Slough Borough Council

Report To:	Cabinet
Date:	18 July 2022
Subject:	Slough Urban Renewal - disposals update
Lead Member:	Councillor Anderson, Lead Member for Financial Oversight and Council Assets
Chief Officer:	Richard West, Executive Director Place and Community Steven Mair, Executive Director Finance and Commercial (s151)
Contact Officer:	Dean Tyler, Associate Director Place Strategy and Infrastructure Carmel Booth, Financial Advisor
Ward(s):	All
Key Decision:	YES
Exempt:	Public with exempt appendices under paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972 Act (as amended), as the appendices contain information relating to the financial and business affairs of Slough Borough Council and Muse, and information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
Decision Subject To Call In:	YES
Appendices:	Appendix 1 – Summary of Options Appraisal (September 2021) Confidential Appendix 1 – Financial and Commercial Implications Confidential Appendix 2 – SUR Commercial Overview Confidential Appendix 3 – Site Development Plan: Montem Lane Confidential Appendix 4 – Site Development Plan: Stoke Wharf Appendix 5 – Montem Appropriation Plan

1. Summary and Recommendations

1.1 This report provides an update on the key sites that are owned by the Council (or part-owned in the case of Stoke Wharf) and are optioned to Slough Urban Renewal (SUR). The report includes a number of recommendations which will enable the disposal of key sites to generate capital receipts for the Council, reduce the Council's financial commitments and secure best value in accordance with the Council's Asset Disposals Strategy and statutory obligations.

Recommendations:

1.2 Cabinet is requested to:

1. Agree to the disposal strategy for the North West Quadrant (NWQ)[1] site and to delegate authority to the Executive Director Place and Community in consultation with the Lead Member for Financial Oversight and Council Assets and the section 151 officer to pursue that disposal strategy in accordance with the draft Heads of Terms[2], and to report back to Cabinet for approval to dispose of NWQ on the final agreed disposal terms subject to the demonstration of best value consideration for the disposal.

2. Agree the updated Site Development Plans (SDPs) for Montem Lane and Stoke Wharf which recommend a disposal strategy for each site and to delegate authority to the Executive Director Place and Community in consultation with the Lead Member for Financial Oversight and Council Assets and the section 151 officer to pursue that disposal strategy (including the negotiation and agreement of all legal documents that give effect to the Sale) and to report back to Cabinet for approval of the Adopted SDP's and the final agreed disposal terms, subject to the demonstration of best value consideration for the disposal.

3. Agree to extend the current Option Agreement for Stoke Wharf up to 31st December 2022 to allow time for the disposal strategy referred to at 2) to be pursued including (i) the marketing of the Stoke Wharf site and (ii) the agreement of legal documents needed to permit the disposal of the Stoke Wharf site prior to development.

4. Delegate authority to the Executive Director Place and Community in consultation with the Lead Member for Financial Oversight and Council Assets and the section 151 officer to approve a further extension to the Stoke Wharf Option Agreement, depending on the outcome of the marketing exercise to be undertaken in Autumn 2022, to allow for the Sale to complete in early 2023.

5. To note that those parts of the Montem site which belong to the Council are no longer required for the purposes for which they are presently held, and recommend to full Council that officers be authorised to take all necessary steps to appropriate the site (shown edged red on the plan in Appendix 5) for planning purposes to facilitate the carrying out of development, re-development or improvement on or in relation to that land.

6. To note the proposed timetable for the site disposals in para 3.1.6 and further Cabinet decisions required to complete the disposals.

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[1] Also known as the Thames Valley University (TVU) site.
[2] The key principles of the draft Heads of Terms are set out in Commercial Appendix 1.

Reason

1.3 The development of the key sites opted to the SUR partnership would require significant investment from the Council over the next five years based upon previously agreed plans. A disposals strategy is therefore considered to be the most effective way to enable the Council to continue to deliver its financial and strategic objectives. Agreement to the recommendations in this report would reduce the Council's future financial commitments, generate disposal receipts at the earliest opportunity, reduce the Council's borrowing requirements and significantly reduce the Council's risk profile.

