ACTION TAKEN UNDER DELEGATED POWERS BY OFFICER

Title	**Brent Cross Cricklewood Funding and Delivery Strategy**
Report of	Chief Executive (in consultation with the Chairman of Policy and Resources Committee)
Wards	Golders Green, Childs Hill and West Hendon
Status	Public
Enclosures	Yes
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Summary

This report sets out the decision to approve the Revised Funding Agreement (RFA) with HM Government (HMG) in consultation with the Chairman of the Policy and Resources Committee and having consulted members of the Assets, Regeneration and Growth and Policy and Resources Committees and to commission the second stage of works under the Implementation Agreement as delegated by the Policy and Resources Committee (P&R) on 20 February 2019. It should be read in conjunction with the report to the Policy and Resources Committee on 20 February 2019 ("the main report of the Policy and Resources Committee").

Decisions

1. **Approve the Revised Funding Agreement (RFA) having had regard to the revised financial tests set by the P&R Committee on 11 December 2018 and being satisfied that the RFA does not expose the council to unacceptable risk; and**

2. **Approve the commissioning of Schedule 2 (Rail Systems and Sidings) works as set out in the Implementation Agreement Contract with Network Rail dated 21 December 2018.**

1. WHY THIS REPORT IS NEEDED

1.1 The terms of the Revised Funding Agreement with HM Government (HMG) as reported to the P&R Committee on 20 February 2019 have now been agreed. The link to that report is as follows: http://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=692&MId=9461

1.2 As the details of the RFA had not been finalised by the P&R Committee on 20 February 2019 meeting, the Committee unanimously agreed to amend Recommendation 3 of that report to:

3. Delegate to the Chief Executive, in consultation with the Chairman of the Policy and Resources Committee, approval of the Revised Funding Agreement agreed with HM Government having regard to:

(i) the revised financial tests set by this Committee on 11 December 2018 for the council to assure itself that the prudential code can be satisfied so that the council can make the required capital commitment to deliver the Thameslink Station (as set out in paragraph 1.19 of the [P&R] report).

Should the Revised Funding Agreement expose the council to material additional risks, to return the matter to Committee.

1.3 The Committee also approved amendment to recommendations 4 and 5 as follows:

4. Subject to approval of the RFA in accordance with Recommendation 3, authorise the Chief Executive in consultation with the Chairman of the Committee to finalise terms and enter into the RFA with HMG and to commission Schedule 2 (Rail Systems and Sidings) works as set out in the Implementation Contract with Network Rail dated 21 December 2018.

5. Subject to approval of the RFA in accordance with Recommendation 3, approve the consequential changes to the capital budget to proceed with the BXT and delivery of core critical infrastructure to support the Brent Cross Cricklewood (BXC) revised delivery strategy as detailed in paragraph 5.2.7 of [the P&R] report.

1.4 This report provides further details of the agreed Revised Funding Agreement (RFA) with HM Government (HMG) having had regard to the financial tests as updated by P&R Committee on 11 December 2018. This report has been shared in draft with all Members of the Assets, Regeneration and Growth and Policy and Resources Committees.

2. REASONS FOR RECOMMENDATIONS

2.1 The decision follows the conclusion of discussions with central Government (HMG) on the terms of the RFA, and assessment of how these terms align to the six tests set by P&R Committee.

Funding structure

2.2 The revised Full Business Case submitted to HMG in January 2019 proposed that the business rate ringfence which currently exists around the Shopping Centre for 12 (with the potential to extend 3 years as described in the grant agreement) years from April 2018 be extended both geographically and in time – to cover the BXS office development. This would have enabled HMG to access an income stream that was expected to equate to the level of grant being provided. HMG has, however, concluded that it would not agree to amend the business rate ringfence as these rates cannot be used as a ringfenced repayment mechanism back to HMG. Therefore, the anticipated growth in business rates generated from the south side which, as modelled, would have been used to repay the grant over an 18.25 year period will now be available to the council and the GLA.

