Brent	**Cabinet** 16 January 2017 **Report from the Strategic Director of Resources**
	Ward: Stonebridge

Bridge Park - Approval to Enter into the Conditional Land Sale Agreement

Appendix 2 is confidential and not for publication

Appendix 2 of this report is not for publication on the basis that it contain information exempt from publication by virtue of paragraphs 3 and 5 of part 1 of Schedule 12A of the Local Government Act 1972, namely (a) information relating to the financial or business affairs of any particular person (including the authority holding that information) and (b) information in respect of which a claim for legal professional privilege could be maintained in legal proceedings.

1.0 Summary

1.1 This report follows on from the four previous reports (see Background Papers) on the subject lands Unisys and Bridge Park Community Leisure Centre (BPCLC) as per the site plan at Appendix 1.

1.2 The report provides an update and seeks approval to enter into a Conditional Land Sale Agreement (CLSA) with the "Purchaser", a UK-registered subsidiary company that has General Mediterranean Holdings SA (GMH – a Luxembourg-registered business) as the parent company and Harborough Invest Inc (a British Virgin Islands based business), who already own part of the development site as the second guarantor of the Purchaser's obligations under this CLSA.

2.0 Recommendations

2.1 That Cabinet agree to enter a Conditional Land Sale Agreement (CLSA) with the "Purchaser" a UK-registered subsidiary company (still to be formed) that has General Mediterranean Holdings SA as the parent company and Harborough Invest Inc as the second guarantor.

2.2 That Cabinet acknowledge that the sale of the Council's surplus land to the Purchaser under this CLSA is subject to the following Conditions:

- The "Planning Condition"

- The “Vacant Possession Condition” and
- The “Financial Viability Condition.

2.3 That Cabinet note that the price payable by the Purchaser for the land it purchases from the Council will be re-calculated following satisfaction of the Conditions, with a development appraisal ascertaining the residual value of the land.

2.4 That Cabinet delegates authority to the Strategic Director for Resources, consultation with the Portfolio Lead Member for Property, in respect the negotiation and entering of a Conditional Land Sale Agreement with the “Purchaser” and awarding any professional services contracts relating to progressing the redevelopment plans for a new leisure centre at Bridge Park.

3.0 Detail

3.1 As per Appendix 1 there are effectively 3 parcels of land on the current Bridge Park site whereby Brent Council currently own the largest proportion of the site (yellow coloured area) GMH own the second largest (green coloured area) and then a private landowner owns the smallest part of the site which is a salvage yard (red coloured area).

3.2 In June 2013, Cabinet approved the option of GMH (and its subsidiary company) to redevelop the Unisys and Bridge Park sites for residential and commercial use. This redevelopment option involved a land sale to GMH to fund a new Bridge Park leisure centre on the retained Council land.

Conditional Land Sale Agreement

3.3 A significant amount of work has since gone in to finalising the Conditional Land Sale Agreement (CLSA) and the range of supplementary legal agreements and transfers which will be entered into between the Council and a UK-registered subsidiary company to be set up by GMH/Harborough Invest Inc who are both foreign-registered companies for the purpose of this transaction.

3.4 The sale of the Council's land to the Purchaser under this CLSA is subject to a number of conditions to protect the Council summarised below:

The Planning Condition

3.5 The Purchaser must submit (at its own cost) the Planning Applications in respect of the new leisure centre (the Council is obliged to procure the architect and lead the design work) and the two phases of its own residential and hotel development, as soon as reasonably practical following the agreement with the Council of the new leisure centre design and associated Planning Application.

3.6 However, the Purchaser may suspend its pursuit of the Planning Applications if it receives advice (from a reputable planning consultant) that, based on its pre-application discussions with planners, they are likely to have less than a 60% chance of obtaining Satisfactory Planning Permissions, in which event the parties will confer and agree a mutually-acceptable strategy.

The Vacant Possession Condition

3.7 The Council is obligated to acquire the "Additional Land", being the adjoining salvage yard land currently owned by a private landowner, this, along with vacant possession of Technology House and the Leisure Centre eventually form the Council Vacant Possession Obligation. The Purchaser will provide the Council an indemnity, covering the cost of a private treaty agreement or Compulsory Purchase in respect of the salvage yard.

The Financial Viability Condition

3.8 The Financial Viability Condition applies to both the Purchaser and the Council in relation to their respective proposed developments. The Purchaser will expect to receive 20% profit on cost and the Council expects the land receipt plus advanced community infrastructure levy on the first two phases in the development to cover the cost of building the new leisure centre. A viability assessment will be undertaken before a planning application is submitted and before completing the land sale.

3.9 It should be noted that GMH and Harborough Invest Inc will both be guarantors to the obligations of the Purchaser, so that the Council will retain the benefit of their financial and covenant strength. Those various documents include:

Overage Deed

3.10 This will grant the Council rights to receive a share of any future uplift achieved by the Purchaser as a result of (I) obtaining more advantageous planning permissions, or (ii) receiving better-than-expected sales proceeds from the residential plot sales on proposed development.

