Brent

one council

Property and Projects

DELEGATED AUTHORITY

Title: Enter into Bridge Park Conditional Land Sale Agreement (CLSA)

Ref no: 68/17

Property & Projects	Y
Procurement Contract	N

Summary: To enter into the Bridge Park 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.

Value of Contract / Transaction: The CLSA does not agree a final value but sets out a mechanism whereby the price payable by the Purchaser for the land it purchases from the Council will be calculated following satisfaction of the CLSA Conditions. The CLSA sets a construction costs cap of £12.25m for Brent to deliver a New Leisure Centre at Bridge Park.

Signed by: Althea Loderick
Strategic Director, Resources

Date: 24th March 2017

Property and Projects

DELEGATED AUTHORITY

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1.0 Summary

1.1 As per the Cabinet approval on Monday 16th January 2017, this delegated authority recommends Brent enter into the Bridge Park 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.

2.0 Recommendation

2.1 That approval be given under this delegated authority to enter into the Bridge Park 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 Confirm that the sale of the Council's surplus land to the Purchaser under this CLSA is subject to the following Conditions which are explained in further detail in section 4:

- Planning Condition
- Vacant Possession Condition
- Financial Viability Condition

3.0 Detail

3.1 In July 2015, Cabinet agreed to delegate authority to the Strategic Director of Regeneration and Growth in consultation with the Chief Finance Officer and Chief Operating Officer to enter into negotiations, finalise and enter into a land sale agreement with General Mediterranean Holding SA/Harborough Invest Inc.

3.2 A significant amount of work has since gone in to finalising the Heads of Terms for a Conditional Land Sale Agreement which was formally approved under delegated authority, ref. no 123/15.

3.3 In December 2015, Bevan Brittan were commissioned to support the Council in concluding negotiations with General Mediterranean Holding SA/Harborough Invest Inc and translating the Heads of Terms into the final Conditional Land Sale Agreement documents.

3.4 Over the last 15 months intensive negotiations have taken place with General Mediterranean Holding SA/Harborough Invest Inc to secure the most appropriate conditions for Brent to formally enter a Conditional Land Sale Agreement that will deliver a New Leisure Centre (NLC) at Bridge Park at zero capital cost and zero revenue cost to the Council.

3.5 In January 2017 Cabinet agreed to delegate authority to the Strategic Director for Resources, in consultation with the Portfolio Lead Member for Property, with respect of entering of a Conditional Land Sale Agreement with the "Purchaser" which will be 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. This report effectively seeks to exercise the delegated authority that was agreed by Cabinet.

4.0 Legal comments

4.1 It should be noted that the various legal agreements and transfers discussed below 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 (referred to below as the "Purchaser"). Nevertheless, GMH and Harborough Invest Inc will both be parties to the various documents, as appropriate, in order to guarantee the obligations of the Purchaser, so that the Council will retain the benefit of their financial and covenant strength.

4.2 The transaction will be formalised by the exchange of the Conditional Land Sale Agreement (CLSA), making the Council's sale of its surplus land to the Purchaser conditional upon:

- **Planning Condition** – the Purchaser will obtain separate planning permissions for the proposed development of both its residential and commercial schemes, as well as the Council's NLC all of which permissions need to be satisfactory to both parties. The Council has considerable scope to decide whether it will accept a planning permission obtained for the NLC, with the ultimate right to terminate the entire transaction if it feels satisfactory planning permission cannot be achieved.

- **Vacant Possession Condition** – the Council will acquire the additional scrap yard land from the third party private landowner, either via private purchase or CPO proceedings, either of which would be funded by the Purchaser, based upon agreed valuations. The Council has already had discussions with the landowner with a view to agreeing the price and terms of a private purchase, and since commenced CPO proceedings to cover the risk that such discussions prove fruitless, in which event the parties will enter into a formal CPO Indemnity Agreement confirming that the Purchaser will indemnify the Council's reasonable legal and compensation costs of a CPO action. The Council is also reviewing its options for how to secure vacant possession of Technology House from the current tenant, New Life Christian Centre International.

- **Financial Viability Condition** – both parties being satisfied that their respective schemes will, following receipt of the planning permissions, still meet the pre-agreed financial appraisal criteria. Again, the Council (in common with the Purchaser) will be entitled to terminate this transaction if it ceases to be financially viable, i.e. if the likely land receipt and advanced CIL to be received from the Purchaser is insufficient to cover the costs of constructing the NLC.

4.3 All three of the above 'Conditions' must be satisfied within two (2) years of exchange of the CLSA, failing which the CLSA will automatically terminate, leaving both parties free to walk away from this transaction.

