loan Arrangements**

10.4 In order ensure that the scheme is delivered to agreed timescales, the Council will provide a short term revolving loan facility of £7,000,000 to assist the Tin Hat Partnership to cover land acquisition and construction costs. The loan will be drawn down and repaid as follows (Note: The dates quoted are based on the current programme and are subject to change, but the sequence is accurate):

- £7,000,000 drawn down in full in February 2014 to fund land acquisitions. This amount will be repaid by Tin Hat Partnership to the Council in full in April 2014.
- In order to finance the build cost of block C, Tin Hat Partnership will draw down £1,000,000 per month from August 2014 – February 2015. This will be repaid in full (£7,000,000) at the end of February 2015.
- Between the period of April – August 2014, the Council will repay these funds to the lender. The Council will not seek to invest the loan monies.
- Tin Hat Partnership will pay the Council interest on a daily basis at an annual rate of 7.5%.

10.5 In order to facilitate this lending arrangement, the Council will be required to borrow these amounts from the open market. Borrowing from the Public Works Loan Boards is not possible for a period of less than one calendar year. The Council will be subject to interest rate risk and market conditions on the day of lending.

10.6 In order to ensure that the risk of this transaction is managed, the Council has sought advice from Treasury Management consultants (Sector Treasury Services Limited). The following controls will be put in place to mitigate against any identified risk:

- Wilson Bowden is a wholly-owned subsidiary of Barratt Developments plc. The Council will seek a separate legal agreement for this loan supported by cross company guarantee from Barratt Developments and Wilson Bowden as well as a bank guarantee for the lending

- Full company checks have been performed on Barratt Developments and all associated subsidiaries to identify any financial risk
- The debt will be secured against the assets of Wilson Bowden to ensure that the Council has a call on these assets should the company enter financial difficulty

10.7 No Minimum Revenue Provision (MRP) will be made on these arrangements on the basis that the loans are held for less then a calendar year and therefore constitute a revenue rather than a capital scheme. This treatment has been agreed with the Council's Treasury Management consultants.

10.8 The Council will use best endeavours to ensure that all funds are pass-ported between the lender, Hinckley and Bosworth Borough Council and Tin Hat Partnership immediately. However, should any delay occur in the arrangements for transfer, an amendment to the Treasury Management Policy is requested to allow up to £7,000,000 to be held within the Council's bank account with HSBC Bank plc for a period of up to 2 weeks. This amendment will ***only*** relate to the loan funds.

**Profit Share Arrangements**

10.9 On completion of the development, blocks A, B and D will be sold by Tin Hat Partnership on the open market. Tin Hat Partnership will have priority over the first £5,000,000 of development profit with the balance split 80:20 (THP: HBBC). This receipt will be used by the Council to fund the Leisure Centre project and is estimated based on current projections to be approximately £1,200,000 (based on a forecast profit of £11,000,000). This is currently less than the £2,750,000 forecast in the Capital Programme (see 10.12 below).

10.10 Members should also note that under the Unconditional Development agreement, agreed by Council in June 2009 and varied by Council in November 2012, as well as the capital receipt of £2,750,000, the Council was entitled to 7.44% of the Development Profit which in November 2012 was estimated at around £400,000. This latter amount has not been budgeted for in the Council's MTFS. The proposals now, as set out above, replace these entitlements by one sum of 20% of the development profit after the first £5,000,000 i.e. an estimated amount of £1,200,000.

**Borrow to fund**

10.11 In order to facilitate the purchase of Block C and the provision of a loan to Tin Hat Partnership, the Council will be required to prudently borrow.

10.12 In addition to these amounts, the current Capital Programme forecasts that a capital receipt of £2,750,000 will be received by the Council in 2014-2017 to fund the Leisure Centre project. As outlined above, the timing and value of this receipt under the revised Development Agreement will not be known until completion and sale of the development. The Council will therefore be required to borrow this amount to fund the Leisure Development.

