LONDON BOROUGH OF BRENT **Meeting of the Executive** 17 January 2005 **Report from the Director of Housing**

For action:	Wards affected: Kilburn, Queens Park

Report Title: South Kilburn Master Plan Implementation

Forward Plan Ref: HSG-O4/05-18

Not for publication ('below the line')

This report is not for publication as it contains the following category(ies) of exempt information as specified in the Local Government Act 1972, namely information covered by paragraph 8 of Schedule 12A:

The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services

.

1. Summary

1.1. This report advises Members of the outcome of the review conducted by officers of the South Kilburn Masterplan options presented to Members in July 2004.

1.2. This report further seeks a number of decisions on the manner in which the Masterplan is to be delivered and, in relation to the improvement of homes on the South Kilburn estate, whether this should be done through retention of the stock by the Council or through a form of transfer to a Delivery Partner.

2. Recommendations

2.1. That Members:

2.1.1. Reiterate the Council's commitment to the overall Masterplan programme and authorise officers to proceed with the necessary steps to allow for its implementation;

2.1.2. Authorise the Director of Housing to seek expressions of interest for a delivery partner or delivery consortium ("Delivery Partner") for the demolition and rebuilding of 1,534 existing units on the South Kilburn estate, the building of approximately 1,419 new units for private sale by the same Delivery Partner in the South Kilburn area and the delivery of the non-housing elements to support and sustain the community as envisaged in the Masterplan;

2.1.3. Agree in accordance with Standing Order 85(a) that there are good financial and/or operational reasons not to comply with the requirements of Standing Orders 89 and 90 in relation to the approval of pre-tender considerations in relation to the procurement of the Delivery Partner;

2.1.4. In place of the standard pre-tender considerations usually considered by Members, note the outline process described within the body of this report and in particular the outline process and evaluation criteria listed at paragraphs 3.96 to 3.108 below;

2.1.5. Note that there is currently an estimated overall funding gap in relation to the delivery of the Masterplan of approximately £38,100,000;

2.1.6. Note that officers intend to establish through the procurement process whether bidders arrive at the same funding gap and note that the Director of Finance in consultation with the Director of Housing will consider proposals by bidders for narrowing any funding gap that they arrive at, and decide how the gap could be bridged taking account of all material factors including the need to preserve as many aspects of the South Kilburn regeneration programme as possible, and taking account of the views of relevant stakeholders including, in particular, the views of the SKNDC;

2.1.7. Consider the various options for delivery of the Masterplan (noting the recommendation of officers that the implementation be achieved through a transfer of ownership of the South Kilburn estate as well as the transfer of other non-housing land to the Delivery Partner, or a member thereof) and determine the option to be pursued;

2.1.8. Should the transfer of ownership route be the one that Members decide to follow, delegate to the Director of Housing in consultation with the Director of Finance authority to determine through the tender process whether the Council should pursue a tenanted transfer (under Schedule 3A of the Housing Act 1985) or a vacant possession transfer (under Ground 10A Schedule 2 to the Housing Act 1985);

2.1.9. Authorise officers to submit an application to the Office of the Deputy Prime Minister (ODPM) by 28th January 2005, to be included on the stock transfer register for the period 2006 to 2007.

2.1.10. Note that of the overall funding gap of £38.1M, £10M is attributable to the SRP Homes (as described in paragraphs 3.22 to 3.46) and that a recommendation will be made to Full Council on 28 February 2005 for the approval of borrowing through the HRA to meet this funding gap and to authorise Director of Finance to arrange such borrowing through the prudential borrowing regime, if required;

2.1.11. Approve the Design Team and Client Team pre-tender considerations set out for the SRP Homes in the detail of this report (paragraphs 3.44 and 3.46).

3. Detail

Introduction

3.1. The South Kilburn Masterplan was approved by the Executive on 12 July 2004. The South Kilburn area currently contains 2,309 residential units. The Masterplan proposes that:

3.1.1. 775 of the existing properties be retained and refurbished;

3.1.2. 1,534 of the existing properties are demolished and rebuilt;

3.1.3. an additional 1,419 units to be constructed for private sale;

3.1.4. investment be made into a number of non-housing infrastructure projects comprising - 1 Sports facility, 1 Business Incubation Centre, 2 healthy living centres, 2 resident activity centres, day centre re-provision and enhanced open space.

3.2. The purpose of this report is to move the scheme forward by commencing the process by which a Delivery Partner is selected.

3.3. The Delivery Partner is the mechanism through which the estate could be redeveloped. The nature of the Delivery Partner, its membership, constitutional structure and objectives, the contractual relationships with other stakeholders (and in particular the Council) and the level of commercial risk it is able to absorb will determine how the estate is redeveloped within the framework of the Masterplan.

Background

3.4. This report seeks Member approval for the commencement of a procurement process for the appointment of a Delivery Partner for the delivery of the Masterplan objectives, should this be the preferred route to delivery of the programme.

3.5. The Council is the local housing authority with housing responsibility for the South Kilburn area under the s1 of the Housing Act 1985. The South Kilburn New Deal for Communities Partnership Board ("SKNDC") was established in August 2001 to manage a £50.06m NDC programme over a ten year period to 2011. Of the £50.6m, £21m was attributed to Housing and Built Environment projects. The Council is the Accountable Body (to the Government Office for London or "GOL") for the proper conduct of the SKNDC, particularly in relation to its financial affairs.

3.6. The SKNDC Partnership Board is made up of 9 elected residents, representatives from statutory bodies (including the Council's Director of Policy & Regeneration and a ward Member for Kilburn), voluntary organisations and the local youth. A Masterplan for the South Kilburn Area was commissioned from the appointed consultants, MACE by the SKNDC in 2002 using some of the NDC programme funding. Given that the Council is responsible for the South Kilburn area, that the SKNDC is an unincorporated body and given the Council's Accountable Body status, the MACE contract (being the Contract pursuant to which the Master Plan was procured) is actually with the Council, rather than SKNDC.

3.7. The development of the Masterplan was based on local partnership working between the SKNDC Partnership Board and the Council. The on-going role of central government agencies should also be acknowledged. Having approved funding through the NDC programme for the regeneration of South Kilburn, GoL effectively thereafter acts as a 'delivery manager', ensuring compliance with the scheme regulations. The Neighbourhood Renewal Unit (or "NRU") acts as commissioner with a view to ensuring that the policy objectives of the NDC programme are delivered.

3.8. The project is ambitious both in its scale and complexity. The Masterplan anticipates six delivery phases lasting approximately 13 years with an overall investment requirement (assuming delivery of all identified elements) of approximately £913,000,000 over the same period (taking on board development, management and maintenance costs). It assumes 1,419 new homes for sale as the key to the regeneration of the entire estate. Central government policy is to increase densities so the Masterplan is in compliance with government policies.

3.9. A summary of the Masterplan is attached to this report at Appendix 1.

3.10. As explained below in the Legal Implications section of this report, it is doubtful that the Council has the statutory powers to build 1,419 units for sale directly.

3.11. In addition, as explained at paragraph 3.49 below, the HRA makes it extremely difficult for the Council to contemplate, in financial terms, developing the stock for Council ownership on a large scale.

3.12. Accordingly, the programme requires delivery through a Delivery Partner. This report therefore seeks Member approval of the route by which the Council is to appoint a Delivery Partner. Members should note that whilst the Masterplan was based on the stock transfer option, officers have considered alternatives, details of which are to be found within this report (see paragraphs 3.47 to 3.81).

3.13. The Masterplan framework is central to achieving the Council's affordable homes and Decent Homes objectives and the SKNDC's social objectives concerning health, community safety, education and employment and to sustain these improvements through future management structures. As already stated in 3.12 above, the Masterplan was put together on the assumption that the route to delivery was via the stock transfer route and this has been alluded to when consulting residents.

3.14. In addition to the recommendations made earlier in this report, Members will wish to:

3.14.1.

3.14.2. Note the success of the ALMO application submitted in December 2003 and that £14,000,000 funding is now available for the refurbishment of 775 of the units on the South Kilburn estate through this programme on which the Council will be working closely with Brent Housing Partnership ("BHP"), the Council's ALMO. Members should note that the £14m is, subject to the points raised in paragraph 4.9, to be topped up by the £10m referred to in paragraph 3.20 allocated by the Council for this purpose.

