

# **BIRMINGHAM CITY COUNCIL**

## **CABINET COMMITTEE – PROPERTY**

**THURSDAY, 28 NOVEMBER 2024 AT 15:30 HOURS**  
**IN COMMITTEE ROOM 6, COUNCIL HOUSE, VICTORIA SQUARE,**  
**BIRMINGHAM, B1 1BB**

### **A G E N D A**

#### **1 NOTICE OF RECORDING/WEBCAST**

The Chair to advise/meeting to note that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

#### **2 APOLOGIES**

To receive any apologies.

#### **3 DECLARATIONS OF INTERESTS**

Members are reminded they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at this meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Information on the Local Government Association's Model Councillor Code of Conduct is set out via <http://bit.ly/3WtGQnN>. This includes, at Appendix

1, an interests flowchart which provides a simple guide to declaring interests at meetings.

**3 - 16**

4 **MINUTES**

To confirm and sign the Minutes of the meeting held on the 24 October 2024 and the public and private Minutes of the extraordinary meeting held on the 13 November 2024.

5 **EXEMPT INFORMATION – POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC**

a) To highlight reports or appendices which officers have identified as containing exempt information within the meaning of Section 100I of the Local Government Act 1972, and where officers consider that the public interest in maintaining the exemption outweighs the public interest in disclosing the information, for the reasons outlined in the report.

b) To formally pass the following resolution:-

**RESOLVED** – That, in accordance with Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting during consideration of those parts of the agenda designated as exempt on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information.

**17 - 40**

6 **SELECTION OF DEVELOPMENT PARTNER AND BID FOR THE FORMER TOWER BALLROOM SITE**

Report of Strategic Director Place, Prosperity, Sustainability

**41 - 58**

7 **SALE OF FREEHOLD – LAND AT CRANBY STREET & ADDERLEY ROAD, BIRMINGHAM B8 1JU**

Report of Strategic Director Place Prosperity & Sustainability

**59 - 136**

8 **ARDEN CROSS LTD DEVELOPMENT AGREEMENT, BUSINESS PLAN AND BUDGET FOR Q3 AND Q4 24/25**

Report of Strategic Director Place, Prosperity & Sustainability.

9 **OTHER URGENT BUSINESS**

To consider any items of business by reason of special circumstances (to be specified) that in the opinion of the Chair are matters of urgency.

# BIRMINGHAM CITY COUNCIL

**CABINET COMMITTEE –  
PROPERTY MEETING  
THURSDAY, 24 OCTOBER  
2024**

**MINUTES OF A MEETING OF THE CABINET COMMITTEE - PROPERTY  
HELD ON THURSDAY 24 OCTOBER 2024 AT 1530 HOURS IN  
COMMITTEE ROOM 6, COUNCIL HOUSE, VICTORIA SQUARE,  
BIRMINGHAM, B1 1BB.**

**PRESENT:** - Councillor Sharon Thompson, Deputy Leader in the Chair

Councillor Jayne Francis, Cabinet Member for Housing and Homelessness  
Councillor Sharon Thompson, Deputy Leader and Cabinet Member for  
Economy and Skills

**ALSO PRESENT:-**

Councillor Ewan Mackey, Deputy Leader of the Opposition (Conservative)  
Councillor Deborah Harries, (Liberal Democrat)  
Phil Andrews, Head of Operational Property Management  
Ian Chaplin, Head of Service, Investment and Valuation  
Philip Nell, Director for Property and Investment  
Mohammed Sajid, Assistant Director Financial Strategy  
Sushil Thobhani, Head of Law, Property, Planning & Regeneration  
Errol Wilson, Committee Team Leader

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**NOTICE OF RECORDING/WEBCAST**

71. The Chair welcomed attendees and advised, and the Committee noted, that this meeting will be webcast for live or subsequent broadcast via the Council's Public-I microsite ([please click this link](#)) and that members of the press/public may record and take photographs except where there are confidential or exempt items.

**APOLOGIES**

72. Apologies for non-attendance were submitted on behalf of Councillors John Cotton, Karen McCarthy, Robert Alden (but Councillor Ewan Mackey as substitute).

**DECLARATIONS OF INTERESTS**

73. The Chair reminded Members that they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at the meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Any declarations will be recorded in the minutes of the meeting.

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**MINUTES**

74. **RESOLVED: -**

The Public and Private Minutes of the meeting held on the 12 September 2024, having been previously circulated, were confirmed and signed by the Chair.

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**EXEMPT INFORMATION – POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC**

The Chair advised that the report at Agenda item 7 contained exempt appendices within the meaning of Section 100I of the Local Government Act 1972.

The Chair then enquired whether there were any matters that Members would like to raise on the exempt appendices that may affect the decision to be made or to ask for clarification on a point on the exempt appendices.

Members of the Committee indicated that they did not have any questions to raise in relation to item.

The Chair advised that the meeting would continue in public session.

75. **RESOLVED:–**

That, in accordance with Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting during consideration of those parts of the agenda designated as exempt on the grounds that it is likely, in

view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information.

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## **DISPOSAL OF SURPLUS PROPERTIES**

The Committee considered a report concerning the *Disposal of Surplus Properties*. The Head of Operational Property Management highlighted that this was a report to declared surplus and brought forward a range of Council properties, buildings and land that were no longer required for City Council purposes. The sale of these properties would generate valuable capital receipts to the City Council's financial recovery plan and enabled the Council to exited liabilities in terms of the vacant buildings and land and associated costs and brought forward economic reuse of said land and buildings.

The Head of Operational Property Management noted the Member's comments concerning *67 Sutton New Road, Erdington* the *Former Erdington Baths, Mason Road, Erdington* and *Coleshill Road Nursery* and made the following statements:-

In respect of *67 Sutton New Road, Erdington* representations were had from the two local councillors in respect of the two Erdington Ward lots. He added that in relation to the *Former Erdington Baths, Mason Road, Erdington* if there was an opportunity to update the paperwork to include both local councillors this would be done as they both stated similar things. The Head of Operational Property Management stated that we would work with the planners concerning *67 Sutton New Road, Erdington* for the most appropriate form of development and use in the locality. This was partly driven by whether it was a reuse of the current structure or whether it was a new build on the site we would work with the planners. Given the values that the site would attract there would be a need to work with the local councillors in terms of any further report to brought forward the disposal.

The Head of Operational Property Management further noted the Member's comments in respect to the *Site of former West Heath Library* and advised that this was closed for at least a decade and was demolished about 8 years ago. The Cabinet Member for Housing and Homelessness advised that when she held that portfolio the West Heath Library was not I existence. The Head of Operational Property Management stated that the West Heath Library did not formed part of the current model for libraries and was not part of the current consultation. He added that this was a small infill site, and that the intention was to brought this forward for development.

With regard to *Coleshill Road Nursery* a number of exchanges were undertaken with the local councillor and the Assistant Director, and this was similar commentary to *Sutton New Road*. We would be working with our colleagues in planning for what was the most appropriate and sustainable form of development and panning use in that locality.

A Member enquired whether a covenant could be placed on the *Sutton New Road* site when it was being sold to state that the site cannot be used for an

## **Cabinet Committee Property – 24 October 2024**

HMO or exempt accommodation. The Head of Operational Property Management responded that further advice would be needed from colleagues in Planning, Legal Services etc. He added that he was aware that we had done such things on small individual properties, but that he was not aware if this had been done on any larger site. He undertook to investigate the issue and provide a response to the Member.

The Chair commented that if her memory served her correctly a Scrutiny report had something in there that looked at some of the things being mentioned now by the Member. The Chair request that this point be investigated by Legal Services to ensure that everything we were doing in this space was compliant with what was being agreed previously.

The Cabinet Member for Housing and Homelessness gave assurance that we did not want any more HMOs or exempt properties within that area of Birmingham as there was more than enough and that she would be grateful if officers could put this in place. It was noted that the Scrutiny went to Full City Council and was adopted.

The Head of Operational Property Management stated that three of the items the ex-caretaker houses - *65 Chilcote Close, Hall Green, 7 Netherdale Road, Highters Heath* and *the Norman Power Centre, 14 Skipton Road, Ladywood* were being investigated by colleagues in City Housing for potential use for temporary accommodations. Those investigations were on going but in the meantime we would proceed with declaring them surplus so that if they were to be unfeasible we had the authority to move forward with the disposals promptly.

The Chair stated that the caveat was ensuring that if these properties were going to be used for other purposes such as temporary accommodations it was ensured that they were complied with energy efficiency and everything else.

The Head of Operational Property Management stated that such uses would be subject to an appropriation report to brought them over into the HRA and such issues would be picked up then.

The Chair sought clarification in relation to these properties being made surplus and questioned how these could be used for temporary accommodations. The Head of Operational Property Management responded that for this we would like the approval at this point subject to those investigations continuing. If they were unsuccessful we could move properly to the open market. He reiterated that any reuse would be subject to an appropriation report and there would be that element of review and challenge by this Committee.

### **76. RESOLVED UNANIMOUSLY: -**

That Cabinet Committee Property:-

- a. Declared the land and property assets listed in Appendix 1 to the report (both freehold and long leasehold interests) surplus to Council requirements and authorised their subsequent sale as detailed;

## **Cabinet Committee Property – 24 October 2024**

- b. Noted that in accordance with existing surplus property procedures no internal reuse of the properties listed in Appendix 1 to the report has been identified;
- c. Authorised the Director of Property & Investment to conclude the sale of the Council's property interests at public auction (where auction is indicated as the method of disposal) through its appointed auctioneers during the remainder of 2024 and 2025;
- d. Authorised the Director of Property & Investment, where deemed appropriate, to set individual reserve prices in excess of £200,000;
- e. Authorised the City Solicitor, where necessary, to advertise the permanent loss of public open space and consider any objections in accordance with Section 123(2a) of the Local Government Act 1972; and
- f. Authorised the City Solicitor to negotiate, execute and complete all necessary legal documents to give effect to the above recommendations.

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### **SALE OF PLOT 1, SMALL HEATH BUSINESS PARK, COVENTRY ROAD, BIRMINGHAM, B10 0HJ**

The Committee considered a report concerning the *Sale of Plot 1, Small Heath Business Park, Coventry Road, Birmingham, B10 0HJ*.

The Head of Service, Investment and Valuation introduced the item and drew the attention of the Committee to the information contained in the report.

A Member referred to the long lease on the property and the leaseholder had leased a portion of it to a third party, but that sublease did not run as long as the long lease. The Member enquired whether an overage clause could be included in the contract so that the Council could do some clawback if the specified condition was satisfied.

The Head of Service, Investment and Valuation responded that the Council granted a 125-year lease on this asset back in 1989 and there were 90 years unexpired. The Council currently received no rent under that arrangement on the basis that a premium was paid on commencement of the lease. The occupational lessee to whom the Member referred to occupied the entire site. This was an international data centre that have been there a number of years, and it was expected that they would be there for a substantially longer period. We have taken the appropriate advice from our advisors. The value the Council would extract from this was a valuation of what was a remote freeholder reversionary interest for the Council. We could do nothing else with the site until those 90 years had expired. We were satisfied that we had secured best value for it. The recommendation at this point was that there should not be any need for an overage provision on it.

## **77. RESOLVED UNANIMOUSLY: -**

## **Cabinet Committee Property – 24 October 2024**

That Cabinet Committee - Property:-

1. Authorised the Assistant Director of Investment & Valuation to conclude an unconditional sale of the Council's freehold interest, to the current tenants on the recommended terms as set out in Exempt Appendix 4 to the report;
2. Noted the purchasing tenant will meet payment of the Council's legal and surveyor's costs, as detailed in Exempt Appendix 4 to the report; and
3. Authorised the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above.

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The Chair informed the meeting that the following items on the Agenda were withdrawn:

- Amendment to Long Nuke Road Development Scheme to Enable Housing Delivery
- Primrose Phase 3 Kings Norton Site to Deliver Affordable Housing
- Amendment to Yardley Brook Development Scheme to Enable Housing Delivery

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### **OTHER URGENT BUSINESS**

#### **78. The Brasshouse, Sheepcote Street Birmingham B16 8AE**

It was also noted that *The Brasshouse, Sheepcote Street Birmingham B16 8AE* was withdrawn from the Agenda.

A Member commented that the Brasshouse was *kicking* around for a while. He added that the Lead Commissioner stated recently that the Council suffered from a failure to follow through with its decisions. The Member further stated that there had been a long delay concerning this asset and it was not thought that this was a model of how a property should be handled.

The Director for Property and Investment responded that he accepted the Member's comments and stated that he did not believe that we would be sat here stating that this was a fast-tracked process. He emphasised that it was disappointing that this item could not be presented today and that this was down to the purchaser renegotiating terms. He added that we have held our nerves which was the right thing to do under these circumstances. He advised that the proposed purchaser were looking for a significant delay in payment before officers had even presented that proposal to the Commissioners. The Director for Property and Investment stated that he was adamant that we have done the right thing.

The Chair commented that since taking over this portfolio she had been working with all of the officers to see if we could do things more efficiently and ensuring



## **Cabinet Committee Property – 24 October 2024**

that we were not losing things financially and getting best value for the properties we have. Having spoken with the Director for Property and Investment this was the right thing to do concerning the Brasshouse. The Member's points were well made, and we were taking on board and ensuring that things were done efficiently around the whole estate.

The Cabinet Member for Housing and Homelessness enquired whether this property would be coming back to the next Cabinet Committee – Property meeting scheduled for November. The Director for Property and Investment responded that it was difficult to say at this stage as we were having an extraordinary meeting on the 13 November to hear some of the items that were withdrawn from this meeting. It was also certain that the item would not come to the next scheduled meeting on the 28 November. The Cabinet Member for Housing and Homelessness stated that it was important that the item came back before Christmas.

### **79. Summary Report**

A Member enquired about the summary of what have been sold and where we were with everything as it was difficult to keep a track from meeting to meeting. The Director for Property and Investment advised that the report had already been provided. He apologised that the report was not provided at this meeting. The Chair stated that she had seen the report on a regular basis as the portfolio holder. It was agreed for a summary to be submitted at the next meeting. The Chair stated that it would be helpful if a meeting could be set up outside of this Committee with Members of the Committee so that we could get up to speed with everything. Then, when we got to the next meeting we would be at the point where we were up to speed with everything

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The meeting ended at 1600 hours.

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CHAIRPERSON



# BIRMINGHAM CITY COUNCIL

<b>CABINET COMMITTEE – PROPERTY EXTRAORDINARY MEETING WEDNESDAY, 13 NOVEMBER 2024</b>
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**MINUTES OF AN EXTRAORDINARY MEETING OF THE CABINET  
COMMITTEE - PROPERTY HELD ON WEDNESDAY 13 NOVEMBER  
2024 AT 0930 HOURS IN ELLEN PINSENT ROOM, COUNCIL HOUSE,  
VICTORIA SQUARE, BIRMINGHAM, B1 1BB.**

**PRESENT:** - Councillor John Cotton, Leader in the Chair

Councillor Jayne Francis, Cabinet Member for Housing and Homelessness  
Councillor Karen McCarthy, Cabinet Member for Finance

**ALSO PRESENT:-**

Councillor Robert Alden, Leader of the Opposition (Conservative)  
Councillor Deborah Harries (Liberal Democrat) online  
Deborah Carter-Hughes, Assistant Director of Legal Services – Corporate Law  
Mumtaz Mohammed, Programme Manager  
Philip Nell, Director for Property and Investment  
Mohammed Sajid, Assistant Director Financial Strategy  
Kerry Scott, Housing Delivery Programme Lead  
Sushil Thobhani, Head of Law, Property, Planning & Regeneration  
Errol Wilson, Committee Team Leader

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**NOTICE OF RECORDING/WEBCAST**

80. The Chair welcomed attendees and advised, and the Committee noted, that members of the press/public may record and take photographs except where there are confidential or exempt items.

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**APOLOGIES**

81. An apology for non-attendance was submitted on behalf of Councillor Sharon Thompson, Deputy Leader and Cabinet Member for Economy and Skills.

**DECLARATIONS OF INTERESTS**

82. The Chair reminded Members that they must declare all relevant pecuniary and other registerable interests arising from any business to be discussed at the meeting.

If a disclosable pecuniary interest is declared a Member must not participate in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If other registerable interests are declared a Member may speak on the matter only if members of the public are allowed to speak at the meeting but otherwise must not take part in any discussion or vote on the matter and must not remain in the room unless they have been granted a dispensation.

If it is a 'sensitive interest', Members do not have to disclose the nature of the interest, just that they have an interest.

Any declarations will be recorded in the minutes of the meeting.

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**EXEMPT INFORMATION – POSSIBLE EXCLUSION OF THE PRESS AND PUBLIC**

The Chair advised that the reports at Agenda items 5, 6 and 8A contained exempt appendices within the meaning of Section 100I of the Local Government Act 1972.

The Chair then enquired whether there were any matters that Members would like to raise on the exempt appendices that may affect the decision to be made or to ask for clarification on a point on the exempt appendices.

Members of the Committee indicated that they have questions to raise in relation to items 5, 6 and 8A which presumably needed to be raised in the private session, however, they would be guided by the Chair.

The legal officer present at the meeting proposed that the Committee move into private session for discussions around items 5, 6 and 8A.

The Chair agreed with the proposal to move into a private session and make the decision in public when the meeting returned to the public session.

83. **RESOLVED:–**

That, in accordance with Regulation 4 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the public be excluded from the meeting during consideration of those parts of the agenda designated as exempt on the grounds that it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the press and public were present there would be disclosure to them of exempt information.

**AMENDMENT TO YARDLEY BROOK DEVELOPMENT SCHEME TO  
ENABLE HOUSING DELIVERY**

The Committee considered a report concerning the *Amendment to Yardley Brook Development Scheme to Enable Housing Delivery*.

A Member referred to the Commissioners comments concerning potential misunderstandings and if there were misunderstands what could be done. The Chair stated that this was a view shared by the Elected Members. The Director for Property and Investment undertook to request that Corporate Landlord provide an update to the Committee concerning the issue.

**EXCLUSION OF THE PUBLIC**

It was-

**84. RESOLVED:-**

That members of the press and public be excluded from the meeting for the exempt items of business under the next agenda item under Section 100A(4) of the Local Government Act 1972 on the grounds that: (i) it involved the likely disclosure of exempt information as defined under paragraph 3 of Part 1 of Schedule 12A of the Act; and (ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

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There were a range of matters that were considered during the exempt part of the meeting, and these are set out in full under the private Minutes.

**85. RESOLVED UNANIMOUSLY: -**

That Cabinet Committee Property:-

- a. Approved the sale of the site (as defined in Appendix 1 to the report) through a Development Agreement route to a Registered Provider with the transaction details as detailed in Exempt Appendix 2 of the report following the approval of the modification of the original contract for the development of housing at Yardley Brook between the Council and the developer;
- b. Noted the land assets have been identified for development and disposal from the Housing Revenue Account (HRA) to provide affordable housing across the city, with the Council retaining 100% Nomination Rights on first lets, and 80% on subsequent lets for the first ten years for those on its housing register. The receipts will be paid into the HRA. This means the Council will be able to relieve pressure from the housing register and receive a capital receipt for the land;
- c. Delegated authority to the Strategic Director for Place, Prosperity, and Sustainability, the Interim Director of Finance (s151 Officer), and the Interim City Solicitor & Monitoring Officer (or their respective delegates)

## **Cabinet Committee Property – 13 November 2024**

to agree the final terms of the transaction, including any non-material amendments of terms; and

- d. Authorised the City Solicitor and Monitoring Officer (or their delegate) to take all steps necessary to prepare, execute, and complete all relevant legal documentation to give effect to the above.

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### **AMENDMENT TO LONG NUKE ROAD DEVELOPMENT SCHEME TO ENABLE HOUSING DELIVERY**

The Committee considered a report concerning the *Amendment to Long Nuke Road Development Scheme to Enable Housing Delivery*.

The Chair moved that with regard to the recommendations that paragraph 3.3 be amended as follows:

- a) *Notes that the land used for new sports pitches and pavilions will be retained by BCC to be retained and managed by Parks and Leisure;*
- b) *Notes that the pavilions works will be completed in accordance with planning requirements, using contributions from city wide Community Infrastructure Levy (CIL) Section 106 monies and the HRA funding.*

A Member referred to the Commissioners comments around the issue of delegations not being used properly. He requested that when these were investigated that a report be submitted to the Cabinet Committee – Property.

### **EXCLUSION OF THE PUBLIC**

It was-

#### **86. RESOLVED:-**

That members of the press and public be excluded from the meeting for the exempt items of business under the next agenda item under Section 100A(4) of the Local Government Act 1972 on the grounds that: (i) it involved the likely disclosure of exempt information as defined under paragraph 3 of Part 1 of Schedule 12A of the Act; and (ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

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There were a range of matters that were considered during the exempt part of the meeting, and these are set out in full under the private Minutes.

#### **87. RESOLVED UNANIMOUSLY: -**

That Cabinet Committee - Property:-

1. Approved the sale of the site (as defined in Appendix 1 of the report) through a Development Agreement route to a Registered Provider with the transaction details as detailed in Exempt Appendix 2 of the report

## **Cabinet Committee Property – 13 November 2024**

following the approval of the modification of the original contract for the development of housing at Long Nuke Road between the Council and the developer;

2. Noted the land assets that have been identified for development and disposal from the Housing Revenue Account (HRA) to provide affordable housing across the city, with the Council retaining 100% Nomination Rights on first lets, and 80% on subsequent lets for the first ten years for those on its housing register. The land receipt will be paid into the HRA. This means the Council will be able to relieve pressure from the housing register and receive a capital receipt for the land;
3. a) Noted that the land used for new sports pitches and pavilions will be retained by BCC to be retained and managed by Parks and Leisure;  
  
b) Noted that the pavilions works will be completed in accordance with planning requirements, using contributions from city wide Community Infrastructure Levy (CIL) Section 106 monies and the HRA funding.
4. Delegated authority to the Strategic Director for Place, Prosperity, and Sustainability, the Interim Director of Finance (s151 Officer), and the Interim City Solicitor & Monitoring Officer (or their respective delegates) to agree the final terms of the transaction, including any non-material amendments of terms; and
5. Authorised the City Solicitor and Monitoring Officer (or their delegate) to take all steps necessary to prepare, execute, and complete all relevant legal documentation to give effect to the above.

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### **PRIMROSE PHASE 3 KINGS NORTON SITE TO DELIVER AFFORDABLE HOUSING**

88. The Chair informed the meeting that this item has been withdrawn.

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### **ADJUSTMENT TO SALE OF PLOTS 6, 7 AND 8 PERRY BARR RESIDENTIAL SCHEME**

The Committee considered a report concerning the *Adjustment to Sale of Plots 6, 7 and 8 Perry Barr Residential Scheme*.

### **EXCLUSION OF THE PUBLIC**

It was-

89. **RESOLVED:-**

That members of the press and public be excluded from the meeting for the exempt items of business under the next agenda item under Section 100A(4) of the Local Government Act 1972 on the grounds that: (i) it involved the likely disclosure of exempt information as defined under paragraphs 3, 4 and 5 of

**Cabinet Committee Property – 13 November 2024**

Part 1 of Schedule 12A of the Act; and (ii) the public interest in maintaining the exemption outweighed the public interest in disclosing the information.

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There were a range of matters that were considered during the exempt part of the meeting, and these are set out in full under the private Minutes.

**90. RESOLVED UNANIMOUSLY: -**

That Cabinet Committee – Property authorised the approval of the recommendations as set out in the Exempt report.

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**OTHER URGENT BUSINESS**

**91. There was no item of urgent business**

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The meeting ended at 1025 hours.

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CHAIRPERSON



# Birmingham City Council

## Report to Cabinet Committee - Property

28<sup>th</sup> November 2024



<b>Title:</b>	<b>SELECTION OF DEVELOP PARTNER AND BID FOR THE TOWER BALLROOM SITE</b>
<b>Lead Member:</b>	Councillor Sharon Thompson- Deputy Leader and Economy and Skills
<b>Relevant Overview and Scrutiny Committee:</b>	Economy Skills & Culture
<b>Has this report been shared with the relevant Overview and Scrutiny Committee Chair?</b>	Yes
<b>Report Author:</b>	Andrew Cox - Principal Surveyor Development Team  Investment & Valuation Division Place Prosperity & Sustainability Directorate Contact: andrew.cox@birmingham.gov.uk
<b>Authorised by:</b>	Philip Nell, Interim Strategic Director Place Prosperity & Sustainability Directorate
<b>Is this a Key Decision?</b>	Yes
<b>If this is a Key Decision, is this decision listed on the Forward Plan?</b>	Yes – 012470/2024
<b>Reason(s) why not included on the Forward Plan:</b>	Not Applicable.
<b>Is this a Late Report?</b>	No
<b>Reason(s) why Late:</b>	Not Applicable.
<b>Is this decision eligible for ‘call in?’</b>	Yes
<b>If not eligible, please provide reason(s):</b>	Not Applicable.

**Wards:** Ladywood/North  
Edgbaston

**Does this report contain exempt or confidential information?** Yes

**Exempt Information**

Appendices 2, 3, 4, 5 & 9 are exempt from disclosure by virtue of the following paragraphs of schedule 12A to the Local Government Act, 1972 as amended:

Paragraph3: Information relating to the financial or business affairs of a particular person (including the authority holding that information).

**Has this decision been included on the Notification of Intention to consider Matters in Private?** Yes

**Reasons why not included on the Notification:** Not Applicable.

## **1 EXECUTIVE SUMMARY**

- 1.1 This report seeks authority for the disposal of The Council's property interests and selection of a development partner for The Former Tower Ballroom site including Lodge Building on the edge of Edgbaston Reservoir by the granting of a new 250-year lease for a financial premium with pre-development agreement conditions.
- 1.2 The property has a site area of approximately 15,700 square meters and is shown edged bold black on the attached site plan at Appendix 1.
- 1.3 The recommendations contained in this report and the Exempt Appendix 2 are fully in line with the Council's Financial Recovery Plan.
- 1.4 Other options for this property interest have been considered and the recommended leasing route provides the best outcomes for the City as detailed in this report.

## **2 COMMISSIONERS' REVIEW**

- 2.1 Commissioners support the recommendations.

## **3 RECOMMENDATIONS**

### **That Cabinet Committee Property**

- 3.1 Authorise the Assistant Director of Corporate Landlord to confirm selection of the preferred development partner.
- 3.2 To further authorise the Assistant Director of Corporate Landlord to accept the bid and conclude the terms with the preferred development partner for entering into a new lease with pre-development conditions for a premium on Council owned assets at the former Tower Ballroom site, The Lodge Building and additional land at Reservoir Rd, Birmingham B16 2EE ("the Property") as shown edged bold black on the attached site plan at Appendix 1 and extending to 15,700 sqm by the grant of a new 250-year lease to the Developer as tenant and detailed in Exempt Appendix 2,3 & 4.
- 3.3 To approve the additional use of required land identified in the manner described in 1.2 above held in both the Leaders Portfolio and also further property interests held by the Parks and Local Services Directorate as shown included and edged bold black on the attached site plan at Appendix 1 that extends to a cumulative 15,700 sqm.
- 3.4 Note that the purchaser will pay a contribution towards the Council's surveyor and legal costs, as detailed in Exempt Appendix 2.
- 3.5 Authorises the City Solicitor to prepare, negotiate, execute, and complete all relevant legal documentation to give effect to the above.

## **4 KEY INFORMATION**

### **Context**

- 4.1 The property, previously known as the former Tower Ballroom, was a popular social and live music venue, particularly in the 50's, through to the 80's. It was also used as a roller-skating rink in its formative years and as a pavilion for brass bands on completion of the reservoir in the 1890's.
- 4.2 With the decline in the Tower Ballroom's popularity as an evening entertainment venue and overall financial viability the Council eventually took enforced lease surrender and repossession of all of the leases on the property by the Investment & Valuation Division of the Council from previous tenants in 2016, since which the property has been vacant.
- 4.3 In March 2021, Cabinet approved the award of a contract for the demolition of the Tower Ballroom structure with the final conclusion of that contract obtaining the deconstruction of the ballroom, the removal of the steel frame, all foundations, identified asbestos sheeting and also trace sulphur elements from collapsed building brickwork from previous historical structures and finally the support concrete footings that existed below the waterline in January 2024.
- 4.4 In October 2022, the Council adopted the Edgbaston Reservoir Masterplan Supplementary Planning Document (SPD), which outlined redevelopment opportunities to re-imagine the use of the site with a particular emphasis on improving the leisure and natural environment opportunities around the reservoir and contributing a significant number of affordable housing units for a new residential development.
- 4.5 Community Consultation on the Masterplan has been extensive on this sensitive and prominent water side development site, leading to the Edgbaston Reservoir Masterplan SPD; with particular local interest in the welfare of the Local Nature Reserve status of the site that surrounds the reservoir, the social and cultural significance of the former Tower Ballroom in addition to a keen local interest in the Council's planning policies to adhere to a high proportion of affordable housing provision.
- 4.6 The responsibilities of the development site have therefore represented a significant opportunity to making a significant affordable housing contribution to the Council's own housing targets, an improved community facility and to offer enhancement of amenity value to the local community and enjoyment by wider users of the Edgbaston Reservoir.
- 4.7 The Council with its appointed agents Avison Young completed an extensive marketing campaign for this prominent development opportunity based on a broad range of evaluation criteria relying on both design, price and deliverability

as well as considering local community need and expected landscape improvements.

- 4.8 Marketing for the property in line with the principles set out in the adopted masterplan SPD commenced in February 2024 by the Council's appointed external advisors Avison Young, which saw a prominent marketing campaign undertaken in the public and professional press.
- 4.9 Initial expressions of interest were solicited, with first round designs and bids submitted at the beginning of April 2024. Second round designs and bids were submitted at the end of April. Evaluation was undertaken by both the development, planning and sustainability teams within the Council. Members of the Local Nature Reserve advisory group and Ward Counsellors were also invited to comment on the submitted designs at this point. (See Appendix 7.)
- 4.10 Final Bids were submitted during May 2024, all subject to planning approval, with a final evaluation completed in June by respective officers and the report writer with the Assistant Heads of Property, Urban Design and Planning conferring on the recommendations in July 2024.
- 4.11 Under the terms submitted the selected developer has undertaken a period due diligence of 4 months to complete, prior to entering into legal negotiations and submitting a detailed planning application for the site.
- 4.12 The respective developer bid rounds and officer weighted evaluation scores are included in summary in Exempt Appendix 2 and are available in full detail in Exempt Appendix 5. The evaluation criteria being used were: 40% weighted on design, 32.5% on price and 27.5% on deliverability.
- 4.13 The site is shown edged bold black on the site plan at Appendix 1 of this report.
- 4.14 The property is owned freehold by the City Council in a series of titles dating back to the 1890's and is currently unregistered.
- 4.15 The proposed sale by the granting of a new 250-year lease represents best consideration and has been validated as such by the Assistant Director of Investment & Valuation and the Council's external agent Avison Young based upon an evaluation analysis of the financial terms of the recommended sale. The lease terms and sale of the Council's new leasehold interest are in line with the Council's Property Strategy, and the proposed transaction and generation of a capital receipt supports the Financial Recovery Plan by generating resources and thus helping to achieve a balanced budget. The continued long term public access to and around the reservoir in future will be maintained firstly by retaining the Council's freehold interest and secondly managed through the lease agreement with the developer.
- 4.16 The Council; will maintain control, through the lease provisions, of important local issues, amenities, pertaining to public access and enjoyment of the reservoir

area, the quality of landscaping and maintenance of the public realm areas to the site.