3.11 The Council would also receive a proportion of any profit the Purchaser achieved from any onward disposal of the former Council land which they originally acquired from Brent, based upon a reducing percentage scale over the first six (6) years following completion of the land transfer to them.

Neighbourly Agreement

3.12 This will grant each party reciprocal rights over each other's land in order to build-out the respective schemes, including reciprocal rights of access, scaffolding and crane over sailing in order to carry out the necessary building works. It also includes an agreement between both parties to consider joint installation of shared heating and renewable energy systems, to be potentially used by the new leisure centre and the residential scheme.

Investment options

3.13 In line with Brent's Property Plan 2015-19 and Investment Strategy 2016, Officers have over the past few months, been in discussions with GMH exploring investment opportunities in the various elements of the proposed development, these discussions have resulted in:

Capital Investment

3.14 The Council has discussed the offer of making capital available to the project in return for equity in the development. Presently this option has not been accepted by GMH, however it should remain an option should the developer's appetite change, if this were to happen it would require negotiation and a separate Cabinet report.

Right of first refusal

3.15 There are however other opportunities for the Council to be involved, the conditional land sale agreement will be refined to capture these:

Right of First Refusal (ROFR) to purchase Affordable Housing.	The Council will be given 6 months to make an offer on any affordable homes in the proposed new development.
ROFR to purchase Private Rental Sector (PRS) units	Once available, the Council will be offered ROFR to purchase PRS units.
ROFR to purchase of Ground Rents	At the end of the development, the Council will be offered ROFR for owning the Ground Rents, thus receiving an income in perpetuity from occupants of the residential and commercial units
ROFR to be a Primary Partner in Estate Management Company	The Council will be offered a 'Golden Share' in the Estate Management Company, giving both an element of control of the look and feel of the legacy development, funded from service charges received from occupants of the residential and commercial units.

3.16 At this time it is impossible to place social and financial values on these opportunities. Whilst agreeing the CLSA unlocks the site for development, these future opportunities will be based on the prevailing economic conditions at the point they become available. The developer has agreed to give sufficient notice and a period of time post valuation for cabinet to consider the options on a case by case basis.

Assurance on Delivery Partners

3.16 GMH have agreed, to consult with and seek the Council's agreement on its development partners.

Generate additional value from releasing the leisure centre site early

3.17 Whilst the draft CLSA unlocks the site for future development, the details of the actual phasing will be reviewed as the scheme progresses. The value of the land is dependent upon the final value that can be extracted from the development. Changing the phasing of the Leisure Centre could have an impact on the final value of the development, and therefore the value attached to the land covered by the

CLSA. Early vacant possession of the site may increase the value of land and receipt to the Council.

4.0 Financial Implications

4.1 The CLSA, as structured, provides for a best achievable capital receipt, being based upon the ultimate development premium obtained by GMH and their partners.

4.2 As detailed in the body of the report, officers from Brent have undertaken detailed negotiations with GMH to establish if the possibility for Brent to take a greater part in the development, and to share in the financial rewards beyond the capital receipt for the land. Unsurprisingly, GMH and their partners would see another equity investor as further complicating a project that has already been in gestation for longer than expected. It is also possible that the partners would see another equity investor as unnecessarily diluting the financial returns that can be made from the development.

4.3 GMH and their partners have made it clear that they aim to maximise the financial returns from this development. This, alongside the planned checkpoints in the overall land transaction, provide the reassurance that the capital receipt from the sale of the land is optimised through the proposed arrangement with the other main site landowner, GMH.

4.4 Further value may be forthcoming from the development through exercising the additional options detailed in the body of the report. All of these are considerations for future cabinet decisions when the final development proposals and options are known.

4.5 This is a complex proposal that has been considered by Cabinet on several previous occasions. Finalising the CLSA on the terms now proposed, which are improved from those previously presented, would be consistent with those previous decisions. As has been set out, the precise value obtained will be determined through provisions in the agreement that is now proposed to be authorised, and as with any complex regeneration proposal, there are inherent risks, opportunities and uncertainties. Of course, once entered into, the agreement would prevent alternative uses of the land, and for the reasons set out in this and previous reports, this is the proposal considered best to achieve the Council's overall interests.

5.0 Legal Implications

5.1 Section 123 of the Local Government Act 1972 provides that the council may dispose of land held by it in any manner it wishes but is under a statutory duty to ensure that the Council does not dispose of land for a consideration less than the best that can reasonably be obtained.

5.2 The Council is required to obtain the "Additional Land", being the adjoining salvage yard land currently owned by a private land owner. The Council will be required to attempt to acquire the Additional Land initially by way of agreement in view of the fact that a CPO is a measure of last resort and should be used where negotiations to enter into an agreement have failed.

5.3 In the event that negotiations with the private land owner fails then section 226 of the Town and Country Planning Act 1990 authorises the Council to compulsorily purchase land if the Council thinks that the acquisition will facilitate the development, redevelopment or improvement of land, or acquisition is required to achieve the proper planning of an areas.

