



Cabinet Member Report

City of Westminster

Meeting:	Cabinet Member for Finance, Property and Regeneration
Date:	15 October 2020
Classification:	General Release but that Appendix A be declared as exempt from publication as it involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a to the Local Government Act 1972, (as amended), in that it contains information relating to the financial or business affairs of any particular person (including the authority) as per paragraph 2.1 below.
Title:	The development of sites at Ashbridge, Ashmill and Cosway Street.
Ward Affected:	Church Street
City for All:	The proposed developments will collectively help to contribute to Westminster's City for All objectives. A City that Celebrates its Communities by supporting the development of a more inclusive community. A City of Opportunity by providing more homes of all types and tenures to create a vibrant community with improved opportunities through the range of housing provided in particular through the provision of affordable housing. A Healthier and Greener City through creating high quality homes and a healthier, greener environment that connects better to surrounding communities.
Key Decision:	Yes
Financial Summary:	The proposals result in additional expenditure and income within the HRA. This is in line with the HRA Business Plan Budget however the profiling of expenditure and receipts does have a marginal impact on HRA resources by the end of the 40 year Business Plan period. In summary the work undertaken demonstrates that the development should proceed.
Report of:	Debbie Jackson, Executive Director, Growth Planning and Housing

1. Executive Summary

- 1.1 Within the Church Street area there are three Westminster City Council sites at Ashbridge, Ashmill & Cosway Street which have been allocated for redevelopment for housing.
- 1.2 The demolition of existing buildings and structures and erection of new building on the sites will provide 77 housing units, of which 49 are private residential units at Cosway street, and 28 (or 36%) are affordable homes at Ashbridge Street and Ashmill car park.
- 1.3 An Outline Business Case (OBC) was approved by the Cabinet Member in January 2019
- 1.4 Significant progress has been made on the project since the OBC was approved, including the completion of the RIBA Stage 3 and 4 design, grant of planning permission, procurement of main contractor (Osborne), letting of an enabling works (demolition) contract and agreement of the main works contract.
- 1.4 The schemes will redevelop underutilised premises into new housing development sites, providing much needed additional housing units of all tenures for Westminster.
- 1.5 The Full Business Case (FBC) demonstrates that whilst there have been some changes to the capital and revenue positions on the project since the OBC, the project remains viable to deliver.
- 1.6 This Paper seeks to to formally agree the preferred way forward as set out in the Full Business Case, namely;
 - A Joint development, with affordable housing provided at Ashbridge and Ashmill, and private housing at Cosway.
 - The direct development of all three sites by the council
 - The appointment of Geoffrey Osborne Ltd (Osborne) as Main Contractor to deliver the construction works at the 3 sites.

2. Recommendations

- 2.1 That Appendix A of the report be exempt from disclosure as it involves the disclosure of information as prescribed by paragraph 3 of Part 1 of Schedule 12a to the Local Government Act 1972, (as amended), in that they contain information relating to the financial or business affairs of any particular person (including the authority).

- 2.2 That the Cabinet Member for Finance, Property and Regeneration formally agrees the preferred way forward as set out in the Full Business Case, namely;
- A Joint development, with affordable housing provided at Ashbridge and Ashmill, and private housing at Cosway.
 - The direct development of all three sites by the council
 - The appointment of Geoffrey Osborne Ltd (Osborne) as Main Contractor to deliver the construction works at the 3 sites.
- 2.3 That the Cabinet Member for Finance, Property and Regeneration, in support of 2.2, formally agrees to:-
- Authorise the drawdown of additional centrally held contingency as referred to in the Financial Implications in Appendix A.
 - Authorise to spend the balance of the capital funds required to deliver the project as referred to in the Financial Implications in Appendix A.
 - Approve the execution of the Building Contract between the Council and Osborne as Main Contractor to deliver the construction works at the three sites as referred to in the Legal Implications in Appendix A.
- 2.4 That the Cabinet Member for Finance, Property and Regeneration notes the mitigation referred to in Appendix A to reduce the HRA borrowing, which is subject to further investigation. The Cabinet Member for Finance, Property and Regeneration delegates authority to the Executive Director for Growth Planning and Housing in respect of any future decision in connection with this matter.

