

## MUNICIPAL YEAR 2016/2017 REPORT NO. 3

### MEETING TITLE AND DATE:

Cabinet 18<sup>th</sup> May 2016

### Joint REPORT OF:

Directors of Regeneration and Environment and Finance, Resources and Customer Services

Contact officers and telephone number:

Patricia Salami 020 8379 2897

E mail: [patricia.salami@enfield.gov.uk](mailto:patricia.salami@enfield.gov.uk)

Peter George 020 8379 3318

E mail: [peter.george@enfield.gov.uk](mailto:peter.george@enfield.gov.uk)

<b>Agenda – Part 1:</b>	<b>Item: 7</b>
<b>Subject:</b> Land Acquisition at Meridian Water	
<b>Wards:</b> Upper Edmonton & Edmonton Green	
<b>Key Decision No:</b> 4317/U196	
<b>Cabinet Members Consulted</b>	
Cllr Sitkin – Economic Regeneration & Business Development	
Cllr Oykenner – Housing and Housing Regeneration	

### 1. EXECUTIVE SUMMARY

- 1.1 On 2nd April 2015 the Council completed the acquisition of three sites within the Meridian Water development area. This land could provide over 1,500 new homes in addition to retail and community facilities.
- 1.2 On the 29th April 2015 Cabinet delegated authority (KD4033) to the Director Regeneration and Environment & the Director of Finance, Resources and Customer Services to develop and finalise the Heads of Terms (HoTs) for the acquisition of a further 6 hectares (14.82 acres) of developable land within Meridian Water. This was finalised in the delegated KD 3931 report.
- 1.3 On the 10<sup>th</sup> February 2016 Cabinet (KD4229) agreed the increase to the Neighbourhood Regeneration Capital Programme to fund the next stages of a number of regeneration initiatives which include Meridian Water land acquisition.
- 1.4 The purpose of this report is to seek authority to acquire land at Meridian Water in accordance with the draft contractual terms identified in Part 2 of this report, noting this purchase forms part of the budget approved above.
- 1.5 The Phoenix Wharf comprises four individual parcels let on four separate leases, within an industrial estate of approximately 5 acres. The Estate includes a private access road and public road access is via Towpath Road. The land comprises of 5 Freehold acres of open storage within Meridian Water.

## **2. RECOMMENDATIONS**

- 2.1. To agree that the draft contractual terms as appended to Part 2 of this Report are acceptable to the Council.
- 2.2. To delegate authority of the final exchange and completion of the Agreement for Sale as described in Part 2 of this report to the Directors of Regeneration and Environment and Finance, Resources and Customer Services.
- 2.3. To authorise the Director of Regeneration and Environment to purchase Title Indemnity Insurance as appropriate.
- 2.4. To authorise any other necessary expenditure associated with the purchase of this land as detailed in Part 2 of this report, noting that it will be contained within the existing approved capital budget.
- 2.5. To authorise that the Council's managing agent for Meridian Water takes on the management of this site following completion.

## **3. BACKGROUND**

- 3.1 Meridian Water comprises approximately 85 hectares in the south east of the Borough and is one of the largest developable areas in London. Located within the Central Leaside growth area and the Mayor of London's wider Upper Lee Valley Opportunity Area, it has significant redevelopment potential.
- 3.2 The Council's Core Strategy (2010) identifies the potential for 5,000 new homes and up to 3,000 new jobs to be created in this area, alongside community uses and other infrastructure necessary to support a new sustainable neighbourhood of this scale. With the advent of Crossrail 2, it is anticipated that Meridian Water could accommodate over 8,000 new homes.
- 3.3 The Council has adopted a proactive strategy of coordinating the delivery of the Meridian Water development following feedback from developers that multiple landownerships were a barrier to development. The Council's strategy is to acquire all developable land at Meridian Water. This not only ensures the delivery of the project it also ensures that the Council has control at every stage of the development process which is crucial to ensure quality is maintained.
- 3.4 In April 2015 the Council completed the acquisition of three former National Grid sites which can collectively provide approximately over 2,500 new homes at Meridian Water. In June 2015 the Council completed the acquisition of a further 6

hectares meaning the Council now has enough land under its control to deliver over 4,000 new homes equivalent to a ten year land supply.

