

Birmingham City Council

Report to Cabinet

18th May 2021



Subject:	Arden Cross Interchange Triangle Contractual Agreements to Enable Development
Report of:	Assistant Director Development, Inclusive Growth
Relevant Cabinet Member:	Councillor Ian Ward, Leader of the Council
Relevant O &S Chair(s):	Councillor Shabrana Hussain – Economy and Skills Councillor Sir Albert Bore - Resources
Report author:	Ashley Skinner, Property Services Telephone No: 0121 464 2117 Email Address: Ashley.skinner@birmingham.gov.uk

Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): NOTE: OUTSIDE CITY BOUNDARY.		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 008771/2021		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		
The financial information on the proposed financial structure and project delivery arrangements are summarised in the attached Exempt Appendix 1. This is covered under Exempt information – discretion to exclude public: information falling within the categories outlined in 12A of the Local Government Act 1972 (as amended): 3 Information relating to the financial or business affairs of any particular person (including the council).		

1 Executive Summary

- 1.1 An opportunity has arisen for early delivery of infrastructure, parking and pre-development enabling works to support the Arden Cross Limited (ACL) Scheme to benefit future development. This report seeks authority for completion of the Arden Cross Interchange Triangle Collaboration Agreement (ACCA), Arden Cross Value Capture Agreement (VCA) and Arden Cross Works Order Agreement (WOCA) for the City Council owned property ("the Property") at Bickenhill Lane, Arden Cross, Solihull pursuant to the authorisations set out at para 2 below.

- 1.2 The Property has a site area of approximately 40.31 hectares and is shown hatched red on the attached plan at Appendix 2. The commercially confidential details relating to the proposed terms of the transactions are set out within Exempt Appendix 1.

2 Recommendations

That Cabinet:

- 2.1 Approve the ACL budget forecast for FY 2021/2022 and BCC's contribution apportioned as per the terms of the ACL Shareholders Agreement as identified at Exempt Appendix 1.
- 2.2 Approve the proposed terms and completion of the Arden Cross Interchange Triangle Collaboration Agreement (ACCA) as set out in Exempt Appendix 1.
- 2.3 Approve the proposed terms and completion of the Arden Cross Value Capture Agreement (VCA) as set out in Exempt Appendix 1.
- 2.4 Approve the proposed terms and completion of the Arden Cross Works Order Cost Agreement (WOCA) as set out in Exempt Appendix 1.
- 2.5 Delegates to the Leader and Cabinet Member for Finance and Resources approval of any additional commercial terms or legal drafting to be put in place for the benefit of the landowners to be added as variations to these Agreements.
- 2.6 Approve the Assistant Director Property Services (or nominated Delegate) to negotiate the final terms and agree all necessary commercial requirements to give effect to the above recommendations.
- 2.7 Authorises the City Solicitor and delegates to negotiate, execute and complete all relevant documentation to give effect to the above recommendations.
- 2.8 Approve ACL to appoint an Agent to market the ACL opportunity and to initiate a development partner selection process to select one or more entities in aggregate to undertake development and negotiate the terms of a development agreement to be brought back to Cabinet.

3 Background

- 3.1 Arden Cross is a strategic development site extending to 140 hectares, located on the east side of Birmingham, adjacent to the NEC, Birmingham International Airport and Birmingham International train station. The site in its entirety is located within Solihull Metropolitan Borough Council (SMBC).
- 3.2 The site is the location of the HS2 Interchange Station now under construction and once built will provide fast connections to the major UK cities.