3.14.3. Note the progress made with the seeking of expressions of interest in relation to the construction of approximately 140 new units with funding received from the Single Regional Pot (London Housing Board), and that there is currently a funding gap in relation to this aspect of the programme of approximately £10,000,000;

3.14.4. Note that the principal risks inherent in the South Kilburn regeneration scheme relate to the risk of falling property values, rental income not materialising, sales not going as well has been planned and Members are asked to note the steps that are being taken to mitigate those risks (see paragraphs 3.88 to 3.89).

3.14.5. Note the approximate timescale for the overall Masterplan programme (attached as Appendix 2) and the submission of further reports (with particular reference to the CPO and planning process) and its implications for the regeneration process.

Non-Masterplan-Dependent Initiatives

3.15. Members should note that whether or not the full-blown Masterplan is ever implemented, the 20 NDC funded Demonstration Homes, the 140 SRP Units and the 775 ALMO refurbished units should be capable of being delivered. Those three items are discussed immediately below, before turning to the Masterplan-dependent items (1,534 affordable rebuild, 1,419 homes for sale and the non-housing elements).

Demonstration Homes

3.16. The Council gave its approval to vary the MACE contract to allow it to project manage (as construction manager) the building of 20 units to demonstrate the intentions of the Masterplan. SKNDC will be funding the development of these units at a cost of approximately £3.7m on Council land.

3.17. To support a Construction Management approach, the Council will be required to enter into a number of agreements namely, a construction management contract (with MACE), a number of trade contracts (with various trade contractors) and a number of consultancy agreements (with various professional consultants).

3.18. The 20 new-build units are to be completed by the winter of 2005. The residents of the 20 units will have Council tenancies up to the point of which a transfer has been agreed. These residents can, if they are Secure or Introductory Tenants of the Council, be included in any stock transfer ballot. BHP will provide housing management services until the Delivery Partner negotiation process is complete and any transfer effected.

ALMO Refurbishment

3.19. It is expected that BHP will play a part in the Delivery Partner process. The Council will be retaining 775 units of stock and by implication, BHP will continue to be involved with estate type services within South Kilburn. However the Delivery Partner may wish to contract out Housing Management services for transferred and newly built stock (even with an RSL on board) in which the ALMO would have the opportunity to be involved. This element will be further explored with the Managing Director of Brent Housing Partnership and with potential Delivery Partners as part of the Delivery Partner negotiation process.

3.20. Confirmation was received in October 2004 that the Council/BHP were successful in the round four ALMO application, and the Council, through BHP will receive the full £14m applied for. The Council has also set aside £10m to top up the money from the ALMO round four funding regime directly to fund this programme. The refurbishment of the 775 properties will be carried out by BHP – indeed the process has started and is independent from the rest of the development.

3.21. This will enable the refurbishment of the 775 properties that are to be retained within Council ownership, to be refurbished beyond the decent homes standard and this will be completed before 2010, which meets the government's target for decent homes.

Single Regional Pot Homes (or the "Granville New Homes")

3.22. As reported to the Executive on 12 July 2004, the Council was successful in attracting £9.85m from the London Housing Board to build units in advance of the main programme. The original application was for £19m and in order for the Council to complete the build of around 125 to 140 units, a minimum of £10m will need to be raised from Council resources.

3.23. The Council has a practical problem in regard to moving ahead with the 'SRP' or 'Granville New Homes'. It is necessary to progress with the development in order that the community can see that the proposed regeneration is real and not theoretical and to ensure that the Single Regeneration Pot resources are spent in line with ODPM's requirements as to timescale. If a Delivery Partner was already in place this would be a straight forward process as the Delivery Partner could build and fund the homes through a combination of SRP resources and borrowing against the net rental stream (i.e. raising a loan) and the tenants would, assuming the Delivery Partner includes one, have an RSL as their landlord.

3.24. The Council has to consider the position, however, where the Delivery Partner is not in place and the position of BHP in respect to the future homes.

3.25. One option would be for the Council's General Fund to fund the development and pass the properties on to the Delivery Partner, receiving a capital sum and thus recovering all net costs. This has been discussed with the Director of Finance who is of the view that he is unable to recommend this route to Members at the present time. In particular, risks arise from the possibility of the dwellings being completed, the Delivery Partner (for whatever reason) not being in place, the properties remaining empty and costs not being able to be recovered from the rentals.

3.26. An alternative option would be for the HRA to 'own' the properties and the new tenancies granted to be Council tenancies.

3.27. Due to the Housing Revenue Account Subsidy system there is a tendency for RSLs to effectively require a lower level of grant to make a social housing scheme work. This difference can, to a degree be mitigated if the ALMO is prepared to undertake the management of the properties within existing HRA resources.

3.28. A recommendation will be made to Full Council on 28 February 2005 for the approval of borrowing through the HRA to meet this funding gap and to authorise the Director of Finance to arrange such borrowing through the prudential borrowing regime, if required. Whether or not borrowing will be required (and how much is to be borrowed) will depend very much on the timing of the appointment of the Delivery Partner and how this fits in with the SRP Homes procurement timetable. In the event that the Delivery Partner has been procured prior to the Council needing to drawn down funds from the HRA, the site will be included as part of the negotiation process for delivery vehicle funding and depending on the outcome of this negotiation the Council may or may not be required to borrow the funds.

3.29. Members should note that evaluation criteria for the SRP Works contractor for the SRP Homes were approved by Members in July 2004 and that expressions of interest have now been sought. It will be made clear to bidders in the tender documents that how the scheme is to be financed is yet to be finally resolved.

3.30. The following table indicates three scenarios for dealing with the SRP Homes; firstly where the Council owns the properties in the HRA and BHP manages them within the ALMO. Secondly, an example where the properties are owned and managed by an RSL and thirdly the same as scenario one except that no grant is being offered by the Council.

	Council/BHP		**RSL**	**Council/BHP No Grant**
	£		**£**	**£**

3.31. This produces the following results:

	Council/BHP	RSL	Council/BHP No Grant
	£M	£M	£M

3.32. Members will note that elsewhere in this report (paragraph 4.9) the Director of Finance has taken the view that there should be no impact on the General Fund. Accordingly, of these three options it is the third (Council/BHP No Grant) that is the preferable one (unless the properties can be transferred to the Delivery Partner). The above analysis is based upon the Council and RSL charging the same for rents and incurring similar costs for management and maintenance. Differences are accounted for in differential interest charges between Council and RSL, VAT and Housing Subsidy.

3.33. Members decided to procure the (approximately) 140 new units of stock, replace the Tabot Play space and the provision of a new pocket park in July. The Single Regional Pot funds of £9.85mare currently being used to progress the scheme. The Council will enter into a design and build works contracts by June 2005 for the new-build to be complete within a two-year period. In the interim the Council will be the landlord of any tenanted properties constructed and BHP is likely to provide some housing management services until the Delivery Partner procurement process is complete.

3.34. As advised earlier, the cost of the works will be around £19m and the fees, cost of decant and buyback may require the Council to raise a minimum of £10m to ensure the completion of the units. As stated earlier in this report, whether or not this will be required will depend very much on the timing of the appointment of the Delivery Partner and how this fits in with the SRP Homes procurement timetable (shown at appendix 2)

3.35. Officers consider it vital to ensure that these properties can be financed in the development period without prejudicing future decisions as to whether these particular dwellings will ultimately be owned by the HRA or a member of the Delivery Partner. In the event of the delivery partner taking ownership of these dwellings the Council will expect the delivery partner to pay tenanted market value for the properties with any residual costs being funded from the agreed £10m Council contribution to the scheme.

3.36. Housing Services has since advertised the design elements of the scheme and received expressions of interest from 80 interested parties. The closing date was 22 September 2004. Housing Services have received stage 1 returns from 23 external parties of which 19 qualified to be progressed to shortlisting stage. This is currently being done through the South Kilburn

Housing Project Team in partnership with external solicitors (Trowers and Hamlin), Health, Safety and Licensing and Housing Finance.

3.37. Residents are involved in the process of selection, design and specifying the requirements of the new units on Granville Road to the same level of involvement as for the Demonstration Homes process.