3. Reasons for Decision

- 3.1 The Council is satisfied that the redevelopment will contribute towards meeting the City for All objectives, in particular “*City of Opportunity*”
- 3.2 Specifically, this development will contribute 28 new affordable homes towards the council’s target of 1,850 by 2023.
- 3.3 Furthermore, the proposed landscaping improvements at Ashbridge St will help to deliver the City for All target of *Healthier and Greener City*.
- 3.4 A linked planning application was submitted in December 2017 and subsequently approved in March 2019
- 3.5 The Full Business Case represents the final business case stage in the project and reconfirms that project remains the most suitable option for the Council to deliver.

- 3.6 The Full Business Case has shown that there is still a strong strategic, economic, commercial, financial and management case for the project to progress to the delivery phase.
- 3.7 Having previously recommended the approval of Osborne for the pre-construction services agreement in October 2018 following an OJEU compliant tender process, the Gate Review Panel also recommended in July 2020 the award of the main construction works contract to Osborne, subject to Cabinet Member approval
- 3.8 Osborne have now completed the detailed design and a rigorous open book tendering exercise has been undertaken and overseen by the Council's appointed Cost Consultant (Currie and Brown). Currie and Brown have confirmed that the Contract Sum for the main works represents reasonable value for money.

4. Background, including Policy Context

Cosway Street

- 4.1 Cosway Street is an island site. The majority of the site (60%) was purchased from City of Westminster College with the purpose of providing additional housing for the Church Street area.
- 4.2 In 2014, local residents voted in favour for a scheme at Cosway Street whereby the proposal was to develop the site for residential use for circa 55 +/- 15 No units for private sale with no affordable or intermediate element on site.
- 4.3 In late 2015, an alternative option was proposed by Pillar Developments in which the site would be developed for both residential and commercial uses, with 20+ residential units and 1,300 sqm of office space for start-up firms and 929 sqm of retail space. This alternative option was later dismissed, as it was both unlikely to gain planning permission and contrary to the approved vote scheme.
- 4.4 Following on from this proposal, it was agreed that a 100% residential scheme would be developed for the site. The current multi-disciplinary team, led by Peter Brett Associates, was appointed to take the design from RIBA stage 1 to planning submission.

Ashbridge Street

- 4.5 Westminster City Council (WCC) purchased the site, a former BT repeater station from Telereal Trillium in September 2014 for £6.9m. The majority of the property has been decommissioned and vacant for a number of years apart from the BT communication asset comprising a lift core that provides

access to subterranean service tunnels, which is still operational and protected via a Redevelopment Brief between WCC and BT.

- 4.6 In the vicinity of the site sits Alpha and Earl House (two WCC owned residential blocks), an underground car park (accessed via a ramp adjacent to the repeater station), public realm and an office block (Tresco House). The surrounding area is predominantly residential in character, comprising a mix of 1950's-1970's residential blocks and terraced housing.
- 4.7 ECD Architects were appointed towards the end of 2016 as lead design consultant by WCC to undertake a feasibility study of the site at 2 Ashbridge Street. This feasibility study reviewed various redevelopment options, two of which included redeveloping Alpha, Earl and Tresco House.
- 4.8 Following this study, a Development Feasibility Report was completed, outlining the various options which recommended developing the repeater station site only.

Ashmill Street

- 4.9 Ashmill Street car park consists of 15no surface parking spaces, located between Shroton and Ashmill Streets.
- 4.10 The car park was constructed by Westminster City Council at the same time as the adjacent starter homes located on Ashmill Street.
- 4.11 The majority of these spaces are no longer used by the residents of Ashmill Street and the site was therefore identified initially as a potential development site under the infills programme.

Policy Context

- 4.12 The proposals for all the sites are in line with key policies in the Draft London Plan and address the delivery of affordable homes (GG4) and increasing housing supply (H1), developing social infrastructure (S1), developing green infrastructure (G1) and improving air quality (SI1). The proposals will help to contribute to achieving London's housing and affordable housing targets.

The proposals also support the objectives in the Westminster's City for All 2018/19. The developments proposed help to contribute to Westminster's City for All ambitions by supporting the development of a more inclusive community, with improved opportunities through the range of housing provided through the provision of affordable housing.