1.4 The disposal of the three SUR opted sites strongly aligns with the objectives of the Council's Asset Disposals Strategy and supports the delivery of the priority in the new Corporate Plan for "a council that lives within its means, balances the budget and delivers best value for taxpayers and service users."

1.5 The disposal of these key sites will enable the Council to simplify its capital and corporate portfolio and enable the Council to focus on its core activities and services.

Commissioner Review

"The issues described in this report are complex, but the recommendations reflect the need to secure value for money, reduce the Council's financial liabilities and risks. The commissioners are therefore content with the report (including the associated Part 2 report."

2. Report

Introduction

2.1 In 2013, the Council entered into a joint venture Partnership Agreement (SUR) with Morgan Sindall Investments Ltd[3] to deliver a number of development schemes, including community projects. Confidential Appendix 2 provides a summary of the key governance, operational and commercial arrangements in place for SUR (these details are subject to confidentiality restrictions as set out in the Partnership Agreement(s)). A number of Partnership Agreements have been entered into as the partnership has evolved to include more potential sites

2.2 This report provides an update on the current position and proposed next steps regarding the Council's negotiations with Muse re the NWQ, Montem Lane and Stoke Wharf sites. SUR has an option to acquire these sites from the Council under the terms of a series of legally binding Option Agreements. Under the terms of the Options Agreement, these sites cannot be disposed of to a third party without permission from Muse, which restricts the viable options available to the Council.

2.3 It should be noted that the Partnership Agreements for NWQ/SUR permits (a) the development of the sites by the JV and (b) site disposals. The current Stoke Wharf does not permit the disposal of sites.

[3] Changed to Muse in Oct 2020 due to a group structure change.

2.4 Under the terms of the NWQ/SUR Partnership Agreements, if sites are developed by SUR, as a 50:50 partner in the joint venture, the Council provides capital (in the form of equity) to deliver the schemes, including its land value (at market value). Prior to when the schemes reach unconditionality (contract close), and proceed to construction, the Council's land value is calculated using an open book basis as set out in the relevant Option Agreement. The Council receives a loan note (equity) equivalent to the land value. The Council receives the capital for the land value from the net proceeds of all sales (i.e. out of the total profits generated from the fully sold scheme). The repayment of land value is made prior to the distribution of any profits to the members (Muse and the Council).

2.5 Based upon the terms of the existing agreements and latest SUR financial projections, to maintain the Council's 50:50 status in the joint venture, the Council would be required to make further capital commitments estimated to be in excess of £27m[4] over the next 5 years (across the three key sites). This capital investment is in addition to the equity provided by the Council in the form of its land value. Confidential Appendix 1 provides more detailed commercial/financial information on the Council's projected future capital commitments and other financial implications, including the Council's potential liability for WIP costs should these schemes not proceed and potential profit share. Given the Council's current financial challenges, a commitment of this scale is challenging.

2.6 The Partnership Agreement(s) sets out the mechanism for the valuation of sites in the event of any disposal.

2.7 In view of the Council's financial position and a significant reduction in the Council's capital programme, Officers have sought to review the Council's options to enable the continued development of these sites to deliver the anticipated regeneration benefits to Slough's residents. Officers have considered options to reduce the Council's future financial capital commitments, generate capital receipts/income, reduce its ongoing costs and/or liabilities associated with SUR and minimise financial risk to the Council.

2.8 A report on the proposed next steps regarding two further sites within the SUR partnership, namely, Haymill and Wexham, is planned for the autumn.

Options review – September 2021

2.9 In August 2021, Montagu Evans were instructed to undertake an Options Appraisal of the key SUR development sites and a Report was provided to LMD in September 2021. A number of options were considered including continuing with existing arrangements and investment plans, terminating existing partnership arrangements and varying the Council's equity / participation on a site by site basis (including the disposal of sites).

2.10 Following legal advice it was agreed that there no/limited grounds for terminating the existing arrangements and that the case for continuing with the investment plans was not viable due to the Council's costs and risks associated with that strategy.

[4] Costs are based upon 2021 estimates. Due to construction material price increases and general inflationary pressures, these costs are likely to increase.

