

COUNCIL-LED GARDEN COMMUNITY UPDATE

Final Decision-Maker	Policy & Resources Committee
Lead Head of Service	William Cornall, Director of Regeneration & Place
Lead Officer and Report Author	William Cornall, Director of Regeneration & Place
Classification	<p>Public report with private appendix.</p> <p>The information contained within Appendix 2 is considered exempt under the following paragraph of part I of schedule 12A to the Local Government Act 1972:-</p> <p>3 = Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p> <p>Public Interest Test</p> <p>Whilst there is public interest in the disclosure of this information as it relates to a proposed development the interest in not jeopardising the financial position of the Council through the disclosure of commercially sensitive information outweighs the interest in favour of disclosure.</p>
Wards affected	All, but in particular Harrietsham & Lenham and Headcorn Wards.

Executive Summary

The proposal was last considered by this Committee on 10th February 2020. The purpose of this report is to gain approval to enter into a Collaboration Agreement (CA) with Homes England (HE). As in the case of previous reports to this Committee, the contents of this report relate to the Council's position as a potential property owner/developer and not as Local Planning Authority (LPA).

Purpose of Report

For decision.

This report makes the following recommendations to this Committee:

1. That the Committee agree to enter into the Collaboration Agreement (CA) as shown in Exempt Appendix 2 to the report and the Director of Regeneration and Place be granted delegated authority to make minor amendments to the CA, prior to its signing, in consultation with the Monitoring Officer and the Chair and Vice-Chair of the Committee.

Timetable	
<i>Meeting</i>	<i>Date</i>
Policy and Resources Committee	24 March 2021

COUNCIL-LED GARDEN COMMUNITY UPDATE

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<p>Impact on Corporate Priorities</p>	<p>The four Strategic Plan objectives are:</p> <ul style="list-style-type: none"> • Embracing Growth and Enabling • Infrastructure • Safe, Clean and Green • Homes and Communities • A Thriving Place <p>Accepting the recommendations will materially improve the Council's ability to achieve all the corporate priorities.</p>	<p>Director of Regeneration & Place</p>
<p>Cross Cutting Objectives</p>	<p>The four cross-cutting objectives are:</p> <ul style="list-style-type: none"> • Heritage is Respected • Health Inequalities are Addressed and Reduced • Deprivation and Social Mobility is Improved • Biodiversity and Environmental Sustainability is respected <p>The report recommendations support the achievement of all the cross cutting objectives.</p> <p>Through delivering much needed homes to include 40% affordable housing. The emerging masterplan is landscape led with up to 50% of the total proposed as green space. Led by the ambitions set out in the Strategic Plan the Council can ensure that the design principles of development where it is the master planner reflect the commitment to reduce health inequalities amongst other things.</p>	<p>Director of Regeneration & Place</p>

Risk Management	See section 5.	Director of Regeneration & Place
Financial	Investment in the Garden Community forms part of the Council's five-year capital programme and budgetary provision exists for the expenditure described in the report and the plans outlined here.	Section 151 Officer & Finance Team
Staffing	We will deliver the recommendations with our current staffing.	Director of Regeneration & Place
Legal	<p>The Council has a general power of competence under section 1 of the Localism Act 2011; this is the power to do anything an individual can do, provided it is not prohibited by other legislation. This power can be used for the Council to enter into the proposed collaboration agreement with Homes England.</p> <p>The Council also has the power under section 111 of the LGA 1972 to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate or is conducive or incidental to the discharge of its functions.</p> <p>Acting on the recommendation is within the Council's powers as set out in the above statutory provisions.</p> <p>HE should be required to warrant to the Council that use of the DPP (or any alternative panel or framework) will be compliant with the Public Contracts Regulations 2015 and that HE will indemnify the Council against any claims or losses caused by HE's use of the DPP (or any alternative panel or framework) which is not compliant with the Public Contracts Regulations 2015.</p>	Principal Solicitor – Commercial/Pinsent Mason

