

Executive Board – 20th October 2020

Subject:	Broadmarsh – Next Steps
Corporate Director(s)/Director(s):	Chris Henning, Corporate Director Development and Growth
Portfolio Holder(s):	Councillor David Mellen, Leader and Portfolio Holder for Regeneration, Schools and Communications
Report author and contact details:	Chris Deas, Director for Major Projects and Transport
Other colleagues who have provided input:	Rex Littlewood
Subject to call-in:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Key Decision:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Criteria for Key Decision:	
(a) <input checked="" type="checkbox"/> Expenditure <input type="checkbox"/> Income <input type="checkbox"/> Savings of £1,000,000 or more taking account of the overall impact of the decision	
and/or	
(b) Significant impact on communities living or working in two or more wards in the City <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Type of expenditure:	<input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Capital
Total value of the decision:	£3.85m
Wards affected:	City Wide
Date of consultation with Portfolio Holder(s):	2 nd October 2020
Relevant Council Plan Key Theme:	
Nottingham People	<input checked="" type="checkbox"/>
Living in Nottingham	<input checked="" type="checkbox"/>
Growing Nottingham	<input checked="" type="checkbox"/>
Respect for Nottingham	<input checked="" type="checkbox"/>
Serving Nottingham Better	<input checked="" type="checkbox"/>
Summary of issues (including benefits to citizens/service users):	
The former intu Broadmarsh shopping centre site offers a unique development opportunity to regenerate an important part of the City centre. This report sets out proposals to ensure the site is securely maintained and identifies next steps in bringing forward this crucially important site for development.	
Exempt information:	
An appendix to the report is exempt from publication under paragraph 3 of Schedule 12A to the Local Government Act 1972 because it contains information that if released in the public domain, could prejudice contract negotiations that could potentially lead to value for money issues in the future and, having regard to all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information. It is not in the public interest to disclose this information because of the commercially sensitive nature of the information contained within the exempt appendix.	
Recommendation(s):	
1 To confirm that the former intu Broadmarsh development proposals are no longer capable of being progressed by the Council following the administration of Intu, and specifically its Broadmarsh related companies going into compulsory liquidation on 3 rd July.	
2 To note that the Broadmarsh Big Conversation will commence shortly to help inform the future development and regeneration opportunities of the city centre site.	

3	To grant dispensation in accordance with Financial Regulation 3.29 for operational reasons from Contract Procedure Rule 4.1.2 in order to award a contract to Sir Robert McAlpine in respect of decommissioning and mothballing works.
4	To grant authority to procure contractors, professional consultants and advisors in relation to the works to be undertaken at the site, and ongoing site maintenance and operation during and up to the award of the phase one demolition works.
5	To delegate authority to the Corporate Director Development and Growth to award and enter into contracts referred to in the recommendations.
6	To delegate authority to the Corporate Director Development and Growth to accept any LEP funding, subject to the LEP's awaited approval of the Full Business Case, and for the Corporate Director to approve any further business case development required to secure funding to enable an early first phase of demolition of the Broadmarsh shopping centre and to progress site master planning.
7	To grant authority to commence the procurement for the phase one demolition contract with the decision to award the contract to be delegated to the Corporate Director Development and Growth, subject to the acceptance of the LEP funding under Recommendation 6 and the recording of the Officer decision.
8	To approve the continued site management and security
9	To approve the establishment of an advisory panel as referred to in paragraph 2.12 below
10	Review of the Capital Programme be urgently undertaken to identify existing Capital Schemes that can be removed or paused to the full value of the collective Broadmarsh approvals i.e. £4.529m.

1 Reasons for recommendations

- 1.1 These recommendations are required to ensure that as a first step the Broadmarsh site is safely and securely maintained and to subsequently enable it to be brought forward for further development in a manner that will bring lasting benefit to Nottingham's citizens.

