

	<p align="center">CHIEF OFFICER IN CONSULATION WITH COMMITTEE CHAIRMAN DELEGATED POWERS REPORT 11 August 2020</p>
<p align="center">Title</p>	<p align="center">Brent Cross Cricklewood – NRIL Land – Option to Tax</p>
<p align="center">Report of</p>	<p>Director of Finance</p>
<p align="center">Wards</p>	<p>Childs Hill, Golders Green and West Hendon</p>
<p align="center">Status</p>	<p>Public</p>
<p align="center">Enclosures</p>	<p>Appendix 1 – Land Transfer Plans East and West of the Midland Mainline Appendix 2 – https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7518</p>
<p align="center">Officer Contact Details</p>	<p>Karen Mercer Karen.mercer@barnet.gov.uk</p>

Summary

The council and Brent Cross South (BXS) are in the process of securing the land needed to deliver the Brent Cross West Station and first phases of the BXS development. Part of the transaction is a “transfer of going concern” (TOGC) and Network Rail have already opted to tax on the land transfer area. The Council needs to Opt to Tax the land to ensure all supplies made in relation to this interest will normally be standard rated. In addition, the Council would be able to recover any VAT incurred in making those supplies.

Decisions

- To approve the recommendation to opt to tax and to authorise officers to make the requisite application to HMRC.**

1. WHY THIS REPORT IS NEEDED

To confirm that a decision has been made to opt to tax the Council's land, being the land acquired from Network Rail Infrastructure Limited, and to mitigate the risk of the Council breaching the partial exemption threshold.

2. REASONS FOR DECISIONS

2.1 The comprehensive regeneration of Brent Cross is a long-standing objective of the council as set out in the quarterly updates to the Housing and Growth Committee.

2.2 In light of Network Rail's decision to have already opted to tax on the land being transferred, the Council is required to protect its VAT recovery position. The Council has taken legal advice from its VAT advisor KPMG on the treatment of VAT to confirm that it is appropriate to opt to tax properties such as this within the Brent Cross regeneration area.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

3.1 Not opting to tax would increase the risk of the council exceeding the 5% partial exemption threshold for exempt supplies. This option was therefore excluded.

4. POST DECISION IMPLEMENTATION

4.1 An application will be made to HMRC to opt to tax the property. Advice will be sought from KPMG on submission as required.

4.2 The option once confirmed by HMRC will be recorded with the council's VAT Accountant to enable the council's Opt to Tax register to be maintained.

5. IMPLICATIONS OF DECISION

5.1 Corporate Priorities and Performance

5.1.1 Previous reports describe in detail the ways in which the regeneration of Brent Cross Cricklewood supports the Council's Corporate Plan Barnet 2024.

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

5.2.1 A separate DPR has been agreed to authorise the acquisition of the land from Network Rail Infrastructure Limited and completion of the associated legal documentation. The acquisition is c.£25m and is within the MHCLG Grant funded budget.

5.2.2 The parties intend for part of the transaction to be a TOGC. The effect of this is that no VAT is payable on the price/that part of the price attributable to the property or that part of the property to which the TOGC applies. However,

should the TOGC status fail, VAT at the current rate will need to be payable in addition to the purchase price.

5.2.3 The freehold element of the land transfer which is already deemed to not be a TOGC includes VAT payable of £2.774m. Opting to tax ensures all future supplies made in relation to this interest will be standard rated. In addition, the Council would be able to recover any VAT incurred in making those supplies.

5.2.4 Opting to tax will reduce the risk of the Council exceeding the partial exemption as mentioned in the alternative options section.

5.2.5 The land subject to VAT and the Option to Tax is included in the attached site plans.

5.3 **Social Value**

5.3.1 As set out in the report to the Housing and Growth Committee on 6 July 2020. <https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>

5.4 **Legal and Constitutional References**

5.4.1 As set out in the report to the Housing and Growth Committee on 6 July 2020. <https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>

5.4.2 Constitution- Article 9.4- Administration of Financial Affairs- The Chief Finance Officer will have responsibility for the administration of the financial affairs of the council.

5.5 **Risk Management**

5.5.1 KPMG has previously advised the Council on VAT advice for a similar decision relating to the Brent Cross Cricklewood Regeneration Scheme.

5.5.2 That advice in conjunction with the recent tax advice obtained with regard to this specific proposed transaction can be taken to apply to this decision to opt to tax as well and as such the issues involved are unlikely to give rise to policy considerations or to significant levels of public concern.

5.6 **Equalities and Diversity**

5.6.1 None in the context of this report.

5.7 **Corporate Parenting**

5.7.1 None in the context of this report.

5.8 Consultation and Engagement

5.8.1 None in the context of this report.

6. BACKGROUND PAPERS

6.1 <https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=8639&Ver=4#>

6.2 <https://barnet.moderngov.co.uk/ieListDocuments.aspx?CId=696&MId=9337&Ver=4>

6.3 <https://barnet.moderngov.co.uk/documents/s48493/Brent%20Cross%20Cricklewood%20Update%20Report.pdf>

6.4 <https://barnet.moderngov.co.uk/documents/s59211/Brent%20Cross%20Cricklewood%20Report.pdf>

6.5 <https://barnet.moderngov.co.uk/ieDecisionDetails.aspx?ID=7518>

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.*

8. OFFICER'S DECISION

I authorise the following action

8.1 To approve the recommendation to opt to tax the property in accordance with the terms of the proposed contract and to authorise officers to seek formal approval from HMRC.

Signed

ANISA DARR
Chief Finance Officer - S151 Officer

Date

12 August 2020