5. Full Business Case Summary

Strategic Case

- 5.1 The proposed redevelopment of these sites will support the Church Street Masterplan and Westminster's ambitions to regenerate the Church Street area.
- 5.2 The proposals for residential development are in line with key policies in the Draft London Plan. They will collectively help to contribute to Westminster's City for All ambitions by supporting the development of a more inclusive community, with improved opportunities through the range of housing and specifically the provision of affordable housing.

Economic Case

- 5.3 The economic appraisal of the preferred Option has been carried out in line with the HM Treasury Green Book (2018) and the HM Treasury Guide to Developing the Project Business Case (2018).
- 5.4 In accordance with this guidance, the Economic Case focuses on public value from the perspective of society and considers, as far as possible, all social, economic and environmental costs and benefits.
- 5.5 Whilst this a theoretical exercise in that it ignores "Sunk Costs" – being costs before 2020, the assessment does show that the Preferred Option demonstrates excellent value for money. This is what you would expect given the level of "sunk costs"

Financial Case

- 5.6 Included in Appendix A

Commercial Case

- 5.7 Osborne has presented itself as a competent contractor, has been transparent in its approach and delivered a proposed contract sum through an open book arrangement in line with the requirements of the procurement process.
- 5.8 Despite the issues that were experienced, overall, the costs returned are reasonable when compared to the current market and according to the Council's Cost Consultant the proposed contract sum represents reasonable value for money.
- 5.9 The Council's Cost Consultant consider that given the extensive amount of due diligence, the benefit of having a lump sum fixed price and in the interest of maintaining programme that the Council should progress with placing the order and appoint Osborne to undertake the main works for this project.

Management Case

- 5.10 The delivery of this project will follow the existing Church Street Regeneration Governance structure. This will ensure momentum and consistency of approach.
- 5.11 The projects have an established Working Group\Project Delivery Group within the Council.
- 5.12 The Council’s internal resources are supplemented by the appointment of suitably skilled external suppliers contracted to deliver specific outputs. This includes Gardiner & Theobald as Project Manager and Currie & Brown as Cost Consultant.
- 5.13 Stakeholder communications will continue to be carried out by a dedicated team within the Church Street programme base.
- 5.14 The completed Cosway Street development will be managed through the appointment of an external managing agent, who will be contracted to the Council for a fixed period and procured through the implementation of a standard procurement strategy aligned to the principles of the ARPM.

6. Sales and Marketing Strategy

- 6.1 Cosway Street has 49 residential apartments that will be released for private sale. This is expected to generate a capital receipt of £60.38m. Following a competitive process, Knight Frank have been appointed as sales agents for the residential units.
- 6.2 Although Cosway Street is located on the edge of Marylebone, the scheme will benefit from the future regeneration of Church Street. The scheme is in close proximity to Marylebone station, Regents Park, the canal and the West End and will be viewed as being relative value in comparison to surrounding submarkets (St Johns Wood and Marylebone).
- 6.3 The sales and marketing strategy focus primarily on the domestic market; however, Knight Frank would utilise their international office network. A potential international exhibit in Hong Kong will be considered, which follows the current agreed strategy for Carrick Yard. To capitalise on the lack of competing schemes and the unique development characteristics, a three-stage marketing strategy has been proposed by Knight Frank that targets specific demographics and markets. The strategy is focused on building momentum towards a local launch 6-9 months prior to practical completion.
- 6.4 The proposed three-stage sales and marketing summarised in the table below but may be subject change.

Milestone	Phase 1 – Pre-Launch	Phase 2 – Domestic Release	Phase 3
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Date	June 2020 to June 2021	July 2021 to September 2021	October 2021
Objective	<ul style="list-style-type: none"> • Build scheme presence, database and marketing collateral. 	<ul style="list-style-type: none"> • Small, targeted release covering a cross section of units. 	<ul style="list-style-type: none"> • Release balance of apartments to the wider market.
Approach	<ul style="list-style-type: none"> • Creating a sense of hype and urgency and building an extensive database of pre-qualified enquiries. • Applicant database specific to the scheme characteristics • High-impacting hoarding erected directing purchasers to online holding page. Wider canvassing through strategic advertising within the local press. • The database will be complimented by Knight Frank's London database for strategic application to Phases 2 and 3. 	<ul style="list-style-type: none"> • Initial private release to the local, Westminster market launching approximately 9 months prior to Practical Completion. • Pre-sales generated from this release event will start to build the urgency from which all future releases will feed. • The structure of the pre-release will prevent cherry picking of the best apartments prior to full release. • Generate market feedback on market demand, setting precedent for pricing levels. 	<ul style="list-style-type: none"> • A 1 -2 day launch event within a show-apartment, coinciding with delivery of the show apartments. • The event would attended by local press, previous purchasers and prospective buyers • Capitalising on the interest created by earlier phases of the strategy.

