London Borough of Hammersmith & Fulham **CABINET** **1 July 2019**	
OLD LAUNDRY YARD, SHEPHERDS BUSH	
Report of the Cabinet Member for the Economy – Councillor Andrew Jones	
Open Report with Exempt Appendices Appendix 3 and 4 are exempt from disclosure on the grounds that it contains information relating to the **financial or business affairs of a particular person (including the authority holding that information) under paragraph 3** of Schedule 12A of the Local Government Act 1972, and in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information	
Classification - For Decision **Key Decision: Yes**	
Consultation: Equalities, Legal, Finance, Business, Commercial, IT, Risk, Property	
Wards Affected: Shepherds Bush Green	
Accountable Director: Jo Rowlands, Strategic Director for The Economy	
Report Author: David Burns, Assistant Director – Growth	**Contact Details:** Tel: 020 8753 6090 E-mail: David.Burns@lbhf.gov.uk

1. EXECUTIVE SUMMARY

1.1. This report sets out the rationale for progressing a planning application at the Old Laundry Yard site in Shepherds Bush and entering into a development management agreement with U+I Ltd to submit the planning application as part of a joint application with U+I's adjoining site, and for U+I manage any development going forward.

1.2. It seeks approval for a budget of £1.3m for professional fees and project management costs to submit planning permission in partnership with U+I for the development of the Old Laundry Yard for residential housing and the commercial units (on land owned by the Council) and commercial units (on land owned by U+I's special purpose vehicle Orion Shepherds Bush (Market) Ltd).

1.3. It also asks Cabinet to allow the Council to enter into the draft Heads of Terms that will form the basis of a development management agreement with U+I, which will govern the relationship between the Council and U+I.

1.4. A feasibility study has identified that, subject to planning (and the Council approving the masterplan), the Council owned land can accommodate approximately 62 new homes, with a minimum of 50 per cent affordable housing, together with 7,000 square feet of affordable commercial space. The land owned by U+I can accommodate, subject to planning, up to 145,000 sq. ft of commercial/office space including new affordable workspaces and studios, of up to 26,000 sq. ft.

2. RECOMMENDATIONS

2.1. That Cabinet approves a budget of up to £1.3m funded from HRA borrowing for the Council's share of the Old Laundry Yard professional fees to enter into a Development Management Agreement with U+I and submit a planning application and the associated costs.

2.2. That Cabinet approves the set-aside of HRA reserves of £1,300,000 to mitigate the risk of potential write off of capital costs should the scheme not proceed.

2.3. That Cabinet agrees to waive the usual tendering requirements of Contract Standing Order 10 pursuant to the procedure in CS03 on the grounds that the circumstances are covered by legislative exemptions, to permit the direct award of the Development Agreement.

2.4. That the Council enters into the Heads of Terms and Development Management Agreement with U+I or any subsidiary company guaranteed by U+I, which are required to facilitate the delivery of the Old Laundry Yard.

2.5. To delegate authority to the Strategic Director for The Economy, in consultation with the Cabinet Member for the Economy and the Arts and the Assistant Director of Legal and Democratic Services, to finalise and complete negotiations with U+I in order to give effect to the decision in 2.3 above.

2.6. Resolves that the area of land at Old Laundry Yard, Pennard Road referred to in this report and shown edged red, coloured yellow on the plan at Appendix 1 is no longer required for the purpose for which it is currently held in the HRA.

2.7. To approve in principle the appropriation of the area of land as shown edged red at Appendix 1, for the planning purposes of facilitating redevelopment for residential and other uses pursuant to section 122 of the Local Government Act 1972 which will enable the Council to override easements, covenants and other third party rights in respect of the land pursuant to section 203 of the Housing and Planning Act 2016 and note that final approval will be subject to a further report demonstrating that the requirements set out in the legal implications section having been satisfied.

3. REASONS FOR DECISION

3.1. To enable the long-term redevelopment of the Council owned Old Laundry Yard site for residential homes and commercial uses.

3.2. To enable a planning application to be submitted for the development of private and affordable housing, affordable workspace, commercial and office space

4. PROPOSAL AND ISSUES

Background

4.1. The Council owns the Old Laundry Yard (OLY) site that sits to the east of the Shepherds Bush market, with the only access via Pennard Road. This is shown coloured yellow on the attached plan (Appendix 1).

