

Part A

Report to: Cabinet
Date of meeting: 4 July 2016
Report of: Property & Regeneration Section Head
Title: Amendments to the Various Agreements for the Watford Health Campus Partnership LLP

1.0 Summary

- 1.1 After a procurement exercise, conducted via the Official Journal European Union (OJEU) process, a joint venture partner, Kier Property Investments Ltd, was selected by the Council to take forward the regeneration of the Watford Health Campus.
- 1.2 The Watford Health Campus Partnership LLP was formally established in June 2013, with various legal agreements signed by both the Council, Kier and West Watford Hospitals National Health Service Trust.
- 1.3 Three years have elapsed since these legal agreements were entered into and for various operational reasons it has become necessary to make a number of amendments to them to reflect changes in circumstances coupled with a better understanding of issues relating to the regeneration of the site.
- 1.4 An Operational and Partnership Board with members of both the Council and Kier has been set up as a governance mechanism to manage the regeneration process which sets out approval processes within the parameters of the above mentioned documentation.

2.0 Recommendations

- 2.1 To AGREE to an amendment of the Members Agreement allowing the Council to lend Senior Debt to the project, similar to a bank. This debt would carry a priority return from development receipts.
- 2.2 To AGREE in the Members Agreement to the prioritising of the return of an additional tranche of Growing Places Funding (GPF) which has been invested in the scheme's infrastructure.

- 2.3 To AGREE to delegate decisions to the Partnership Board regarding the allocation of site specific abnormal costs to site wide costs where appropriate to create viable development zones
- 2.4 To AGREE to an amendment of the Campus Agreement relating to the land equalisation agreement with West Hertfordshire Hospital Trust (WHHT) so that payment from the Council is deferred until plans for the hospital and it's development land are further progressed and that a reconciliation mechanism is entered into when WHHT plans are finalised

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3.0 **Detailed Proposal**

- 3.1 In June 2013 the following Agreements were entered into to govern the Watford Health Campus Partnership LLP, the joint venture created to enable the regeneration of the area known as Watford Health Campus:-
- Members Agreement (between the Council and Kier)-Sets out the governance process and financial issues for the Joint venture
 - Campus Agreement (between the Council the Hospital and Kier)-To regulate the relationship between WBC, Kier and WHHT and agree the overarching regeneration objectives of the site and financial issues between landowners.
 - Development Agreement (between the Council, Kier and the LLP)-Sets out the process for developing specific zones
- 3.2 It is deemed advantageous to the Council to lend funds to the WHCP LLP and obtain a better return for the Council's reserves. At present the reserves return 0.5 to 1% to the Council and agreement has been reached in principle to lend at a rate of 4.5%. This is seen as advantageous to the Council in increasing revenue and also generates a higher land value for the first development project Industrial Zone South (IZS) as it assists viability and helps enhance land value reducing the Council's need to put equity into the scheme.

The loan is anticipated to be for a period of 18 to 24 months and will be repaid with

interest upon the sale of the development which is anticipated in financial year 2017/18.

The alteration to the documentation is proposed to allow the Council to lend money to WHCP and for this funding to be classed as Senior Debt giving it a priority return.

Currently the Members Agreement does not envisage either partner acting as a bank or other lending institution to the LLP but putting in any money (or in the Council's case land and/or money) as a Member of the LLP with a different mechanism for securing a return depending on whether both parties put in equal or unequal values.

A separate Cabinet paper dealing with the development of (IZS) has been prepared on this matter highlighting the quantum of potential returns.

- 3.3 Further funds of £3m Growing Places Funding (GPF) which were originally intended to invest in specific development zones needed to expended on infrastructure and it was economically advantageous to address site specific issues whilst the groundwork contractor for the road was on site. This will result in those zones not carrying these extra costs going forward but is expended earlier on the zones than anticipated.

