

## Slough Borough Council

<b>Report To:</b>	<b>Cabinet Committee / Cabinet</b>
<b>Date:</b>	11 <sup>th</sup> & 15 <sup>th</sup> July 2024
<b>Subject:</b>	Disposal of the Council's land which forms a part of the Stoke Wharf Project
<b>Lead Member:</b>	Cllr Chahal – Deputy Leader and Cabinet Member for Financial Oversight, Council Assets, Procurement and Revenue & Benefits
<b>Chief Officer:</b>	Pat Hayes – Executive Director (Regeneration, Housing and Environment)
<b>Contact Officer:</b>	Mark Halligan – Programme Director (Property Transformation)
<b>Ward(s):</b>	Central
<b>Key Decision:</b>	YES
<b>Exempt:</b>	NO - Public with exempt appendices under paragraph 3 of Schedule 12A Local Government Act 1972 – Information relating to the financial or business affairs of the Council
<b>Decision Subject To Call In:</b>	YES
<b>Appendices:</b>	Confidential Appendix 1 – Draft Approved Site Development Plan Confidential Appendix 2 – Commercial & Financial Summary Confidential Appendix 3 – Valuation Report Confidential Appendix 4 – EY Asset Appraisal and Disposal Framework calculations

### 1. Summary and Recommendations

- 1.1 This report sets out recommendations associated with the disposal of the Council's land at Stoke Wharf which is proposed to be sold as part of the larger Stoke Wharf Site ("the Site").
- 1.2 The proposed sale has been subject to a due diligence process and reflects best consideration reasonably obtainable for the disposal of the assets in accordance with section 123 of the Local Government Act 1972.

### Recommendations:

- 1.3 Cabinet is recommended to:

- a) Approve the Draft Formal Site Development Plan (*the Draft Formal Site Development Plan is the form that is presented to Cabinet*).
- b) Approve the Council entering into documentation to give effect to the Formal Site Development Plan and which is anticipated to comprise (i) a Deed of Variation to the Council's Option Agreement with Stoke Wharf Development (SWD) LLP; (ii) (in its capacity as a member of Slough Urban Renewal LLP (SUR) the Sale Contract between SWD (of which SUR is a member) and the Purchaser; (iii) (once the Sale Agreement between SWD and the Purchaser has become Unconditional) a Transfer of the Council's land to the Purchaser (pursuant to the Option Agreement); and (iv) (once the Sale Agreement between SWD and the Purchaser has become Unconditional) a Works Access Agreement between the Council and the Purchaser.
- c) Delegate authority to the Executive Director of Regeneration, Housing and Environment, in consultation with the Lead Member for Financial Oversight and Council Assets and the Executive Director of Finance and Commercial to (i) approve the final form of the Draft Formal Site Development Plan that is presented to the SUR Business Board for its approval; and (ii) to approve the final terms of the documentation required to give effect to the final form of the Draft Formal Site Development Plan.

**Reason:**

- 1.4 The disposal of the Council's land at Stoke Wharf is in accordance with the Stoke Wharf Disposals Strategy agreed by the Cabinet Committee on 18 July 2022. Agreement to the recommendations in this report will contribute to the reduction in the Council's future financial commitments, generate disposal receipts at the earliest opportunity and reduce the Council's borrowing requirements. The proposed land and Site sale have been subject to a due diligence process and the Council's land sale reflects best value and best consideration reasonably obtainable for the disposal of the assets in accordance with section 123 of the Local Government Act 1972.
- 1.5 The disposal supports the corporate priority for "a Council that lives within its means, balances the budget and delivers best value for taxpayers and service users."
- 1.6 The disposal of the Council's land will enable the Council to simplify and reduce its land portfolio holding and its corporate arrangements including progressing towards the winding up of SUR which will enable the Council to focus on its core activities and services.

**Commissioner Review**

*"The Asset Disposal Programme is of significant importance to the Council's financial recovery, and an integral part of the approved financial strategy and 'minded to' Capitalisation Direction. All disposals should be on commercial terms, subject to legal and financial due diligence and demonstrably evidence that the disposal is for best consideration reasonably obtainable. Each site will be unique and any decision to dispose of an asset for less than best consideration, except for disposals to comply with statutory obligations, should be considered on a case-by-case basis with a separate business case justifying the approach and report approved by Cabinet."*