4.2. The properties along Pennard Road form part of the Shepherds Bush Conservation Area and those along Lime Grove are designated as part of the Coningham and Lime Grove Conservation area. Pennard Road mansions and the former Shepherds Bush Library to the north and south of the site are both identified on the Council's Register of Buildings of Merit.

4.3. The OLY site is currently leased to U+I for meanwhile uses – and is occupied by affordable start-up studio space for biotech focussed innovators (Open Cell), entrepreneurs and community space until 2020, on the basis of a temporary planning permission. U+I's special purpose vehicle Orion Shepherds Bush (Market) Ltd (OSBL) owns the site to the south of the Council site as well as the market (with TfL).

4.4. U+I have approached the Council with a proposal to jointly develop their sites and the Council's OLY site for a mixed-use development of residential and commercial uses. U+I also have control of the market site and so are able to provide the necessary rights of access which are required for the development and use of the OLY site for residential and commercial purposes.

Proposal

4.5. The proposal is for the Council and U+I to enter into a development management agreement (DMA) for the submission of a planning application on both sites, and the development management of construction through to completion. In any development, the Council and U+I will retain their separate land ownerships.

4.6. Under the proposed appointment, U+I will provide the full DM service for the joint development, and the Council will pay its share (i.e. for the OLY site only) of the DM service and professional fees through the whole of the development. This arrangement will be governed through a development management agreement (DMA) between the Council and U+I.

4.7. The Council will only pay U+I for DM services once the DMA has been signed. It is anticipated that it will take a further 12 weeks to finalise the agreement if Cabinet approval is granted. The Council will need to commission and pay for its own legal and valuation fees circa £80,000 while the DMA is being negotiated. These fees are included in the recommendation 2.1.

4.8. The Council will ensure that U+I as DM is getting value for money in the appointment of the consultants and contractors that will be used in the development, through its role as client and controls placed in the DMA. U+I have appointed Gardiner and Theobald to provide advice on their procurement strategy confirming the appointments represent value for money. See Exempt Appendix 3 for this report.

4.9. The DMA will be based upon the HOTs (Exempt Appendix 4) but will set out in greater detail the services to be provided. The services span the whole of the development process, from consultation and planning to construction and completion of the new residential and commercial properties. It will include a project plan and timetable with cashflows that show drawdown profiles for the professional fees. It also provides a detailed specification for the DM and other professional services, setting out milestones for consultation, planning, procurement, construction and completion. There will be termination rights for the Council in the event that milestones are missed and/or are not rectified within reasonable time, ensuring that (amongst other things) the Council will not be obligated to incur further costs if the masterplan cannot be agreed.

4.10. The Council will be fully involved in approving the masterplan of the joint site, ensuring the submitted planning application achieves the Council's objectives. The DM role will provide the support services but the Council will, subject to achieving planning and further Council and Cabinet authority, approve a capital budget for the scheme and procure a contractor to build the new homes and affordable workspace on its land.

4.11. The Heads of Terms set out terms on which the two parties will work together to develop the design of the comprehensive development and seek to obtain planning permission and subsequently to develop out the site together. They require both parties to review the viability of their respective schemes should planning permission be obtained. This allows for both parties to review before commencing if there are changes in market conditions. It also to allow further approvals to be sought in line with the Council's Constitution, Financial Regulations and Contract Standing Orders once the full development costs are known following a tender process.

4.12. The Heads of Terms set out the following key protections for the Council:

- A further viability assessment can be made once planning permission is granted that enables the Council to return to Cabinet and Council for approval to proceed with a fully costed scheme
- The Council can terminate at any stage where key milestones are not met, this includes submission of the planning application

- If planning permission is granted for a joint scheme U+I will be required to give the Council access over their land although they are not compelled to build their site out
- If the Council decides not to build their scheme out following grant of planning approval, access through the U+I owned site will be granted to enable the Council to sell the site should it wish to.

4.13. The initial viability appraisal has demonstrated that, on current assumptions, a viable development of 62 residential homes, of which 50% are affordable, is achievable on the OLY site. Initial pre-application discussions with planners have provided a positive steer in terms of use and density.

4.14. U+I will work with the Council to submit a joint planning application for both sites. The Council's site could accommodate circa 62 new homes (of which a minimum of 50% to be affordable) as well as circa 7,000 sq. ft of affordable work space, but only as part of a joint scheme due to the site access restrictions.