- 4.17 Avison Young, the Council's external advisor have recommended that the Council proceeds with the preferred developer and with the proposed sale following the competitive bid, formal evaluation and dialogue process and their recommendation report is in Exempt Appendix 3 with the proposed heads of terms attached in Exempt Appendix 4

4.18 **Proposal and Reasons for Recommendations**

- 4.19 It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Strategy, Planning Policy and the external advice obtained to support delivery of the Strategy, to deliver a capital receipt to further assist in the Council's Financial Recovery Plan.

4.20 **Other Options Considered**

- 4.21 **Option 1 - Do Nothing.** The Council is under no obligation to proceed with this proposal and would suffer no reputational consequences if it did not proceed, notwithstanding the open marketing campaign. The negotiated capital receipt would not be realised at this time and would not be available to contribute to the affordable housing strategy nor fund the City Council's ongoing transformation programme. This option would fail to optimise the opportunity of Council owned land to help meet the city's housing needs. Furthermore, the opportunity to improve the public realm and landscaping round the Edgbaston Reservoir would remain dormant.

- 4.2 **Option 2 – Property Retained for Reuse and / or Development by the Council.** The property is owned freehold and has the benefit of the adopted Edgbaston Reservoir Masterplan SPD (October 2022) for redevelopment. In accordance with the Council's surplus property procedures, the property prior to being demolished and the site offered for sale on the open market, has been considered for potential internal reuse, and / or development by the Council to support its business priorities, with no interest expressed or identified.

- 4.3 **Option 3 – Proceed with Agreed Transaction.** It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Strategy, Planning Policy and the external advice obtained to support delivery of the Strategy, to deliver a capital receipt to assist funding of the Council's transformation programme and assist in removing the Council current management obligation. The developer proposes to secure a planning consent for the proposed residential scheme and contribute a significant affordable housing project in addition to undertaking to improve local community facility, provide enhanced landscaping and increasing reservoir amenity value for both

local and the wider residents of the City. The enhancements to the reservoir will provide a focal point to green pathways through a wider connectivity with the Port Loop project, the emerging Ladywood Regeneration scheme and its reconnected canal cycle routes back to the City Centre.

## **5 RISK MANAGEMENT**

- 5.1 There are no immediate risks to the Council's holding if the transaction does not complete since its interests are well protected and managed as a secure freehold site, car park and temporary Council offices within the Lodge.
- 5.2 The risk is entirely in the hands of the developer tenant who have a highly valuable commercial scheme presently at risk, due to making external funding and contractual commitments with limited permitted uses under present lease structure.
- 5.3 The 'risk' of not proceeding could only be seen in terms of a lost opportunity to generate a capital receipt for potential reinvestment via a sale of the Council's interest.

## **6 CONSULTATION**

- 6.1 Both Ladywood & North Edgbaston ward members have been notified of the proposed sale of this property and were consulted extensively and directly on the developer bids during both evaluation of offers, but also during the demolition contract period, and additionally during the Edgbaston Reservoir Masterplan SPD consultation period, as well as through the Local Nature Reserve advisory group meetings.
- 6.2 The Local Nature Reserve advisory group members were also consulted, specifically on design considerations of submitted bids (after round 2 of the competitive process) in May 2024, at a focused event held at the Council House, with both property and planning officers present. The responses are summarised in a schedule in Appendix 7.

## **7 MEMBER ENGAGEMENT**

### **Ward Councillor(s)**

- 7.1 The Ladywood & North Edgbaston councillor ward members have been notified of the proposed sale of this property and their design comments and responses are summarised in Appendix 7.
- 7.2 The ward councillor responses to the proposed decision are recorded separately in Appendix 8

## **Overview and Scrutiny**

- 7.3 The report has been notified to the chair of the Economy, Skills and Culture OSC Committee.

## **8 IMPACT AND IMPLICATIONS**

### **Finance**

- 8.1 The Assistant Director of Investment & Valuations and external advisors consider this proposed sale represents best consideration based upon analysis of the bidders' proposals as per exempt appendix 2, 3 and 4.
- 8.2 The purchaser will pay a contribution towards the Council's professional costs related to the disposal as detailed in exempt appendix 2.
- 8.3 Upon exchange of contracts the purchaser will pay a premium as set out in exempt appendix 2 and a further premium on practical completion of the project.
- 8.4 The purchase price, including any contribution to the Council's costs, is exclusive of VAT.

### **Legal**

- 8.5 Sections 120-123 of the Local Government Act 1972 authorises the Council to acquire, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director of Investment & Valuations has confirmed that the recommended sale, as detailed in Exempt Appendix 2, 3 & 4 represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.
- 8.6 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 pre-commencement restrictions and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains the Council's ancillary financial and expenditure powers in relation to the discharge of its functions, including the disposal and acquisition of property and the expenditure of money.
- 8.7 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.
- 8.8 Exempt information: Schedule 12A of the Local Government Act 1972 (as amended) Paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendices 2, 3 and 4 are considered to contain commercially sensitive information of a financial or business nature, which if disclosed to the public could be prejudicial to a named person, individual or company and in the public interest to keep exempt.
- 8.9 The Council's in-house legal team will complete all legal matters associated with the transaction.

### **Equalities**



- 8.10 An Equality Impact Assessment has been carried out. The EIA000459 dated 27/06/2024 is attached at Appendix 6. This identifies no adverse impacts on any groups protected under the Equality Act 2010. The principle of the redevelopment of the former Tower Ballroom site was subject to an equalities assessment as part of the assessment undertaken for the adoption of the Edgbaston reservoir Masterplan SPD.

#### **Procurement**

- 8.10 N/A

#### **People Services**

- 8.11 N/A

#### **Climate Change, Nature and Net Zero**

- 8.12 The Council have sort to both preserve and enhance the environment of the Local Nature Reserve. It is also envisaged that the overall scheme itself will make valid contributions to the City by being a significant improvement to the previous development on the site (former Tower Ballroom building) in terms of impact on the environment and setting of the reservoir and by demonstrating a commitment to carbon neutral development through the proposed development specification.
- 8.13 Consideration to the impact on the Local Nature Reserve and how any scheme will deliver such enhancements will be a part of the planning application process.

#### **Corporate Parenting**

- 8.14 N/A

#### **Other**

- 8.15 N/A

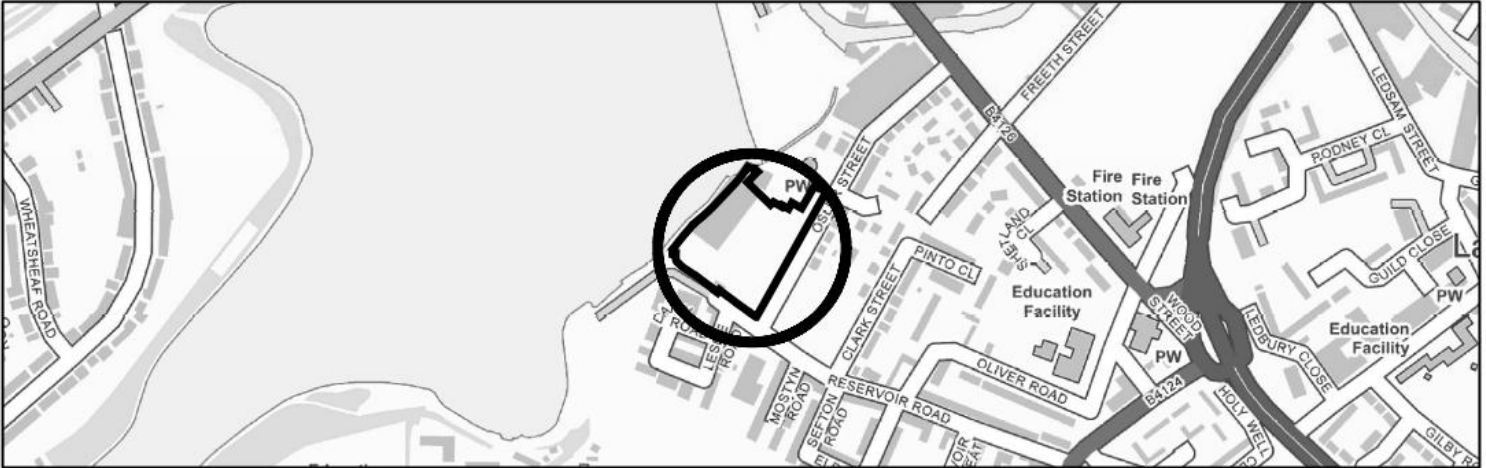
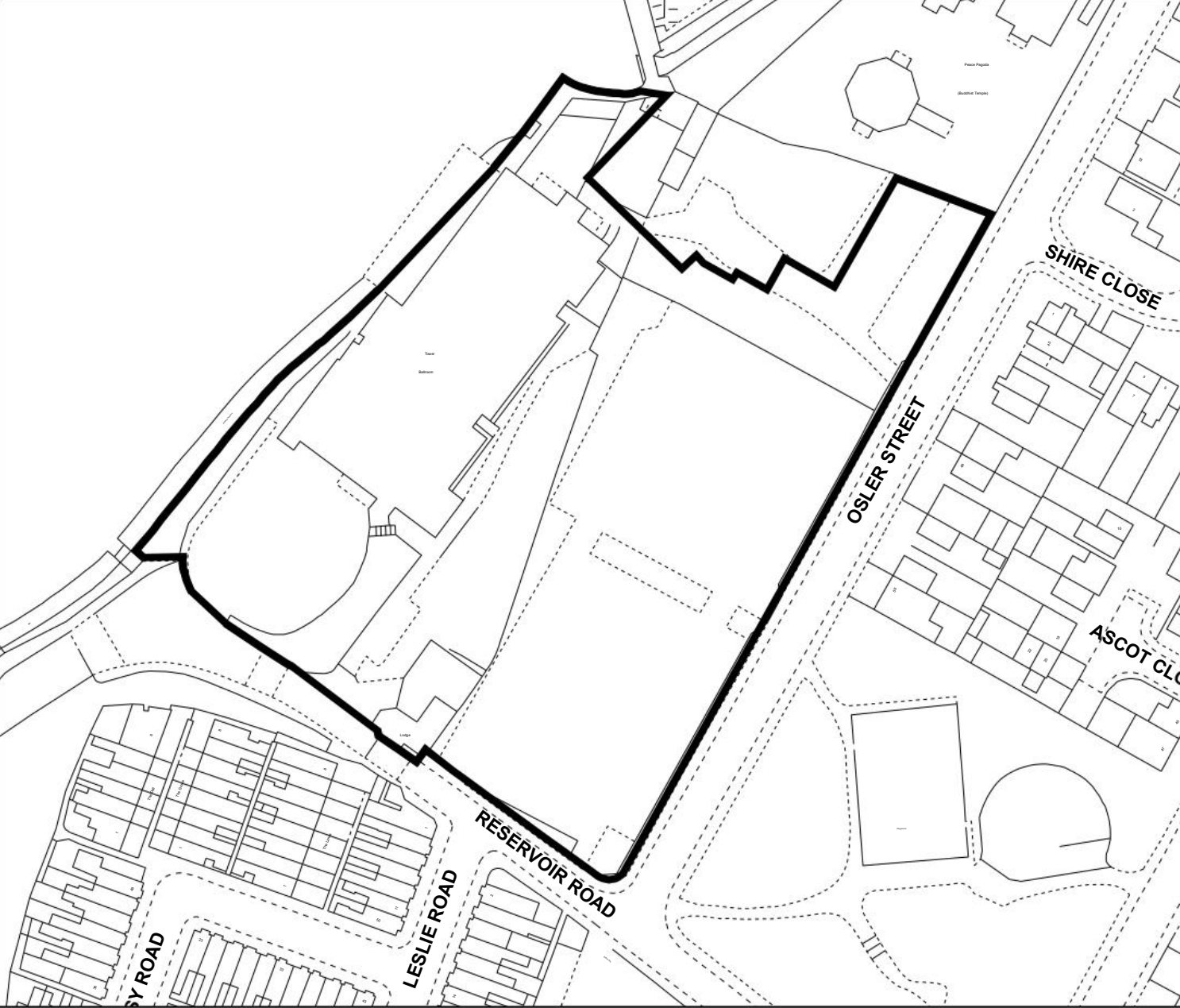
### **9 APPENDICES**

- 9.1 Appendix 1 – Tower Ballroom – Site Plan
- 9.2 Exempt Appendix 2 – Tower Ballroom Report
- 9.3 Exempt Appendix 3 – Tower Ballroom Recommendation Report by Avison Young
- 9.4 Exempt Appendix 4 – Tower Ballroom Heads of Terms
- 9.5 Exempt Appendix 5 – Evaluation Rounds and Weighted Scores
- 9.6 Appendix 6 – Equality Impact Assessment EQA000459
- 9.7 Appendix 7 – Local Nature Reserve (LNR) Committee and Ward Councillor Design Consultation summaries
- 9.8 Appendix 8 – Ward Councillor Consultations to the Decision.
- 9.9 Exempt Appendix 9 – Preferred Bidder Design Update



### **10 BACKGROUND PAPERS**

- 10.1 Edgbaston Reservoir Masterplan SPD (October 2022)





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 <b>Birmingham</b> City Council		Kathryn James Assistant Director of Investment and Valuation Place, Prosperity & Sustainability Directorate 10 Woodcock Street Birmingham, B7 4BG		
Tower Ballroom Site - Edgbaston Reservoir Osler Street Ladywood		Scale (Main Map)	Drawn	Date
		1:1,250 @A4 O.S.Ref SP0486NE	Bharat Patel	26/06/2024



# EQUALITY IMPACT ASSESSMENT

Selection of Developer & Bid for the former Tower  
Ballroom site

Reference: EIA000459

Date: 27/06/2024

Submitted by: Andrew Cox



### EIA Form – About your EIA

Reference number	EIA000459
Date Submitted	27/06/2024
Subject of the EIA	Selection of Developer & Bid for the former Tower Ballroom site
Brief description of the policy, service or function covered by the EIA	Selection of a developer and property sale
Equality Assessment is in support of...	["New function"]
How frequently will you review impact and mitigation measures identified in this EIA?	Annually
Due date of the first review	2025-06-27

### Directorate, Division & Service Area

Which directorate(s) are responsible for this EIA?	["Places, Prosperity and Sustainability"]
Division	Investment & Valuation
Service area	Development Team
Budget Saving	Yes

### Officers

What is the responsible officer's name?	Click or tap here to enter text.
What is the responsible officer's email address?	andrew.cox@birmingham.gov.uk
What is the accountable officer's name?	Eden Ottley
What is the accountable officer's email address?	eden.ottley@birmingham.gov.uk

### Data Sources

Data sources	["Relevant reports/strategies", "Relevant research", "Consultation results"]
Data source details	Edgbaston Masterplan 2022 Consultation

### Protected Characteristics

#### Protected Characteristic – Age

Does this proposal impact people due to their age as per the Equality Act 2010?	No
---	----



What age groups are impacted by your proposal?	
Please describe any potential impact to the age characteristic	
How could you mitigate against any negative impact to the age characteristic?	
Please describe how this proposal does not impact people due to their age	The project is aimed to enhance a free for all publicly accessible amenity space at Edgbaston Reservoir, with the support of much needed affordable housing and community space.

#### Protected Characteristic – Disability

Does this proposal impact those people with a disability as per the Equality Act 2010?	No
Please describe any potential impact to the disability characteristic	
How could you mitigate against any negative impact to the disability characteristic?	
Please describe how this proposal does not impact people due to their disability	Landscaping and public access is all at ground floor level and has disabled and design for all at its forefront.

#### Protected Characteristic – Sex

Does this proposal impact citizens based on their sex as per the Equality Act 2010?	No
What sexes will be impacted by this proposal?	
Please describe any potential impact to the sex characteristic	
How could you mitigate against any negative impact to the sex characteristic?	
Please describe how this proposal does not impact people due to their sex	Access for all

#### Protected Characteristic - Gender Reassignment



Does this proposal impact people who are proposing to undergo, undergoing or have undergone a process to reassign one's sex as per the Equality Act 2010?	No
Please describe any potential impact to the gender reassignment characteristic	
How could you mitigate against any negative impact to the gender reassignment characteristic?	
Please describe how this proposal does not impact people due to gender reassignment	Access for all

#### Protected Characteristic - Marriage and Civil Partnership

Does this proposal impact people who are married or in a civil partnership as per the Equality Act 2010?	No
What legal marital or registered civil partnership status will be impacted by this proposal?	
Please describe any potential impact to the marriage and civil partnership characteristic	
How could you mitigate against any negative impact to the marriage and civil partnership characteristic?	
Please describe how this proposal does not impact people who are married or in a civil partnership	Access for all

#### Protected Characteristic - Pregnancy and Maternity

Does this proposal impact people covered by the Equality Act 2010 under the protected characteristic of pregnancy and maternity?	No
--	----





Please describe any potential impact to the pregnancy and maternity characteristic	
How could you mitigate against any negative impact to the pregnancy and maternity characteristic?	
Please describe how this proposal does not impact people who are covered by the pregnancy and maternity characteristic	Access for all

### Protected Characteristic - Ethnicity and Race

Does this proposal impact people due to their race as per the Equality Act 2010?	No
What ethnic groups would be impacted by this proposal?	
Please describe any potential impact to the ethnicity and race characteristic	
How could you mitigate against any negative impact to the ethnicity and race characteristic?	
Please describe how this proposal does not impact people due to their race	Access for all

### Protected Characteristic - Religion or Beliefs

Does this proposal impact people's religion or beliefs as per the Equality Act 2010?	No
What religions could be impacted by this proposal?	
Please describe any potential impact to the religion or beliefs characteristic	
How could you mitigate against any negative impact to the religion or beliefs characteristic?	
Please describe how this proposal does not impact people due to their religion or beliefs	Access for all



### Protected Characteristic - Sexual Orientation

Does this proposal impact people's sexual orientation as per the Equality Act 2010?	No
What sexual orientations may be impacted by this proposal?	
Please describe any potential impact to the sexual orientation characteristic	
How could you mitigate against any negative impact to the sexual orientation characteristic?	
Please describe how this proposal does not impact people due to their sexual orientation	Access for all

### Monitoring

How will you ensure any adverse impact and mitigation measures are monitored?	Ongoing planning team review of final designs and approvals. The new lease will provisions have covenants as to the maintenance of public access and use by all.
Please enter the email address for the officer responsible for monitoring impact and mitigation	eden.ottley@birmingham.gov.uk



## APPENDIX 7

### Local Nature Reserve (LNR) Committee and Ward Councillor Consultation Summary

The Local Nature Reserve advisory group committee members and Local Ward Councillors were consulted, specifically on design considerations of submitted bids (after round 2 of the competitive process) in May 2024, at a focused event held at the Council House, with both property and planning officers present. The below is a summary of the comments received during this stage on all the submitted proposals at round 2. These comments have been used to help shape officers' decisions on scoring for the design element of the schemes assessments and to inform the discussions around design of the preferred scheme with the potential developer.

#### General Comments:

- Welcomes the opportunity to see the plans at this stage
- Concerns that the 2D plans lacked the relevant information of the height of the suggested designs to make fully informed comments on the impact on the LNR.
- Not all schemes look to have secured the 20m wide path requirements as set out the SPD and should therefore not be supported.
- Discussions are needed with the Sea Cadets about how they intend to use their waterfront to avoid conflict.
- The lighting, and noise will confuse the wildlife diurnal patterns, impacting on the viability of the LNR. Any development which can be designed to minimise the need for 24/7 lighting fronting on the reservoir is a more positive option.
- The public right of way around the reservoir is sacrament.
- From the point of view of preserving nature the best solution is to have the blocks as far as possible from the waterfront.
- The housing should be as low as possible near the water edge, it could be up to 3 / 4 storied high facing Osler Street, as these are further from the water/nature of the reservoir.
- The beech trees must be preserved.
- Roads or parking on waterfront will create more disturbance to tranquillity of the LNR and disturbance will limit range of migratory birds, which is what the reservoir is valued for.
- Peace and tranquillity and benefit of the LNR for humans must be protected
- Caution is needed over the amount of commercial and community space created. Needs to complement the existing uses of the waterfront and at the Settlement site.

- Need to have viable end users for any space to not create vacant units.
- Some designs had better interpretations of how to integrate the site to the adjoining LNR and thereby reducing the impact of development in the LNR. None included all the features of a low density, low rise design set in an large open green site reflecting the adjoining Local Nature Reserve. Therefore, none met all of criteria in respect of the proximity and impact on the Local Nature Reserve.
- Preference by the group for the scheme that has the widest area of public space on the waterfront.

#### **Elements that were considered positive about the schemes:**

- Sensitive to surrounds and not “overdeveloped”.
- Scheme does not appear overwhelmingly car-dependent and therefore promotes active travel.
- The park next to the Lodge and the linear park idea is appealing.
- Proposal enhances the Grade II listed lodge building.
- It looks to promote “greening” of the site in line with status of neighbouring LNR.
- Scheme looks to reflect the masterplan aspirations
- Good wide public space adjacent to the water that meets the 20-35m set back of buildings back from the waterfront
- Clear view of the Lodge from the water’s edge.
- Generous amount of public space i.e. green space and public access.
- Imaginative layout and good use of commercial / community space.
- Positive levels of community space
- Linear Park proposal attractive

#### **Concerns raised about the schemes:**

- Not clear that the developer has met the requirements of the masterplan
- Some of the proposals have storey heights that are too high in terms of the impact on nature and wildlife.
- Building in front of lodge obscures it
- Concerns over the level of commercial use fronting reservoir.
- Poor connections to the LNR
- Lack of community facilities with only housing being proposed
- Community space feel a little closed
- 3 storey houses at front is overbearing on the waterfront
- The large area between the waterfront and the housing should be mainly a soft surface such as grass – not tarmac.
- Scheme needs much more trees and greener
- Scheme is too close to water.
- Car parking for residents too prominent

- Linear Park lost in development.
- The amount of housing proposed is too dense.
- Road at front right by the reservoir should not be supported
- The layout has a closed gated feeling
- Scheme provides very little public space
- Too regimented and no real imagination
- Anything that requires 24/7 lighting on waterfront will impact on LNR
- Concerns that a scheme could impact on the “circular loop” because of the landscaping on the water’s edge. More generous width on the pathway would be preferred.



## Appendix 8

**Ward Councillor Consultations for:  
Selection of Developer for Former Tower Ballroom, Birmingham.  
October 2024**

Andrew Cox - Principal Surveyor, Development Team,  
I & V Division of PPS Directorate  
[andrew.cox@birmingham.gov.uk](mailto:andrew.cox@birmingham.gov.uk)

Cllr. Identification	Date Requested	Comments Received
Cllr . Sharon Thompson	20/10/2024	No written response so far Initial CMB meeting 29/10/2024
Cllr. Sir Albert Bore	20/10/2024	Written response received 22/10/2024 & Teams Meeting held on 23/10/2024.  Comments relating to reassurances for the continued access for the Midland Boat Station and also Public Access to the perimeter of the Edgbaston Reservoir, in accordance with the Edgbaston Masterplan 2022.  All of which will be included in the new lease provisions to the proposed developer, with protections to BCC
Cllr. Kath Hartley	20/10/2024	No written response so far
Cllr. Marcus Bernasconi	20/10/2024	Written response on 27/10/2024 "Thanks for this. On the face of it, very good result" Further written response 29/11/2024 "I am pleased that the council has selected a partner to provide a fully affordable scheme, prioritising adherence to the masterplan and good design. Delivering the a development with a partner that understands he environmental and historic

## Appendix 8

### Ward Councillor Consultations for: Selection of Developer for Former Tower Ballroom, Birmingham. October 2024

Andrew Cox - Principal Surveyor, Development Team,  
I & V Division of PPS Directorate  
[andrew.cox@birmingham.gov.uk](mailto:andrew.cox@birmingham.gov.uk)

		<p>significance of the reservoir and its place within the LNR is essential.</p> <p>I would be grateful if the report acknowledges under 'Risks' the risks associated with development works on the boundary of the LNR and that the council will work with selected partner to mitigate disruption to biodiversity on the reservoir."</p>



# Birmingham City Council

## Report to Cabinet Committee - Property

28th November 2024



<b>Title:</b>	<b>SALE OF FREEHOLD – LAND AT CRANBY ST &amp; ADDERLEY RD, BIRMINGHAM B8 1JU</b>
<b>Lead Member:</b>	Councillor Sharon Thompson, Deputy Leader and Economy and Skills
<b>Relevant Overview and Scrutiny Committee:</b>	Economy, Skills and Culture
<b>Has this report been shared with the relevant Overview and Scrutiny Committee Chair?</b>	Yes
<b>Report Author:</b>	Warren Bird – Strategic Investment Property Manager  Place, Prosperity & Sustainability Directorate  Warrren.Bird@birmingham.gov.uk
<b>Authorised by:</b>	Philip Nell – Strategic Director  Place Prosperity & Sustainability Directorate
<b>Is this a Key Decision?</b>	No  Forward Plan Reference: N/A
<b>Reason(s) why not included on the Forward Plan and confirm who has authorised it to be considered:</b>	N/A
<b>Is this a Late Report?</b>	N/A
<b>Reason(s) why Late and confirm who has authorised it to be considered:</b>	N/A
<b>Is this decision eligible for ‘call in?’</b>	Yes
<b>If ‘call-in’ has been dis-applied, please provide reason(s) and confirm who has authorised:</b>	N/A
<b>Wards:</b>	Alum Rock

**Does this report contain exempt or confidential information?**

Yes

Please delete both the section 'Exempt Information' and 'Confidential Information' if answered 'No' above. If only completing one of the sections below, please delete the other.

### **Exempt Information**

Exempt Appendices 2,3,4 and 5 are exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act, 1972 as amended: (please select the relevant criteria and delete otherwise).

3. Information relating to the financial or business affairs of a particular person (including the authority holding that information).

All exempt and/or confidential information must be provided using the exempt template and attached as an appendix to the report.

**Has this decision been included on the Notification of Intention to consider Matters in Private?** Yes

**Reasons why not included on the Notification and confirm who has authorised it to be considered:** N/A

## **1 EXECUTIVE SUMMARY**

- 1.1 This report seeks authority for the sale of the Council's freehold interest in the Site at Cranby Street & Adderley Road, Birmingham B8 1JU to a successful bidder following marketing and a tender process.
- 1.2 The property has a site area of approximately 0.62 acres and is shown identified edged red on the attached plan at Appendix 1.
- 1.3 The recommendations contained in this report, and Exempt Appendices 2, 3 and 4 set out the provisionally agreed terms, and are fully in line with the Council's wider ambitions and plans for financial stability and income generation.

## **2 COMMISSIONERS' REVIEW**

- 2.1 Commissioners support the recommendations.

## **3 RECOMMENDATIONS**

### **That the Committee:**

- 3.1 Authorises the Director of Property & Investment to conclude the sale of the property on the recommended terms as set out in Exempt Appendix 3 refer to Guidance
- 3.2 Authorises the City Solicitor to prepare, negotiate, execute, and complete all relevant legal documentation to give effect to the above.

## **4 KEY INFORMATION**

### **Context**

- 4.1 The subject site comprises of a predominantly flat, concrete covered area, surrounded by unmaintained grass verge and a small area of generally uneven, open land. The entirety of the site has deteriorated significantly due to being vacant for a number of years and has previously been illegally occupied on a number of occasions to the detriment of its upkeep. The site has also encountered a number of instances of antisocial behaviour, including fly tipping.
- 4.2 The property is owned freehold by the City Council and currently vacant land. There is no income attached to the site. Surrounding holdings of City Council commercial ownership have been disposed of in recent years in support of the Property Strategy and the Property Investment Strategy and this site represents one of the few remaining elements.
- 4.3 Following a comprehensive review of the Council's Commercial Property Portfolio, supported by appointed advisors (Avison Young) in 2020, The Council's interest in this property has been identified for potential sale. Therefore, in accordance with agreed process, Avison Young (on behalf of the City Council) have offered the property to the market via tender. An appropriate bid was

received and associated terms negotiated for the sale of the Council's freehold interest in the land have been offered and negotiated.

- 4.4 The negotiated settlement offer represents the best recommendable deal based on all of the market forces and surrounding circumstances and has been supported by our agents as being the best available.
- 4.5 The agreed Heads of Terms are outlined in Exempt Appendix 3. The transaction will generate a Capital Sum and will contribute to the City Council's Financial Recovery Plan 2024. The subject site does not currently generate an income but a potential Estimated Rental Value will be lost to the City Council. Given the priority to generate capital receipts to support the Council's Financial Recovery Plan, provision for loss of this income is being provided in the MTFP as a pressure to rebase the income budget.

### **Proposal and Reasons for Recommendations**

- 4.6 To accept the recommendations outlined in Exempt Appendix 2 of this report on the basis the sale of this property to the recommended bidder is consistent with the aim to maximise the capital receipt from the disposal of parts of the Commercial Property Portfolio that are seen as a potential future income risk and assets that are not recommended for retention.
- 4.7 The site was subjected to the open market via a tender process operated by our appointed agents. A viable offer was received and provisional terms agreed with the successful bidder. The recommended sale demonstrates the requirement to achieve best consideration under Section 123 of the Local Government Act 1972 and is regarded as the best achievable in the market by our appointed agents (Avison Young).
- 4.8 The capital sum generated will directly contribute to the Council's Financial Recovery Plan 2024 targets in relation to the maximisation of revenue from assets which and no longer deemed as beneficial to be held within the Council's commercial property portfolio.

### **Other Options Considered**

- 4.9 **Option 1 – Do Nothing.** The Council is under no obligation to proceed with the proposal and would suffer no reputational consequences if it did not proceed. It would not, however, be in line with the aims of the Property Strategy or the external advice obtained to support delivery of the Strategy. The negotiated capital receipt would not be realised at this time and would not be available to fund Council expenditure, with there being no guarantee of a future market opportunity. The property is not allocated, nor does it have planning consent for an alternative use and is therefore not an immediate development opportunity. The property does not have an obvious alternative use which would benefit the Council.

