

**PRIVATE AND CONFIDENTIAL
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SUPPLEMENTARY 2

THE CABINET

Tuesday, 28 September 2010

Agenda Item 16. London Road / North Street Regeneration (Pages 1 - 35)

Appendices 1 and 2 to this report are private and confidential as they contain commercially sensitive information.

Agenda Item 17. Internal Audit and Anti-Fraud Service Contract (Pages 37 - 55)

Appendices B and C to this report are private and confidential as they contain commercially sensitive information.

Agenda Item 20. Building Schools for the Future - Progress Report (Pages 57 - 96)

This report is exempt from publication as it contains commercially sensitive information (paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended)).

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CABINET

28 SEPTEMBER 2010

REPORT OF THE CABINET MEMBER FOR REGENERATION

Title: London Road / North Street Regeneration	For Decision
<p>Summary:</p> <p>At its meeting on the 14 July 2009 the Cabinet approved the development parameters for the future regeneration of the London Road / North Street site in Barking for a retail-led mixed use scheme. It also approved the commencement of a procurement process under OJEU procedures to identify a potential development partner.</p> <p>This report summarises the outcome of that process. It sets out and assesses the proposed terms contained in a development proposal submitted by Bouygues Development in partnership with a major food retailer.</p> <p>Cabinet is recommended to approve the selection of Bouygues Development as the preferred Development Partner to take forward the scheme, subject to the Director of Finance and Resources being satisfied that the scheme delivers an agreed minimum capital receipt to the Council. The approval of Cabinet will form the basis for the Consortium to invest its resources to undertake further work to refine the proposal in preparation for the submission of a planning application and to conclude a Development Agreement with the Council, and the basis for the eventual construction of the Scheme.</p> <p>The report also seeks approval for –</p> <ol style="list-style-type: none"> a. The use of Compulsory Purchase Order (CPO) powers to acquire a number residual properties needed to secure the delivery of the Scheme; b. Provision within the Council's capital budget of £2,238,000 to front fund the acquisition of residual properties during the financial year 2011/12; c. The conclusion of all outstanding legal documentation associated with the Scheme being delegated to the Director of Finance and Resources, or her nominated officer in consultation with the Legal Partner. <p>If approved, the Scheme would represent over £100m of investment in Barking Town Centre which would unlock a site that has been underused or vacant for several years. The regeneration of the site would immediately boost the local economy and act as a catalyst for increased levels of spend in the town centre and help attract greater levels of inward investment. Barking's identity and desirability would be further enhanced as both a key shopping destination and a place to live and work in East London, taking forward the good work that was begun with the nearby Town Square redevelopment. New jobs, a new civic space and new homes would represent a significant improvement to the local environment and deliver a range of social, economic and environmental benefits for both existing residents and businesses and future investors in the area.</p> <p>Wards Affected: Abbey</p>	

Recommendation(s)

The Cabinet is recommended to:

- (i) Approve the selection of Bouygues Development as the preferred Development Partner for phase 2 of the London Road/North Street site subject to the agreement of a minimum capital receipt.
- (ii) Authorise the Director of Finance and Resources, or her nominated officer, in consultation with the Legal Partner to enter into the following with Bouygues Development subject to the agreement of the minimum capital receipt ;
 - a Development Agreement ;
 - a 153 year Lease and building lease;
 - Compulsory Purchase Order (CPO) indemnity agreement;
 - Car Park Management Agreement and
 - Overage Deed
- (iii) Agree the components and development parameters associated with the proposed Scheme submitted by Bouygues Development whilst noting that the detailed Scheme will be subject to a formal planning application and the decision of the Development Control Board and LTGDC Planning Committee at a future date;
- (iv) Authorise the provision of £2,238,000 within the Council's capital budgets in order to front fund the acquisition of residual properties necessary to deliver the Scheme during the financial year 2011/12 noting that the upfront costs will be reimbursed when the Development Agreement becomes unconditional on or before 31 March 2012;
- (v) Authorise the use by the Council of its Compulsory Purchase Order (CPO) making powers pursuant to Section 226(1)(a) of the Town and Country Planning Act 1990 for the acquisition of the land and Section 13 of the Local Government (Miscellaneous Provisions) Act 1976 for the acquisition of new rights over land (shown shaded on **Appendix 1**) for the purposes of securing, retail, residential, and leisure uses as part of the London Road / North Street Scheme
- (vi) Authorise the Director of Finance and Resources in consultation with the Legal Partner, or her nominated officer to -
 - a). take all necessary steps to secure the making, confirmation and implementation of a Compulsory Purchase Order including the publication and service of all Notices and the presentation of the Council's case at any public inquiry following the making of the Compulsory Purchase Order for the land shown shaded on the plan attached as Appendix 1;
 - b). approve agreements with landowners setting out the terms for withdrawal of objections to the Compulsory Purchase Order, including, where appropriate, seeking exclusion of land or new rights from the Compulsory Purchase Order and/or making arrangements for the relocation of occupiers; and
- (vii) Authorise the appropriation of the land owned by the Council (the area within the

red line shown on the Plan on Appendix 1) for the purpose of bringing forward the London Road / North Street Scheme in accordance with Section 122 of the Local Government Act 1972

Reason(s)

To assist the Council in achieving all of its Community Priorities, the good planning of the area by the implementation of one of the Site Specific Allocations of the Barking Town Centre Area Action Plan and to promote the social and economic well-being of the area.

Comments of the Chief Financial Officer

The Scheme is expected to provide a net land value / capital receipt to the Council of around £2.4m which is made up of a £6m gross receipt less £3.6m for deductions for property acquisitions, transport works and the market square.

There are inevitably risks to the precise level of capital receipt to be paid to the Council and a number of detailed site surveys will need to be completed within four months following the award of contract in order to completely de-risk the Scheme and the development cost assumptions upon which it is based. This could result in an increase / decrease to the capital receipt payable to the Council, however at this stage the Council is satisfied it represents realistic assessment.

There is also a degree of uncertainty associated with the potential costs (deductions) and these may increase or decrease when definitive costs associated with transport works and property acquisitions are known and the results from the site surveys and the sales of residential and retail interests (i.e. overage) are returned.

In terms of property acquisitions, these costs are included as it may be necessary for the Council to acquire some properties that are not in Council ownership in order to deliver the scheme prior to the Development Agreement going unconditional and the capital receipt becoming available. As a result the Council will need to set aside £2.238m in its capital budget for the financial year 2011/12. However under the agreement the developer could walk away from the development under a number of circumstances, or where 'onerous conditions' arise. Should this situation arise the Council would not be reimbursed for the acquisition costs it has incurred, however, in this event, the Council would be left with a more saleable site / asset that could be re-marketed at a greater value.

There is also a degree of risk that during the planning stage, changes may be required to the Scheme design resulting in inflated design and build costs. However, this risk has been minimised as far as possible as a number of design workshops have been held during the dialogue stage that has resulted in changes to the Scheme in response to feedback received.

In terms of any ongoing revenue costs, there may be a need to fund the maintenance of the new market square should the Council decide to adopt this as public highway. The decision whether to adopt will need to be made at a future date alongside the planning process. The responsibility for all future ongoing repairs, maintenance and upkeep of the building is to be shared between the food store operator and the managing agent of the residential units. The Council will be the Freeholder but will not be directly responsible for any ongoing repair and maintenance costs to the building or car park

The Council will also be entitled to receive a Section 106 contribution and at this stage the agreement assumes this will be a contribution of £1,000 per residential unit.'