- 3.3 The Arden Cross site is principally owned by three landowners, BCC, Packington Estate and Coleshill Estate who have pooled their land interests to enable the delivery of a comprehensive mixed-use development.
- 3.4 Arden Cross Limited (ACL) is a Special Purpose Vehicle (SPV) that the landowners have created to ensure the development comes to fruition. ACL is financed by the landowning shareholders through a SPV Shareholders Agreement. ACL provide forecast budgets that are supported by a business plan each year.
- 3.5 ACL have commissioned the production of an evidence-based masterplan (www.ardencross.com) with supporting Her Majesty's Government compliant business case. The masterplan and business case articulate that the site can deliver over 6 million sq ft of commercial space, >3000 new homes with unrivalled public realm to include a new 12 hectare country park at its heart.
- 3.6 Once fully developed the site has the capacity to accommodate at least 27,000 jobs that will deliver an additional £1.4bn Gross Value Added to the local economy per annum. The gross development value of the development exceeds £3bn.
- 3.7 The outline business case identifies significant early infrastructure investment is required to unlock the site and to ensure development and the subsequent growth is forthcoming, Government intervention funding is required. The masterplan and business case have the support of local and regional Government and is being mobilised with the necessary departments of central Government who have offered support for the proposals. In the March 2021 Budget, HM Treasury made provision of a financial support package by way of a £50m grant to fund the first phase of Multi Storey Car Park (MSCP), the grant is conditional upon the Collaboration Agreement and Value Capture Agreement being in place by June 2021. HS2 will own and run the multi-storey car park.
- 3.8 The landowning parties entered into a land agreement with the Secretary of State for Transport in 2016 that amongst other things enabled the landowners to utilise the infrastructure being delivered by HS2 to access their development land, provide for easements across the HS2 permanent infrastructure and ensure that land required during the construction of the railway is returned to the relevant landowners for development. This arrangement was to be documented in a 'Collaboration Agreement'. In return for these concessions, the landowners agreed to enter into a commercial Value Capture Agreement with a public sector body that would ultimately contribute to the significant infrastructure that the site benefits from.

- 3.9 In order to realise the full development potential there are a number of early interventions identified that are required, and need to be delivered, as part of the HS2 construction. Of note is the requirement to ensure utility connectivity across the HS2 permanent infrastructure. ACL along with HS2 have identified two strategic utility crossing points (UTX). Whilst the infrastructure will be delivered by HS2 and its contractors, the cost of this infrastructure is to be borne by the ACL shareholders who will be the ultimate beneficiaries of the easements that will be granted for the use of the UTX. The design costs associated with the UTX will need to be met early in the programme with the final payment for the works being deferred until after the works are complete and the infrastructure can be utilised. It is intended that the funding of the actual works will be borne by ACL's funding/development partner.
- 3.10 SMBC have recently submitted their Local Plan to the Planning Inspectorate and the Arden Cross site has an allocation for a major mixed-use scheme. The proposals within the submission version of the plan are aligned with the ACL masterplan.
- 3.11 As a result of the significant support for the masterplan and business case, along with the allocation in the SMBC submission version of the plan, ACL now require an investment/development partner to take this project into the delivery stages of development. The following paragraphs outline the detail and purpose of the three legal agreements proposed.

Arden Cross Collaboration Agreement (ACCA)

- 3.12 The ACCA sets out the framework by which the Parties will work in collaboration to maximise development and economic opportunities in the site.
- 3.13 This includes supporting development and optimising phased delivery whilst recognising and supporting HS2's responsibility for delivery of the new Interchange Station, associated infrastructure and all necessary infrastructure for development of the site.
- 3.14 The relevant Parties will enter the ACCA on the same date as the VCA and WOCA. The completion of the Value Capture Agreement will satisfy the commercial requirements of HS2 and the Secretary of State for Transport (SSFT) in the 2016 HS2 Land Agreement.

Value Capture Agreement (VCA)

- 3.15 The Urban Growth Company (UGC) is the SPV established by Solihull Council in 2016 to co-ordinate interests surrounding the HS2 Interchange Station and operates to bring stakeholders together to stimulate development in the area. UGC is facilitating investment by HMT, WMCA and SMBC of public sector funds to maximise the growth opportunities brought by the delivery of HS2 and future development. UGC is also facilitating funding of the Changes to the HS2 Base Scheme to increase the quantum of land available for development.