*"The commissioners are content with the recommendations within this report."*

## 2. Report

### Introduction to SUR

- 2.1 In 2013, the Council established the SUR joint venture (JV) with Community Solutions for Regeneration (Slough) (CSRS) Ltd<sup>1</sup> to deliver a number of development schemes. The JV is underpinned by a Partnership Agreement (PA) which sets out the key operational and governance arrangements and sets out the mechanism to facilitate the disposal of sites.
- 2.2 The PA states that SUR is required to produce Site Development Plans (SDPs) for each development site which requires approval from the SUR Board and partner approvals from each of Muse and the Council. SDPs are approved by Cabinet as required and Cabinet also approves the SUR five-year business plan<sup>2</sup> with the most recent SUR business plan approved by Cabinet on 18<sup>th</sup> September 2023 (Minute 38).
- 2.3 Schedule 9 of the PA sets out what information should be included in each SDP including and is based upon a two-phased approach:
- *Draft/Approved Indicative SDP*<sup>3</sup> – this document is prepared by SUR at the start of a development scheme to set out site proposals and to seek partner approval to the development strategy, indicative budgets and project plans. The SDP is “draft” until it is approved by all members; and
  - *Draft/Adopted Formal SDP* – this document is prepared by SUR at the end of a disposal/appointment of a developer to seek partner formal approval to costs and financing arrangements and legal documentation/packs.
- 2.4 A number of Council sites are/were opted to SUR, most of which have now either been fully developed or have been sold by SUR for development by a third party. e.g. the Montem Lane site was acquired by Bellway in 2023. The Council-owned Stoke Wharf land was included in the schedule of SUR opted sites and is now proceeding with a Disposal Strategy to a third party as agreed by Cabinet in July 2022 (Minute 25).
- 2.5 The operating and financing model for SUR, as set out in the PA, is based upon pre-development costs/work in progress (WIP) costs financed by Muse by way of loan notes which are then repayable by the JV out of development profits and/or disposal receipts.
- 2.6 The PA also includes provision for SUR to dispose of sites using the “On-Sale Site” mechanism. The On-Sale Site mechanism was used for the recent disposal of Montem Lane (exchanged and completed in February and August 2023 respectively) and is proposed to be used for the sale of other SUR-opted sites including Haymill in FY 2024/25.

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<sup>1</sup> A wholly owned subsidiary of Muse Places Ltd – referred to in this report as Muse

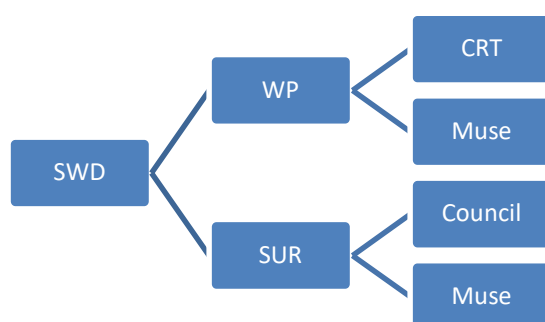
<sup>2</sup> The five-year business plan is updated on an annual basis

<sup>3</sup> Note that the Council’s Cabinet receives “Draft” versions of the SDPs. They are only referred to as Approved or Adopted following subsequent approval by the SUR Business Board

## Stoke Wharf Developments – Governance and Key Developments

- 2.7 The Stoke Wharf Project is a proposed residential development with planning permission for 312 new homes on the site surrounding the terminus of the Grand Union Canal in Slough. This development will be on the Stoke Wharf Site which comprises two adjacent sites owned by each of the Council and the Canal and River Trust (CRT).
- 2.8 Stoke Wharf Development (SWD) LLP was established on 25<sup>th</sup> March 2019 and a Partnership Agreement was entered into which included a business plan for the residential development of the assembled site (the Stoke Wharf Site). SWD is a JV partnership between SUR and Waterside Places LP (WP). WP is a JV partnership between the CRT and Muse Places Ltd. This is JV within a JV structure (see Figure 1).

Figure 1: SWD structure and members



- 2.9 SWD was originally established to enable it to fully develop the Stoke Wharf Site based upon funding to be provided by all partners (through SUR and WP). On 14<sup>th</sup> August 2017, the Council and SUR entered into an Option Agreement relating to the Council's Stoke Wharf land (the "SBC Option Agreement"). Under the SBC Option Agreement, SUR agreed to pay a price for the Council's Stoke Wharf site calculated with reference to its market value at the date the Option was exercised by SUR subject to the calculation principles as set out in that Agreement<sup>4</sup>.
- 2.10 Based upon these principles, a Council land price of £4.23m was agreed and fixed as part of the Cabinet approval of the July 2022 Updated Indicative SDP. The CRT also agreed its fixed land price based upon the same principles. Approvals were sought from the SWD Board in May 2022 to inform the Draft Indicative SDP including the fixed land prices.
- 2.11 The Council's land mainly comprises the former Travis Perkins site which the Council acquired in 2017 (see the financial section for further details). It also includes some adjacent open space and the Council took the relevant steps in January 2017 to advertise the prospective sale of this open space to ensure compliance with s.123 (2A) of the Local Government Act 1972 with the outcome of the advertisement process noted by the Council's Cabinet on 6 February 2017.
- 2.12 Following the Council's s114 Notice in 2021, the Council's capital programme was paused, including capital commitments related to SUR opted sites. This resulted in

<sup>4</sup> Fixed land price to be paid to the Council to be calculated with reference to the Council's acquisition costs, additional associated costs (e.g. demolition costs), stamp duty and an annual uplift

the Council, and all JV partners, reviewing a series of options for the Stoke Wharf Project.

