Birmingham City Council Report to Cabinet



5th September 2023

Subject:	NEC MASTERPLAN AND PROPERTY STRATEGY
Report of:	Strategic Director - Place, Prosperity & Sustainability
Relevant Cabinet Member:	Councillor John Cotton – Leader of the Council
Relevant O &S Chair(s):	Councillor Akhlaq Ahmed - Economy and Skills
	Councillor Jack Deakin – Finance and Resources
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⊠ Yes	□ No – All wards affected
⊠ Yes	□ No
⊠ Yes	□ No
□ Yes	⊠ No
	⊠ Yes

1 Executive Summary

1.1 The NEC occupies 155 hectares of land on the eastern edge of Birmingham, within the administrative area of Solihull MBC. The City Council retains the freehold of the land occupied by the NEC on a 125 year lease. This lease is split into the core land area, over which the NEC Group have development rights, and the non-core land area where the City Council retains development rights under a claw back condition subject to the re-provision of car parking (see plan at Appendix 1).

- 1.2 The NEC, with engagement from the City Council, has prepared a revised Masterplan for the NEC site which sets out a vision for the NEC to create a unique environment for work, rest, live and play, further enhancing the vibrancy and attractiveness of the NEC site and driving existing operations. The Masterplan focusses upon the northern (and less used) car parking areas at the NEC (within the non-core land) with opportunities in the areas to the south to be considered at a future date.
- 1.3 It is proposed that Phase 1 (Urban Village) of the Masterplan will deliver 2,240 homes on approximately 18 hectares of land along with supporting facilities and amenities. To bring this opportunity to the market it is proposed that the Council enter a surrender of the existing lease and a freehold disposal agreement with the NEC which will see the development profit for Phase 1 shared between the two parties (see section 3.14 below). Following the completion of the agreement, the NEC proposes to go to the market to select a development partner for Phase 1. The preferred developer and the associated financial arrangements will then be the subject of a further report to Cabinet.
- 1.4 Bickenhill Plantation is a large block of woodland to the north of the NEC, within the Council's ownership, which has biodiversity and amenity value. The Masterplan envisages improvements and increased access to the Plantation. Its current state and future value as a potential part of the scheme is to be considered as proposals for Phase 1 progress.

2 Recommendations

- 2.1 Notes the new Masterplan for the NEC site and approves the proposed terms and conditions of the surrender of the existing lease and a freehold disposal agreement with the NEC Limited as detailed in Appendix 3.
- 2.2 In principle approves a freehold disposal agreement for Phase 1 (as identified on the plan within Appendix 5) to the NEC Limited subject to the completion of the agreement and the selection and appointment of an appropriate development partner.
- **2.3** Authorises further consideration of options for Bickenhill Plantation including enhanced connectivity and integration with the proposed Urban Village.
- 2.4 Authorises the Strategic Director of Place, Prosperity and Sustainability in consultation with the Leader of the Council and in conjunction with the Interim Director of Finance and S151 Officer and the City Solicitor and Monitoring Officer to agree the final terms of the agreement.
- 2.5 Authorises the process to initiate a procurement process to select a development partner(s) to undertake development and negotiate the terms of a development agreement to be reported to Cabinet at a future date.

- 2.6 Delegates approval to the Assistant Director of Investment and Valuation or nominated appointee to extend the existing commissions for financial and legal advice during the developer selection process to an agreed budget of £180,000.
- **2.7** Authorises the further extension of the lockout agreement with Blackstone to the 14th February 2024.
- **2.8** Authorises the Assistant Director of Investment and Valuation or nominated appointee to carry out preparatory work and enter into any relevant negotiations involving the Council.
- **2.9** Authorises the City Solicitor (or their delegate) to negotiate, execute and complete all relevant documentation required to give effect to the above recommendations.