Comments of the Legal Partner

One of the recommendations in this report is that subject to conditions to protect the Council interests, the Council enters into a Development Agreement which if its terms are satisfied will lead to the granting of a 153 year lease for a development consisting of a major retail facility, housing, parking and town square. The proposals are dependant upon contingencies foreseen in legal documentation to be completed to facilitate the scheme and principally relate to acceptable planning issues such as planning conditions and the assembly of the necessary property components as to make up the site required. This may include the exercise of compulsory purchase powers.

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1. Background

1.1 The Cabinet of 14 July 2009 (Minute 34), agreed the establishment of a retail led mixed use scheme including residential and community uses, and a new public square in the area between London Road, East Street and North Street (the 'London Road / North Street' site). In order to assist the Council to achieve all of its Community Priorities, the Cabinet resolved to:

- (i) Agree the Council's parameters on the London Road / North Street site for the redevelopment of up to 6,500 m² (gross) of commercial floorspace, up to 150 units of housing (subject to financial viability), the provision of a permanent public square to accommodate the Market and the creation of better pedestrian linkages for the area.
- (ii) Authorise the publishing of a Contract Notice in the Official Journal of the European Union (OJEU) calling for expressions of interest from developers regarding the regeneration of the mixed use development on London Road / North Street.
- (iii) Authorise the use of the Council's Compulsory Purchase Order making powers pursuant to Section 226 of the Town and Country Planning Act 1990 (as amended) for the acquisition of any outstanding freehold and leasehold interests from the properties outlined in the report, for the purposes of securing the site for redevelopment.

- (iv) Agree the principle of the delivery of an element of housing subject to financial viability of this component.
 - (v) Agree the principle that a portion of the costs associated with works to the Methodist Church be funded, in due course, from any capital receipt received from the commercial development; and,
 - (vi) Note the net loss :
 - a. General Fund revenue income to the council of £80,000 in a full year from loss of car parking income arising from the proposals and agree that these reductions are reflected in the medium term financial strategy and the relevant service budgets.
 - b. HRA revenue income of £68,000 from shops on London Rd / North Street in a full year arising from these proposals and agree that these reductions are reflected in the HRA medium term Business Plan and the relevant HRA service budgets.
- 1.2 Following authorisation from the Cabinet to proceed on the above basis, the Council commissioned specialist planning and development consultants (GVA Grimley) to advise on the development potential of the London Road / North Street site and recommend the most suitable way to secure a development partner market the site, and secure implementation / development partners.
- 1.3 A design code was formulated on the basis of the criteria set out in par. 1.1(i), the existing policy framework for the site, in particular the Barking Town Centre Area Action Plan and the agreed Masterplan for the site. The Design Code informed the marketing material for the site and provided a basis for evaluating bids submitted through the tender competition. Further legal, design and financial criteria were developed alongside the design code to fully assess the bids received.
- 1.4 A Competitive Dialogue procurement route, under the Public Contracts Regulations 2006 was followed as it afforded the greatest opportunity for the Council to provide detailed input into scheme design. An Official Journal of the European Union (OJEU) Contract Notice was published in July 2009 inviting Pre-Qualification Questionnaires to be submitted by 21 September 2009. One of the requirements of the contract was that respondents to the PQQ were required to have a retailer as part of their consortium to occupy the foodstore.
- 1.5 The Bouygues Development (BYD) were the only party to successfully pass the PQQ stage and were invited to participate in the subsequent Dialogue Stage. The procurement process and scoring is set out in **Appendix 2**. Throughout the process, the Consortium has worked with the Council in order to bring forward more detailed and refined proposals and, to this effect, were involved in several design, financial and legal meetings with Council officers (Area Regeneration, Development Control, Asset Management, Refuse, Environment and Transportation officers). Other key stakeholders such as HCA, LTGDC, Design for London, English Heritage and CABE were also consulted on the emerging proposals. Two outline solutions submissions were submitted. The first in December 2009 and the second in March 2010. The final tender submission represents the culmination of the competitive

dialogue process and the refinement of the various iterations developed during the Dialogue Stage.

2. Proposal

- 2.1 Bouygues Development’s final submission includes a foodstore of some 9,249 m² gross internal area (3,716 m² net sales area), 90 residential units, some 344 parking spaces (one level at ground level, one level underground) and a new market square of some 2,000 m², together with associated public realm improvements, servicing, access and landscaping (‘the Scheme’) on a site comprising 1.07 hectares (2.6 acres) of which the Council currently owns 0.82 hectares (2 acres), or 77% of the site.
- 2.2 The car parking on site is, with the exception of blue badge spaces for residents, dedicated for shoppers. The allocation of no residential parking, apart from the disabled spaces, is consistent with the Barking Town Centre Area Action Plan as this an area with high public transport access and a local car club. In addition the proposal to extend the hours of the London Road Car Park to 24/7 will mitigate the loss of the surface car park spaces for Church users and could in the future allow for a contract parking arrangement for residents. These issues will be further explored during the planning application stage.
- 2.3 The Scheme has been designed to meet the aspirations set out in the site’s Masterplan (2007) along with key local policy documents that form part of the Local Development Framework including the Core Strategy, Borough Wide Development Policies, Barking Town Centre Area Action Plan (AAP), and the Barking Town Centre Urban Design Guidance Supplementary Planning Document.
- 2.4 The final tender submission represents the BYD’s approach to ensuring that the Scheme meets the Council’s policy requirements whilst having regard to the cost, value and legal implications of different uses, layouts, construction forms and massing. It represents a compliant bid as it passes all the mandatory and minimum requirements set out in the technical and financial evaluation matrices established by the Council at the beginning of the dialogue stage (Appendix 2).
- 2.5 All the design objectives and development parameters in the final tender submission are set out in **Appendix 3**. A brief summary is set out in the table below.

Commercial	
Foodstore Gross Internal Area	8,899 m ² / 95,788 sq ft
Foodstore Net Sales Area	3,716 m ² / 40,000 sq ft
Foodstore Café	350 m ² / 3,768 sq ft
Employment	350 jobs
Ancillary Space	
Community or Retail Unit	115 m ² / 1,238 sq ft
Market Square	Circa 2000 m ²
Car Parking	
336 dedicated parking spaces for shoppers and a further 8 units	

for blue badge residential holders		
Residential		
90 units		
1 Beds (2 person)	36 units	40%
2 Beds (3 person)	22 units	24%
2 Beds (4 person)	23 units	26%
3 Beds (5 person)	3 units	3%
3 Beds (6 person)	6 unit	7%

Table 1. Summary of development parameters

- 2.6 The 90 units proposed in the Scheme are assumed to be 100% private, however, if HCA / NAHP funding is secured at a later date, a proportion of the units could be delivered as affordable.

Development Agreement and Building Lease

- 2.7 The Project Team, made up of members from the Council's Regeneration and Economic Development, Asset Management and Property Services, and Legal Practice teams along with external legal advisors (Nabarros) have met the Consortium on several occasions to negotiate legal documentation to be agreed alongside any award of contract. This includes the drafts of the Development Agreement, Building Lease, CPO Indemnity Agreement, Car Park Management Agreement and Overage Deed.
- 2.8 Subject to Cabinet approval, the Council would enter into a contract with Bouygues Development (BYD) by way of a Development Agreement (DA) and Lease. However, this would be subject to a number of pre-conditions that would need to be satisfied before the contract between the Council and BYD could become unconditional. These include:
- The grant of a satisfactory planning permission without 'onerous conditions' attached;
 - Receipt of satisfactory site surveys by BYD;
 - Completion of site assembly by the Council through negotiated agreements or via the application of its CPO powers; and
 - BYD being able to agree satisfactory arrangements for the disposal of the supermarket and of the residential units to appropriate investors.
- 2.9 Whilst the Council maintains control over the Scheme's development through a number of longstop dates by which all pre-conditions must be satisfied, there are a number risks outside the Council's control that allow BYD to withdraw from the Scheme's delivery. As such, there remains a level of risk associated with the DA due to its reliance on retail market sales and to a lesser extent, housing sales. Nevertheless, commercial advice notes that in a development of this scale and complexity the pre-conditions are not abnormal and the Council can take some comfort from the fact that BYD have spent, and continue to spend, considerable sums, in progressing the Scheme with their professional advisors.
- 2.10 The draft Car Park Management Scheme sets out that the car park will provide up to 350 spaces, 10% of which will be dedicated for residential tenants as blue-badge spaces with free and unrestricted access. For shoppers, the car park will be

managed on a 3 hour 'pay and display' / short stay basis and shoppers blue badge spaces will also be provided.

