

	<p><b>Urgency Committee</b></p> <p><b>26<sup>th</sup> February 2015</b></p>
<p style="text-align: center;"><b>Title</b></p>	<p><b>Brent Cross Cricklewood – Amendments to Legal Agreements</b></p>
<p style="text-align: center;"><b>Report of</b></p>	<p>Cath Shaw, Commissioning Director, Growth and Development</p>
<p style="text-align: center;"><b>Wards</b></p>	<p>Childs Hill, Golders Green and West Hendon</p>
<p style="text-align: center;"><b>Status</b></p>	<p>Public with an accompanying Exempt Report and Exempt Appendix</p>
<p style="text-align: center;"><b>Enclosures</b></p>	<p>None</p>
<p style="text-align: center;"><b>Officer Contact Details</b></p>	<p>Karen Mercer, Programme Director Re,  <a href="mailto:Karen.Mercer@barnet.gov.uk">Karen.Mercer@barnet.gov.uk</a>, 0208 359 7563</p>

<b>Summary</b>
<p>The report seeks consent to vary the terms of the Co-operation Agreement and Share Purchase Agreement to acquire Cricklewood Regeneration Limited (CRL) as approved by Cabinet Resources Committee on 16 January 2014 to enable the completion of the legal documents to bring forward the regeneration of the Brent Cross Cricklewood development.</p>

<b>Recommendations</b>
<p><b>The Committee is requested to:</b></p>
<p>a) approve the changes to the terms of the Co-operation Agreement and CRL Share Purchase Agreement (as considered and approved by CRC in January 2014) as set out in Section 2 of this report and associated increased acquisition costs and capital budget to be approved for these agreements;</p>
<p>b) authorise the Chief Executive in consultation with the Leader of the Council to agree the detail of the Co-operation Agreement and CRL Share Purchase Agreement;</p>

## **1. WHY THIS REPORT IS NEEDED**

- 1.1 This report is being brought to Urgency Committee because of the need to complete the legal documentation referred to below, including the Compulsory Purchase Indemnity Agreement, by 3 March 2015 to enable the Assets, Regeneration and Growth Committee to consider and make recommendations to full Council to commence the proposed compulsory purchase proceedings to deliver the first phases of the regeneration proposals. The Council's CPO advisors have confirmed that the CPOs should be made in March 2015 if the requirements of the existing planning consent which require a start on site by October 2017 are to be met.
- 1.2 In January 2014, the Cabinet Resources Committee approved the amendments to the Brent Cross Principal Development Agreement (as previously reported to CRC in Oct 2009) and the terms of the Co-operation Agreements to reflect the change in delivery strategy to enable the Hammerson and Standard Life Partners to focus solely on the delivery of the shopping centre and the critical infrastructure required to support the Brent Cross Cricklewood regeneration proposals; and the Council to take the lead on the south side to deliver the southern parts of the Brent Cross Cricklewood Regeneration masterplan, including the delivery of the Thameslink Station.
- 1.3 The Committee authorised the Chief Executive in consultation with the Leader to agree the detail of the Brent Cross Principal Development Agreement and Co-operation Agreements. These documents were agreed on 23 July 2014 and subject to a separate Delegated Powers Report (DPR). However at that time the Development Partners had not reached agreement on the proposed joint venture delivery vehicle and therefore requested a delay to the process to enable agreement to be reached and the necessary restructuring arrangements to be put in place. The PDA and associated suite of documents are now in their final agreed form to be executed in advance of the Assets, Regeneration and Growth Committee on 3 March 2015, and will be subject to a separate Delegated Powers Report.
- 1.4 The Urgency Committee is asked to note that the Assets, Regeneration and Growth Committee on 3 March 2015 will consider the recommendations to make two compulsory purchase orders for the first phase of the BXC proposals alongside selecting the Council's preferred development partner to bring forward the south side proposals.
- 1.5 This report seeks to amend the terms of the Co-operation Agreement and CRL Share Purchase Agreement as agreed in January 2014 in respect of the Council's option to achieve control of Hammerson's land holdings and those of its subsidiary Cricklewood Regeneration Limited within the southern masterplan area, including CRL's land option over the Network Rail land. As these documents form part of the overall suite of Brent Cross Cricklewood legal documentation required to be completed simultaneously, Urgency Committee is requested to approve the proposed amendments to enable the documents to be executed without delay.