3.38. The procurement of the Design and Build Contractor will commence after the Design Team and Client Team have worked up the Employer's Requirements and the outline design to a sufficiently advanced stage to enable the Contractor to tender on the same. This contract will be procured via the EU Restricted Procedure, with the deadline for delivery of the works contract estimated to be March 2006

3.39. The evaluation of all tender responses for the shortlisted Design Teams and all respondents for the Client Team will be conducted using the "most economically advantageous tender" criteria, with specific tender criteria being developed prior to the distribution of the Contract Documents.

3.40. Members considered the SRP Homes Works contract pre-tender considerations, including the outline evaluation criteria for the works contract in July which were:

3.40.1. To accept the most economically advantageous tender which meets the following

3.40.2. Technical capacity to meet the requirements

3.40.3. The Tender Price

3.40.4. Demonstrated ability to provide a service

3.40.5. Customer orientation & Diversity issues.

3.41. The above criteria will be developed to take into account the Employer's Requirements and outline design requirements in the final draft of the Contract Documents. Tenderers will be advised of the funding position on the SRP homes in the tender documents.

3.42. As noted above, in addition to the Contractor, the Council will be appointing a Design Team and a Client Team. The Design Team is currently being procured via an EU-compliant Restricted Procedure (i.e. two-stage tender).

3.43. It is important to note that elements of the Design Team will be novated to the Contractor for the post-planning application works

3.44. In accordance with Contract Standing Orders 89 and 90, pre-tender and procurement considerations for the SRP Design Team are set out below for the approval of the Executive:

1	The nature of the service	Professional design team services to work up to RIBA stage E
2		
3		
4		
5		
6		▪
7		
8		
9		
10		

3.45. It is envisaged that the Client Team (Employer's Agent, Clerk of Works, Planning Supervisor and Building Surveyor) will be procured via the EU Open Procedure (i.e. one stage tender).

3.46. In accordance with Contract Standing Orders 89 and 90, pre-tender and procurement considerations for the SRP Client Team are set out below for the approval of the Executive:

1		
2		
3		
4		
5		
6		▪
7		
8		
9		
10		

Delivery Partner Options

3.47. As mentioned earlier in this report, the Masterplan programme is for the demolition and rebuild of 1,534 affordable units, the building of approximately 1,419 new units for private sale and the delivery of the social investment programme through the provision of a number of non-housing facilities.

3.48. With regard to the provision of homes, there are three main options for the redevelopment of the estate:

3.48.1. Stock Retention - Development of the new dwellings by the Council (or another organisation) and the dwellings becoming part of the Housing Revenue Account. Possession of the units would have to be taken under Schedule 2, Part II Ground 10 of the Housing Act 1985;

3.48.2. Stock Transfer - Development of the new dwellings by an RSL/Developer with the social housing ultimately being owned and managed by an RSL. Members should note that within this option, there are two sub-options allowing for either a tenanted or vacant possession transfer; Possession of units would have to be under Schedule 3A of the Housing Act 1985 or Schedule 2, Part II Ground 10A of the Housing Act 1985.

3.48.3. Development of the new dwellings by an RSL/Developer with the social housing ultimately being owned and managed on an agreed split basis between an RSL and the Council.

Stock Retention – Prudential Borrowing Option

3.49. Under this option the Council would borrow sufficient funds to enable it to pay for the 1,534 new social housing units. There would therefore be no transfer of land otherwise than as required to permit private sales. The HRA does make it extremely difficult for the Council to contemplate, in financial terms, developing the stock for Council ownership on a large scale. This in itself does not preclude BHP replacing RTB properties through the acquisition of new dwellings in order to maintain sufficient mass.

3.50. The contract to build the units would be a straightforward public works contract requiring it to be advertised in compliance with the EU procurement legislation. It is likely that the contract would have to be procured on the basis of the restricted procedure because it is difficult to see how in these circumstances, the negotiated procedure would be justified.

3.51. This alone could place the Council at somewhat of a disadvantage, as in a transaction as complicated as this, the Council would almost certainly need to have the freedom to negotiate proposals with bidders if it is to achieve the Best Value option at the end of the bid process. It might be possible to classify the scheme as a "public housing scheme works contract" (a public works contract relating to the design and construction of a public housing scheme), in which case more flexibility could be introduced into the procurement process

3.52. For a number of years, Councils have been unable to consider a newbuild or retention strategy due to government policy for stock investment via the transfer process. This policy softened considerably with the introduction of the Arms Length Management programme. This programme is targeted at housing stock that is capable of being refurbished with relatively small amounts (per dwelling) of government aid. The Council has taken advantage of this programme (Rounds 2 and 4 programmes). However, the residual Council stock in South Kilburn is unsuitable for an ALMO programme and hence resources need to be generated through other means. The introduction of the prudential borrowing regime has at least given Councils the opportunity to consider whether it is cost effective for Councils to embark on a stock retention strategy and in the case of South Kilburn the opportunity to develop and own the properties.

3.53. At this stage it is extremely difficult to compare financially between an RSL financed scheme and a Council funded scheme. Providing there was no difference in basic scheme costs between the Council and an RSL the main comparisons are below:

Advantages for the Council of Council funded scheme	**Disadvantages to the Council of Council funded scheme**

Advantages for the Council of Council funded scheme	Disadvantages to the Council of Council funded scheme
An interest rate advantage (say between 0.25% and 0.5%)	Housing Subsidy – negative effect which equates to approximately £15K grant.
No exposure to non-recoverable VAT (particularly in respect to 'bought in services' e.g. repairs)	Disproportionate level of Council overheads in pursuing the scheme.
Council does not have to repay loans in the same manner as an RSL.	RTB will exist in perpetuity (on current Govt. policies)
No costs associated with a ballot.	Setting up a whole new team to manage this approach – the first of its kind in nearly 20 years.
BHP would remain as Housing Management contractor.	
	The Council would need to meet the costs of decanting and rehousing
	The Council would need to meet the costs of CPO, legal, compensation and buyback.
	The Council would have to use a 3rd party in the sale of units in order not to be seen as acting ultra vires vis a vis - the "Allerdale" case
	It would increase Council rent across the borough's stock.

3.54. The option of building new stock on such a scale by Councils across Britain, has not been done for over 20 years. Application of the prudential borrowing regime in this manner has not been tested and, moreover, the expertise to manage such a process from within the Council is scarce, if not non-existent.

3.55. There may well be the possibility of overage agreements being agreed with the developer to provide additional units of stock for Council ownership at some stage in the future, either directly or through the application of overage derived funds.

3.56. Given the current revenue stream from the rest of the Housing stock and the current valuation of the stock it would be unrealistic to try and raise the full amount required for the rebuilding of all the necessary affordable homes, let alone delivery of the entire Masterplan programme.

3.57. There are clearly a number of issues around the practicality or otherwise of the Council undertaking such a large redevelopment programme. Moreover there may be legal hurdles to be overcome in regard to the Council's direct ability to extract value through property sales.

3.58. However raising sufficient funds to procure the construction of some stock may still be achievable. The question lies in whether it would be in the best interest of the overall scheme to do so. Officers are recommending that the Council does not close off this option for procuring some new stock at this stage, as future funding streams may give the Council the resources in which to do so at a later stage.

Stock Retention – RSL/Developer Investment Option

3.59. One RSL and one Developer suggested through the Council's consultation process with the market that this option could be made more financially attractive by the Delivery Partner providing social homes replacement and the Council providing vacant land.

3.60. The developer would need to build 3 properties to re-provide 1 unit of social housing i.e. 4,602 to provide 1,534 units. This would be in excess of what was agreed within the Masterplan and the private units would not be built to the same specification as the social housing units.

3.61. The tenure mix would also change from 73% social & 27% private to 31% social and 69% private and does not provide the balance in tenure that the Council is seeking to achieve.

3.62. The Council would be responsible for providing vacant possession at each phase to be handed over to the developer for demolition and rebuilding. The Council would need to meet the cost of decanting & rehousing, any legal costs and compensation costs.

3.63.

Advantages for the Council	**Disadvantages to the Council**
No formal ballot would be required	
Tenants would remain tenants of the Council.	Disproportionate level of Council overheads in pursing the scheme.
There may be a possibility of increasing social housing units for the Council	RTB will exist in perpetuity (on current Govt. policies)
BHP would remain as Housing Management contractor.	
	The Council would need to meet the costs of decanting and rehousing
	The Council would need to meet the costs of CPO, legal, compensation and buyback.