2.3 The RFA therefore now has the following key characteristics:

(i) Government will meet the council's costs of delivering the Thameslink up to the value of £419.5m – an addition of £319.5m over the £97m already granted. This is in addition to £2.9m of business rates previously provided by the GLA.

(ii) This will be in the form of a partially repayable grant, to be drawn down monthly on evidence of spend.

(iii) The grant is conditional on meeting key project milestones, and HMG retain the right to clawback the grant if these milestones are not met. This is in line with the terms of the existing £97m grant.

(iv) The grant will be repayable, as set out in (v) and (vi) below.

(v) The current ring-fence, which sets aside the growth in business rates from the expansion of Brent Cross Shopping Centre, will remain in place. Rather than using income to repay borrowing, the council will use it to repay the grant.

(vi) HMG will receive 50% of LBB profits from the Brent Cross South scheme (i.e. those arising from land receipts and joint venture surpluses) on a phase by phase basis, side by side with the council, and verified by independent RICS advisors. This condition reflects that the south side business rates will no longer be used to fund BXT.

(vii) The council will not be liable to repay the grant beyond the return of business rate growth to Government and 50% of the south side surpluses, unless it breaches the terms of the grant agreement.

(viii) That the council work with HMG to minimise the impact on government finances and ensure that the BXC project has a positive, or no more than a de minimis negative, effect on the overall balance sheet.

2.4 MHCLG has confirmed the terms of the RFA in writing, meaning that the council can commission the Part 2 Rail Sidings and Station works to maintain the station May 2022 opening date. The RFA will be completed by mid-March 2019, and will be the subject of a separate DPR.

` **Assessment against the Revised Financial Tests set by P&R, 11 December 2018**

2.5 The Committee set itself six financial tests in July 2014 for the council to assure itself that the prudential code can be satisfied, before making the capital commitment that borrowing can be undertaken to deliver the Thameslink Station. These tests were revised by the Committee on 11 December 2018 to reflect scheme development and contracting strategy. It was also noted that some will not be relevant should the RFA be based on grant rather than a loan.

2.6 An assessment of the tests is set out below:

(i) A guarantee of either 1) forward funding investment in return for 100% of the ring-fenced local share of business rates growth or 2) ring-fencing (or equivalent assurance) of business rates received from HMG and CLG and that the RFA does not expose council to unacceptable risk.

Government has opted for option (1), and has indicated that it will not extend the ring-fence either geographically or in length. Modelling suggests that up to £102m will be recovered by Government through this mechanism. HMG has also required as a condition of the grant that 50% of the council's surpluses from Brent Cross South (through land receipts and joint venture surpluses) are repaid to HMG. Modelling suggests that approximately £35m will be recouped by HMG through this mechanism. In total, therefore, HMG would recover about £137m to offset additional grant to meet the council's costs up to £319.5m (in addition to the £97m already granted).

Provided the council adheres to the terms of RFA, it will not be liable to repay anything beyond that recouped through the existing business rate ringfence and 50% of the surplus generated from the south side scheme. This test is therefore passed.

(ii) If the RFA requires the council to borrow, confirmation that business rates will still pay back borrowing in 25 years if cost increase by 15% on Network Rail controllable costs.

The RFA is now based on grant and not council borrowing.

The agreed level of grant allows for a significant element of contingency, which has been benchmarked against other major rail projects. It allows for an increase in overall costs of 17.25%. The test is therefore overtaken, and also passed 'in spirit'.

(iii) If the RFA requires the council to borrow, that interest rates are capped at no more than 4.5%.

This test is no longer applicable.

(iv) That an acceptable RFA is in place does not expose the council to unacceptable risk.

The RFA is now based on upfront grant, which is partially recoverable through the existing ringfence and profits from the scheme. This has removed the challenges identified in previous reports to the Assets, Regeneration and Growth Committee and this Committee in respect of the risks associated with borrowing and repayment and the requirement for cashflow support for any interest payments before business rate growth is available. This approach also ensures that the council is sufficiently protected against the risk if the commercial and/or shopping developments do not go ahead.