- 4.10 **Option 2 – Disposal for Development/Retention for Development.** The positioning and the nature of the land is expected to lead to regeneration of the site and the level of bid supports this view. Retention for City Council development was considered but rejected due to the relatively small site in terms of ownership portfolio deficiencies and restricted use. Housing development would not be supported in this location.
- 4.11 **Option 3 – Proceed with Agreed Transaction.** It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Strategy and the external advice obtained to support delivery of the Strategy to deliver a capital receipt and help the Council's Financial Recovery Plan. The sale to the bidder will provide the ability to invest in the asset and secure/create jobs.

## **5 RISK MANAGEMENT**

- 5.1 The risks associated with not proceeding are the usual commercial risks which arise when holding a vacant site such as security, clearance costs, maintenance, repairs and increased management time in both the active management of the site and the marketing of the property.
- 5.2 The risk of not proceeding in relation to the Capital sum are in relation to potential market reduction and the lost opportunity to generate a capital receipt (at a level recommend by a market leading agent) to go towards the Council's Financial Recovery Plan 2024.
- 5.3 There has previously been little interest in the land from a rental aspect and the potential income level would not alter the recommendation for sale of the site. Any proposed letting would likely be at nominal value and require market inducements to attract a potential occupier. The site has been vacant for a significant number of years and has been subject to repeated acts of antisocial behaviour, vandalism and illegal occupation which the City Council has had to resolve, requiring both capital resource and officer time in various directorates.

## **6 CONSULTATION**

- 6.1 The Property Investment Board comprising officers from Investment & Valuation, Finance and Legal recommends proceeding with the transaction.
- 6.2 The Ward Councillor was initially notified on 14th March 2023 and has contacted us regarding the site subsequently. No further external consultation is necessary for this commercial transaction.

## **7 MEMBER ENGAGEMENT**

### **Ward Councillor(s)**

- 7.1 The Alum Rock ward members have been notified of the proposed sale of this property and were supportive of a sale to a local tenant organisation who intended to use the site as an open Car Park. This potential use was not supported by the

Planning Directorate and does not align with the Future City Masterplan which designates the site as being for industrial use. The prospect of the site being used for car parking was also opposed by the Cabinet Member for Transport as being against the aims of the Birmingham Transport Plan.

### **Overview and Scrutiny**

- 7.2 The report has been notified to the chair of the Overview and Scrutiny Committee.

### **Other**

- 7.3 N/A

## **8 IMPACT AND IMPLICATIONS**

### **Finance and Best Value**

- 8.1 The transaction will generate a capital receipt for the Council, as set out in Exempt Appendix 2.
- 8.2 The property is not currently subject to an annual rental and no immediate loss will be incurred by the City Council. Any potential rental income will not be achieved. Provision is being made in the Financial Plan 2024 to adjust the commercial portfolio income budget for disposals under the programme. The use of the capital receipt from this specific asset is intended to go towards the City Council's Financial Recovery Plan 2024 to ensure a balanced budget and prioritise the generation of capital receipts.
- 8.3 As the site is not currently let all holding costs related to the asset are the responsibility of the City Council, together with the additional BCC officer time incurred in managing the land. Whilst there has been no specific repair outlay on the land, the site is in poor state and is currently unsecured which has led to repeated antisocial behaviour and trespass. Officer time management costs are not specifically recorded or measured currently.
- 8.4 The purchaser will pay a contribution towards the City Council's professional costs related to the disposal as detailed in Exempt Appendix 2.
- 8.5 The purchase price, including any contribution towards the City Council's professional costs relating to the disposal, is exclusive of VAT. However, as the City Council has not opted to tax the site, nor intends to do so prior to the disposal, VAT is not chargeable on the purchase price.

### **Legal**

- 8.6 Sections 120 - 123 of the Local Government Act 1972 authorises the Council to hold, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Director of Property & Investment has confirmed that the recommended letting, as detailed

in Exempt Appendices 2, 3 and 4 represents best consideration and satisfies the Council's obligations, under Section 123 of the Local Government Act 1972.

- 8.7 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 pre-commencement restrictions and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains the Council's ancillary powers in relation to the discharge of its functions including the disposal and acquisition of property and incurring of expenditure.
- 8.8 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.
- 8.9 Exempt information: Schedule 12A of the Local Government Act 1972 (as amended) paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendices 2, 3, 4 and 5 are considered to be exempt as they contain commercially sensitive information of a financial or business nature, which if disclosed to the public could be prejudicial to a named person, individual or company.

### **Equalities**

- 8.10 An Equality Assessment has been carried out (EIA000858 dated 22/10/2024) and is attached at Appendix 6. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

### **Procurement**

- 8.11 N/A

### **People Services**

- 8.12 N/A

### **Climate Change, Nature and Net Zero**

- 8.13 N/A

### **Corporate Parenting**

- 8.14 N/A

### **Other**

- 8.15 N/A

## **9 APPENDICES**

- 9.1 List of Appendices accompanying this report:

Appendix 1 – Site Plan

Exempt Appendix 2 – Exempt Information Report

Exempt Appendix 3 – Heads of Terms

Exempt Appendix 4 – Agent Recommendation Report

Exempt Appendix 5 - Decision Matrix

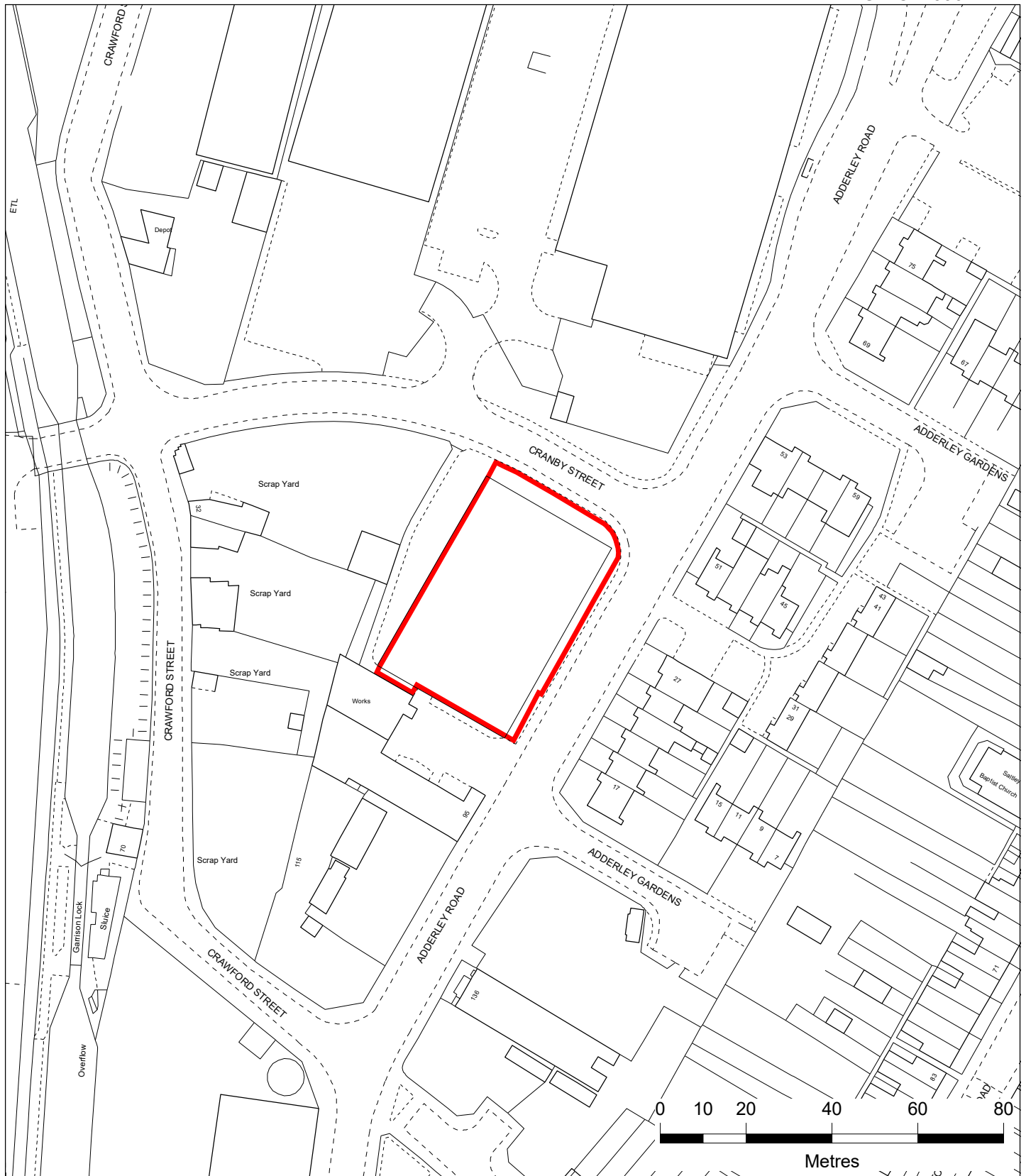
Appendix 6 – Equality Impact Assessment EIA000858

## **10 BACKGROUND PAPERS**

10.1 Property Strategy (Approved by Full Cabinet – November 2018)

10.2 Property Investment Strategy (Approved by Full Cabinet – July 2019)





AREA EDGED RED 2055 SQ. METRES APPROX. 2457 SQ. YARDS APPROX.



**Birmingham**  
City Council

David Harris  
Assistant Director Corporate Landlord  
Place, Prosperity & Sustainability Directorate  
Council House  
Victoria Square  
Birmingham, B1 1BB

Site At  
Cranby Street  
Alum Rock



SCALE

DRAWN

DATE

1:1,250

Bharat Patel

01/10/2024

O.S.Ref SP0988SE



# EIA Form

## About your EIA

Reference Number:	EIA000858
Subject Of EIA:	Freehold Sale - Land at Cranby Street and Adderley Road, Birmingham B81JU
Description:	Freehold sale in support of Property Strategy, Investment Strategy and Financial Recovery Plan
In Support Of:	["New function"]
EIA Approval Status:	Draft
Reviewing Frequency:	Not required
First Review Date:	10/22/2025 1:00:00 AM

## Directorate, Division & Service Area

Directorates:	["Place, Prosperity and Sustainability"]
Division:	Investment & Valuation
Service Area:	Strategic Investment Property Team

## Budget Savings

Related to Budget Savings?:	
Budget Proposal Ref. No:	



## Officers

Responsible Officer Email:	warren.bird@birmingham.gov.uk
Accountable Officer Email:	eden.ottley@birmingham.gov.uk

## Data Sources

Data sources:	["Relevant reports/strategies"]
Data sources Details:	Information internal to the City Council has been utilised to prepare this report.

## Initial Assessment

Impact Age:	No
Impact Disability:	No
Impact Sex:	No
Impact Gender Reassignment:	No
Impact Marriage and Civil Partnerships:	No
Impact Pregnancy and Maternity:	No
Impact Race:	No
Impact Religion or Beliefs:	No
Impact Sexual Orientation:	No
Impact Care Experience:	No



## Initial Assessment Summary

Initial Assessment Summary:	The sale of this asset is to a registered company, owned and operated by individuals who are of adult age.
Is a full EIA Required?:	Yes

## Protected Characteristic – Age

Impact Age:	No
Age Group Impacted:	
Age Impact Details:	No impact as the asset is being sold to a company owned and operated by individuals of an adult age.
Age Impact Mitigation:	

## Protected Characteristic – Disability

Impact Disability:	No
Disability Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual with a disability seeking to acquire.
Disability Impact Mitigation:	



## Protected Characteristic – Sex

Impact Sex:	No
Sex Groups Impacted:	
Sex Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impacted or guided selection based upon sex of the bidder.
Sex Impact Mitigation:	

## Protected Characteristic – Gender Reassignment

Impact Gender Reassignment:	No
Gender Reassignment Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual that has embarked upon or completed gender reassignment seeking to acquire.
Gender Reassignment Impact Mitigation:	



## Protected Characteristic – Marriage and Civil Partnership

Impact Marriage and Civil Partnership:	No
Marriage and Civil Partnership Groups Impacted:	
Marriage and Civil Partnership Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual on the basis of marital status seeking to acquire.
Marriage and Civil Partnership Impact Mitigation:	

## Protected Characteristic – Pregnancy and Maternity

Impact Pregnancy and Maternity:	No
Pregnancy and Maternity Impact Details:	No
Pregnancy and Maternity Impact Mitigation:	

## Protected Characteristic – Ethnicity and Race

Impact Ethnicity and Race:	No
Ethnicity and Race Groups Impacted:	



Ethnicity and Race Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual on the basis of religion or beliefs seeking to acquire.
Ethnicity and Race Impact Mitigation:	

## Protected Characteristic – Religion

Impact Religion:	No
Religion Groups Impacted:	
Religion Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual on the basis of religion or beliefs seeking to acquire.
Religion Impact Mitigation:	

## Protected Characteristic – Sexual Orientation

Impact Sexual Orientation:	No
Sexual Orientation Groups Impacted:	
Sexual Orientation Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impacted or guided selection based upon sex of the bidder.
Sexual Orientation Impact Mitigation:	





## Protected Characteristic – Care Experience

Impact Care Experience:	No
Care Experience Impact Details:	The sale of this asset is to a successful bidder following an open marketing exercise and there are no criteria or implications which impact any individual classed as a care leaver seeking to acquire.
Care Experience Impact Mitigation:	

## Other Risks or Impacts

Any Other Risks Or Impacts:	Sale of the site will promote regeneration with potential job creation whilst also reducing the instances of anti-social behaviour.
-----------------------------	---

## Full Assessment Summary

Full Assessment Summary:	
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## Monitoring

Monitoring Details:	As part of the disposal the officer responsible will be required to ensure full due diligence is followed and the sale to the successful bidder is compliant with the Equality Act.
Monitoring Officer Email:	warren.bird@birmingham.gov.uk





# Birmingham City Council

## Report to Cabinet Committee- Property

18<sup>th</sup> December 2024



<b>Title:</b>	<b>Arden Cross Limited (ACL) Development Agreement and Budget 24-25 and 25-26</b>
<b>Lead Member:</b>	Councillor Sharon Thompson, Deputy Leader and Economy and Skills
<b>Relevant Overview and Scrutiny Committee:</b>	Economy, Skills and Culture
<b>Has this report been shared with the relevant Overview and Scrutiny Committee Chair?</b>	YES
<b>Report Author:</b>	Ashley Skinner Investment and Valuation Division Place Prosperity & Sustainability Directorate 07840 712376 ashley.skinner@birmingham.gov.uk
<b>Authorised by:</b>	Philip Nell, Strategic Director Place Prosperity & Sustainability Directorate
<b>Is this a Key Decision?</b>	YES - 012997/2024
<b>Reason(s) why not included on the Forward Plan and confirm who has authorised it to be considered:</b>	N/A
<b>Is this a Late Report?</b>	NO
<b>Reason(s) why Late and confirm who has authorised it to be considered:</b>	N/A
<b>Is this decision eligible for 'call in'?</b>	YES
<b>If 'call-in' has been dis-applied, please provide reason(s) and confirm who has authorised:</b>	N/A
<b>Wards:</b>	Ladywood

**Does this report contain exempt or confidential information?**

YES

Please delete both the section 'Exempt Information' and 'Confidential Information' if answered 'No' above. If only completing one of the sections below, please delete the other.

### **Exempt Information**

Private Report and associated appendices is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act, 1972 as amended: (please select the relevant criteria and delete otherwise).

3.Information relating to the financial or business affairs of a particular person (including the authority holding that information).

**Has this decision been included on the Notification of Intention to consider Matters in Private?** YES

**Reasons why not included on the Notification and confirm who has authorised it to be considered:** N/A

## **1 EXECUTIVE SUMMARY**

- 1.1 On the 8th November 2022 Cabinet approved, inter alia, the appointment of Muse Places Ltd (Muse) as Arden Cross Limited's development partner for the Arden Cross HS2 Interchange Triangle Site. Arden Cross Limited (ACL) is the Special Purpose Vehicle owned by the Council and other landowners for the development of this site. This report seeks to update Cabinet Committee Property following the previous report and to seek approval to the final terms of the Master Development Agreement for the phased development of land at Arden Cross Solihull, the 2024/25 25/26 budget for ACL and variations to the existing legal documentation.
- 1.2 This report seeks to provide an overview of the position that has been reached concerning the development of the land within the Triangle and set out the background to the rationale for investment by the landowners (including the Council), through Arden Cross Ltd (ACL) in order to protect the landowner's interests.

## **2 COMMISSIONERS' REVIEW**

- 2.1 Commissioners recommend that the approach the Council takes to company governance is reviewed. The relates to ACL and all companies that the Council

holds an interest. The shareholder role needs to be clearly defined as does the role and responsibilities of the Cabinet Sub Committee – Group Company Governance and that of Cabinet sub Committee Property when it comes to companies with a property interest such as ACL. Roles and responsibilities need to be understood by the Council and also translated into expectations around reporting and decision making. For example it is good practice for annual business plans and outturns associated with companies to be considered formally by cabinet or a sub committee. There are good practice guides available that would support such a review.

### **3 RECOMMENDATIONS**

#### **That Cabinet Committee Property:**

- 3.1 Authorises the Strategic Director Place, Prosperity and Sustainability and the Deputy Leader to agree on behalf of the Council the final terms of the Master Development Agreement (DA) to be entered into by ACL with Muse Places Ltd and Morgan Sindall Group PLC and inter alia enter into all agreements envisaged and required to put into effect the provisions of the DA on behalf of the Council including inter alia changes to the Shareholders Agreement and the Landowners Option Agreement and associated Draft Ground Lease, negotiation of and entering into the Framework Agreement and Delivery Agreement which together enable ACL to request changes to the HS2 design in order to implement the Arden Cross development the Easement Agreements (which will provide ACL with the necessary rights to link into HS2 infrastructure etc), the draft Phase Development Agreement and draft Phase Sub-Lease.
- 3.2 Notes ACL's revenue operational budget for 2024/25 and 2025/26 and approves Birmingham City Council's (BCC) contribution as per the terms of the ACL Shareholders Agreement (at Exempt Appendix 2) which will be recovered from any end-deal together with the payment of utility UTX track crossings design fees.
- 3.3 Authorises the City Solicitor to prepare, negotiate, execute and complete all relevant legal documentation to give effect to the above recommendations.

### **4 KEY INFORMATION**

#### **Context**

- 4.1 The Cabinet report; Arden Cross Interchange Triangle Contractual Agreements to enable development, of the 18th May 2021 approved a suite of agreements which led to ACL appointing Jones Laing Lasalle (JLL) to market the Arden Cross site and complete a development partner selection process to appoint one or more entities in aggregate to undertake development and negotiate the terms of a development agreement to be entered into by ACL, to be brought back to Cabinet.

- 4.2 The Cabinet Report of the 8th November 2022 approved the appointment of Muse Places Ltd as ACL's development partner for the Arden Cross HS2 Interchange Triangle Site as detailed in the Exempt Appendix 3. Due to the effluxion of time, formal notification from DfT that it would progress Surface Level Parking rather than Multi Storey Parking, and consequential reduction of developable area, complexity of the DA and need for Commissioner oversight since the original approval was received it has been decided to seek refreshed approval from Cabinet Committee Property.
- 4.3 Arden Cross is a strategic development site, 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) and is the location of the HS2 Interchange Station now under construction which once complete will provide fast connections to London.
- 4.4 The Cabinet report; Arden Cross Interchange Triangle Contractual Agreements to Enable Development dated 18th May 2021, approved ACL's commencement of procurement of a development partner, to be reported back to Cabinet.
- 4.5 The Arden Cross site is principally owned by three landowners, BCC, Packington Estate and Coleshill Estate, as identified at Appendix 1, who have pooled their land interests to enable the delivery of a comprehensive mixed-use development and have entered into an Option Agreement with ACL which entitles ACL to draw down these land interests for the purposes of development.
- 4.6 ACL is a Special Purpose Vehicle (SPV) that the landowners have created to ensure the development comes to fruition. ACL is financed by the land-owning shareholders through a SPV Shareholders Agreement. ACL provide forecast operational budgets that are supported by a business plan each year.
- 4.7 ACL commissioned the production of an evidence-based masterplan ([www.ardencross.com](http://www.ardencross.com)) aligned with HM Government's compliant HS2 scheme. The masterplan and business case have been updated by Muse and articulate that the site can deliver an exciting mix of commercial space, new homes and public realm.
- 4.8 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. HS2 will connect Arden Cross to central London in 38 minutes and to every major regional city in less than an hour. The gross development value of the development exceeds £3bn.
- 4.9 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 are supportive of the proposals.

- 4.10 The landowning parties entered into a land agreement with the Secretary of State for Transport (SST) in 2016, that amongst other things enables 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.
- 4.11 The Arden Cross Interchange Triangle Collaboration Agreement (ACCA) sets out the framework by which the Parties work in collaboration to maximise development and economic opportunities in the site. Which include supporting development and optimising phased delivery whilst recognising and supporting HS2's responsibility for delivery of the new Interchange Station.
- 4.12 The strategic approach to the utilisation and disposal of BCC's property assets was outlined in a report of the Director, Inclusive Growth entitled "Property Strategy 2018/19-2023/24 (the Property Strategy) approved by Cabinet in November 2018.

### **Proposal and Reasons for Recommendations**

- 4.10 The proposed disposal mechanism within the development agreement requires ACL / Muse to obtain best consideration on all land disposals to ensure all disposals represent best consideration and have been validated by third party agency, based upon market conditions at the time and analysis of the bidders' proposals.

### **Other Options Considered**

- 4.11 **Option 1 - Do Nothing.** BCC is under no obligation to proceed with the proposal and would suffer no reputational consequences if it did not proceed. It would not, however, be in line with the aims of the Property Strategy or the external advice obtained to support delivery of the Strategy. The development would not be realised at this time and future receipts would not be available to fund BCC's transformation programme.
- 4.12 **Option 2 – Property Retained for Reuse and / or Development by the Council.** The property is subject to the existing Arden Cross shareholders agreement and procedures.
- 4.13 **Option 3 – Sell the Council's Freehold Interest.** At present the site is subject to a CPO process activated by HS2/DfT, as a result a significant proportion of the land is currently controlled by HS2, partly through "Schedule 16" occupation and partly through having been subjected to a General Vesting Declaration (GVD). This is coupled with a smaller CPO by National Highways of land to the SW corner of the Triangle. Sanderson Weatherall have been appointed by BCC as agent in respect of negotiations regarding compensation claims arising from compulsory

purchase by HS2 and National Highways. These negotiations and discussions over land to be returned in the future remain ongoing and would impact best consideration at this juncture.

- 4.14 **Option 4 – Proceed with Agreed Transaction.** It is recommended to proceed with the transaction outlined in this report, in line with the aims of the Property Strategy and the external advice obtained to support delivery of the Strategy, to deliver a capital receipt(s) to support the Council's financial recovery and to facilitate the development of the sites.

## **5 RISK MANAGEMENT**

- 5.1 The recommended course of action is seeking to mitigate the risk of development not proceeding and mitigate uncertainty around future delivery of the project.
- 5.2 To meet the expectations of the prevailing property market, BCC has committed to deliver as per the agreements at exempt appendix 3.
- 5.3 The proposal crystallises the commencement of the delivery phase and provides for a structured timeline for payments of premium receipts to the Council.

## **6 CONSULTATION**

- 6.1 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.

## **7 MEMBER ENGAGEMENT**

### **Ward Councillor(s)**

- 7.1 The land lies within Solihull Metropolitan Borough Council's (SMBC's) administrative boundary.

### **Overview and Scrutiny**

- 7.2 The report has been notified to the Chair of the Overview and Scrutiny Committee for Economy, Skills and Culture.

### **Other**

- 7.3 Not Applicable. No external consultation has taken place regarding the contents of this report, beyond the informal discussions with ACL.



## **8 IMPACT AND IMPLICATIONS**

### **Finance and Best Value**

- 8.1 Exempt Appendix 2 contains details of ACL's revenue operational budget for 2024/25 and 25/26 to which the Council (together with the other two landowners) make an annual contribution. This is treated as a revenue loan on BCC's balance sheet and will be repaid as part of the shareholder (landowner) returns from future development returns as per the legal agreement with ACL. This could be in the form of capital receipts, rents or dividends negotiated by ACL.

### **Legal**

- 8.2 Sections 120-123 of the Local Government Act 1972 authorises the Council to acquire, appropriate and dispose of land. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director Corporate Landlord (or nominated appointee) has confirmed that the recommended transaction, as detailed in Exempt Appendices 2 and 4, as regards the land of the Council, represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.

- 8.2 Section 1 of the Localism Act 2011 contains BCC's general power of competence, which is circumscribed only to the extent of any applicable pre-commencement restrictions and any specific post-commencement statutory restriction of the power, and Section 111 of the Local Government Act 1972 contains BCC's ancillary financial and expenditure powers in relation to the discharge of its functions, including the disposal and acquisition of property. Section 4(3) of the Localism Act 2011 requires that if the Council does any things for a commercial purpose it has to do them through a company.

- 8.3 The Local Government Act 2003 and guidance issued under it authorises the Council's investment management functions.

- 8.4 Exempt information: Schedule 12A of the Local Government Act 1972 (as amended) Paragraph 3. Information relating to the financial or business affairs of any particular person (including the Council). Exempt Appendices 2 to 9 inclusive are considered to contain commercially sensitive information of a financial or business nature which, if disclosed to the public, could be prejudicial to a named person, individual or company and is in the public interest to keep exempt.

- 8.5 BCC's in-house legal team or subject to resource a Third Party Legal Resource will complete all legal matters associated with the transaction.

### **Equalities**

- 8.6 An Equality Assessment has been carried out and is attached at Appendix 10. This identifies no adverse impacts on any groups protected under the Equality Act 2010.

### **Procurement**

- 8.7 ACL have met with SMBC to discuss Social Value considerations previously and conversations are ongoing. Muse have confirmed in addition to the use of their proprietary tool they also use the Social Value Portal and will work with SMBC; and BCC East Birmingham Team to link with local initiatives to ensure the

development of a programme that meets local needs. Muse have provided confirmation that their approach to delivering Social Value will involve the identification, measurement and optimisation of Social Value outputs/benefits delivered to individuals, business and the communities in which they work.

8.8 The Arden Cross Community and Social Value Strategy identifies the intent for the provision of employment for the local workforce and to ensure jobs are accessible. This strategy was shared with all potential Partners during the bid process and it was confirmed to SMBC that Social Value would be a key consideration during the selection process.

8.4 A draft Social Value plan has been produced for the project, which will be developed further with all stakeholders. One of the drivers of the Social Value Strategy is to be able to quantify social value outputs in a meaningful way and to enable reporting on total social value generated. The outputs are measured in a reporting tool from Social Value Bank which enables projects to quantify the total social value created through the pre and post construction stages including, Community needs analysis, consultation vision, policy analysis, objectives, project charter, KPI's and project

#### **People Services**

8.5 No staffing implications

#### **Climate Change, Nature and Net Zero**

8.6 N/A as confirmed by the Net Zero Team

Corporate Parenting

8.7 N/A.

#### **Other - Employment Skills**

8.8 The development is expected to bring forward jobs and training opportunities during the construction phase. It is anticipated that permanent jobs will be created once the development is completed.

