Cabinet report

milton keynes council

13 July 2021

Investing in the Regeneration of the Agora and Wolverton High Street

Name of Cabinet Member	Councillor Rob Middleton **Resources**
Report sponsor	Stuart Proffitt **Director of Environment and Property**
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Exempt / confidential / not for publication	**Yes**
Council Plan reference	**40**
Wards affected	**Wolverton**

Executive Summary

The regeneration of the Agora shopping Centre and the adjoining Council car park (the Agora) has been a Council priority for over two decades. To reflect this longstanding ambition to see the regeneration of the Agora, a commitment to that effect was included in the Council Plan. The regeneration has been difficult to deliver for the current developer TOWN / Love Wolverton Ltd (the Developer) and predecessors due to viability challenges preventing the regeneration proceeding.

To overcome this obstacle preventing the regeneration taking place, the Council took a delegated decision on 23 March 2021 noting the regeneration of the Agora requires significant Council intervention and investment to take it forward.

The decision provided that further detailed work be carried out on the final two options for funding the delivery of the Agora, namely the forward funding option and the purchase option. Delegated authority was given to the Director Environment and Property, working with the Director Finance and Resources and the Director Law and Governance to review the options in detail with a view to making a recommendation to the Cabinet.

This report concludes this detailed work and makes a recommendation for the most suitable option for delivering the Agora regeneration. This work has involved detailed legal, procurement and financial review by Finance and Legal to ensure the most appropriate delivery route is recommended.

The preferred option is for the Council to purchase the development site directly from the owner, Trivselhus, taking on the role of developer with responsibility for delivery and financing of the scheme. By taking on the role of the developer the Council will have complete control over the development, including the management of associated risks and any subsequent financial implications. This also means that the Council would not need to pay a developer profit. The purchase option will involve the appointment of TOWN as the Council's Development Manager for the project because TOWN has designed the placemaking development scheme and submitted the planning application which the Council as land owner has approved as per the terms of a disposal contract in 2018. The Council will follow a compliant procurement processes to award any contracts for the main development, bringing local social value benefits. The Council will also retain the freehold of the completed asset for at least 50 years.

The current TOWN designed scheme reflects a high quality design celebrating the conservation area and the local heritage of Wolverton as the first railway town. The Council will conduct an independent value engineering review of the scheme to ensure the scheme specification is appropriate. This review will seek to understand if a lower build cost can be achieved whilst maintaining the same layout design principles as the current design and still reflect the conservation area and heritage of Wolverton without compromising design quality.

A summary of the Agora regeneration development is included within Annex A**.** The regeneration comprises 6 blocks of which block C is excluded and will be separately developed by TOWN. Block C is an elderly cohousing development to be operated by Still Green Cohousing. The development of block C is not under consideration for the purposes of this report. It may be the subject of a separate decision in the future should it be beneficial to the Council. The expectation is that block C will be developed at the same time with the wider scheme as this is practical.

The development will bring benefits to both the Borough and Wolverton Ward itself, creating 115 new homes (86 excluding block C) with appropriate levels of affordable housing, a local convenience store with small shops totalling 917 m2, along with car free 'little streets', new areas of public realm including a small public park and generate significant local social value.

The scheme will reconnect Wolverton town centre which has been bisected by the Agora shopping centre since its construction in the 1970s, Radcliffe Street will be reinstated, fronted by homes and shops delineating a clear route between Church Street and the Square. Streets within the Scheme will connect to existing paths and public rights of way. It will also provide direct and indirect job creation and shared communal space.

The preferred option is for our wholly owned Limited Liability Partnership (LLP), the Milton Keynes Development Partnership (MKDP) to hold and manage the asset once complete under a lease agreement. This has the advantage of utilising the capability and capacity of MKDP to manage the assets in the best interests of MKC, and may also compliment the proposed Local Housing Company; holding appropriate assets and building local housing capacity for the best interest of residents.

Given the capital required to enable and deliver the scheme is not provided for in the Council's current budget, at its meeting on Wednesday 14 July, Council will need to agree the additional allocation set out in recommendation 1.12.

1. Decisions to be made

1.1 That the public and press be excluded from the meeting by virtue of Paragraph 3 (Information relating to the Financial or Business Affairs of the Authority) of Part 1 of Schedule 12A of the Local Government Act 1792, in order that the meeting may consider the Confidential Annexes (B, C, D, F, G) to the report.

1.2 That the Agora shopping centre site be acquired alongside the design rights to the scheme, as developed by TOWN.

1.3 That the freehold of the built Agora asset be retained by the Council for a minimum of 50 years.

1.4 That the Contract dated 9 November 2018 between the Council and Love Wolverton Ltd for the disposal of the adjoining Council car park to the Developer be terminated.

1.5 That the lease of the adjoining car park (necessary for the development of Block C on as detailed in Annex C) be acquired.

1.6 That the Council take on the role of developer of the scheme and that the appointment of TOWN, as the Council's Development Manager, be agreed via a direct contract award as set out in Annex C subject to any agreed variations in 1.8.

1.7 That the draft Heads of Terms for leasing the completed development to MKDP as contained in Annex D, be approved and that the Council agrees to enter into the lease, related agreements and contracts with MKDP.

