Slough Borough Council

Report To:	Special Cabinet
Date:	7th March 2023
Subject:	Disposal of Council Asset at North West Quadrant
Lead Member:	Councillor Anderson, Lead Member for Financial Oversight and Council Assets
Chief Officer:	Pat Hayes, Executive Director of Housing and Property Steven Mair, Executive Director Finance and Commercial (s151)
Contact Officer:	Pat Hayes, Executive Director of Housing and Property
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 Slough Urban Renewal LLP, 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:	Confidential Appendices: 1 – Disposal Summary: Financial and Commercial Implications 2 - Section 123 Best Consideration Report including Heads of Terms for land sale 3 - Summary of Transaction Terms

1. Summary and Recommendations

1.1 This report seeks approval for the disposal of land assets at the North West Quadrant (NWQ) site which is one of a series of sites that are owned by the Council and opted to the Slough Urban Renewal (SUR) Partnership.

1.2 Following a Cabinet decision to approve a disposal strategy for the NWQ site in July 2022, this proposed sale has been subject to a due diligence process, further analysis and deal negotiation and reflects the best consideration reasonably obtainable for the disposal of the asset in accordance with section 123 of the Local Government Act 1972. The asset sale will generate a capital receipt which will be applied to reduce borrowing and the Council's Minimum Revenue Provision (MRP).

Recommendations:

1.3 The Cabinet is recommended to:

a) Agree to the disposal of the NWQ site substantially in accordance with the Heads of Terms at Appendix 2, and to delegate authority to the Executive Director of Housing and Property, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to enter into the Sale Contracts and the related legal documentation in connection with the disposal and to the approve the final disposal terms.

b) Agree to the key terms of related corporate transactions that will be required as a result of the disposal of the site, including the treatment of associated pre-development costs and steps preparatory to the winding-up of NWQ LLP, and to delegate authority to the Executive Director of Housing and Property, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial, to enter into all related legal documentation, and to approve the final terms.

Reason

1.4 The early disposal of surplus assets is a key element of the Council's new Corporate Plan, which includes a strategic priority to be "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users." Agreement to the recommendations in this report will contribute to the reduction in the Council's future financial commitments/liabilities, generate disposal receipts and reduce the Council's borrowing and MRP. The proposed asset sale has been subject to a due diligence process and reflects best consideration for the disposal of the asset in accordance with section 123 of the Local Government Act 1972.

1.5 The disposal of this asset will also enable the Council to simplify its property portfolio and corporate structure and enable the Council to focus on its core activities and services. It will include the winding up of NWQ LLP and will simplify SUR LLP and the Council's partnership arrangements.

1.6 The site is subject to an Option Agreement in favour of NWQ LLP, therefore, the Council's options to dispose of the site are limited for reasons as outlined in the Options Appraisal.

1.7 On 18 July 2022, Cabinet agreed that the Council should pursue a disposal, via SUR, to generate a capital receipt, reduce the Council's future financial commitments/ liabilities in relation to SUR and to best enable the delivery of a number of strategic objectives; including the delivery of new housing (including affordable housing). The recommendations in this paper are aligned with the disposal strategy previously approved by Cabinet in July 2022.

Commissioner Review

"This disposal is essential to meet the financial recovery goals and is considered to be best value in the market today. The recommendations are strongly supported."

2. Report

Introduction

2.1 On 21 June 2021, Cabinet approved the Asset Disposal Programme which outlined the principles and process for disposing of surplus General Fund land and property assets to reduce borrowing costs. The report highlighted that the Council would seek to dispose of surplus assets to support the following objectives:

- Provide capital receipts to contribute to the 2022/23 budget by reducing MRP and borrowing costs; and
- Provide capital receipts to meet Capitalisation Directive commitments and align with the Medium-Term Financial Strategy (MTFS) to reduce overall borrowing costs.

2.2 The Asset Disposal Programme approved in June 2021 set out the following sequential steps for disposing of assets:

- Identify assets for disposal;
- HB Public Law to produce detailed Reports on Title for each asset identified for disposal;
- Asset valuation – obtain up to date independent valuations to provide a benchmark for assessing best consideration;
- Methods of disposal - take advice on the most advantageous method of disposal; and
- Officer Delegation – authorise the Executive Director (Place), subject to proper legal/valuation of advice to dispose of assets up to £1m in value after consultation with the S151 and Monitoring Officers.