4.15. To develop the site jointly will require U+I to move 20 market units, affecting 15 market trader tenants, to enable construction of the improved market entrance at Goldhawk Road. All the affected tenants will be offered alternative accommodation within the existing market during construction of the new development. A communications and consultation strategy to maximise trader and resident engagement in the process is in development. This will be developed in parallel with the U+I asset management strategy for the market.

4.16. The temporary nature of the meanwhile space on the OLY site (Open Cell) will also mean having to relocate the current occupants to enable the development. However, the Council will support them to find alternative accommodation.

Strategic links

4.17. The 2018-2022 Business Plan sets out clear priorities around delivering 1,500 new affordable homes, including 500 for affordable home ownership, and to review all sites including smaller areas to use every available piece of land for housing. The Council also has London Plan commitments to deliver new housing. To support these policies, the Council has been preparing an assets and growth strategy with the objectives to:

- Increase the supply of affordable housing in line with the administration's priorities
- Use capital resource to increase the Council's income in line with the long -term financial strategy
- Utilise assets to help manage demand and avoid costs, for instance from specialist housing or temporary accommodation.

4.18. The Council's key drivers in the proposals is to use the site for much needed homes, including half at affordable levels for local residents, responding to the Council's business plan and one of the visions to build and share prosperity. It also supports the aspirations within the Council's Industrial Strategy to collaborate across sectors with the aim to provide more job opportunities across the borough in 21st Century industries.

4.19. U+I development proposals are led by the following key principles:

- Provide space for the market to grow and expand with varied scales and opportunities
- Upgrade pedestrian routes and improve and manage site permeability
- No net loss of market space
- New affordable workspaces and studios, up to 26,000 sq. ft.

Governance

4.20. The Council will use a gateway process to manage the financial risk by reviewing the feasibility and the financial case before committing additional investment. This is set out briefly below, with stages 1 and 3 requiring Cabinet or Council decisions:

Gateway 0	Feasibility Stage	Identification of the Opportunity
Gateway 1	Strategic Outline Business Case	***Current stage*** Approval to procure and appoint consultant team/Development Manager
Gateway 2	Outline Business Case	Approval to submit planning application
Gateway 3	Final Business Case	Approval to Procurement strategy and, Approval to enter into contract
Gateway 4	Completion	Review at both completion and final account, to include lessons learned

4.21. There is sufficient evidence to proceed through gateways 1 and 2 and approve initial budgets to progress towards a planning application as in recommendation 2.1. The initial budgets will be capitalised.

4.22. In order to manage the risk of potentially abortive costs, the HoTs set out agreed milestones. The Council is only liable to pay for the consultancy fees provided there is sufficient progress against these milestones.

4.23. If planning permission is granted, then the Final Business Case (Gateway 3) will come back to Cabinet and Council for approval to continue with the scheme, approval of a capital budget and to appoint a contractor in line with the Council's Constitution and Financial Regulations. At this stage there will be a fully tendered scheme and any future costs and risk would be managed.

4.24. Indicative timetables suggest a planning application could be submitted in Spring 2020 and the Final Business Case could be submitted to the Council for approval in Autumn 2020.

Long term ownership of the completed homes

4.25. The current proposal will (subject to planning) deliver 62 new homes, the 32 affordable homes will be owned and let within the HRA and the 30 private homes will be sold on the open market or retained for private rent by the Council.

5. OPTIONS AND ANALYSIS OF OPTIONS

5.1. The alternative options and analysis for use of the OLY site have been considered and are set out below:

5.2. Option 1 – 'do nothing' retain for current meanwhile use. This option would require the Council to renew a fresh lease to U+I and obtain a renewal of the temporary planning permission for 'meanwhile' uses. The temporary planning permission covers both the Council and U+I land. The Council's letting to U+I would need to be re-negotiated as the commercial return has been low and terms will need to be agreed. This is not an attractive long-term solution for the Council as it does not make effective use of the land holding and foregoes the opportunity for new housing. This option is not preferred.

5.3. Option 2a - disposal of land. The Council could market the site based on a title restriction for income from meanwhile uses subject to the temporary planning permission. The disposal would result in a low capital receipt and would not unlock wider delivery of new homes, modernised market stall accommodation and new business space. This option is not preferred.