- 3.16 HS2's Base Scheme (Exempt Appendix 1 Annex 3) would not maximise the available developable land so the UGC Works are designed in collaboration with HS2 and ACL to enhance development to specifications agreed by HS2, UGC and ACL. The Changes are the scope of works additional, or different, to HS2's Base Scheme and the Funding Strategy sets out how the costs required to deliver the infrastructure including the MSCP (Exempt Appendix 1 Annex 2) will be raised and repaid.
- 3.17 ACL acknowledge that planning permission for high-density mixed-use commercial development and the Changes to the HS2 Base Scheme, will realise additional value from the delivery of enhanced development land and accept that Urban Growth Company's (UGC) funding partners should share in the additional land value through the equitable value capture mechanism set out in Exempt Appendix 1.
- 3.18 The Changes which the parties anticipate at the date of the Agreement are set out in Exempt Appendix 1.

Works Order Cost Agreement (WOCA)

- 3.19 HS2 Limited is due to deliver the HS2 Interchange Station, rail and associated infrastructure by 2029/2030 and HS2, SMBC and UGC have entered into a Construction Funding Agreement dated 13 December 2019 and an initial Approved Works Order has been prepared and agreed. SMBC is required to pay the Works Order Costs and SMBC has provided ACL with a redacted copy of the Funding Agreement. Detail of the proposed Works Order Agreement are included at Exempt Appendix 1.
- 3.20 Under the agreement, SMBC through UGC is offering to forward fund and request, on behalf of ACL, that HS2 carry out and deliver the Scope of Works (at Exempt Appendix 1 Annex 7). In return, it is proposed ACL agree to reimburse SMBC the Total Costs set out in the Agreement.
- 3.21 The Parties recognise the need for a Steering Group with suitable representation from each Party to share information, discuss matters, and make recommendations to their respective organisations. The function of the Steering Group is set out at Exempt Appendix 1 Annex 10.
- 3.22 SSFT, ACL, Packington Estate, Coleshill Estate, BCC, SMBC and UGC will maintain the Steering Group throughout the VCM Period consisting of three (3) members from SSFT, UGC and/or SMBC, three (3) members from ACL and/or the Landowners; plus, additional members qualified to participate, additional members have no voting rights.
- 3.23 The City Council Arden Cross/HS2 Project Board chaired by a Chief Officer or Member will provide scrutiny, approve the ACL annual budget and loan requirements, monitor expenditure and progress towards delivery of outcomes.

4 Options considered and Recommended Proposal

4.1 Option 1 – Do Nothing: Do not proceed with the Agreements – the Property may not be developed to its full potential in terms of value achieved, mixed use, community uses and quality of built environment and therefore the opportunity to maximise economic growth. In this event it is likely that the HS2 Base case (surface car parking) will consume the majority of the cities land interest.

4.2 Option 2 – Proceed with the proposal: Proceed with the Agreements - the transactions provide the optimum opportunity for the City Council and Arden Cross Limited shareholders to sell and develop their land holdings as part of the Arden Cross Site project and attract major private investment into the immediate site area and regional economy pursuant to the ACCA. The development of the site will promote private investment into the City region.

5 Consultation

5.1 The Property and the Arden Cross Site are outside the city boundary and consequently Ward member consultation has not been undertaken.

5.2 The proposal has been considered in consultation with and support of Legal Services, Planning, Property Services and Finance.

6 Risk Management

6.1 The benefits to the Council include shared commercial risk, potential for significant enhanced value and the enablement of development.

6.2 In the event that HS2 infrastructure is not constructed, the Property may be disposed, let, sold, developed in isolation or jointly with other landowners.

6.1 In the event that funding consent is not forthcoming for development of the Arden Cross Site, returns and proceeds may be diminished.