- 2.13 In June 2022, the SWD Board agreed to proceed with a Disposal Strategy of the Stoke Wharf Site (including Council and CRT land) with the benefit of planning permission. Prior to this, a series of options were considered including individual site sales by each of the Council and CRT, a whole-site sale approach, SUR/SWD development of the site and delayed development/sale of the Site. The independent market analysis illustrated that a whole-site sale strategy was more likely to result in a greater overall value for the Site (i.e. marriage value) due to a range of considerations including access arrangements (noting that some of the Council's land is landlocked) and the development opportunity/market appeal of a whole-site compared to two smaller sites. The Site is also allocated for mixed use development within the adopted Site Allocations Development Plan Document (2010) reference SS17 and this determines that the Site should be comprehensively developed.
- 2.14 These options also considered the predevelopment costs that had been incurred to date for the Site, noting that the Council would be liable for its share of costs plus interest on the loans used to fund these costs. Loans funded by SUR are provided wholly by Muse. Loans funded by WP are funded 50/50 by CRT and Muse. The confidential Appendix 1 and 2 provides details of the waterfall model including predevelopment costs, loans and interest.
- 2.15 In June 2022, the Indicative SDP was approved by the SWD Board and set out a strategy for the disposal of the Site on the basis that it would meet a series of shareholder objectives including:
- Improved certainty of a land receipt (and profit share) in the short term;
  - Enhanced ability to demonstrate best consideration and best value;
  - Ability of partners to repay WIP costs, loans and remove future liabilities;
  - Equitable share value created by SWD in the scheme – with SWD securing planning and leading the market engagement and disposal of the Site; and
  - Ability to best meet wider objectives in relation to the delivery of new homes, affordable homes and public realm.
- 2.16 The Council's Cabinet approved the Draft Indicative SDP on the 18<sup>th</sup> July 2022 which set out the options considered at that time. Following on from this decision, planning consent was secured by SWD in June 2023 for 312 new homes, commercial space, parking public realm and park improvements to Bowyers Field. The market was kept under review by SWD's market advisors throughout 2023 and the SWD Board agreed to formally market the site in February 2024 which has resulted in the selection of a preferred purchaser in May/June 2024.
- 2.17 In preparation for sale, the SBC Option Agreement and the CRT Land Sale Agreement were varied on the 29<sup>th</sup> September 2023. The Council's decision was made by means of a Significant Officer Decision (a link to this decision notice is provided at Section 4 below) with reference to the Cabinet decision of the 18<sup>th</sup> July 2022. A Deed of Novation and Variation were entered into on the 29<sup>th</sup> September 2023 to substitute SWD (in place of SUR) as the beneficiary of the Option and to release SUR from its obligations under the SBC Option Agreement. The Deed of Novation and Variation also set out key governance requirements in relation to the

final approval of the Site sale which are reflected in the recommendations made in this report. This includes the acknowledgement confirmed by the Council, SUR and CSRS that SUR's approval of the terms of the sale of the Stoke Wharf Site to the Purchaser must be by means of a Draft Formal SDP that is approved by the SUR Business Board and by the Council's Cabinet.

## Options considered

- 2.18 In July 2022, Cabinet considered a number of options in relation to its land and the Stoke Wharf Site including relevant financial and legal matters:
- Option A – Proceed with existing contractual JV arrangements to develop the site via SWD in line with original plans. This was discounted for reasons as set out in the Confidential Cabinet Paper Appendix focused on costs, financing and risk share arrangements.
  - Option B – Break the existing legal agreements with SUR/SWD to enable the Council to dispose of its land. This was discounted as it was difficult to establish reasonable grounds to support the termination plus the independent market valuation advice illustrated that a whole-site sale was more likely to achieve a greater sales price and capital receipt for the Council. The SUR Partnership was established for a 15-year period up to 2028.
  - Option C - Sell the Council's land to Muse. This was discounted as there was no immediate appetite by Muse to acquire the land for current or future development.
  - Option D - Dispose of site via SWD. This was recommended as most likely to satisfy partner objectives and most likely to demonstrate best consideration due to higher associated marriage value and more attractive market offer due to Site access and enhanced development opportunities.
  - Option E - Hybrid of Option C with a restructured equity/land model to release an early capital receipt. This was discounted as it proved difficult to devise a model that could meet the needs of all parties due to project risks in relation to planning, market conditions and financing arrangements plus this was considered to be unlikely to release substantial receipts in the short term.
- 2.19 Following careful consideration of all of the options, the Cabinet approved a Disposal Strategy – Option D. As set out in the Marketing Section, the market has continued to be assessed on a regular basis by Haslams. Following the latest market engagement and evaluation of all bids, Haslams has stated that the whole-Site sale approach has met the objective of securing a higher overall sales price and is considered to be the strongest outcome for partners compared to single-site sales by each of CRT and the Council. See confidential Appendix 2 for further details including commentary on the red book valuation. The independent red book valuation is included as Appendix 3.
- 2.20 There are no significant changes to the conditions that gave rise to the recommendation to pursue Option D. **Cabinet is asked to approve a disposal which aligns with Option D – Disposal Strategy.** The disposal of the Site will enable the Council to receive a capital receipt upon the granting of a new planning permission, an application for which is expected to be submitted within three months of contract exchange as set out in the Heads of Terms. The capital receipt will enable the Council to reduce borrowing.