Advantages for the Council	Disadvantages to the Council
	The scheme would be more dense and is therefore unlikely to be supported by tenants
	The Council would not have control of the development.
	The mix in tenure would be altered

3.64. As this approach could substantially alter the approach taken by the Masterplan, officers are recommending that Members disregard this approach.

Stock Transfer

3.65. This option anticipates either the transfer of the current tenanted stock in South Kilburn (other than that managed by BHP) to an RSL which would redevelop the site either itself or in a consortium in accordance with the agreed principles of the Master Plan, or the transfer of vacant land by the Council on a phased basis to the Delivery Partner which would then build the scheme as against such agreed principles. The EU Procurement legislation applies to the letting of contracts for works, services or supplies by public bodies. The question arises as to whether, in the context of the stock transfer option, the Council is procuring works, services or supplies at all or whether the stock transfer arrangement (involving as it does the transfer of land) falls outside the scope of the legislation. There are a number of possible approaches as to how the stock transfer option should be categorised for EU Procurement purposes. For example, as to whether the arrangement could amount to a works contract, it should be borne in mind that the works involved would not be carried out for the Council or on land owned by the Council or ever to be transferred to the Council. Consequently this arrangement should arguably not be seen as a "public works contract" within the meaning of the legislation.

3.66. The arrangement could be classified as a "mixed contract" (i.e. one involving both the transfer of land and the carrying out of works) or, alternatively, as a services contract on the basis that the outcome of the development would be the provision of accommodation for which the Council could nominate the occupants.

3.67. Alternatively, the arrangement could be classified as a "concession". If the Council's developer partner(s) (whether an RSL or a private developer or a consortium made up of both) is to take ownership of the land upon which the new build is to be constructed and is to be remunerated wholly or substantially from the revenue stream derived from the social housing units or from the sale of the private units and further, on the assumption that the risk of failure of the project would fall wholly or to a substantial degree on the developer partner, then the transaction could be construed as a concession agreement. The important elements of a concession arrangement are that the concessionaire should have right of "exploitation" and following on from that, it should also bear some (but not necessarily all) of the risks inherent in that "exploitation".

3.68. The EU treatment of concession arrangements depends on whether the underlying concession relates to “Works” or “Services”. The advantage to the Council in advertising the transaction as a public works concession contract is the flexibility and freedom it will afford to the Council in negotiating with its preferred developer partner or partner(s). Service concession arrangements on the other hand are excluded altogether from the EU legislation. Notwithstanding the number of possible categories into which the stock transfer option may fall for EU purposes (some falling outside the scope of the legislation altogether), the intention would be for the Council to run an EU compliant tender process for the appointment of the Delivery Partner on the basis that the discipline and transparency of such a process will encourage robust bids based on value for money criteria.

3.69. The business evaluation model and the Business Plan have assumed that the stock would be transferred at some point in time. This option presents the challenge to a consortium or Delivery Partners on whether they would have the appetite to take on such a huge development and still make a decent return on their investment. The commercial realities are the key drivers in this project and it will be down to the parties to prove to the Council and the residents that they can deliver the programme.

3.70. The tenanted transfer option is well used by many authorities and has been and still remains the most popular way of improving stock for Councils. It is a tried and tested route which allows Councils to transfer liabilities to the private sector whilst influencing the meeting of Council’s objectives.

3.71. In this option the tenants are consulted and a ballot is undertaken. If a simple majority of those voting express a wish to transfer to a new landlord in return for guarantees as to the works to be undertaken and the level of rents to be charged (in the first five years) then tenants transfer to the new landlord.

3.72. The transferee would be obliged through the underpinning contractual documents to deliver promises made to secure tenants during the consultation phase. In straightforward refurbishment schemes, a five year works period is not uncommon, but longer periods are necessary in respect of redevelopment schemes to take account of the generally longer delivery period and to accommodate required flexibilities. Essentially the stock would transfer at Tenanted Market Value (TMV), or in the case of a so-called negative valuation, sometimes with a dowry. In the circumstances of South Kilburn the only stock that is available for transfer is that programmed for demolition and the replacement of this stock is highly dependant upon the property market. Given the position that the Council has adopted on financial resources (being limited to £10M and for the time being allocated to the ALMO refurbishment programme), consideration needs to be given to the nature and certainty of the offer that would be made to tenants as part of the tenanted transfer procedures given that the scheme could only be fully completed if the property sales were sufficient to fund the new units.

3.73. The other means to achieving similar aims would be through the redevelopment route whereby individual parcels of land would be transferred (untenanted) to the development vehicle. This would allow the Council far more control over the process, creating a scheme that not only could be more attractive to the market but would enable the Council greater opportunity to take advantage of changes to government policy over the whole of the project's life. The advantages (and disadvantages) of this route are similar to those set out in paragraphs 3.81 and 3.82 below.

3.74. If the tenanted transfer route were followed, the Delivery Partner would face the following challenges, and it is likely that these would be the subject of negotiation:

3.74.1. Raising the necessary funds to manage the development programme;

3.74.2. Taking on board the Council's objectives to minimise risks to the Council;

3.74.3. Taking on board the SKNDC's aspiration of "creating a desirable place to live, learn and work";

3.74.4. Taking on board both the Council and SKNDC aspiration of single area management (involving current managers of estate services);

3.74.5. Taking on board a unified tenancy agreement protocol so that tenants are , as far as permissible, treated the same irrespective of the landlord;

3.74.6. Meeting the Council's requirement of providing up to 20% stock to a BME RSL within the programme;

3.74.7. Agreeing with the Council an offer document that will motivate residents to move to the new landlord;

3.74.8. Exploring the potential of creating a special purpose vehicle to subsume the SKNDC projects at an appropriate stage in the development life cycle.

3.75. The Council has successfully used stock transfer (for Chalkhill, Church End, Willow (sheltered stock) and Stonebridge). Officers within Housing have been involved in all of these schemes and are confident that this approach/structure would best meet the needs of South Kilburn.

3.76. The benefits and risks of the tenanted transfer option are highlighted below, but again are likely to be subject to negotiation with the scheme partners:

Advantages for the Council	**Disadvantages to the Council**
Residents will get new properties as part of the process – at limited cost to the Council	That should the commercial agreements not cover all eventualities, some of the risks associated with the project may fall back on the Council
The Delivery Partner will pick up the costs of legal, decant, rehousing, compensation and the CPO process	That should the Delivery Partner fold and the parent body (if this is appropriate) folds also then the Council may have to assume certain

Advantages for the Council	Disadvantages to the Council
	risks
The Delivery Partner will close or significantly reduce the funding gap.	Should the property market crash – the scheme would be in danger of collapsing and the scheme period would be extended beyond 13 years.
Residents will be able to influence the decisions of the Delivery Partner.	It requires a positive ballot to achieve the stock transfer.
Residents will sit on the new Delivery Partner board.	If a positive ballot is not achieved then the whole scheme is at risk.
Residents will be able to direct the Community Development structure of the Delivery Partner	It may be difficult in the consultation material to give sufficient certainty about the scheme to encourage tenants to vote in favour of the proposal.
The Council will continue its enabling role within the new Delivery Partner structure.	
Overage agreements that could benefit both the residents and the Council	
SKNDC will achieve its goals and objectives for sustainability.	

Development by RSL/Developer with Split Ownership and Management

3.77. This option is a variation on the other two options whereby the Council agrees for an RSL/developer to undertake development with the Council having an option to purchase (at TMV) an agreed number of dwellings whilst acknowledging that the majority of the new social housing dwellings will be RSL owned and managed.

3.78. This would require the Council to specify at the outset that it intended to purchase new stock at some time within the development period. The Council could transfer ownership of the relevant parts of South Kilburn on a phased basis with vacant possession using its powers under Ground 10A of the Housing Act 1985.

3.79. This approach has previously been included in housing regeneration projects by the Council (e.g. on the Chalkhill Estate) although clearly at the time the Council, due to the Capital Finance Regulations 1997, was unable to seriously consider exercising a buy back option.

3.80. This option would need to be negotiated with an RSL/developer prior to any transfer. This would provide an opportunity to review the general developments of ALMOs nationally whilst at the same time giving BHP the opportunity to secure new dwellings in South Kilburn and thus assisting in the viability of that organisation.