Privacy and Data Protection	No impact identified	Policy and Information Team
Equalities	An Equalities Impact Assessment will be completed if the proposal forms part of the draft spatial strategy of the Local Plan Review.	Equalities and Corporate Policy
Public Health	We recognise that the recommendations will not negatively impact on population health or that of individuals more broadly. However, the period of uncertainty whilst the opportunity is being explored could negatively affect local residents.	Public Health Officer
Crime and Disorder	The recommendation will not have a negative impact on Crime and Disorder.	Head of Service or Manager
Procurement	N/A.	Head of Service & Section 151 Officer
Biodiversity	The revised masterplan brief seeks a biodiversity net gain within the proposed redline.	Head of Policy Communications & Governance

2. INTRODUCTION AND BACKGROUND

2.1 The Council is pursuing this project as it is consistent with its Strategic Plan priority of “embracing growth and enabling infrastructure” and the desired outcomes within it:

- The Council leads master planning and invests in new places which are well designed.
- Key employment sites are delivered.
- Housing need is met including affordable housing.
- Sufficient infrastructure is planned to meet the demands of growth.

2.2 This report principally seeks approval to enter a CA (summarised in Appendix 1 and attached as Exempt Appendix 2) with HE, but will also provide a brief update on two further matters, so will cover the progress made since the last report to this Committee, in respect of the following areas:

- Homes England (HE) partnership
- Promotion of Heathlands through the Local Plan Review (LPR)
- Principal Landowners

2.3 **Homes England (HE) Partnership.** On 16th December 2020, this Committee considered three possible deal structures as to how the Council

could collaborate with HE with the goal of delivering the Heathlands project.

2.4 To recap, the December 2020 report to this Committee stated that the Council should enter into a CA with HE which will cover the period from now through to the submission of a Planning Application for the scheme in approximately five years-time (assuming that the scheme is allocated within the Local Plan), and beyond into the delivery phase too, and cover the following areas:

- *Establish commitment from both the Council and HE to co fund, on a 50:50 basis the ongoing promotion, Land Option and Planning Application costs up to an anticipated figure of circa £3m. This Committee has previously decided to meet these costs in their entirety, and they feature in the Council's capital programme. If costs look likely to exceed this figure both parties will seek authority for this additional expenditure.*
- *The selection and appointment of any consultancy advice required after the CA is in place. All reports and surveys commissioned after the Collaboration Agreement has been entered into will be for the joint benefit of the Council and HE.*
- *Governance arrangements around shared decision making.*
- *The resources in respect of staff time and grade that each organisation will contribute. There should be some political representation too, possibly the Chair and Vice Chair of this Committee.*
- *Responsibilities in relation to exercising the Option Agreements. It is envisaged at this stage that HE will control the Option and will potentially fully fund the acquisition.*
- *The responsibilities of both the Council and HE during the delivery phase of the development. This will likely include how preferred developers are selected, how the estate is managed (roads, parks etc) and a timetable for the delivery of the enabling infrastructure works. HE will lead on all these points but seek input from the Council to help shape the development.*

2.5 Furthermore, the December report then set out three different options as to how the deal could be structured to recover its investment, as follows:

- **Option 1 - Master-developer 50:50 Joint Venture with Homes England.** *This would mean that both parties remain equal and active partners across the likely 25-year delivery period of the project, funding the acquisition of the land and the key infrastructure elements, and recovering this investment through the onward sale of development land parcels to the housebuilder / developer sector. The parties would share risk and reward equally.*

- **Option 2 – MBC cease further investment prior to delivery phase.** In this scenario, the Council would simply co-fund the circa £3m required to secure Planning Consent and secure the Land Options but limit our financial exposure to this, and recover our investment through one of two variants depending on our risk appetite:
 - **Option 2A. Seek a "Priority Return"** whereby the Council has first call on any receipts from serviced land parcel sales that HE secures up to the sum invested by the Council (i.e., circa £1.5m). This would be the quickest and most secure route to the Council recovering its investment, but it would not be rewarded with any profit for its endeavours.

