

## London Borough of Enfield

### Operational Report

### Report of Programme Director – Meridian Water

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**Subject: Meridian Two – Authority to Enter into Development Agreement**

**Executive Director: Executive Director - Place**

**Ward: Upper Edmonton**

**Key Decision: 4952**

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### Purpose of Report

1. In March 2020, following a competitive procurement process, Cabinet approved the selection of a development partner to deliver 'Meridian Two', a mixed use development proposal comprising circa 270 homes of which 100% will be affordable, and 3000m<sup>2</sup> of workspace (to be retained by the Council) at the site of the former gasholder at Leaside Road (KD4952).
2. Cabinet approved the Council forward funding or underwriting the Developer's enabling works costs, authorised the Programme Director for Meridian Water (in consultation with the Director of Law and Governance, the Director of Property and Economy, and the Executive Director of Resources) to finalise the terms of the Development Agreement and ancillary documents, and to negotiate the level, timing and payment profile for the deal and delegated authority to the Director of Law and Governance to enter into the Development Agreement and any ancillary documents.
3. This report sets out the final terms of the Meridian Two Development Agreement and ancillary documents and seeks authority from the Programme Director of Meridian Water (in consultation with the Director of Law and Governance, the Director of Property and Economy and the Executive Director of Resources) to approve those terms.

### Proposal(s)

4. That the Programme Director for Meridian Water (after consultation with the Director of Law and Governance, the Director of Property and Economy, and the Executive Director of Resources) approves the final terms of the Meridian Two Development Agreement and ancillary documents as set out in this report.
5. That the Programme Director for Meridian Water notes the Confidential Appendix and approves the level, timing and payment profile for the deal.

### Reason for Proposal(s)

6. The detailed justification for the Council selecting a development partner to deliver the Meridian Two scheme is set out in the Cabinet report of 11th March 2020, 'Meridian Water – Meridian Two, selection of Development Partner' (KD4952).

7. In summary, the Council is ready to enter into a Development Agreement with Vistry Partnerships to deliver a mixed-use development scheme comprising circa 270 homes (subject Reserved Matters approval) of which 100% will be affordable (50% London Affordable Rent and 50% Intermediate) and owned and managed by a Registered Provider, expected to be Metropolitan Thames Valley Housing, and 3000m<sup>2</sup> of workspace (to be retained by the Council).
8. The development will achieve a number of corporate and Meridian Water specific objectives including the provision of affordable homes to meet housing need in the borough, placemaking at a key gateway to Meridian Water, alignment with the three placemaking pillars of Meridian Water, and the creation of new high quality jobs in line with the Meridian Water Employment Strategy.
9. Since Cabinet authority, and as outlined in the Cabinet report, an opportunity to improve the Council's commercial position through amending the payment profile and accelerating the programme has been explored and final terms agreed with Vistry Partnerships. The programme benefits are set out in this report, and financial benefits are included in the Confidential Appendix.

### **Relevance to the Council's Plan**

10. Meridian Two aligns with the vision, aims and priorities of the Council's Plan in a number of ways.
11. **Good Homes in well-connected neighbourhoods:** Meridian Two will deliver circa 270 homes (subject to Reserved Matters approval) of which 100% will be affordable with 50% for London Affordable Rent (LAR), and 50% as Intermediate which will include shared ownership, London Living Rent and other rental products, helping to meet the housing needs of the borough. The Council will benefit from nomination rights for the LAR homes, and the intermediate homes will be allocated in accordance with the Council's own intermediate housing policy. When completed, the homes will benefit from adjacency to the rest of Meridian Water Phase 2, improved public transport accessibility from the nearby Meridian Water Rail Station (5-7 minutes walk) and enhanced frequency of trains (4 per hour from 2024) as well as proximity to the Lea Valley and cycle routes into London. T
12. **Safe, healthy and confident communities:** The new homes and employment spaces at Meridian Two will benefit from immediate proximity and outlook to the new 1.8 hectare 'Brooks Park' which will be delivered as part of the Strategic Infrastructure Works by 2024, providing high quality and ecologically rich amenity with naturalisation of the Pymmes and Salmon's brooks. The scheme will also benefit from proximity and outlook onto the Lea Valley and Tottenham Marshes.
13. **An economy that works for everyone:** Meridian Two will deliver a substantial new ground floor workspace of 3000m<sup>2</sup> that will be retained by the Council, providing high quality employment opportunities. The Development Agreement also includes a number of Social Value obligations which are set out in this report.