10.13 The current Leisure Centre scheme is included in the Capital Programme based on a capital outlay of £7,100,000. During the tender process for this scheme, queries have been raised by a number of bidders over the options for delivering the desired scheme to this budget. In order to keep the tender process on track the bidders have been given the following two options:

(i) The Council would borrow and invest a further £4,000,000 and the cost of the debt,interest plus repayments over a 25 year term be serviced from the revenue income from the Centre.

(ii) The developer/operator borrow and invest up to £4,000,000 with the debt similarly being serviced from the income from the Centre.

10.14 On this basis, an amendment to the Treasury Management Policy to increase the Council's Authorised Limit to allow for this debt is being made. This assumes the worst case position as the profile of these debts will be clarified following completion of the negotiations with Tin Hat Partnership and Leisure suppliers. A total maximum increased limit of £18,250,000 is requested, split as follows:

| | **£million** |
|---|---|
| Loan to Tin Hat Partnership | 7 |
| Purchase of Block C | 4.5 |
| Bus Station capital receipt | 2.75 |
| Leisure Centre - additional investment | 4 |
| | **18.25** |

**Impact on Medium Term Financial Strategy (MTFS)**

The impact of the revised proposal, as set out in this report, on the Council's funding of the Capital Programme, more specifically the Leisure Centre and on the future revenue budget is set out in the paragraphs 10.15 to 10.21 below.

10.15 The MTFS makes 3 assumptions on the capital receipt from the Bus Station redevelopment:

(i) Best Case position – receipt of £2.75m as per the Development agreement of June 2009
(ii) Worst Case position- no capital receipt.
**(iii) Forecast position- Reduced capital receipt of £1.25m**

The position adopted and the one that officers and members will be working to is the "forecast" position.

10.16 The revised anticipated receipt as set out in paragraph 10.9 above is £1.20m. This is a reduction of £1.55m from the original of £2.75m. Compared to the MTFS forecast position of £1.25m reduction, therefore, this is a further reduction from forecast of £50,000. It should also be noted that the £2.75m capital receipt was a fixed amount under the development agreement whereas the £1.2m is dependant on the overall scheme profit. To mitigate against this risk of variable share of profit and to recover the shortfall of £50,000, a further amount of £1.160m has been transferred from other earmarked reserves and general fund balances to the earmarked Leisure Centre reserve to take the balance of this reserve to £2.513m **(please refer to separate report on this Council's agenda)**

10.17 Members should note that The MTFS does not include any provision for income from the profit share of 7.44% stipulated in the original development agreement. Therefore there is no impact on the MTFS of the proposed change in the profit share outlined in 10.10 above.

10.18 The purchase of Block C will have capital and revenue implications. The Council will have a liability of the loan of £4.5m on its Balance Sheet which will be written off over a 30 year period. Block C will be treated as an asset under construction and then valued on completion for inclusion on the Balance Sheet.

The revenue implications will be the cost of borrowing, interest plus MRP spread over 30 years. Assuming PWLB rate of 4.3% the total revenue cost per year will be **£343,500.**

10.19 The annual rental income from Block C is **£131,250** from the Cinema operator plus anticipated rents as follows from the rest of the units in Block C:

25% occupied £89,000 (total including cinema £220,250 pa)
50% occupied £178,000 (total including cinema £309,250 pa)
75% occupied £267,000 (total including cinema £398,250 pa)
100% occupied £356,000 (total including cinema £487,250 pa)

The minimum rent that the Council would expect to receive from Block C is £98,437 per annum, assuming worst case that none of the ground floor restaurants are let and the cinema operator derives the benefit of the 25% rent concession (this assumes that the Sainsbury's is open and trading and as such, the cinema operator does not receive any further rent concession.

The valuation of Block C assumes that 50% of the block plus the cinema will be pre-let and this is the minimum that we will be striving to achieve. This would mean a total rental income of £309,250. The break even position (without the business rates income – see 10.20 below) is 59.6% of units let.