- 2.11 The draft Overage Deed and CPO Indemnity Agreement are examined in detail in the following section of this report.
- 2.12 Fine-tuning and minor changes to all legal documentation will continue until the Award of Contract to Bouygues. As such, the Cabinet is requested to authorise the Director of Finance and Commercial Services, or her nominated officer to conclude all draft legal documentation associated with the Scheme.

Financial Offer

- 2.13 Bouygues Development (BYD) have offered a gross land value of £6,000,000. This sum is subject to the estimated deductions outlined below which are required to deliver the Scheme:

Property Acquisitions	£2,238,000
Market Square	£600,000
Transport Works	£750,000
Total deductions	£3,588,000

Table 2. Costs to be deducted from capital receipt / gross land value

- 2.14 The cost estimates above have been assessed and agreed by the Project Team. Taking into account the deductions above, the net land value / capital receipt for the Council is estimated to be £2,412,000.
- 2.15 The £2,238,000 acquisition costs would be expected to reduce by some £863,000 if an agreement is secured for the Phase 1 Skills Centre contract. Clarification of acquisition costs are covered in greater detail in paragraph 2.25 and 2.27 of this report. The £750,000 for transport works represents a realistic estimate given current information known about the site and proposals submitted by BYD. Cost certainty will only be achieved once site surveys are returned in fulfilment a pre-condition attached to the Development Agreement.
- 2.16 The net land value / capital receipt to the Council is subject to base values being agreed with BYD for the residential and retail elements of Scheme and the results of site surveys. The base values for the residential and retail elements are linked to a draft Overage Deed which sets out that should, at a later date, the selling price of the retail and / or residential elements to an investor be more or less than the base values allowed for by BYD as part of their final submission, then any addition / reduction would be increased / deducted from the capital receipt paid to the Council. The Project Team is currently in negotiations with BYD to secure a minimum capital receipt that would be paid to the Council in any event. At the time of writing, this is still being negotiated. An update on the negotiations will be reported verbally to Cabinet.
- 2.17 In terms of positive overage, the terms of the draft Development Agreement allows for two possible situations where percentage of excess profits can be clawed-back by the Council either before the conditions have all been satisfied or within three years of completion. The first allows that, prior to the DA becoming unconditional, should the selling price to the investors be more than the final offer, any addition in

the receipt would be paid to the Council as an element of the land value. The second allows that, within three years of the DA becoming unconditional, LBBD will be entitled to an overage on the actual sales values of the residential sales equivalent to around 50% of the gain. There is a high probability that the second overage will not arise since the intention of BYD is to sell all of the residential units to a housing developer who will clearly wish to retain all of the growth in property values.

- 2.18 There are inevitably risks to the precise level of capital receipt to be paid to the Council following any award of contract. A number of detailed site surveys such as an assessment of transport works and ground investigations need to be completed within four months following the award of contract in order to completely de-risk the Scheme and the development cost assumptions upon which it is based. This could result in an increase / decrease to the capital receipt payable to the Council. At this point provisional sums have been submitted by BYD and the Project Team is satisfied that they represent realistic assessments of site preparation costs with the information readily available.
- 2.19 The draft Development Agreement currently sets out that any capital receipt would not be paid to the Council until all pre-conditions are satisfied, in other words, the contract becomes 'unconditional'. This is currently expected to be no later than 31 March 2012.

Residual land and property acquisitions and the use of the Council's CPO Powers

- 2.20 At the Cabinet meeting held on 14 July 2009 (Minute 34) a report was presented that authorised the use of the Council's Compulsory Purchase Order (CPO) making powers pursuant to Section 226 of the Town and Country Planning Act 1990 (as amended) for the acquisition of any outstanding freehold and leasehold interests for the future development of London Road / North Street.
- 2.21 Although more than three-quarters of the Site is within the Council's ownership, there are still a number of residual property interests to be acquired in order to deliver the Scheme. Negotiations are underway with one of the affected landowners, 20 – 22 North Street with a view to purchasing this key property by agreement using existing funds (paragraph 2.27). In other cases it has not been possible for outstanding property acquisitions to have been actively pursued due to shortage of funding.
- 2.22 Subject to Cabinet's approval of the terms of BYD's final submission, the Council would need to step-up negotiation activity to purchase by agreement and seek formal CPO powers to ensure certainty that the site can be granted to Bouygues Development on time and with vacant possession.
- 2.23 The draft CPO Indemnity Agreement with Bouygues Development indicates that if the Council acquires any interests in the Site (as part of site assembly), then reimbursement of such acquisition costs will not be made until March 2012, with 31 March 2012 being the final date for such re-payments. It should be noted that the Council will not have any obligation to acquire any interests in the current financial year (2010/11) but there is a risk that it may be required to do so if served with a Planning Blight Notice (sections 149 -171 Town and Country Planning Act 1990) by any of the affected property owners.

- 2.24 If the Council acquires property in advance of the CPO, it is expected that there would be a period of time between the date of acquisition and the date on which reimbursement would be received from BYD (March 2012). As such, the Cabinet is asked to authorise the provision of £2,238,000 within the Council's capital budget in order to front fund the acquisition of residual properties set out in Appendix 1 (this will be subject to review to confirm that all of the associated fees can be treated as Capital expenditure). They represent properties that are not in the Council's ownership but are required to deliver the Scheme.
- 2.25 If the pre-conditions are all satisfied or waived before 31 March 2012 and the Lease to BYD is therefore granted earlier, then all acquisition costs due from BYD will be paid to the Council on the grant of such Lease.
- 2.26 The costs associated with acquiring land currently owned by Barking Methodist Church land and completing necessary remedial works are estimated at £863,000. If the Council proceeds with Phase 1 (the Skills Centre) there would not be no need to allocate within the Council capital budget any costs associated with the acquisition of land and works associated with Barking Methodist Church since such costs would be covered by the phase 1 contract. This would result in a reduction in acquisition costs of £863,000, resulting in acquisitions for the Phase 2 Development totalling £1,375,000. However, in this instance, it would be expected that any capital receipt from Phase 2 would be expected to help offset any borrowing associated with the phase 1 (Skills Centre) development.
- 2.27 If any properties are not able to be acquired through a negotiated settlement, the application of the Council's CPO powers will be required. The making of the CPO and Inquiry will incur costs of around £200,000 which are included in the estimated £2,238,000.
- 2.28 The HCA recently acquired no.s 23 – 25 East Street (former Woolworths property) which is recognised as integral to delivering the comprehensive redevelopment of the phase 2 site. It has indicated that it may set aside the land value on property to the rear of no. 23 -25 East Street (valued at approximately £600,000) in order that the Council may use this land / these monies to invest in the successful delivery of the Skills Centre and phase 2 development. If the Cabinet does not enter into contract with the preferred bidder for phase 1 and the Skills Centre development does not go forward, the transfer of land from the HCA to the Council would be at risk and the arrangement with the HCA will need to be re-negotiated. Provision for this expenditure does not need to be allocated within the Council's capital budget as the property is owned by the HCA (regeneration partner for the site). Though, there is a possibility that such costs may be required to be paid back to the HCA once a capital receipt becomes available.