3 Background

- The NEC is the UK's number one venue of choice for organisers, exhibitors and visitors and is the home of a unique collection of leisure and business tourism that attracts over 2.3 million visitors a year and has a wider economic impact of £3bn a year. The NEC is located within the Solihull MBC administrative area and as such Solihull is the local planning authority, with the Council's interest one of landowner.
- 3.2 Birmingham City Council sold The NEC Ltd to Lloyds Development Capital (LDC) (the private equity arm of Lloyds Banking Group) in 2015; LDC subsequently agreed the onward sale to private equity group Blackstone. The Council retains the freehold of the sites occupied by The NEC Ltd with a number of leases granted. The National Exhibition Centre (NEC) site is occupied on a 125 year lease. This lease is split into the core land area, over which the NEC Group have development rights, and the non-core land area where the City Council retain development rights under a claw back condition subject to the re-provision of car parking (see plan at Appendix 1).
- 3.3 The Non-Core Land lease provides that replacement parking must be provided within the lease area before any land within that area can be taken back by the Council under its claw back condition. The NEC currently has around 16,500 car parking spaces. The non-core land therefore is a significant brownfield development opportunity close to the Airport, NEC, International Rail Station and the future HS2 Interchange Station and Arden Cross development.
- 3.4 In November 2018, Cabinet approved an initial Masterplan for the NEC which set out a vision for the future of the NEC site as "nec•city" an internationally unique destination with global appeal that fuses entertainment, leisure, exhibition space, commercial and residential offers with the existing NEC at its heart. Overall, the Masterplan identified the potential to redevelop 75 hectares of brownfield land creating, at that time, 315,000 sq m of new floorspace, 10,000 new jobs, and up to 2,000 new apartments. The scale of the opportunity meant that development would be phased over several years.

- 3.5 In November 2018, Cabinet also considered a report on the private agenda regarding entering negotiations with Blackstone over potential participation in the development of the Non-Core Land lease area. It was agreed that the Council would enter into a formal arrangement with Blackstone for a period of two years, and that if terms acceptable to the Council could be agreed for the release of the claw-back condition in the Non-Core Lease, then the Council would release the condition.
- 3.6 Due to the impact of Covid on the NEC's business, in February 2021 it was agreed that the period for negotiation with Blackstone be extended for a further two years with the proposed terms of any future release of the claw-back condition (if appropriate) to be considered by Cabinet at a future date. As part of this process, it was agreed that the Masterplan and supporting evidence would be revisited and revised in part to support the case for growth at the NEC at the Solihull Local Plan Examination.
- 3.7 The draft revised masterplan was subsequently published in November 2021 and focusses upon the northern (and less used) car parking areas at the NEC as well as the infill areas around Pendigo Lake, with opportunities in the areas to the south to be considered at a future date. It is anticipated that the land values will increase over time as the scheme progresses and the HS2 Interchange Station to the east of the M42 is delivered. The Masterplan vision for the NEC is to create a unique environment for work, rest, live and play, further enhancing the vibrancy and attractiveness of the NEC site and driving existing operations. The masterplan has been informed by a detailed desktop assessment and study of the environmental and physical character, condition and context of the site; a detailed assessment of the demand and supply dynamics for the residential. commercial and leisure / retail / hospitality sectors across the local and regional geography; a financial model assessing viability; and a framework for the social, environmental and physical infrastructure to support development and secure positive sustainable outcomes for the future.
- 3.8 The Masterplan incorporates the following initial phases (shown on Appendix 4):
 - Phases 1 of the Urban Village would deliver 2,240 homes.
 - Phase 2 of the Urban Village would deliver 2,800 homes.
 - Phase 3 would deliver commercial and retail space as part of a new Grand Plaza (creating new development and a flexible outdoor events space adjacent to the existing NEC atrium halls) and Urban Boulevard (a new east west link which will connect the NEC site to the Arden Cross development and HS2 Interchange Station, with ground floor retail, food and beverage and small-scale leisure uses located along the route). Phase 3 would be largely on land within the NEC's core lease.
- 3.9 Bickenhill Plantation (28 ha) is located to the north of the NEC, adjacent to the proposed Urban Village, and is within the Council's ownership. The Plantation is a substantial mature woodland which is a local wildlife area. The Masterplan

proposes greater integration and connectivity with the Urban Village through improved community access and environmental and ecological enhancements. Options will be explored with the preferred development partner(s) once selected and will be reported to Cabinet at a future date. This will include consideration of any impact on the ecology and biodiversity of the Plantation (further information is included within the ESA at Appendix 8).