## **9 APPENDICES**

9.1 Appendix 1 – Site Plan

9.2 Exempt Appendix 2 – Recommendation Report

9.3 Exempt Appendix 3 – Key Agreements

9.4 Exempt Appendix 4 – DA HoT's (No Go Scenario)

9.5 Exempt Appendix 5/A/B – Estimated BCC Land Receipts

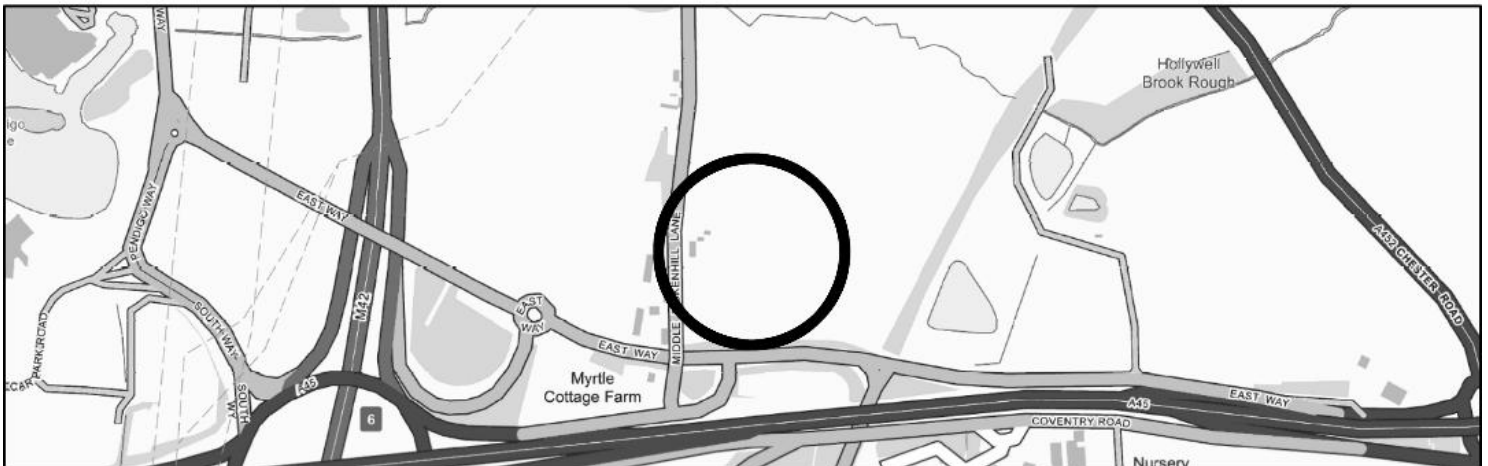
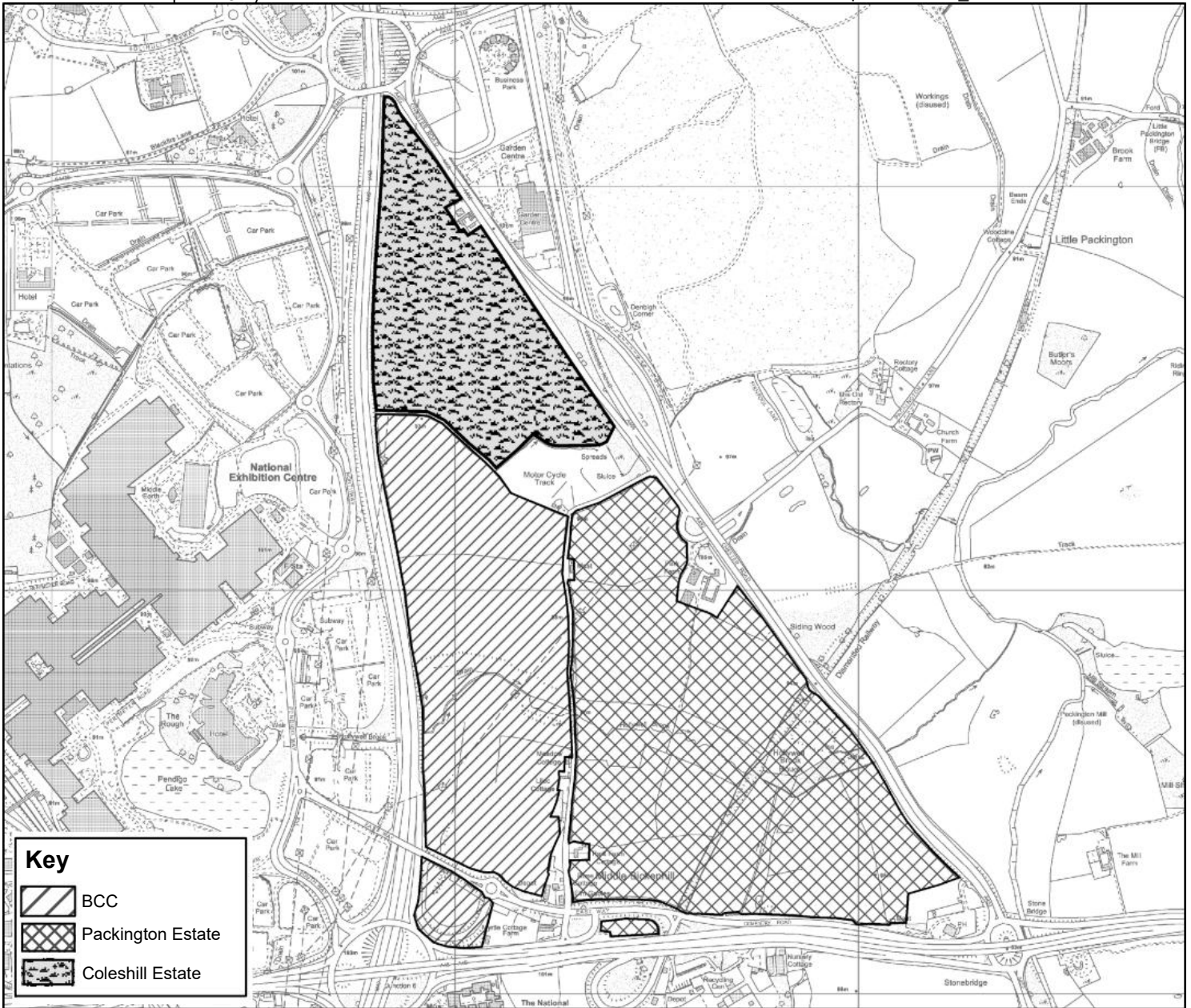
9.6 Exempt Appendix 6 - Estimated Infrastructure Costs by Phase

- 9.7 Exempt Appendix 7 - ACL Variation to Legal Agreements
- 9.8 Exempt Appendix 8 - Development Zones
- 9.9 Exempt Appendix 9 – Further changes to LOA and draft Headlease
- 9.10 Appendix 10 – Equality Impact Assessment EIA000431: 02/05/2024

## **10 BACKGROUND PAPERS**

- 10.1 Shareholder Report (approved by Cabinet – 2016)
- 10.2 Arden Cross Interchange Triangle Contractual Agreements to Enable Development (Cabinet report 18th May 2021)
- 10.3 Arden Cross Developer Selection (approved by Cabinet 8th November 2022)
- 19.3 Arden Cross Limited Business Plan & Budget Financial Year 2023/24 (Cabinet 25th April 2023)





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Kathryn James  
Assistant Director Property  
Place, Prosperity & Sustainability Directorate  
10 Woodcock Street  
Birmingham, B7 4BG

THE NEC  
BIRMINGHAM



Scale (Main Map)

1:15,000

Drawn

Bharat Patel

Date

29/09/2022





**REPORT for ARDEN CROSS LIMITED on  
proposed MASTER DEVELOPMENT AGREEMENT  
with MUSE PLACES LIMITED**

**26 September 2024**

**1 INTRODUCTION AND BACKGROUND**

- 1.1 Following a marketing exercise undertaken Arden Cross Limited ("**ACL**"), Muse Places Limited ("**Muse**" or the "**Developer**") was selected by ACL to be its development partner for the comprehensive development of the Arden Cross site. Heads of Terms for a development agreement were agreed with Muse in July 2023 and then reviewed later that year<sup>1</sup> in light of the decision by HS2 not to proceed with a multi -storey car park within the Arden Cross site ("**HoTs**"). Since then, there have been extensive negotiations with Muse in order to settle the terms of the development agreement.
- 1.2 This report sets out the key terms of the 'Master Development Agreement' for the phased disposal and development of land at Arden Cross Solihull to be entered into between (1) ACL (2) Muse and (3) Morgan Sindall Group Plc ("**Guarantor**") (the "**MDA**").
- 1.3 The MDA relates to land within the triangular area bounded by the M42, A45 (Coventry Road) and A452 (Chester Road) as shown for identification purposes outlined in red on the plan at Annex 1 ("**Arden Cross Site**") but excludes any retained interests of the Landowners<sup>2</sup> (shown for identification purposes on the plans at Annex 2<sup>3</sup>) ("**Retained Interests**") and any third-party interests.
- 1.4 ACL will note that it does not yet own an interest in the Arden Cross Site but does have the benefit of an option to call for the grant of a long lease ("**Headlease**") to it from the Landowners (as defined below) pursuant to an Option Agreement dated 17 November 2021 ("**LOA**"). This option currently expires in November 2031. It is proposed to vary this so that the option expires in 2034 or 2035. The latter is required in light of the anticipated timescale to achieve planning permission for the development of the Arden Cross Site, as ACL cannot exercise its option until this is achieved. The option is also to be varied so that the term of the Headlease is varied to 280 years (rather than the currently envisaged 250 years).
- 1.5 The Headlease to be granted will comprise all of the land owned by the Landowners at the time of grant. The majority of the Arden Cross Site is currently either occupied temporarily by High Speed Two (HS2) Ltd ("**HS2**") pursuant to powers of temporary occupation contained in the High Speed Rail London – (West Midlands) Act 2017 ("**HS2 Act**") or has been acquired permanently by the Secretary of State for Transport ("**DFT**") pursuant to various vesting declarations for the purposes of HS2 Phase One. It is envisaged that some of the land currently vested in DFT may become surplus to requirements and hence re-acquired by the Landowners. Where such land is so acquired after the Headlease is already granted, the Landowners will grant supplemental leases of the same to ACL.
- 1.6 ACL will note that it has entered into various agreements with public sector bodies in connection with the development of the Arden Cross Site<sup>4</sup> all of which influence how development can be carried out, how costs can be allocated, and how certain receipts are to be shared.

<sup>1</sup> Revised terms were dated 22 August 2023 and supplied to Gowling WLG on 5 September 2023.

<sup>2</sup> Being those identified as such in the Landowners' Option Agreement dated 17 November 2021.

<sup>3</sup> Note that the plan at Annex 2 does not currently show the BCC Retained Interest pending resolution of a query over the correct plan depicting this.

<sup>4</sup> Collaboration Agreement dated 23 March 2022, Value Capture Agreement dated 23 March 2022, Works Order Costs Agreement dated 12 July 2021 and HS2 Land Agreement dated 17 October 2016.

- 1.7 From the above it can be seen that the arrangements here are unusual and challenging with lots of moving parts. Against this backdrop the negotiations have sought to focus on providing a framework within which the parties can engage to bring forward development over time.
- 1.8 The MDA is a complex and bespoke development agreement crafted to the particular circumstances of Arden Cross. In this report we seek to draw out how the MDA is intended to operate. However, this report should not be a substitute for reviewing the provisions of the MDA in full and reverting to us should you require any clarification or explanation of its terms.
- 1.9 Please note that in negotiating the MDA we have not sought input from our tax team on its implications. This is on the understanding that ACL will be seeking input from its accountants on any tax implications arising for it. We do strongly recommend that ACL seeks advice on any tax implications arising as a result of it entering into and performing the obligations in this agreement. Please note that the shareholders of ACL (i.e. the Landowners) would need to take their own separate tax advice.
- 1.10 At the time of preparing this report the key terms of the MDA are settled. This report comments on the provisions of the version of the MDA enclosed with it. The annexures to the MDA are also enclosed with this report. These have been agreed directly between ACL and Muse and we have not reviewed them against the MDA provisions. The MDA provides that in the event of any conflict between the terms of the MDA and the Land Assembly Strategy, the Funding Strategy, the Planning Strategy, and the Infrastructure Delivery Strategy, the terms of the MDA prevail.

## **2 OVERVIEW**

- 2.1 The negotiations with the Developer have been lengthy and challenging at times -in a large part due to circumstances having changed since the HoTs were settled and in other instances due to matters arising which were not anticipated by the HoTs. Examples of some of the changes which have occurred since the HoTs were settled include:
- (a) it being determined that a multi-storey car park would not be delivered at the Arden Cross Site (i.e. there being a 'No -Go' decision);
  - (b) the developer entity changing from an SPV to Muse Places Limited and hence a change in the guarantee structure and also a removal of the possibility of ACL (or a Landowner) investing into that SPV to participate in the development that way;
  - (c) the HoTs envisaged various development periods (referred to as DP1, DP2, and DP3) which were no longer appropriate given the passage of time and hence the obligations in the development agreement needed to be recast accordingly;
  - (d) the HoTs also envisaged a "red flag" concept/procedure which was re-considered in order to provide a bit more clarity around what that concept entailed;
  - (e) a change in the payment profile of ACL's Historic Costs;
  - (f) a change in the payment profile of the UTX Works Costs;
  - (g) a change by which Muse's development obligations would now by and large be contained in plot development agreements ("**Plot DA**") (with the details of those agreements yet to be agreed);
  - (h) a review of the LOA and Headlease provisions with Muse specifying which variations they would need to see made to them;
  - (i) elaboration of the principles to apply to the calculation and application of any super profit generated from the development of plots;



- (j) changes arising from the fact the provisions around a 'development surplus account' structure are yet to be agreed.
- 2.2 Furthermore, whilst the HoTs referred to certain termination principles, these were to be further considered and addressed as part of the detailed negotiations. A considerable amount of negotiation has occurred with the Developer in establishing the grounds upon which the MDA could / could not be terminated, and this again has influenced some of the terms of the MDA. In particular, ACL has successfully negotiated positions whereby no compensation (by way of reimbursement of Muse's sunk costs) is payable to Muse in these termination scenarios.
- 2.3 The HoTs also envisaged that the terms of the subleases to be granted on a plot by plot basis ("**Plot Lease**") would be agreed as part of the negotiation of the MDA terms. This workstream is to follow after the MDA is exchanged. We report further below at paragraph 45 on the workstreams which the MDA now envisages as following its exchange.
- 2.4 The MDA is unconditional in nature but can be terminated in certain scenarios. Save where the MDA is capable of termination, in entering into the MDA, ACL (and essentially the Landowners) are locking into an agreement for at least 30 years (- as the term of the MDA is calculated (broadly speaking) from obtaining planning) and accordingly tying up their land. If development proposals are agreed during this period then that obliges ACL to grant long subleases of parts of the Arden Cross Site to Muse (or to a funder/purchaser from Muse as it directs).
- 2.5 Muse's key obligation is to achieve planning permission for the whole development and thereafter to work up development proposals for ACL to consider. If the land value generated by those proposals is acceptable to ACL (at ACL's discretion) then ACL is to grant subleases of the relevant land so that development can proceed.
- 2.6 Muse receive a project management fee for the work they undertake to get to a position where plots can start to be drawn down for development, and thereafter look to make their returns via development by seeking a return/profit on cost of 15% (unless the parties agree a lower percentage in respect of a particular Plot(s)). Profit above this level is shared 50/50 between Muse and ACL to the extent the parties do not agree to reinvest this money to support future development.
- 2.7 ACL receive repayment of an agreed level of their historic costs incurred if certain milestones are achieved, and any additional or ongoing costs incurred by ACL are subject to reimbursement as part of plot developments. Half the UTX Works costs (but subject to a cap) which ACL are obliged to pay would also be funded by Muse (as described in paragraph 28 below).
- 2.8 It should be noted that there is no obligation on Muse to actually fund any development and there is no obligation on Muse to actually develop within any specific timeline, given the viability challenges associated with the development of the Arden Cross Site although there is an obligation on Muse to bring forward the Development in accordance with accordance with the Business Plan. The expectation however is that Muse will be commercially motivated to bring forward development in order to recoup expenditure they have already incurred and which they will incur (including payment of ACL's Historic Costs) in achieving outline planning permission for the whole development.
- 2.9 It should also be noted that at the point of exchange of the MDA there will not be a business plan appended to the MDA. This is unusual as most development agreements will incorporate a business plan which informs how the parties are to bring about development and to set parameters and budgets around that. Muse indicated that it would be challenging to prepare a sensible business plan at this juncture given the evolving nature of the project. The MDA accordingly provides for an initial business plan to be prepared and agreed post exchange and for there to be a termination right should this not occur within an agreed timescale.

### 3 PARTIES

3.1 The parties to the MDA are ACL, Muse and the Guarantor.

3.2 Please note the "**Landowners**" being

- (a) Birmingham City Council ("**BCC**")
- (b) Kenelm Edward Wingfield Digby and Elizabeth Brierley as the partners of the Common Farm East Partnership ("**Coleshill Estate**"), and
- (c) The Honourable Heneage James Daniel Finch-Knightley Lord Guernsey ("**Packington**")

are not a party to the MDA and hence have no direct rights against Muse or the Guarantor.

3.3 The HoTs provided that the developer contracting party was to be The Arden Cross Delivery Company ("**ACDC**") being a SPV wholly owned by Muse. This changed during negotiations and **Muse are now the contracting party with ACL. You should satisfy yourself on the covenant strength of Muse.**

3.4 (Note that the HoTs indicated that the use of an SPV allowed for the developer to allow potential partners (for example Legal and General or a public sector investor) to invest in that vehicle. It also allowed for the possibility of ACL or any of its shareholders to invest into that vehicle subject to agreeing terms with the Developer (for example to carry over a land receipt). Given there is no longer an SPV investment vehicle, such investment would no longer be possible.)

#### **Guaranteed Liabilities**

3.5 Morgan Sindall Group Plc provides a limited guarantee of certain payment obligations of Muse.

3.6 The Guarantor guarantees Muse's obligation to pay the following to ACL:

- (a) ACL Historic Costs capped at £9,000,000, and
  - (b) 50% of the UTX Works Costs capped at £1,220,000
- (both sums plus VAT).

3.7 The guarantee can be called upon if payment is not made by Muse within 40 business days of being due and once called upon payment is to be made within 20 business days.

You should satisfy yourself on the covenant strength of the Guarantor.

*(Please note that Morgan Sindall Group PLC's internal legal team have refused to provide any representations or warranties in respect of the Guarantor's capacity to provide the guarantee. Reliance is therefore given to the fact that it is a PLC entity and therefore the risk of not having capacity to provide the guarantee is lower.)*

#### **Replacement Guarantor**

3.8 The HoTs provided that as new investors came into the partnership (via investment into ACDC) the Developer would be entitled to request a replacement guarantor. Our view was that these

provisions no longer applied given that ACDC was no longer a contracting party. However, at the request of Muse the following limited replacement guarantor provisions have been agreed:

- (a) The Developer can request a replacement guarantor in the event that the Guarantor ceases to have a controlling interest in Muse (*note such a change of control would require consent of ACL pursuant to the change of control provisions*).
- (b) ACL is to act reasonably in considering the request but will be deemed to be acting reasonably in refusing consent where the replacement guarantor:
  - (i) does not have a net asset value of £100 million;
  - (ii) is not incorporated in the UK;
  - (iii) does not acquire a controlling interest in the Developer; or
  - (iv) would be a 'Prohibited Person'.

3.9 A **'Prohibited Person'** is defined in the MDA and is essentially someone who is subject to government sanctions or has sovereign immunity.

3.10 ACL does not have to consider a request to replace the Guarantor where there is a subsisting unremedied breach of the MDA or any Plot DA.

3.11 Note, however, that Muse can make reasonable representations to ACL in respect of any replacement guarantor not being incorporated in the UK, or not having a controlling interest in the Developer, to which ACL is to have due regard (but not be bound by).

#### ***Change of Control***

3.12 Note that a change of control of either ACL, Muse or the Guarantor can give rise to termination of the MDA. Please see paragraph 36.9 for details. Note in particular the comments there made regarding the shareholders in ACL having to be the owners of the Arden Cross Site and hence effectively 'stapled' for the duration of the MDA.

#### ***Restrictions on assignment by Muse / the Guarantor***

3.13 The Developer and the Guarantor are prohibited from assigning, mortgaging or parting with or in any way dealing with their interest under the MDA without the prior written consent of ACL (in its absolute discretion).

#### ***Restrictions on assignment by ACL***

3.14 ACL is prohibited from assigning or parting with or in any way dealing with its interest under the MDA without the prior written consent of Muse (in its absolute discretion) until the earlier of: (i) the expiry of the term of the MDA, (ii) the termination of the MDA, and (iii) the date of the final plot drawdown ("**End Date**"). However, no consent is required to:

- (a) an assignment (or novation) of the benefit and the burden to an entity that is controlled by the persons comprising the Landowners (or their successors in title) from time to time; or
- (b) charging or assigning (by way of security) the benefit to a funder.

*Note this restriction was negotiated in by Muse as they want to ensure that whilst they have the ability to call for Plot Leases, they are dealing with an entity which is always controlled by the landowners of the Arden Cross Site. The Landowners can still sell their respective land*

*interests provided they transfer their shares in ACL to the same person or entity to whom they transfer their land.*

- 3.15 Following the End Date, ACL can freely novate, assign or part with or in any way deal with its interest under the MDA without the consent of the Developer and the Developer and Guarantor are to enter into such documentation as may be reasonably required to effect such novation but provided that:

- (a) the assignment or novation cannot be to a Prohibited Person; and
- (b) ACL is to pay the reasonable and proper legal costs incurred by the Muse and the Guarantor in entering into such documentation *before* completion of the same.

*Note that ACL is unable ever to assign or novate the MDA to a Prohibited Person (with this restriction surviving termination of the MDA). You should therefore satisfy yourself that the definition of Prohibited Person is acceptable to you from this perspective.*

*Note that Muse and the Guarantor will only enter into agreements to effect assignment or novation if their legal costs of so doing are first paid.*

*Note also that the Headlease will provide that if ACL was to assign / sell its Headlease before practical completion of the final plot development then it would also need to ensure its assignee agrees to be bound by its obligations in the MDA. We believe it unlikely that ACL could assign its Headlease without at the same time passing on its obligations in the MDA to an assignee. This could affect the marketability of the Headlease.*

#### **4 PROPERTY AND DEVELOPMENT**

- 4.1 Pursuant to the MDA the Developer can draw down phased leases of the "**Property**" which is defined as that part of the property forming part of the Arden Cross Site and owned freehold by the Landowners as at the date of the MDA, together with any 'Surplus Land' (*see reporting at paragraph 11.6 below*) and/or other land within the Arden Cross Site which is (from time to time) subsequently acquired by the Landowners and in respect of which ACL is entitled to draw down a Headlease pursuant to the Landowners' Option Agreement (but excluding in all cases the Retained Interests unless the same are actually comprised in a Headlease).
- 4.2 From this it can be seen that Muse can only draw down for development (via the grant of subleases) the land which is today owned freehold by the Landowners, or is so owned by the Landowners in the future and is included in the Headlease or supplemental leases to that Headlease.
- 4.3 The "**Development**" is defined as the development of the Property as a new high quality mixed use development integrating the HS2 Interchange Station/Railway, in accordance with the Masterplan, the Planning Strategy, the Funding Strategy and the Land Assembly Strategy and in a manner that is consistent with and that will not detrimentally affect the construction, operation and /or safety of the HS2 Railway in accordance with the 'Objectives' and/or the Business Plan.
- 4.4 The various strategies referred to in the definition of 'Development' will be appended to the MDA apart from the Business Plan which will follow. We set out the Objectives at paragraph 5 below.

#### **5 OBJECTIVES**

- 5.1 The principal objectives of the MDA are defined as follows:
- (a) to facilitate the commercially viable development of the Arden Cross Site as a new high quality mixed use development integrating the HS2 Interchange station, and in

accordance with an agreed Masterplan, an agreed Financial Model, the Planning Strategy, the Funding Strategy and the business plan and in a manner that is consistent with and that will not detrimentally affect the construction, operation and /or safety of the HS2 Railway;

- (b) maximising the development land values and returns realised from the Development;
- (c) a preference for the Landowners to retain their freeholds (save potentially in respect of residential development) and to secure long term investments; and retention of rents and ground rents over capital disposals;
- (d) generating long term capital growth for the freeholds in the Arden Cross Site;
- (e) to agree and secure the funding (on commercially sensible terms) of private and public sector sources for infrastructure necessary to facilitate the Development and
- (f) such other objectives as the parties may agree in writing between them from time to time,

(together the "**Objectives**").

*Note the Objectives set out at b), c) and d) mirror those set out in the Landowners' Option Agreement.*

- 5.2 The Objectives (along with the Business Plan) are used as a guide to inform various obligations within the MDA and hence have an important role. Please let us know if you have any queries on the Objectives.
- 5.3 The Developer is to carry out and complete the Development in accordance with the terms of MDA to achieve the Objectives as soon as possible.
- 5.4 The Developer is also to diligently pursue the implementation of the Business Plan and each 'Plot Development Plan' (see reporting at paragraph 18 below) with reasonable skill and care. There is also a general obligation for the parties to cooperate fully with each other to achieve the Objectives.

## **6 COMMENCEMENT AND TERM**

- 6.1 The MDA commences on the date on which it is signed by all of the parties and continues (unless terminated in accordance with the terms of the MDA) for a term of 30 years which is calculated from the earlier of:
  - (a) the grant of a planning permission in respect of the whole or part of the Development in accordance with the agreed planning strategy and it being free of challenge and free of any agreed onerous conditions;
  - (b) the date of adoption of an updated Local Plan following its review which provides the Arden Cross Site with allocation for development.

## **7 BUSINESS PLAN**

- 7.1 As mentioned above, the MDA does not append a business plan but does however append a number of documents which will form part of the business plan to be agreed between the parties. These documents are as follows:
  - (a) Masterplan;
  - (b) Financial Model;

- (c) Infrastructure Delivery Strategy (*being a strategy for the delivery of infrastructure for the Development (such strategy as to be produced and agreed pursuant to the terms of the Value Capture Agreement)*<sup>5</sup>);
- (d) Funding Strategy; and
- (e) Planning Strategy,

and these are collectively referred to as the "**BP Annexures**". Each of these can change as the Business Plan changes.

- 7.2 The MDA will also append a 'Business Plan Contents' document which will set out an outline of the content of the business plan (*note the Business Plan Contents was referred to in the HoTs as the 'Principles Brief'*). The BP Annexures and the Business Plan Contents together will frame the expectations for the content of the initial business plan.

***Process for agreeing the Business Plan and updates to it***

- 7.3 Following exchange of the MDA the Developer is to prepare the draft initial business plan which is to be materially in accordance with Business Plan Contents, the Objectives and the BP Annexures and shall be for the 2025/2026 accounting period commencing on 1 April 2025. Muse are to submit the same to ACL for approval as soon as reasonably practicable but no later than 31 December 2024.
- 7.4 ACL and the Developer are to act reasonably in agreeing the draft initial business plan by 30 March 2025. If they cannot agree it within two years of exchange of the MDA (or such later date as they agree between them) then either party can terminate the MDA. ACL can decline to approve the draft initial business plan by reason of any 'Reserved Matter' (*see paragraph 8 below for details of what these are*).
- 7.5 If the draft initial business plan is submitted to ACL for approval prior to the issue of a 'Grant Funding Offer Letter' (-this being a letter for grant funding in respect of the first phase of the Development) then the Developer must update the draft initial business plan within 3 months of receipt of the Grant Funding Offer Letter and submit the same to ACL for approval. Failure to so update the draft initial business plan entitles ACL to terminate the MDA.
- 7.6 If ACL and the Developer (both acting reasonably and without delay) are unable to agree the updated business plan within 20 business days of its circulation, then where the initial business plan had already been approved this will remain in force and there shall be no update to the same (i.e. the status quo will be maintained).
- 7.7 Following agreement of the initial business plan the Developer is to update it on an annual basis (including updating the BP Annexures) and circulate the same to ACL for approval. Both parties are to act reasonably and without delay to agree the updated business plan (with ACL again having the ability to withhold consent in the grounds of any Reserved Matter). If the parties are unable to agree the updated business plan within 20 business days of its circulation, then the previous business plan will remain in force (i.e. the status quo will be maintained).
- 7.8 Outside of the annual updates to the business plan, either party (acting reasonably) can propose changes to the business plan and the same approval process as set out above applies to approve any changes.

*Note that the Business Plan is an important document to get right to govern the Development. Care should be taken to ensure the initial business plan adopted sufficiently covers all key or*

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<sup>5</sup> We do not know whether the strategy appended to the MDA has been approved by the UGC in accordance with the terms of the Value Capture Agreement dated 23 March 2022.

*important aspects. Disagreements over Business Plan contents can arise from time to time and to that end you will note that if changes cannot be agreed, the status quo will remain.*

## 8 APPROVALS AND RESERVED MATTERS

- 8.1 The MDA contains a few important interpretation provisions which are worthy of note.
- 8.2 Firstly, all approvals and consents are to be given in writing.
- 8.3 Secondly, wherever the MDA requires the approval or consent of either party then (unless the contrary is stated) neither party can unreasonably withhold or delay the provision of consent/approval. The MDA goes on to state that the parties acknowledge that in judging whether the other party has acted reasonably, proper regard shall be made to the stated intention of the parties in entering into the MDA to achieve the Objectives, and whether the withholding of that other party's consent or approval may prejudice the achievement of the Objectives, and whether it is in accordance with the Business Plan.
- 8.4 Thirdly, ACL is deemed to be acting reasonably where it refuses its approval or consent on the grounds of any 'Reserved Matters'. These are matters which are of fundamental importance to ACL where ACL is entitled to exercise its absolute discretion as to whether it approves or provides any consent required:
- (a) where there would be a materially adverse impact on the Retained Interests or land outside of the Arden Cross Site owned by the Landowners;
  - (b) any matter which would give rise to a breach or non –compliance with the terms of any 'Existing Agreements' (see paragraph 10.1 for details of these) or would be inconsistent with the provisions of the same to the detriment of ACL;
  - (c) where the matter is inconsistent with the Objectives;
  - (d) where the matter is inconsistent with the Business Plan;
  - (e) where it would mean that ACL or the Landowners would be in breach of any statutory requirements;
  - (f) a matter which would result in a significant and adverse change to the scale of and the mix of uses of the Development from those set out in the Masterplan; and
  - (g) a matter which would result in a significant adverse impact on the quality of the Development as set out in the "**Development Principles Code**" (-the latter being the document which the Headlease envisages will be appended to it to govern any comprehensive development of the Property<sup>6</sup>).
- 8.5 Reserved Matters apply to a number of approval rights that ACL has under the MDA as flagged in this report.
- 8.6 In refusing approval on the grounds of a Reserved Matter, ACL is to give details of the grounds on which it is refusing. Muse will then have a reasonable period to propose reasonable proposals to address such matters. ACL is to have due regard to those proposals but is not bound by them.

*Note the process referred to in this paragraph 8.6 needed to be agreed in return for the Developer agreeing to the concept of 'Reserved Matters' which they often cited as being (in*

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<sup>6</sup> Note that the Development Principles Code does not yet exist.

their view) a 'veto'. Whilst this process could act to delay matters under the MDA, this provision was accepted on the basis that it did not ultimately fetter ACL's decision.

## 9 PROJECT GOVERNANCE AND MEETINGS

- 9.1 The MDA establishes the principle of an 'Arden Cross Project Board' which is to meet quarterly and be responsible for the oversight of the Development with a minimum of 3 representatives from each of the parties. Any decisions are to be unanimous (save where a decision relates to a Reserved Matter where ACL has a discretion to vote how it wishes in the matter). In the event of deadlock the status quo remains.
- 9.2 Beneath the Project Board is to be a 'Partnership Steering Group' which is to sit monthly to oversee implementation of the Business Plan and any decisions made by the Project Board. Each party is to have a minimum of 2 representatives on the Partnership Steering Group.
- 9.3 The parties will from time to time agree any working group structure required for the Development (including roles and responsibilities, the scope of the working group and any governance and reporting requirements in relation to the same).

## 10 EXISTING AGREEMENTS AND FURTHER AGREEMENTS

- 10.1 The MDA acknowledges that the following agreements have been entered into prior to the MDA:
- (a) Collaboration Agreement (dated 23 March 2022)
  - (b) Landowners' Option Agreement (dated 17 November 2020)
  - (c) Value Capture Agreement (dated 23 March 2022)
  - (d) HS2 Land Agreement (dated 17 October 2016)
  - (e) Works Order Costs Agreement (dated 12 July 2021)
  - (f) Memorandum of Understanding signed with Warwick University (dates 15 February 2022)
  - (g) Memorandum of Understanding (MoU) signed with University Hospital Birmingham NHS Trust (dated 17 January 2021)

(and any documents supplemental or ancillary thereto). These are collectively referred to as the "**Existing Agreements**". If ACL wants to vary the terms of an Existing Agreement, then it would need Muse's consent (acting reasonably).

*Note that the Minerals Agreements have not been disclosed to Muse (pending confirmation from the Landowners that they do not object to their disclosure). Accordingly, the Minerals Agreements do not constitute 'Existing Agreements' to which Muse take subject.*

- 10.2 The Developer agrees that it cannot require ACL to undertake an action or fail to act so as to put ACL and/or the Landowners in a position where they are in breach of the terms of any Existing Agreement and/or cannot comply with any Existing Agreements.
- 10.3 The parties also agree that in considering ACL's approval rights under the MDA, it will be reasonable for ACL to have regard to its obligations in the Existing Agreements.
- 10.4 The HoTs indicated that the MDA would provide for which obligations in the Existing Agreements would be stepped down to the Developer. ACL may recall that at the HoTs stage, Muse were reluctant to agree to comply with the obligations within those agreements, and during negotiations it became apparent that Muse were still resisting this approach to a degree.



Accordingly, as each of the Existing Agreements is a substantial document and a detailed review and allocation of the obligations within them would take some time, it was agreed to defer this exercise until after exchange of the MDA.

- 10.5 The MDA provides for ACL and Muse to agree the allocation, apportionment, division or delegation of obligations, roles or responsibilities between them in respect of ACL's roles, obligations and entitlements under the Existing Agreements ("**Existing Agreements Allocation**") with a target of doing so within 6 months following exchange of the MDA. The exercise will also involve considering in further detail how the Existing Agreements and the MDA will interact on matters such as permitted disposals, land dealings, and the registration of priorities at Land Registry<sup>7</sup>. If the Existing Agreements Allocation is not agreed within 18 months following exchange of the MDA then the matter is referred to senior representatives to resolve in the first instance but if they cannot agree, the matter is referred for expert determination in accordance with the dispute resolution provisions in the MDA.