2.3 As part of the Council's budget setting process for 2022/23, the Council approved a Treasury Management Strategy (TMS) for the period 2022/23 to 2026/27 on 10 March 2022. A key element of the TMS is the need to reduce borrowing to bring the Council back onto a more sustainable financial footing.

2.4 The current financial strategy assumes that the Council will generate £200m in total capital receipts in 2022/23 and a further £200m in 2023/24. These will then be used to pay down temporary borrowing and potentially pay off the pension fund deficit. This is a major element of the Council's financial recovery strategy and this transaction is a key part of that.

SUR and NWQ Context

2.5 SBC owns the freehold to the NWQ site at William Street, Slough. The Council acquired the majority part of the NWQ site from the University of West London in April 2017 for £24.2m plus stamp duty and fees. This was approved by the Cabinet in September 2016.

2.6 SBC entered into an Option Agreement (NWQ Option Agreement) with North West Quadrant LLP (NWQ LLP) on 15 November 2019. The NWQ Option Agreement applies to the whole of the NWQ site and is intended to run until March 2028 unless it is terminated early in accordance with its terms or by agreement between SBC and NWQ LLP.

2.7 NWQ LLP was established in November 2019 as a Development Subsidiary of Slough Urban Renewal LLP (SUR). SUR was established in March 2013 and is a 50/50 joint venture between SBC and Community Solutions for Regeneration (Slough) Limited (CSR) which is a Morgan Sindall group company.

2.8 NWQ LLP has incurred pre-development costs of £1.6m in respect of the proposed development of the NWQ site in accordance with the terms of the NWQ LLP Partnership Agreement (PA). Interest is payable of £0.3m. Total WIP plus interest is £1.9m. Under the terms of the PA, 50% of the WIP cost plus interest is payable by SBC in the event that the NWQ scheme does not proceed.

2.9 In August 2021, the Council commissioned Montague Evans to undertake an Options Review to consider long term options for SUR including the Council owned sites that are opted to SUR LLP/NWQ LLP. The contractual obligations and restrictions imposed on the opted sites means, that whilst the principles of the Asset Disposal Programme steps above (Section 2.2) remain valid, the asset disposal approach and associated considerations for the sale of the NWQ site are more complex.

2.10 In the context of the proposed disposal of the NWQ site (which includes the adjacent TVU car park), the following key points should be noted:

2.11 The original plans for the site were based upon the Council selling the site on a phased basis to NWQ LLP, prior to development of each phase of what was anticipated to be a 10-year development scheme. This would have required significant capital investment by the Council which is no longer possible given the Council's financial position.

2.12 Following the Council's decision to consider disposal options for the SUR opted sites, Muse confirmed at an early stage that it did not wish to acquire the NWQ site. This was not unexpected as Muse's operating model is based upon partnering with landowners rather than acquiring land speculatively.

2.13 The July 2022 Cabinet Report provided an analysis of all options available to the Council, and these are summarised again in Section 2.30 onwards of this Report. Given the Option Agreement in favour of NWQ LLP, the Council's options for disposal are constrained as Muse is required to agree to any disposal.

2.14 Should Muse not be in favour of a disposal, there are a number of options that could be considered including identification of grounds for termination and pursuing a legal route to terminate the Option, mutual agreement of a premium payment to Muse (to facilitate a termination of the Option) or allowing the option to lapse. Clearly, there are risk, time, cost and reputational issues associated with all of these options and these were set out in the July 2022 Cabinet Report.

2.15 Following the Options Review, Montagu Evans' recommended option was for the Council to enter into dialogue with a named third party purchaser to acquire the site and for this third party to enter into a partnership arrangement (or equivalent) with Muse. i.e. the third party would effectively step into the Council's position. This option was agreed by Cabinet in July 2022.

2.16 The key reasons for recommending the named third party as a "special purchaser" are:

- Muse have an ongoing relationship with this purchaser on a number of comparable high profile regeneration schemes and partnerships and it is considered to be more likely that both parties may be able to negotiate a satisfactory new [development] arrangement and proceed to development within the shortest timescale.
- The purchases indicated a willingness to step into the Council's role and is seeking to play a more active role in supporting strategic town centre developments where its role as land owner will facilitate multi-phased place-making projects. There is a clear alignment of strategic objectives between the Council and the purchaser.
- A sale to the potential purchaser can enable the Council to seek an expedited disposal of its land whilst satisfying Best Consideration requirements.

The NWQ Disposal

The Site

2.17 In the context of the proposed disposal of the NWQ site the key points to note are:

2.18 A masterplan was approved by Council at Cabinet in June 2020. The masterplan includes a provision at NWQ for c.1300 residential units, commercial offices c.450,000sqft and leisure/retail.