3.81. Advantages offered by this route include:

3.81.1. Phased delivery of land to the Delivery Partners in conjunction with project phasing. This would mean that if the scheme did get into financial difficulties at any point, the Council would not have transferred ownership of all of the land to the Delivery Partners in one go.

3.81.2. The transfer of land is not dependent upon a ballot of tenants, although there is still a requirement for tenant consultation.

3.81.3. The land transfers do not have to be routed through an RSL which, given the need for newbuild sales, may make the exercise simpler.

3.81.4. Either route will have resourcing implications for the Council which need to be examined.

3.82. Disadvantages of this route include:

3.82.1. The Council would have to use the general allocations pool to make this option work

3.82.2. It would require the Council to fund decant, rehousing and buyout proposals within each phase.

Timing Implications.

3.83. Attached at Appendix 1 is a copy of the summary version of the Masterplan which gives the main points of the proposals. It includes which stock is to be demolished and refurbished, the proposed phasings and the estimated timescales for the regeneration programme.

Officer Recommendation

3.84. Having taken account of the advantages and disadvantages and risks discussed above, officers consider that for reasons of financing on such a large scale which would be extremely difficult for the Council to achieve economically and because split ownership would complicate the management of the estate and the welfare of residents, the option to be recommended is that of development of stock through an RSL/Developer with the RSL being the landlord/manager of the stock.

3.85. Officers recommend the stock transfer approach for approval by the Executive. Officers assume that the Delivery Partner will wish to propagate SKNDC's community development activities through, for example, a Community Based Housing Association ("CBHA").

3.86. Officers propose that Members delegate the decision to the Director of Housing as to whether to use Schedule 3A or Ground 10A Schedule 2 to facilitate the regeneration process as part of any Delivery Partner negotiation. However officers do not wish to close off the possibility of a transactional structure that would allow the potential for the Council to retain/buy back stock at a future point in time (and on terms that reflect the level of subsidy that the Council initially made to enable the project to progress through land sales).

3.87. Officers propose that the Council includes reference to the option to buy back stock (if and when it would be deemed appropriate within the phasing of the development) in the possibilities open to bidders to consider.

Risk

3.88. Potential risks include:

3.88.1. Property values plummeting;

3.88.2. Rental income not materialising;

3.88.3. Sales not going as well has had been planned.

3.89. Officers will need to ensure that in the assessments of all options proposed by applicants to deliver the South Kilburn regeneration programme, that there are measures to mitigate losses and that the programme can be brought to a halt (albeit that some of the steps taken may be irreversible) if necessary Officers will need to ensure that it is possible to take any steps necessary to safeguard the Council's interest against any risk exposure i.e. seek additional external funding for relevant parts of the scheme and/or if necessary temporarily halt the programme should it become uneconomic to continue.

Place on the Stock Transfer Register

3.90. In light of officers' recommendation to pursue a transfer option, and the need to start the development process within 2007, there will be a requirement to meet the ODPM's timescales to facilitate the transfer of stock. The Housing Transfer programme 2005 specifies that in order to transfer stock by March 2006 authorities would need to register by 28th January 2005. This would allow a two year window to complete the stock transfer process.

3.91. Officers therefore seek members' approval to place the scheme on the stock transfer register before the deadline of 28th January 2005. Members should note that the application to be placed on the register does not commit the Council to proceed with the transfer.

Analysis of responses after the DV Seminar of 13 September 2004

3.92. Following on from the report to members in July 2004, a voluntary OJEU notice was despatched inviting interested parties to attend a seminar to explain the South Kilburn Master Plan to interested parties. The reasons were two fold:-

3.92.1. To elicit what level of interest there was within the market for the regeneration of South Kilburn and

3.92.2. To find out from the market how best to structure and organise the procurement route that would receive a favourable response.

3.93. Officers received requests from 96 organisations to attend the seminar. The requests were received from a range of groups involving developers, RSLs marketing companies, specialist technical companies through to Government agencies. The seminar was held on 13 September 2004 and over 135 persons attended.

3.94. The attendees were given to 24 September 2004 to submit their views on what possible structure could be delivered to facilitate the regeneration of South Kilburn.

3.95. Judging by comments received formally and informally at the seminar RSLs favoured the consortium based approach. It is likely that the Council would favour the consortium based structure which incorporated a BME RSL within the structure

Delivery Partner Procurement Process

3.96. The nature of the transaction is yet to be classified as to a large extent, this depends on the route that is to be followed. As noted above (paragraph 3.65 to 3.68) the Delivery Partner transaction could be classified in many ways, including any of the following

3.96.1. Contract for the Disposal of Land

3.96.2. Development Agreement

3.96.3. Public Works Contract

3.96.4. Public Services Contract

3.96.5. Mixed Contract for Public Works and Services

3.96.6. Public Housing Scheme

3.96.7. Public Works Concession Contract

3.96.8. Public Services Concession Contract

3.97. It is difficult to see how an award of this complexity and size could be made with any degree of certainty as to the financial implications and the risk allocation for both the Delivery Partner and the Council, without some degree of negotiation.

3.98. How the contract comes to be finally classified will determine the degree of freedom that the Council will have to negotiate the award. Careful consideration will be given to this point and legal advice sought in due course. The preliminary view is that, however the transaction is to be classified, it should be possible to justify the use of negotiation for this award.

3.99. Even if a negotiated process is to be used, general principles of EU public procurement law apply and the Council is obliged to run a transparent tender process and to treat all bidders fairly and equally.

3.100. Once bids have been returned and a preliminary assessment of the proposals has been carried out, the Director of Finance will in consultation with the Director of Housing consider how bidders view the notional overall estimated funding gap, how the funding gap could be bridged with both the housing and non-housing objectives of the Masterplan being met.

3.101. This assessment will include the possibility of securing other funding sources, the possibility of combining traditional procurement with a PFI approach to delivery of the Masterplan and the possibility of securing further funding through the prudential borrowing regime, having taken account of the views of relevant stakeholders including in particular the views of the SKNDC.

3.102. The Council has set up a Delivery Partner Steering Group, consisting of six residents, the Director of Housing, the Assistant Director of Housing and the Chief Executive of SKNDC.

3.103. This Group is supported by officers in an advisory capacity with legal, financial and administrative support. The Residents' Friend attends to support the resident members of the group. The group has been meeting on a regular basis since June 2004 and has produced a set of outline selection criteria for the recruitment of the Delivery Partner.

3.104. Ultimately, however, it is the Council rather than the stakeholders that will be accountable for the procurement and the delivery of the project and will be the contracting party with the Delivery Partner. Accordingly, whilst it is perfectly right that the Council should take account of the views of all stakeholders, particularly residents, the Council must satisfy itself that the procurement process is robust and accords with its legal obligations and the meeting of its fiduciary duties and that the Council has control and conduct of the tender process.

3.105. In order to minimise risk to the Council the issues covering the following items would need to be explicitly addressed by any prospective partner (or partners). They are:

3.105.1. gap funding;

3.105.2. rehousing;

3.105.3. nomination rights;

3.105.4. rent levels;

3.105.5. non-housing facilities;

3.105.6. governance issues;

3.105.7. Masterplan and Delivery Partner principles;

3.105.8. resident views;

3.105.9. low cost home ownership;

3.105.10. leaseholder/free holder treatment;

3.105.11. CPO/Buyout funding etc;

3.105.12. involvement of SKNDC;

3.105.13. involvement of BHP.

3.106. For each of these issues the Council will identify those areas in respect of which the Council will bear the risk and those where the risk will need to be managed by the prospective parties.

3.107. The high level outline evaluation/selection criteria which are currently being developed by the Steering Group and which will be fed into the overall Delivery Partner evaluation matrix are as follows:

3.107.1. Financial capacity to undertake the regeneration of SK

3.107.2. Ability to show that it is resident centred

3.107.3. Ability to demonstrate partnership working

3.107.4. Ability to manage the development process

3.107.5. Proposals for neighbourhood Management

3.107.6. Proposals for sustaining the existing residents in SK

3.107.7. Proposals for social regeneration (e.g. employment, health, education, infra-structure issues)

3.107.8. Housing Management track record

3.107.9. Equalities and diversity

3.108. Appendix 3 to this report provides more detail under each of the high-level criteria, but Members should note that these are still being developed and that for the purposes of the evaluation of bidders, weightings (their relative importance) will need to be attached to them.