- 3.5 The acquisition of the 5 acre site is proposed on the basis of its existing use commercial basis but in the future, depending upon a future masterplan, it could accommodate different uses, possibly including residential or education.
- 3.6 This additional 5 acres will mean that the Council is well on the way to acquiring the land to enable the vision of Meridian Water to become a reality.
- 3.7 The Council's land buying agent, Jones Lang LaSalle (JLL), is negotiating the acquisition of a number of other sites at Meridian Water and within 2016 a number of other sites are expected to be under the Council's control ensuring the Council's land acquisition strategy unlocks Meridian Water's potential.
- 3.8 The draft Meridian Water Master Developer Framework Agreement describes the process of how the Council will dispose of land to the master developer, once appointed. The Council will release plots of land to the developer only once planning consent has been obtained and all other conditions satisfied. At this point the market value of the land will be determined and the Council will benefit 100% from the residual land value subject to a "minimum" floor commercially agreed with the developer as well as potentially benefitting from overage. This mechanism optimises the Council's ability to obtain profits from disposing of sites.
- 3.9 The Council is already in discussion / negotiating with the vast majority of Meridian Water landowners to ensure that any Compulsory Purchase Order (CPO) is a last resort. This negotiated settlement is another example of the Council securing control through negotiated methods.
- 3.10 On the 10<sup>th</sup> February 2016 Cabinet (KD4229) agreed the increase to the Neighbourhood Regeneration Capital Programme to fund the next stages of a number of regeneration initiatives which included Meridian Water land acquisition.
- 3.11 In accordance with Property Procedure Rules, the Council is obligated to obtain a Red Book Valuation to substantiate the open market value of land to be acquired and demonstrate Best Value. Accordingly property firm Glenny's have been commissioned to prepare the Red Book Valuation their findings can be found in Part 2 of this report.
- 3.12 The Council also appointed JLL in the capacity of land buying agent, to negotiate on the Council's behalf the terms of the acquisition and when a price has been agreed they will provide a Supporting Purchase Report that will inform the market value of the land.
- 3.13 Trowers and Hamlins LLP, are the Council's appointed legal advisor, and will work with the vendor's solicitors to prepare a suite of documents to effect the final purchase once the final figure has been agreed. They will also advise the Council on risks associated with the acquisition.

- 3.14 AMEC Foster Wheeler will provide specialist advice regarding the environmental characteristics of the site. However, it should be noted, that the site is being acquired for commercial purposes so the advice from AMEC relates to the scenario where the Council decides to promote this site for residential purposes.
- 3.15 PWC have been appointed to provide advice in relation to VAT and Stamp Duty Land Tax (SDLT) arising from the purchase.
- 3.16 Trowers and Hamlin have been appointed to undertake title due diligence and their findings are reported in the Part 2 report.
- 3.17 Members are requested to authorise the unconditional exchange of the Agreement for Sale and complete the purchase. This will commit the Council to purchasing the site.

### **The Terms of the Agreement for Sale**

- 3.18 The draft Heads of Terms are described in Part 2 of this report. The Agreement for Sale will be reviewed if the Vendor accepts the Council's offer.
- 3.19 The site is sold as a freehold, with occupational leases in place and the property will be provided with Tenants in situ on completion. Vacant possession of the site will not be needed until the Council's soon to be selected master developer requires this land for development purposes.
- 3.20 The site comprises industrial buildings which are subject to a number of occupational leases. Trowers and Hamlin's have only received two of the four occupational leases and have so far reviewed one of them. In this lease there is a break right in favour of both the landlord and tenant which can be exercised in 2018 and 2020 provided 12 months' notice is given. The risk associated with the occupational leases can be found in section 7.
- 3.21 The vendor will continue to manage the property in accordance with the vendor's normal management practice between exchange and completion.
- 3.22 The land will be acquired as a 'transfer of a going concern' (TOGC). In order to purchase land in this manner, the council will have to 'opt to tax' in advance of the purchase. This is described further in Part 2 of this report and is referred to in the key risk section of this report.
- 3.23 The purchase transaction could be completed by means of a simultaneous exchange and completion.

### **Due Diligence**

- 3.24 The Council will appoint specialists to undertake due diligence in relation to the site which include or will include valuing the land, examining the title and the leases. The Council has appointed Amec Foster to understand the environmental characteristics of the site.

