

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.

Head of Service: Jeremy Grint	Title: Divisional Director of Regeneration and Economic Development	Contact Details: Tel: 020 8227 2443 Fax: 020 8227 5326 E-mail: jeremy.grint@lbbd.gov.uk
Cabinet Member: Councillor M A McCarthy	Portfolio: Regeneration	Contact Details: Tel: 020 8724 8013 E-mail: mick.mccarthy@lbbd.gov.uk

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 targeted 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