### **Background**

14. In March 2020, Cabinet authorised the Council to select a development partner to deliver 'Meridian Two', a mixed use development proposal comprising circa 270 homes of which 100% will be affordable, and 3000m<sup>2</sup> of workspace (to be retained by the Council) at the site of the former gasholder at Leaside Road (KD4952).

15. The detailed justification for the Council selecting a development partner to deliver the Meridian Two scheme is set out in the Cabinet report of 11th March 2020, 'Meridian Water – Meridian Two, selection of Development Partner' (KD4952).
16. Since Cabinet authorisation, Officers have finalised terms with the selected partner, Vistry Partnerships in order to enter into a Development Agreement. Vistry Partnerships will enter into a sale agreement with Metropolitan Thames Valley Housing as the Registered Provider that will own and manage the homes when completed.

## **Main Considerations for the Council**

### Summary of the Meridian Two Development Agreement

17. The Development Agreement for Meridian Two is in the form of the GLA's LDP2 Framework with project specific amendments as permitted by the framework.
18. The Development Agreement will be entered into by the London Borough of Enfield with Vistry Partnerships, with Vistry Group PLC as the Guarantor.
19. The Development Agreement is conditional on satisfaction or waiver of the following Conditions Precedent:
  - (1) Landowner's conditions:
    - Landowner's Planning Condition (All reasonable endeavours to obtain Outline Planning Permission), as soon as reasonably practicable and in any event prior to the Landowner's Planning Condition Longstop Date (i.e. 6 months from the date of the Development Agreement). The purpose of this condition is to ensure that the Council as Landowner obtains the Outline Planning Permission within reasonable timescales. The Phase 2 Outline Planning Application has been approved by Planning Committee and the decision notice is expected to be issued later this year.
    - Vacant Possession Condition (all reasonable endeavours) as soon as reasonably practicable after the date of satisfaction of the Landowner's Planning Condition and in any event prior to the Conditions Long Stop Date (i.e. three years from the date of the Development Agreement). The Council has already served notice on the existing tenant, and the lease will terminate on 5th September 2021, ensuring that the Developer will be able to access the site under license to commence Enabling Works prior to draw down of a 21-year Building Lease when the Development Agreement goes Unconditional.
    - Landowner's Pre-Commencement condition requires the Council to have submitted and obtained approval for a number of strategies and plans required under the Phase 2 Outline Permission.
    - Landowner's Funding Condition (all reasonable endeavours to ensure that the Council's funding agreement with MHCLG becomes unconditional). The purpose of this condition is to protect the Council from delays in completing the Strategic Infrastructure Works in the event that the HIF Funding is not available
    - Landowner's HIF Contract Condition requires the Council to have entered into the contract to deliver the Strategic Infrastructure Works.

- (2) Developer's conditions:

- Developer's Planning Condition – Reserved Matters approval constituting a Satisfactory Planning Consent as soon as reasonably practicable after the date of satisfaction of the Landowner's Planning Condition and in any event prior to the Conditions Long Stop Date (i.e. three years from the date of the Development Agreement). The purpose of this condition is to ensure that the Developer achieves the Reserved Matters planning consent within reasonable timescales as does not delay the programme for delivery of the scheme.
  - Association Condition – the Developer to have entered into an unconditional agreement with a Registered Provider to purchase all of the homes.
- (3) Gas Governor Condition – Parties to enter into the Gas Governor Agreement with Cadent (Developer may waive). The purpose of this condition is to ensure that the Developer is not exposed to an unacceptable level of risk associated with the relocation of the 'Gas Governor Station', gas pressure reduction apparatus owned by Cadent Gas, which must be relocated to enable the development. The Landowner will acquire the land and transfer to the Developer, however the Developer is required to cover all costs relating to the relocation of the gas governor.
20. Vistry Partnerships will be required to pay the Council any sales overage in the unlikely event that the Local Planning Authority require private tenure homes as part of the Reserved Matters Application. The sales overage will ensure that the Council claws back a proportion of the increase in income between the assumed affordable and actual private sales values.
21. Vistry Partnerships will also pay the Council a Station Upgrade Sum (calculated on a per dwelling basis, at £1850 per affordable unit – therefore estimated to be over £500,000) and Community Benefits Payment (£50,000). Both sums are to be paid 50% on or before grant of Building Lease and 50% 12 months after grant of the Building Lease.
22. Since Cabinet authority, and as outlined in the Cabinet report (KD4952), the Vistry Partnerships bid included an opportunity to improve the Council's commercial position by amending the payment profile and accelerating the programme. This opportunity has been explored and the final terms of this proposal has been agreed with Vistry Partnerships. The revised payment profile enables Vistry Partnerships to commence enabling works and technical design to procure sub-contractor packages prior to the Development Agreement going unconditional, meaning that a circa six-month programme saving can be achieved. In turn, this programme saving means that construction cost inflation is reduced, and the saving can be passed on to the Council through an improved land premium position. Further information on the commercial terms is included in the Confidential Appendix.
23. The Council as Landowner is required to approve the draft Reserved Matters Application before it is submitted to the Local Planning Authority within a timeframe of 20 Working Days. The Reserved Matters Application must be pursuant to the Phase 2 Outline Planning Permission, which includes a Design Code, and parameter plans to guide the urban design, built form and architecture. A Design Charter is also included as an Annexure of the Agreement, to ensure that commitments of the Vistry bid are upheld in line with the Place Brief which also has contractual status. The Council, along with a 'Design Advisory Group' will monitor the emerging scheme design to ensure that it meets the Council's requirements for a high quality