5.4 As detailed in Recommendation 2.1, the intention is to enter into the CLSA with a newly created UK-registered subsidiary company that has GMH as the parent company and Harborough as the second guarantor. GMH is registered in Luxembourg and Harborough is registered in the British Virgin Islands (BVI), and GMH has said it would prefer that the transaction is conducted through a new UK-registered subsidiary.

5.5 As the Purchaser is a newly-created subsidiary company with no assets, then there are risks to Council if it fails to perform its obligations under the CLSA and associated documents, as there would be no substantive entity against which to take legal proceedings for breach of contract, etc. To mitigate this risk, both GMH and Harborough will be named as "Guarantors" in both the CLSA and the Overage Deed, being the two documents which contain substantive obligations upon the subsidiary company. As such, both GMH and Harborough will guarantee to perform the obligations of the subsidiary under these two documents in full (as if they themselves were named as the main contracting party), should the subsidiary fail to so perform any obligation. Updated financial checks against both companies prior to exchanging the CLSA, will be carried out to ensure that they have sufficient financial strength to perform the obligations under the CLSA and Overage Deed if called upon to do so as a result of the subsidiary's default

5.6 Further, As GMH and Harborough are both foreign-registered companies, GMH’s lawyers will obtain (at GMH's own cost) formal legal "opinion letters" from reputable law firms qualified in Luxembourg and BVI respectively in favour of the Council, to confirm that these guarantee provisions will be legally binding upon both companies, and that the Council could pursue either or both company through the English courts if they in turn defaulted on these guarantee obligations.

5.7 It should be noted that GMH has suggested that it may ask the Council to transfer different parcels of the Council's Land and the salvage yard to different subsidiaries to be set up later by GMH, in order that a separate subsidiary would hold the land intended for the residential element of their development, the affordable housing element, the hotel element, the retail element, etc. This is permitted under the CLSA, and is not uncommon where developers wish to have different land uses held by different entities, but would not alter the overall extent of land which the Council will transfer or the total amount of monies which the Council receives for that land at completion of the transfer(s). Even in these circumstances, the guarantees provided by GMH and Harborough under the CLSA and Overage Deed (as discussed above) would continue to cover these additional subsidiaries in relation to the obligations in those documents which still remained to be performed

6.0 Diversity Implications

6.1 The 2013 Redevelopment Executive report, informed Bridge Park has been an important part of Brent's Afro-Caribbean community. Removing the sports centre would strongly impact on this group.

6.2 The area has one of the highest increase in under 5's in the whole of Brent. Over 88,000 of the 447,000 people within a three mile catchment of the centre are under 16 years of age (20% compared with the Borough average of 16%).

6.3 The business units that would not be replaced do have a high proportion of people from Afro-Caribbean background. Bridge Park currently accommodates a number of faith groups.

6.4 Existing tenants, faith groups and leisure centre user were consulted as part of the Sports Centre Options consultation in 2014. Nine of the 15 business tenants use BPCLC for office accommodation with ancillary storage space and/or training space.

6.5 These tenants will therefore need to seek alternative accommodation once the CLSA is signed as the Council cannot replicate this provision but may be able to offer guidance and advice if requested. The Council will discuss alternative options to accommodate the remaining six businesses within other Council owned buildings.

6.6 Officers continue to negotiate with representatives of the landowner of the adjoining non-operational salvage yard, as the land is inactive, purchasing the land should provide a positive overall impact, helping bring back into use largely vacant, overgrown disused wasted land.

7.0 Staffing/Accommodation Implications (if appropriate)

7.1 As first reported to Executive in 2013, Bridge Park is now showing its age and its condition has since further deteriorated, the building needs investment or replacement.

7.2 If the existing centre is kept open until the new one opens then there would be no implications for staff that operate in the new centre, and if were chosen to out-source any new centre then TUPE arrangements would apply.

7.3 There are no staffing implications at the current time.

8.0 Public Services (Social Value) Act 2012

8.1 Whilst the Public Services (Social Value) Act 2012 (the "Social Value Act") does not apply to works contracts, Officers will have regard to considerations relevant to the Social Value Act in the procurement of the works contract, namely the how the contract might improve the economic, social and environmental well-being of its area and how, in conducting the procurement process the Council might act with a view to securing that improvement and whether the Council should undertake consultation. Regard will be had to these same considerations if making further consultant's appointments.

Background Papers

17th June 2013, Executive Report, Bridge Redevelopment Proposals
17th February 2014, Executive Report, Redevelopment of Bridge Park Leisure Centre
27th July 2015, Cabinet Report, Bridge Park, Approval to Enter into Heads of Terms
19th October 2015, Cabinet Report, Procurement of Architectural Led Design Team

Appendix

Appendix 1: Site Plan
Appendix 2: Bridge Park Tenancy Schedule – Not for Publication

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