2.11 The preferred option was to seek to renegotiate the Council's relationship in each of the key sites to reduce/remove the Council's equity position on a site-by-site basis to move away from the 50% joint venture commitment on each development site (i.e. a site disposal).

2.12 It was agreed that this approach would:

- Significantly reduce/eliminate any further Council capital commitment requirements.
- Reduce the Council's future liabilities in relation to abortive costs/Work in Progress (WIP) costs (under the terms of the Partnership Agreement, all members are eligible for 50% of these costs should a site not proceed to development).
- Reduce the Council's exposure to additional development risk and costs/site losses[5].
- Enable Muse (or another third party) to continue to develop the sites in line with the original SDPs to deliver the regeneration benefits and new homes, including affordable homes.
- Require Muse to agree to any sale due to the terms of the Options Agreement.
- Reduce any potential upside financial benefit/profit to the Council.
- Enable the Council to reduce its debt and borrowing costs and restructure its role across a number of key sites (moving to an enabling rather than a development role).

2.13 Appendix 1 to this report provides a summary of the options considered in September 2021 together with the pros and cons of the various options.

2.14 Appendix 1 excludes the financial implications of these options – this information is provided in the Confidential Appendix 1. Confidential Appendix 1 also provides a summary of the progress made between October 2021 and June 2022 in pursuing the disposal option. This has included extensive negotiations with Muse, recent market valuations for key sites and further financial and commercial analysis.

SUR Sites Overview

2.15 The current position regarding the three key sites that are the subject of this report and opted to SUR is set out below.

North West Quadrant

- The Council acquired the former TVU site in 2016 for £24.2m to facilitate a mixed-use regeneration scheme. The Council entered into a joint venture with Muse (NWQ LLP) and entered into an Option Agreement for the site which facilitated Muse's funding of the masterplanning and other pre-development due diligence.

- A NWQ masterplan was prepared in Spring 2021 which proposed c 1300 apartments and 45,0000sqm of commercial space. Muse subsequently prepared a detailed Business Plan in accordance with the Option Agreement

[5] Due to, for example, an economic downturn, inflationary pressures, abnormal site issues or unexpected costs.

prior to preparing a planning application. Following the Council issuing the S114 Notice, the NWQ joint venture Business Plan adoption process was put on hold. This effectively paused all work including progress with the planning application.

- The Montagu Evans Options Appraisal in September 2021 recommended a preferred option for the site which has been pursued in FY 22/23. This has resulted in negotiations with a purchaser to acquire the site/enter into a new (partnership) agreement with Muse. Negotiations have reached an advanced stage where a financial/commercial basis for progressing a sale has been agreed in principle subject to Cabinet approval. Details of the proposed disposal are contained in Confidential Appendix 1. Cabinet will be required to approve the disposal before the end of September 2022 (see timetable in Confidential Appendix 1).

Montem Lane

- SUR has secured full planning permission for the proposed residential development of the Montem Lane site to include 212 new homes. Planning committee approval was granted in Jan 2021 and the S106 Agreement was executed in April 2022.

- Whilst the original Options Review anticipated that the most likely disposal route would be a sale to Muse, Muse/SUR have proposed a revised disposal strategy based upon the disposal of the consented site[6] which is expected to generate a higher capital receipt compared to the alternative options. Indicative market valuations and other financial implications are included in Confidential Appendix 1. This disposal strategy is expected to generate a higher capital receipt for the Council and at an earlier date (compared to the alternative option which would see Muse acquire and develop the site).

- It is proposed that this site is marketed in Summer 2022 with potential suitable housebuilders and that a sale is agreed subject to the demonstration of best value consideration. Cabinet will be required to approve the final disposal once a sale price and terms have been agreed and best consideration can be satisfied.

- It is anticipated that a receipt could be secured before the end of the Financial Year 2022/23, compared with a receipt by mid/late 2024 under the scenario where Muse acquire and develop the scheme.

- The new SDP (Confidential Appendix 3) was approved by SUR members in June 2022 and is subject to approval by Cabinet in July 2022. This sets out the disposal strategy and proposed route.

