

# Birmingham City Council

## Report to Cabinet



8th November 2022

**Subject:** ARDEN CROSS INTERCHANGE TRIANGLE DEVELOPMENT  
PARTNER APPOINTMENT

**Report of:** Strategic Director – Place, Prosperity & Sustainability

**Relevant Cabinet Member:** Councillor Ian Ward, Leader of the Council  
Councillor Yvonne Mosquito, Finance and Resources

**Relevant O &S Chair(s):** Councillor Saima Suleman, Economy and Skills  
Councillor Ahmed Akhlaq, Resources

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Are specific wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No – All wards affected
If yes, name(s) of ward(s): SMBC		
Is this a key decision?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, add Forward Plan Reference: 010452/2022		
Is the decision eligible for call-in?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Does the report contain confidential or exempt information?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Exempt Appendices 2 and 3 Information relating to the financial or business affairs of any particular person (including the council)		
Schedule 12A Local Government Act 1972		

### 1 Executive Summary

- 1.1 The Cabinet report of the 18<sup>th</sup> May 2021 approved a suite of agreements which have led to Arden Cross Limited (ACL) appointing an Agent to market the Arden Cross site and to initiate a development partner selection process to select one or more entities in aggregate to undertake development and negotiate the terms of a development agreement to be entered into by ACL, to be brought back to Cabinet hence this report.

- 1.2 Further to the advice of ACL's appointed Property Consultant; Jones Lang LaSalle (JLL), market engagement to procure a development partner for the site has been progressed and developer partner selection process initiated and concluded. The recommendations of the JLL report attached at Exempt Appendix 4 were approved by the Board of Arden Cross Limited on the 24<sup>th</sup> August 2022. The ACL Executive have approvals from other landholders; Packington Estate and Coleshill Estate.
- 1.3 Note / This report seeks approval to update Cabinet on progress to date and to approve commercial terms for ACL to appoint a development partner for the scheme.

## **2 Recommendations**

- 2.1 Approves the appointment of a development partner for the Arden Cross Interchange Triangle Site as detailed in the Exempt Appendix 3.
- 2.2 Approves ACL reverting to the under bidders in the event of failure to complete and proceed to completion.
- 2.3 Approves the proposed terms and completion of the Commercial Terms of the Development Agreement by ACL as set out in Exempt Appendix 5.
- 2.4 Authorises the Leader of the Council in conjunction with the Strategic Director of Council Management and Strategic Director Place, Prosperity and Sustainability to agree final terms and Development Agreement (DA) to be entered into by ACL.
- 2.5 Notes ACL's revenue budget for 2022/23 and approves Birmingham City Council's (BCC) contribution as per the terms of the ACL Shareholders Agreement, identified at Exempt Appendix 7.
- 2.6 Authorises the City Solicitor (or their delegate) to negotiate, execute and complete all relevant documentation required to give effect to the above recommendation.
- 2.7 Authorises the Assistant Director of Investment and Valuation or nominated appointee (Head of Property and Valuation) to carry out preparatory work and enter into any relevant negotiations involving the Council.

## **3 Background**

- 3.1 Arden Cross is a strategic development site extending to 140 hectares, located on the east side of Birmingham, adjacent to the NEC, Birmingham International Airport and Birmingham International train station. The site in its entirety is located within Solihull Metropolitan Borough Council (SMBC).
- 3.2 The site is the location of the HS2 Interchange Station now under construction which once built will provide fast connections to the major UK cities.
- 3.3 The Arden Cross site is principally owned by three landowners, BCC, Packington Estate and Coleshill Estate who have pooled their land interests to enable the

delivery of a comprehensive mixed-use development and have entered into an Option Agreement with ACL which entitles ACL to draw down these land interests for the purposes of such development.

- 3.4 ACL is a Special Purpose Vehicle (SPV) that the landowners have created to ensure the development comes to fruition. ACL is financed by the landowning shareholders through a SPV Shareholders Agreement. ACL provide forecast operational budgets that are supported by a business plan each year.
- 3.5 ACL commissioned the production of an evidence-based masterplan ([www.ardencross.com](http://www.ardencross.com)) aligned with Her Majesty's Government compliant HS2 scheme. The masterplan and business case articulate that the site can deliver an exciting mix of over 6 million sq ft of commercial space, 3000+ new homes with unrivalled public realm to include a new 12 hectare country park at its heart.
- 3.6 Once fully developed the site has the capacity to accommodate at least 27,000 jobs that will deliver an additional £1.4bn Gross Value Added to the local economy per annum. The gross development value of the development exceeds £3bn.
- 3.7 The masterplan and business case have the support of local and regional Government and is being mobilised with the necessary departments of central Government who have offered support for the proposals. In the March 2021 Budget, HM Treasury made provision of a financial support package by way of a £50m grant to fund the first phase of Multi Storey Car Park (MSCP),
- 3.8 The landowning parties entered into a land agreement with the Secretary of State for Transport in 2016, that amongst other things enabled the landowners to utilise the infrastructure being delivered by HS2 to access their development land, provide for easements across the HS2 permanent infrastructure and ensure that land required during the construction of the railway is returned to the relevant landowners for development.
- 3.9 As a result of the significant support for the masterplan and business case, ACL now require an investment/development partner to take this project into the delivery stages of development.
- 3.10 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.
- 3.11 The ACCA identifies that ACL progress a robust and transparent process to select a development partner following the principles of delivering best value to its shareholders. The stages of the process to be established by ACL with its advisors, accepting that ACL will lead and be responsible for the negotiations.
- 3.12 The Arden Cross Interchange Value Capture Agreement (VCA) identifies that ACL will use its reasonable and commercially sensible endeavours to secure