The Members Agreement needs to be altered to reflect the expenditure of this funding and to prioritise the GPF return in the development receipts "waterfall payments" which is set out as follows:-

- Repayment of external senior debt (council loan)
- Repayment of Growing Places Funding (tranche 1)
- Loan interest and Loan on Loan B Notes (Council or Kier equity)
- Loan Interest and Loan on Loan A Notes (Council or Kier equity)

The specific alteration to the Members Agreement will align the repayment of the extra GPF (tranche 2) funding to the existing GPF (tranche1) payback. Any further GPF funding deployed in the same way would be treated similarly.

- 3.4 The development of the Campus site is challenging and abnormal costs are high. WHCPLLP are regenerating a former railway goods yard site and a former coal and gas power station which are challenging.

In assessing viability of the individual projects that make up the campus development it is seen as necessary when assessing viability, in certain circumstances, to attribute some site specific costs to site wide costs. This has the effect of attributing site specific costs in some circumstances to higher value and more profitable areas and improving viability of lower value development zones. These decisions will be closely monitored and approved by the Partnership Board having reviewed the business plan.

It is proposed to make an amendment to the Members Agreement which presently doesn't allow for site specific costs to be allocated elsewhere and to provide for this scenario in certain scenarios subject to Partnership Board sign off.

A summary of the proposed Deed of Variation is contained in Appendix 1. This document will be subject to minor changes but addresses the main issues recommended in this report.

- 3.5 The development of Watford Health Campus originally envisaged that much of the existing hospital site would be developed in a similar timetable to the land owned by the Council. Therefore a land equalisation agreement was agreed to with West Hertfordshire Hospital Trust (WHHT) in the Campus Agreement which was calculated on the basis of gross development area of each parties developable land included in the scheme. In June 2013 this was calculated at 75%:25% in favour of the Council.

The plans to develop the hospital however are at Outline Business Case stage whilst faster progress has been made on non-hospital land areas. There is therefore no clarity at this stage on the eventual configuration of their plans so an accurate calculation of a revised equalisation split cannot be agreed at this point.

It has been agreed verbally with WHHT that as development plans for IZS will shortly commence that the present formula for distributing land value is unworkable and inequitable. It is proposed that until plans for the hospital are clearer that the equalisation formula will not operate immediately but when the hospital plans are finalised that a reconciliation exercise is undertaken on the first development of the hospital site to reflect any changes.

It is proposed this matter is dealt with by way of a side letter.

4.0 **Implications**

4.1 **Financial**

- 4.1.1 The Shared Director of Finance comments that the ability to provide loans will increase the Council's revenue funding as increased returns can be obtained above placing in deposit at the bank. In addition the Growing Places Funding which is a loan that has to be paid back in 2020 is secured.

4.2 **Legal Issues** (Monitoring Officer)

- 4.2.1 The Head of Democracy and Governance comments that under the terms of the various agreements any changes to the terms of them have to be agreed for the Council by Cabinet and they will also have to be approved by the Kier Board and in relation to the Land Equalisation proposals by the WHHT Board.
- The Council has been using Browne Jacobsen to advise on appropriate wording. The partner at Browne Jacobsen was the partner at Nabarro LLP who advised the Council and WHHT and led the negotiations on the original terms for setting up the LLP.
- The advice the Council has received has included advice on whether the loan would be

deemed to be State Aid. The advice has concluded that state aid is not an issue as the interest rate of the loan is what can be obtained in the market taking into account the covenant strength of Kier and financial strength of the council.

4.3 Potential Risks

Potential Risk	Likelihood	Impact	Overall score
The loan is considered state Aid	1	2	2
WHHT renege on equalisation approach	2	3	6
Those risks scoring 9 or above are considered significant and will need specific attention in project management. They will also be added to the service's Risk Register.			

4.4 Staffing

4.4.1 N/A

4.5 Accommodation

4.5.1 N/A

4.6 Community Safety

4.6.1 N/A

4.7 Sustainability

4.7.1 The development is remediating contaminated land and improving the environment.

Appendices

- Appendix 1- summary of Deed of variation

Background Papers

No papers were used in the preparation of this report.

File Reference

- None