5.4. Option 2b - The Council's land interest could be acquired by adjoining landowners but the majority of the site (U+I land) is also land locked. It is difficult to assess how an adjoining land owner apart from U+I would want the Council's land. U+I could acquire the land from the Council, so it re-develops the combined sites for a scheme to be delivered on their own. U+I or another developer could develop a planning application, in accordance with planning policy, but may not take into account the Council's wider drive for a mixed-use development that is considered in consultation with residents and local traders. This option is not preferred.

5.5. Option 3 - Council to redevelop the land. 15 Pennard Road has restrictions both spatially, from a planning point of view, and also access/egress from a highway stance that makes it impossible for vehicles to pass over LBHF land during the construction period. This option is not preferred.

5.6. Option 4 – Council to redevelop in partnership with adjacent land owner U+I as per the proposal set out in section 4. The Council will retain its freehold ownership and benefit from a joint planning permission with U+I. This is the preferred option as it provides the Council with the only realistic option to build much needed new homes, of which 50% will be affordable. U+I want to work with the Council to enable a joint development with their sites and is willing to provide access through their sites if they are appointed to provide development management (DM) services.

5.7. As the Council’s preferred option 4 may result in the market sale homes being sold on long leases the Council will be selling part of its land interest, and therefore it is required to follow Best Consideration guidelines. The Council will confirm the land is being held for regeneration purposes and therefore best value under S233 Town and Country Planning Act 1990 will be required; this may also require Secretary of State consent before any homes are sold on the open market.

6. CONSULTATION

6.1. A full and detailed consultation will be carried out with market traders and local residents as the planning application is developed.

7. EQUALITY IMPLICATIONS

7.1. It is not anticipated that there will be any negative impact on any groups with protected characteristics, under the terms of the Equality Act 2010, from the progression of this development proposal.

7.2. Implications completed by: Peter Smith, Head of Policy & Strategy, Tel. 020 8753 2206.

8. LEGAL IMPLICATIONS

8.1. The Council has been advised by Lewis Silkin LLP on the negotiation of the Heads of Terms and the real estate aspects of the proposed transaction, and by Sharpe Pritchard LLP on the procurement aspects of the proposed transaction.

Appointment of U+I as Development Manager

8.2. Lewis Silkin have confirmed that the Heads of Terms will form the basis of a Development Management Agreement pursuant to which the development of the OLY site will be managed by U+I, but through contractors and a professional team who will owe a duty of care directly to the Council.

8.3. The Heads of Terms provide the Council with the required level of control over the design and carrying out of the proposed development on the OLY site, as well as providing that U+I (as owners of the adjoining land) will be required to grant such rights over their adjoining land as are sufficient to enable the development at the OLY site to take place, and for occupiers going forward.

8.4. In addition, the Heads of Terms set out termination and step-in rights for the Council where U+I fail to achieve pre-agreed milestones in carrying out the development of the OLY site, or in the event of any other material non-performance by U+I.

8.5. The Council has agreed to pay the development costs in arrears on an ongoing basis, against evidence of costs incurred and/or progress with the development.

8.6. Lewis Silkin have confirmed that they envisage being able to draft and negotiate a Development Management Agreement with U+I within the timescales agreed in the Heads of Terms, on the assumption that U+I and their solicitors are fully engaged, and that the Council is able to provide instructions promptly, when requested to do so.

Property Issues

8.7. Lewis Silkin have carried out an initial review of the Council's title to the OLY site and confirmed that they do not see any insurmountable development constraints, although this is subject to a more detailed review and any issues which may be raised by U+I and their solicitors.

8.8. Given that the Heads of Terms do not deal with the disposal of any interests in land owned by the Council to U+I, Lewis Silkin have advised that there is no need to advise on the Council's powers to dispose of land for the purposes of the transaction envisaged in the Heads of Terms.

8.9. A general power to appropriate land is conferred on local authorities under section 122 of the Local Government Act 1972 (LGA 1972). A Council may appropriate land:

- Belonging to that Council
- That is no longer required for the purpose for which it is held
- For any other purpose for which it is authorised by statute to acquire land

There is no statutory requirement to advertise or consult on a proposal or decision to appropriate land under this section (unless the appropriation relates to special categories of land such as open space, common or allotment land). Local authorities must, however, adopt a conscious process to the appropriation of land, to ensure that the statutory powers under which the land was held, and the appropriation made is clear

Legal comments completed by Anthony van Hoffen, Partner at Lewis Silkin Solicitors LLP - Anthony.VanHoffen@lewissilkin.com

Legal comments verified by Rachel Silverstone, Senior Solicitor - Rachel.silverstone@lbhf.gov.uk

9. FINANCIAL IMPLICATIONS

9.1. The recommendations in this report request that Cabinet approve a capital budget of up to £1,300,000 for the Council's contribution towards the Development Managers fees for taking the scheme to the point of a planning application.