private sector funding and select one or more development / investment partners, in consultation with UK-Central (Solihull) Limited trading as the Urban Growth Company (of Solihull Council House (UGC)), via a selection process providing relevant assurance to public sector partners and funders and the security required for such private sector funding.

- 3.13 The Cabinet report; Arden Cross Interchange Triangle Contractual Agreements to Enable Development dated 18<sup>th</sup> May 2021, approved ACL's commencement of procurement of a development partner, to be reported back to Cabinet.
- 3.14 To support the case for public sector funding that will contribute directly or indirectly into supporting the Development, it is accepted under the ACCA that ACL needs to demonstrate a robust and transparent process to select a preferred development partner including a requirement for due regard to be given to the reasonable opinions of the public sector funding partners through the process.
- 3.15 Due consideration is to be given to UGC views on the submissions and the final evaluation, where required to demonstrate deliverability of the land value capture and where appropriate to consider and evaluate proposed public sector input.
- 3.16 The offers were reviewed and evaluated by the ACL Board and appointed consultant JLL, BCC appointed officers from Property Services and Planning, have subsequently approved the preferred bidder as Directors of ACL.
- 3.17 The opportunity has been marketed to ensure the maximum return to the landowning partners and any development proposals that may be brought forward by the successful development partner will be in accordance with the prevailing planning policy.
- 3.18 The proposal recommended represents best consideration and has been validated by ACL's appointed property advisor JLL and the Assistant Director of Investment and Valuation's authorised delegate based upon analysis of the offers received.
- 3.19 The Tender Report detailing the outcome of the process is appended as Exempt Appendix 4 and provides confidential tender information.
- 3.20 The strategic approach to the utilisation and disposal of the City Council'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.
- 3.21 The development of this site will contribute to the creation of jobs within the plan area with employment and skills programmes put in place to connect these opportunities to the local communities. The arrival of HS2 and extension of the Midland Metro from the City Centre to Birmingham Airport and the proposed HS2 Interchange Station.

## **4 Options Considered and Recommended Proposal**

- 4.1 ACL and its property advisors have considered a number of options for the development of the site as set out in earlier reports.
- 4.2 This work is outlined in more detail in Exempt Appendix 4 and the report concludes that the proposal recommended represents the best way forward and in their opinion “meets the requirements of S123 of the Local Government Act 1972.
- 4.3 The successful tenderer has the resources and experience to deliver the development going forward.
- 4.4 The delivery of the subject site will promote investment into the city region economy.

## **5 Consultation**

- 5.1 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.
- 5.2 No external consultation has taken place regarding the contents of this report, beyond the informal discussions with ACL.

## **6 Compliance Issues:**

### **6.1 How are the recommended decisions consistent with the City Council’s priorities, plans and strategies?**

The decisions recommended in this report will facilitate the development of the Site which contributes to:

- 6.1.1 The Property Strategy which is aligned with the strategic outcomes outlined in the Council Plan 2018-2022 – to create a city of growth where every child, citizen and place matters.
- 6.1.2 As the largest local authority in the country with the biggest property portfolio, the Council has the opportunity to utilise its property and land assets in a strategic way to deliver its priorities.
- 6.1.3 The Property Strategy takes a medium to long term strategic approach to how the City Council utilises its commercial property assets and will ensure a balanced delivery of maximised commercial and social returns. Re-aligning the Council’s land and property will provide a catalyst for development and underpin the social fabric of communities across the city region.
- 6.1.4 The Council’s Corporate Delivery Plan 2022-2026 prioritises jobs and skills for Birmingham to be a great city to succeed in and to be renowned as an enterprising, innovative and green city. The scheme will support inclusive sustainable growth in the number of jobs, invest in infrastructure to develop a modern, sustainable transport system; invest in growth

sectors; and provide training for residents so that they can take advantage of sustainable employment. The scheme will deliver on actions within the Delivery Plan to concentrate on significant areas of opportunity, by facilitating jobs and training opportunities using the City Council's property assets to accelerate regeneration and investment and by facilitating the expansion of the Metro.