## Background

2.21 The Council originally acquired part of the former Travis Perkins site in 2017 for £1.8m plus SDLT and demolition costs of £0.2m. It was acquired with the intention of developing the site within the SUR/SWD partnership. The other land that comprises the Council's Stoke Wharf land interests have been in Council ownership for many years<sup>5</sup>.

## The Stoke Wharf Site

2.22 The Site is located 0.5 miles north of the town centre and is surrounded on all sides by residential neighbourhoods. The Council's land comprises areas of hard standing and open space, lying to the north and south of the terminus of the Grand Union Canal, with a total area of approximately 3.57 hectares (8.83 acres). The open space includes Bowyers Field public park. The site had an area that was a former Travis Perkins depot which was demolished to a slab in 2018.

2.23 The proposed net usable area for redevelopment and to be disposed of by SWD is approximately 1.8 hectares (4.6 acres). The remainder will be released under the option and areas of open space that are due to be enhanced will continue under either CRT or the Council's ownership and management. SBC wished to retain areas within the open space network in order to manage and maintain in the future.

Figure 2: Stoke Wharf Site



2.24 The Council owns the playing fields and adjoining land to the north of the canal and, with the support from SUR, acquired the former Travis Perkins site on Stoke

<sup>5</sup> Bowyer Playfields and land North of Canal were first registered to the Council in 2009 and 1978 respectively and there are no records of any amounts paid for these sites



Road in June 2017. The Council granted SUR an option to acquire the relevant Council-owned Stoke Wharf land on 14<sup>th</sup> August 2017 subject to various conditions being satisfied. SUR entered into a contract to sub-sell the Stoke Wharf land to SWD when SWD was established on 25<sup>th</sup> March 2019. The SBC Option Agreement was varied and novated by means of a Deed of Novation and Variation made between the Council, SUR and SWD on 29<sup>th</sup> September 2023 as a result of which, SWD is now the beneficiary of the Option over the Stoke Wharf land owned by the Council.



- 2.25 The CRT owns land surrounding and adjoining the canal basin which forms part of the Stoke Wharf Site. The SDP states that CRT entered into a conditional contract to sell the land direct to SWD – the conditions were to mirror those in the sub-sale of the Council owned land<sup>6</sup> at Stoke Wharf.
- 2.26 SWD holds an option to buy the land by virtue of the SBC Option Agreement and a Conditional Land Sale Agreement with CRT, both of which were varied in September 2023 in preparation for the combined Site disposal to a third party. The 2023 Deed of Novation and Variation refers to the fixed land prices agreed with the SWD Board and Cabinet in May/July 2022.
- 2.27 The Option Period during which SWD has the right to call on the Council to transfer the SBC land to Purchaser currently expires on 31<sup>st</sup> March 2025. In the event that the Sale Contract to be entered into between SWD and the Purchaser terminates for any reason before the transfer of the Stoke Wharf Site is completed, the Option Period will be extended for a period of 12 months after the date of the termination to allow all parties to consider their options.
- 2.28 The land for development disposal comprises three parcels of land:

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<sup>6</sup> Note that CRT contracts have not been reviewed by the Council although SWD board papers and decisions have been made on the basis of this underlying principle



**Table 1: Stoke Wharf Land Parcels**

		m2	Ha	Acres
<b>Planning red line area</b>		35,738	3.57	8.8
<b>Disposal Land:</b>	<b>LR Title Ref</b>			
Council land (former TP site)	BK 293916 (All)	6,194	0.6	1.5
Council land (part of Bowyers Field)	BK 434463 (Part)	6,155	0.6	1.5
CRT land (former TP and light industrial)	BK 398543 (All)	6,217	0.6	1.5
		18,566	1.86	4.6

2.29 Figure 2 shows the land use parcels and the SDP (Confidential Appendix 1) provides a more detailed plan.

## Planning

2.30 SWD secured detailed planning consent for the Site on the 9<sup>th</sup> June 2023 (application reference no. P/07584/011) and the Judicial Review Period expired without challenge.

2.31 The permission is subject to various planning conditions and the terms of a Unilateral Undertaking (UU). Appended to the UU is a plan that indicates the proposed land for sale with a redline. The planning consent extends to a wide area marked (outlined in green) which is the “planning redline” and includes open space enhancements required to satisfy the planning permission and deliver the residential development. The Council and CRT land, upon which works are required (under the terms of the Sale Contract between SWD and the Purchaser) will be required to enter into a Works Access Agreement with the Council and a Works Licence Agreement with CRT under which the Purchaser will carry out the works to the Retained Land.

2.32 The consented scheme comprises 312 homes (17 mews/townhouses and 295 apartments), including a minimum requirement for 20.5% (64 units) and a maximum of 35% (109 units) on-site affordable housing provision, the amount is dependent on the outcome of an affordable housing review mechanism which is included in the UU. 312 new residential dwellings include a mix of studio, 1 and 2 bed mews houses and 3 bed houses. It is also proposed to provide 329 sqm of flexible commercial space (use class E).

2.33 The policy compliant level of affordable housing within Slough Borough Council is highlighted in the below Table as outlined within “SBC Developer Contributions and Affordable Housing (Section 106) Developers guide Part 2”.