Budget and funding requirements

9.2. The intention is for the scheme to be delivered within the Housing Revenue Account (HRA) and therefore the funding will be from a combination of increasing internal or external borrowing as measured by the HRA Capital Funding Requirement (CFR)[1] and either Right to Buy receipts, S106 contributions and/or GLA grant funding. The Council still has time to decide on what the optimal funding strategy will be given the timing and application restrictions of each funding source therefore this will be initially funded from borrowing and any amendments will be requested from Cabinet through the Quarterly Capital Monitoring reports.

9.3. The interest charges incurred on any borrowing taken out to fund these (and construction) costs can be capitalised during the development period[2], therefore not immediately affecting revenue budgets.

9.4. The expenditure will be approved by the Council, in addition it is recommended that no expenditure is committed until the Development Management Agreement is finalised. It will need to include sufficient milestones that need satisfying before the Council agrees to pay for its contribution to that milestone (i.e. payment in arrears) and progression to the subsequent milestone.

Appropriation of land

9.5. The recommendations include the approval in principle of the appropriation of the area of land for planning purposes with final approval subject to a further report. The Old Laundry Yard site is currently within the HRA therefore if appropriated for planning purposes, a further appropriation back to the HRA will be required. Statutory accounting regulations require a notional debt adjustment to be made to reflect the appropriation of land and assets between the Council's HRA and the General Fund and vice versa, based on valuation in the financial year the transaction occurs.

9.6. Any appropriations may need to be carefully managed to avoid unintended revenue implications of borrowing costs on the general fund. Further legal advice is being sought on the timing/ sequencing of the appropriations required and formal valuations will be required to establish the financial implications. These will be included in full in any future appropriation decision report.

Implications and appraisal of full scheme

9.7. If successful in achieving planning the scheme would need to demonstrate viability prior to the Council approving the progression of the full scheme and the report recommending this will need to be considered alongside a fully

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[1] The Capital Financing Requirement is the non-funded element of capital spend which is in respect of borrowing or credit arrangements used to **finance capital** expenditure on assets. This is not restricted to external borrowing as the council may elect to internally borrow against cash balances.
[2] As per International Accounting Standard 23.

costed scheme and validated appraisal model. A draft appraisal developed the Economy department officers indicates that the private housing makes a surplus capital receipt for the Council and that whilst the affordable housing has negative present value it demonstrates that net income is sufficient to cover interest costs.

9.8. The final assessment of viability is dependent on the final rents agreed and tenure mix in relation to the cost of construction, level of RtB/S106/ GLA funding available and applied and the cost of borrowing. All of this will need to be determined ahead of the Council approving the full scheme.

9.9. As set out in 4.17, the Council is developing an Assets and Growth Strategy to meet the Council's priority of delivering new affordable homes. This strategy will provide an overview and framework for Council capital investment priorities. In addition, the Council is preparing its Housing Revenue Account Asset Management Strategy to prioritise capital investment in its current housing stock. Any future decision on capital investment by the general fund and/ or the HRA will need to be made in the context of potentially competing demands for capital investment and the affordability of the revenue implications of these within available resources and may influence the potential options through which future schemes can be delivered.

Financial standing of U+I and Orion/Appointment of works contractor

9.10. A credit check was run on U+I and its SPV Orion Shepherds Bush (Market) Ltd on 29 April 2019 resulting in a very low and moderate risk respectively. The strong score of U+I provides sufficient re-assurance for the lower score of its subsidiary Orion Shepherds Bush (Market) Ltd.

9.11. There is a requirement in the HoT's that U+I are required consult with, and obtain the approval of, the Council prior to the appointment of the building contractor for the development on the OLY site so that there is an opportunity for the Council to have an input on the procurement process and make any desired checks on the financial standing of the contractors under consideration.