Timetable

- 2.29 The table below sets out the key dates for delivery of the Scheme if the Cabinet selects Bouygues Development as the preferred Development Partner for the redevelopment of Phase 2 London Road / North Street.

Milestone	Date
Cabinet meeting	28 September 2010
Contract award and signature of documentation (to include Conditional Development Agreement and CPO Indemnity Agreement)	17 December 2010
Complete all surveys and due diligence	05 March 2011
Submission of Planning Application	15 June 2011
Anticipated Planning Decision	17 November 2011
Start on site works	1 March 2012
Practical Completion	12 September 2015

Table 3. Indicative scheme delivery programme / timetable

3. Financial Issues

Capital

- 3.1 The Scheme is expected to provide a net land value / capital receipt to the Council of around £2,412,000 to the Council when the Development Agreement goes unconditional and the Lease is granted. There is a degree of uncertainty associated with this sum as it may increase or decrease when definitive costs associated with transport works and property acquisitions are known and the results from the site surveys and the sales of residential and retail interests (i.e. overage) are returned. A provisional sum for transport works, land acquisitions and site remediation have been agreed by Council's consultant surveyor and Project Team who believe them to be realistic assessments of cost.
- 3.2 The Project Team has confirmed with Bouygues Development (BYD) that the Council will not accept negative overage resulting in net land values / capital receipt to the Council dropping below an agreed baseline level. The Project Team is currently in discussions with BYD about the minimum level of capital receipt that the Council would accept which will be reported to the Cabinet on 28 September 2010.
- 3.3 The financial offer assumes a Section 106 contribution of £1,000 per residential unit which represents a reduction from the LTGDC's standard £6,000 per residential unit tariff. The Project Team feel that that this reduction is justified as it can be demonstrated that the £6,000 tariff can be offset by contributions towards community benefits such as the market square, significant road / junction improvements, and work associated with the Skills Centre and adjacent Barking Methodist Church
- 3.4 The financial risks associated with acquisition of residual land interests will be initially borne by the Council as it will be expected undertake all acquisitions costs including potential CPO Inquiry costs in advance of the Development Agreement becoming unconditional. However, this risk will be mitigated by the draft CPO Indemnity Agreement which sets out that if the Council acquires any interests in the site (as part of site assembly), then reimbursement of such costs by BYD will be made by 31 March 2012. If the pre-conditions are all satisfied, or waived, before 31 March 2012 and the Lease is granted earlier, then all acquisition costs due from BYD will be paid to the Council on the grant of such Lease. The acquisition costs will be deducted from the gross capital receipt.

- 3.5 The Cabinet is asked to set aside up to £2,238,000 in the Council's capital budget for the financial year 2011/12. This would enable the Council to front fund the acquisition of residual properties set out in Appendix 1 prior to the capital receipt becoming available.
- 3.6 The Development Agreement is worded such that BYD can walk away from the development under a number of circumstances, or where 'onerous conditions' arise. In this instance, the Council would not be reimbursed for the acquisition costs expended. However, in this event, the Council would be left with a more saleable site/asset that could be re-marketed at a greater value.
- 3.7 There is a degree of risk that during the planning stage, changes may be required to the Scheme design resulting in inflated design and build costs. However, this risk has been minimised as far as possible as a number of design workshops have been held during the dialogue stage with LTGDC, Design for London, English Heritage, and CABA that has resulted in changes to the Scheme in response to feedback received.
- 3.8 The Project Team has conducted an exercise with the Council's architectural consultant in order to determine whether the detailed design and finish can be delivered to an acceptable quality within the given cost model so that the Council is not left with additional fees resulting from any design changes/improvements to specifications required during the planning stage (e.g. by CABA, English Heritage, GLA). This exercise has concluded that the scheme can be delivered to an acceptable quality within the cost model.

Revenue

- 3.9 The Council currently manages and maintains the temporary market square. If the Council adopts the new square and pedestrian route that would be delivered by the Scheme, it would be required to manage and maintain the area at its own expense. If the area is not adopted there is an option that revenue contributions from occupants bounding and / or occupying the market square such as the supermarket operator would be required. However, in this instance, the Council will also be required to contribute to this cost as market stalls and the Skills Centre will occupy / front onto the area. Should the Council decide to adopt the market square for public highway at a later date, a budget would need to be allocated for the maintenance and management from the Council's revenue budget. The decision whether to adopt the market square as public highway will need to be made at a future date alongside the planning process.
- 3.10 Management of the traffic works as per the Council's usual duties as highways authority would also be required in order to implement the Scheme. BYD would be expected to pay the Council's associated fees.
- 3.11 The responsibility for all future ongoing repairs, maintenance and upkeep of the building is to be shared between foodstore operator and the managing agent of the residential units. The Council will be the Freeholder but will not be directly responsible for any ongoing repair and maintenance costs to the building or car park.

3.12 All other revenue implications were noted by the Cabinet on 14 July 2009 (Minute 34)

4. Legal Issues

4.1 After the Development Agreement is signed it represents a conditional contract with longstop dates by which all conditions must be satisfied. There remains a level of risk associated with the development agreement due to its reliance on a number of pre-conditions, some of which are reliant on retail market sales and to a more limited extent housing sales. However, commercial and legal advice indicates that the risks have been mitigated against as far as possible in the legal documentation following an assessment of the current and projected retail and housing markets and through consultation with various statutory authorities (e.g. LTGDC, CABE, English Heritage, Design for London) and internal Council departments.

4.2 Advice suggests that it is not unusual that these types of conditions are included in such a development agreement. There is a risk that the Council could be left in a situation where it had completed (or was part way through) the CPO process but the development does not proceed due to one of the pre-conditions not being able to be satisfied. In this instance, the Council could be left holding the site but without a means to recoup CPO costs until alternative arrangements were made, however, as observed about a complete site has a significantly greater development value.

4.3 In relation to the use of the Council's Compulsory Purchase Order (CPO) making powers, the Council's Constitution (Part D, Land Acquisition and Disposals Rules Section 3) requires that the Cabinet must exercise its judgement regarding the use, acquisition and disposal of land in respect of the grant and/or disposal of leases over 20 years. Consideration has been given to the Council's responsibilities under the Human Rights Act 1998. The key provision is Schedule 1 Part 2 Article 1 which relates to protection of property. This is a qualified right that is to say the rights of individuals have to be balanced with the common good. The Council proposes to offer proper compensation through negotiation and if agreement cannot be reached acquisition will be through compulsory purchase powers. The Human Rights Act recognises such powers may be used for the general interest and as set out in this report the scheme is driven by the consideration to achieve the economic and well being of the community by this regeneration proposal. This is a valid ground and adequately addresses the Human Rights consideration.

4.4 In order to safeguard the delivery of the Scheme, authority is sought to include part of Barking Methodist Church's land to be acquired using CPO powers if, in the first instance, the land cannot be acquired through negotiation. The acquisition is required in order to mitigate the risk of the Cabinet not entering into contract with the preferred bidder associated with phase 1 London Road / North Street (Skills Centre). This would ensure the Scheme can be implemented and is able to deliver the agreed regeneration objectives.

4.5 The issue of whether making use of the CPO power is justified or not (for the portions of Church land and any other objections to property acquisition) would be determined by the responsible Minister or through a CPO Inquiry if one was held under the procedures. The Council would need to demonstrate that there was a "compelling case in the public interest". The Project Team is confident that a case can be made as the regeneration benefits far outweigh any losses. In the case of

the Methodist Church, small portions of the Church's land and side building would be acquired with the main part of the Church itself remaining unaffected. There would be a possibility of negative publicity associated with the CPO and the Council would need to consider its approach to this.