- 3.10 The NEC and the Council as the landowners are intending to commence a procurement process in 2023 to seek a development partner for the delivery of Phase 1 (circa 2,240 homes). The development partner will then be responsible for securing planning consents and delivering enabling and infrastructure works. It is forecast that Phase 1 will be completed by 2036/37.
- 3.11 To progress the proposals at the NEC the Council will need to reach agreement with the NEC / Blackstone on the opportunity and the commercial structuring of any potential deal. As such the Council and NEC have negotiated the key commercial and legal principles to bring forward Phase 1. To date, these have included:
- 3.12 Surrender and Freehold Disposal of the Non-Core Lease Area It is proposed that the NEC surrender plots of the Non-Core Lease with the Council simultaneously for sale and development purposes. Plots will be surrendered, and a freehold disposal to the NEC agreed, upon the satisfaction of certain conditions which would broadly centre on meeting pre-development requirements which will enable Phase 1 to be brought forward (planning consent, identification of funding requirements, agreement of relevant construction packages etc together with valuation.). This would provide the Council with a degree of control in relation to what is being delivered across the Phase 1 plots. For example, conditions around compliance with the master plan would be implemented, however, the Council would not benefit from direct review nor have approval rights.
- 3.13 Structure & Roles of the Parties The NEC and its advisors will lead the procurement process to identify a (master) developer, with the Council taking an oversight role with select agreed controls. This will enable the NEC to progress the procurement at pace, whilst enabling the Council to have an appropriate level of involvement in the process to both support discussions and manage the Council's risk. The legal structure of this arrangement is subject to legal review; however, it is likely to be a hybrid conditional land deal and joint venture between the parties. It is expected to be via contract as opposed to an incorporated joint venture.
- **3.14** Commercial Principles a waterfall mechanism has been agreed for the parties to recover costs and share in profit (attached in Appendix 3). Key elements of the waterfall have been negotiated including:
 - Existing Use Value (EUV) for the Land at the top of the waterfall mechanism, is a payment for each party's EUV for the land. NEC's valuation takes into

consideration their lost income as a result of not using the land for car parking and additional costs of operating the remaining site, whilst the Council's valuation reflects the reversionary value of the land at the end of the current lease and the current development hope value. Following negotiation, the EUV has been agreed at £400k per acre for the NEC and £50k per acre for the Council.

- Cost recovery the principle has been agreed that both parties should be in a position to recover agreed costs that have been incurred during the process of bringing the scheme forward and taking it to market. This includes full transparency of budgets and processes to ensure that the Council is in a position to review and validate the costs incurred by the NEC, and vice versa, before they are incurred or reimbursed. To date the NEC has funded the majority of the work to unlock the opportunity, including the preparation of the Masterplan and its supporting evidence. The Council will also be able to recover its costs to date including the cost of the financial and legal advice that has supported its negotiating position (including the costs for ongoing advice set out at paragraph 2.6).
- It should be noted that the development partner(s) once selected will also receive their costs and margin.
- Net Land Value Uplift Once agreed costs have been recovered, remaining cash within the waterfall will be shared between the parties as profit, or Net Land Value Uplift. NEC initially proposed a 60:40 split of the Net Land Value Uplift in NEC's favour. It has since been agreed that the Net Land Value Uplift should be reduced to a 55:45 split, which more accurately reflects the disruption that construction of the project would cause to the NEC core operating business, and the investment of time and resource required in order to deliver this project and drive the commercially beneficial outcome for both parties. Ultimately, the NEC will take the majority of the financial risk during the procurement of the master developer, only recovering costs when plots are sold.
- There is also on-going work to process the surrender of the existing lease and the freehold disposal agreement with the NEC. This includes:
 - Engaging legal counsel to consider the procurement implications arising from the provisionally agreed commercial and legal principles.
 - Engaging a tax and accounting advisor to confirm the relevant implications for both parties in bringing forward Phase 1 in accordance with the provisionally agreed commercial structure and to ensure that there are no adverse outcomes to the Council.
 - Engaging with the NEC to develop and agree the procurement strategy, principles and timing.