Financial context

9.12. This decision is not expected to affect the level of HRA cashable reserves as the funding requested is capital and it is not proposed to fund these from revenue reserves or contributions. The level of debt for the HRA is measured by the HRA Capital Financing Requirement (CFR) and the Capital Programme Monitor & Budget Variations, 2018/19 (Third Quarter) report that went to Cabinet on 4 February 2019 sets out that the CFR is forecast to be within prudential borrowing limits. The proposal in this report will increase the CFR by up to £1,300,000 in the HRA depending on whether RtB receipts, S106 contributions or GLA grant can be applied to reduce the HRA borrowing requirement.

Financial risks and mitigation

9.13. There is an inherent risk with capital projects that if the scheme is not considered viable, or the scheme is aborted, the capitalised costs incurred to date must be written off as an unbudgeted charge to revenue. Therefore, should the scheme not progress the DM fees of up to £1.3m will need to be written off to revenue. The Council can elect to set aside HRA reserves for expenditure incurred until the scheme achieves planning to mitigate this risk.

9.14. Implications completed by: Firas Al-Sheikh, Head of Housing Financial Investment and Strategy, Tel: 020 8753 4790.

9.15. Implications verified by: Emily Hill, Assistant Director, Corporate Finance, Tel. 020 8753 3145.

10. IMPLICATIONS FOR LOCAL BUSINESS

10.1 This proposal will directly affect Open Cell and their current biotech microbusinesses as well as several market stallholders. U+I have indicated that they will offer comparable temporary accommodation for these businesses. Consultation with affected businesses will be carried out and ways to mitigate any negative impact identified.

There is likely to be some disruption for the market traders in the construction stage but this will be mitigated by having a detailed construction programme and migration strategy that limits the disruption as far as possible.

There will be no opportunities for local SMEs at the design stage but there will be scope for local supply chain opportunities as part of the development.

10.2 *Implications verified/completed by: Albena Karameros, Economic Development Team, Tel. 020 7938 8583.*

11. COMMERCIAL IMPLICATIONS

11.1. The author of the report is requesting Cabinet approval to directly award a development contract to U+I for the purposes of the development of the Old Laundry Yard. Cabinet is being asked to approve a sum of up to £1.3 million to cover the cost of the Council’s obligations under the proposed contract.

11.2. The proposed contract would be considered as a public service contract under the Public Contract Regulations 2015 (“the Regulations”) for which the relevant threshold is £181,302. As the total contract sum will exceed this figure the contract would be considered “regulated” and subject to the full provisions of the Regulations. The Legal Implications contained in the report detail how the proposed direct award of contract would be permissible under the Regulations.

11.3. Hammersmith & Fulham Contract Standing Order (“CSO”) 10.2 classifies a public service contract with a value of £181,302 or greater as “High value” and requires that if it is not possible to “call off” from an existing framework agreement a full tender in accordance with the Regulations should be conducted.

11.4. CSO Section 3: Waivers and Exemptions provides for the requirement to expose a service to commercial competition to be waived if one of five grounds are satisfied:

A prior written waiver to these CSO’s may be agreed by the Appropriate Persons if they are satisfied that a waiver is justified because there are circumstances which are genuinely exceptional.

11.5. It is considered that the author of the report has demonstrated that there are exceptional circumstances which justify a waiver of the CSO’s to allow for the direct award of the proposed development contract to U+L.

11.6. CSO 3.1 defines the Appropriate Persons to agree waivers with an estimated contract value of £100,000 or more as the appropriate Cabinet Member(s) and the Leader of the Council. The proposed waiver can therefore be agreed as a Cabinet report recommendation.

11.7. CSO 3.2 states that all waivers with an estimated value of £25,000 and more, and the reasons for them, must be detailed in a report either to the appropriate Cabinet Member or the Cabinet. This report satisfies this requirement.

11.8. On the basis the waiver is approved the proposed contract, as it will have a value of £100,000 or greater, must be awarded by Cabinet in accordance with CSO 17.3.

11.9. In the event the waiver of the Contract Standing Orders is approved, and the direct award of contract is made the award must be published in Contracts Finder, the contract between the council and U+L must be formally executed in accordance with CSO 19 and the contract details entered on capitalEsourcing.

11.10. *Implications completed by: Tim Lothian, Procurement Officer, 020 8753 5377*

12. IT IMPLICATIONS

12.1 No IT implications are considered to arise from this report as sets out the rationale for, and seeks budget approval to, expend consultancy fees to progress a joint planning application with U+I at the Old Laundry Yard site (OLY). Should this not be the case, for example, by requiring new systems to be procured or existing systems to be modified, IT Services should be consulted.