*Note that there is no ability to terminate the MDA if the parties are unable to agree the Existing Agreements Allocation. The worst case scenario is therefore that ACL remains liable to perform the obligations in the Existing Agreements and is unable to step these down to Muse. Note also that due to the referral of disputes to an expert for determination, ACL may be stuck with an allocation of responsibilities which it may not necessarily have anticipated or expected. Muse were adamant to have these matters resolved ultimately by an expert in the event of stalemate as they felt it could otherwise prejudice the performance by them of their obligations in the MDA. Whilst ACL were not entirely convinced of that argument, the point was conceded on the basis the reference to an expert would only occur after a sufficiently long period (i.e. 18 months) so as to maximise the opportunity for ACL and Muse's senior representatives to resolve the dispute between them.*

*Note that a supplemental deed(s) /deed(s) of variation to the MDA is likely to be required to document the outcome of the Existing Agreements Allocation.*

- 10.6 Pending the Existing Agreements Allocation, ACL is to enforce its rights and obligations in the Existing Agreements (where reasonable and commercially sensible), and Muse is to provide ACL with all reasonable support and information to assist ACL in doing this.
- 10.7 ACL also agrees not to do or omit to do anything in the performance or operation of the Existing Agreements which would frustrate the Objectives whilst the Existing Agreements Allocation remains to be agreed or determined.

*Note: this needed to be conceded to avoid Muse asking for certain termination rights to be suspended in the event of delay in agreeing the Existing Agreements Allocation or the terms of any new/varied agreements.*

- 10.8 There will be further agreements which will need to be entered into following exchange of the MDA ("**Further Agreements**"). These include:
- (a) variations to any Existing Agreements;
  - (b) further agreements envisaged by Existing Agreements (for example the UTX easement pursuant to the Works Order Cost Agreement);

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<sup>7</sup> Note that the Collaboration Agreement provided for the parties to agree which agreements were to be registered in which order to protect the rights conferred by those agreements. The registration exercise was deferred at the point of exchange of the Collaboration Agreement because the Arden Cross Site was subject to various GVDs which were in the process of registration at Land Registry and hence the title position was 'shifting'. Since registration of the GVDs the parties to the Collaboration Agreement are yet to re-engage on this matter. Muse have accordingly agreed to await the outcome of this exercise.

- (c) agreements which are under negotiation at the point of exchange of the MDA (i.e. the **"Easement Suite"** (being the Agreement for Easements (and appended proforma Deed of Easement and Licences) to be agreed and entered into pursuant to the Collaboration Agreement) and the Framework Agreement; and
- (d) other agreements required for the Development (for example utility wayleaves and easements, infrastructure leases or licences, and documents required to give effect to £ for £ negotiations).

10.9 Muse will have the right to approve any Further Agreements before they are entered into by ACL

*Note that this now means that Muse will also be able to input into and approve the wider variations which have been agreed to the LOA and Headlease<sup>8</sup>, as these variations whilst approved in principle by the Landowners, have not yet been documented.*

10.10 Once entered into, the Further Agreements are treated as 'Existing Agreements' for the purpose of the MDA. As per the Existing Agreements, the parties are to agree the allocation of obligations, roles or responsibilities between them in respect of ACL's roles, obligations and entitlements under the Further Agreements. Any dispute in agreeing the same is referred to senior representatives for resolution and ultimately to an expert. Again, there is no termination right in the event the parties fail to agree this allocation and hence it would again be the case that ACL would remain liable to observe and perform the obligations under these agreements.

*Note again that a supplemental deed(s) / deed(s) of variation to the MDA is likely to be required to document the outcome of the allocations in respect of any Further Agreements.*

10.11 ACL's costs of complying with the Existing Agreements will be an ACL Historic Cost or ACL Ongoing Cost (as applicable) (see reporting at paragraph 13.16). Muse's costs of complying with the Existing Agreements will be an 'Agreed Global Development Cost' (see reporting at paragraph 13.8).

## 11 LAND ASSEMBLY

### **ACL Headlease(s)**

#### **Variation**

11.1 ACL is to use reasonable endeavours to agree and enter into a deed of variation to the Landowners' Option Agreement and the draft form of Headlease appended to it, on terms approved by the Developer (not to be unreasonably withheld or delayed) to reflect the changes set out the Headlease Variation Note (see Annex 3 -which changes were was approved by ACL's Board on 22 July 2024) within the period of 12 months after the date of the MDA (**"Headlease Variation"**).

11.2 The Headlease Variation is the trigger for the first tranche of the payment of ACL Historic Costs (see reporting at paragraph 14.3(a) below) and as such it is important that the Headlease Variation is agreed and entered into within this 12 month period (**"Trigger Date (Landowners' Option Agreement)"**).

*Note the MDA provides that the first tranche of payment of the ACL Historic Costs is payable within 5 business days of the 'Trigger Date (Landowners' Option Agreement)' (whenever such date occurs). During negotiations Muse indicated that payment of the first tranche was to be on the 'Trigger Date (Landowners' Option Agreement)' only if such date occurs within the 12*

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<sup>8</sup> These variations were agreed alongside variations to ACL's shareholder agreement which also remain to be documented but as the shareholders agreement has not been disclosed to Muse it is not anticipated to involve Muse in those changes.

*month period, if it did not so occur then payment was to be deferred until payment of the second tranche of the ACL Historic Costs on the 'Trigger Date (Planning)' (see paragraph 15.19 for when this occurs). We have not sought to amend the drafting to reflect this but you should be aware that Muse may challenge paying this first tranche if the relevant trigger date does not occur within 12 months of exchange and so the safest course is to ensure it occurs within that 12 month period.*

- 11.3 There is therefore a need for ACL to progress diligently with these changes as soon as possible.
- 11.4 The other changes agreed by the Landowners to the LOA and Headlease (and ACL's shareholders agreement) should also run in parallel as there is a high degree of interrelationship between all changes and this may risk securing the Headlease Variation and hence payment of the first tranche of ACL's Historic Costs.

#### **Drawdown of Headlease**

- 11.5 ACL is under an obligation to call for the grant of the Headlease to it pursuant to the terms of the LOA, albeit Muse acknowledge that ACL will not be in a position to do so until Muse obtains planning permission for the Development.

*Note that if ACL did not call for the Headlease when it was in a position to do so (or a Landowner failed to accede to the grant of the Headlease when it was required to do so) then ACL would be in material breach of the terms of the MDA and the Developer would be able to terminate the same (and potentially have a claim for loss).*

#### **Surplus Land**

- 11.6 As at the date of the MDA, the Landowners own the 'Schedule 16 Land' (being land temporarily occupied by HS2 pursuant to its statutory powers) and the Retained Interests. It is anticipated that there will likely be "**Surplus Land**" from time to time which will be acquired by the Landowners and/or ACL. Surplus Land is land within the Arden Cross Site which is owned by DfT having been compulsory purchased (i.e. "vested") which is subsequently declared surplus pursuant to the procedure set out in the Collaboration Agreement, Crichel Down Rules or any other contractual or statutory mechanism.
- 11.7 The MDA sets out that there is:
- (a) no guarantee there will be any Surplus Land and that there is no obligation on ACL and/or the Landowners to acquire any such Surplus Land; and
  - (b) no obligation to grant a Plot Lease in respect of any Surplus Land or Schedule 16 Land until such time as ownership has transferred to ACL (in respect of Surplus Land), ACL is granted a Headlease in respect of the same and HS2 and/or DfT are no longer in occupation.
- 11.8 Given the £ for £ deal under the Collaboration Agreement no longer applies (due to the 'No-Go' decision), the MDA acknowledges that there are ongoing discussions with DFT and HS2 with regards to a revised £ for £ deal for Surplus Land. ACL is to use reasonable endeavours to negotiate and finalise such arrangements with DFT and HS2 as soon as reasonably practicable with Muse supporting ACL in this.
- 11.9 If ACL is successful in negotiating arrangements with DFT for a revised £ for £ deal then ACL and Muse will collaborate in good faith to agree reasonable changes to the MDA and the Existing Agreements and any further agreements needed to reflect and accommodate such arrangements, including any reasonable extensions to any dates within the MDA to reflect the time period involved in connection with such Surplus Land pursuant to those arrangements.

*Whilst this is effectively an 'agreement to agree', the parties should be commercially motivated to agree such matters as the Masterplan currently reflects the inclusion of Surplus Land.*

### **Third Party Land and the Land Assembly Strategy**

- 11.10 There is currently land within the Arden Cross Site which is owned by third parties (i.e. not a Landowner, ACL, HS2 or DfT). The MDA will append a land assembly strategy by which ACL and/or the Landowners could acquire further land within the Arden Cross Site if considered desirable for the Development (e.g the Malt Shovel pub and private housing within the Arden Cross Site) ("**Land Assembly Strategy**"). The Land Assembly Strategy is to be consistent with the Objectives, the Business Plan and the Existing Agreements. The Land Assembly Strategy obliges ACL (amongst other matters) to use reasonable endeavours to (assist Landowners to):
- (a) secure the registration of certain unregistered land parcels;
  - (b) secure the vesting of Middle Bickenhill Lane in Packington Estates;
  - (c) liaise with HS2 and other stakeholders in relation to the location of utilities which may be required and/or proposed within the Arden Cross Site (and any associated easements, wayleaves or other rights) in order that any impact on the delivery of the Masterplan can be assessed and where possible mitigated or minimised;
  - (d) liaise with HS2/DfT on the transfer back to the relevant Landowner of mineral titles vested in the DfT.
- 11.11 There is a prohibition on Muse and the Guarantor (or any entity within the group of either or (where Muse or the Guarantor has knowledge of the same) any entity connected to or associated with either party) on making any offer/contract to purchase any interest in land within the Arden Cross Site. Any breach of such prohibition would allow ACL to terminate the MDA. The restriction applies for a period of 24 months following termination of the MDA. *Note the carve out re. the Developer or the Guarantor having to have actual knowledge of an 'associated entity' purchasing land was not set out in the HoTs but was required by the Developer. In addition, the restriction being capped at 24 months following termination of the MDA is a departure from the HoTs where it applied indefinitely.*

## **12 SITE RESTORATION**

- 12.1 ACL will recall that there are obligations in the Collaboration Agreement requiring it to liaise with HS2 in relation to the hand back of 'Schedule 16 Land' and vested land. ACL is to keep Muse informed of these discussions and to have regard to Muse's representations.
- 12.2 Upon reasonable request by ACL, Muse is to procure the carrying out of:
- (a) site investigations of Schedule 16 Land recovered from HS2 (as soon as reasonably practicable after recovery of possession of the same) in order to identify and report on any contamination; and
  - (b) any remediation works required.
- A warranty will be provided to ACL/Landowners (and any funder of them in respect of the Property/Development) in relation to such site investigations and the remediation works.
- 12.3 The costs of the investigations and the remediation works are to be agreed in advance and in respect of:
- (a) the site investigations, ACL will reimburse Muse these costs within 20 business days of demand (once the warranties referred to above are delivered); and

- (b) the remediation works, ACL will reimburse Muse in accordance with a payment profile which is agreed at the time.

- 12.4 Muse will be entitled to a development management fee in respect of the remediation works, such fee to be agreed at the time and to be on a fair and reasonable basis.

*Note that the LOA is to be amended to cater for the above with each Landowner being required to pay the cost of remediation of its land.*

*Note also that site access licences will need to be agreed between the relevant Landowner, ACL and Muse to facilitate access for the above.*

### **13 DEVELOPMENT/DEVELOPER COSTS**

- 13.1 There are various heads of Developer/Development Costs set out in the MDA as follows:

- (a) Developer Pre-Exchange Costs
- (b) Developer Post-Exchange Costs
- (c) Global Development Costs
- (d) Plot Development Costs
- (e) Project Management Fee

*Note there is to be no double counting between heads of cost.*

The costs referred to in paragraphs (a) - (e) above are all recoverable by Muse as part of carrying out plot developments and hence will inform the land value for a plot.

The costs referred to in paragraphs (a), (b), (d) and (e) above are all borne by Muse as part of it performing its obligations in the MDA.

#### ***Developer Pre-Exchange Costs***

- 13.2 These are the costs incurred by the Developer in respect of the Development up until a point prior to exchange of the MDA. These costs will be agreed between ACL and Muse prior to exchange and set out in a schedule appended to the MDA. As at 31 August 2024 these costs have been agreed as £1,331,118.

#### ***Developer Post-Exchange Costs***

- 13.3 These are costs reasonably and properly incurred by the Developer in respect of the Development (following the date referred to above) which do not fall to be Plot Development Costs or Global Development Costs and which accord with annual budgets and the Business Plan.
- 13.4 An annual budget of these will be provided to ACL so that it can make representations on such costs (which Muse will have due regard to (but not be bound by)).
- 13.5 Muse will provide ACL with a monthly schedule of this expenditure incurred (on an open book basis) and keep a running record of these costs.
- 13.6 Muse are under an obligation to recover VAT on such costs (so that VAT does not form part of the Developer Post-Exchange Costs).

- 13.7 Muse and ACL will undertake a review of these costs on a quarterly basis. The purpose of this exercise is to allow the parties to look back on expenditure incurred or committed and look forward in assessing likely expenditure so as to collaborate in ensuring there is no duplication of effort between them, and that the expenditure is efficient and in accordance with the annual budgets.

*Note similar provisions apply in relation to ACL's Ongoing Costs.*

*Note that the definitions of Developer Pre- and Post- Exchange Costs are fairly generic and there are no specific cost exclusions.*

### **Global Development Costs**

- 13.8 Global Development Costs are defined as:
- (a) ACL Historic Costs;
  - (b) ACL Ongoing Costs;
  - (c) Developer Pre-Exchange Costs;
  - (d) Developer Post-Exchange Costs;
  - (e) Project Management Fee;
  - (f) Infrastructure Costs;
  - (g) UTX Works Costs (*see reporting at paragraph 28*); and
  - (h) costs in respect of Development Constraints (*see paragraph 24.1 for details of these*).
- 13.9 The intention is that each Plot will bear a pro rata proportion of the Global Development Costs to be factored into the Plot Appraisal (albeit the parties can in their discretion agree to over-recover Global Development Costs for any particular plot) (*see reporting at paragraph 20.5*). This allocation is referred to as "**Agreed Global Development Costs**".
- 13.10 The Developer will maintain a Global Development Costs Account and a Global Development Costs Reconciliation Account for so long as is necessary to discharge any Global Development Costs. (*Note although there is reference to 'account' this is actually just referring to an accounting 'code'.*) The Developer is to debit directly to the Global Development Costs Account all Global Development Costs properly paid or incurred by or on behalf of the Developer or ACL.
- 13.11 On the date of the Initial Planning Application (*see paragraph 15.2*), the Developer will provide ACL with a statement of the Global Development Costs Account and thereafter at 3 monthly intervals and on each Plot Drawdown.
- 13.12 Any disputes over Global Development Costs or their apportionment may be referred by either party to be determined by senior representatives or (failing agreement) by an expert.

### **Plot Development Costs**

- 13.13 Plot Development Costs are all items of expenditure reasonably and properly paid (or expected to be payable) by the Developer and which relate to the Development of a Plot in accordance with the Business Plan and the Objectives, and incurred as part of the implementation of and

comprised in the relevant approved Plot Development Plan. Plot Development costs will exclude:

- (a) the site remediation works costs referred to in paragraph 8 above (as these costs will be paid for by the relevant Landowner);
- (b) the cost of carrying out works to the extent funded by grant funding;
- (c) any project/development management fee which Muse may be entitled to for carrying out works funded by grant funding;
- (d) irrecoverable VAT where Muse has failed to recover the same;
- (e) any Agreed Global Development Costs.

13.14 On the grant of a Plot Lease, the Developer is to establish a Plot Code in respect of each Plot to which all development costs relating solely to that Plot are to be allocated, together with all development receipts (including sale consideration and grant funding).

13.15 The Developer will submit to ACL a statement of all Development Costs allocated to each Plot Code at quarterly intervals (increasing to monthly once development on the Plot has commenced).

#### ***Project Management Fee***

13.16 In exchange for providing the 'Agreed Services' (*see reporting at paragraph 25.1*) Muse is entitled to a 'Project Management Fee'. This is a sum representing 7.5% of all costs which the parties agree as being reasonably and properly incurred by Muse in providing the 'Agreed Services' until the first plot drawdown (excluding as a 'cost' for such purposes any ACL Historic Costs and ACL Ongoing Costs and any costs of carrying out any works to the extent that such costs are funded by grant funding).

13.17 This Project Management Fee is capped at £450,000 but can be increased up to a maximum of £600,000 where there have been unforeseen changes to the Scope of the Agreed Services or the Development. The parties are to calculate the Project Management Fee within 10 business days of the first Plot Drawdown.

13.18 The Project Management Fee will not be paid as such but will be rolled up and recovered by Muse as a Global Development Cost as part of each plot development, and (subject to the ability for accelerated recovery as set out in paragraph 20.5) will be apportioned on a fair and reasonable basis against Plots within the Development as provided for in a Plot Appraisal and in a manner which is consistent with the apportionment of the 'ACL Works Costs' (as defined and calculated in accordance with the terms of the Value Capture Agreement) and the Business Plan.

13.19 If the MDA terminates then Muse's entitlement to this Project Management Fee ceases.

13.20 Muse are to provide monthly to ACL (on an open book basis) a costs schedule setting out the expenditure it has incurred in providing the Agreed Services for the previous month (along with reasonable supporting evidence if requested by the ACL) and:

- (a) the parties will act reasonably in agreeing the costs set out in each costs schedule;
- (b) the parties will keep and circulate between them a running record of such costs;
- (c) if as at a point in time when conditions have been satisfied so as to allow a Plot Lease to be granted there remains a dispute over any such costs, then Muse can only include in the 'Final Plot Appraisal' (*defined in paragraph 18.7 below*) a sum representing the

undisputed amount of the costs of providing the Agreed Services, with a reconciliation to be made on subsequent Final Plot Appraisals once the dispute has been resolved.

#### **Development Management Fee**

- 13.21 The MDA acknowledges that Muse may carry out works and/or services for a third party relating to the delivery of off-site infrastructure which may benefit or be utilised by the Development. Where it does so, then Muse are able to seek a development management fee from that third party for this (and disclose details of that fee to ACL where they are able to so disclose).
- 13.22 Such fee is to be fair, reasonable and proportionate having regard to the scope of services required.
- 13.23 Muse will themselves provide a duty of care, and procure that any building contractor/professional team provide a warranty for ACL and/or the Landowners in respect of any such infrastructure works which benefit /are utilised by the Development.

#### **14 ACL COSTS**

- 14.1 ACL has incurred costs to date in relation to the Development and will continue to do so. The MDA provides for how these costs are recovered by ACL.

*Note there is to be no double counting between heads of cost recovered.*

#### **ACL Historic Costs**

- 14.2 ACL Historic Costs are all costs reasonably or properly incurred by ACL or a Landowner in relation to the Development up to a maximum sum of £9,000,000 (nine million pounds (exclusive of VAT)). There will be a schedule appended to the MDA reflecting what these costs are pre-exchange. As at 31 July 2024 these costs are agreed as being £8,338,258.
- 14.3 The ACL Historic Costs are payable by the Developer to ACL in three tranches:
- (a) **Tranche 1:** the sum of £2,250,000 (two million two hundred and fifty thousand pounds) (exclusive of VAT) (being 25% of the ACL Historic Costs) no later than five Business Days after the 'Trigger Date (Landowners' Option Agreement)' (see paragraph 11.2) occurs.
  - (b) **Tranche 2:** the sum of £2,250,000 (two million two hundred and fifty thousand pounds) (exclusive of VAT) (being 25% of the ACL Historic Costs) no later than five Business Days after the 'Trigger Date (Planning)' (see paragraph 15.9) occurs.
  - (c) **Tranche 3:** the sum of £4,500,000 (four million five hundred thousand pounds) (exclusive of VAT) (being 50% of the ACL Historic Costs) no later than five Business Days following the 'Trigger Date (Viability)' occurring (see paragraph 17.6).

*Note: This is a change from the HoTs which provided that ACL Historic Costs were to be paid in full following a Go/No Go decision and once any applicable 'red flags' were cleared, and the site had received an allocation under the Local Plan or an acceptable planning permission had been granted.*

- 14.4 Until the ACL Historic Costs hit £9m, the provisions referred to at paragraphs 14.8 to 14.11 apply equally to them.

#### **ACL Ongoing Costs**

- 14.5 ACL Ongoing Costs are any costs and expenses reasonably and properly incurred by ACL and/or any Landowner (which are incurred in addition to the ACL Historic Costs) solely in



relation to the Development and shall include (but not be limited to) such costs and expenses incurred in relation to:

- (a) internal management time of ACL or any Landowner;
- (b) any matter referred to or contemplated by the MDA, any Plot DA, any Plot Lease any documents referred to in any of them, and any ancillary documents thereto;
- (c) any matter referred to or contemplated by any Existing Agreements (including any Further Agreements);
- (d) any 'Change' (save to the extent such costs have been separately reimbursed or paid direct by the Developer) (*paragraph 31 below discusses 'Changes'*);
- (e) all reasonable professional and legal fees payable by ACL or any Landowner;
- (f) ACL Works Costs (as defined and calculated in accordance with the terms of the Value Capture Agreement);
- (g) any costs (whether incurred by ACL or any Landowner) in dealing with any title issues relating to the Arden Cross Site save to the extent they have been separately reimbursed or paid direct by the Developer; and
- (h) any costs (whether incurred by ACL or any Landowner) in dealing with the grant of easements and licences for the Development.

- 14.6 ACL bears its own ongoing costs but Muse must allocate them to a plot appraisal and the proportion so allocated is paid to ACL on completion of a Plot Drawdown.
- 14.7 The ACL Ongoing Costs are to be apportioned to each Plot within the Development in a manner which is consistent with the provisions of the Value Capture Agreement and as anticipated by the Business Plan.
- 14.8 An annual budget of these will be provided to Muse so that it can make representations on such costs (which ACL will have due regard to (but not be bound by)).
- 14.9 ACL will provide Muse with a monthly schedule of the expenditure incurred (on an open book basis) and keep a running record of these costs.
- 14.10 ACL are under an obligation to recover VAT on such costs (so that VAT does not form part of the ACL Ongoing Costs).
- 14.11 Muse and ACL will undertake a review of these costs on a quarterly basis. The purpose of this exercise is to allow the parties to look back on expenditure incurred or committed and look forward in assessing likely expenditure so as to collaborate in ensuring there is no duplication of effort between them, and that the expenditure is efficient and in accordance with the annual budgets.

## **15 PLANNING**

### ***Local Plan Review/Very Special Circumstances Application***

- 15.1 As the revised Local Plan has not been and may not be adopted by the time the 'Initial Planning Application' is to be submitted, Muse will pursue a Very Special Circumstances Application but if by the time the Initial Planning Application is ready to be submitted, the revised Local Plan has been adopted, Muse will consider what (if any) amendments need to be made to the Initial Planning Application to take account of the same.

### **Initial Planning Application**

- 15.2 The Initial Planning Application is a planning application for an outline or hybrid planning permission in respect of the Development prepared by the Developer in accordance with the Planning Strategy appended to the MDA.

*Note that the aim is to ensure that the planning permission obtained by Muse satisfies the requirements of the LOA, as the grant of an acceptable planning condition is a precursor to the grant of the Headlease. We will separately report to you on any further changes which may be required to the LOA around planning, now that the MDA terms are largely settled and we are able to undertake a comparison between the two agreements.*

- 15.3 Muse are to prepare and submit the draft Initial Planning Application to ACL for approval as soon as reasonably practicable after exchange of the MDA and within two years of the date of the Grant Funding Agreement (being a binding agreement for the Grant Funding) (see paragraph 32 for further details of the latter).

*Note the HoTs provided that there was no obligation on the Developer to start to prepare the Initial Planning Application until such time as the following criteria were satisfied:*

- (a) *there being no material adverse change to the timetable for the updated Local Plan;*
- (b) *the 'CIL Exemption' being granted;*
- (c) *there being no material adverse change to the timetable for the hand back of land from DfT; and*
- (d) *the Surplus Land option agreements and Easement Suite (pursuant to the Collaboration Agreement) being sufficiently advanced or exchanged,*

*In addition, Muse were to undertake a review of the status of the project generally, in full transparency with ACL, and if the parties jointly agreed (each acting reasonably) that there were any other 'red flags' which justified a delay in moving forward to the preparation of the Initial Planning Application then the project would be paused (for up to 12 months) with the parties then seeking to resolve those identified 'red flags'. This 'red-flag' procedure has now been dispensed with. A Post-Planning Viability Condition (see paragraph 17 below) now applies.*

- 15.4 Muse cannot include any land within the Initial Planning Application other than Schedule 16 Land without ACL's prior written approval (acting reasonably). No Retained Interests are to form part of the Initial Planning Application without the prior written consent of ACL (in its absolute discretion).
- 15.5 ACL and Muse are to act collaboratively and reasonably to agree the draft Initial Planning Application within 30 Business Days of Muse submitting the same to ACL. ACL can refuse to consent to the Initial Planning Application on the grounds of any Reserved Matter.
- 15.6 The obligation on Muse to submit the Initial Planning Application does not arise until such time as the "**CIL Exemption**" has been obtained (the "**Initial Planning Application Submission Condition**") (or the requirement to do so has been waived by ACL in writing (in its absolute discretion)). The CIL Exemption is defined as an exemption being granted, it being charged at a 'zero rate', or it being mitigated sufficiently to the sole satisfaction of ACL (and confirmed as such by ACL in writing) so as not to hinder viability.
- 15.7 Muse are to submit the Initial Planning Application as soon as is reasonably practicable following the later of:
- (a) agreement of the Initial Planning Application between the parties; and

(b) satisfaction (or waiver) of the Initial Planning Application Submission Condition,

and by the Planning Application Longstop. The latter is the date two years from the date of the Grant Funding Agreement or such later date as the Parties agree in writing between them (acting reasonably). Failure to do so gives rise to a termination right (*see termination reporting at paragraph 36.3*).

- 15.8 Following submission of the Initial Planning Application, the Developer is to use all reasonable endeavours to obtain the Initial Planning Permission in accordance with the Planning Strategy and to provide regular updates and reports to ACL in respect of the same. The Developer must consult with ACL in respect of any changes to the Initial Planning Application.

#### **Further Planning Application/ Planning Application for a Plot**

- 15.9 Prior to submission of a planning application for a Plot ("**Plot Planning Application**"), the parties are to agree the Initial Plot Development Plan (*see paragraph 18.4 for details of the latter*).
- 15.10 ACL and the Developer are to act collaboratively and reasonably to agree the Plot Planning Application by no later than 15 Business Days following the Developer submitting the same to ACL. In agreeing the Plot Planning Application, ACL can refuse approval on the grounds of any Reserved Matter.
- 15.11 Muse is to submit any Plot Planning Application within 30 business days of its agreement and thereafter use all reasonable endeavours to obtain the Plot Planning Permission in accordance with the Plot Planning Application and Planning Strategy, providing ACL with regular updates (at least monthly) and consulting with ACL over any changes.

#### **Planning Disputes**

- 15.12 Save in respect of a Reserved Matter, if there is a dispute as to the form of a planning application which lasts longer than 10 business days, then either party can refer the matter to senior representatives for resolution or (failing that) to an expert.

#### **Planning Appeals**

- 15.13 Muse can appeal a planning refusal, non-determination or any conditions attaching to a planning permission ("**Appeal**") and is obliged to do so where a Planning Counsel advises there is a more than likely prospect of success (as a result of such action) of securing an 'Acceptable Planning Permission'.
- 15.14 Muse must indicate within 18 months of submitting the Initial Planning Application whether it intends to Appeal.
- 15.15 The Developer is to indemnify ACL (and the Landowners<sup>9</sup>) on a full indemnity basis against all proper and reasonable legal fees and other costs, expenses and liabilities incurred by ACL (and/or the Landowners) in relation to any Appeal including any costs, expenses, damages, losses and liabilities awarded against them.

#### **Acceptable Planning Permission**

- 15.16 ACL and Muse are to notify the other within 15 business days following receipt of any planning decision notice as to whether in their reasonable opinion it constitutes an 'Acceptable Planning Permission'.

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<sup>9</sup> Note that whilst this indemnity is phrased as extending to the Landowners they have no contractual nexus with the Developer for such purposes. The loss would in essence need to be suffered by ACL to be recoverable.

15.17 An 'Acceptable Planning Permission' is a Planning Permission and any associated 'Planning Obligation' (*defined below at paragraph 15.20*) which is free from "**Onerous Conditions**".

15.18 The Onerous Conditions are a condition or term which would:

- (a) For ACL:
  - (i) make the planning permission personal to any person or class of persons or limiting occupation or use of all or a material part of the Development to some designated occupier or class of occupier (whether by reference to geographical criteria or otherwise);
  - (ii) make the planning permission limited in time (other than in relation to implementation of that planning permission);
  - (iii) prevent the carrying out of the Development and/or use or occupation of the Development unless a condition is complied with which cannot be satisfied without the agreement of a third party which is unlikely to be obtained without unreasonable costs or on terms or within a time that is unreasonable in the circumstances;
  - (iv) materially and detrimentally affect the ability to develop any subsequent Plot within the Development; or
  - (v) not be in accordance with the Objectives or the Business Plan;
- (b) For the Developer – the same conditions apply as for ACL above save that the onerous condition described in 15.18(a)(iii) above also refers to 'without the agreement of a Landowner' (i.e. in addition to a third party).

15.19 The second tranche of the ACL Historic Costs (as set out in paragraph 14.3(b) above) is payable on the "**Trigger Date (Planning)**" which is the earlier of:

- (a) the date of adoption of the updated Local Plan; or
- (b) the date on which an Acceptable Planning Permission (free of challenge) pursuant to the Initial Planning Application is obtained. This date cannot occur until there is a 'CIL Exemption' acceptable to ACL.

*Note that the inclusion of Developer Onerous Conditions was a compromise position, ACL's view initially being that the Developer should not have the ability to declare a planning permission unacceptable on the grounds of an onerous condition as the Developer would be leading on the planning and should obviously be steering a course to avoid any 'onerous conditions'. Muse resisted this on the basis they could not control what conditions would actually be imposed. You will note that the grant of an 'Acceptable Planning Permission' pursuant to the Initial Planning Application is a trigger for payment of a tranche of ACL Historic Costs. There is a risk (albeit one which ACL can mitigate by remaining closely involved in the progress of the Initial Planning Application) that the Developer uses these Onerous Conditions to delay payment. This risk has also been mitigated so far as possible by limiting the remit of the Onerous Conditions (by making them as objective as possible) and not agreeing certain onerous conditions (as proposed by the Developer) such as 'having an impact on viability'.*

### **Planning Obligation**

15.20 A 'Planning Obligation' is a s106 agreement or similar, or unilateral undertaking with the local planning or other authority.