- 1.6 Completion of these agreements will then enable the Council and the Brent Cross Development Partners to enter into the CPO Indemnity Agreement, under which the Development Partners provide the Council with an indemnity in respect of the costs of promoting the CPO and the compensation payable to third parties whose land and interests are acquired pursuant to the CPO. This document needs to be completed by 3 March in order for the Assets, Regeneration and Growth Committee to consider the case for compulsory purchase proceedings and make recommendations to full Council. The CPOs must be made in March 2015 if the requirements of the existing planning consent which require a start on site by October 2017 are to be met.

## **2. REASONS FOR RECOMMENDATIONS**

- 2.1 The Co-operation Agreement and CRL Share Purchase Agreement enable the Council to take over Cricklewood Regeneration Limited's role to deliver the comprehensive development of the Brent Cross Cricklewood (BXC) south regeneration area. The original terms were approved by the Cabinet Resources Committee on 16 January 2014.
- 2.2 The decisions relating to Hammerson and CRL's landholdings are set out in the exempt report.
- 2.3 Under the arrangements set out in the exempt report, the acquisition of the Hammerson Land and CRL are subject to the Principal Development Agreement going "unconditional" following the satisfaction of the staging conditions.
- 2.4 Consequently, should the PDA be terminated prior to going unconditional, it would then be necessary for the Council to reach an alternative deal with Hammerson (and CRL) to secure the land either through private treaty negotiations or, as a measure of last resort, using its compulsory purchase powers. This could jeopardise and delay delivery of the south-side scheme and Thameslink Station.
- 2.5 This new arrangement as outlined in the exempt report enables the Council with its development partner to lead on all aspects of the southside scheme. In particular, it will enable the Council to deal direct with Network Rail to reflect the emerging delivery strategy for the south side. It will also enable the Council to acquire the Hammerson land within the south masterplan area required to bring forward the south irrespective of whether the north scheme goes ahead. It therefore provides a clear separation, reflecting the updated delivery strategy to deliver comprehensive development, thereby reducing risk associated with and dependency on the northside scheme.
- 2.6 It is proposed that the additional land acquisition costs are funded from additional capital funding approved by the Committee on behalf of Policy and Resources Committee.

### **3. ALTERNATIVE OPTIONS CONSIDERED AND NOT RECOMMENDED**

- 3.1 These amendments enable the Council and its development partner to acquire the land within Hammerson and Cricklewood Regeneration Ltd ownership needed to bring forward the Brent Cross Cricklewood South development, including the Thameslink Station. The Brent Cross Development Partners have indicated that they will no longer meet the terms of the original deal and therefore there is no alternative option. These legal documents are required to ensure the delivery of the regeneration proposals and, as confirmed by the Council's property advisors this transaction represents the best that can be reasonably be negotiated with the Development Partners.

### **4. POST-DECISION IMPLEMENTATION**

- 4.1 The Co-operation Agreement and CRL Share Purchase Agreement will be updated to incorporate these amendments. The Chief Executive, in consultation with the Leader of the Council, will then agree the detail of both Agreements and authorise execution alongside the Principal Development Agreement and CPO Indemnity Agreement in advance of the Assets, Regeneration and Growth Committee on 3 March 2015.