2 Background (including outcomes of consultation)

- 2.1 On 3rd July a number of companies forming part of the Intu group went into compulsory liquidation. These companies were active participants in the redevelopment of the Broadmarsh Shopping Centre and also held the head lease for the site. The result of the insolvency proceedings was the disclaiming of the head lease back to the Council who then became fully responsible for the partially demolished site. This created a number of significant obligations for the Council to manage. In particular these included site operation, safety, security and the urgent need to re-establish the public Right of Way (ROW) between Lister Gate and Collin Street/Carrington Street.
- 2.2 A robust site management regime has been established with operation and security staff in place, all tenants from the redundant part of the centre have now vacated and some immediate safety related remedial work has been completed, including the opening of the ROW.

- 2.3 The Broadmarsh development was intended to form part of the wider Broadmarsh transformation programme, which includes the new Nottingham College, the transformation of Nottingham Castle and the new car park and bus station, all of which are expected to be complete and open in 2021 with the new library due to follow in winter 2021/22. The programme includes new public realm and changes to the road network in that area.
- 2.4 The redevelopment of the Broadmarsh site was based on investment by intu which is no longer available and a pre-Covid retail market. These significant changes set the context and opportunity for a wholesale reimaging of the site of the Broadmarsh Shopping Centre, located within the heart of Nottingham Southside and acting as a catalyst for rethinking how a new approach can contribute to a successful vibrant city centre in changed times.
- 2.5 The legal framework surrounding the disclaiming of the lease has resulted in a period of time where the Council has been unable to fully engage with the public about the future development of the site. The Council is keen to receive further ideas and proposals for the future of the site and add to the numerous suggestions that have been received to date. To ensure maximum engagement the Broadmarsh Big Conversation will commence on soon and will run for a period of up to ten weeks.
- 2.6 It is now necessary to consider how the site is managed further into the future and how the site development is progressed within the Broadmarsh transformation programme.
- 2.7 Works undertaken since 3rd July at the site have been to predominantly manage the safety of the site in its partly demolished state and the re-opening of the ROW. Further works are now required to maintain the safety and integrity of the structure and to commence the more extensive decommissioning works in order to mothball the site until the future development requirements are known and agreed. It is therefore proposed that the current contractors on site, Sir Robert McAlpine (SRM) are awarded a contract to undertake these works. The award of the contract to SRM is considered to deliver the best value for money as the presence on site means that savings can be made on any prelim costs for a contractor to set up on site. In addition the extensive knowledge and understanding that SRM have of the site due to their previous engagement in the redevelopment works under their contract with the intu developer means that the Council will not incur costs of a new contractor establishing knowledge of the site, including survey costs etc. The value of the works will be below the EU threshold for a works contract but a dispensation from the Council's constitutional requirements is sought under this report. Further details can be found in Appendix 1.
- 2.8 To support the work to be undertaken under paragraphs 2.7 and 2.10 and the asset management issues which may arise as a result of those works (including the management of existing tenants) the Council will require the services of professional consultants and advisors. These contracts will be procured through compliant processes. It is expected that a professional team, including Project Manager and Quantity Surveyor will primarily be procured through the SCAPE framework and its Perfect Circle provider.
- 2.9 Ongoing, the Council has the responsibility to safely maintain the site and operate the part of the site accessible to the public where a number of tenants continue to trade or require access. Robust site management arrangements have been established and will be required to continue for the foreseeable future. Further details are set out in Appendix 1.