7. Risk Appraisal

7.1 A Risk Register has been produced for the projects. This includes assessment of key risks, their probability of occurring and assessment of potential impact, as well as the mitigation strategy.

7.2 The Key risks identified for each of the sites are as follows:-

Cosway

No.	RISK	
	Description	Mitigation
1	Pre-cast façade design, cost and buildability, causing delay, as a result of manufacture, design approvals.	Early engagement with specialist suppliers to develop the detail of the scheme in line with agreed Osborne offer, for agreement by WCC and Bell Philips.
2	Provision of upgraded services (electricity, gas, water) in time for completion could delay completion and hand.	Early engagement with utility company, early placement of orders.
3	Material availability/lead time, especially bricks for façade.	Procurement periods shown on programme for key items. Availability to be a consideration in material selection and orders placed as soon as approved. Early engagement of supply chain during enabling works to develop the design and secure availability.
4	Working above and adjacent LUL Infrastructure (Cosway Street) causing unexpected cost or programme delay.	Early consultation with LUL, agreement of working methodology during the 2nd stage. Peter Brett appointed as WCC consultant to provide advice and monitoring of contractor and contractor's sub consultants.
5	Approval of Non-Material Amendments to Planning Consent as a result of VE and Design Development. Delaying progress through construction, re-design, increased construction cost.	Early consultation with WCC Planning undertaken, changes minimised to non-contentious items. On-going engagement with Planning Consultant.

Ashbridge Street

No.	RISK	
	Description	Mitigation
1	Piling in close proximity to boundary/ party wall, causing impact to neighbouring properties.	Piling specialist to work with design team to mitigate risk to neighbouring properties. Site monitoring Communications and RLO support will be required on this as it affects a number of residences and there will be a considerable amount of making good and reinstatement of boundary walls required. This also carries a significant comms/negative publicity risk.
2	BT demise within the Ashbridge repeater station is protected via a redevelopment brief. Unforeseen issues causing derogation from agreed strategy, requiring significant re-negotiation of construction strategy and delay to programme.	Regular consultation meetings with BT to take place to ensure full compliance with the Redevelopment Brief.
3	Ramp design, programme and logistics means that the existing ramp must be closed. Cost and stakeholder impact.	Dialogue and communication with parking users at Tresco House and WCC garage users ongoing, and legal process underway.
4	Provision of upgraded services (electricity, gas, water) in time for completion.	Early engagement with utility company, early placement of orders.
5	Existing BT building which is to be partially re-used, not as expected and impacts on the current design.	Detailed structural surveys carried out ahead of demolition and used as the basis of detailed design.

Ashmill

No.	RISK	
	Description	Mitigation
1	Due to interface between the proposed scheme and the gable end walls either side at Christ Church House and 34 Daventry Street. Party wall awards required, could cause delay to construction works.	Early engagement of Party Wall Surveyor to agree scope of works and solution to interface issues.
2	Unforeseen impact on supply chain delivery due to Brexit/ Covid-19	Updated contract terms to be agreed with the Contractor to set out the commercial position should this come to fruition.
3	Working in residential area	Considerable, early and on-going consultation with local residents re logistics and activities of work. Stakeholder management plan developed by specialist. RLO engaged to advise on method and frequency of engagement. RLO engagement with stakeholder in accordance with stakeholder management plan. Frequent communication prior to and during construction works via RLO. Continuous monitoring of progress and feedback from community.
4	Post contract variations	Designs reviewed in detail prior to contract and approved by WCC.
5	Provision of upgraded services (electricity, gas, water) in time for completion.	Early engagement with utility company, early placement of orders.