Table 2: Affordable Housing Required

	Type of Requirement	Normal Requirement	Exemption For brownfield sites where development viability is an issue
		Affordable Housing as a % of total development.	
<b>Development Size</b>			
15 to 24 new homes	Financial Contribution	Schedule of rates applied (Table 3)	Not applicable
25 to 69 new homes	Build new homes	30% total Comprising: Rent 25% Intermediate 5%	25% total Comprising: Rent 21% Intermediate 4%
70 or more new homes	Build new homes	40% total Comprising: Rent 25% Intermediate 15%	35% total Comprising: Rent 22% Intermediate 13%

- 2.34 The consented scheme comprises 10 buildings ranging from three to eight storeys which have been designed in response to the existing site conditions and surrounding context. The layout of the buildings is situated around the Canal basin with the intention of creating new areas of public realm that will provide welcoming landscaped spaces and a desirable place to live.
- 2.35 The main access to the site is from Stoke Road. A total of 144 car parking spaces are to be provided including 8 accessible spaces. 312 cycle spaces are included as well as 30 spaces for motorcycles. For charging electric vehicles, 10% of car park spaces are due to have active provision with a further 10% including ducting for future provision.
- 2.36 The consented scheme was designed prior to the revisions to the Building Regulations that came in to force in June 2022 (Part L, O and F). A number of the residential blocks are also now categorised under the Building Safety Act (Part 4) new guidance as Higher-Risk Buildings (HRBs). Whilst the development could feasibly comply with the revised Building Regulations, the HRBs would need additional requirements such as secondary means of escape, cladding and external materials, sprinkler and ventilation systems. In addition, they would need to follow the gateway process and relevant certification. The purchaser will need to make the necessary adjustments in the design in order to have compliant scheme.
- 2.37 Recognising that the potential Purchaser may propose other material changes to the consented development, SWD elected to not make any changes prior to marketing the Site.
- 2.38 The proposed Purchaser intends to prepare their own design and secure a planning permission based on meeting all Building Regulations and safety requirements and it will not feature HRBs.

## Valuation

- 2.39 The former Travis Perkins site was acquired in 2017 as a potential development site and total costs are estimated to be £2.1m, including demolition costs. There are no

acquisition costs associated with the other Council land which forms part of the Council's Stoke Wharf land interests.

- 2.40 The land is held in the Council's balance sheet and is revalued annually at fair value in line with 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 alternative uses for the asset as well as its current use (being limited as open storage only). The Council's land is valued in the accounts at £1.4m (as valued by Wilks Head & Eve (WHE) at fair value)).
- 2.41 The Recommended Offer is for the sale of the Stoke Wharf Site (including the Council's and CRT's land). Further details on the Offer are included in the Confidential Appendix 1 and 2. The Council's expected receipt following the sale of the Stoke Wharf Site is in excess of the value currently recorded in the Council's balance sheet (£1.4m), the fixed land price as agreed by Cabinet in July 2022 (£4.2m) and is in line with the red book valuation for the Council's land.
- 2.42 Haslams have led the marketing process and have provided professional advice on the market conditions and evaluation of bids received. The proposed Purchaser is named in Appendix 1 and has been selected for the reasons contained in that Appendix.

### **Marketing and bids**

- 2.43 The SDP includes a Marketing Report from Haslams including details of the marketing exercise, and evaluation of bids and a preferred bidder recommendation. A summary of non-confidential information is set out below.
- 2.44 Following the granting of planning permission in June 2023, Haslams undertook soft market testing in Summer 2023 to gauge market interest and consider the optimal time to market the Site.
- 2.45 Building upon the recent experience of the sale of the Montem Lane site, the data room information and legal documentation were produced in preparation for marketing and in January 2024, the SWD Board agreed to market the Site in February 2024.
- 2.46 Haslams' sales particulars were uploaded onto Haslams' website and mailshotted to 500+ commercial and residential developers who are active in the local area. Haslams built upon their market engagement with developers throughout 2023 to ensure that known interested parties were contacted. Haslams recommended a guide price of OIEO £12m.
- 2.47 A deadline for bids was agreed of 10<sup>th</sup> April 2024 which is in line with the market norm for similar sites. During this period, Haslams accompanied viewings of the Site with interested parties and once Non-Disclosure Agreements were signed, all were provided with access to the data room set up by SWD's solicitors which contained all relevant planning, legal and technical information relating to the Site.
- 2.48 In total there were 11 interested parties and five bids were received; of which four were taken through to the next round to provide best and final offers (BAFOs). Some bidders increased their offers and the preferred bidder is in excess of the guide price of £12m.

2.49 The SWD Board agreed a preferred bidder on 17<sup>th</sup> May 2024 and is considered to represent best consideration in accordance with s123 of the Local Government Act 1972 due a range of factors including but not restricted to price, commercial terms, credibility of bid and reliability of bid. These factors are set out in the SDP. In addition to these considerations, the red book valuation of the Council's site also supports best value and consideration as set out in Appendix 2.

### Summary of Proposed Terms

2.50 Heads of Terms have been agreed with the Purchaser as appended to the SDP. The Heads of Terms anticipate exchange within 12 weeks from the receipt of a full legal pack.