5. Other Implications

5.1 Risk Management

5.2 There are a number of risks associated with awarding the contract to Bouygues Development (BYD) for the Scheme proposed. The legal and financial risks and mitigation strategy are noted in the sections above.

5.3 By granting a 153 year lease for the occupants of the Scheme, the Council will effectively place itself as the head landlord for the supermarket and housing units located above. This risk will be minimised as far as possible through provisions set out in the legal documentation that have been negotiated and agreed by the Regeneration, Legal and Asset Management & Capital Delivery officers, on advice from commercial and legal advisors. Likewise, the timescales and criteria for design and construction of the Scheme must meet agreed terms set out in this documentation.

5.4 Site investigations are to commence within strict timescales following award of contract in order to de-risk the Scheme and determine ground conditions so that there can be greater certainty over BYD's cost plan. All estimates to date have been examined by the Council's external surveyor and are satisfied given level of information on-hand.

5.5 In the circumstance that the Council needs to exercise its Compulsory Purchase Powers the main risk to the Council would be that, due to a valid objection or other reason, the CPO is not confirmed. Legal advice has also been sought to ensure the strongest possible case for a CPO is developed. It should be noted that the proposal is consistent with the Borough's planning framework such as the LDF Barking Town Centre Area Action Plan, Core Strategy and London Plan policies. It also has been through extensive consultations as part of the London Road / North Street Masterplan.

5.6 Contractual Issues

5.7 Procurement relating to this project has been undertaken in accordance with the provisions of the Council's contract rules and procurement rules. It has also followed EU Official Journal of the European Union (OJEU) Contract Notice procurement rules as followed by the "*Competitive Dialogue*" procedure as outlined in Regulation 18 of The Public Contracts Regulations 2006 (SI 2006 No. 5). The Council's legal team along with their external legal consultants (Nabarros) have been consulted on the terms and conditions of the procurement and issues arising from the drafting of legal documentation.

5.8 The Cabinet has the power under Section 15 (6) of the Local Government Act 2000, and under Part C of the Council's Constitution, to delegate its powers to officers. If the request for delegated authority to the Director Finance and Commercial Services, or her nominated officer is granted, in deciding whether to award or not to

award the contract, to the recommended contractor must be satisfied that the provisions of the EU Regulations, including EU Treaty principles of equal treatment of tenderers, non-discrimination and transparency have been complied with in the selection of the contractor. The Legal Partner confirms that there are no legal reasons that have been drawn to their attention to prevent the Cabinet from approving the recommendations of this report.

- 5.9 A 153 year head lease would rest with Bouygues Development for the delivery of the Scheme. Separate leases would be issued from the Council to residential and retail investors, with arrangements already agreed between BYD and the retail investor that current preferred foodstore operator would occupy the retail unit. The market square would remain in the ownership and control of the Council.
- 5.10 Legal advice suggests that the main builder's collateral warranty should take account of issues such as interference, as with the Market Square and with the Traffic works. If the builder is in default under the construction contract (in terms of the works constructed) then the Council would have the ability to recoup costs for making right such works. Under the current drafting of the Development Agreement, BYD is requesting an overall cap on their liability (and the liability of the parent company guarantor / builder). At present, the amount of this cap has not been specified. Through further negotiations with the developer, the Project Team will ensure that this cap is sufficiently high enough to cover any potential claims or losses.
- 5.11 **Staffing Issues**
- 5.12 There are no staffing implications.
- 5.13 It should be noted that there will be a need for further legal and commercial advice resulting from any implementation of the Council's CPO making powers, if required. However, this would be covered within a reserved budget / borrowing set aside for the acquisition of residual properties on the site, subject to the approval of Cabinet, and would be reimbursed when the contract with BYD becomes unconditional and the capital receipt is paid to the Council.
- 5.14 **Customer Impact**
- 5.15 An Equalities Impact Assessment for London Road / North Street phase 2 Scheme has been completed this concluded that for people who move into the development, and for existing residents of the Town Centre, the experience of the development will hopefully be very positive. New homes, jobs and community facilities will be provided for these people, to make a healthy and sustainable community. For residents in other parts of the Borough, who may not make use of the facilities in the town centre or who have no need to visit this development, the impact may not be felt as strongly. Though it is envisaged that even for those who do not live in the town centre will visit the site to shop and spend time in the new public space provided on site.
- 5.16 We will ensure during the development process that action is taken to sufficiently publicise the facilities available to all residents in the town centre and encourage people to visit the site and make use of public space, parking and shopping facilities. We will ensure that all public areas are designed with safety and security

in mind so that everyone can enjoy the space. In addition, having management strategies for both the public and private spaces (i.e. housing areas) will ensure that the proposed development will be enjoyed by all. Employment and training links with the Skills Centre and programmes targetted those in need will help ensure equity is achieved through job creation. There may be opportunities for additional community space provision within the development. Additionally, if any cross subsidy from phase 2 is achieved to support the provision of community/outreach facilities in Barking Methodist Church this will be a great benefit.

- 5.17 The Scheme provides an opportunity to cater to all people irrespective of race, gender, disability, age, sexual orientation or faith. The objective is to plan for the needs of all in order to ensure that the physical design does not adversely affect anyone's use, access or enjoyment of the area.
- 5.18 Equity in job creation and skills training will ensure that those in need are provided with new opportunities to improve economic self-sufficiency and well-being through additional jobs as well as employment and training programmes provided through the life of the development. Both the supermarket operator and BYD are committed to meet Council's objectives in terms of achieving the economic development which are:
- Embedding training and employment opportunities within the procurement, development and planning processes
 - Reducing unemployment levels within the borough
 - Developing local supply chain opportunities
 - Increasing educational opportunities for young people, through work placements, apprenticeships and other vocational learning (e.g. diplomas).
- 5.19 Employment creation is part of sustainable communities and both Bouygues and the major food retailer are committed to implementing employment schemes for the site with a particular focus on creating local jobs. It is envisaged that the new food store will employ 350 persons. In addition, during the construction works of the development, BYD will be required to provide apprenticeships and internships when and wherever possible. There may be the opportunity for BYD to provide formwork apprenticeships and business administration apprenticeships in addition to the traditional construction trades. Work experience and internships will also be offered to local residents who wish to get a taster of the construction industry to complement their studies. BYD have expressed an interest to help the Council promote their Education Business Partnership. Once complete the store will provide jobs to the local community and links with the Skills Centre will be established so that training and employment in hospitality and catering will be delivered.
- 5.20 The retail and residential uses, and civic space will address needs across ethnicity, age, sexual orientation, gender, faith and disability groups and the proposal will not discriminate against any persons wishing to move into the community or use the facilities. The development will be designed with advice from Safer by Design experts so that all public and private spaces are designed to deliver a sense of safety and security. 10% of the residential units will be wheelchair accessible and all of the residential units will be built to Lifetime Homes standards. Good public transport links, including the ELT will cater for people who cannot drive or walk long distances. The public realm will be designed so that there are highly visible

surfaces for people with vision disabilities. At the same time, this space will be used by school children and other residents and visitors to the area. The public places will be designed with the input of the Barking and Dagenham Access Forum. It is anticipated that this will provide a positive impact on community cohesion through provision of a new destination that promotes pride and sense of place.

5.21 Safeguarding Children

5.22 The Scheme will create an improved public space and destination at the heart of the Town Centre with improved legibility and accessibility. These measures will go towards improving safety levels and reducing the fear of crime benefiting the local community at large including young people. Family housing would address housing need.

5.23 Health Issues

5.24 The Scheme is expected to improve health of local residents by providing improved access to fresh food. Ill health attributed to unemployment will be addressed via employment and skills training schemes provided by BYD during construction and the foodstore operator's apprenticeship scheme when the foodstore opens.