10.20 In addition, the completion of the Bus Station development will generate additional Business Rates for the Council. Under the revised Business Rates Retention Scheme, 80% of any growth over the issued baseline will be allocated to Hinckley and Bosworth as the billing authority. 50% of this amount is then retained by the Council with the other half paid as a "levy" to either the Council's "pool" or Central Government (if no pooling is taking place). Based on proposed rental values and for the scheme and current Business Rate multipliers, the total **retained** Business Rates generated by the entire scheme are forecast to be **£377,907** per annum, giving a pay back period on the investment of £4,500,000 of 10-12 years.

10.21 Therefore the cost of purchasing Block C should be adequately serviced from the rental income and the business rates up lift.

**Impact on funding of the Leisure Centre**

10.22 The funding included in the Leisure Centre Invitation to Tender (and the MTFS) for the new Leisure Centre (before the additional amount of £4m) is as follows:

| | £m |
|---|---|
| Anticipated receipt from the sale of the current LC site | 2.20 |
| Capital Receipt from the Bus Station development | 2.75 |
| Net proceeds from the sale of Middlefield Lane site | 0.50 |
| Transfer from Earmarked Reserve | 1.00 |
| Right to buy sales | 0.10 |
| Borrowing (Balance) | 0.55 |
| **TOTAL FUNDING** | **7.1** |

The revised funding after the proposals set out in this report will be as follows:

| | £m |
|---|---|
| Anticipated receipt from the sale of the current LC site | 2.20 |
| Anticipated profit share from the Bus Station development | 1.20 |
| Net proceeds from the sale of Middlefield Lane site | 0.50 |
| Transfer from Earmarked Reserve | 2.53 |
| Right to buy sales | 0.10 |
| Borrowing (Balance) | 0.57 |
| **TOTAL FUNDING** | **7.1** |

The level of borrowing under the revised proposals set out in this report will increase by £20,000 from £550,000 to £570,000. We will seek to make up this additional amount of £20,000 from savings in year. If this is not possible, then the additional revenue costs; interest and MRP at 4.3% will be £1660.

## 11. **LEGAL IMPLICATIONS**

11.1 The original Development Agreement which was entered into on the 31st July 2009 had a longstop date of the 30th July 2013. The proposals recommended in this report will require a Deed of Variation to take into account the necessary changes to the Development Agreement

11.2 The first required amendment will be an extension of the longstop date in the Development Agreement to the 31 July 2014. This is to allow time for the outstanding conditions precedent to be met. At present the outstanding conditions precedent are:

- The Planning Condition – Outline planning consent has been granted but the Reserved Matters are presently outstanding
- The Vacant Possession Condition – this is largely met by the existence of the confirmed Compulsory Purchase Order on the site. A General Vesting Declaration has yet to be served on the existing owners.
- The Funding Condition – An agreement in principle for funding between Tin Hat and Osprey is in place and the condition will be met when this agreement is unconditional.
- The Viability Condition – Is to remain in place and will be satisfied when Tin Hat are satisfied that an appropriate return on investment can be achieved.

11.3 The Development Agreement will require amending to take into account that, following completion of construction and the granting of the lease to Cineworld, the freehold of Block C will be transferred to the Council.

11.4 HBBC will require warranties and from the main and sub contractors building Block C in favour of the Council. To ensure that the Council is covered against any liability caused by any defects in the construction of the property.

11.5 The HBBC purchase of Block C could potentially constitute State Aid to Tin Hat. However, it is considered that the Market Economy Investor Principle applies. The principle is that an investment acceptable to a market investor in normal market economy conditions is not State Aid. Advice has been received from Sturgis Snow and Astill which indicates that the purchase price is a fair market value of the property in the present economic climate.

11.6 The Council will no longer be receiving a guaranteed £2.75m capital payment on completion of the development. It is therefore considered that the disposal of the Council's interests on the land could be considered a disposal at an undervalue. A valuation of the Council's landholding has been carried out by Sturgis Snow and Astill. The land has been notionally valued at £3.1m. This is based on the scheme having planning consent and a CPO in place, as well the scheme of the nature approved being deliverable. If it was not delivered, the value would not be realised. As such the undervalue will be greater than £2,000,000 and the disposal will fall outside the Local Government Act 1972 General Disposal Consent (England) 2003. As a result an application for specific consent will need to be made to the DCLG prior to the Development Agreement becoming unconditional. The normal timescale for such consent is 28 days.