- Engaging with the NEC to agree the detail of remaining elements of the cashflow waterfall, including costs to be included within the sunk / opex (operating expenses or expenditure) mechanisms.
- 3.16 At the end of the procurement process authority for the selection of the preferred development partner(s) will be reported to Cabinet. The delivery of Phase 1 and the financial outcomes will be monitored and evaluated prior to progressing the future phases of the Masterplan (which again will be the subject of future reports to Cabinet).
- 3.17 Solihull MBC are the local planning authority for the site and their local planning policies regarding matters such as sustainability and affordable housing will apply. Nevertheless, Council officers will engage with officers at Solihull MBC to explore how their sustainability and zero carbon objectives can mutually enhance the proposal for all parties and to investigate other potential benefits for the citizens of Birmingham.

4 Options considered and Recommended Proposal

A range of options have been considered in terms of the proposed way forward with the five options below shortlisted.

- **4.1 Do Nothing Option** this option is to not develop the land and continue with business as usual, as such the car parks would not be developed. The original strategy at lease grant was to undertake a redevelopment at a much later time. No land value is lost by not progressing the scheme but the opportunity to enhance the area via the Masterplan is moved further out.
- **4.2 Do Minimum Option** this option would be a sale of the freehold interest in the land to the NEC or the purchase of the long leasehold from the NEC. It was considered more practical to work with the NEC to reach an agreed way forward where both parties share the potential risk and profit.
- 4.3 Option 1 (MSCP) build new MSCP car parks and exercise the Council's rights to develop out the land on the car parking spaces which are released (the claw back). As the existing car parks do not run at capacity this would effectively involve building new surplus car parks. The current financials of this option are not viable with the car park construction cost exceeding the value of the released land.
- **4.4 Option 2 (Phase 1 Only)** this option focuses on the development of the Phase 1 land only with an option to progress with Phase 2, if agreed, at a later date. It allows progression of the Masterplan on the Phase 1 site whilst retaining options for the later phases in a timeframe where it is expected land values will increase generally and as a result of the development of the scheme itself.
- **4.5 Option 3 (Phases 1, 2 & 3)** this option is for the development of all three phases the original deal presented by the NEC. There is a loss of control for the Council on future phases, which could still be developed out on the same terms as Phase 1 under this option.

4.6 Option 2 is recommended as the preferred option.

5 Consultation

- 5.1 The draft Masterplan https://www.necgroup.co.uk/media/3234/nec-masterplan-consultation-draft.pdf was published in November 2021 and has been the subject of public consultation. The Masterplan establishes the vision and framework for future development of land at the NEC.
- As the proposals for development of the site are progressed further public consultation will take place including all future planning applications relating to the site.
- 5.3 The NEC site is located outside of the City boundary and consequently Ward member consultation has not been undertaken.
- No external consultation has taken place regarding the detailed contents of this report, beyond the negotiations with the NEC.

6 Risk Management

- Risks will be identified, evaluated and managed in line with the City Council's Risk Management Methodology 2017. The initial risks and opportunities are shown in the Risk Register at Appendix 6.
- The report seeks authority to the proposed terms and conditions for the surrender of the existing lease and a freehold disposal agreement with the NEC; in particular the proposed waterfall agreement to share costs and profits. Following procurement, the appointment of the preferred developer and associated financial and legal agreements will be the subject of further reports to Cabinet.
- 6.3 Consultants are also appointed on behalf of finance, legal and property to provide advice on the negotiation process going forward, including the minimisation and mitigation of risk.

7 Compliance Issues:

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

The decisions recommended in this report will facilitate the development at the NEC which will contribute to:

7.1.1 The Corporate Plan 2022 – 2026 (To Support, To Serve, To Level Up) has tackling inequalities at its heart and is underpinned by the vision to make Birmingham a city where all citizens share in the creation and benefits of sustainable economic growth and live longer, healthier and happier lives. The future development of the NEC and the economic benefits that will accrue from this (including additional visitors to the city and region) will accord with the priorities for a Prosperous Birmingham (through a focus on inclusive economic growth,