development in parallel with the pre-application process and engagement with the Local Planning Authority.

24. In relation to the 3000m<sup>2</sup> workspace, this will be handed back to the Council on completion for nil cost and the Council's enhanced Shell & Core specification is included as an Annexure in the Development Agreement. Therefore the workspace must be completed to this specification, ensuring that the space is marketable to an operator/tenant.
25. A Development Inspector will be jointly appointed by the Developer and the Landowner before commencement of the Works. The Development Inspector will be responsible for the monitoring of the Development, the issue of Compliance Certificates and such other services as the Council as Landowner may require in order to be satisfied that the Developer has complied and continues to comply with its obligations in this Agreement at all times.
26. The Council will have the ability to approve the form of Building Contract, and will have the benefit of warranties, as well as warranties from specified sub-contractors, which can be passed on to first purchasers or occupational tenants of the workspace units, utility services provider, the Meridian Water Estate Management Company and other third parties. Should Vistry Partnerships wish to opt for a Construction Management approach, warranties from Principal Trade Contractors will be provided as above.
27. The Council will also be able to approve Professional Team members appointed by Vistry Partnerships and have the benefit of warranties from those consultants.
28. A Development Programme is included as an Annexure to the Development Agreement, setting out the target milestone dates for Vistry Partnerships.
29. The Development Agreement also makes reference to contractual dates; target dates, long stop dates and drop dead dates as follows. The milestone dates are based on current programme dates at the time of writing and the agreed milestone dates are subject to confirmation.

<b>Milestone Event</b>	<b>Target Date</b>	<b>Long Stop Date</b>	<b>Drop Dead Date</b>
Submission of the Approved reserved matters planning application to the Local Planning Authority	24/12/2021	24/12/2022	24/12/2023
Building Lease Completion Date	06/07/2022	06/07/2022	06/07/2024
Implementation Date	24/08/2022	24/08/2023	24/08/2024
First Dwelling PC Date	01/07/2024	No Long Stop Date	No Drop Dead Date
(Final) Dwelling PC Date	02/06/2025		

30. In summary, following authorisation of the proposals in this report, the Council is able to enter into a Development Agreement, which would see Vistry Partnerships taking possession of the site at the end of the year, commencing enabling works in 2021, starting construction in late 2022, with first completions in 2024.
31. The S123 report has been updated and the results show that there is no undervalue as originally envisaged in the March 2020 cabinet report.

## **Safeguarding Implications**

32. There are no safeguarding implications associated with entering into a Development Agreement for Meridian Two.

## **Public Health Implications**

33. The availability of good quality, safe, affordable housing has significant potential to positively impact the wellbeing of residents. Additionally, the significant workplace space involved in this development will contribute towards local employment and economic development which ultimately positively impact wellbeing. It would be important to ensure that local businesses providing good quality employment/ work opportunities are supported.
34. Key to maximising the potential of this development to positively impact on resident's wellbeing is to ensure that the local environment is safe, promotes physical activity and non-car dependence. Consideration should also be taken regarding green space and play space within the development.