11.7 The loan to the Tin Hat Partnership is being made at commercial rates and as such the Market Economy Investor Principle applies and the loan does not constitute State Aid.

## 12. CORPORATE PLAN IMPLICATIONS

12.1 The redevelopment of the Bus Station site supports a key Corporate aim of promoting a thriving local economy.

## 13. CONSULTATION

13.1 Following the bidding process in 2007, the Council provided the opportunity to engage further response from the public and local stakeholders in respect of the final submission. Consequently, a staffed public exhibition took place between 7 – 11 May 2008 within the town to seek opinion on the short-listed schemes. A series of staffed exhibitions also took place with over 400 people attending. Questionnaires were also produced to gauge public response to the different elements of each scheme. The Council also carried the information on its website throughout the consultation period.

13.2 In addition public consultation the Council continued to meet regularly with local landowners affected through the redevelopment proposals through a series of public meetings. Local residents, including those from Clarendon Road and Rugby Road, were also kept informed by letter of the proposals and were invited to specific residents' sessions during the consultation period.

13.3 The consultation exercise raised a series of questions designed to ascertain which elements of each scheme best met public expectation. Assessment of the public response to the three proposals indicated strong support for the quality of the design and mix of uses incorporated into the Tin Hat Partnership proposal. The public response clearly indicated that the proposal had particular merit in terms of integrating the site layout within the existing townscape and providing a quality design that sought to complement its surroundings.

13.4 Further consultation was integral to both the process to obtain Outline planning permission for the development (granted on 18 January 2011) and the Public Enquiry that approved the enactment of a Compulsory Purchase Order for the site in November 2011.

13.5 Since then the Council has issued regular updates through the web-site and as press releases as progress has been made.

## 14. RISK IMPLICATIONS

14.1 It is the Council's policy to proactively identify and manage significant risks which may prevent delivery of business objectives.

14.2 It is not possible to eliminate or manage all risks all of the time and risks will remain which have not been identified. However, it is the officer's opinion based on the information available, that the significant risks associated with this decision / project have been identified, assessed and that controls are in place to manage them effectively.

14.3 The following significant risks associated with this report / decisions were identified from this assessment:

| Management of significant (Net Red) Risks | | |
|---|---|---|
| Risk Description | Mitigating actions | Owner |
| Council not agreeing to the variation of the Development Agreement | This key retail/leisure scheme to regenerate the Bus Station will not take place in the short term and there is a high risk of securing an alternative Developer who could deliver a similar scheme of this scale in the foreseeable future. | SLB |
| Council not agreeing to the funding arrangements | As above | SLB |
| Repayment of loans to Developer | The Council will secure a cross company guarantee from Barratt Developments and Wilson Bowden as well as a bank guarantee for lending. Full company checks have been performed on Barratt Developments and all associated subsidiaries to identify any financial risk. The debt will be secured against the assets of Wilson Bowden to ensure the Council has a call on these assets should the company enter financial difficulties. | SLB |
| Restaurant and shop lettings not being taken up. | The marketing programme for obtaining pre-lets will only start once the construction phase for the Sainsbury's store .has begun. This is standard. The Developer is experienced in managing this process having lead on numerous successful schemes and is responsible for delivery. | SLB |
| Market and interest rate risk - The Council may not be able to obtain sufficient and affordable borrowing. | Ongoing advice will be taken from the Council's Treasury management experts and Brokers to ensure that affordable borrowing can take place. | SK/SLB |

15. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

15.1 None for this report.

16. **CORPORATE IMPLICATIONS**

16.1 By submitting this report, the report author has taken the following into account:

- Community Safety implications
- Environmental implications
- ICT implications
- Asset Management implications
- Human Resources implications
- Planning Implications
- Voluntary Sector

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Background papers: None

Contact Officer: Bill Cullen - Deputy Chief Executive (Community Direction)

Executive Member: Councillor Stuart Bray