- tackling unemployment and attracting inward investment) and an Inclusive Birmingham (tackling poverty and inequality).
- 7.1.2 The Birmingham Property Strategy. As the largest local authority in the country with the biggest property portfolio, the Council has the opportunity to utilise its property and land assets in a strategic way to deliver its priorities. The Property Strategy takes a medium to long term strategic approach to how the City Council utilises its commercial property assets and will ensure a balanced delivery of maximised commercial and social returns. Re-aligning the Council's land and property will provide a catalyst for development and underpin the social fabric of communities across the city region.
- 7.1.3 The Birmingham Development Plan (2017) Policy TP25 Tourism and Cultural Facilities states that Birmingham is a top visitor destination and that tourism is an important contributor to the City's economy. It is recognised that the city has a wide range of assets including the NEC, Genting Arena, Alexander Stadium, Balti Triangle, Aston Hall, Barclaycard Arena and ICC and Symphony Hall which are key venues for business visitors and leisure tourism. Proposals which reinforce and promote Birmingham's role as a key destination for business tourism will be supported.
- 7.1.4 **Solihull Draft Local Plan** The Solihull Local Plan recognises the importance of the NEC as a longstanding economic asset. In order for it to remain competitive within the international market the Local Plan establishes the opportunity for future sustainable economic growth. This growth includes support for residential, commercial and other uses at the NEC site. The draft Local Plan includes an allocation and policy to deliver up to 2,240 residential units alongside 50,000 sq. m of commercial office, retail, leisure and community space within the Plan period. The draft Plan is currently paused at the Public Examination stage pending the publication of the National Planning Policy Framework (NPPF).
- 7.1.5 East Birmingham Inclusive Growth Strategy East Birmingham is home to more than 230,000 people and forms a crucial part of the city and region's economy. This area sits between Birmingham City Centre and the UK Central Hub Area. The East Birmingham Inclusive Growth Strategy (2021) sets out the strategy for a comprehensive multi-agency approach to ensure that the growth in the surrounding areas benefits the communities in East Birmingham. This includes providing new opportunities for education and skills, and access to jobs, and improving living standards including health, the environment and transport. The growth planned at the NEC will provide new jobs and investment into the area which aligns with the overall aims and objectives for East Birmingham. Improved public transport and connections to the NEC will help facilitate this further.
- 7.1.6 Prosperity and Opportunity for All: Birmingham City Council's Levelling Up Strategy sets out the vision of levelling up for the city rooted in the belief that we must encourage growth and stimulate investment in the city, whilst at the same time making Birmingham a fairer and more equal place. Levelling up must mean

- that our citizens share in the economic benefits of Birmingham's development and live longer, healthier, and happier lives.
- 7.1.7 Everyone's Battle, Everyone's Business: Birmingham's Equality Action Plan 2022/2023. The proposal accords with the objectives of Everyone's Battle, Everyone's Business to make long term council-wide improvement to embed equity in a wide range of policy and practice. This includes Place Matters, one of five key principles, which focuses on place approaches that improve access to opportunities for local communities.
- 7.1.8 **Route to Zero.** The Masterplan is accompanied by a sustainability strategy which sets out a framework for the social, environmental and transport infrastructure to support development and secure positive sustainable outcomes for the future. Active and sustainable travel will be promoted through the creation of a network of pedestrian and cycle routes and the location of a Mobility Hub within the new local centre. Sustainable urban drainage solutions will be created across the public realm including swales, ponds, permeable paving, planning and green / brown roofs. Going forward the Council will engage with Solihull MBC to explore shared objectives regarding sustainable development and carbon net zero development.

7.2 Legal Implications

- 7.2.1 Section 120 of the Local Government Act 1972 contains the Council's powers to acquire by agreement any land whether situated inside or outside their area for the purposes of any of their functions or for the benefit, improvement or development of their area.
- 7.2.2 The power to dispose of land is contained in Section 123 of the Local Government Act 1972. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director Investment and Valuation (or nominated appointee) has confirmed that the proposed approach set out in the collaboration agreement represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.
- 7.2.3 Section 1 of the Localism Act 2011 contains the Council's general power of competence, which is circumscribed only to the extent of any applicable precommencement restrictions and any specific post-commencement statutory restriction of the power, and Section 4 of that Act contains the Council's power to exercise this general power of competence for commercial purposes through a company. Section 111 of the Local Government Act 1972 contains the Council's ancillary powers to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions, including the expenditure, borrowing or lending of money and including the disposal and acquisition of property or rights.
- 7.2.4 Under Section 13 of the Planning and Compulsory Purchase Act 2004 the Council must keep under review the matters which may be expected to affect the development of their area or the planning of its development including such

matters in relation to any neighbouring area to the extent that they may be expected to affect their area.