7.3 The Building Contract is fixed price lump sum contract. This means that the Contractor takes the risk with regard any build cost inflation. There a single provisional sum relating to public art at Cosway Street. All other construction costs are firm.

7.4 WCC are likely to introduce a COVID-19 clause into contracts moving forwards. Osborne has specifically excluded risks associated Party Wall matters, which is excepted by the Council. WCC has also previously accepted a Brexit clause which does transfer some risk to WCC .

7.5 As part of the Sales and Marketing Strategy for Cosway Street, consideration is given to the potential impact of three areas. These are as follows:-

- COVID 19 - Based upon the current situation and with the proposed programme for the sales of the units not commencing until Q2/Q3 2021, it is felt that the likely impact of COVID-19 should be negligible.
- Development Pipeline - Very few of the Councils current schemes are directly comparable and as a result competition is limited. Schemes that are most comparable in terms of price point and location are Venice Court (previously known as Parsons North) and Carrick Yard (previously known as Luton Street) both of which are being delivered by the Council and will

be launching c.12 months prior to the proposed programme for Cosway Street.

- Although Cosway Street is located on the edge of Marylebone, the scheme will benefit from the future regeneration of Church Street. The scheme is in close proximity to Marylebone station, Regents Park, the canal and the West End and will be viewed as being relative good value in comparison to surrounding submarkets (St Johns Wood and Marylebone).

10. Financial Implications

- 10.1 The detailed Financial analysis are provided as part of the FBC proposals which is included in Appendix A
- 10.2 The overall viability results in an HRA borrowing which will be funded by the income from the Social units retained by HRA.
- 10.3 Further mitigations have been reviewed to reduce the HRA borrowing.
- 10.4 Financial implications are set out in Appendix A

11. Legal Implications

- 11.1 The Council has a range of powers to enact the proposed developments. The general power of competence under Section 1 of the Localism Act 2011 to do anything that individuals can do subject to any specific restrictions contained in legislation, and the power at section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate, or is conducive or incidental to, any of its functions.
- 11.2 The Full Business Case provides a full appraisal of the legal risks associated with the scheme. In summary all three sites create Right to Light infringement. The implications of having rights to light can be predominately financial by way of compensation to the affected party, although there is a risk of an injunction should the Council proceed without having dealt with rights to light infringement. The latter can halt the programme which will have a significant additional cost to the Council.
- 11.3 Section 203 of the Housing and Planning Act 2016 local authorities have the power to override easements (including rights to light), however, due regard will be taken with regards to the environmental, social and economic well-being of its area. Whilst the ability to use this section de-risks the site of the threat of an injunction, it does not negate the need to compensate impacted owners for their loss of light or otherwise. S.204 Housing and Planning Act provides that a

developer is liable to compensate any interference authorised by s.203. Therefore, the risk to the Council will be financial.

11.4 In line with the legal risks in the Full Business Case and the background in the report, the scheme now requires the drawdown of funds to progress the scheme in line with the proposals in the Full Business Case.

11.5 The Council proposes entering into a design and build contract with Geoffrey Osborne Limited ('Osborne') for construction works at the 3 sites. The contract is a contract for 'Works' within the meaning of the Public Contracts Regulations 2015 ('PCRs').

11.6 Further Legal implications are set out in Appendix A.

12. Staffing Implications

There are no staffing implications as a result of the Recommendations in this Paper

13. Consultation

A Ward Councillor Briefing Note was issued on Monday 3rd August 2020 setting out the Recommendations referred to in this Paper and no comments have been received.

14 Next Steps and Key Milestones

14.1 Below is a summary of the next steps and key milestones leading to the main works starting on site

	13-Jul	20-Jul	27-Jul	03-Aug	10-Aug	17-Aug	24-Aug	31-Aug	07-Sep	14-Sep	21-Sep	28-Sep
Governance												
FBC to CSPRB	■											
CM Briefing		■										
FBC to CRG			■									
CMR Prep		■	■	■	■							
Ward Cllr Briefing				■								
CMR Approval						■						
Standstill period							■	■				
Issue Main Contract									■			
Construction												
Enabling Works	■	■	■	■	■	■	■	■	■	■	■	
Main Works start												■

- Ashbridge\Ashmill Street completes – March 22
- Cosway Street completes – July 22

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

Debbie Jackson, Executive Director, Growth Planning and Housing via
rclark@westminster.gov.uk

Appendices - Exempt, not for publication.