## **Equalities Impact of the Proposal**

35. The Council will work with the Developer to ensure, in the delivery of this contract, that they help to promote the Council's equality aims and duties under the Equality Act 2010.
36. In the Development Agreement, the Developer and the Landowner agree that, in realising the Works, due regard will be given to the Landowner's policies of eliminating unlawful racial discrimination, providing equality of opportunity and promotion of good race relations between different racial groups.
37. The Developer will ensure that all Building Contractors and Consultants engaged in relation to the Development and/or the Enabling Works and/or the Works will have an equal opportunities policy at least equivalent to that operated by the Developer and will include a requirement to comply with such policy in the terms of contract and/or engagement of such Building Contractor and/or Consultant.
38. The Developer will additionally require the relevant Building Contractor or Consultant to produce a copy of its equal opportunities policy to the Landowner on written request by the Landowner.
39. An Equalities Impact Assessment (EQIA) by Ottaway Strategic Management Ltd was commissioned by the Council to consider the impacts of the Meridian Water (Strategic Infrastructure Works) Compulsory Purchase Order. The EQIA concluded that there are no direct negative equality impacts identified against any of the protected characteristics. However, there are some groups with protected characteristics who are likely to experience proportionately higher consequences of the regeneration of Meridian Water and these are: white other staff, including Eastern European, Turkish and Greek; BAME staff; women in properties in third party ownership; and older members of the workforce potentially less able to re-engage in the labour market if their jobs are lost to the relocation programme. The EQIA proposed several mitigation measures to address these indirect impacts which the Council intends to implement including the implementation of effective equalities monitoring by the Council and development and construction partners. The EQIA also acknowledges significant potential positive impacts of the regeneration of Meridian Water (including for example, new homes, social infrastructure and

employment growth) and that these benefits will likely impact on all the aforesaid groups having protected characteristics.

40. An EQIA was also prepared by the Council's Strategic Planning Team to support the ELAAP submission. The planning application for Phase 2 was also subject to an EQIA. The Phase 2 application was accompanied by a socio-economic analysis as part of the Environmental Statement. No substantive negative impacts to persons or groups with protected characteristics were identified.

## **Environmental and Climate Change Considerations**

41. Enfield Council declared a Climate Emergency in July 2019, and the Council has developed a specific Environmental Sustainability Strategy for Meridian Water (KD5089). This Strategy sets out ambitions for all projects and the financial assessment and implementation mechanism for achieving them.
42. Although the construction of new homes will create an increase of emissions compared to not building homes, the Meridian Water Environmental Sustainability Strategy seeks to mitigate these emissions, progressively increase performance, and create a state where net zero carbon homes are a reality.
43. In the approved Meridian Water Environmental Sustainability Strategy the operational energy requirement reduces from 105kWh/m<sup>2</sup>/yr to under 30kWh/m<sup>2</sup>/yr, while the embodied carbon reduces from 600 kgCO<sub>2</sub>e/m<sup>2</sup> to under 300 kgCO<sub>2</sub>e/m<sup>2</sup> and the local renewable energy offsets increases from 25% to 100% of the residual carbon emissions.
44. The Council has invested in a district heating network (Energetik), using very low carbon heat from the rebuilt North London Heat and Power plant. This network will support Meridian Water in operating low carbon homes. All homes constructed will be connected to the heat network, initially fed by temporary gas boilers until the Energy Recovery Facility comes on-line in 2026. Once delivered this will achieve an estimated 92% reduction in the residents' carbon footprint for heating compared to an individual gas boiler for each dwelling.
45. For Meridian Two, the Council negotiated a Development Agreement assuming that the developer will meet current planning policy and Building Regulations and also connect to the Meridian Water Heat Network. The Meridian Two RMA will need to respond to the requirements of the Phase 2 Outline Planning Permission, which includes a number of the newly adopted London Plan policies for example the higher Carbon Offset requirement of £95 per tonne, and an Urban Greening Factor of 0.4.

## **Risks that may arise if the proposed decision and related work is not taken**

46. Risks associated with the development approach are considered in the Cabinet report of March 2020, KD4952.
47. By not signing the Development Agreement with a selected partner, following almost 12 months since receipt and evaluation of the tender submission and agreeing the final terms with considerable time and expense of both parties, this could lead to significant reputational damage for the Council.

48. As set out in the Cabinet report, KD4952, there is a very strong justification for proceeding with Meridian Two on the terms offered, with which the final terms of the Development Agreement are consistent.