2.19 The latest masterplan proposals put forward by Muse include 1,340 residential units, with a provision of 25% affordable housing (split 50:50 between intermediate and Slough living rent), and a provision of 467,180 sq. ft. NIA of office space and 43,900 sq. ft. GIA of retail/F&B space.

2.20 The updated proposed masterplan would need to be approved and planning permission sought for the proposals. The site does not benefit from planning permission.

2.21 NWQ LLP reached a stage in February 2021 where a Business Plan for the NWQ scheme had been approved by the JV Board. However, this was not approved by the Council in its capacity as 50% shareholder in NWQ LLP due to the S114 Notice which resulted in speculative capital projects being paused. As a consequence, the planning application related work was put on hold too.

2.22 A full site overview is provided within the Best Consideration Report (Appendix 2).

Negotiations

2.23 In October 2021, the Council instructed Montagu Evans to enter into discussions with the identified third party re the potential sale of NWQ and to enter into discussions with Muse to agree on the corporate changes required as a result of the disposal (e.g. the treatment of WIP costs and winding up of NWQ LLP) and to facilitate a new partnership arrangement (or equivalent) between Muse[1] and the purchaser.

2.24 The third-party purchaser instructed their due diligence team in November 2021 to review the NWQ scheme and undertake a full commercial, financial and legal due diligence review. This resulted in a period of negotiation regarding the sale price and key terms, which has resulted in the recommended Heads of Terms as contained within Appendix 2.

2.25 It is important to note that the purchaser is acquiring the NWQ site only and is not acquiring any interest in NWQ LLP. As a result, the NWQ Option Agreement (currently between SBC and NWQ LLP) will not be fit for purposes once the NWQ site is transferred to the purchaser. Therefore a series of legal agreements will be required to facilitate the key principles of the overall transaction. A summary of the key transaction terms is provided in Appendix 3 and the key headlines are stated below.

2.26 There are three key components of this transaction that relate to SBC and a further component that primarily relates to the purchaser and CSR only:

- ***Land Sale*** – Sales Contract and Transfer of NWQ site plus associated legal agreements in relation to matters including demolition works, hoarding, highways and overage (between the Council and purchaser);
- ***Option Arrangements*** – All parties have agreed that the NWQ Option Agreement will be novated by SBC and NWQ LLP to the purchaser and CSR on completion of the Transfer of the NWQ site from SBC to the purchaser. The Deed of Novation will also contain terms regarding SBC's liability for WIP and interest;

[1] It should be noted that the contracting entity within the Morgan Sindall Group is expected to be CSR and not Muse

- ***Corporate Changes*** – Separate agreements to deal with the NWQ WIP costs and other corporate matters such as termination of existing agreements and the winding up of NWQ LLP; and
- ***Development Agreement*** – A Development Agreement (DA) is required to be agreed between the purchaser and CSR only and this is required to be agreed within 12 months of the acquisition date. SBC is not a party to this agreement although the DA is of importance to the Council as it will remain liable for its share of NWQ WIP until the DA signed. (See Appendix 1 for further details).

Valuations

2.27 All of the Council's assets were valued at 31 March 2022 by the Council's independent valuers Wilks Head Eve LLP. Assets are held at fair value in line with the accounting standards. Fair value measures the "highest and best" value in the most advantageous market for an asset (i.e. this method of valuation includes considering alternatives used for the asset as well as its current use).

2.28 For valuation purposes, NWQ is considered to be an "asset under the course of construction" and as a result its value for accounting purposes is based upon its acquisition costs plus additional costs incurred to date.

2.29 Valuation details are set out in Appendix 1. The Best Consideration Report (Appendix 2) also provides a range of market values as part of its consideration of Best Consideration.

Purchaser

2.30 Details of the purchaser are set out in the Confidential Appendices. The purchaser was selected on the basis of their established track record in the delivery of projects throughout the UK with a town centre regeneration focus.

2.31 In addition the purchaser is reputable and has funds in place to proceed with a sale of this scale and quickly progress to development.

Options Considered

2.32 As set out in July 2022 Cabinet reports, the Council considered a number of options in relation to NWQ including:

- Termination of the Option Agreement and sale to a potential third party;
- Continuation of the original plans for the site; and
- A sale to an identified third party with aligned strategic objectives and an interest in partnering with Muse.