## **Title and leases**

- 3.25 The Council will appoint Trowers and Hamlin to examine the title and occupational leases and their report will be included in the final agreement. The Report on the Occupational Leases currently only includes a report on the Lease dated 5 September 2013 which was granted for a term of 10 years expiring on 24 March 2023. Further input from a Valuer is required in respect of some of the assumptions/disregards to ascertain what impact, if any, this could have on any reviewed rent. See information in 3.20.
- 3.26 The title register refers to (1) the land being subject to corn rents, (2) the land being subject to rights of common due to fact that it is Lamma Land and (3) mines and minerals being excluded. The intention is that these risks will be covered by indemnity insurance. Access from the land is not clear based on initial review of the title register and further enquiries will need to be made in this regard to establish the actual position. Either side, the land abuts a towpath and access/riparian rights will need to be checked as part of the due diligence process.

## **Land Valuation**

- 3.27 In accordance with the council's Property Procedure Rules, Glenny's have been commissioned to provide a Red Book Valuation. The Land Valuation can support the purchase price detailed in the Heads of Terms. The Valuation Report is annexed to Part 2 of this Report.

## **Environmental**

- 3.28 The council has commissioned AMEC Foster Wheeler to undertake a desktop survey review of the available information on the site condition that may have resulted in ground and groundwater contamination for the following reasons:
- Ground reclamation rising from marshland
  - Timber wharf that may have involved the storage and use of timber preservatives and hydrocarbon fuels;
  - Bus depot that is likely to have involved the storage and use of fuels, oils and chemicals;
  - Waste recycling
- 3.29 The site has been used for a range of industrial uses and it is possible that other potentially contaminating activities have been undertaken which have not been identified. The site is in a high sensitivity location with respect to groundwater and surface water, it is therefore possible that the soils will necessitate remediation.
- 3.30 A full site investigation has not been undertaken, but based on remediation costs at Willoughby Lane it is considered likely that per acre remediation costs at Phoenix Wharf will be less. This is primarily due to the known contamination that

exists at Willoughby Lane and the less intensive polluting nature of the former site uses identified at Phoenix Wharf. The environmental report is attached to Part 2 of this report – it should be noted that any remediation costs will fall to the Councils development partner.

3.31 The site benefits from substantial frontage facing the canal of approximately 100 metres to the west and at the east of the site is a frontage of approximately 150 metres overlooking the reservoir – this means that the area could be susceptible to flooding, The site is within flood Zone 2, this will result in the following constraints to the site:

- Infiltration SUDS are not appropriate for use at this site;
- On redevelopment of the site compensatory flood storage would need to be provided within the 1% AEP plus climate change plus flood extent. This would need to be confirmed with the Environment Agency through a data request and consultation.
- The development will be a part of the overall development of the Meridian Water project and as such will form a part of the wider surface water drainage strategy.
- In addition there is a c.3m culvert buried c.9m below the site, development over this culvert would need to be limited to highways and landscaping unless otherwise agreed.

3.32 AMEC Foster Wheeler has prepared a Flood Risk Assessment Report which is annexed in Part 2 of this Report.

#### **4. ALTERNATIVE OPTIONS CONSIDERED**

The following options have been considered:

- 4.1 Declining the possible purchase of the land potentially available to the council has been considered, but rejected due to the uncertain timescales associated with the vendor bringing the land to market and securing development and consequent benefits for the community.
- 4.2 The use of compulsory purchase powers to acquire the land that comprises the opportunity has been considered, but this is not the council's first preference given the negotiations that have taken place with the landowner and there remains the prospect of a deal. The use of CPO powers must always and will always be a last resort.

#### **5. REASONS FOR RECOMMENDATIONS**

- 5.1 The acquisition of the site will enable the council to exercise control over the land within the Meridian Water Masterplan area, which will help accelerate housing delivery.

- 5.2 To provide a greater level of certainty over the timescales associated with the development of Meridian Water and to increase developer and stakeholder confidence in the delivery of the Masterplan.
- 5.3 The purchase of the site will underpin the delivery of the Meridian Water Housing Zone and this land could support a mixed use development at a later date.
- 5.4 As the land is being acquired as TGOC it means the Council will be able to earn an income pending the time the land will be developed therefore the Meanwhile Use is activated immediately.
- 5.5 The agreement of the maximum budget acceptable for the purchase of Phoenix Wharf and the delegation of authority to the Directors of Regeneration and Environment and Finance, Resources and Customer Services means that should the Vendor decide to accept the Council's offer completion would take place very quickly.