### **Risks that may arise if the proposed decision is taken and actions that will be taken to manage these risks**

49. Three risks were considered in the Cabinet report (Public, Part 1) of March 2020, KD4952.

50. The risk of the market softening and the developer negotiating less favourable terms has not materialised and the Council has been able to finalise the Development Agreement on the basis of the submitted tender response from the developer.

51. The risk of the developer becoming insolvent remains a risk, albeit low, and this is monitored on an ongoing basis by the Council.

52. Additional risks and mitigations are summarised in the Confidential Appendix.

### **Financial Implications**

53. Please see the Confidential Appendix.

### **Legal Implications**

MD: 22nd July 2021

54. Section 1 of the Localism Act 2011 provides the Council with the power to do anything an individual may do, subject to a number of limitations. This is referred to as the "general power of competence". A local authority may exercise the general power of competence for its own purpose, for a commercial purpose and/or for the benefit of others. Furthermore section 8 of the Housing Act 1985 requires the Council to consider the housing conditions and needs of their area with respect to the provision of further housing accommodation. The Council has the power under section 9 of that Act to provide housing accommodation. The Local Government Act 2003 gives the Council power to borrow for any purpose related to its functions, and to utilise capital receipts, subject to the limitations set out in that Act. The Council therefore has the statutory powers to enter into the transactions described in this report.

55. Public law principles apply to the decisions made by the Council including the Council's duty to take account of its fiduciary duty and to act prudently with public monies entrusted to it. The Council is also under a general duty to act reasonably and show that its decisions are made after having given due and proper consideration to all relevant factors (disregarding irrelevant factors).

56. In conducting the procurement of a developer for Meridian Two, the Council must comply with all requirements of its Constitution (including its Contract Procedure Rules ("CPRs")) and the Public Contracts Regulations 2015 ("Regulations"), both of which permit the call-off from an existing framework if the framework terms permit. The resulting call-off contract must be based on the framework terms and officers have ensured that the rules of the relevant framework have been complied with. Any selection process must be carried out in a manner which is fair, transparent and proportionate. The procurement process is described in detail in the 11<sup>th</sup> March 2020 (KD4952) Cabinet Report. The modification of the contract terms from those set out



in the original tender documents are considered to be compliant with the Public Contracts Regulations 2015 as the modifications are not considered to be “substantial” for the purposes of those regulations.

57. The Council will enter into the following documents with the preferred developer partner and the developer’s guarantor: a development agreement on the terms summarised in this report; on satisfaction of conditions precedent, a 21 year building lease; a licence of land adjacent to the development site in order for the developer to undertake public realm landscaping works; and, on practical completion of a section or, if required by the developer, at golden brick, a 250 year headlease (extendable to 999 years in the event of a change in law requiring such for shared ownership units). All legal agreements arising from the matters described in this report must be approved in advance of contract commencement by the Director of Law and Governance.
58. Throughout the engagement of the preferred developer, the Council must comply with its obligations of obtaining best value, under the Local Government Act 1999.
59. The disposal of land to the developer by way of building lease and, upon practical completion of the development, headlease must comply with s123 Local Government Act 1972. Officers have commissioned from BNP Paribas a valuation report dated 9<sup>th</sup> July 2021 that confirms compliance with the Council’s s123 obligations.

### **Workforce Implications**

60. Existing staff from the current Meridian Water team structure will monitor the contract, manage Council obligations under the contract, and manage relevant Council workstreams, supported by external professional advice from consultants where necessary.

### **Property Implications**

61. This report deals with the formalisation and signature of a Development Agreement where such Agreement was approved by Cabinet in March 2020 under KD 4952. There are no new specific property implications to those within the March 2020 report. For the avoidance of doubt, as with the March 2020 report KD4952 there will be outputs flowing from the signed Development Agreement which will require subsequent deals and reports which will have their own individual property implications that will become apparent at that time and these will require agreement and sign off by Strategic Property Services when the full details of those subsequent deals are known.

### **Other Implications**

62. No other implications have been considered.

### **Options Considered**

63. No other options have been considered.

### **Conclusions**

64. The final terms of the Development Agreement for the Meridian Two scheme are consistent with the authority from Cabinet in March 2020 (4952), and the detailed justification in that report remains. The financial position is improved for the Council

as a result of the accelerated programme and reprofiling of the payments, as set out in the Confidential Appendix. It is therefore recommended that the Council proceeds with entering into the Development Agreement on this basis.

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## **Appendices**

Confidential Appendix