- 15.21 Muse are to use reasonable endeavours to negotiate and conclude the terms of any Planning Obligation required to secure the grant of planning, supplying ACL with the heads of terms for such agreements and the first and all subsequent material drafts.
- 15.22 Muse and ACL are to work together to ensure that the Planning Obligation separates out liabilities such that they are phased to ensure neither is dependent on the other for compliance. Where this is not possible then the parties are to put in place reciprocal agreements to document the required arrangements between them for the Development.
- 15.23 Before finalising the terms of any Planning Obligation under which ACL or any Landowner are to have any liability, or are to sign, Muse must provide ACL with a copy of the final draft and allow ACL at least 20 business days to review the same (in conjunction with the Landowners) and must obtain ACL's written approval to the final form of that Planning Obligation. ACL can refuse consent on the grounds of any Reserved Matter. The MDA also sets out certain provisions which are to appear in a Planning Obligation (these being largely the same as those stipulated in the LOA).
- 15.24 Once agreed, ACL shall itself (where required) and shall procure that the relevant Landowners shall, enter into any Planning Obligation required to obtain an Acceptable Planning Permission.
- 15.25 Neither ACL (nor any Landowner) will be obliged to enter into a Planning Obligation if it would mean ACL and/or any Landowner would be in breach of any Existing Agreements.
- 15.26 The Developer is to make all payments due and discharge any liabilities on the part of ACL and/or the Landowners which arise to be discharged pursuant to a Planning Permission and/or Planning Obligation and pay any CIL, and is to indemnify ACL (and/or the Landowners<sup>10</sup>) (and their successors in title) in respect of all claims, losses etc incurred by them.

## **16 STATUTORY AGREEMENTS**

- 16.1 Statutory Agreements are defined as any highways or utilities agreements required in respect of the Development.
- 16.2 The provisions of paragraphs 15.22 to 15.26 apply equally to agreeing any Statutory Agreements.

*Note that an amendment will be required to the LOA to reflect this process and require the Landowners to enter into any Statutory Agreements.*

## **17 POST PLANNING VIABILITY CONDITION**

- 17.1 Within six months of an Acceptable Planning Permission being obtained in respect of the Initial Planning Permission which is free of challenge, Muse are to update the Financial Model and serve the same on ACL, together with a written statement as to whether or not it considers the Post Planning Viability Condition to be satisfied.
- 17.2 The Post Planning Viability Condition is satisfied if following that updated Financial Model. Phase 1<sup>11</sup> remains "**Viable**". Phase 1 is 'Viable' if it generates:
- (a) a Land Value which is more than £0 (zero); and
  - (b) profit on cost to the Developer of 15% or more,

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<sup>10</sup> See footnote 10 above.

<sup>11</sup> Phase 1 is fluid in that it is whatever is the first phase of development identified in the Business Plan.

taking into account the 'allocation of funding which is secured by means of a signed grant agreement or approval from a grant provider confirming the definitive allocation of funding to the Development'.

- 17.3 If the parties agree that Phase 1 is not Viable, they are to collaborate in good faith to consider whether the MDA, the Development or any other matters pertaining to the Development might be varied so as to render Phase 1 Viable in accordance with the Objectives. The parties are to continue to do this for a period of 6 months following any event of failure to achieve a viable position and Muse are to use all reasonable endeavours to keep the Initial Planning Permission extant during these discussions
- 17.4 If within five years of achieving an Acceptable Planning Permission (which is free of challenge) in respect of the Initial Planning Permission:
- (a) the Parties have not reached agreement that Phase 1 is Viable, and
  - (b) the Initial Planning Permission is no longer extant,
- then ACL may terminate the MDA.
- 17.5 If within seven years of achieving an Acceptable Planning Permission (which is free of challenge) in respect of the Initial Planning Permission, ACL and the Developer have not reached agreement that Phase 1 is Viable then either party may terminate MDA.
- 17.6 The third (and final) tranche of the ACL Historic Costs (*as set out in paragraph 14.3(c)*) is payable on the "**Trigger Date (Viability)**" which is the later of:
- (a) the Trigger Date (Landowners' Option Agreement);
  - (b) the Trigger Date (Planning); and
  - (c) the Post Planning Viability Condition Date.

## **18 PLOT DEVELOPMENT PLAN AND PLOT APPRAISAL**

- 18.1 In accordance with the Phase Sequencing Plan (being the document that identifies the Plots and the sequence for them being brought forward) and as soon as is reasonably practicable once the Initial Planning Permission is obtained (and within six months of that), the Developer is to prepare and circulate to ACL a Plot Development Plan for Phase 1.
- 18.2 Thereafter the Developer is to prepare and circulate such further Plot Development Plans for further Plots/phases of the Development in accordance with the Phase Sequencing Plan and the Business Plan.

### ***Initial Plot Development Plan***

- 18.3 A "**Plot Development Plan**" is a proposal for the development of a Plot and is to be consistent with the Objectives, the Business Plan and the Infrastructure Delivery Strategy and will comprise the key principles of the development of the Plot concerned including (but not limited to) the:
- (a) the proposed scheme for the development of the Plot;
  - (b) a business plan for the relevant Plot to include a Plot Appraisal (accompanied by a market commentary (*note this replaces the 'Assumptions Document' as referred to in the HoTs*) in respect of the proposed development of the Plot concerned). The proforma Plot Appraisal is appended to this report at Annex 4;

- (c) proposals for the responsibility and funding of any Plot development works;
- (d) whether the Developer intends to develop the Plot on a speculative basis or by way of a forward fund;
- (e) a programme for the development and phasing of the Plot;
- (f) whether the proposed Plot development is authorised by the Initial Planning Permission or whether any further planning approvals or other consents or statutory agreements are required and their details;
- (g) details of all rights required (whether by licence, easement or otherwise) in respect of land not comprised within the Plot to carry out (and subsequently use) the development of the Plot and any associated infrastructure works;
- (h) the letting and/or sales strategy for the Plot;
- (i) the proposed form of Plot Lease and Plot DA for the Plot and a plan showing the extent of the Plot; and
- (j) any other documents, surveys, reports or other information which ACL may reasonably request,

which together shall be the "**Initial Plot Development Plan**".

- 18.4 Following receipt by ACL of an Initial Plot Development Plan (and any additional information required by ACL), it has 15 business days to indicate its in principle approval or otherwise of that Initial Plot Development Plan, and the proposed Land Value for that plot as shown in the plot appraisal supplied ("**Initial Plot Appraisal**"). Whilst ACL is to act reasonably in approving the Initial Plot Development Plan (-it being reasonable for it to refuse approval on the grounds of a Reserved Matter), and in agreeing the calculation of Land Value, ACL is under no obligation to accept the proposed Land Value and agreement or otherwise of the Land Value is in ACL's absolute discretion.

***Process for establishing the Initial Land Value***

- 18.5 The Developer is to prepare the Plot Appraisal and calculate the 'Land Value' (*see reporting at paragraph 20 for details*).
- (a) If the calculation of the Land Value as part of the Initial Plot Appraisal produces a positive Land Value which is acceptable to ACL (taking into account the liability to pay the "**VCM Sum**" (*i.e. the sum payable to the UGC pursuant to the value capture mechanism in the Value Capture Agreement*)) then this becomes the Initial Land Value for the purpose of the Initial Plot Development Plan.
  - (b) If the calculation of the Land Value as part of the Initial Plot Appraisal produces a negative or nil Land Value then the parties are to work together co-operatively to review the Initial Plot Development Plan and its various inputs to agree a way forward.
  - (c) If the calculation of the Initial Land Value as part of the Initial Plot Appraisal produces a positive Land Value which is not acceptable to ACL (again taking into account the liability to pay the relevant VCM Sum) then ACL (acting reasonably) is to provide Muse with a figure for a revised Land Value which is acceptable to ACL (the "**Required Land Value**"). Muse is then to review the Initial Plot Development Plan to ascertain how the Required Land Value can be achieved and advise ACL accordingly of that, supplying ACL with a revised Plot Appraisal together with any updated information to form part of the revised Initial Plot Development Plan relevant for such purposes. ACL indicates whether it approves the same. This process is repeated as often as is necessary until

the Required Land Value is achieved and ACL (in its absolute discretion) provides its in principle approval (in writing) to the Initial Land Value in the Initial Plot Appraisal and the Initial Plot Development Plan.

*Note the HoTs provided that in the event that the Land Value was not acceptable to ACL, that the parties would get 3 (advisory only) valuations for the Land Value. This procedure has been dispensed with.*

**Developer next steps**

- 18.6 Following in principle approval of the Initial Plot Development Plan and Initial Land Value by ACL (in writing), the Developer is to promptly proceed to:
- (a) obtain a Plot Planning Permission and discharge any pre-commencement conditions;
  - (b) obtain all other "**Necessary Consents**" (being necessary consents required for the Development (or relevant part thereof));
  - (c) obtain tenders for the development of that Plot from Approved Contractors; and
  - (d) do all reasonable other matters so as to ascertain the costs of developing the Plot.

**Updated Plot Development Plan and Updated Plot Appraisal**

- 18.7 Once the Developer has actioned the matters referred to in paragraph 18.6 above and has obtained a Plot Planning Permission (which is free of Onerous Conditions and free of challenge), then within 15 business days the Developer is to produce and circulate to ACL an updated Plot Development Plan, updating the information contained in the Initial Plot Development Plan as required ("**Final Plot Development Plan**"). This is to include an updated Plot Appraisal ("**Final Plot Appraisal**") which is to include an updated VCM Sum calculation and Land Value, and indicate whether the Developer proposes to forward fund the development.
- 18.8 If a forward fund is proposed then the Final Plot Development Plan is to include the heads of terms for that along with the final form of legal documentation for the forward fund ("**Forward Fund Documentation**"). The parties are then to agree (acting reasonably) on light of that whether there should be a change to: the 'Calculation Date' for the purpose of calculating Super Profit (see paragraph 29 below for details of the latter); the principles to apply to the calculation of any Super Profit for the Plot; and any changes to the proposed form of Plot Lease and/or Plot DA (or other documents relevant to that Plot). Disputes are referred to senior representatives for resolution.
- 18.9 ACL is to act reasonably in approving the Final Plot Development Plan and Final Plot Appraisal (albeit it can withhold consent on the ground of a Reserved Matter). ACL has 20 business days following receipt of all information relevant to a Final Plot Development Plan to indicate whether it agrees the same. The provisions as referred to above at paragraph 18.5 apply to agreeing the final Land Value until ACL approves it in its absolute discretion.
- 18.10 Note that ACL does not have to agree the Land Value in the Final Plot Appraisal until it is satisfied that the VCM Calculation and hence the VCM Sum payable pursuant to the Value Capture Agreement is also agreed. To this end ACL is responsible for keep the parties to the Value Capture Agreement apprised of discussions relevant to the calculation of the VCM Sum.
- 18.11 The Final Plot Development Plan (as agreed between ACL and the Developer) will satisfy the 'Plot Development Plan Condition' (being one of the pre-conditions to the grant of a Plot Lease) if:
- (a) the Funding Strategy and funding sources are agreed for the Plot;



- (b) the Updated VCM Sum is agreed and ACL has procured consent to the removal of the restriction on title (if any) insofar as it relates to the Plot in accordance with the terms of the Value Capture Agreement;
- (c) the Land Value in respect of that Plot is agreed by ACL (in its absolute discretion); and
- (d) the Final Plot Appraisal forming part of the agreed Final Plot Development Plan shows that the "**Developer Priority Return**" is achievable for the Plot (unless the Developer has elected to accept a lesser return).

*The Developer Priority Return is the sum calculated by applying 15% to 'Allowable Development Costs' (being the aggregate of Plot Development Costs and Agreed Global Development Costs but excluding all ACL Ongoing Costs and the Project Management Fee) as set out in the Final Plot Appraisal.*

*Please note that whilst the actual Project Management Fee payable to Muse is excluded from the category of cost to which 15% is applied for the purposes of calculating the Developers Priority Return, the underlying costs used to calculate the Project Management Fee do also form part of the category of costs used to calculate the Developer's Priority Return. We have highlighted this to you and you have indicated that this is agreed.*

- 18.12 Once approved the Final Plot Development Plan will remain valid for a period of 60 Business Days. If all of the pre- conditions to the grant of a Plot Lease are not satisfied within this timeframe then the Final Plot Development Plan has to be updated and reissued and the process for agreeing it repeated.

*Note that it is helpful (on a project as complicated as this) for ACL to have a discretion as to whether to agree the proposed Land Value or not, as it allows ACL the ability to influence how matters proceed (given legislating for all eventualities would be extremely difficult). If the Land Value is not agreed then a Plot Lease cannot be drawn down and development cannot proceed.*

## **19 VCM SUM**

- 19.1 As part of the Parties agreeing the Initial Plot Development Plan (and in accordance with the procedure set out in the Value Capture Agreement and before the due date for payment of any VCM Sum), Muse is to prepare and submit the calculation of the VCM Sum to ACL and provide such further assistance as ACL shall reasonably require to agree the Initial VCM Sum with the UGC.<sup>12</sup>
- 19.2 ACL is to use its reasonable endeavours (in consultation with the Developer) to agree the VCM Sum calculation with UGC.
- 19.3 In producing the Final Plot Development Plan, Muse is to update the VCM Sum calculation and again assist ACL in agreeing the VCM Sum with the UGC.
- 19.4 ACL is to pay any VCM Sum due in respect of a plot disposal.

## **20 LAND VALUE**

- 20.1 The proforma Plot Appraisal is to be used to calculate Land Value.
- 20.2 The appraisal will show the Plot Development Costs and the proportions of the various heads of Global Development Costs allocated to that appraisal. The appraisal will also show the

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<sup>12</sup> (or SMBC, where UGC has transferred its obligations to SMBC)

expected 'Gross Development Value'<sup>13</sup> and the net realisable value of the completed development of the Plot.

- 20.3 The allocation of Plot Development Costs and the apportionment of Global Development Costs to a Plot is to be agreed between ACL and Muse and is to be consistent with the Business Plan and the provisions of the Value Capture Agreement relating to the recovery of the "ACL Works Costs"<sup>14</sup>
- 20.4 The Land Value will be calculated by way of a 'Red Book Valuation' for which contracts for the sale of the relevant Plot might expect to be exchanged at the relevant time.
- 20.5 Note that whilst the intention is to amortise Global Development Costs across all phases of the Development (as that is what the Value Capture Agreement envisages), each of Muse and ACL can propose to the other (approval of which shall be within their absolute discretion) that any Plot Appraisal may provide for the over-recovery or accelerated recovery of the Global Development Costs as opposed to an apportionment of the same.

*In essence, ACL would only agree to this if it was allowed as part of calculating and agreeing the VCM Sum with UGC.*

- 20.6 The agreed final Land Value is paid by Muse to ACL on the grant of a Plot Lease and Plot DA in respect of the Plot.

*Please check and confirm that the provisions which apply to calculate Land Value accord with what you intend. We recommend you run some worked examples applying the provisions in question to check they produce the anticipated outcomes.*

## **21 PLOT LEASE AND PLOT DA**

- 21.1 The HoTs provided for the phased draw down of Plot Leases but did not envisage a Plot DA per each Plot development. This was a later request from the Developer and was agreed to on the basis that Muse Places Limited will remain the contracting party with ACL on all Plot DAs.
- 21.2 Following exchange of the MDA the parties will need to agree the template form of Plot Lease and Plot DA (acting reasonably). These are not appended to the MDA on the basis that the parties needed more time to agree the terms of the same and also because in respect of the Plot Lease, it was felt the terms of the Headlease needed to be further finalised. The parties will seek to agree the form of Plot Lease and Plot DA no later than 15 months from the date of the MDA.

*Note there is no ability to terminate the MDA if the parties are unable to agree the sublease proforma. The expectation is that the parties will be commercially motivated to agree the same in order to facilitate development.*

*Note that the Developer did produce a form of Plot DA for our review but it was very light on development obligations and hence its review was parked to allow the parties to focus on finalising the form of the MDA. We did try to agree certain development obligations in the MDA which would be of general application but these were struck out on the basis 'the Plot DA would*

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<sup>13</sup> Gross Development Value for any Plot is the gross investment value (before deduction of usual purchaser's costs) reasonably expected to be realised from the sale in the open market of the completed Development comprised on such Plot in accordance with the Plot Development Plan and the terms of the MDA assuming that such Development will be carried out and units constructed and disposed of in accordance with a reasonable and prudent construction and disposal programme according to prevailing market conditions at the time.

<sup>14</sup> (these are the costs incurred to enable commencement of the Development, infrastructure works costs, and the "Initial Balance" (the sum of four million twenty thousand pounds (£4,020,000) incurred prior to 31st December 2020 plus any reasonable and proper costs incurred by ACL (and evidenced to the reasonable satisfaction of UGC) following that date and prior to the date of this Value Capture Agreement)).

*deal with such matters'. It therefore remains to be seen to what extent Muse will offer up development obligations to ACL.*

*Note also that there is a slight risk that ACL may not secure all the provisions it would ideally like in the form of a Plot Lease given the sublease terms have not yet been negotiated. ACL would be looking to the Objectives to try and ensure it achieves a balanced form of sublease with some controls in there for it as landlord.*

21.3 The HoTs envisaged that the Developer would be the tenant pursuant to any Plot Lease. However it was a requirement of the Developer that they be able to nominate an "**Approved Funder**" to take a Plot Lease. An Approved Funder is any reputable and creditworthy financial institution or other person or entity providing funding for the Development (whether as a whole or in respect of any Plot(s)) approved (in writing) by ACL (acting reasonably). ACL can withhold consent where such person or entity:

- (a) is not (in its reasonable opinion (when assessed together with any guarantor or other security offered for or by it)) of sufficient financial standing to enable it to comply with the tenant's covenants in the Plot Lease; or
- (b) does not have experience of funding a development of a size, scope and complexity as the Development,

and is not a Prohibited Person.

## 22 PLOT DRAWDOWN AND PLOT DRAWDOWN CONDITIONS

### ***Plot Drawdown Conditions***

22.1 Plot Drawdown is the grant of a Plot Lease and Plot DA in respect of a Plot.

22.2 The following are pre-conditions to each Plot Drawdown:

- (a) **Headlease Condition:** this is satisfied when ACL has a Headlease in respect of the Plot in question, vacant possession has been obtained from HS2 or DfT (as applicable), and any agreed site restoration works have been carried out by HS2 in accordance with a scheme of restoration.
- (b) **Plot Development Plan:** this is satisfied when the updated Final Development Plan for the relevant Plot is agreed.
- (c) **Building Contract and Professional Team Condition:** this is satisfied when:
  - (i) The approved building contract is entered into for the Plot and a warranty provided in favour of ACL and the Landowners.
  - (ii) The Professional Team is appointed as required for the Plot and warranties from the 'Key Professional Team' (see *paragraph 27.9*) provided in favour of ACL and the Landowners.
- (d) **Necessary Consents and Planning Condition:** this is satisfied when there is an acceptable planning permission for the Plot (which is free of Onerous Conditions and free of challenge), pre-commencement conditions have been satisfied, and all necessary consents/statutory agreements/Planning Obligations for commencement of development have being obtained.

- (e) **Plot Lease Condition:** this is satisfied when:
- (i) The form of Plot Lease and Plot DA are agreed for the Plot (including a Land Registry compliant plan of the Plot).
  - (ii) A Licence to Underlet has been agreed with the Landowners (pursuant to the Headlease).
  - (iii) all statutory agreements required for the Plot are agreed.
  - (iv) all rights required (whether by licence, easement or otherwise) in respect of land not comprised within the Plot as required to carry out (and subsequently use) the development of the Plot are agreed.

22.3 For the first Plot the Post Planning Viability Condition Date must also have occurred.

22.4 Muse are to use reasonable endeavours to satisfy the Plot Drawdown Conditions in respect of each Plot Drawdown (other than the Headlease Condition where Muse shall provide ACL with reasonable assistance towards satisfying the same). These conditions are to be satisfied as soon as reasonably practicable in accordance with the Business Plan (once agreed) and in accordance with the other terms of the MDA.

22.5 Each party must notify the other when a Plot Drawdown Condition is satisfied.

#### **Plot Drawdown**

22.6 Muse may only serve a Drawdown Notice in respect of the relevant Plot once the Unconditional Date has occurred and then within 10 Business Days of that Unconditional Date.

22.7 Muse cannot serve a Drawdown Notice in respect of a Plot where it has received written notice of:

- (a) an 'event of default' pursuant to the MDA; or
- (b) breach of a material covenant in relation to any Plot Lease which has already been granted (*note: this limb falls away once the Plot in question has achieved practical completion*); or
- (c) a material breach of any Plot DA.

until such time as it is agreed or determined that the default /breach has been remedied, or a remediation plan for doing so has been agreed (in writing) between the parties.

### **23 PLOT LEASE COMPLETION**

Completion of the Plot Lease occurs 10 business days following service of a Drawdown Notice. On completion:

- (a) The Plot Lease will be granted to the Developer (or an Approved Funder).
- (b) The Developer shall enter into the Plot DA;
- (c) The Developer shall pay to ACL the Agreed Land Value and the ACL Ongoing Costs as apportioned to the Plot.

## 24 TITLE AND INVESTIGATIONS

- 24.1 Muse has undertaken some title due diligence prior to exchange of the MDA<sup>15</sup>. Muse will (as a part of the relevant Plot Development Proposal) further investigate title and carry out searches and enquiries in respect of the relevant Plot to ascertain whether there are any matters which would materially hinder (whether commercially, physically or both) the Development of the Plot in accordance with the Masterplan and the Plot Development Proposal ("**Development Constraints**").
- 24.2 Muse can ask ACL for reasonable assistance to help resolve any Development Constraints, and ACL is to use all reasonable (but commercially prudent) endeavours to so assist but at Muse's cost. Such costs will be reimbursed by Muse to ACL as and when ACL invoices for the same provided they accord with budgets agreed for them at the time.

*Note that ACL will likely need the co-operation of the Landowners to deal with Development Constraints.*

- 24.3 ACL is to respond to any title requisitions and pre-completion enquiries raised by Muse in relation to a Plot and to assist with the registration of Plot Leases. These costs will be an ACL Ongoing Cost.

## 25 DEVELOPER OBLIGATIONS

### **Project Management**

- 25.1 Muse has been providing and shall continue to provide 'Agreed Services' in exchange for the Project Management Fee (see paragraph 13.17 above). The "**Agreed Services**" are defined simply as all activities carried out by Muse pursuant to the MDA from 8 November 2022 (being the date on which they were appointed as development partner) and prior to the first Plot Drawdown (but excluding any works and/or services carried out for a third party relating to delivery of infrastructure).
- 25.2 *Note that aside from the specific obligations imposed on Muse in the MDA (e.g. to obtain the Initial Planning Permission) there is no list of specific services which Muse are required to provide for the Project Management Fee.*
- 25.3 In the providing the Agreed Services the Developer shall:
- (a) (and this also applies to the wider Developer obligations under the MDA) warrant that they have and will continue to act in the best interests of the Development and for the benefit of the Development with the reasonable care, skill, prudence and diligence that a prudent and competent development manager experienced in projects of a comparable size, scope, type and complexity as the Development would adopt;
  - (b) report to ACL on the due performance by the Professional Team and the Building Contractor of their respective obligations owed under their appointment;
  - (c) at all times act within the authority set out in the MDA;
  - (d) use reasonable endeavours to achieve parties' objectives as set out in Business Plan in an efficient and timely manner;
  - (e) seek consents and approvals under the MDA in good time (save in the case of emergency);

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<sup>15</sup> Note that some of the title enquiries remain to be resolved.

- (f) dedicate and maintain all appropriate resources reasonably required to provide the Agreed Services;
- (g) consult with ACL as frequently as may be reasonably necessary in order to fulfil those aspects of the Business Plan to which the Agreed Services relate;
- (h) give prompt notice to ACL of any fact or circumstance which in the reasonable opinion of the Developer is likely to delay or prevent the Developer from carrying out the Agreed Services;
- (i) keep ACL informed of all matters which may be of interest to a prudent owner of a property in the nature of the Property;
- (j) perform the Agreed Services in such a manner as not to cause the ACL to be in breach of any Title Matters, Statutory Requirements, Necessary Consents or the Existing Agreements; and
- (k) not make any profit or commission out of the provision of the Agreed Services, other than the Project Management Fee to be accrued to the Developer.

25.4 Muse is to maintain (as a minimum):

- (a) professional indemnity insurance of at least £10,000,000; and
- (b) public liability insurance in the sum of no less than £10,000,000 and employer's liability insurance in the sum of no less than £5,000,000,

(in all cases on an each and every claim basis or (where such basis of cover is not available at reasonable commercial rates in the prevailing market) in the aggregate) until the date six years after the date of termination of the MDA.

25.5 In the event that ACL has a funder and/or there is any public sector grant funding and such funder(s) require(s) a duty of care from Muse in respect of the Agreed Services then Muse will enter into a duty of care in respect of the funder.

### ***Developer Obligations***

25.6 We sought to include a set of general obligations on Muse in respect of the Development. These were heavily resisted by Muse who maintain that the Plot DAs should contain any such obligations.

25.7 Accordingly, ACL should be careful not to allow Muse on site for any enabling works, site investigations or infrastructure works etc without first agreeing the terms of a suitable document with Muse to regulate the same. Any Plot development should also only occur once a signed Plot DA is in place. This is so ACL has recourse against Muse in respect of any works it undertakes on site.

25.8 The limited obligations provided by Muse in respect of the Development generally are contained in Schedule 3 of the MDA and are as set out below. Once a Plot DA is entered into then the relevant Plot DA prevails.

### **25.9 Steering Groups/Boards**

Muse is to participate in steering groups alongside ACL (who must also participate in the same) at the reasonable written request of ACL. Some of these steering groups are listed in the MDA. Others will be agreed from time to time in the Business Plan.

### **25.10 CIL Exemption Work**

Muse will lead on (and pay for) the work to obtain the CIL Exemption and keep ACL informed and updated in respect of the same. Any costs incurred by ACL in this regard will be an ACL Historic Cost or ACL Ongoing Cost.

#### 25.11 Infrastructure

- (a) Muse is (in consultation with ACL) to identify the infrastructure required for the Development (and the development of Plots) and the phasing thereof and will update the Infrastructure Delivery Strategy from time to time (as required under the VCA and the MDA but at least annually) and submit the Infrastructure Delivery Strategy to ACL for approval. (ACL can withhold approval on the grounds of a Reserved Matter.)
- (b) As a part of identifying the infrastructure works, Muse is to identify any structural infrastructure which is common to more than one Plot ("**Strategic Infrastructure**"). Strategic Infrastructure will not be included in any Plot Lease.
- (c) Prior to undertaking any infrastructure works the parties will agree and enter into early works licences.
- (d) The relevant Infrastructure Works will not commence before both a building contract and appointments of the Key Professional Team are in place for such works and warranties from them delivered to ACL

#### 25.12 Estate Management

- (a) As soon as reasonably practicable following the date of the MDA Muse will prepare an estate management strategy for the Development to include a plan for maintenance, repair, use and ownership of all common areas, public realm and Strategic Infrastructure ("**Estate Management Strategy**") and submit the same to ACL for approval. ACL is to act reasonably in agreeing the same (save that ACL can withhold approval by reason of any Reserved Matter).
- (b) As part of considering the Estate Management Strategy, the parties will consider whether that should include the grant of long leases at nil premium of the Strategic Infrastructure to any entity that is established for the purposes of managing and maintaining the Strategic Infrastructure ("**Strategic Infrastructure Leases**") and the ownership structure of such entity, or how the ownership of Strategic Infrastructure should be dealt with (as well as considering other reasonable options for the ownership and maintenance of Strategic Infrastructure).
- (c) The parties are to act reasonably in agreeing the Estate Management Strategy and to consider whether the MDA needs to be amended to facilitate the implementation of that strategy (such as the grant of Strategic Infrastructure Leases). The Estate Management Strategy is to be agreed as soon as reasonably practicable and no later than the date of submission of the Initial Planning Application.

#### 25.13 Site Visits and Information

- (a) ACL can enter upon any part of the Development under the control of Muse to review the progress of the Development.
- (b) Muse is to give ACL not less than 5 working days' notice of any key site meetings and to allow ACL to attend.

- (c) Muse is to provide ACL with copies of all notices or material correspondence in respect of the Development in so far as the same affect ACL and/or a Landowner, and will provide such other information as ACL requests.

#### **25.14 Reports**

Muse will (in conjunction with ACL) prepare a report for all ACL Board meetings from time to time.

#### **25.15 Variations**

Once scheme proposals have been approved as part of a Final Plot Development Plan, Muse can only make limited changes to them without the consent of ACL

#### **25.16 Practical Completion**

Muse is to give ACL at least 5 working days' notice of the inspection of any infrastructure works (or any other works undertaken pursuant to an early works licence) to ascertain that practical completion has been achieved. ACL can attend and make representations to which Muse is to have due regard (but not be bound by).

#### **25.17 The Development**

Muse is to procure that the Development is commenced, carried out and completed as soon as reasonably practicable in accordance with the relevant Business Plan; and to keep ACL informed on progress and any material delays.

### **26 KEY PERSONS**

- 26.1 Each of Muse and ACL are to engage an adequate number of competent, suitably qualified and experienced personnel reasonably required for the proper performance of their obligations under the MDA.

- 26.2 Each party is also required to have certain 'key persons'.

#### ***Developer***

- 26.3 The Developer's Key Persons are Maggie Grogan and Jonathan Ashcroft. Muse cannot remove or replace them without:

- (a) giving ACL at least six months prior written notice;
- (b) the identity of any replacement being approved by ACL (acting reasonably).

#### ***ACL***

- 26.4 ACL is at all relevant times engage an adequate number of competent, suitably qualified and experienced personnel reasonably required for the proper performance of its obligations under the MDA.

- 26.5 ACL is to ensure that at all times it has suitably qualified, competent, trained and experienced persons (having regard to the obligations under the MDA) appointed in the following roles:

- (a) Chair, and
- (b) Project Director.