### **5. IMPLICATIONS OF DECISION**

#### **Corporate Priorities and Performance**

- 5.1 The regeneration of Brent Cross Cricklewood supports the Corporate Plan 2013-2016 priority '*To maintain the right environment for a strong diverse local economy*', and the strategic objective under this priority to sustain Barnet by '*promoting growth, development and success across the borough*'.
- 5.2 The Growth Strategy for Barnet recognised that regeneration and growth are vital for ensuring the future prosperity of the Borough and maintaining Barnet as a successful London suburb. The BXC regeneration proposals will play a major role in delivering this objective, doubling the size of the shopping centre and linking seamlessly to a new town centre for Barnet and North London across the North Circular Road. BXC is one of Barnet's priority regeneration areas, and will provide approximately 7,500 new homes over the next 20 years. It is a key part of the wider revitalisation of the A5 corridor, linking BXC with developments at West Hendon, Colindale and Edgware and improvements to Cricklewood Town Centre, to create a series of high quality modern suburbs.
- 5.3 The first phase of the BXC project includes the redevelopment of the shopping centre, creation of major new infrastructure, improved links to the existing tube station, and delivery of approximately 2,500 new homes over the next 8-10 years. This will create an estimated 3,000 construction jobs, and 4,000 permanent jobs.

#### **Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)**

- 5.4 It is proposed that the additional land acquisition costs are funded from additional capital funding approved by the Urgency Committee on behalf of the Policy and Resources Committee.

### **Legal and Constitutional References**

- 5.5 The Council has a power of general competence under Section 1 of Chapter 1 of the Localism Act 2011 and this empowers the Council to enter into legal arrangements for the development of the Brent Cross Cricklewood regeneration scheme. Section 1 of the Localism Act 2011 provides local authorities with a broad power to do anything that individuals can do subject to any specific prohibitions and restrictions on Local Government powers pre-dating the power of general competence.
- 5.6 The Council has the power to acquire and dispose of land in accordance with Sections 120 to 123 of the Local Government Act 1972, and subject to obtaining appropriate consents and approvals.
- 5.7 The Public Services (Social Value) Act 2012 requires the Council to consider whether it can achieve an improvement to the economic, social and environmental well-being of an area as part of the procurement of these services. If so, the social value objectives identified must be written into the procurement process. All of this must be achieved with regard to value for money and in a way that is compliant with existing public procurement law. "Social value" objectives can include the creation of employment, apprenticeship and training opportunities for local people, trading opportunities for local businesses and the third sector; and the promotion of equality and diversity through contract delivery.
- 5.8 Section 111 of the Local Government Act 1972 provides that a local authority has power to do anything which is calculated to facilitate, or is conducive or is incidental to, the discharge of its functions.
- 5.9 The public sector equality duty referred to in Section 5 also required consultation to ensure the Council complies with its duties under the Equality Act 2010.
- 5.10 The majority of decisions in this report would ordinarily be approved by the Assets Regeneration and Growth Committee, with the exception of the additional land acquisition costs which would require approval by Policy and Resources Committee. However the next meeting of the Assets, Regeneration and Growth Committee is not scheduled to take place until 3 March 2015, and the next meeting of Policy and Resources Committee is not scheduled to take place until 24 March 2015. As these agreements must be completed prior to 3<sup>rd</sup> March an Urgency Committee decision is required.
- 5.11 The Council's Constitution, Responsibility for Functions, 7.1 states if a decision on an issue is required as a matter of urgency and if time allows

under the provisions of the Access to Information Rules, then a Committee comprising of the Leader, the Deputy Leader, and the Leader of the Opposition will be called. The decision may be within the terms of reference of another committee, but this will not invalidate the decision as the arrangements to discharge the function in cases of urgency is through a committee comprising the three specified members. The Committee must consult with the Chairman of the relevant Committee.

## **Risk Management**

- 5.12 The Brent Cross Cricklewood Programme Management Office manages the key risks across the programme. The key risks reported to the Cabinet Resources Committee on 16 January can be summarised as follows:
- 5.13 The Committee report noted that the main risk to the project is viability and that the Council is seeking to mitigate this risk through the following measures:

### **(1) Delivery of the Thameslink Station**

The delivery of the station will help drive land values, thereby enabling the regeneration of the Brent Cross Cricklewood area. The Council together with public sector partners (GLA, Network Rail and TFL) and Central Government are exploring strategies to bring forward the station. This includes continuing design work in respect of the station itself, including a review of the station output, functional specification as well as technical due diligence work to provide a detailed cost estimate. An update on the Funding Strategy is expected mid March.