7.3 Financial Implications

- 7.3.1 The proposed surrender of the existing lease and a freehold disposal agreement with the NEC will generate a capital receipt for the City Council. The Waterfall Agreement sets out how the financial agreement between the Council and the NEC will operate. The Council and the NEC will both be able to recover their costs on the project to date. Net Value Uplift (profit) will then be split 55 / 45 in the NEC's favour. The scheme will not progress unless there is enough surplus to cover the costs, provide an uplift and pass a best value test.
- 7.3.2 The Council has sought tax and accounting advice to confirm the relevant implications for both parties in bringing forward Phase 1 in accordance with the provisionally agreed commercial structure and to ensure that there are no adverse outcomes to the Council. The Council will treat the transaction as capital in nature, recognising additional capital receipts and adjusting the existing financial asset disclosed in the balance sheet. Any income from ground rents will be disclosed in the comprehensive income and expenditure account to the extent that they are not fixed lease payments. The intention is that any City Council tax liability related to the transaction will form part of the waterfall arrangement, which will ensure that the City Council is not directly exposed to any tax payment. In addition, it is not expected that there will be any adverse cashflow implications for the City Council related to any tax liability.
- 7.3.3 It is proposed to extend the existing commissions providing legal and financial advice for these complex commercial negotiations on a time and materials basis subject to the delegated approval of the Assistant Director of Investment and Valuation and regular monitoring of a budget of up to £180,000. These costs will be recoverable through the terms of the waterfall mechanism.
- 7.3.4 The appointment of a development partner (following procurement) and the associated financial outcomes will be the subject of a further report to Cabinet.

7.4 Procurement Implications

- 7.4.1 The NEC will lead on the competitive procurement of a development partner. The requirement is that the NEC progress a robust and transparent process for the selection of a development partner following the principles of delivering best value to the stakeholders. For the avoidance of doubt the NEC will not follow the Council's standing orders.
- 7.4.2 In terms of the procurement process the Council will have an oversight role with select controls which are to be agreed. The decision on the selection of the development partner will be the subject of a further report to Cabinet.

7.5 Human Resources Implications

- 7.5.1 The Council is largely using existing staff from the Property Services and Planning and Development service of the Place, Prosperity and Sustainability Directorate to progress this project.
- 7.5.2 Specialist financial and legal advice has been commissioned to support and inform the Council's position in these complex commercial negotiations and to ensure that best value is obtained. To ensure that the Council's position is represented and properly considered throughout the identification of a development partner(s) it is proposed that these commissions are extended.

7.6 Public Sector Equality Duty

- 7.6.1 The programme has been undertaken in accordance with the Property Strategy. The Property Strategy is a policy document setting out the strategy principles associated with property assets and at this stage there are no specific implications.
- 7.6.2 The Equality Analysis is attached at Appendix 7, which concluded that the proposals will contribute to equality of opportunity for all through creating the conditions for growth and job creation. In addition, it is considered that the proposals do not have the potential to have a differential impact on any group or protected characteristic.

8 Appendices

- **8.1** List of appendices accompanying this report:
 - Appendix 1 Site Plan (Core and Non-Core Land)
 - Appendix 2 The NEC Masterplan, November 2021 Consultation Draft
 - Appendix 3 Collaboration Agreement (Waterfall Agreement)
 - Appendix 4 Non-Core Land Initial Phases
 - Appendix 5 Phase 1 New Lease Area
 - Appendix 6 Risk Register
 - Appendix 7 Equality Assessment
 - Appendix 8 Environment and Sustainability Assessment

9 Background Documents

- The Corporate Plan 2022-2028 (To Support, To Serve, To Level Up
- The Birmingham Property Strategy
- The Birmingham Development Plan 2017
- Solihull Draft Local Plan 2021
- East Birmingham Inclusive Growth Strategy 2021
- Prosperity and Opportunity for All: Birmingham City Council's Levelling Up Strategy 2021
- Everyone's Battle, Everyone's Business: Birmingham's Equality Action Plan 2022/2023