Stoke Wharf

- A resolution to grant consent for a residential-led scheme of 312 units was made in February 2021. Muse has continued to engage with the Local Planning Authority to progress the S106 agreement and other planning issues. It is

[6] Sale of site with planning permission.

unlikely that this will be resolved before the current Option Agreement is due to expire in August 2022.

- Stoke Wharf Developments LLP is a joint venture within a joint venture. The members of Stoke Wharf Developments LLP are SUR and Waterside Place, which is a national joint venture between Muse and the Canal and Rivers Trust (CRT) which specialises in residential led regeneration of unused waterside areas where the CRT is the landowner within Waterside Place.

- As a result of this structure the Council and CRT are 25% members each of Stoke Wharf Developments LLP and Muse is a 50% member.

- The Council and CRT have each committed its land via Option Agreements that expire in August 2022.

- One of the key actions from the September Options Review was to update the Stoke Wharf appraisal to assess the viability of the proposed scheme. This was completed in January 2022 and is now considered to be unviable by Muse for a number of reasons, including changes to core assumptions in relation to build cost inflation and sales value. As a result, this is not a scheme that Muse wish to develop in isolation. Following an options review including indicative market valuations for the site, Muse, acting as Development Manager for the Stoke Wharf joint venture, have presented a commercial case to the landowners (the Council and CRT) to dispose of the consented scheme at the earliest opportunity. Based upon the market valuations, it is anticipated that this route will enable the Council to secure a higher capital return compared to (a) the Council allowing the existing Option Agreement to lapse in August 2022 and (b) proceeding to sell the Council's land in isolation. Confidential Appendix 1 sets out details of the latest market valuations and the financial implications of pursuing a partial or complete site sale.

- The updated SDP (Confidential Appendix 4) has been prepared by SUR which sets out the business plan in support of the disposal route. The new SDP was approved by SUR members in June 2022 and is subject to approval by Cabinet in July 2022.

- The current Stoke Wharf Partnership Agreement does not include a site disposal mechanism. To facilitate this disposal, it is proposed that the existing Option Agreement is extended to the 31st December 2022 which will provide sufficient time for the joint venture legal documents to be revised in preparation for disposal. Cabinet will be required to approve the final disposal once a sale price and terms have been agreed and best consideration can be satisfied.

3. Implications of the Recommendation

3.1 Financial implications

3.1.1 Confidential Appendix 1 sets out the anticipated financial implications of a disposal strategy. This includes details of (a) the level of Council capital commitments that would be avoided (compared to original investment plans) if a disposal strategy was agreed; (b) the Council's anticipated share of WIP on a site-by-site basis should sites not proceed to development; (c) potential profit share based upon latest available plans; and (d) potential disposal receipts to the Council based upon market information/draft heads of terms. This information has informed the selection of a preferred option on a site by site basis.

3.1.2 Stoke Wharf and Montem sites will be marketed for sale in FY 22/23 and a decision to sell would be informed by market offers to satisfy best consideration requirements. A s123 best consideration case will be produced for each site.

3.1.3 The financial implications for the NWQ site will be confirmed following agreement and approval of the heads of terms. This will be supported by a s123 best consideration case.

3.1.4 The recommendations as set out in this report will enable the Council to reduce its ongoing financial commitments and realise value from key sites that are opted to SUR. It will also provide more certainty over the Council's borrowing and resource requirements. These principles will minimise the Council's commercial risks and exposure.

3.1.5 As a result of ongoing negotiations and uncertainty with regards to disposal receipts, Confidential Appendix 1 provides a range of potential receipts (if applicable) based upon existing appraisal data and latest available market information.

3.1.6 It is anticipated that the receipts to SBC would be phased over 3 years, with the majority in FY 22/23. These are anticipated to be:

Site	**Approx. timing**
NWQ	Q4 FY 22/23
Montem Lane	Q4 FY 22/23
Stoke Wharf	Q1 FY 23/24

3.1.7 It is likely that accounting adjustments will be required following the disposal of these sites due to differences between the Council's asset acquisition/ associated additional costs (fees, demolition, security costs, resource costs) and the disposal proceeds. These will be determined on a case-by-case basis and the Council's asset disposal report and s123 best consideration case will set out any implications.