4.4 Following satisfaction of these 'Conditions' the parties would complete the transfer of the surplus land to the Purchaser comprising part of the Council's existing land and part of the scrap yard land that Brent has acquired. In addition, the parties would also simultaneously complete the following additional documents:

- **Overage Deed** – This will grant the Council rights to receive a 50% share of any future uplift achieved by the Purchaser as a result of their (i) obtaining more advantageous planning permissions for their land, or (ii) receiving better-than-expected sales proceeds from the residential plot sales on their new scheme. Equally, the Council would 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 Council's transfer to them.

- **Existing Leisure Centre Lease** – This will allow the Council to remain in occupation and continue operating the existing leisure centre for a period of up to 30 months from the date of completion, rent free, whilst the NLC is being constructed. This is to allow sufficient time for the construction of the NLC (given that planning permission will already have been obtained) and decanting, albeit with the option to remain in occupation for a further six (6) months in return for a market rent to the Purchaser. The Council is entitled to notify the Purchaser whether it wishes to accept the 'Lease at all and, if so, whether Brent requires a term of 18 or 36 months, with the option to break at any time.

- **Affordable Housing Pre-Emption Agreement** – This will give the Council a right to be offered the first opportunity to purchase the affordable housing units to be included within the Purchaser's residential scheme, most likely on a phase-by-phase basis, at the market price independently assessed at the time of offer. Provided the Council agrees to pay the market price, then the Purchaser must sell to Brent. Such affordable housing would provide the Council with much-needed stock, as well as future rent revenue streams.

- **Right of First Refusal (ROFR) Agreement** – This will give the Council a right of first refusal to purchase (a) the Private Rented Sector (PRS) units and/or (b) the ground rents payable by purchasers of private flats to be included in the Purchaser's residential scheme, upon reasonable terms to be offered by the Purchaser once those units are ready for marketing. In this case, the Purchaser is entitled to sell to a third party who makes an alternative offer which is 3% or more higher than the price offered by the Council. Such PRS units would again provide the Council with stock and (along with the ground rents) future rent revenue schemes.

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

4.5 The above structure will ensure the Purchaser applies for planning permission for the Council's NLC at its own cost, in conjunction with that for its own residential and commercial schemes, whilst the Council continues acquisition discussions and CPO proceedings with the landowner of the scrap yard. It also affords the Council the protection that the Purchaser will pay the planning costs, associated professional fees (up to an agreed cap) for progressing the design of the NLC and costs for acquiring the scrap yard land.

4.6 Furthermore, this structure ensures the Council will only be required to sell its surplus land to the Purchaser once Brent is satisfied that appropriate planning permission and sufficient funds coming from the Purchaser to build the NLC have been secured.

4.7 Equally, the Council will maintain a degree of control over the future delivery of the Purchaser's neighbouring residential scheme (upon both the Purchaser's currently disused Unisys site and that surplus land sold to it by the Council), via development obligations within the CLSA imposing minimum development progress criteria upon the Purchaser on a four-yearly basis (irrespective of market conditions), failing which the Council may step-in to carry out the construction.

4.8 The Council will further benefit from the CIL and any section 106 payments arising in relation to the Purchaser's development, as well as the potential future overage and the right to purchase the affordable housing (discussed above in relation to the Overage Deed and the Affordable Housing Pre-Emption Agreement respectively).

4.9 From the perspective of the public procurement rules, these will not apply as this is purely a structured land deal, whereby the Council is simply agreeing to sell surplus land in return for the Purchaser both paying a land price and obtaining planning permission for the jointly-owned site, with no "procurement" being made the Council. Once the CLSA conditions have been met, the construction of the NLC will be separately procured by the Council via standard procurement procedures.

5.0 Financial comments

5.1 Through the CLSA the capital cost to build the NLC is capped at £12.25m and proposed to be funded from the land receipt and advanced Community Infrastructure Levy (CIL). As such, delivery of the project is entirely dependent on adequate land sale receipts and advance CIL payments being received from GMH.

5.2 The figures for the capital build are as of 2013 and would need to be retested to assess affordability in respect of the derived land receipt and advanced CIL. Should there be a cashflow issue then the differential in cost would need to be financed from an alternative source and could have additional budgetary implications and subject to Cabinet approval.

Report prepared by: Tanveer Ghani (Project Manager)

Signed: ______________________ Date prepared: 24th March 2017

Report approved by: Sarah Chaudhry (Head of Property)

Signed: ______________________ Date signed: 24th March 2017

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Concurrence

Concurrence: Given/not given

Signed: ______________________ Date signed: 24th March 2017

Althea Loderick
Strategic Director, Resources

After being consulted, I ~~do /~~ do not object to entering the Bridge Park Conditional Land Sale Agreement.

Signed:

Print Name: Councillor Muhammed Butt
Position: Council Leader/Portfolio Lead Member for Property
Date: 24th March 2017