5.25 Crime and Disorder Issues

5.26 Section 17 of the Crime and Disorder Act 1998 places a responsibility on local authorities to consider crime and disorder implications of any proposal. The Scheme is expected to greatly improve the local environment and contribute to a healthier, safer and more vibrant town centre by improving accessibility and the public realm and providing increased activity and passive surveillance in and around the site during both the day and night. This will replace homes on the site that previously did not meet decent homes standards and whose entrances at the rear of the commercial premises often lead to resident complaints regarding safety and crime.

5.27 The Scheme will seek to achieve 'secured by design' status to ensure that the opportunities for crime are minimised. During construction, security arrangements for the site will be the responsibility of the appointed Contractor and each site adjacent neighbours will be given contact details for the site management in case of any problems and out of hours emergencies.

5.28 Property / Asset Issues

5.29 The Council will retain freehold of the site but will grant leases for the supermarket and housing elements of the Scheme. The market square is currently maintained by the Council and will remain under the Council's management if it is adopted as public highway. If the square is not adopted, the Council could seek a commuted sum to be charged on the foodstore operator and any other uses bounding or benefiting from the market square in order for its long term maintenance and management.

6. Options appraisal

- 6.1 **Option 1 – Approve the current offer from Bouygues Development without a guaranteed minimum receipt to the Council.** This option presents the risk that the Council could realise little or no net financial benefit for the site. It would however still realise the key regeneration benefits of a retail-led mixed use scheme incorporating a large foodstore, new jobs, a new civic space and new homes. Whilst this would represent a significant improvement to the local environment and deliver a range of social, economic and environmental benefits this option has been discounted as officers and our advisors consider that a net receipt from the site should be achievable in the current market.
- 6.2 **Option 2 - Do not approve the proposal even if a minimum net receipt can be agreed.** The selection of this option would require the site being re-offered to the market via a new OJEU procedure meaning all of the resources and funding committed to this project to date would be abortive. Any new procurement would incur expenditure which is not currently budgeted for. In addition this would give no guarantee that a better offer would be achieved. This option has been discounted as the cost of entering into a new OJEU procedure could be in the region of £100,000. In addition the failure to bring forward any regeneration activity on this key Town Centre gateway site would have a negative impact and delay delivery of the economic or housing benefits by up to two years.
- 6.3 **Option 3 – Approve the offer from Bouygues Development subject to the agreement of a satisfactory guaranteed minimum net receipt to the Council.** This option would ensure that the Council receives both an acceptable level of net receipt and the early delivery of the regeneration the benefits. This option also ensures that we can, subject to agreement of the minimum net receipt, move forward with the delivery of a scheme that brings in over £44m of investment to Barking Town Centre unlocking a site that has been underused or vacant for several years. The regeneration of the site would immediately boost the local economy and act as a catalyst for increased levels of spend in the town centre and help attract greater levels of inward investment. At the time of writing the Council and its Agent are still exploring a variety of ways to ensure that the net receipt can be realised. This allows for the approval of the final guaranteed minimum price to be delegated to the Director or Finance and Resources and incorporated into the Development Agreement.

7. Background Papers Used in the Preparation of the Report:

- London Road / North Street Masterplan (2007)
- London Road / North Street Planning Statement (2008)
- Memorandum of understanding with the Homes and Community Agency (2007)
- The Barking Town Centre Area Action Plan Issues & Options Report (July 2007)
- The Barking Town Centre Area Action Plan Preferred Options Report (June 2008)
- The Barking Town Centre Area Action Plan submission report (2009)
- Barking Town Centre Area Action Plan Urban Design Guidance Supplementary Planning Document (2009)
- Town and Country Planning Act, 1990. Part 6 rights of owners to require purchase of interests
- The Abbey and Barking Town Centre Conservation Area Appraisal (2009)

- Barking Framework Plan (2003)
- Barking Town Centre Retail Study Update (2009)
- Public Off-Street Parking Demand Study for Barking Town Centre Stage 1 Report - Assessment of Existing Provision (2009)
- Public Off-Street Parking Demand Study for Barking Town Centre Stage 2 Report - Parking Strategy (2009)
- Cabinet in Minute 53, 20 July 2004
- Cabinet in Minute 133, 28 September 2004
- Cabinet in Minute 162, 13 March 2007
- Cabinet in Minute 150, 20 February 2007
- Cabinet in Minute 93, 11 December 2007
- Cabinet in Minute 156, 7 May 2008
- Cabinet in Minute 148, 10 March 2009
- Cabinet in Minute 34, 14 July 2009

8. List of appendices:

- **Appendix 1** – Properties to be acquired
- **Appendix 2** – Procurement and Scoring of Bouygues Development Consortium
- **Appendix 3** – Design Objectives and Development Parameters

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of the Local Government Act 1972.

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Design Objectives and Development Parameters

Design Objectives

- Create a landmark building at the junction of London Road and North Street which serves as a prominent signpost for the Barking town centre.
- Utilise this building to form a new Market Square and pedestrian passage between the pedestrianised East Street retail area and London Road.
- Incorporate a net 40,000 sqft foodstore and significant residential provision, with all necessary parking and support areas.
- Respond and be sensitive to surrounding heritage assets, including the Abbey Green, Curfew Tower, and Magistrate’s Building.
- Minimise the impact of the development on the rear of adjoining properties along East Street.
- Create active frontages along the new Market Square, London Road, and North Street.
- Provide a high quality public realm throughout the scheme in accordance with the Barking Code.
- Achieve BREEAM “Excellent” for the foodstore and Code for Sustainable Homes Level 4 for the residential areas.

Development Parameters

The Scheme consists of the following –

Commercial		
Foodstore Gross Internal Area		8,899 m ² / 95,788 sq ft
Foodstore Net Sales Area		3,716 m ² / 40,000 sq ft
Foodstore Café		350 m ² / 3,768 sq ft
Employment		350 jobs
Ancillary Space		
Community or Retail Unit		115 m ² / 1,238 sq ft
Market Square		Circa 2000 m ²
Car Parking		
336 dedicated parking spaces for shoppers and a further 8 units for blue badge residential holders		
Residential		
90 units		
1 Beds (2 person)	36 units	40%
2 Beds (3 person)	22 units	24%
2 Beds (4 person)	23 units	26%
3 Beds (5 person)	3 units	3%
3 Beds (6 person)	6 unit	7%

At this stage it is anticipated that the level of Affordable Housing that could be provided will be subject to viability testing and the availability of HCA Grant Funding. It is very unlikely that the scheme will provide significant level of affordable housing.

The scheme will also include a new market square which will either be laid out by the developer's contractor to LBBB's agreed specification at the agreed capped cost of £600,000 exclusive of VAT, or this level of contribution will be provided to the Council to complete these works.

The retail store occupies the first floor of the new building with associated parking on the ground and basement levels. The residential element steps down from 6 to 4 stories (from 27.5m to 10.m) above the supermarket from the London Road / North Street junction and line the perimeter of the London Road and North Street blocks.

There is an optional proposal (if residential values increase sufficiently) that a further 20 units of housing be provided above the car park and service yard entrance / area on London Road. This is based on whether current housing prices recover and increase at a greater rate than construction costs.

The residential element will be designed to meet Lifetime Homes Standards and Code for Sustainable Homes Level 4. The foodstore will be designed to meet BREEAM Excellent.