*Note this is a departure from the HoTs which did not envisage ACL being subject to key person provisions however this has been insisted upon by Muse.*

## 27 CONSTRUCTION

*Negotiations with the developer on its obligations relating to engagement of contractors and a professional team have been particularly drawn out and at the date of writing this report there remain points still under negotiation. As ACL will have step in rights to take over certain construction contracts/ appointments in the event that things go wrong, we have sought to ensure that the terms upon which the professional team and contractors are appointed are reasonable and that ACL has some input into the process whilst recognising that there will need to be some flexibility given the long term nature of the project and the likely mix of uses. We anticipate that a number of these provisions will be stepped down /reflected in the form of plot DA.*

### **Building Contract**

- 27.1 No later than 15 Business Days following receipt of the Acceptable Planning Permission for the Plot (or 45 working days prior to the commencement of any infrastructure works), the Developer shall provide to ACL a list of three Approved Contractors (or 3 plus 1 if one of the Approved Contractors is affiliated to the Developer or the Guarantor) to go out to tender for Development of a Plot and/or for Infrastructure Works which ACL shall have 15 Business Days to provide comments on (and the Developer is to take reasonable account of such comments). An **"Approved Contractor"** is one with the covenant strength and experience to carry out the works as approved by ACL (acting reasonably). *Note if the Developer wishes to use an alternative procurement route this would be subject to ACL consent (not to be unreasonably withheld).*
- 27.2 The Developer is to provide to ACL a minimum of two tenders for the Development of the Plot from Approved Contractors (or 2 plus 1 if one of the Approved Contractors is affiliated to the Developer or the Guarantor) (the **"Tenders"**) and the Tenders shall be accompanied by a recommendation report from the Developer which sets out which Tender the Developer recommends to proceed with and if the recommended Tender is not the Tender which has the lowest contract sum or does not represent the best value, the reason why the Tender is recommended. ACL shall then confirm whether it agrees with the recommendation, if the parties cannot agree then the matter is referred to senior representatives. If senior representatives cannot agree then the Developer shall (acting reasonably and having regard to representations from ACL) select the Tender to proceed with.
- 27.3 The Building Contract is to be materially on the form appended to the MDA, the commercial terms or any material departure from the proforma are to be approved by ACL (acting reasonably (save in the case of a Reserved Matter)).
- 27.4 On or before Plot Drawdown (or in the case of Infrastructure Works) prior to such Infrastructure Works having commenced), the Developer is to enter into the Approved Building Contract and simultaneously with entering into the building contract and procure that the Approved Contractor provides a warranty in respect of the same to ACL, the Landowners and (if applicable) any funder. The requirement to provide a warranty also applies to any Building Contract for infrastructure works even if those infrastructure works are being undertaken on the part of a third party however in this instance the form of warranty would be as agreed between the Developer and the third party.
- 27.5 The Developer is to comply with its obligations under the building contract and use all reasonable endeavours to procure that Approved Contractor complies with their obligations under the Building Contract.

- 27.6 The MDA allows for step-in to the Building Contract (in the event the Developer is in breach, the order of priority of step-in being:

In respect of a Plot:

- (a) Approved Funder/ Funder of the Developer (if the Developer has elected to take the Plot Lease)
- (b) ACL/Landowners/their funder
- (c) Any other party

In respect of infrastructure works:

- (a) Funder (in respect of the infrastructure works):
- (b) ACL/Landowners
- (c) Any other party

If an Approved Funder or Funder exercises its right to step-in to a Building Contract it shall also be obligated to step-in to the Plot DA.

**Professional Team**

- 27.7 The Developer will appoint the Professional Team to be engaged in respect of each Plot or Infrastructure Works and such appointment will be materially on the form of appointment and warranty appended to the MDA ("**Proforma Appointment and Warranty**").
- 27.8 The Developer shall ensure that the form of each appointment appointing the Professional Team is substantially in the form of the Proforma Appointment and Warranty. The commercial terms or any material departure from the proforma are to be approved by ACL (acting reasonably (save in the case of a Reserved Matter)).
- 27.9 With regards to the "**Key Professional Team**" (being the architect, structural engineer, civil engineer, highways engineer, quantity surveyor, contract administrator or anyone else agreed between the parties as having material design responsibility), the Developer is to propose 3 professionals per discipline (or 3 plus 1 if any are an affiliated entity to the Developer). The Developer will take reasonable account of comments made by ACL and refine the list of professionals accordingly.
- 27.10 Within 20 business days of entering into a Professional Team Appointment for a member of the Professional Team (who is not a Key Professional Team member), the Developer shall deliver a warranty in respect of the same to ACL and this shall also apply to appointments in respect of infrastructure works which are being undertaken on the part of a third party (however in this instance the form of warranty would be as agreed between the Developer and the third party). In respect of the Key Professional Team a warranty is to be provided at the same time the appointment is entered into.
- 27.11 *Note there are a number of Professional Team members who have been appointed prior to the date of this report which we understand have been appointed on an agreed form of short form appointment letter. However copies of these appointments are awaited from the Developer. The short form appointment letter gives ACL (and the Landowners) copyright in the materials produced pursuant to the appointments but does not provide a warranty (as ACL did not deem this necessary for these appointments).*

## 28 UTX WORKS COSTS

- 28.1 ACL is liable to pay the "UTX Works" (being the utility crossing works) pursuant to the terms of the Works Order Cost Agreement. These costs are anticipated to be £2.44million.
- 28.2 Muse and ACL are to fund the UTX Works costs 50/50 with Muse's liability being capped at £1.22million (unless Muse in its absolute discretion agrees to a higher sum).
- 28.3 If Grant Funding is available to pay all or part of the UTX Works Costs and the parties agree (acting reasonably) such funding is available to draw down and apply to discharge all or part of the UTX Works costs, then the UTX Works costs (or part of them as the case shall be) will be paid using such Grant Funding monies.
- 28.4 In the event that there is a Development Surplus Account ("**DSA**") (see paragraph 30 below for details of this) then any sums held at the point at which the UTX Works Costs are payable will be withdrawn by the parties and used towards payment of the same. If the sums so held are not sufficient to cover the full cost of the UTX Works then the parties are to pay the balance on a 50/50 basis. However, Muse's obligation to pay its share is conditional on the earlier of:
- (a) the Trigger Date (Viability) having occurred (*note this limb differs from the HoTs which provided for this to be on the grant of an Acceptable Planning Permission*); and
  - (b) when Development has commenced in respect of a Plot.
- 28.5 In the event there is no DSA then the parties will make payment of their 50% of the UTX Works Costs directly.

*ACL will note that if the UTX Works Costs end up exceeding £2.44m then they may have to fund that excess themselves. Note also the timing point in paragraph 25.6 above which may mean ACL funding the UTX Works Costs itself until those conditions are satisfied.*

## 29 SUPER PROFIT

- 29.1 Super Profit is profit in respect of a Plot which exceeds the Developer's Priority Return and is calculated by way of the following formula:

*such sum computed in respect of any Plot at the relevant Calculation Date as follows*

$$P = (DR - (DPR + LV + NDC))$$

*Where:*

*P is the Super Profit (excluding VAT);*

*DR is:*

- (a) *the Sale Consideration where the Developer has completed a Sale of the whole of the Plot by the Calculation Date; and/or*
- (b) *the Market Value of the completed development of a Plot (or such part of the completed Plot) to which (a) above does not apply as at the Calculation Date;*

*DPR is the Developer's Priority Return in respect of the development of the Plot;*

*LV a sum equal to the Agreed Land Value in respect of such Plot;*

*NDC are the Development Costs relating to or apportioned to the relevant Plot (including any SDLT payable in respect of the acquisition of the relevant Plot) less any Development Receipts relating to the relevant Plot.*

29.2 Super Profit is due to the Developer/ACL in equal 50/50 shares and is to be calculated by the Developer at the relevant 'Calculation Date' for a Plot.

29.3 The following terms are defined as:

- (a) **"Development Receipts"**: in relation to any Plot all interim income and payments received from third parties of whatever nature (which shall for the avoidance of doubt exclude any Sale Consideration or Excluded Receipts) including rents, insurance proceeds and other payments received by the Developer for the use and enjoyment of such Plot;
- (b) **"Excluded Receipts"**: a sum equal to:
  - (i) any monies paid or payable to the Developer by ACL in respect of the remediation works (*referred to in paragraph 12 above*) (including any development management services fees);
  - (ii) any monies received by way of grant or other public sector funding in respect of the Development or any part of it but only to the extent that those monies are used to fund Development Costs;
- (c) **"Market Value"**: "Market Value" in paragraph 4 of VPS 4 of the RICS Valuation – Global Standards (colloquially known as the Red Book) (November 2021 Edition or any updated edition current at the date of valuation) or such nearest equivalent estimated value (should the definition change or cease to be available) for which contracts for the sale of the completed development of the relevant Plot might expect to be exchanged at the relevant time;
- (d) **"Sale"**: the bona fide disposal by the Developer of all or part of the Developer's interest in a Plot Lease (including the grant of a long lease(s) for a premium and at a nominal rent) or through the Developer calling for the grant of the Plot Lease direct to an Approved Funder but excluding a disposal by way of legal charge or mortgage for the purpose of funding Development Costs or any disposal by way of the grant of any occupational interest (other than a disposal to an owner occupier by way of grant of a long lease for a premium and at a nominal rent or ground rent); and
- (e) **"Sale Consideration"**: the total amount of the consideration received by or due to the Developer on a Sale including any amounts received or receivable by the Developer or any group company of the Developer in consideration of any obligations undertaken in respect of the Development (save for the Excluded Receipts) together with any other receipts of a capital nature derived from the Plot received by or due to the Developer or any such group company (but exclusive of VAT in every case) (which shall include the consideration which is received in lieu of a premium other than in cash, for example shares or a land swap).

**Calculation Date**

29.4 The 'Calculation Date' in respect of each Plot is the date which is the earlier of:

- (a) two years after practical completion of the development of that Plot; and
- (b) the completion of a Sale following the practical completion of the development of that Plot;

unless:

- (a) the Developer undertakes a speculative development for that Plot in which case the calculation date shall be the date stated in the approved Plot Development Plan; or
- (b) the Developer is disposing of a Plot by way of a forward fund and the parties agree in the relevant Plot Development Plan that a different calculation date should apply to such Plot.

**Process for Agreeing Super Profit**

29.5 The process for agreeing the Super Profit is as follows:

- (a) 20 business days prior to the relevant Calculation Date an initial estimate (by way of a worked calculation) is to be provided by the Developer in respect of the Super Profit ("**Estimated Calculation**") such Estimated Calculation to include:
  - (i) any valuation and any other supporting evidence to demonstrate the Market Value of the completed development of the relevant Plot;
  - (ii) evidence of any Sale and Sale Consideration to which the Estimated Calculation relates;
  - (iii) the Development Costs attributable to the relevant Plot;
  - (iv) a reasonable estimate of any Development Costs attributable to the relevant Plot which will be incurred by the Calculation Date;
  - (v) the relevant Final Plot Appraisal updated to calculate the Developer Priority Return and the Super Profit;
  - (vi) any other information necessary to evidence how the estimated Super Profit has been calculated.

ACL can request further information from the Developer in respect of the Estimated Calculation.

- (b) Within 10 business days of each relevant Calculation Date, the Developer is to update the Estimated Calculation so as to compute it as at the relevant Calculation Date and submit the same to ACL ("**the Updated Calculation**") together with all information as referred to at 29.5(a) above.
- (c) ACL then has 15 business days from receipt of the Updated Calculation to confirm that it either:
  - (i) agrees with the Updated Calculation and the amount of the Super Profit (if any); or
  - (ii) disagrees with the Updated Calculation and the amount of the Super Profit (if any) and specifying the reasons for the same.
- (d) If the parties are unable to agree the Updated Calculation, then the matter can be referred to expert determination. Pending determination of a dispute any Super Profit is to be paid into the DSA (if applicable) or if there is no DSA to ACL (*see reporting at paragraph 30 below in relation to the DSA*).
- (e) The Developer is to provide ACL (in such form as shall be reasonably required by it), and at the same time as the Updated Calculation, a duty of care, warranty or letter of

reliance from any valuer appointed by the Developer to provide valuation evidence to demonstrate the Market Value of the completed development of the relevant Plot.

- 29.6 Super Profit will either be held in a DSA or distributed to Muse and ACL 50/50.

*Note the HoTs did not set out in any detail how the Super Profit was to be calculated, and these provisions have been heavily negotiated between the parties. We strongly recommend you review these provisions carefully and ensure that worked examples are undertaken of the calculation (by applying the definitions in question) in different scenarios to satisfy yourself that the outcomes accord with your commercial expectations.*

### 30 DEVELOPMENT SURPLUS ACCOUNT ("DSA")

- 30.1 The HoTs envisaged that a 'development surplus account' would be operated between the parties so that any Super Profit generated from phases of the Development could be used to subsidise less profitable phases of the Development (and the UTX Works Costs). However, the HoTs did not conclude what legal structure would be adopted to protect the monies held in such an account (e.g. from insolvency) and the parties could not agree on this during the course of negotiation of the MDA. Given that actual development is some way off, and also that early stages of the development are unlikely to generate Super Profit, it was agreed that this would be a work stream to be considered post exchange of the MDA, to see if the parties can settle on a suitable holding structure acceptable to them both. That said the MDA does reflect some of the mechanics which have been agreed are to apply to a DSA if established.
- 30.2 The MDA provides that following exchange, the parties will work collaboratively to agree whether there will be a DSA (which shall be a separate bank account) and the terms on which funds will be held and secured in the DSA ("**DSA Terms**"). They have until by the time the first Plot is ready to draw down to agree the DSA Terms, if not then the provisions referred to in paragraph 30.9 below apply.
- 30.3 If DSA Terms are agreed then any Super Profit will be paid into the DSA rather than being distributed (unless agreed otherwise). The sums held within the DSA will represent an equal share of Super Profit for ACL and Muse respectively and all distributions shall be made equally to the parties.
- 30.4 Where agreed by ACL and Muse, sums paid into the DSA will be 'recycled' into the Development to assist the Parties in meeting the Objectives and to cross subsidise the development of a Plot which may not be viable without such cross subsidy, to cross subsidise enhanced Infrastructure Works (including the UTX Works) or public realm works. Muse are to prepare a viability assessment (i.e. an updated Financial Model) each time they prepare an Estimated Calculation to assist with deciding on the application of DSA monies.
- 30.5 ACL may at any time (where its shareholders unanimously so require it to) service notice requesting the release of all or part of its 50% share of the monies held in the DSA ("**Release Request**"). Following the Release Request, the Developer shall prepare a viability assessment for the anticipated next Plot development within the Arden Cross Site for consideration by ACL. If following consideration of that viability assessment, ACL still wishes to proceed with the Release Request then it shall serve notice on the Developer confirming the same and specifying whether it requests the release of all or part of its 50% share of the monies held in the DSA.
- 30.6 In the event that ACL proceeds with the Release Request then and only then, can Muse call for (but not obliged) to request the release from the DSA to itself of a sum equal to the amount released to ACL.
- 30.7 Note however that unless otherwise agreed by the parties, the monies cannot be released from the DSA to the parties until such time as the monies held in the DSA exceed the outstanding amount required to fund the UTX Works Costs (and then cannot be released if a withdrawal means the monies fall below the level required to fund the UTX Works Costs).

30.8 On the earlier of:

- (a) the expiry or determination of the MDA; and
- (b) ACL and the Developer agreeing in writing that there is no need for any further sums from the DSA to be applied to fund UTX Works Costs / subsidise development,

any balance of monies held in the DSA will be distributed to Muse and ACL in accordance with their respective entitlements to such monies.

30.9 In the event that the parties cannot agree whether there should be a DSA or the DSA Terms, any Super Profit is paid to ACL and Muse in equal 50/50 shares.

30.10 Disputes go to senior representatives to resolve and failing agreement to expert determination.

## 31 CHANGES

31.1 ACL will recall that the Collaboration Agreement envisaged that ACL would have the ability to make changes to the HS2 base scheme. Negotiations are currently underway for a framework agreement and delivery agreement to be entered into between ACL and HS2 to facilitate this.

31.2 The MDA states that the parties will act collaboratively to identify any changes, with neither party requesting change without the other's consent. Disputes go to senior representatives for resolution.

31.3 The costs of dealing with any Change are to be paid in accordance with the Framework Agreement/Delivery Agreement and where Muse agree to the change, they will pay those costs, to then be recoverable as a development cost.

31.4 If ACL (or a Landowner) incur costs in respect of Changes agreed with Muse, then these will be an ACL Historic Cost or ACL Ongoing Cost.

31.5 Muse will seek to enter into a framework agreement with HS2 on substantially the same terms as the Framework Agreement. Where it does so then any changes which the parties agree to request are to be submitted via the Muse agreement(s). *This then avoids ACL / the Landowners having primary liability to HS2 for requested changes.*

*Muse are not keen on the (onerous) provisions of the proposed Framework and Delivery Agreements and have said they would exercise caution in requesting any changes.*

## 32 PUBLIC SECTOR FUNDING

32.1 The MDA contains obligations for Muse to pursue grant funding for the Development.

### Phase 1

32.2 As soon as reasonably practicable following exchange, Muse is to prepare a business case for grant funding for Phase 1 (to be materially in accordance with the Funding Strategy, the Business Plan and the Objectives) ("**Grant Funding Business Case**") and submit this to ACL for approval (acting reasonably albeit approval can be withheld on the grounds of a Reserved Matter). If the parties cannot agree the Grant Funding Business Case within 3 months the matter is referred to senior representatives for resolution.

32.3 Once the Grant Funding Business Case is agreed, Muse and ACL are to work collaboratively to secure the grant funding as soon as is reasonably practicable, including the terms of any grant funding. ACL can withhold its approval to any terms that are not in accordance with the Funding Strategy, the Objectives, relate to a Reserved Matter, would require security over the

Property or any other land owned by ACL or the Landowners, or would require a fundamental change to the Development as set out in the Masterplan, or the Business Plan.

*Note that securing grant funding is important to the viability of the development of Phase 1 and will assist with satisfying the Post Planning Viability Condition (which in turn is linked to payment of part of ACL's Historic Costs).*

### **Further Public Sector Funding**

- 32.4 Muse is to explore whether any further public sector funding is available for the Development in accordance with the principles agreed with ACL from time to time / the Funding Strategy (e.g. funding from Homes England (either in its own capacity or via the English Cities Fund), the West Midlands Combined Authority, and DFT) keeping ACL informed. ACL would again have the ability to approve the terms of any funding agreements as per the provisions as set out in paragraph 32.3 above.

## **33 UNIVERSITY AND HOSPITAL REQUIREMENTS**

ACL has engaged in discussions for this and signed various MOUs regarding the same. The MDA provides that the parties are to act collaboratively to attempt to accommodate the requirements of the University Hospital Birmingham NHS Trust and University of Warwick in relation to a medical and/or technology campus at the Arden Cross Site as a part of the Development (including using reasonable endeavours to include this in the Initial Planning Application).

## **34 DEVELOPER DATA SITE AND COPYRIGHT**

- 34.1 Muse is to maintain a datasite of all material information relating to the Development ("**Data Site**") and provide ACL with access to it. Muse is to circulate an index to the content of the Datasite on a monthly basis. *This is to allow ACL to track that all information is being uploaded and to allow ACL to request copies of items. We recommend ACL requests copies of all material items as it goes along.*
- 34.2 The Developer grants to ACL a copyright licence to view, use and reproduce for the purposes of the Development all 'design information' within the Data Site as set out below.
- 34.3 Muse (insofar as and to the extent it is able to do so (having used all reasonable endeavours to do so)) grants to ACL an irrevocable royalty-free and non-exclusive licence to use and reproduce any all plans drawings specifications and other design information prepared for the Development. This 'design information' can be used by ACL for the purposes of the Development. This licence is capable of being transferred to third parties or sub-licenses being granted. The licence does not extend to any corporate data of Muse and/or the Guarantor.
- 34.4 The provisions in relation copyright survive termination of the MDA (apart from where the MDA is terminated due to ACL's default or change of control in which case the copyright licence ceases on termination).
- 34.5 The Data site is to remain open for a period of 6 months post termination only (but again apart from where the MDA is terminated due to ACL's default or change of control in which case the copyright licence ceases on termination).

*Note that the licence only extends to 'design information' and not everything in the Data Site. Please let us know if any further rights to information are required. Please note there is no 'transfer' of the Data Site to ACL on termination of the MDA. Please advise if this is required.*

*Note also that the above is a slight departure from the HoTs which stated that Muse were to ensure that ACL had a copyright licence to use the Information in connection with the Arden*



*Cross Site, and that after termination of the Development Agreement all Information will promptly be downloaded by Muse and provided to ACL.*

### **35 LAND SALES**

35.1 The MDA sets out (at a high level) a regime for dealing with any land sales to a third party. If Muse or ACL wish to make such a disposal then it shall serve notice on the other setting out the proposed terms. The other party then has 20 business days to determine whether or not it consents to that (in its absolute discretion).

35.2 If the parties agree to proceed with the disposal then they will work collaboratively to implement the same. Whoever requested the proposal is to lead on the negotiations.

35.3 On completion of the disposal the proceeds ("**Third Party Disposal Proceeds**") are calculated as follows:

Third Party Disposal Proceeds = Total Sale Price less Total Deductions

Total Sale Price = the total consideration received from a third party in respect of the disposal prior to any deductions being made.

Total Deductions = those deductions agreed at the time between ACL and the Developer (each acting reasonably) as constituting the total deductions in relation to the disposal and likely to include:

- (a) the Developer's transaction costs;
- (b) ACL (and the Landowners) transaction costs;
- (c) a due proportion of any outstanding ACL Historic Costs;
- (d) a due proportion of any outstanding ACL Ongoing Costs;
- (e) a due proportion of any Infrastructure Costs (to include UTX Works Costs);
- (f) any VCA Sum;
- (g) land acquisition costs,
- (h) a fair reasonable and proportionate project management fee to the Developer or ACL (as the case may be) in negotiating the disposal;
- (i) a due proportion of the Project Management Fee; and
- (j) a fair and reasonable proportion of the Global Development Costs (albeit with the parties being able to agree accelerated recovery of these by allocating more than a proportion) in relation to the land being disposed of.

35.4 On completion of the disposal:

- (a) the VCA Sum shall be paid to ACL
- (b) the other Total Deductions are paid to the party who incurred them; and
- (c) the Third Party Disposal Proceeds are paid as follows:
  - (i) 80% to ACL;

- (ii) 10% to the Developer;
- (iii) 10% into the DSA where there is one otherwise this 10% sum is paid as to half to ACL and half to Muse.

*Note that in discussions Muse have indicated that it will be necessary to seek to sell parts of the Arden Cross Site freehold (e.g. for residential development) and that the Masterplan is likely to reflect this.*

*The LOA is to be updated so it contains provisions obliging the Landowners to consider requests for them to dispose of freehold or longer leasehold interests in relation to those Plots identified in the approved Masterplan and Business Plan (from time to time) as being developed for residential uses, and, subject to agreeing terms and price, to agree to dispose of such Plots on such tenure.*

*Note that where the price payable on a land sale is payable in instalments, Muse want the ability to ask you to consider off-setting costs against earlier instalments (i.e. so that such costs are recovered first before any surplus is distributed). ACL have a discretion as to whether or not to agree to this.*

### 36 TERMINATION

Negotiations with Muse have resulted in the following grounds for one or both parties terminating the MDA.

#### 36.1 Business Plan

- (a) ACL can terminate the MDA if Muse fails to update the draft Business Plan (or Initial Business Plan as applicable) within three calendar months after receipt of the Grant Offer Letter and provide the same to ACL.
- (b) If the Business Plan is not agreed by the parties by 2 years from the date of the MDA then either party can terminate the MDA.

*Note this differs from the HoTs which provided that:*

- (i) *the parties would agree the first iteration of the business plan no later 31 January 2024 and use reasonable endeavours to agree it by 30 April 2024; and*
- (ii) *if the business plan was not agreed by 31 October 2024 then either party could terminate the MDA.*

#### 36.2 Grant Funding

If a legally binding grant funding agreement for the development of Phase 1 ("**Grant Funding Agreement**") has not been entered into by the date which is 5 years after the date of the MDA then either party can terminate the MDA.

#### 36.3 Planning Application

If:-

- (a) the CIL Exemption has been achieved and
- (b) Muse do not submit the Initial Planning Application by the date which is two years from the date of the Grant Funding Agreement (*note under the HoTs this was two years from the date of agreement of the business plan*),

then ACL can terminate the MDA.

#### 36.4 CIL Exemption

If the CIL Exemption has not been achieved prior to the date which is 7 years after the date of MDA then either can terminate the MDA.

#### 36.5 Planning Permission

(a) If:-

- (i) an Acceptable Planning Permission has not been obtained in respect of the Initial Planning Application by the date which is two (2) years from the date on which the Initial Planning Application is submitted, and
- (ii) within such two (2) year period the Developer notifies ACL that it does not intend to appeal or make a fresh planning application in respect of the whole Development

then ACL can terminate the MDA.

- (b) If an Acceptable Planning Permission has not been obtained in respect of the Initial Planning Application by the date which is two (2) years from the date on which any appeal or fresh planning application is lodged then ACL can terminate the MDA.

*Note in the HoTs there was a further termination right if there was no updated Local Plan by the date which was three years from the date of the MDA and there is no planning strategy between the parties to progress a "very special circumstance" planning permission. This termination right was dispensed with as the Developer is proceeding with a very special circumstance planning permission.*

#### 36.6 Material start on site

- (a) If within 12 months of Plot Drawdown ("**Commencement Longstop**") the Developer has not commenced the Development in respect of the Plot and used reasonable endeavours to pursue Development in respect of the Plot in accordance with the Plot Development Plan then ACL can serve notice of breach requesting that the breach be remedied within a reasonable period of time which the parties shall then work together (each acting reasonably) to agree (the "**Agreed Reasonable Period of Time**"). If the Developer does not commence and pursue the Development within the Agreed Reasonable Period of Time then:
  - (i) ACL can terminate the MDA in respect of future phases; and
  - (ii) forfeit the relevant Plot Lease.
- (b) The Commencement Longstop shall be extended by valid extensions of time under the building contract (not caused by an act or omission of the Developer). Any extension of time is capped at 24 months from Plot Drawdown.

#### 36.7 Events of Default

- (a) If either party is in material breach of the terms of the MDA and/or a Plot DA then the non-defaulting party can serve notice specifying the breach. The MDA provides for a remedy period in respect of the breach. If not remedied then the non-defaulting party can terminate the MDA.

- (b) If the material breach is as a result of any Plot Development Plan not having been issued in accordance with the timeframes set out in paragraph 18.1 and 18.2 above, then the Developer will have a period of 6 months from the date of such notice to submit to ACL the relevant Plot Development Plan or a revised business plan. If they fail to do this ACL can terminate the MDA. *Note this termination right was not set out in the HoTs.*

### 36.8 Insolvency

If ACL, the Developer or the Guarantor become insolvent, are struck off or otherwise cease to exist, then the non-defaulting party can terminate the MDA.

*Note the HoTs did not provide for insolvency of ACL to be a termination right. This has been insisted upon by Muse.*

### 36.9 Change of Control

- (a) Each party is to notify the other of any Change of Control to which they are subject.
- (b) If ACL, the Developer or the Guarantor are subject to a Change of Control without the consent of the other party then this would give right to a termination right in favour of the non-defaulting party.
- (c) In respect of the Developer/ the Guarantor a Change of Control is:
  - (i) A change to the persons having a controlling interest in the relevant entity;

*Bona fide intra-group restructures are permitted provided both the holding company remains the same and Muse still exists and is able to carry out its functions (including continuing to have the resource, funds and expertise required to carry out developments in the nature of the Development).*

and/or

- (ii) A change to the persons having a controlling interest such that they are a Prohibited Person.

*Any changes in the legal or beneficial ownership of the shares of the Guarantor do not constitute a change of control.*

- (d) In respect of ACL a Change of Control is:
  - (i) A change to the persons having a controlling interest to someone who is a Prohibited Person; and/or
  - (ii) Until such time as the date that is the earlier of (i) the expiry of the term of the MDA, (ii) termination of the MDA, and (iii) the date of the final Plot Drawdown, a change to the person(s) from time to time having a controlling interest in ACL such that they no longer comprise the Landowners (or successors in title to the Landowners).

*Note this in effect staples the shareholding in ACL to the party owning the relevant freehold land – this was accepted on the basis that this is what the ACL shareholders agreement envisages. Landowners would still be able to dispose of their freehold interests, but this would be subject to the purchaser becoming a shareholder in ACL.*

### 36.10 General

- (a) Following the MDA terminating (subject to any step-in rights (as referred to in paragraph 27.6 above)), ACL can call for an assignment or novation of the Building Contracts, Professional Team Appointments, warranties, guarantees and other agreements entered into by the Developer in respect of the Plot or Plots subject to termination. ACL is to pay the Developer's legal costs associated with such assignment/novation where that termination was not due to the fault of the Developer.
- (b) Following the MDA terminating all sums due under the MDA on or before the date of termination become payable within 5 working days of the date of termination.

### 37 WARRANTIES

ACL and the Developer each give various mutual warranties as to corporate capacity to enter into comply with the terms of the MDA. These are fairly standard form warranties and are given by each as at the date of the MDA and on each Plot Drawdown. ACL should consider these (which appear in clause 39 of the MDA) at each Plot Drawdown to satisfy itself that it can continue to warrant the same.

### 38 DEALINGS WITH THE PROPERTY

- 38.1 Save in respect of a Permitted Disposal, ACL is not allowed to sell lease or dispose of or deal with encumber charge or grant any interest over its interest in the Property (or agree to do any of the same) other than what is defined as a 'Permitted Disposal'.

*Note the MDA recognises that the definition of 'Permitted Disposal' can be revisited as part of the Existing Agreements Allocation review. This is because it is known that all Existing Agreements have slightly different regimes for permitted disposals and there is a need to go through these carefully to ensure they allow (on the one hand) ACL and the Landowners with some flexibility to deal with their interests but (on the other hand) do not prejudice's Muse's ability to call for Plot Drawdowns and deal with the Development generally. We anticipate ACL will need to engage with the Landowners post exchange to identify what ability in reality they require to make disposals. The ability for the Landowners or ACL to charge their interests is of particular concern to Muse.*

- 38.2 A 'Permitted Disposal' is defined in the MDA as the disposal (including the grant of an easement or other rights) pursuant to the following:

- (a) for the purposes of delivering the Development and at the Developer's direction or with the Developer's prior written approval (such approval not to be unreasonably withheld or delayed):
  - (i) to a statutory undertaker, utility company or other similar body acquiring land for the provision of an electricity substation, gas governor, pumping station, service media or other similar facility for public use including by way of grant of a wayleave or easement; *Note there is a similar provision in the LOA for a Landowner to make such a disposal with ACL consent.*
  - (ii) to a highways authority in respect of highways works;
  - (iii) licences required during the course of any construction works;
  - (iv) to a management company;
- (b) any planning requirement;
- (c) a right or obligation in the Existing Agreements;

- (d) any compulsory purchase order (or equivalent);
- (e) by way of short term licences which do not confer any security of tenure or renewal rights and which allow for vacant possession on giving not more than 60 days' notice; *Note there is a mirror provision in the LOA for a Landowner to make such a disposal.*
- (f) in the case of residential premises by way of an assured shorthold tenancy or tenancy which does not confer any security of tenure or renewal rights and which in any event allows for vacant possession on giving not more than 60 days' notice; *Note there is a mirror provision in the LOA for a Landowner to make such a disposal.*
- (g) in the case of non-residential premises by way of a tenancy which does not confer any security of tenure or renewal rights and which allow for vacant possession on giving not more than 60 days' notice; *Note there is a mirror provision in the LOA for a Landowner to make such a disposal.*
- (h) by way of a farm business tenancy for a term of two years or less which provides for termination on giving not more two months' notice and otherwise in a form approved by the Developer (such consent not to be unreasonably withheld or delayed); *Note there is a mirror provision in the LOA for a Landowner to make such a disposal.*
- (i) by way of a charge provided that such charge will be discharged in respect of any part of the title to the Headlease which is subject to Plot Drawdown on or before the date of Plot Drawdown; *Note there is a similar provision in the LOA for a Landowner to grant a charge (subject to ACL consent).*
- (j) a transfer for internal consortium management or tax planning purposes (which does not constitute a Change of Control); or
- (k) an option, transfer or leaseback pursuant to any £ for £ arrangements.