## **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

### **6.1 Financial Implications**

- 6.1.1 Contained in Part 2 of this report.

### **6.2 Legal Implications**

- 6.2.1 The Council has power under section 1(1) of the Localism Act 2011 to do anything that individuals generally may do provided it is not prohibited by legislation and subject to public law principles. The recommendations detailed in this report are in accordance with the Council's powers.
- 6.2.2 Section 120(1)(b) of the Local Government Act 1972 (LGA) gives Councils a specific power to acquire land for the benefit, improvement or development of their area. In addition, the Council has powers under section 227 of the Town and Country Planning Act 1990 (as amended) to acquire land by agreement for 'planning purposes'. Where agreement cannot be reached, the Council has the power under various enactments to acquire land compulsorily using a Compulsory Purchase Order. However, CPO is a lengthy process and a measure of last resort. It is therefore noted that purchase by agreement has been pursued in this case.
- 6.2.3 The Council has a fiduciary duty to look after the funds entrusted to it and to ensure that its Council tax and rate payer's money is spent appropriately. For that reason, the Council must carefully consider any project it embarks to ensure that it is making decisions based on a proper assessment of risk and rewards/outcomes
- 6.2.4 When considering an acquisition of property the Council must act in accordance with its Property Procedure Rules, including obtaining advice that the terms negotiated represent value for money and the property is suitable for intended use.

## 6.3 Property Implications

6.3.1 Please see the Part 2 Report.

## 7. KEY RISKS

Key risks considered arise from the liabilities associated with the acquisition and development of the site, conversely not acquiring the site poses a risk to the council's ability to deliver the vision for Meridian Water.

### Financial

7.1. **Risk** - Development appraisals are sensitive to fluctuations in build cost and housing prices, because the developments are built out over time.

**Mitigation:** the actual development process where current assumptions, such as the quantum of affordable housing may need to be adjusted to secure the expected return. Such risks are further mitigated by the Housing Zone Status that has secured grant for affordable housing and loans for remediation.

7.2. **Risk** - The cost of acquiring the land cannot be recovered from the value generated from redeveloping the site in association with the Councils development partner.

**Mitigation** - by receiving detailed valuation advice from Glenny who is able to demonstrate via the development appraisal that the land price can be recovered. The Red Book Valuation for the site confirms that the current Market Value for the land is in accordance with the price that the council has agreed to buy the site for and therefore represents Best Value.

7.3. **Risk** – The Vendor has indicated that if this deal cannot be completed quickly they will sell to a third party.

**Mitigation** – Using Rule 15 to expedite decision making and getting this report agreed so that the funding and authority have been approved so that when the Vendor accepts the deal that things can be expedited.

7.4. **Risk** - The Purchaser understands that there are occupational leases in place and the property will be provided with Tenants in situ on completion.

**Mitigation** – All leases are outside of the Landlord and Tenant Act 1954

### Development

7.5. **Risk** – No site inspections have been undertaken thus far although a number of desk top studies have been done. Uncertainty exists with respect to ground water contamination, the scope and cost of remediation required to address risk to future site users and the environment, the extent and location of the culvert.

7.6. **Mitigation** – The majority of the risks mentioned above relate to future uses of the site.



7.7. **Risk** - The development assumptions are based on Angel Road Station being upgraded in concert with investment in the railway line to achieve a 4-trains-per-hour service. Should the rail investment be delayed or fail to materialise, then the development densities assumed will not be able to be achieved. Not to achieve the development assumptions will affect land value and the ability for the council to recover its costs.

**Mitigation** - By taking plans for three tracking and the new station to an advanced stage of agreement with Network Rail and the Greater London Authority (GLA). The final funding package for three tracking has been agreed and the station is now part of Phase 1 Planning Application submitted in February 2016.

7.8. **Risk** - the development could be affected by flooding given the provisions of the Strategic Flood Risk Assessment.

**Mitigation** - The measures set out in the Masterplan and through the implementation of appropriate design solutions. In short, this particularly allows for an appropriate amount of flood storage. Providing that proper attention is paid to design, which will be tested by the Environment Agency through the planning process, there is no reason why residential development here should prove any more problematical than anywhere else, in so far as flood-risk is concerned.