2.33 Continuing with the existing plans was dismissed at an early stage due to the Council's financial position. This would have required a significant capital investment and would also expose the Council to significant development and commercial risks.

2.34 The Options Review concluded that the Council's ability to dispose of the site easily and quickly was heavily constrained due to the existing Option Agreement which would need to be terminated either (i) by agreement between the Council and Muse (most likely in return for a termination payment from the Council to Muse); or (ii) unilaterally by the Council if the Council was able to find grounds to justify the Council's termination of the Option Agreement for Muse default.

2.35 The existing Option Agreement with NWQ LLP restricts the ability of the Council to sell the land without a potentially significant reduction in the receipt to reflect breaking the existing contract position with Muse (a premium payment).

2.36 The Best Consideration Report sets out further commercial and financial reasons for not pursuing this option.

2.37 The Montagu Evans review recommended, informed by legal advice, that the Council should enter into discussion with the named potential purchaser to assess their interest in acquiring the site and continuing the partnership with Muse.

2.38 This option has been pursued and has resulted in an agreed set of terms in relation to the site sale and as of the date of this report, the majority of the key terms in relation to the other aspects of this transaction have been agreed. Any outstanding matters have been identified in the Appendices.

2.39 Following the disposal, the Council will not have any direct control or influence over the site other than through the planning process. If the Council were to seek influence via contractual controls at this stage, it would compromise the saleability and valuation of the site, and potentially the Best Consideration case.

2.40 Therefore, the sale to this third party based upon the current commercial terms is considered to provide the highest return to the Council, in the shortest timescale for the least risk whilst minimising future financial exposure. Given the track record and financial standing of the purchaser, the likelihood of this scheme being delivered is considered to be very high.

3. Implications of the Recommendation

Financial Implications

3.1 The main part of the site was acquired in 2017 for £24.2m plus stamp duty of £1.4m. At the time it was recognised that the Council paid a premium for the site although this was considered to be justified on the basis that the Council was able to successfully assemble a series of sites under one ownership in one of Slough's key strategic locations.

3.2 The sale of the site will generate a substantial cash receipt for the Council which will be payable in one payment in March 2023. The financial terms associated with the unconditional offer are outlined in Appendix 2.

3.3 The purchaser has all of its governance/internal approvals and funding is in place for an exchange and completion in March 2023.

3.4 To enable the sale, the Council are required to complete the demolition works to the former Grove Academy buildings and to secure the site appropriately in accordance with the agreed demolition specification and agreed works in relation to the hoarding on site. It is anticipated the demolition and hoarding work will cost c £0.48m. These works are underway and completion is due by the end of March 2023.

3.5 There will be a small retention payment of [£0.17m] from the gross purchase price pending the practical completion of the contracted enabling/demolition works, anticipated by the end of March.

3.6 Under the terms of the Partnership Agreement, each partner is liable for 50% of the WIP costs plus interest, should the NWQ scheme not be developed. As the purchaser is acquiring the site, and not NWQ LLP, these liabilities remain with the SUR LLP.

3.7 Based upon negotiations, a revised arrangement has been agreed which is set out in Appendix 1 and 3. This includes the Council paying to CSR (i) 50% of the total interest payable upon completion (£0.16m) and (ii) 50% of the WIP only if a Development Agreement cannot be agreed within 12 months of the sale of the site. The liability for the remaining 50% of the interest is retained by SUR and is payable out of distributable profits / future site sales.

3.8 The Council and SUR have each obtained tax advice, particularly in relation to the deal structure and in relation to SDLT and VAT. The key points to note are:

3.9 The Council has not opted to tax the sale of the site to the purchaser and it will be exempt for VAT purposes.

3.9.1 SDLT will be payable on any interest payments on completion of the Deed of Novation which is anticipated to be £0.001m (subject to minor change as final terms are agreed re interest payable).

3.9.2 SBC can apply to HMRC to defer its SDLT liability in respect of its share of WIP costs which is expected to be £0.36m should a Development Agreement not be agreed within 12 months after completion of the sale (£nil if a Development Agreement is agreed).

3.9.3 The Council has claimed VAT on earlier demolition costs for the site, therefore the Council's VAT partial exemption calculations will require adjustment to reflect the sale of the site. There is headroom (before the de minimus limit is reached) in previous years which can be used to accommodate these additional costs although the Council's PE calculations will require adjustment and resubmission.