### 39 DISPUTES

39.1 The dispute resolution procedure in the MDA largely mirrors that of the Collaboration Agreement and provides for two levels of procedure:

- (a) Referral of disputes to senior representatives to resolve; and
- (b) If they fail to so resolve, referral to an expert.

*Note not all disputes in the MDA are to be referred to an expert, some are only to be referred to senior representatives on the basis that it was felt the dispute would not be appropriate for an expert to determine.*

*Similarly some disputes are not expressly referred for resolution in accordance with the above dispute resolution procedure and hence such disputes would ultimately need to be resolved by the Courts.*

39.2 Where expert determination applies, the Expert is to determine the matter having regard to the Objectives, with each party having the opportunity to make written representations and counter representations to the Expert (but so as not to fetter the judgment of the Expert). Until a dispute is determined, the status quo remains.

39.3 Any determination of the Expert shall only be binding on ACL so far as it does not put ACL in breach of any of the Existing Agreements.

39.4 Furthermore, where the subject matter of the dispute is also subject to dispute resolution under the Existing Agreements then the dispute resolution procedure set out in the MDA is subject to

the dispute resolution procedure in the Existing Agreement. *This provision was inserted to try and ensure that the same dispute was not resolved separately under multiple agreements with different outcomes.*

#### **40 ESG AND SOCIAL VALUE**

The MDA provides that following exchange, the parties will work collaboratively to agree ESG and social value strategies and comply with their respective obligations pursuant to the same.

#### **41 ARCHAEOLOGICAL AND MINERAL FINDS**

The MDA provides that all archaeological finds belong to the Landowners, and that mines and minerals are excluded from the Plot Lease(s) with ownership retained by the respective Landowner.

#### **42 VAT**

42.1 Unless otherwise stated sums payable under the MDA are exclusive of VAT. VAT is payable in addition upon production of a VAT invoice.

42.2 ACL and Muse are to use all reasonable endeavours to recover all VAT incurred by them.

42.3 ACL is to notify Muse each time it makes a VAT election in relation to the Property.

#### **43 REGISTRATION AT LAND REGISTRY**

The Developer can register the MDA by way of a unilateral notice on the Landowners' and (once the Headlease is granted) ACL's title. However, such registration is not to take place until the parties have undertaken the Existing Agreements Allocation (to agree the priority of such registrations).

#### **44 CONFIDENTIALITY AND PUBLICITY**

The MDA contains confidentiality provisions on the part of the parties and restrictions on making public announcements without the consent of the other party.

#### **45 POST EXCHANGE**

45.1 It is inevitable in a long term project such as this that there will be elements which give rise to further negotiations as matters materialise (and sometimes changes to what has already been negotiated) as the project evolves.

45.2 You should note that entering into the MDA will give rise to a number of immediate work streams which will need to be progressed within the next couple of years. Due to the complexity of arrangements and the time taken in negotiations to date, the approach has been to set out in this MDA the broad framework within which the development of the site will come forward but to recognise and oblige the parties to immediately progress certain work streams which are necessary to conclude before development can take place. These work streams include:

- (a) Varying the terms of the Landowners option agreement and draft Headlease<sup>16</sup>. (This obligation to be fulfilled within 12 months of exchange of the MDA.) (Note that this will also require variations to the shareholders agreement along with other changes to the

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<sup>16</sup> As per Gowling WLG's paper dated 19 July 2024.

LOA and Headlease as previously presented to ACL<sup>17</sup>. Note also that the changes to the LOA and Headlease will (once the MDA is exchanged) require Muse's approval.)

- (b) Reviewing in detail the obligations contained within the various Existing Agreements already entered into by ACL and the landowners (or to be entered into pursuant to the Collaboration Agreement) to agree who should have the primary responsibility for performing those obligations and to agree generally how those obligations interface with the operation of the MDA. This exercise is likely to give rise to some changes to be made to the MDA obligations as a result, or for there to be supplemental obligations documented. *This exercise is to be undertaken within 6-12 months of exchange of the MDA. Note that any dispute in this regard remaining after 18 months of exchange will be determined by a third party expert.*
- (c) Concluding negotiations of the Framework Agreement and Delivery Agreement with HS2 relating to the ability to make changes to the HS2 base scheme.
- (d) Concluding negotiations with DFT and HS2 in relation to the Easement Suite of documents.
- (e) Agreeing the form of a Plot Development Agreement (*within 15 months of exchange of the MDA*).
- (f) Agreeing the form of a Plot Lease(s) (*within 15 months of exchange of the MDA*).
- (g) Pursuing the registration of certain unregistered land parcels.
- (h) Agreeing the content and priority of land registry applications to protect various interests pursuant to the Existing Agreements and the MDA.
- (i) Agreeing and finalising the business plan to govern how the parties will deliver the development of the site.
- (j) Agreeing whether there should be a 'development surplus account' and if so the legal structure and terms to govern the operation of the same. (*This obligation to agree continues until first plot draw down.*)
- (k) Agreeing the Estate Management Strategy.
- (l) Considering how Strategic Infrastructure is to be dealt with and what land holding structure is to apply to that.

45.3 The obligations relating to the above workstreams are in a number of instances 'agreements to agree' and hence you should be aware are not legally enforceable. Also, there are not always terminations rights associated with failing to achieve /agree these. However, it is envisaged that the parties will be commercially motivated to work together to resolve the same.

This Report is addressed to and is solely for the benefit of Arden Cross Limited in connection with its proposal to enter into a master development agreement with Muse Places Limited for the development

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<sup>17</sup> As per Gowling WLG's paper dated 30 June 2023 and presented to the ACL Board in September 2023, and which were then discussed and summarised in a note circulated by Carl Potter and entitled 'Shareholders Agreement – Summary of Agreed Changes 28/03/2024'.



*Strictly Confidential*  
*Privileged Solicitor / Client Communication*

of Arden Cross. Neither its contents nor its existence may be disclosed to or relied upon by any third party without our prior written consent, nor may it be used for any other purpose.

*Gowling WLG (UK) LLP*

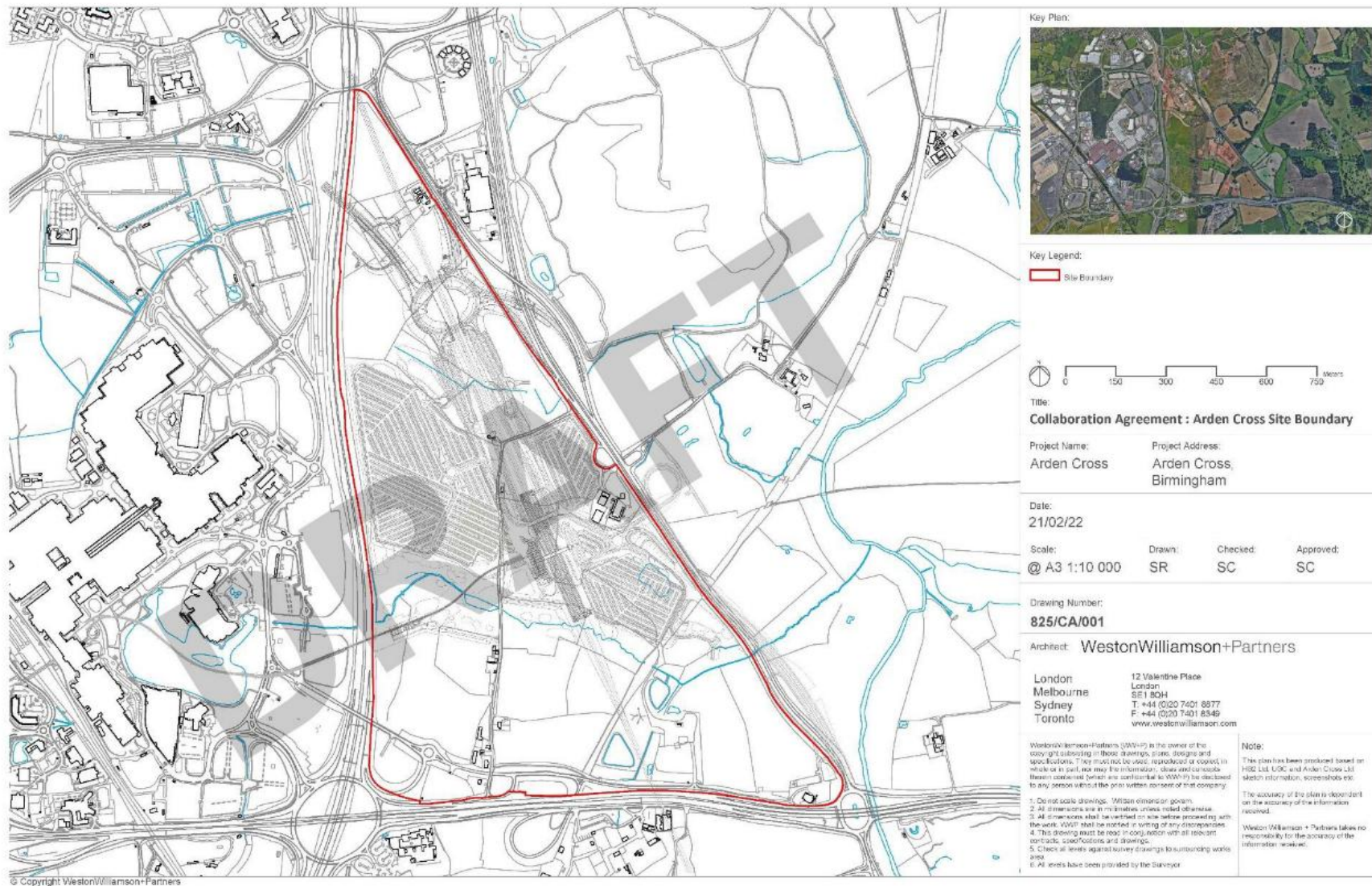
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**Gowling WLG (UK) LLP**  
**Two Snowhill, Birmingham,**  
**B4 6WR,**  
**United Kingdom**

**26 September 2024**

**ANNEX 1**

**ARDEN CROSS SITE PLAN**



**ANNEX 2**

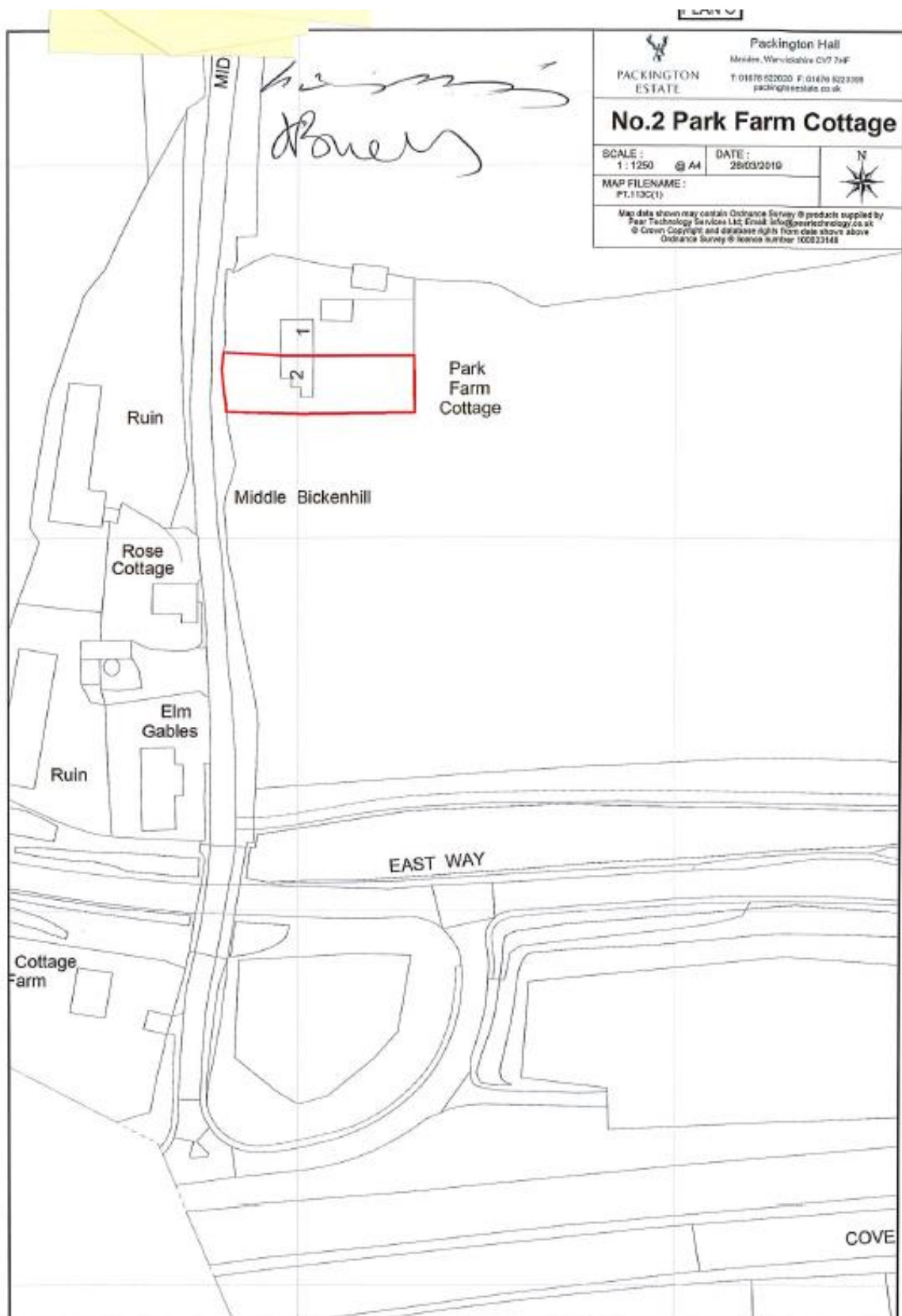
**RETAINED INTERESTS**

DRAFT

Common Farm (Coleshill Estate) ('Owner 1')

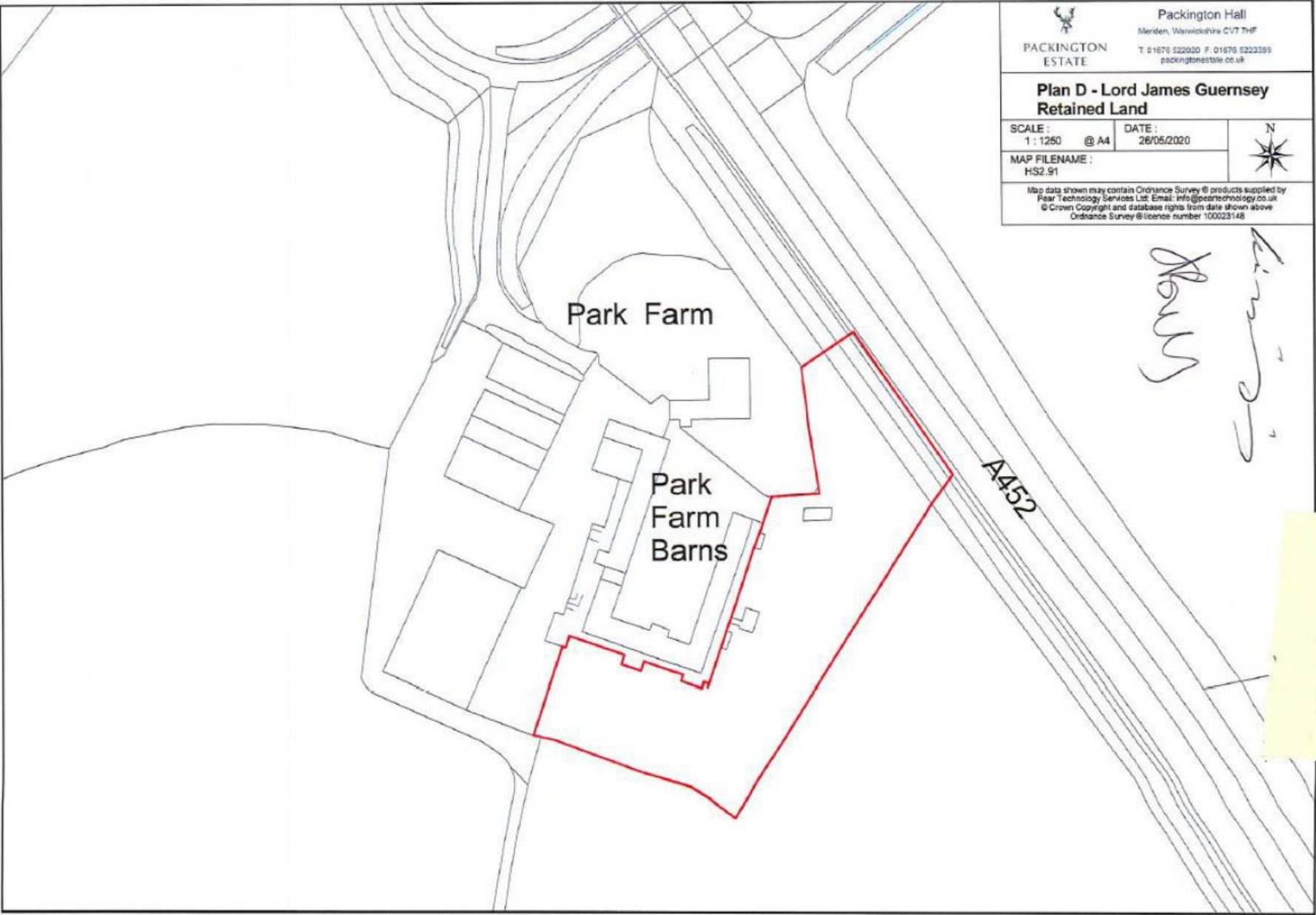


**Park Farm Cottages (Packington Estate) ('Owner 2')**

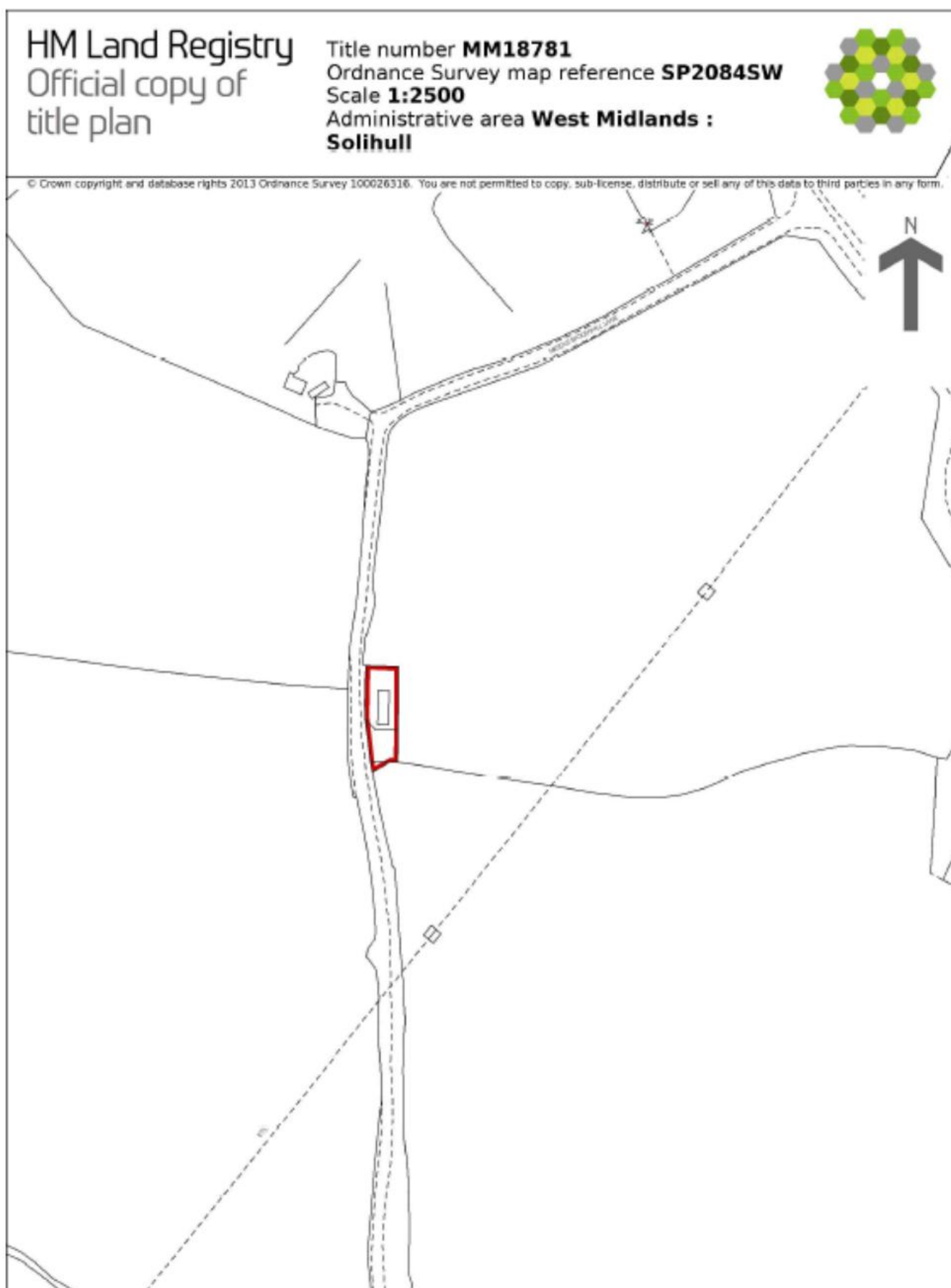




**Park Farm (Lord Guernsey) (Part A Land) ('Owner 4')**



**Middle Bickenhill Lane (Lord Guernsey) (Part B Land) ('Owner 4')**





For reference the 'Retained Interests' are the based on the following definition of Retained Land in the Landowners' Option Agreement:

<b>Retained Land</b>	the Owner 1 Retained Land, the Owner 2 Retained Land, the Owner 3 Retained Land, and/or the Owner 4 Retained Land as the case may be;
<b>Owner 1 Retained Land</b>	the freehold property known as Common Farm with a frontage to the A452 shown edged red on Plan B being part of the property registered at HM Land Registry with title absolute under title number WM980154;
<b>Owner 2 Retained Land</b>	the freehold property known as 2 Park Farm Cottages Middle Bickenhill Lane shown edged red on Plan C being part of the Packington Estate registered at HM Land Registry with title absolute under title number WM 893700;
<b>Owner 3 Retained Land</b>	the freehold property known as land on the north side of Coventry Road being the property registered at HM Land Registry with title absolute under title numbers WK11176 and WK46810;
<b>Owner 4 Retained Land</b>	<p>the freehold property known as:</p> <p>(a) Park Farm Chester Road Meriden Coventry CV7 7TL comprising 0.3161 hectares or thereabouts shown edged red on Plan D and being in part registered at HM Land Registry with title absolute under title number MM82529 together with the adjoining freehold property being in the course of registration at HM Land Registry pursuant to the two Transfers dated 23rd January 2020 as set out in the definition of 'Owner 2 Land' ("<b>Part A Land</b>"); and</p> <p>(b) Land on the east side of Middle Bickenhill Lane registered at HM Land Registry with title absolute under title number MM18781 ("<b>Part B Land</b>") but only if the freehold of this land is acquired by Owner 4 from SSFT after the date of this Agreement.</p>

**ANNEX 3**

**HEADLEASE VARIATION NOTE**

## Arden Cross

### Land Owners' Option Agreement and Headlease

#### Agreed Note of points for ACL Board

*This Note sets out the full and final list of amendments required by Muse to satisfy the 'headlease variation condition' in the MDA.<sup>18</sup>*

1. Term/tenure: LOA needs to anticipate the requirement for freehold sales and longer HL term to allow for residential sales and shared ownership tenure (supported by AHG, where Homes England require 990 years).

The DA to be updated to require Muse to indicate, as part of bringing forward a Plot Development Plan (which is to be consistent with the Masterplan, the Objectives, the Business Plan and the Infrastructure Delivery Strategy) whether residential development is proposed on that Plot and hence whether it requires a freehold or a longer [HL/ sublease]<sup>19</sup> term, and shall provide a business case to ACL for that freehold / longer leasehold interest which ACL can take to the Landowners for consideration. If ACL (on behalf of the Landowners) and Muse can agree a land value for such a disposal (with ACL having absolute discretion), then ACL will facilitate the disposal of such freehold or longer leasehold interest.

The LOA to be updated to expand clause 27 so it contains provisions obliging the Landowners to consider requests for them to dispose of freehold or longer leasehold interests in relation to those Plots identified in the approved Masterplan and Business Plan (from time to time) as being developed for residential uses, and, subject to agreeing terms and price, to agree to dispose of such Plots on such tenure.<sup>20</sup>

2. Landlord break option:

It has been agreed commercially that the 'Break Period' will be 5-7 years from the date the headlease grant is agreed. In addition, the break can only be exercised if the MDA has been terminated.

3. Regime for the incorporation of surplus or additional land (in particular, the staged hand back of land to the Landowners by SSFT/HS2) to be included in the Headlease via the grant of supplemental leases on the same terms as the Headlease to be included.

Where the acquisition of Surplus Land handed back by SSFT/DfT, or additional land acquired from a third party, is agreed to be required for the overall development of the Arden Cross Site then this shall be included in the Headlease or included via the grant of supplemental headleases *on the same terms as the Headlease*.

However, where the parties do not require the Surplus Land / additional land for the Arden Cross development but the Landowners purchase the land (which the Landowners are entitled to do) then that land will not be added to the Headlease.

4. Inclusion of controls (see existing Restrictions on Dealings clause) on the Landowners dealing with such surplus/additional land before this is incorporated in the Headlease to be included.

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<sup>18</sup> GWLG Note : this statement is required as part of presenting this list to the ACL Board.

<sup>19</sup> Parties to discuss whether, where a longer leasehold term is required (e.g. 990 years), whether ACL will remain the intermediate landlord of that phase.

<sup>20</sup> GWLG Note: as the Plot Development Plans for developing residential plots will arise after the grant of the Headlease, this will entail surrendering part of the Headlease so that the Plot can be transferred either freehold or on a longer leasehold term. The tax implications of this need to be considered by the parties.

Clause 4 of the LOA is to be updated to make it clear that any Surplus Land / additional land acquired by the Landowners before the grant of the Headlease is subject to these same Restrictions on Dealings.

5. The draft Headlease is to be amended to deal with certain square brackets and drafting notes as set out in the column "To be resolved in satisfying Headlease Condition" in the table appended to this Note.

**Pinsent Masons LLP**

**8 August 2024**

**Annexure**

**Headlease – footnote/bracketed drafting resolution plan**

**Agreed Note following discussion as at 8 August 2024**

Footnote	Factual guidance note – no action required	To be resolved in satisfying Headlease Condition	To be finalised at point Headlease is granted with Muse consulted to agree
5 Permitted Use		Landowners/ACL to agree that footnote and brackets can be removed  (i.e. that drafting as it is works for ACL/landowners)	
11 Mortgagee		Drafting to be amended to enable sub-tenant's mortgagee to also be entitled to a forfeiture protection deed	
20 VP on yielding up		To be amended to remove footnote, to confirm position as drafted is acceptable	
22 Assignment of the Headlease		Wording to be amended from 'prior to PC' to: <i>'until the earlier of:</i> a) <i>30 years from the grant of the Headlease; or</i> b) <i>earlier determination of the DA'</i>	
Clause 2.1 – term of lease		Term to be increased to 280 years	
Para 5.2 of Schedule 4 – repairing covenant		Landowners to confirm square brackets can be removed	
Para 7.7 – 7.11 of Schedule		Landowners to confirm square brackets can be removed	

**ANNEX 4**

**PROFORMA PLOT APPRAISAL**

<b>Appendix 15</b>	<b>Illustrative Plot Appraisal</b>	<b>Plot 1</b>	<b>Size: 6.2 acres</b>	<b>[Date]</b>
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**Comments**

<b>Revenue</b>	x sq ft at £yps pa	Sch 21.2(c)
	Net Annual Income	
	Capitalised at x% Yield	
	Less Unpaid Rent: x Months Rent Free	
<b>Gross Development Value</b>		
	Less Purchaser's Costs at x%	
<b>Net Realisable Value</b>		

<b>Plot Development Costs</b>		
	Land Value	Sch 2 1.2 (d)
	SDLT @ 4.8%	
	Site Legal Fees @ 0.5%	
	Site Agency Fees @ 1.00%	
<b>Total Land Costs</b>		
	Town Planning Surveys	
<b>Total Initial Payments</b>		
	Construct x sq ft @ y psf	
	Demolition	
	Off Site Infrastructure	
	Utilities	
	CIL	
	S106	
	Estate / Plot Roads	
	Remediation	
	Contingency @ x%	
	Architect @ x%	
	M&E Engineer @ x%	
	QS @ x%	
	Structural Engineer @x%	
	CDM @ x%	
	Landscape @ x%	
	Highways Engineer	
	Planning Consultant	
	Sustainability Consultant	
	Developer's Contingency @ x%	

Total Build Costs		
	Letting Agents Fee @ x% Letting Legal Fees @ x% Investment Agents Sale Fee Investment Legal Sale Fee Marketing	
Total Disposal Fees		
	Developer's Apportioned Project Management Fee Apportioned ACL Ongoing Costs  Apportioned ACL Historic Costs  Apportioned Developer Pre and Post Exchange Costs	Sch2 1.2 (b) (i) Sch2 1.2 (b) (ii) Sch2 1.2 (b) (iii) Sch2 1.2 (b) (iv) Sch2 1.2(b)
Agreed Global Development Costs		
	Interest @ x% per annum	

Summary		
Net Realisable Value		
Plot Development Costs Developer Priority Return		Sch 2 1.2(a)

#### Notes

Muse 7.5% PM fee applies to costs incurred up to the first Plot Drawdown  
 Muse PM fee excludes ACL Historic Costs and ACL Ongoing Costs.  
 Muse Profit excludes ACL Ongoing Costs and Muse PM Fees.