7.9. **Risk** - There is currently no established residential market at Meridian Water and therefore levels of sales and values assumed in the development appraisal, produced by Glenny, are yet to be tested.

**Mitigation** - The land is being purchased using commercial valuation which as a TOGC will be covered by the Red Book, any change in planning designation to residential / mixed use will increase the land value considerably.

7.10. **Risk** – There is a risk that three of the occupational leases have not been properly excluded and if not, upon expiry, a statutory tenancy will come into effect and one of the grounds for possession under the 1954 Landlord and Tenant Act will need to be established in order to gain possession. One of those grounds is proposed redevelopment. There is also the risk that the tenant may successfully claim a new lease.

**Mitigation** – A full examination of all the occupational leases will take place prior to the exchange of contract and any implications of these will be duly considered.

7.11. **Risk** – If the Council do not notify the HMRC of its decision to opt to tax before the land is acquired and before any payment is made, it will be liable for irrecoverable VAT of approximately £2m.

**Mitigation** – The Council will ensure that all evidence to support the conditions for the Transfer of Going Concern, which allow the option to tax, are provided in a timely manner to HMRC.

7.12. The TOGC conditions are as follows;

- The assets must be sold as part of the transfer of a 'business' as a going concern;

- The assets are to be used by the purchaser with the intention of carrying on the same kind of 'business' as the seller (but not necessarily identical);
- Where the seller is a taxable person, the purchaser must be a taxable person already or become one as a result of the transfer;
- In respect of land which would be standard rated if it were supplied, the purchaser must notify HMRC that it has opted to tax the land by the relevant date, and must notify the seller that their option has not been dis-applied by the same date;
- Where only part of the 'business' is sold it must be capable of operating separately; and
- There must not be a series of immediately consecutive transfers of the 'business'.

## **8. IMPACT ON COUNCIL PRIORITIES**

- 8.1 The acquisition of the land described in this report would enable the early development of new homes in Meridian Water. The subsequent development would be guided by the Meridian Water Masterplan which, amongst other objectives, seeks to achieve fairness for all, sustainable growth and development of strong communities.

## **9. EQUALITIES IMPACT IMPLICATIONS**

- 9.1 The draft Meridian Water Masterplan was subject to an initial Equalities Impact assessment/Analysis (EqIA) to ensure that consultation promoted equal opportunities. During the master-planning process, demographic data was collected in relation to residents of Edmonton in order to determine which groups to target for community engagement and to also help assess the equalities issues the Masterplan proposals will need to consider.
- 9.2 These issues were summarised in the final EqIA report that was reported to the Local Plan Cabinet Sub-Committee at its 11<sup>th</sup> September 2013 meeting.
- 9.3 Any further equalities impact issues will be examined at the planning application stage on individual sites.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

- 10.1 Delivery of a comprehensive regeneration scheme at Meridian Water is a corporate priority within the Council's Business Plan for 2012-15. Completion of the Masterplan, and the delivery of phased infrastructure improvements including increased rail services, station improvements and new homes will help to meet Outcome 2.10 of the Business Plan; to improve the quality of life of residents through the regeneration of priority areas and to promote growth and sustainability.

## **11 PUBLIC HEALTH IMPLICATIONS**

- 11.1 There are no Public Health Implications directly arising from this land acquisition, but the intention to remediate and develop the site when finally used for residential development is likely to have positive benefits.

## **12. HEALTH AND SAFETY IMPLICATIONS**

- 12.1 A component of the Masterplan concerns the need to improve access to healthy living corridors. Meridian Water adjoins the Lee Valley Regional Park, the rivers and open spaces within which offer significant recreational and environmental benefits as do the series of reservoirs immediately to the south of the area. The Masterplan seeks to maximise this potential for existing and new residents by improving east/west and north/south connections through a network of open spaces. Improved connections will help deliver healthy living into the heart of the new development and reconnect the nearby communities with the Park. The Masterplan creates opportunities for formal and informal recreation and leisure, urban agriculture and outdoor learning. It draws the community and landscape together combining healthy living into the daily structure and form of Meridian Water. In accordance with the Core Strategy it required the delivery of new health facilities to support the new communities and suggests these should be located within Meridian Central neighbourhood or where benefits from the co-location of services can most appropriately be realised.

### **Background Papers**

None