3.2 Legal Implications

3.2.1 The Council has statutory powers to dispose of land, including under the:

- Section 123 of The Local Government Act 1972;
- Housing Act 1985;
- Section 233 of the Town and Country Planning Act 1990;
- Local Authorities (Land) Act 1963;
- Housing and Planning Act 2016; and
- Localism Act 2011.

Under section 123 of the Local Government Act 1972 (LGA 1972), the Council has a statutory duty to sell land at the best price reasonably obtainable. What is reasonable in any particular case depends entirely on the facts of the transaction. Although there is no absolute requirement to market the land being disposed of, or to obtain an independent valuation, to comply with the duty, the Council should obtain independent professional valuation advice, as a failure to take proper advice can constitute a breach of section 123 of the LGA 1972.

All disposals need to comply with the UK's public subsidy rules. A disposal at less than best consideration means that the Council could be providing a subsidy. Also, where the consideration received includes an obligation to carry out specific works, the arrangement may be caught by the public procurement regime.

3.2.2 The Council's existing joint venture obligations were procured in 2012 under a compliant public procurement procedure. The JV is governed by (amongst other documents) a combination of the SUR Partnership Agreement (PA), the NWQ PA and the individual site Option Agreements (OA).

3.2.4 Section 122 of the Local Government Act 1972 and section 232 of the Town and Country Planning Act 1990 (TCPA) offer the mechanisms under which the Council can appropriate land for planning purposes

3.3 Risk Management

3.3.1 The decision and recommendations required from Cabinet, as outlined in this Report, are intended to minimise financial and commercial risks to the Council whilst enabling a number of key developments to proceed with the intended regeneration benefits as planned. If the principles put forward in the recommendations are not agreed this will result in a delay in the restructuring of the Council's role in each site and as such there are specific risks as summarised in the following.

RISK	SUMMARY	Mitigations to be reviewed
Financial	• Delay to realising capital receipts impact wider financial plans, cashflows and financing • Cost increases (and time delays) to deliver schemes – e.g. construction cost inflation and wage inflation	• Cabinet decision to progress the recommendations of the Cabinet report in principle approach is taken in July 2022 • Sale process for Montem and Stoke Wharf to seek

RISK	SUMMARY	Mitigations to be reviewed
	• Viability of schemes at risk due to changing economic circumstances – construction cost increases, market changes, demand changes • Ongoing Council costs associated with each site • Failure to achieve best consideration • Loss on sale of assets • Higher level SUR operating costs due to an inability to reduce the scale of SUR operations	open market offers with ability to expedite land offers, providing more certainty re best consideration • Progressing a disposal of NWQ to a purchaser not reliant on raising external funding • All capitalised costs to be reviewed on a site-by-site basis to determine the extent of any losses on sale. Details to be included in the asset disposal report as part of a disposal decision • Regular discussion at SUR Board level including revisions to appraisals and market data
Legal	• Delay to negotiations on Heads of Terms • Council continues to be tied in to existing Options – resulting in site paralysis and uncertainty • Potential beach of conditions in the Partnership Agreement in relation to approval of business plans and site conditions • SUR Sites deprioritised over NWQ • Breach of statutory requirements	• Bi-weekly all party Corporate Oversight Board meetings • Regular weekly engagement with all legal and commercial advisors • Bi-weekly meeting with Council and NWQ proposed purchaser on HoT and legal requirements • Ongoing dialogue between members re potential disputes • Each disposal to be supported by a disposal report (to be approved by Cabinet) including a statement on s123 •
Outputs / benefits	• Delay to start on site for key sites and regeneration benefits/homes • Land banking or site flipping – fail to deliver key regeneration schemes and benefits	• Regular risk assessment undertaken by COB and reported to Risk and Audit Board, and, Exec Management Team • Marketing of key sites with reputable housebuilders/ partners with strong track record

RISK	SUMMARY	Mitigations to be reviewed
		• SUR members (incl Council) responsible for agreeing purchaser • Overage agreements for major sites
Reputational	• Unable to agree Heads of Terms and a way forward - schemes will be on hold pending a resolution. Inability to deliver regeneration schemes • Loss of market confidence in local area • Sites remain undeveloped and physically unattractive	• Governance, project management and decision making operate effectively to deliver best value solution for Council, partner and community • If principles not agreed then Council to formulate a Plan B for each site by Q3 FY 22/23 • Phased and managed asset sales programme

3.4 Environmental Implications

3.4.1 No environmental implications have been identified as a direct result of this report.

3.5 Equality implications

3.5.1 No equality implications have been identified as result of the options in this report.

3.6 Procurement implications

3.6.1 The Council has taken legal advice on the potential procurement risks associated with the proposed strategy and changes. No issues have been identified for the Council.