6.1.5 The development of the Site for employment uses is a key part of Regional Growth Strategy and will be complemented by skills and training programmes to connect the local community to the job opportunities created.

6.1.6 Net Zero Carbon Measures –

The preparation of the master plan was both supported and informed by Environment and Sustainability Appraisals. In terms of ongoing work, the ACL team is working with key stakeholders to ensure the site fulfils overarching objectives in terms of 'pollution free' transport modes, e.g. an Automated People Mover; car free gateways; and green and blue infrastructure design. ACL is also working with UGC and other UK Central Hub stakeholders to identify the means to optimise use of renewable energy sources wherever possible.

## 6.2 Legal Implications

6.2.1 The power to dispose of land is contained in Section 123 of the Local Government Act 1972. The disposal power in Section 123 of the Local Government Act 1972 is subject to the best consideration test. The Assistant Director of Property (or nominated appointee) has confirmed that the recommended transaction, as detailed in Exempt Appendix 3 represents best consideration and satisfies the Council's obligations under Section 123 of the Local Government Act 1972.

6.2.2 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 4 of that Act contains the Council's power to exercise this general power of competence for commercial purposes through a company. Section 111 of the Local Government Act 1972 contains the Council's ancillary financial and expenditure powers in relation to the discharge of its functions including the disposal and acquisition of property.

6.2.3 The information in Exempt Appendices 3 and 4 is commercially sensitive with regard to the tender process. Exempt information is set out in Schedule 12A of the Local Government Act 1972 (as amended) and paragraph 3 of schedule 12A includes information relating to the financial or business affairs of any particular person (including the council). It is in the public interest to treat the information in Exempt Appendices 3 and 4

as exempt information as they contain commercially sensitive information of a financial or business nature, which if disclosed to the public could be prejudicial to a named, individual or company.

### **6.3 Financial Implications**

- 6.3.1 All tenders received are detailed in the individual Tender Report attached as Exempt Appendix 4. Exempt Appendix 3 and 5 provides the detailed financial information.
- 6.3.2 Exempt Appendix 7 contains details of ACL's revenue budget for 2022/23 for which the Council makes an annual contribution. This is treated as a revenue loan and will be repaid as part of the shareholder (landowner) returns from future development returns as per legal agreement with ACL. This could be in the form of capital receipts, rents or dividends negotiated by ACL.

### **6.4 Procurement Implications**

- 6.4.1 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 specific targets. The ACL business case prepared in 2021 identified that Arden Cross has the ability to deliver 27,000 jobs 16,000 of which will be new.
- 6.4.2 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.
- 6.4.3 In their bid the preferred bidder provided confirmation that their approach to delivering Social Value would involve the identification, measurement and optimisation of Social Value outputs/benefits delivered to individuals, business and the communities in which they work.
- 6.4.4 ACL have met with SMBC to discuss Social Value considerations previously and have passed contact details to preferred bidder in order for conversations to be continued. The preferred bidder have confirmed in addition to the use of their proprietary tool they also use the Social Value Portal and they they will work with SMBC; and intend to link with local initiatives to ensure they develop a programme that meets local needs.

## **6.5 Human Resources Implications (if required)**

6.5.1 The Council is using existing staff from the Property Services and Planning and Development service of the Place, Prosperity and Sustainability Directorate to progress this project.

## **6.6 Public Sector Equality Duty**

6.6.1 The programme has been undertaken in accordance with the Property Strategy. The Property Strategy is a policy document setting out the strategy principles associated with property assets and at this stage there are no specific implications.

6.6.2 The Equality Analysis is attached at Appendix 2, which concluded that the scheme will help create a framework that will positively impact on the quality of life of the area's diverse community. A further Equality Analysis will not be required at this stage, as the report recommendations do not have an adverse impact on the groups and characteristics protected under the Equality Act 2010.

## **7 Appendices**

7.1 List of Appendices accompanying this report:

1. Site plan
2. Equality Impact Assessment
3. Exempt Appendix 3 Report
4. Exempt Appendix 4 Recommendation/Tender Report
5. Exempt Appendix 5 Proposed Key Commercial Terms
6. Exempt Appendix 6 Strategic and Partner Appointment Risk Registers
7. Exempt Appendix 7 ACL Revenue Budget 2022/23

## **8 Background Documents**

8.1 Land at Bickenhill Lane, Arden Cross adjacent to the proposed HS2 Interchange Station, Solihull, Landowner Options Agreement and Revised Shareholders Agreement; Leader report 28<sup>th</sup> October 2020

8.2 Arden Cross Interchange Triangle Contractual Agreements to Enable Development; Cabinet report 18<sup>th</sup> May 2021

8.3 Arden Cross Interchange Triangle Collaboration Agreement (ACCA) March 2022.

8.4 Value Capture Agreement (VCA) in relation to the Arden Cross Interchange Triangle, Solihull, West Midlands March 2022.