The materials proposed are as follows –

Ground floor	Brickwork
Ground floor Cores and Entrances	Glazing
1 st floor store	Cladding
2 nd – 6 th floor (residential)	Coloured Render

The shopfront of the store has been orientated to directly face onto the Market Square with the Café a clear glazed entrance atrium forming a continuously animated façade framing the Square. Pedestrian access will be via three entrances from the market square - one directly off the main portion of the market square, a second off London Road, and a third located in the accessway between the two. Customer vehicles will access the parking area under the store via an entrance off North Street and a separate entrance for service vehicles will also be located on North Street.

For the residential elements, pedestrian access will be provided via two residential cores (serving approximately 40-45 persons each), one located on London Road and the other on North Street. 8 parking spaces will be provided for blue badge holders and will share access with retail customers. It is

envisaged that parking permits for London Road Multi-storey car park may be provided for other residents of the Scheme.

The market square will provide a new civic space along and improved access for pedestrians walking from London Road to East Street. The market square will consist of a 6m wide area leading from London Road to the main portion of the public square providing opportunities for spill out seating for the Café, and Skills Centre Bistro located directly opposite. The square will extend towards East Street where it is envisaged that smaller market stalls will be provided to accommodate the weekly public market. Further specifications for the market square will not be provided by BYG, instead design control will rest with the Council. Nevertheless, the market square is to be designed in accordance with the Barking Code.

An ancillary unit will be located towards the corner of London Road and North Street and will be available for either a retail or community use. BYG will explore potential occupiers for the site prior to submitting for planning.

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CABINET

28 SEPTEMBER 2010

REPORT OF THE CABINET MEMBER FOR FINANCE

Title: Internal Audit and Anti-Fraud Service Contract	For Decision
<p>Summary:</p> <p>Since 2001 the Council has procured a proportion of its Annual Audit Plan requirements from an external provider. Initially this was with Deloitte and from April 2009 with Croydon Council under its “Croydon Framework Contract”, also known as the London Audit and Anti Fraud Partnership, or LAAP for short.</p> <p>Joining Croydon’s framework has allowed the Council to buy-in audit reviews including those related to the adequacy of the Council’s key financial systems, computer audit and those aimed to provide assurance at individual schools. The contract also provides for advice on audit and control issues and time to follow up audit recommendations. Deloitte, one of the major audit suppliers in the UK, provides services under the Framework at a significantly lower cost, afforded by the large volume offered by a number of councils opting to join and securing Value For Money (VFM) from economies of scale. The Council is only required to procure the number of days it needs to supplement in-house resources to deliver the annual Audit Plan, and is not precluded from buying-in specialist resource from other providers should there be a VFM case to do so.</p> <p>The Council joined the framework for an initial 12 month period (extendable to 18 months - 1 April 2009 to 30 September 2010), with the intention of reviewing the quality of the arrangement before deciding if it was in the Council’s best interest to renew, after considering a number of existing and new options that were on the horizon. The previous Head of Audit and Risk indicated that a full options appraisal be undertaken ahead of any decision to ensure the most advantageous way forward for the Council would be identified and recommended.</p> <p>Aligned to this, the Chief Executive requested a review of the service be undertaken with a view as to whether it should be re-tendered or delivered via another option. This was reported back to CMT on 21 October 2009. All options were considered, against CIPFA benchmarked data, and the outcome was that CMT agreed to “maintain existing mixed economy arrangement, with improved contract monitoring, and to rationalise and reduce management arrangements, adopting a generic Anti-Fraud and Audit Service”.</p> <p>Since then other options have arisen and been considered, including a geographical shared service option (NELSS), however this did not develop, due to several of the councils involved joining the Croydon Framework and a lack of appetite for formal shared working arrangements.</p> <p>Recent soft market-testing undertaken (including Office for Government Commerce information), supports the recommendation that the Croydon Framework offers best value for the Council, combining economies of scale, flexibility and high levels of customer satisfaction (over 80% satisfaction levels achieved in key audit assignments). Additionally, the Council saves money from not undertaking a full tender procurement process, as this</p>	

has already been addressed by Croydon Council. Furthermore, there would be no disruption to the service from any transitional arrangements being required.

The Council currently has a small audit and anti-fraud programme (1400 days), approximately two thirds of the service is delivered by experienced in-house staff, the remainder is provided by specialist external staff, in areas as required where skill sets need to change to meet new technology and requirements e.g. Carbon Reduction Scheme. This arrangement ensures the Council benefits from a wide range of professionals, ensuring its audit and anti-fraud needs are well catered for. The latest CIPFA benchmarking (July 2010) indicates that 18 out of 22 London councils “buy-in” some or all of their audit service.

It would not be in the Council’s best interest to bring the specialist audits in-house, given difficulties in recruiting / retaining specialist staff and fully utilising them within a small team.

The Croydon Framework contract affords the Council continued value for money and will allow the Council to call upon highly qualified and experience specialists as it requires them. There are also soft benefits from an extensive network, where learning and resources can be shared to the advantage of each council in the partnership.

Wards Affected: None

Recommendation(s)

The Cabinet is recommended to agree:

- (i) In accordance with Constitution Contract Rules 3.6, to approve the procurement of the Council’s Internal Audit and Fraud services by way of entering into a contract with Croydon Council for the provision of these services under a contract that will operate from 1 October 2010 to 31 March 2015. The value of the contract, when aggregated with the value of the existing 18 month contract with Croydon, is above £400,000 and therefore requires the approval of the Cabinet.
- (ii) To note that under Constitution Contract Rules 4.1.3 that the Council is exempted from undergoing a separate tendering process under which tenders are invited for the service because the Council will be purchasing services “from a public purchasing body which has already completed a tender process in accordance with EU procedures” for those services.
- (iii) To agree that, in the event that Croydon’s contract with the service provider is extended beyond its existing contract term, the term of our contract with Croydon may also be extended for any such further extension period without need for further Cabinet approval.
- (iv) To agree that the contract shall contain a no-fault break clause in the Council’s favour allowing the Council an opportunity (in September of each year) to terminate the agreement should it wish to do so.

Reason(s)

The Council is recommended to agree to join Croydon’s existing framework agreement as

it

- Provides best value for money for the Council
- Offers maximum flexibility, having a “call down contract”
- Supports the delivery of the Council’s Audit and Anti-Fraud Strategies and Audit Plan
- Ensures the Councils Assurance Function is delivered by a tailored mixed economy approach

Comments of the Chief Financial Officer

The Croydon Framework offers significant reductions on daily rates for internal audit services as a result of the economies of scale produced with the number of boroughs involved and therefore this contract provides value for money. It is likely that given the Council’s constrained finances, there will be a greater need for internal audit compliance reviews to ensure compliance with core processes in the organisation and the reduced rates offered through the framework will provide future value.

Comments of the Legal Partner

The Council may procure services, including its internal audit and anti-fraud services, by joining ‘Framework Agreements’ that are operated by other local authorities or by other public bodies. By joining such a Framework Agreement, the Council will not be required to undertake its own tendering process for the procurement of the service, as it would normally be required to under the Council’s Contract Standing Orders. Where the Council joins another body’s framework agreement, it is also exempted from the requirements of EU procurement regulations.

Head of Service: Sandy Hamberger	Title: Audit and Risk Controller	Contact Details: Tel: 020 8227 2015 E-mail: sandra.hamberger@lbbd.gov.uk
Cabinet Member: Councillor Geddes	Portfolio: Finance	Contact Details: E-mail: cameron.geddes2@lbbd.gov.uk

1. Background

- 1.1 The original Deloitte contract commenced in 2001 for a period of five years and was extended in February 2006, to operate until 31 March 2009. An options paper outlining various ways forward for procuring the audit service was provided to the Director of Corporate Resources and the Divisional Director of Corporate Finance in September 2008.
- 1.2 In early 2009, in discussion with the previous Head of Audit and Risk, Deloitte agreed to retain the same average day rate applying at that time for a further 12 months from April 2009 (extendable to 18 months) if the Council joined with Croydon Council under its “Croydon Framework Contract”, also known as the London Audit and Anti Fraud Partnership or LAAP for short. This was taken up in the knowledge that the Council would be unable to achieve similar rates if it went out to tender on its own (due to the small volume of audit days required). Accordingly, on 29 March 2009, the previous Head of Audit and Risk recommended that this option was agreed by Chief Officer, as it represented the best VFM and

flexibility for the council, and additionally saved the Council in the region of £24,315 per annum.