3.9.4 In summary, the Council will:

- Receive a capital receipt for the sale of the site in March 2023;
- Pay SDLT as outlined in this report and based upon external tax advice;
- Pay CSR £0.16m upon completion in relation to interest payable on WIP costs funded to date;
- Be required to recalculate its VAT partial exemption calculations;
- Not have any ongoing operational costs associated with the site (security, demolition, utilities etc);
- Have a potential liability for WIP/interest costs should a Development Agreement not be agreed between the purchaser and CSR within 12 months, but noting that the risk of incurring these costs is considered to be low due to the likelihood of CSR and the purchaser agreeing a Development Agreement to develop the site in that timescale; and
- The potential for any overage payments to the Council is likely to be limited and would be payable should the purchaser sell the site on to a third party within 3 years without first obtaining a substantive planning permission.

Legal Implications

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

- 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.

3.11 Under section 123 of the Local Government Act 1972 (LGA 1972), the Council has the power to dispose of land in any manner it wishes, subject to certain provisions. The Council has a statutory duty to obtain the best price reasonably obtainable, subject to certain exemptions.

3.12 What is reasonable in any particular case depends entirely on the facts of the transaction. Case law has determined that whilst 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. The Council has received independent professional valuation advice that the proposed sale is at the best price reasonably obtainable (see Appendix 2).

3.13 The Council has received expert legal advice throughout the negotiations and particularly in relation to the Sale Contracts and the related legal and corporate transaction documentation in connection with the disposal.

3.14 Special Cabinet has been duly convened in accordance with the requirements of Part 4.4 of the Constitution (Executive Procedure Rules).

Risk Management Implications

3.15 The recommendations required from Cabinet, as outlined in this report, are intended to improve the Council's financial position, by realising capital receipts which can then be used to repay Council borrowing from the existing high level and reduce debt servicing charges in the form of interest and MRP. If the recommendations are not approved this will delay the Council being able to return to a financially sustainable position. Specific risks are summarised below:

Risk	Summary	Mitigations
Financial	Delay in realising capital receipts from assets sales will delay the Council's financial recovery Failure to agree a satisfactory deal may result in Council liabilities (Site WIP) Unexpected tax liabilities or matters that require action (e.g. applications to defer tax or apply allowances)	Cabinet decision to be requested only when there is with sufficient information to inform that decision Cabinet to approve officers to proceed with the sale to achieve the stated exchange/completion date Simultaneous agreement of land sale agreement and corporate agreements to ensure that the Council's WIP exposure is addressed at the point of land sale and not afterwards Early view on Best Consideration matters including market valuations External advice on the financial, commercial property and tax implications of all aspects of this transaction
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge	Independent assessment of Best Consideration Council Officer oversight of the valuation, and sales process via the SUR Board and the Council's COB. Plus regular meetings between the Council, Muse and the purchaser The Council has appointed external property advisors to advise on land valuation There are clear separation of duties within the Council with regards to its SUR roles and Council roles The Corporate Oversight Board meets on a bi-weekly basis to assess progress, deal with issues, make decisions (within its powers), and provide robust governance and oversight Disposal decision has been taken by Cabinet in compliance with the Constitution

Risk	Summary	Mitigations
Legal	Failure to ensure legal title/deeds etc which could delay or halt sale Delay to contract negotiations Non-compliance with the terms of the Partnership Agreement	Legal title reports obtained in advance SUR Corporate Oversight Team meet bi-weekly to discuss progress and compliance – includes legal, financial, commercial and property input Weekly meetings between the Council and SUR to monitor critical requirements to enable exchange/completion At least weekly all parties meeting to provide oversight of the transaction and associated agreements required Legal advisors to this project were engaged in the original set up of the Partnership Agreement and are familiar with the key terms that are relevant to this transaction
Reputational	Unable to agree a way delaying the disposal and an inability to deliver capital receipts in line with Plan Failure to agree a deal with purchaser which could damage long term relationships Challenges to procurement process which could damage reputation of all parties	Governance, project management and decision-making operate effectively to deliver asset disposals on time and best consideration for the Council Regular engagement with all parties at a senior level to resolve issues and agree key commercial terms Procurement advice taken throughout the process plus the purchaser has issued a Voluntary Transparency Notice) VEAT notice to ascertain and mitigate any risk of a procurement challenge to the arrangements. The end of the standstill period will be before the Cabinet meeting

Environmental Implications

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

Equality implications

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

Procurement implications

No issues have been identified for the Council.

Workforce implications

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

Property implications

This report will directly impact on the Council’s property holdings. Full details will be provided via progress reports to Cabinet.

4. Background Papers

July 2022 cabinet report – Part 1 and Confidential