- A. Financial Implications and Legal Implications
- B. Full Business Case

For completion by the **Cabinet Member for Finance, Property and Regeneration**

Declaration of Interest

I have <no interest to declare / to declare an interest> in respect of this report

Signed: _____ Date: _____
Councillor Melvin Caplan, Cabinet Member for Finance, Property and Regeneration
NAME: _____

State nature of interest if any

.....
.....

(N.B: If you have an interest you should seek advice as to whether it is appropriate to make a decision in relation to this matter)

For the reasons set out above, I agree the recommendations in the report entitled **The development of sites at Ashbridge, Ashmill and Cosway Street** and reject any alternative options which are referred to but not recommended.

Signed

Councillor Melvin Caplan, Cabinet Member for Finance, Property and Regeneration

Date

If you have any additional comment which you would want actioned in connection with your decision you should discuss this with the report author and then set out your comment below before the report and this pro-forma is returned to the Secretariat for processing.

Additional comment:

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If you do not wish to approve the recommendations, or wish to make an alternative decision, it is important that you consult the report author, the Director of Law, the Executive Director for Finance and Resources, and, if there are staffing implications, the Director of People Services (or their representatives) so that (1) you can be made aware of any further relevant considerations that you should take into account

before making the decision and (2) your reasons for the decision can be properly identified and recorded, as required by law.

Note to Cabinet Member: Your decision will now be published and copied to the Members of the relevant Policy & Scrutiny Committee. If the decision falls within the criteria for call-in, it will not be implemented until five working days have elapsed from publication to allow the Policy and Scrutiny Committee to decide whether it wishes to call the matter in.

Not for Publication

Appendix A

Financial Implications

The total projected capital costs for these schemes now stands at £76.74m. £24.79m (including acquisitions) has been spent to date with £47.74m forecast up to 2022/23. The forecast spend is contained within the existing HRA Business Plan budgets.

Since OBC, the scheme has moved from a surplus of £0.5m to a deficit of £5.8m are shown in the table below.

OBC to FBC MOVEMENT	COSWAY	ASHBRIDGE	ASHMILL	TOTAL
	OBC - Net Cashflow -Surplus	(£15.29m)	£14.03m	£0.79m
Increase in Capital Costs	£8.59m	£2.66m	£0.67m	£11.92m
Increase in Capital Income	(£1.80m)	(£3.70m)	(£0.14m)	(£5.64m)
FBC - Net Cashflow -Deficit	(£8.50m)	£12.99m	£1.32m	£5.80m

The movement in Capital Costs since OBC is as a result of a significant increase in construction costs as well as the inclusion of Finance Costs, which were excluded from the OBC. This is offset by savings from other development costs (£2.36m) and increased capital income of (£5.64m).

The Funding gap of £5.8m needs to be funded by HRA borrowing.

HRA Viability	
HRA Borrowing	£5.80m
Net Income	£0.12m
Finance cost at stabilisation	£0.18m
ICR	65%
Revenue Gap	£0.06m
Capital GAP	£1.96m
Total Gap over 40 years	£0.52m

The HRA income (about of £115k at stabilisation) from 18 Social units is only able to cover 65.4% (ICR -Interest Cover Ratio) of the finance cost and this creates a funding gap of £62k annually at the inception or capital gap of £1.96m to achieve 100% ICR. The total revenue funding gap over 40year period is only about £520k.

The HRA Business plan has an approved capital budget to cashflow this project.

The GF budget GF budget needs to be updated to reflect the latest funding requirement £1.92m to fund the purchase of intermediate units by Westminster Builds (WB).

The detailed financial analysis is included part of FBC Finance section.

Proposed Mitigations:

The below mitigation is proposed to reduce the HRA borrowing and bring the revenue gap to a more affordable level.