4. Background Papers

None

PART 1

Appendix 1 – Summary of September 2021 Options Appraisal

Note that the original Options Review related to all key opted sites, including NWQ

<table>
<tr><th>Option</th><th>Summary</th></tr>
<tr><td>Option 1: Proceed with the existing contractual joint venture arrangements (without change)</td><td>Under the terms of the existing contractual agreements, the sites would require significant additional speculative expenditure to enable SBC to maintain its 50% share of the joint venture.

Given the Council’s financial position and its requirement to reduce borrowing, reduce costs and limit financial exposure and development risk, this is not considered a viable option for the Council. The Council is required to reduce its capital programme and future commitments.

Update: market conditions continue to change which is likely to increase the Council’s capital requirements and impact upon the viability of some schemes. In addition, the Council’s financial position is clearer; further impacting on the affordability of ongoing capital schemes.</td></tr>
<tr><td>Option 2: Break the current Legal Agreements with SUR & sell sites</td><td>The SBC owned sites are subject to legally binding Option Agreements (OA) for varying lengths of time. Based upon legal advice, this is not a viable option. This is likely to be a difficult case to establish and would be expensive and a lengthy process.

Update: comments still remain valid</td></tr>
<tr><td>Option 3: Sell the sites to Muse to realise land value this financial year</td><td>It is not a viable option – it is not feasible to secure capital receipts for the sale of land in all sites. There is no appetite for Muse to step-in and speculatively acquire the sites within this timeframe.

To achieve this, it is likely that SBC would be required to make significant financial concessions to make this option attractive. Further reductions in the anticipated land receipts would undermine the Best Consideration requirements and it would be difficult for the Council to justify this approach and statutory compliance with s123.

Update: still remains valid – no appetite to acquire in current FY</td></tr>
<tr><td>Option 4: Minimise the Council’s capital investment and risk whilst maximising land receipts <u>[a negotiated disposal of sites – with consent from Muse]</u>

<u>RECOMMENDED</u></td><td>This approach would see SBC not investing any further capital in the sites and would instead re-structure its commitment on a site by site basis. This could be a partial or full sale to Muse (or another party but only with agreement by Muse due to the terms of the Options Agreement).

From the review of the Council’s options, this option provides the ability to maximise the Council’s capital recovery within an optimum timescale whilst enabling the Council’s regeneration aims to be progressed by a third party. Best consideration cases would be essential to any decision to dispose.

The level of Council control following the disposal of the sites will be limited to relevant contract conditions, but it will not have any day-to-day involvement as a Developer/Investor.

Update: Initial assessment of this option suggested that Muse would be most likely to acquire the sites, however this has now been widened to include a potential SUR disposal due to market values (details set out in</td></tr>
</table>

Option	Summary
	Confidential Appendix 1). This could initially be achieved for Montem, NWQ and Stoke Wharf - (subject to receiving and agreeing acceptable disposal offers/terms. The agreed way forward on other sites would be subject to revised SDPs.
Option 5: Minimise further capital investment to land only whilst maximising land receipts	This is a hybrid version of option 4 – the difference being that SBC could leave its land value in each site invested as "equity" in return for a profit share in proportion to its equity holding. This would delay the timing of the Council's land receipts from each land disposal until the completion and sale of residential units to realise the (anticipated) net profit on each scheme. This would continue to expose the Council to development risk and delay recovery of capital by a number of years. For these reasons this is not considered to be a suitable option in the circumstances. *Update: comments remain valid. A partial disposal does not satisfy the Council's objectives of reducing financial risk, costs, capital commitments and debt.*