- 2.10 Further to the above and subject to the D2N2 LEP granting Full Business Case approval, funding has been secured from the Government's Getting Building fund , to enable site master planning to commence and for an early first phase of demolition of part of the site. Both these key activities are considered of significant benefit to bringing the site forward for development. Indeed, establishing a clear and compelling vision and place making strategy and associated masterplan will strengthen development values and deliverability, and translate the ambitions of the Council, citizens and partners. In order to progress the above it will be necessary to procure a contractor to undertake the demolition works and utilise the services of professional consultants procured under 2.7 for the development of the scope of works and management of the project. Any contractor will be procured in accordance with the Council's constitutional requirements. Additional details can be found in Appendix 1.
- 2.11 In order for the Council to openly and robustly pursue the Broadmarsh development strong Governance and Programme Management arrangements are in place and the Broadmarsh Programme will continue to be monitored closely under the Council's assurance and scrutiny procedures.
- 2.12 To further support site master planning and build on the Broadmarsh Big Conversation it is also proposed to establish a panel of advisers to assist the Council in considering planning and development options. The panel will include nationally renowned experts in major city development as well as local champions. It is expected that the panel will be initially set up on a 'pro bono' basis but which may in time require some elements to be established on a commercial footing. The terms of reference for the panel will now be developed including the appointment of experts.

3 Other options considered in making recommendations

- 3.1 To do nothing and fail to effectively maintain and operate the Broadmarsh site would breach the Council's statutory and landowner responsibilities. Not bringing forward the Broadmarsh site for development would have a significant detrimental impact on the City Centre.
- 3.2 To sell the site or seek alternative sources of investment, in its present state. This is rejected as the site requires significant work before it becomes developable. In its current state it is likely to be viewed by any investor as a liability. Developing a masterplan and part-demolition will enable the site to be brought forward as a developable asset. At this point decisions will need to be taken about the City Council's strategy for further development of the site.

4 Finance colleague comments (including implications and value for money/VAT)

- 4.1 The Council currently has the opportunity to review the redevelopment of the Broadmarsh area subject to securing the required funding.
- 4.2 No budget exists for the works contained within this decision but a number of funding sources have been identified including the LEP Grant which is pending final business case. The funding identified is insufficient to cover the value of this decision and leaves the Council with a risk that £0.968m which will need to be funded by the removal of existing capital programme schemes.

- 4.3 Given the challenging financial environment, the lack of flexibility and the reduced ability to mitigate financial risks, it would be prudent to identify existing capital programme schemes that can be either removed or paused to the full value of £4.529m until there is further certainty of funding and prior to the commencement of this work.

The requirement to review the capital programme (as per recommendation 10) was raised within the original Delegated Decision 3944 (July 2020). This was also set out in the recent Interim Budget report (September 22 Executive Board).

- 4.4 The Section 151 Officer has agreed to the dispensation from Contract Procedure Rule 4.1.2 (requirement to obtain tenders) under Financial Regulation 3.29, due to a supplier's specialist knowledge of the site.
- 4.5 Please refer to the exempt finance appendix for further details.

Advice provided by: Theresa Channell – Head of Strategic Finance & Deputy Section 151 Officer) & Tom Straw – Senior Accountant (Capital Programmes), 7 October 2020

5 Legal and Procurement colleague comments (including risk management issues, and legal, Crime and Disorder Act and procurement implications)

- 5.1 The Council holds the freehold ownership of the site on which the Broadmarsh shopping centre site is situated. Up until 3rd July the site was leased to one of the Broadmarsh specific companies within the intu group. Following the winding up proceedings of a number of Broadmarsh specific intu companies (including those that held the head lease) the head lease was disclaimed which resulted in all the obligations and property liabilities that had been the responsibility of the head tenant falling to the Council. This has involved the Council having immediate responsibilities in respect of health and safety and security at the site and the management of those tenants that had their business premises within the centre.
- 5.2 This report focuses on how the Council is now in a position to move from being solely reactive to its situation to proactive actions and future planning for the site.
- 5.3 A number of contracts are being proposed within the report. The contract to be awarded to Sir Robert McAlpine follows a consideration of ensuring that the Council can discharge its best value obligations when making a direct award without further competition. The value of the contract will be below the thresholds set for the application of the Public Contract Regulations 2015 (as amended) and therefore consideration primarily needs to be given to the Council's own constitutional requirements for awarding contracts. Under the Contract Procedure Rules any contract with a value over £100,000 will require to be tendered (CPR 4.1.2). It is possible to grant a dispensation for operational reasons under Financial Regulation 3.29. The reasons for the dispensation and consideration of securing best value for the Council are set out in this report and appendix one. Those reasons can be supported by Legal Services.
- 5.4 A range of consultants, advisors and other appointments are envisaged to be necessary for these next stages of work undertaken at the site and the