Changing the intermediate rent levels from current agreed sec 106 rents to London Living rents would result in

- decrease of HRA borrowing by £770k (to £5.03m)
- the Peak debt would be reduced to £5.3m from £6.6m
- HRA working capital needed to fund finance cost would be reduced to £286k from £756k
- the revenue balance over 40 years would move to surplus of £470k from current negative balance £520k which can be used to repay the borrowing down

Further work would need to be undertaken to action this change, if the proposed mitigation is approved to proceed.

Risks:

- The above debt position is based on £60.2m from the sale of private units which contributes about 88% of the total scheme income so any delay or reduction in income would significant impact the peak debt position and viability of the project. The below table shows the impact of movement in Sales values to the borrowing.

Impact of movement in Sales Values					
Change	-10%	-5%	Current Debt	+5%	+10%
Borrowing needed	£11.82m	£8.81m	£5.80m	£2.79m	(£0.22m)

- .
- The Building Contract is fixed price lump sum contract. This means that the Contractor takes the risk with regard any build cost inflation. There a single provisional sum relating to public art at Cosway Street. All other construction costs are firm
- It should be also noted the current affordability analysis is based on assumed HRA operating costs of 25% of gross income (about £1,950 per unit/per annum) but the actual cost of operating could vary depending on the specification of the build.
- The current Covid impact needs to be assessed for Costs, Income and programme timeline.

Conclusion:

This paper seeks approval for:

- Drawdown of £2.65m of centrally held contingency for the project;
- The balance of the capital funds required to deliver the project (£47.74m);
- The appointment of Geoffrey Osborne Ltd as Main Contractor to deliver the construction works for the fixed sum of £43.49m at the 3 sites.
- To explore the proposed mitigation to reduce HRA borrowing.

Legal Implications

The Council proposes entering into a design and build contract with Geoffrey Osborne Limited ('Osborne') for the fixed sum of £43,489,998 for construction works at the 3 sites. The contract is a contract for 'Works' within the meaning of the Public Contracts Regulations 2015 ('PCRs'). It is understood a Part 2 compliant process was undertaken including by advertising the opportunity in The Official Journal of the European Union.

The Council adopted a 2 stage approach to the procurement. At the first stage, the project was tendered on the basis of a design, price and programme prepared by the Council's professional team. The contract was advertised. Osborne were chosen to work with the Council based on its proposal. The first stage ended with the Council entering into a Pre Construction Services Agreement (PCSA) with Osborne on 20th May 2018 for a fee of £1,250,683. During the second stage, the relationship between the Council and Osborne was governed by the PCSA with Osborne advising the Council on the buildability of the design, the contract sum and providing other pre-construction services. The Council has now received Osborne's contract sum for the construction.

The contract sum provided by Osborne for the construction is 12.4% higher than the cost plan that was presented to them as part of the tender. Although only 3.1% of this relates to an increase in fixed prices. For the purposes of the PCRs, an increase in contract price is a 'modification' to the contract which is only permissible without triggering a need for a new procurement if the modification is in accordance with one of the 'cases' set out in regulation 72. Regulation 72(1)(f) permits modifications where paragraph (5) applies: 'This paragraph applies where the value of the modification is below both of the following values – (a) the relevant threshold mentioned in regulation 5 [4,733,252] and (b) ...15% of the initial contract value **[the report from Procurement Services states that the real increase is 3.1%]** provided that the modification does not alter the overall nature of the contract..' Subject to the latter proviso which is a matter for the Council to satisfy itself within Procurement Services, the increase in price is within the regulation and permissible without a new procurement procedure.

In terms of the Council's Contract Procedure Rules, 3.18 states that the decision to award is reserved to the appropriate Cabinet Member following a recommendation to approve from the appropriate Executive Director and the Procurement Assurance

Board. 3.20.1 deals with variations to contracts. Increases in price of less than 10% are deemed 'minor' and do not usually require the same level of approval as for the original award. Since the decision to award the build contract has yet to be taken by the Cabinet Member, who will be asked to approve the award, including the increase, this provision is satisfied. 3.18.9 states that 'All contracts with a value of over £175,000 must be signed by at least 2 authorised officers of the Council or made under the common seal attested by the Chief Executive, the Director of Law or authorised Solicitors in accordance with the correct standing orders in the Council's Constitution.

Appendix B

Full Business Case dated 25 June 2020