### Critical Path

2.51 The key activities and milestones are set out in the following table, with exchange anticipated at the end of August following partner approvals in July. Based upon a planning application in November 2024, the completion of sale is expected to be before the end of 2025 although this remains subject to risk should planning be rejected or take longer than anticipated.

**Table 2: Critical Path**

<b>Activity</b>	<b>Date</b>
Options Review	July 2022
Disposal Strategy agreed – Council, CRT, SWD	July 2022
Variations to Options Agreement	Various incl. September 2023
SDP agreed – SWD and Council	May & July 2022
Launch of marketing period	26 <sup>th</sup> February 2024
Deadline for initial offers	10 <sup>th</sup> April 2024
HOTs agreed	28 <sup>th</sup> May 2024
Legal documents issued. To include: <ul style="list-style-type: none"> <li>- Sale Contract between SWD and Purchaser</li> <li>- Deed of Variation to SBC Option Agreement between the Council and SWD (required to allow for sub sale agreement based on the precedent and approach adopted on Montem Lane)</li> <li>- Works Access Agreement (draft document to be entered into between Council and Purchaser on completion of sale)</li> <li>- Crane Licence (draft document which the Purchaser may draw down from the Council after completion of sale)</li> <li>- Transfer (TP1) of the Council land (draft document to be entered into between Council and Purchaser on completion of the sale)</li> <li>- Transfer (TP1) of CRT land (draft document to be entered into between CRT and Purchaser on completion of the sale)</li> <li>- Commercial Property Standard Enquiries (CPSEs)</li> </ul>	Mid-June 2024

<b>Activity</b>	<b>Date</b>
Council Cabinet approval	15 <sup>th</sup> July 2024
Legal negotiations	June/July 2024
CRT, Muse, SUR, SWD approvals	By 31 <sup>st</sup> July 2024
Proposed Purchaser approvals	By 16 <sup>th</sup> August 2024
Exchange of sales contract and completion of the Variation to the SBC Option Agreement	By 30 <sup>th</sup> August 2024
New planning application to be submitted by Purchaser	30 <sup>th</sup> November 2024
Planning Committee	March 2025 (for illustration purposes as used to inform financial modelling and key contract dates)
S106 Agreement executed to enable DCN issued	June 2025
Contract completion (after JR expires)	August 2025
Sales proceeds received by SWD followed by cash receipt to JV partners, loan repayments to be made (in line with the waterfall cash distributions schedule – included as an appendix to the SDP)	August 2025

## **Lessons Learnt**

- 2.52 This transaction has benefited from a series of lessons learnt from recent transactions including the advance sign-off of all title matters and draft legal pack before the commencement of marketing activities to facilitate a more effective and efficient marketing and sales process and contract management arrangements.
- 2.53 The Council's oversight arrangements have worked effectively for this transaction including the biweekly Corporate Oversight Board (COB) meetings. The Council has identified that it is important to maintain full membership of COB Board in preparation for future key transactions.

## **3. Implications of the Recommendation**

### **3.1. Financial implications**

- 3.1.1. The Stoke Wharf Development LLP is a joint venture between Slough Urban Renewal and Waterside Places (which is itself a joint venture between Canal Riverside Trust and Muse). Figure 1 and paragraph 2.8 above set out the relationship between these entities and the Council. Whilst notionally 50/50 JV arrangements the contractual arrangements determine the actual cash waterfall arrangements between the various partners arising from the disposal of the site. Those arrangements are set out in exempt appendices to this report.
- 3.1.2. The playing fields and open space have been in Council ownership for some time (as noted in Section 2) and the Council acquired the former Travis Perkins site in 2017 and has spent £2.1m on site acquisition and enabling works including demolition costs. Overall, as set out in paragraph 2.10, the Council's land value invested in the site (and hence its financial interest in the JV) is fixed at £4.23m. This compares to outstanding debt on the Council's balance sheet for prudential borrowing of the site which is currently some £2m. SWD has incurred additional

predevelopment costs across the Site as detailed in the SDP and confidential Appendix 2, and this is an important factor in determining the cash waterfall arrangements and hence the share of the total receipt to which the Council is entitled. There are no current financial implications relating to the playing fields and open space.