intention is that these will be procured in accordance with the Council's Contract Procedure Rules. It is proposed that the Scape frameworks will be utilised for some of the professional services and this can, in principle, be supported by Legal Services as a compliant means of procurement but advice and support should continue to be sought from the Council's procurement and legal teams for all proposed contracts.

- 5.5 A contractor will be procured for the first phase of the demolition works at part of the site. Procurement routes are to be discussed and finalised before any formal process commences. As the award of tender is dependent on the acceptance of the LEP funding this must be clearly communicated to the market as part of the procurement process.
- 5.6 The LEP funding may be subject to specific conditions and funding terms. These must be fully understood and adhered to by the Council in order to avoid any risk of clawback. Again any specific obligations that may affect a contractor will need to be communicated to the market to ensure transparency in the tendering process.
- 5.7 The asset management of the site, including the management of existing tenancies and any legal implications of those tenancies will need to be considered in respect of the timetabling of any works. It is therefore imperative to ensure full engagement with property and legal officers throughout the planning of the next stages of work to be undertaken.

Advice provided by Naomi Vass, Senior Solicitor 2 October 2020

- 5.8 Procurement will support the client to procure works and services in line with the Councils CPRs and Public Contract Regulations to ensure value for money for the Council.
- 5.9 Procurement supports the recommendation for a dispensation to Finance Regulation 3.29 to grant works directly to Sir Robert McAlpine without any further competition. The client must ensure that these works remain below the EU thresholds.
- 5.9 With regards to using Scape, they have a number of frameworks that are due to be/ or are in the process of being retendered and therefore care needs to be taken that all call-offs from the framework are in line with terms and conditions set out in the framework agreements and that Contracts are executed prior to the Framework expiry dates.

Advice provided by Sue Oliver, Procurement Category Manager for Places
2 October 2020.

6 Strategic Assets & Property colleague comments (for decisions relating to all property assets and associated infrastructure)

- 6.1 It is recognised that the former intu Broadmarsh development proposals are not viable to progress, this is largely due to the turbulent retail market which has declined further due to Covid 19.

intu left the Broadmarsh Centre in a part demolished state with a small number of tenants in situ. Despite being largely vacant, the centre requires day to day management, 24 hour security and a number of statutory

inspections have had to be undertaken to make the building compliant in health and safety terms. The ongoing safety and security of the Broadmarsh site in advance of finalising the business case to secure the funding for the early stage demolition is also required and the measures detailed in this report are supported Property.

The public engagement process and planning policy will inform the master planning of this important site. This report sets out the proposals to do this and the recommendations are supported by Property.

7 Social value considerations

- 7.1 The location and scale of the Broadmarsh site means it is important to the population of the City and wider region. The market on its own is unlikely to deliver an optimal solution, given the uncertainty and complexity around the site and its potential value. Public sector intervention, at this stage, has the ability to overcome this market failure and create value for residents of and visitors to the City Centre.

8 Regard to the NHS Constitution

- 8.1 N/A

9 Equality Impact Assessment (EIA)

- 9.1 Has the equality impact of the proposals in this report been assessed?

No

An EIA is not required because:
(Please explain why an EIA is not necessary)

Yes

Attached as Appendix 3, and due regard will be given to any implications identified in it.

10 List of background papers relied upon in writing this report (not including published documents or confidential or exempt information)

- 10.1 None

11 Published documents referred to in this report

- 11.1 None