- **Option 2B. Seek a "Share of Planning Uplift"** over the duration of the 25-year delivery phase. HE will be aiming to recover its own investment in the land and infrastructure plus a profit by capturing the Planning Uplift that would be achieved between exercising the land options and disposing of serviced land parcels (with the benefit of Outline Planning permission) to developers. Rather than take a Priority Return (as per Option 2A) HE would offer the Council a share in the Planning uplift of each development land parcel over the duration of the delivery period, say 40 parcels of 100 homes. Whilst there can be no guarantee about the level of financial returns, the Council would generate returns over the entire duration of the project and could recover its initial investment of circa £1.5m within the first six years of the delivery phase.

This option would offer the potential of an income stream for the Council for future re-investment. It is proposed that if this option is the Council's preferred route then this would enable the council to invest in Heathlands in a way consistent with our Strategic Objectives including delivery of affordable housing and custodianship to ensure maintenance of a good quality public realm.

2.6 **The Committee decided to proceed with Option 2B (highlighted), subject to the Committee itself approving the final form of the CA (attached as Exempt Appendix 2).**

2.7 The CA attached is very nearly in its final form, and so the recommendation is that the report author be granted authority to negotiate minor amendments to it prior to signing, in consultation with the Monitoring Officer and the Chair and Vice Chair of this Committee. Given this requirement, the Council's acting solicitor, Anne Bowden of Pinsent Mason, will also be in attendance to answer any questions on the CA.

- 2.8 The CA contains clauses that will give the Council “right of first refusal” to acquire some or all the circa 2,000 affordable homes that will be built on Heathlands, as well as some of the commercial property too.
- 2.9 **Promotion of Heathlands through the LPR.** The Council is working closely with HE and is on track to make the submission by the due date (being end of March 2021). The Chair and Vice Chair of this Committee will be fully briefed prior to the submission being made.
- 2.10 **Principal Landowners.** Constructive dialogue continues with the principal landowners and / or their representatives, with the discussion focussed upon the proposed terms for the Option Agreement put forward by HE. The expectation is that the Option Agreements will be entered into in Q1 of the next financial year.
- 2.11 Whilst the proposed redline is still being refined, with the development shifting northwards, it is likely that there will be a much-reduced pool of landownership parcels required to deliver Heathlands.
- 2.12 At this stage, it is therefore probable that all 18 landowners that had previously requested that their landholdings be removed from the proposal, can be obliged. Regardless, the revised masterplan will once again safeguard existing homes in the locality inclusive of the provision of green buffers around them.
-

3. AVAILABLE OPTIONS

- 3.1 The Committee has the following options:

Option 1 – To enter into the CA in the form or substantially the form attached as Exempt Appendix 2 and grant authority to the report author to negotiate minor amendments to it, prior to signing, in consultation with the Monitoring Officer and the Chair and Vice Chair of this Committee. This is the preferred option.

Option 2 – To not enter into the CA. This is not recommended as it would compromise the chances of securing an “allocation” for Heathlands in the Local Plan Review. It would also mean that the Council would need to identify an alternative partner within a tight time frame, or indeed have a much greater financial exposure itself in delivering the whole Heathlands concept.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 Option 1 is recommended, as it gives a clear means for the Council to achieve its strategic objectives and secure a return on its financial investment in the project.
-

5. RISK

5.1 When this proposal was presented to this Committee in September 2019, the likely risks were set out as follows:

- At risk consultancy expenditure.
- A period of uncertainty for the community affected.
- Possible negative perceptions of a broader role for the Council in the context of acting as master developer.
- Maintaining cohesion amongst the landowner group.

5.2 These risks have to some degree crystallised and largely remain. However, the level of cohesion amongst what is now a smaller core landowner group, is now strong.

5.3 Further risks that have since been added and remain are:

- Terms cannot be agreed with the principal landowners.
- Challenge from individuals or organisations that oppose the principle and/or the specific details of the Council's council-led garden community.

6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

6.1 Nothing further to report.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

7.1 The next steps will be to:

- Advance the commercial negotiations with the principal landowners.
- Enter into the CA with HE subject to approval by this Committee by 31st March 2021.
- Continue to engage with the LPA to refine and evolve the Heathlands concept.
- Make the third stage submission to the LPA by 31st March 2021.

8. REPORT APPENDICES

Appendix 1 – Legal Summary

Exempt Appendix 2 – Proposed CA

9. BACKGROUND PAPERS

None.