- 3.1.3. The Stoke Wharf Site was assembled with the specific objective of creating a much larger development Site combining the Council's and CRT's land assets in this area in order to secure a greater capital receipt compared to single landowner development. The Council's land was not purchased as an investment asset and has been held with a view to develop the site (pre-2021) and then latterly, for disposal (2022 onwards) as agreed by the Cabinet in July 2022.
- 3.1.4. There are no known Council income streams associated with the Council's land interests. The longer the development site remains in Council ownership, the more likely it is that additional costs may be incurred by the Council to maintain the land interests.
- 3.1.5. As outlined above, it is assumed that the site acquisition and works were financed from prudential borrowing. Therefore, there is an associated borrowing cost (see table 2 below). It is estimated that the disposal of the Council's land will generate a capital receipt for the Council which is in excess of the Council's acquisition and associated costs incurred to date (£2.1m)<sup>7</sup>, in excess of the Council's valuation for valuation purposes (WHE valuation of £1.4m based upon fair value accounting methodology) and in line with the red book valuation for the Council's land. Although it should be noted that the Council is liable for its share of SUR predevelopment costs/WIP costs incurred for the Site. As a result, the Council's net receipt as a result of a whole-Site sale would be greater than its net receipt<sup>8</sup> should the Council's land be sold at the red book valuation.
- 3.1.6. The capital receipt payable to the Council has been calculated based upon the "priority of payments and distributions" as set out in the Indicative SDP which was agreed by Cabinet in July 2022. The key principles are that:
- The purchase price is payable by the Purchaser to SWD;
  - Priority 1 payments are payable by SWD to the landowners (Council and CRT – fixed price already agreed);
  - Priority 2 payments are payable by SWD to repay the interest free loans from SUR and WP;
  - SWD then pays the sales agent costs to Haslams;
  - Priority 3 payments are payable by SWD to distribute the remaining net profit equally to SUR and WP (nil balance to remain within SWD);
  - WP and SUR to repay loans received from CRT and Muse, which are not interest bearing; and
  - SUR and WP distribute a profit to achieve a position through the waterfall whereby the three shareholders receive a third of the net profit. i.e. a profit share of one-third each to each of the Council, CRT and Muse.

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<sup>7</sup> Note that this excludes SWD costs incurred in preparing the site for sale including planning permission – these are set out in Appendix 2

<sup>8</sup> The net receipt based upon the Council's share of WIP and disposal receipt



- 3.1.7. The cash generated from the sale will mean less Council debt will need to be refinanced. The net revenue impact, based on offsetting the capital receipt<sup>9</sup> against the Capitalisation Direction will be as follows.

**Table 2: Council net revenue savings**

	£000
Net Revenue streams	Nil
MRP	111.2
Interest on refinancing	77.6
Saving	188.8

- 3.1.8. The cash receipt is based upon the disposal strategy as agreed by the SWD Board and the Cabinet in July 2022. A Disposal Strategy, as opposed to the sale of individual sites, is still considered to be the best value option to the Council which is most likely to generate the greatest capital receipt. Haslams market and bidder analysis reports that the marriage value of the combined site is stronger than the single site sale option. This is supported by a red book valuation for the Council's land.
- 3.1.9. A deposit of 5% will be paid at exchange and held as Stakeholder, the balance will be paid to SWD upon completion; subject to a new planning consent and the Judicial Review period expiring. The proposed Purchaser has agreed to submit a new planning application within three months of exchange (anticipated to be the end November 2024 based upon an end of August exchange date). A reasonable estimate is that contract completion may be in the region of August 2025 dependent upon JV negotiations, governance and approvals, contract exchange dates and planning approval.
- 3.1.10. The Council's capital receipt is calculated after the repayment of all loans to SUR as set out in Section 3.1.5. Therefore, an extended planning period will increase interest payable by the Council and reduce the Council's receipt from the sale of the Site. Financial projections are based upon a Summer 2025 contract completion. It is estimated that interest payable is in the region of £10k per month therefore a 12-month delay may cost in the region of £120k which would reduce the Council's receipt by the same amount.
- 3.1.11. Appendix 2 includes a Confidential Commercial Finance Overview including relevant key headlines from a Council perspective.
- 3.1.12. The Site is being sold to the preferred buyer by SWD and as a result, SWD has obtained tax advice from KPMG in relation to VAT and SDLT treatment. In addition, as is standard practice for all SUR transactions, the Council has obtained its own tax advice from PS Tax. Key headlines include:
- The Council has not opted to tax its site;
  - SWD has opted to tax the Site to ensure that VAT is not liable on the working capital costs incurred;
  - VAT is payable on the purchase price by the purchaser;
  - There are no VAT implications for the Council;

<sup>9</sup> The actual capital receipt is based upon an estimate at this stage and is dependent upon a number of factors as set out in the Confidential Appendices 1 and 2

- There are no SDLT implications for the Council<sup>10</sup>;
- SDLT is payable by the Purchaser; and
- There is no additional tax to be paid by SWD or the Council as a result of the disposal.