As set out in 2) above, the agreed level of grant allows for a significant element of contingency. It allows for an increase in overall costs of 17.25%. Whilst the council is in control of the Train Operating Company accommodation, waste, highways and station programmes, and is confident to manage those contracts, it is the Rail Systems and Sidings contract with Network Rail that carries the greater risk of cost overrun for the council as per the existing agreement.

To mitigate this risk to an acceptable level, the council has put in place an experienced rail team and robust cost management processes to manage the outturn cost as set out in previous reports to the Committee. HMG are also in a position to influence if necessary given Government's relationship with NR. BXT costs will continue to be reported to and monitored by the Government Assurance Board, who will review and agree any required contingency plans. The decision by HMG not to extend the ring-fencing to include the south side also provides the council greater flexibility over its own financial resources to manage the programme. These processes, combined with the RFA, has mitigated the councils cost exposure to an acceptable level so that BXT does not expose the council to unacceptable risk. As this remains a financial risk to the council, the cost of delivery will be closely monitored.

This test is therefore passed.

(v) Noting that NR will only progress on an emerging cost contract (not fixed price), the RFA must mitigate the risk of NR cost overruns and not expose the council to unacceptable risk, noting the provisions within the Implementation Agreement approved by the Assets, Regeneration and Growth Committee on 17 September and 27 November 2018.

The report to Full Council on 18 December 2018 explained that Network Rail will not enter the fixed price variant for high value projects and that any contract with Network Rail will be an emerging cost contract and confirmed the cost control measures put in place within the Implementation Agreement Contract with Network Rail as well as within the council and Re BXT teams to manage this risk. Further explanation is provided within the risk section of the Policy and Resources report. Following Full Council's approval to enter into the IA on 18 December, the IA was subsequently completed. As explained in point (ii) and (iv) above sufficient risk and contingency has been built into the grant, and together with the governance, risk and cost control processes in place, combined with the RFA, the council is in a position to manage this contract without exposing the council to unacceptable risk.

This test is therefore passed.

(vi) That the impact on the council's general fund is either net nil or positive.

The decision not to extend the ringfence to BXS means that business rates from the office development and other retail and commercial space will be available to the council. The council is also able to net its costs of development off the total land receipt before sharing it with HMG. The scheme is therefore expected to be positive to the General Fund.

This test is therefore passed.

3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED

3.1 The RFA proposed by HMG is the only funding option on the table. The alternative, therefore, is not to proceed with the station at this time. As set out in the business case, this would result in the BXC scheme stalling whilst a new funding solution is found and the very real possibility that delivery of 7,500 new homes and comprehensive development will not be achieved.

4. POST DECISION IMPLEMENTATION

4.1 As set out in the main report to the Policy and Resources Committee.

5. IMPLICATIONS OF DECISION

5.1.1 As set out in the main report to the Policy and Resources Committee.

5.1.1 In addition to the Resources implication included in the Policy and Resources Committee report, paragraph 2.6 of this report confirms that the revised financial tests have all now either been met or are no longer relevant.

5.1.2 The revised funding agreement does not require additional business rates to be made available to HMT, which will have a positive revenue impact on the council in the future. The additional commitment of 50% of scheme surpluses is paid from capital receipts that would not arise if the scheme did not progress.

6. BACKGROUND PAPERS

6.1 As set out in the main report to the Policy and Resources Committee.

7. DECISION TAKER'S STATEMENT

7.1 *I have the required powers to make the decision documented in this report. I am responsible for the report's content and am satisfied that all relevant advice has been sought in the preparation of this report and that it is compliant with the decision-making framework of the organisation which includes Constitution, Scheme of Delegation, Budget and Policy Framework and Legal issues including Equalities obligations. The decision is compliant with the principles of decision making in Article 10 of the constitution.*

Chief Officer: John Hooton, Chief Executive

Signed:

Dated: 06/03/19