### **(2) Development of a viable first phase market proposition.**

This involved undertaking detailed financial modelling and a detailed review of all technical existing due diligence to provide an updated cost plan. As detailed in Section 9 of the January 14 report, GVA has undertaken a detailed review of the existing scheme and consider that there is a viable first phase proposition.

- 4.3 The report to the Cabinet Resources Committee also outlined the risk that any procurement of the south side partner could be subject to challenge. To mitigate this risk, the procurement process will be subject to the relevant European Union procurement procedures, including if required, submitting a contract notice to the Official Journal of the European Union (OJEU). The Council has retained specialist legal advice on the scheme as a means of ensuring that all actions taken by the Council accord with the provisions of relevant national and international laws, regulations and directives. The procurement process and selection of a preferred development partner is subject to a separate report being considered by the Assets, Regeneration and Growth Committee on 3 March 2015.
- 4.4 Lastly the Committee also outlined the risk that Hammerson and Standard Life do not progress the shopping centre scheme. In this regard the proposed amendments described in this report seek to mitigate this risk. The proposed amendments will ensure that the Council and its preferred development

partner are able to progress the regeneration of the southern land independently, in the unlikely event that the north side does not progress.

### **Equalities and Diversity**

- 5.14 The public sector equality duty under section 149 of the Equality Act 2010 (“PSED”) requires the Council to have due regard to: (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010; and (ii) the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it. ‘Protected characteristics’ are: gender, race and disability, sexual orientation, age, religion or belief, pregnancy and maternity and gender reassignment.
- 5.15 The Council is committed to improving the quality of life for all and wider participation in the economic, educational, cultural, social and community life in the Borough.
- 5.16 The development proposals for the BXC scheme will make a significant contribution to the provision of additional, high quality affordable housing units in the Borough as well as providing employment through the creation of a new town centre with leisure, health and educational facilities. The delivery of the Thameslink Station will enhance public transport provision and improve accessibility and provide greater choice for all. It should be emphasised that a fully integrated and accessible town centre will be created as part of these proposals.
- 5.17 An Equalities Impact analysis was carried out in respect of the Outline Planning Application granted in 2010, which took fully into account the demographic makeup of the regeneration area and addressed the impact on the protected characteristics. This anticipated a significant positive impact from the regeneration proposals.
- 5.18 BXC is an opportunity to extend Barnet’s success as a desirable and attractive suburb, by creating a new urban village for London which sets the tone for future evolution of the borough more widely and emphasises the need to create a place that makes residents, workers and visitors feel good – inviting people to meet and spend time in the spaces, and to walk or cycle.
- 5.19 Importantly, the requirements highlight that BXC will be a place for people of all ages, with a housing mix that reflects different life stages, a range of housing tenures, and public spaces which are accessible to all. It emphasises that promoting health and wellbeing and reducing dependency will be ingrained in the place.

### **Consultation and Engagement**

- 5.20 Extensive consultation has and will continue to be undertaken with key stakeholders and the community to ensure that the BXC scheme reflects local

needs including the needs of those with protected characteristics, as well as securing the future of North London's only regional shopping centre.

- 5.21 There has also been consultation and engagement with local stakeholders and the community during the planning process.