## 3.2 Legal implications

- 3.2.1 Pursuant to section 123 of the Local Government Act 1972 (“Section 123 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. Section 123(2) permits a disposal at less than the best price reasonably obtainable with the consent of the Secretary of State.
- 3.2.2. When considering the duty under section 123 LGA 1972, what is reasonable in any particular case depends entirely on the facts of the transaction.
- 3.2.3. Case law has determined that whilst there is no absolute requirement to market the land or obtain an independent valuation, if valuation evidence is obtained, it should be up to date and that there should not have been any material and significant changes in circumstances since it was obtained.
- 3.2.4 In addition, obtaining proper professional advice throughout the process on how to maximise its receipts is a material consideration and the Council should limit itself to taking account of those elements of a transaction which are of commercial or monetary value and should disregard irrelevant factors such as “job creation” when assessing whether it is obtaining the best consideration reasonably obtainable. The deliverability or credibility of a bid are commercial factors which are relevant to an assessment.
- 3.2.5 Marketing and commercial advice has been obtained from Haslams. Haslams and Addleshaw Goddard have advised SWD on the negotiations with the proposed Purchaser to agree commercial terms. Bevan Britain have advised the Council on disposal matters pertaining to the Council as a land owner and member of SUR.
- 3.2.6. Following a marketing exercise on the open market reported by Haslams in the Confidential Appendix 1, the agreed offer prices for the whole Site exceeds the guide price and the Council’s expected receipt exceeds the fixed land price for its land and the latest accounting valuation. Haslams have confirmed that the best and final offer sale price for the Site, received following a competitive disposal process, represents best consideration reasonably obtainable in the current market. The Council has also obtained a recent red book valuation which further supports this.
- 3.2.7 In addition to meeting its best consideration duty, the Council must comply with its best value duty. This requires consideration as to the income generated from the asset compared to the capital receipt to be achieved upon sale. The financial implications contain an assessment of these two options. Appendix 4 provides some evidence of Best Value from the proposed sale.
- 3.2.8 Section 2.47 sets out the Critical Path including key legal documentation that is required to effect the sale. The recommendations within this report enable these

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<sup>10</sup> Based upon advice from KPMG and PS Tax, the Deed of Variation and Novation requires an amendment to alter the timing of the satisfaction of conditions for tax planning purposes. The recommendations in this Paper reflect this requirement

legal documents to be approved and entered into by the Council by means of the exercise of the relevant delegated authority.

3.2.9 SUR was procured in 2012 under a compliant public procurement procedure. SUR is governed by (amongst other documents) the SUR Partnership Agreement. The Council (as JV Partner) has to date complied with the relevant legal and governance requirements under the JV arrangements to enable the disposal of the Council's Stoke Wharf land to take place. By making the resolutions referred to in paragraph 1.3 (Recommendations) the Council will take the final steps in this regard.

### 3.3 Risk management implications

3.3.1 The recommendation required from Cabinet, as outlined in this report, is intended to improve the Council's financial position, by realising capital receipts which can be used to repay Council borrowing from the existing high level and reduce debt servicing charges in the form of interest and minimum revenue provision (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:

**Table 3: Risk Summary**

<b>Risk</b>	<b>Summary</b>	<b>Mitigations</b>
Financial	Delay in realising capital receipts from the assets will delay the Council's financial recovery	Cabinet to approve officers to proceed with the sale – recommendations reflect this  Heads of Terms includes provision for the purchase price to be adjusted depending on (i) the percentage of affordable homes to be delivered and (ii) the quantum of financial contributions (s.106 payments); as both are required by the Local Planning Authority under the terms of the new planning permission
Governance	Failure to obtain best consideration from the disposals could expose the Council to risk of legal challenge	SWD has employed external advisors to manage and competitively market the combined sites, having access to wider markets than officers locally and has maintained a regular review of the market throughout 2022/23/24  Red book valuation obtained by the Council to provide latest market information
Legal	Failure to ensure legal title/deeds etc., which could delay or halt sale	Title and other legal related matters were addressed in advance of the site being marketed/data room opening – building upon the experience of Montem Lane

<b>Risk</b>	<b>Summary</b>	<b>Mitigations</b>
	<p>Delay to contract negotiations</p> <p>Failure to establish that the buyer is a reputable business and that the buyer's funds are from acceptable sources</p>	<p>Regular meetings between all parties on a regular basis – Council/CRT/Muse</p> <p>Legal documentation based upon recent sale of Montem to speed up the legals/disposals process and approvals</p> <p>Due diligence undertaken on the Purchaser to assess their business, funding, including anti-money laundering checks and ability to transact</p>
Governance	<p>Failure to establish robust governance arrangements could expose the Council to risk of impropriety and legal challenge</p>	<p>The Council has established sound governance arrangements for SUR including biweekly Corporate Oversight Board and an established SUR client team</p> <p>SUR has adopted a Disposal Strategy for other recent site sales – apply same arrangements for the sale of the Site</p> <p>Deed of Variation agreed in September 2023 set out the additional governance requirements for the sale of the SW Site (i.e. the SDP is required to be approved by Cabinet including Sales Terms between Buyer/SWD)</p>
Reputational	<p>Unable to agree a way forward causing delay to asset disposals and failure to deliver capital receipts within the timescales set out in the Debt Reduction/Asset Disposal Strategy</p>	<p>Governance, project/programme management and decision making operate effectively to deliver asset disposals on time and best consideration for the Council</p> <p>Timely decision making to support sales to third parties which align with market expectations</p>

### 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 This asset is not used for operational or service delivery purposes. There are no identified equality implications with the disposal of this site.

### 3.6 Procurement implications

3.6.1 There are no procurement implications.

### 3.7 Workforce implications

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

### 3.8 Property implications

3.8.1 This report will directly impact on the Council's land and property holdings as set out in this report.

## 4. Background Papers

18<sup>th</sup> July 2022 Stoke Wharf Disposal Strategy [[Decision - Deed of Novation and Variation to Option Agreement for Stoke Wharf \(slough.gov.uk\)](#)]