The Role of SKNDC in Delivery of the Masterplan

3.109. The Council employs a number of staff who effectively carry out work for the SKNDC Partnership Board. The SKNDC Partnership Board has set up a company limited by guarantee ("SKNDC Ltd"). The company is 'dormant' at the moment. Officers and the SKNDC Partnership Board are working towards SKNDC Ltd being fully incorporated by 31 March 2005. This has to be seen in the context of a wider discussion with the SKNDC as to its long term sustainability (i.e. beyond 2011). Full incorporation will involve the transfer of staff and assets to SKNDC Ltd and the entering into of a Transfer Agreement.

3.110. At present, the role that SKNDC Ltd may have in the delivery of the Masterplan project is still to be determined. It is possible that it could have a role through a linkage with a Community Based Housing Association structure. Once clearer, the Council and the SKNDC Partnership Board will consider how best to address this (as well as the role of BHP in relation to wider Housing Management issues) in the Invitation to Tenderers to be issued to the prospective Delivery Partners.

Single Coherent Area Management Standards

3.111. The Masterplan currently proposes a mixed approach to development in that some stock will be refurbished and retained by the Council, and the majority of stock will be demolished and rebuilt for both social rented and private ownership.

3.112. Currently the Council is the majority landlord, with at least four other RSL's operating within the area. Each current landlord has its own management and maintenance arrangements, and delivers services appropriate for their respective tenants/leaseholders. It is important to recognise that the Masterplan proposals indicate that there will be a different tenure mix and there may well be different landlords by the end of the regeneration process.

3.113. The Council will expect any delivery partner to work towards unified management standards which will be tenure blind. Therefore an RSL tenant, Council tenant and leaseholders living in the same area, should expect to receive the same types of services (as appropriate) to the same management standards, whether they are tenancy related or estate based services.

3.114. The Council will encourage the exploration by the Delivery Partner of possibilities for joint appointment of contractors between landlords (e.g. for shared communal areas) or the opportunity to have one housing management organisation for the area, which is designed to ensure that residents receive good quality services irrespective of tenure. This is a fundamental principle endorsed by both the Council and SKNDC.

3.115. The benefits to this approach are:

3.115.1. A joint protocol covering all landlords can be proposed.

3.115.2. Procurement efficiencies can be made

3.115.3. Could provide single point accountability

3.115.4. Residents of the area can expect to be treated the same

3.115.5. Monitoring is made easier by this approach.

3.116. The Council is not likely to entertain any proposal that does not address this point specifically.

4. Financial Implications

4.1. The Executive have received previous reports relating to South Kilburn and the South Kilburn Masterplan on 24 September 2003, 8 December 2003 and 12 July 2004.

4.2. In those earlier reports a range of funding gaps from £3.9m rising through to approximately of £32m had been identified. The finalised Masterplan indicates that there is in fact a current gap of £38.1m. This is calculated as follows:

Item	£M
▪ ▪	

4.3. The housing element of the scheme is being funded from a combination of private house sales, loans that are able to be raised from the net rental stream and government grants. The housing costs include all projected expenditure directly associated with the houses e.g. roads and open spaces. Additionally there are costs (approximately £30m) which are integral to the master plan, and in many instances relate to planning requirements.

4.4. The NDC programme which is closely linked to the South Kilburn regeneration project is based upon the community being supported in both the physical and non-physical aspects of holistic regeneration and hence the provision of community facilities (such as a sports centre) is viewed as vital to the success of the area's regeneration. Officers consider that rather than further stretching the business plan to ensure delivery of such non-housing elements, other external funding routes are explored. Clearly the Council, in consultation with the NDC, must ensure that no contractual commitments are made that cannot be funded and hence in the event of external finance being unavailable, priorities will need to be clarified and/or reassessed.

4.5. The funding gap represents approximately 4% of the total estimated expenditure of £913m, with programme duration of 13 years. Members will note that this gap is arrived at after taking into account contributions from the NDC programme (£18m) and funding received from the London Housing Board's Single Regional Pot (£9.85m). The programme's main risk is the dependency on the property market.

4.6. The position on the funding gap that arises from the SRP Homes is discussed in paragraphs 3.22 to 3.35 above.

4.7. The increase in the Business Plan cost has arisen largely due to sustainable building costs inflation (16%), the impact assessments (cost of school places, infrastructure issues etc.) and revaluation of properties for buy-back (17%) since December 2003.

4.8. The majority of public subsidy included in the programme arises from the Council being prepared to recycle housing land to 'unlock' value. The Council has agreed (in addition to land contribution) to allocate £10M to South Kilburn over the period of the scheme. This was allocated to the ALMO part of the project and enabled a further £14m to be obtained from government.

4.9. Since this decision was taken the local authority capital finance regime has changed to 'prudential borrowing'. The Director of Finance has taken the view that there should be a nil impact on the General Fund as a consequence of the South Kilburn regeneration and accordingly, all of the anticipated financial implications of the scheme are for the HRA. This means that the only means by which the HRA can be supported is through the application of capital receipts. Given that the HRA Business Plan is currently being reviewed in the light of the ODPM's confirmation of resources available to Brent (from both ALMO Rounds 2 and 4), it is suggested that the £10m allocated by the Council is reviewed in conjunction with the Director of Finance to determine the most appropriate mechanism for funding the ALMO. Essentially, this means that that there may be a possibility of achieving greater flexibility by moving the £10m Council contribution to fall within the greater South Kilburn NDC scheme thus assisting in the overall delivery. It should be emphasised that this would only be possible if the ALMO has sufficient resources to deliver the decent homes programme for that area.

4.10. The way this risk is managed will clearly be an issue for discussion and consideration by the Council and the proposed Delivery Partner.

4.11. If all the social housing is to be fully replaced then the current funding gap will need to be closed. However, Members need to consider this in the context of the substantial risks associated with a long term infrastructure project that is highly predicated on the state of the property market to deliver value from the sales to private persons. As part of any evaluation, the Council will need to examine carefully the Delivery Partner proposals in the context of the risk allocation between the Council and the Delivery Partner and the pricing by the Delivery Partner of that allocation.

4.12. Whilst the above analysis focuses upon the risks and the costs to the Council/public subsidy, the overall scheme costs/revenues (in cash terms), both capital and revenue, are indicated in the table at paragraph 4.2 above. This illustrates the enormity of the South Kilburn project and in particular the Council's contribution by way of land included in the arrangements to enable private sale to take place. The project is still largely dependent on private sale to cross-subsidise the replacement of public housing. Therefore it is appropriate to draw Members attention to the overall risks of the project rather than solely discussing the current funding gap. Clearly, if the property market does not deliver value (through, say, falling prices) then the gap will increase and the converse is true if value has been understated in the business plan.

4.13. The Business Plan produced for the Masterplan is based on the assumption of a transfer of stock. Officers have investigated all the options, as instructed in the Executive report of 12 July 2004, and the outcome was explained earlier on in section 3 of this report.

4.14. The Council also undertook a series of soft market testing exercises with a range of parties culminating with the event on 13 September 2004 referred to in paragraph 3.93.. Around 96 organisations turned up to the event that was held to explain the South Kilburn Masterplan and the objectives of the partners involved (residents, SKNDC and the Council). Given the size of the project and the potential for an organisation to have work between the next 12-15 years it is not surprising that interest has been considerable.

4.15. As indicated elsewhere the Council will be seeking to gain additional external funding for a number of elements within the Masterplan. Currently within the Masterplan Business Plan there is around £30m attributed to non-housing/community type facilities and this will be the subject of bids for additional resources. There may be other ways of reducing the gap such as building more homes for sale, using additional Council resources, scaling back on the housing and/or non-housing programme, utilising other government funding streams and finally cost re-engineering solutions offered by the Delivery Partner.

4.16. To conclude, the scheme is faced with a potential funding gap in the region of £38M. This gap has yet to be verified by the market. Officers consider that this gap should be viewed within the context of the project's risk management, with the prospect that the overall fundability will be increased through examining the possibility of gaining further external funding, particularly in relation to the non-housing aspects. In addition officers will ensure that the Council's HRA is adjusted in accordance with the stock losses that are likely to occur in South Kilburn. As regards the overall deficit on the scheme, Members will need to decide upon a strategy that ensures that the scheme is feasible, this will need to include the possibility of building less social housing or amending proposals for the non-housing elements.