## **6. BACKGROUND PAPERS**

- 6.1 Cabinet, 26 April 2004 (Decision Item 8) – approved the adoption of the Cricklewood, Brent Cross and West Hendon Development Framework as Supplementary Planning Guidance.
- 6.2 Cabinet, 29 March 2005 (Decision Item 6) – agreed to enter into a Collaboration Agreement with the development partnership (Cricklewood Regeneration Limited, Hammerson and Standard Life). [<http://barnet.moderngov.co.uk/Data/Cabinet/200503291900/Agenda/Document%204.pdf>]
- 6.3 Cabinet, 5 December 2005 (Decision Item 7) – approved, amongst other matters, that 1) the Eastern Lands Addendum be adopted as Supplementary Planning Guidance; and 2) the Eastern Lands Supplementary Guidance is incorporated into the Cricklewood, Brent Cross and West Hendon Development Framework. [<http://barnet.moderngov.co.uk/Data/Cabinet/200512051900/Agenda/Document%204.pdf>]
- 6.4 Cabinet Resources Committee, 25 March 2008 (Decision Item 16) – approved the outline terms so far agreed with the Brent Cross partners and Cricklewood Redevelopment Limited, including the proposals for the finalisation of the financial terms, be approved in principle subject to the outcome of Counsel's advice on procurement issues, and that the finally agreed terms for the Development Framework Agreement and the Principal Development Agreements be reported to a future meeting of the Cabinet for approval. <http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/200803251900/Agenda/Document%2015.pdf>
- 6.5 Cabinet, 21 October 2009 (Decision Item 7) – approved the terms and conditions of entering into the Development Framework Agreement and the Principal Development Agreements, subject to approval of the Brookfield Europe and Hammerson Guarantor companies by the Director of Finance and the Leader of the Council, and the approval of the appropriate land transaction and financial arrangements by the Secretary of State. The approval was also subject to agreement of the plans, the historic costs and the form of the legal documents. <http://barnet.moderngov.co.uk/CeListDocuments.aspx?Committeeld=120&MeetingId=306&DF=21%2f10%2f2009&Ver=2>
- 6.6 Cabinet Resources Committee, 19 October 2010 (Decision Item 5) – approved the changes to the terms and conditions of the Development Framework Agreement and the two Principal Development Agreements



regarding Brent Cross Cricklewood (as considered and approved by Cabinet in October 2009)

[<http://barnet.moderngov.co.uk/Data/Cabinet%20Resources%20Committee/201010191900/Agenda/Document%203.pdf>]

- 6.7 Cabinet Resources Committee, 18 April 2013 (Decision Item 14) - noted that the Brent Cross Cricklewood Development Partners wished to modify the existing planning consent to allow re-phasing; approved that the Director for Place begin preparations to enable the Council to procure a development partner to deliver the regeneration of the southern parts of Brent Cross Cricklewood Regeneration Area and confirmed the continued appointment of the external advisors for the Brent Cross Cricklewood Regeneration project, and the procurement of appropriate additional advice, and to delegate authority to the Director for Place to deal with necessary contractual issues or arrangements.  
[<http://barnet.moderngov.co.uk/mgConvert2PDF.aspx?ID=8369&ISATT=1#search=%22Brent%20Cross%20%22>]
- 6.8 Cabinet Resources Committee, 16 January 2014 (Decision Item 6) - approved the changes to the terms of the Brent Cross Principal Development Agreement (as considered and approved by CRC in October 2010) and the terms for the Co-operation Agreement as set out in Section 9 of this report; authorised the Chief Executive in consultation with the Leader of the Council to agree the detail of the Brent Cross Principal Development Agreement and Co-operation Agreement; approved commencement of market testing through the issue of a Prior Information Notice to inform the delivery strategy for the Brent Cross Cricklewood South area; and approve that the Council enter into negotiations with landowners to acquire land required in advance of any Compulsory Purchase Order, subject to approval of the bid for capital funding by Cabinet on 25 February 2014; and approved that the Council continue the design and development work to develop the business case and funding strategy for delivery of the Thameslink Station, subject to approval of the capital funding bid by Cabinet on 25 February 2014; and delegate authority to the Strategic Director for Growth and Environment to procure the necessary advice and consultants to progress the Brent Cross project workstreams and deal with the related contractual issues and arrangements.  
[<http://barnet.moderngov.co.uk/mgConvert2PDF.aspx?ID=12505&ISATT=1#search=%22Brent%20Cross%20%22>]
- 6.9 Assets, Regeneration & Growth Committee, 8 September 2014 (Decision Item 10) – approved the appropriate Chief Officers be authorised to negotiate and enter into agreements to acquire by private treaty the land and interests; and to approve and enter into agreements and undertakings with the owners and/or occupiers of the land in the said areas so as to facilitate its acquisition.  
<http://barnet.moderngov.co.uk/documents/s17302/Brent%20Cross%20Cricklewood%20-%20Report.pdf>