6.2 In the event the Arden Cross Site or the Property are permanently compulsorily acquired by HS2 statutory compensation will be claimed in accordance with the Land Compensation Act 1973.

7 Compliance Issues

7.1 How are the recommended decisions consistent with the City Council's priorities, plans and strategies?

7.1.1 The proposals set out in this report will support the delivery of the Council Plan and Budget 2018/22+ (as updated in 2019) the outcome being delivery of an exemplar mixed use development and the delivery of new infrastructure. The Birmingham Development Plan 2020 identifies and supports regional investment for the wider benefit impacting on the citizens of Birmingham.

7.1.2 The proposed masterplan for the development of the Arden Cross Site details the potential delivery of 6 million sq.ft of high quality mixed use

development linked to rail, road and airport connectivity. Extensive mixed range housing (3000+ Units), commercial, research, academic, hospitality and public realm facilities are planned to create an exemplar new district environment to serve the region.

7.2 Legal Implications

7.2.1 Section 1 of the Localism Act 2011 contains the City Council's general power of competence. which is circumscribed only to the extent of any pre-commencement restrictions and any specific post commencement restrictions on that power.

7.2.2 The power to acquire, appropriate and dispose of interests in land is contained in Sections 120 to 123 of the Local Government Act 1972. Section 111 of the Local Government Act 1972 contains the Council's subsidiary powers to do anything, including acquiring and disposing of land and incurring expenditure, which is calculated to facilitate, or is conducive or incidental to, the discharge of any of the Council's functions.

6.2.3 Under Section 13 of the Planning and Compulsory Purchase Act 2004 the City Council must keep under review and examine any matters in relation to any neighbouring area which may be expected to affect the development of their area or the planning of its development including the principal purposes for which land is used in the area and the communications, transport and traffic of the area.

6.2.4 Officers of the City Council act as Directors of ACL and the proposed and prospective arrangements to advance the development of the Arden Cross site envisage participation of neighbouring authorities and the WMCA. Declarations of interest by any affected decision makers (and Members involved with WMCA decision making), if appropriate, will need to be made in connection with any ensuing connected decision making.

7.3 Financial Implications

7.3.1 The financial consequences of the proposed arrangements are summarised in the attached Exempt Appendix 1. This is covered under Exempt Information – discretion to exclude public: information falling within the categories outlined in 12A of the Local Government Act 1972 (as amended): Item 3 (Information relating to the financial or business affairs of any particular person (including the council)). In the circumstances Exempt Appendix 1 is considered to be in the public interest as public disclosure would be prejudicial to maintaining the privacy of commercially sensitive information.

7.4 Procurement Implications (if required)

7.4.1 Under the proposed arrangements ACL will initiate an investment/development partner selection process to select one or more entities in aggregate to undertake development.

7.4.2 The expectation being that ACL will progress a robust and transparent process for selection of a development partner following the principles of

delivering best value to its shareholders. The stages of the process will be established by ACL with its advisors and it is recognised this is likely to be via a 2 Stage negotiated procedure.

- 7.4.3 To support the case for public sector funding supporting the Development, it is accepted ACL will need to demonstrate a robust and transparent process to select a preferred development partner including a requirement for due regard to be given to the reasonable opinions of the public sector funding partners through the process and engagement, consulting with UGC in the process of developer selection.

7.5 Human Resources Implications (if any)

7.5.1 N/A

7.6 Public Sector Equality Duty

- 7.6.1 An initial Equality Assessment Ref No. EQUA129 dated 6th Oct 2020, is attached as Appendix 3. The assessment confirms there is no adverse impact on the protected groups identified in the Public Sector Equality Duty statement included in this report under the Equality Act 2010, and that a full Equality Assessment is not required for the purpose of this report.

8 Appendices

- 8.1 Exempt Appendix 1
- 8.2 Appendix 2 - Site Plan
- 8.3 Appendix 3 - Equality Analysis

9 Background Documents

- 9.1 N/A