5. Legal Implications

5.1. Trowers and Hamlins have been appointed as external solicitors for the South Kilburn regeneration programme. In-house Legal will be giving support to the client team and may take on responsibility for some of the key areas of work, particularly in the planning and property areas.

Powers

5.2. The powers that the Council has to procure the delivery of the Masterplan programme include s2 of the Local Government Act 2000 (power to do anything which the Council considers is likely to achieve the promotion or improvement of the economic, social and environmental well-being of its area), which officers consider to be the case in this instance.

5.3. Regard has to be had to the Council's Community Strategy when relying on this power and the Council's Community Plan (the Council's Housing Strategy 2002 to 2007 and the Unitary Development Plan both of which are cross-referenced in the Community Plan in the Local Housing section) which makes specific reference to ensuring the development of mixed and balanced residential communities, increasing the supply of affordable dwellings, improving the existing dwelling stock, ensuring resident participation and linking housing and regeneration programmes.

5.4. In addition, Priority 1 of the Council's Regeneration Strategy is "to 'reduce the gaps' between Brent's deprived communities and the rest of London, and in particular to focus on the neighbourhoods of South Kilburn, St Raphaels/ Brentfield, Roundwood, Church End, Stonebridge and Harlesden". Accordingly, it is considered that the well-being powers in s2 of the Local Government Act 2000 are appropriate powers for the implementation of the Masterplan.

5.5. The Council has a duty under s8 of the Housing Act 1985 to consider the housing conditions within its area and the needs of its area with regard to the provision of further housing accommodation

5.6. The Council has powers under s22 of the Housing Associations Act 1996, to promote the formation of bodies to act as registered social landlords, and to promote the extension of the objects or activities of registered social landlords. In addition and under the same provision, the Council may for the assistance of any registered social landlord subscribe for share or loan capital of the landlord and/or make grants or loans to the landlord, or guarantee (or join in guaranteeing) the payment of the principal of, and interest on, money borrowed by the landlord (including money borrowed by the issue of loan capital) or of interest on share capital issued by the landlord.

5.7. The Council would not appear to have any statutory powers to build and sell the 1,419 units for sale directly and should it purport to do so, it is highly likely that the transaction (or that part of it) would be deemed *ultra vires*.

5.8. A leading case in this area is that of Crédit Suisse v Waltham Forest LBC heard in the Court of Appeal in May 1996. In that case, the local authority set up a company for the purpose of purchasing properties that would be leased to the local authority to enable it to discharge its duties under s65 of the Housing Act 1985 (housing for homeless persons). The local authority planned to use profits generated by the scheme for the acquisition of further housing stock. The scheme was held to be unlawful and whilst in that instance, there were issues relating to the improper discharge of functions through a limited company and the improper issuing of guarantees, the overriding finding that the Housing Acts contain a complete code for the discharge of housing functions is likely to be of application in this instance, and it is unlikely that the direct provision of homes for sale by the Council would be considered a proper function of the Council and the scheme could be deemed unlawful.

Prudential Borrowing

5.9. Reference has been made to the possibility of using powers under s1 of the Local Government Act 2003 to raise loans through prudential borrowing. The 2003 Act provides that a local authority may borrow money for any purpose relevant to its functions under any enactment, or for the purposes of the prudential management of its financial affairs subject to the borrowing limit determined by the authority and the Secretary of State and regard will have to be had to this and other related requirements before taking any decisions on borrowing.

5.10. The prudential borrowing regime in the main applies to the remaining Council stock in the area. A RSL has always had the capacity to raise private finance as long as their business plan is robust enough and sufficient security was made available. Use of prudential borrowing powers is entirely dependant upon the General Fund (or HRA) being able to repay loans.

Procurement of Delivery Partner

5.11. Procurement of the Delivery Partner will have to be in accordance with Contract Standing Orders and (as noted in 3.68) will be let in compliance with the applicable requirements of EU public procurement regulations.

5.12. As explained earlier on in this report (paragraphs 3.96 to 3.101), in a complicated transaction of this nature, it would be preferable if the Council were able to negotiate with bidders. The Borough Solicitor is of the view that it should be possible to justify negotiating the award to a Delivery Partner through the Negotiated Procedure, but this will depend very much on how the transaction is to be classified (paragraph 3.96).

5.13. Furthermore it should always be possible to invite Standard and Variant Bids, thereby allowing for increased bidder innovation.

5.14. Contract Standing Orders require Executive approval for the entering into any Agreement if the value of the agreement is estimated to exceed £500,000 in respect of services or £1,000,000 in respect of works over the life of the contract.

5.15. Given the nature of the Masterplan and the fact that the final shape of the transaction will be determined by proposals for bridging the funding gaps as well as a decision on the procurement structure and the classification of the transaction for the purposes of the EU Regulations, the Council's pre-tender considerations are not seen as appropriate for determining whether or not to proceed with this transaction and the recommendations to this report request accordingly that Members agree in accordance with Standing Order 85(a) that there are good financial and/or operational reasons not to comply with the requirements of Standing Orders 89 and 90 in relation to the approval of pre-tender considerations in relation to this scheme.

Land Disposals

5.16. Any disposal of land held for housing purposes would be under the provisions of s32 and 43 of the Housing Act 1985 and would require the consent of the Secretary of State. Any existing secure tenants would have their Right to Buy preserved as specified in the Act.

5.17. The disposal of other land is subject to the provisions of s123 of the Local Government Act 1972 and requires land to be disposed of for best consideration unless the consent of the Secretary of State is obtained. There is general consent that permits disposals at an undervalue of up to £2m (where the disposal is for the promotion or improvement of the economic, social or environmental well-being of the area, which officers consider would be the case here – see paragraphs 5.2 and 5.3 above). The Council must have regard to its Community Strategy in determining whether this ‘well-being’ test is met.

5.18. Members owe a fiduciary duty to Council Tax payers and must consider whether any such disposal complies with normal and prudent commercial practices.

Stock Transfer

5.19. If the Council resolves to pursue the transfer option, consideration will need to be given as to whether this should be effected on the basis of either (a) a tenanted transfer upon which secure [and introductory] tenants of the Council will be asked to vote (as was the case with the Scientist Estate at Chalkhill) or (b) upon a vacant land basis (Ground 10A of the Housing Act 1985, as was the case with the Bison Blocks at Chalkhill).

5.20. The former route would, in procedural terms and depending upon the arrangements arrived at with the Council’s development partners, as a minimum require:

5.20.1. The Council securing a place on the ODPM’s disposal programme;

5.20.2. A transfer of the ownership of the dwellings to an RSL. This is a requirement of current Government policy. It is likely that associated assets would in the first instance also be transferred to the RSL;

5.20.3. A consultation exercise pursuant to Schedule 3A of the Housing Act 1985 pursuant to which secure [and introductory] tenants must inter alia be advised of the identity of the purchaser to whom the disposal is to be made, the implications of the disposal for their right to buy and such other details in respect of the disposal as the Council considers appropriate. The latter are largely prescribed by ODPM guidance and current practice;

5.20.4. Securing a positive ballot result following the conclusion of the required exercise under Schedule 3A;

5.20.5. The conclusion of successful commercial negotiations with the Delivery Partner;

5.20.6. If appropriate, the registration of any new vehicle with the Housing Corporation as an RSL and possibly as a charity with the Charity Commission; and

5.20.7. Securing the necessary regulatory and statutory consents.

5.21. Careful consideration will need to be given to the merits of the tenanted transfer approach in the context of this scheme, given its scale and high reliance on market sales to support the construction of newbuild affordable units. The less certainty that can be given to tenants about what is to happen to them and their homes, the less likely that the result would be a positive ballot. The risk with pursuing the tenanted transfer route is that a negative ballot would prejudice delivery of the entire scheme.

5.22. An alternative approach would be for the Council to transfer ownership of the relevant parts of South Kilburn on a phased basis with vacant possession using its powers under Ground 10A of the Housing Act 1985.