- 1.3 LAAP is a partnership / Framework Contract between Deloitte, who provides services to local authorities under the Framework, and London Borough of Croydon which allows for other local authorities to join. The framework was tendered under EU procurement rules and provides for 15,000 audit days in total. LAAP provides for discounts to apply on the average framework daily rate depending on the number of authorities joining the framework. The maximum discount was a 15% reduction on the starting average day rate, if the full 15,000 days are procured. Councils now within or considering joining the Croydon LAAP contract are set out in **Appendix A**.
- 1.4 At present, approximately one third of the Council's internal audit and anti-fraud services, including those audit reviews related to the adequacy of the Council's key financial systems and computer audit, as well as advice on audit and control issues and follow up of audit recommendations, are delivered via the contract with Croydon LAAP. Deloitte also provides services to LBBB for its schools audits. The Croydon LAAP operates effectively on a 'call off' basis – the Council specifies the audits it requires to be undertaken and Deloitte provides them.
- 1.5 At the time the contract with the Croydon LAAP was entered into, the previous Head of Audit and Risk recommended the Council join for a period of 12 months, extendable to 18 months, which would give the Council sufficient time for the value and quality of the contract to be assessed. He also recommended a full option appraisal be completed before the end of the final six months of the contract – the Council could then decide either to enter into a longer contract period or seek other options; for example shared service solutions, full tendering or other framework contracts. The options appraisal was to include market testing given the length of time since the previous full tender exercise.
- 1.6 Aligned to this, part way through the first year of operation, the previous Chief Executive requested a full review of the audit service be undertaken, including the:
 - Overview of the current service arrangements and findings
 - Options Appraisal for improvement in service configuration
- 1.7 A thorough review of the options were looked at, and the outcome was:
 - CMT agreed to “maintain existing mixed economy arrangement, with improved contract monitoring, and to rationalise and reduce management arrangements, adopting a generic Anti-Fraud and Audit Service”.
 - That emerging options including Strategic Partnering and alternative shared services under development are considered at a future date.
- 1.8 The detailed analysis undertaken at the time is set out in **Appendix B**.

2. Proposal

- 2.1 The current contract extension will end on the 30 September 2010. It is deemed not financially beneficial to undertake a full market-testing exercise, given the Audit Plan was reduced by 300 days in 2009/10, essentially making it highly unlikely that

the council would achieve lower rates than the Croydon LAAP due to no economies of scale being available on the number of days for an external supplier. Additionally, the Council saves money from not undertaking a full tender procurement process. Neither shared services nor the Joint Venture options are viable at this stage.

- 2.2 In addition to the option appraisal and market testing undertaken previously, additional soft market testing still indicates that the most advantageous option is to join the Croydon LAAP, when considering economies of scale, flexibility and quality. Details of this are shown in **Appendix C**.
- 2.3 The Audit and Risk Controller proposes that the most advantageous option for the Council is to re-join the Croydon Framework contract from 1 October to 31 March 2015, with the option to extend for up to a further three years. This will be on a call-down basis and subject to annual renewal to remain with the framework.
- 2.4 Cabinet are asked to agree to enter into a contact with LB Croydon under which Croydon will be responsible for providing the internal audit and anti-fraud services to the Council. The contract will specify that the services are provided pursuant to the framework agreement that Croydon has entered into with Deloitte, and that Deloitte will be used to provide the actual services to the Council.

3. Financial Issues

- 3.1 There are no financial implications associated with the recommendations, the annual cost estimated as £86,000 is funded within existing resources.

4. Legal Issues

- 4.1 The new contract with LB Croydon will in effect be a continuation of the existing contract and for this reason Constitution Contract Rules 3.3 is applicable. This provision requires that aggregation of the values of such contacts should take place when applying the tendering requirements of the Constitution Contract Rules. When the value of the existing 18 month contract is combined with the expected value of the new contract (should it run its full length), the value exceeds £400,000. It is for this reason that Constitution Contract Rules 3.6 applies whereby the procurement of a contract of this value must be approved by the Cabinet.
- 4.2 Croydon's framework agreement with Deloitte was procured under a full EU procurement process, and this will allow Constitution Contract Rules 4.1.3 to apply. This provision is an exemption from the normal requirement to follow the tendering procedures contained in the Constitution Contract Rules where the Council purchases services "from a public purchasing body which has already completed a tender process in accordance with EU procedures" for those services. The Council will in effect be taking advantage of an existing framework agreement rather than conducting a formal tendering exercise. EU procurement regulations, which are contained in the Public Contracts Regulations 2006, will not apply in accordance with section 22 of the Regulations.
- 4.3 The Council's legal staff will produce the agreement with LB Croydon under which the Council will access the services for the four and a half year period. Although the Council will be entering into an agreement with Croydon (rather than directly

with Deloitte), the agreement will state that Croydon will arrange for Deloitte to provide the services to the Council, in effect as sub-contractors. The daily rates that will be payable will be subject to an annual inflation based adjustment. The agreement will contain a no-fault break clause in the Council's favour which may be exercised annually in September of each year.

5. Other Implications

- 5.1 **Risk Management**, although there is no requirement to do so, soft-market testing has been undertaken to support the recommendation.
- 5.2 **Contractual Issues** A contract in-line with Contract Rules 3.6 and 4.2.1 has been constructed. The procurement option recommended is in-line with this.
- 5.3 **Staffing Issues** There are no changes to the current staffing levels as a consequence to the recommendation put forward.

6. Options appraisal

- 6.1 In-line with the previous decision to join the LAAP framework, a number of options have been investigated to establish what offers best VFM, flexibility and quality for LBB. These are set out in the table below

Option	Positives	Negatives	Score (1Low-4High)
Undertake service in-house	Strengthen in-house permanent knowledge	Difficulty recruiting appropriately experienced staff. Difficult to fully utilise specialist staff within small team	2
Undertake a full tender exercise	Full test of the potential Market	Costs incurred Small volume of service, won't attract economies of scale	1
Join the Croydon Framework	VFM Flexibility Shared practise Established network Shared risk Shared knowledge & skills transference No service disruption		4
East London Shared Services	Established network. Shared knowledge	Lack of appetite Others joined Croydon framework Competition for similar audits i.e. financial audits	1

		at same time	
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7. Background Papers Used in the Preparation of the Report:

No public reports used, only non-public reports

Head of Audit and Risk Chief Officer report 29 March 2009

CIPFA Benchmarking report 2009

Interim Audit and Risk Controller CMT review paper 21 October 2009

CIPFA Benchmarking report 2010

8. List of appendices:

Appendix A - List of Boroughs within Croydon LAAP Framework Contract

Appendix B - October 2009 CMT review options (this appendix is private and confidential)

Appendix C - Soft' Market testing September 2010 (this appendix is private and confidential)

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List of Boroughs within Croydon LAAP Framework Contract

The current membership is:

LB Barking and Dagenham

LB Bexley

Brighton and Hove CC

LB Bromley

LB Croydon

LB Ealing

LB Hounslow

RB Kingston

LB Redbridge

LB Richmond

Slough BC

LB Southwark

LB Tower Hamlets

LB Waltham Forest

Waverley DC

In discussion to join:

Another two London Boroughs

One County Council

Three Unitaries

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