12.2 IM implications: a Privacy Impact Assessment(s) should be carried out to ensure that all the potential data protection risks (e.g. in consulting with Goldhawk market trader tenants) around the area affected by the development are properly assessed with mitigating actions agreed and implemented.

12.3 Any contracts arising from this report will need to include H&F's data protection and processing schedule. This is compliant with the General Data Protection Regulation (GDPR) enacted from 25 May 2018.

12.4 U+I will be expected to have a GDPR policy in place and all staff will be expected to have received GDPR training.

12.5 *Implications verified/completed by: Tina Akpogheneta, Interim Head of Strategy and Strategic Relationship Manager, IT Services, tel 0208 753 5748*

13. RISK MANAGEMENT

13.1 As set out in the report, the most appropriate delivery mechanism for this scheme and funding terms are still subject to legal, tax and treasury advice. Changes to the current assumptions which have been made in the report and any potential changes in risks arising from the final advice will need to be considered and updated as necessary within any future Cabinet or delegated decision reports. Officers will ensure that the risk implications of any changes are fully understood. There are a number of risks associated with a project of this size and complexity. Regular project team and programme boards are used to manage risks.

13.2 Some of the key risks and associated mitigations, as identified by officers, are identified below:

Pre-Planning Risks

Risk	Impact	Mitigation
Heads of Terms/Development Management Agreement issues cannot be resolved or agreed	Delay to overall scheduled timescales Council's interests not appropriately protected or indemnified	Continuous dialogue and communication to progress negotiations Appropriate legal, finance and insurance input will be provided for the draft HoT/Development Management Agreement
Consultancy fees due for payment but milestones not achieved	Liable for payment but consultancy work not completed	Heads of Terms/Development Management Agreement requires milestones to be achieved before payment
Failure to obtaining a satisfactory planning Permission	Programme slips	Strong client approach in monitoring quality of work during the pre-contract period
Delays to obtaining a satisfactory construction budget	Programme slips and potential increase in costs	Strong client approach in monitoring quality of work during the pre-contract period
PR Consultation	Potential risk of disruption to PR process and disgruntled market traders	Continuous dialogue and input into the consultation process and style of the communication message

Build risk - timing and quality	Delay in delivery of the development	MDA to include LADs for the developer, which also flow through into the build contract
Construction budget cannot be met through procurement	Development cannot be funded and so cannot proceed	Opportunity to value engineer, and amend planning application so that budget can be met

The project team has identified the pre-planning risks in this project, as set out above, and sought to put in place appropriate mitigations. It is recommended that they continue to review, monitor, and escalate project risks as appropriate until the project objectives have been delivered and ensure that new risks identified are assigned to risk owners.

13.4 The financial implications section in this report identifies a number of key financial risks, including the viability of the project being assessed by both parties once planning permission has been secured, and the impact and treatment of abortive costs if the project does not proceed. The financial risks which will need to be closely monitored and managed and subject to regular reporting to senior management and Members.

13.5 If planning permission has been granted, officers will need to obtain appropriate advice regarding the viability of the scheme and make appropriate recommendations to Members in terms of progressing the project.

13.6 Officers will need to ensure that correct procedures are followed to make a direct award for to contract to develop the site is compliant with regulation 32 of the PCR 2015. This will mitigate the risk of potential future challenge.

13.7 Officers should ensure that appropriate legal, finance and insurance advice is sought on the draft Development Management Agreement to ensure that the Council is appropriately protected and indemnified.

13.8 Given the value and complexity of the proposed programme, officers should set out the officer and member governance arrangements which will provide project oversight and assurance and ensure that costs are appropriately controlled, and key actions taken once approvals have been confirmed.

13.9 Implications verified by: David Hughes, Director of Audit, Fraud, Risk and Insurance, Tel: 020 7361 2389.

14. BACKGROUND PAPERS USED IN PREPARING THIS REPORT

None.

LIST OF APPENDICES:

Exempt Appendix A – Exempt elements of the main report
Appendix 1 – Existing Site Layout
Exempt Appendix 2 – Land Ownership Plan
Exempt Appendix 3 – Cost Consultant Report
Exempt Appendix 4 – Draft Heads of Terms