5.23. Advantages offered by this route include:

5.23.1. Phased delivery of land to the Delivery Partner in conjunction with project phasing. This would mean that if the scheme did get into financial difficulties at any point, the Council would not have transferred ownership of all of the land to the Delivery Partner in one go;

5.23.2. The transfer of land is not dependent upon a ballot of tenants, although there is still a requirement for tenant consultation;

5.23.3. The land transfers do not have to be routed through an RSL which, given the need for newbuild sales, may make the exercise simpler.

5.24. Either route will have resourcing implications for the Council which need to be examined.

Planning and CPO issues

5.25. The regeneration of the stock at South Kilburn will involve demolition and rebuilding and this will require planning permission. There will therefore be an effect on the Council in terms of staffing resources to deal with this. It is envisaged that a development of this type would normally include a Section 106 Agreement and the negotiation of that will be carried out by officers. In the Stock Transfer, it is likely that a precondition will be the grant of a satisfactory planning permission.

5.26. Given that there are a number of long leaseholders (under right to buy legislation) and commercial interests in the proposed regeneration area, it is likely that some, at least, of these will not agree to selling their interest and a

Compulsory Purchase Order will, therefore, need to be pursued and the Transfer Agreement will need to make provision for this. Discussion will need to be had as to the grounds for the Compulsory Purchase Order, the choice basically being the Housing Act or the Town and Country Planning Act.

5.27. The Council has power under the Housing Act 1985 to acquire land for the provision of housing accommodation. This power is available even where the land is acquired for onward sale to another person who intends to develop it for housing purposes. The power under the 1985 Act is subject to authorisation from the Secretary of State and can only be used to achieve a qualitative or quantitative housing gain and the Council would have to demonstrate such gain when seeking the Secretary of State's confirmation of any CPO.

5.28. The Council also has power to acquire land compulsorily under s 226 of the Town and Country Planning Act where this is for the promotion of the economic, social or environmental well-being of its area. Again, the need for the order would need to be justified.

5.29. The Council will need to comply with the procedure for making and confirming compulsory purchase orders set out in the Acquisition of Land Act 1981, if the Council decides to acquire the land under its compulsory purchase powers

5.30. Further reports seeking authority to commence the CPO process and the CPO timetable will be prepared for the Executive once the implementation programme becomes clearer. In the meantime, Members are referred to Appendix 2 for the outline timetable which includes the anticipated reporting framework. Pursing the CPO will clearly have resource issues for the Council if it is to be carried out by officers and some or all of the process may be outsourced (for example, referencing). However dealt with, the Council will seek to obtain an indemnity both for the cost of pursuing the CPO and the compensation payable as a result of interest taken under it, from the transferee.

Procurement of Works (SRP Homes)

5.31. The tendering of contracts for the SRP works will need to comply with the Council's Standing Orders and the EU Procurement Regulations. Pre-Tender Considerations for the works contract were considered by the Executive as required by Standing Orders 89 and 90 in July and are set out for the Design and Client Teams within this report (paragraphs 3.44 to 3.46).

5.32. The funding gap that arises in relation to the SRP Homes has been addressed earlier in this report and in procurement terms, the important point will be to let tenderers know of any implications for the tender process that arise from how the SRP Homes are to be financed (paragraph 3.41).

Housing Management and BHP

5.33. The Council's stock within South Kilburn is currently managed by BHP pursuant to the terms of a management agreement entered into on 1st October 2002. The Council has the necessary consents and funding to continue to own and manage (through BHP) the stock identified as not being demolished.

5.34. The implementation of the wider South Kilburn regeneration project may mean that properties currently managed by BHP will be withdrawn from BHP's remit over time as land or dwellings are transferred to the Delivery Partner (or a member thereof). The terms of such management agreement will need to be reviewed to establish the Council's ability to withdraw stock from the agreement and the consequences of such withdrawal analysed in terms of its effect on future BHP finances etc. It was clearly understood by the Council and ODPM that the management of South Kilburn was not a long term arrangement when the Council applied for Round 2 funding. Clearly with the Council receiving Round 4 funding (for a further for 775 dwellings (located in South Kilburn)) BHP is managing dwellings in excess of the original bid.

5.35. It has been suggested that BHP should continue to manage the redeveloped housing post transfer. The ability of an ALMO to manage RSL stock has yet to be tested and this is a matter which will need to be discussed with the Council's eventual Delivery Partners, their funders, regulators and with ODPM. The Council has received preliminary advice from external consultants as to the VAT implications of such possible arrangements.

5.36. If such an arrangement were to be considered viable, a separate management agreement would need to be entered into between BHP and the relevant Delivery Partner. The Council would need to consider the implications of that, given the status of BHP as a company wholly owned by the Council.

5.37. This is clearly a matter of risk assessment in respect of any financial liabilities which BHP may incur as a result of such a commercial arrangement. Whilst there is a technical legal separation between the Council and BHP, it is assumed that the Council would view BHP's liabilities as its own, if BHP were unable to meet any liabilities that might arise under that contract.

5.38. Any proposed new housing management scheme and/or variation to the contract between the Council and BHP may require the further consent of the Secretary State under s27 of the Housing Act 1985.

TUPE Issues

5.39. There may be staffing issues arising from the proposed Delivery Partner/stock transfer for both BHP and the SKNDC. Members should note that strictly speaking, employees working for and on behalf of the SKNDC are for the time being Council employees. These issues are explored in more detail in Section 7 of this report.

6. <u>Diversity Implications</u>

6.1. The diversity implications surrounding the Masterplan were fully addressed in the report to Members in July 2004. The proposals in this report have been subject to screening and there the following diversity implications are listed below.

6.2. The amount of stock that could be transferred (1,534) would require the Delivery Partner to put forward proposals to transfer at least 20% of stock to a Black and Minority Ethnic RSL. This is current Council policy.

7. Staffing/Accommodation Implications

7.1. The regeneration of South Kilburn is based on the transfer of the majority of land and 1,723 units of stock (1,534 tenants and 189 leaseholders/freeholders) to a new Delivery Partner.

7.2. BHP currently manages the stock of South Kilburn. Any transfer of stock will impact on the current managers of the stock and therefore it is anticipated that the provisions of the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended) ('TUPE') may apply to relevant BHP staff. TUPE may also apply to some Council employees working for and on behalf of the SKNDC and to other Council employees in the Housing Department. It will be difficult to be any clearer on these points prior to the receipt of bids.

7.3. TUPE regulates the employment implications of transfers of undertakings or parts of undertakings. Where TUPE does apply, the transferee inherits the employment contracts of all staff assigned to the transferor's undertaking or that part of the transferor's undertaking being transferred.

7.4. It is understood that BHP, Council and SKNDC staff are aware of these issues and appropriate consultation with staff will be carried out.

7.5. The following issues remain to be finalised in respect of TUPE resulting from the possible transfer:

7.5.1. The extent of employment details to be given by the relevant transferor concerning relevant employees;

7.5.2. The extent of any warranties / indemnities to be given by the relevant transferor concerning such employment details;

7.5.3. Pension rights and other considerations and benefits associated with public sector employment.

7.6. Whether or not TUPE applies, the Code of Practice on Workforce matters provides that local authorities should encourage staff transfers where public services are being externalised or transferred to a private sector partner. The Council will consider staffing proposals as part of the evaluation of the Delivery Partner.

7.7. The level of internal Council resources required to deliver the Masterplan framework from September 2004 will need to increase to cover:

7.7.1. Managing the Delivery Partner selection process;

7.7.2. Professional fees to cover implications of stock transfer;

7.7.3. Developing the neighbourhood management model especially the interface between retained properties and new and temporary accommodation issues;

7.7.4. Developing the link between off-site developments elsewhere in Brent and the redevelopment proposals in South Kilburn.

8. Next Steps and Further Reports

8.1. Members will receive further reports during the next twelve months about the procurement and selection of the Building Contractors, the selection of the Client-side consultants, the selection of the Design Consultants in relation to the Granville site, the selection of the Delivery Vehicle partner structure and other reports to progress the implementation of the regeneration process.

Background Papers

- **South Kilburn Master Plan files**
- **South Kilburn Master Plan contract**

Anyone wishing to inspect these documents should contact:

Robert Johnson, South Kilburn Housing Project Director,
South Kilburn Regeneration Office, 21 – 23 Peel Precinct, Kilburn
London NW6 5BS

Martin Cheeseman

Director of Housing Services