1.8 That the Director of Environment and Property in consultation with Cabinet member for Resources, the Director of Finance and Resources, and the Director for Law and Governance be authorised to agree any variations to the Heads of Terms with the Development Manager and MKDP as set out in this report, and to agree any other necessary documents and agreements to effect the decisions made pursuant to this report.

1.9 That the commencement of a procurement process to appoint an independent consultant, in order to oversee the performance of the professional team delivering the development and as a check on the value for money cost of delivering the development as required, be approved.

1.10 That the Director of Environment and Property in consultation with Cabinet member for Resources, the Director of Finance and Resources, and the Director for Law and Governance be authorised to engage any external advisors, including legal and other professionals as necessary in order to implement the decisions pursuant to this report subject to such engagements complying with the council's contracts procedure rule.

1.11 That approval is granted to conduct a procurement processes compliant with the public contracts regulations 2015 for both the demolition of the Agora and the construction of the proposed scheme.

1.12 That authority is delegated to the Director for Environment and Property, in consultation with the Director for Finance and Resources to approve the award of the demolition contract and the construction contract for the Agora scheme, subject to the contract sums being within the forecast overall budget of £36,590,668.

1.13 That Cabinet approves the subsidy of £5,719,270 set out at para 6.43 and Annex B and further described in Annex G.

1.14 Cabinet recommends to full Council, that Resource Allocation and is made within the Capital Programme for £36,590,668 as detailed at Annex B.

2. The history of the Agora

2.1 The site of the Agora Centre and car park was redeveloped and completed in 1979. The eastern part of the site now forming the car park was previously occupied by the Wolverton Science and Art Institute from 1864 until it was destroyed by fire in the late 1960s. Further west, the site consisted of terraced housing characteristic of the town, with corner shops on the main street corners. Radcliffe Street continued south on Church Street to the Square, connecting the railway works and the commercial areas of Stratford Road and Church Street directly to the Market Square.

2.2 In the late 1970s, with the support of the Milton Keynes Development Corporation, the terraced housing on the west of the site was demolished and replaced by the Agora Centre, completed in 1979, and promoted at the time as a new heart of the town, the Agora Centre combined retail, leisure and community use under one roof.

2.3 Although it was intended to create a new internal route from Church Street to the Square, in reality the removal of a section of Radcliffe Street beneath the Agora severed the town centre in two, replacing a direct street connection with an indirect route involving changes of level and direction within the building and was detrimental to pedestrian movement, which is critical to a thriving town centre / high street economy.

2.4 Whilst popular as a roller-skating venue in its early 1980's, the Agora was never truly financially viable and the withdrawal of funding support and ultimate sale led to disinvestment and steady decline in a series of private owners – there was not the expected demand for new retail units and the cost to run the building was much higher than expected. Before closure it was a mix of store holders trading on licences mostly selling discounted goods and mostly underused.

2.5 Over the years the building deteriorated due to its build quality and a lack of investment in maintenance by various site owners who acquired the building. A later analysis of the Agora which was reinforced by the Wolverton Regeneration Strategy and emerging (now adopted) Town Centre Neighbourhood Plan revealed a number of issues (general massing of the site, orientation, height, loss of Radcliffe Street link to The Square, architecture to name a few) which assisted in undermining the identity and vitality of this town centre asset.

2.6 The 2004 Wolverton Regeneration Strategy became the first official Council document to endorse the demolition and regeneration of the site, and this became a key requirement of both the 2013 Agora Development Brief SPD and the 2014 Wolverton Neighbourhood Plan. The site sits within the Town's Conservation area (2011) which sought to ensure that Wolverton's centre, remained at the heart of the town, as a vibrant, attractive and distinctive neighbourhood with a variety of retail, commercial, cultural, and leisure uses.

2.7 In 2011 the Agora's then owners went into administration and the Cabinet considered how the Council could assist in preventing the loss of businesses and secure the future regeneration of the Agora. MKC's redevelopment strategy, as stated in the Cabinet Report of August 2012, set out a requirement for the market to deliver redevelopment of the site [i.e. via private/procured developer], with the Council facilitating site assembly through the disposal of its interest in the car park.

2.8 The Agora development is identified in the current Plan:MK for redevelopment, as it was in the previous Local Plan from 1995. It is a key objective in the adopted Wolverton Town Centre Neighbourhood Plan. There is a 2013 Agora development brief which guides what should happen here, these are normally only completed for sites identified as key development sites within existing Local Plans.

2.9 A Cabinet decision in July 2014 sought to reconsider a revised strategy to bring forward the redevelopment of the Agora. In 2015/2016 the Council took a decision to sell the Council car park to City Renovation/Brickhill Estates Ltd, at undervalue subject to a number of conditions to deliver the regeneration development of the Agora centre and car park. A planning application was submitted in 2016, which was granted outline permission however the developer could not meet the conditions of the decision and the sale and the regeneration was stalled.

2.10 The current Agora owners (Trivselhus, with TOWN) were contacted by the Council to explore a purchase of the car park in line with an offer to buy the Agora centre as TOWN were in discussions with the then owner. Following a Council decision, TOWN entered into a contract with the Council in 2018 to purchase the car park and the Agora centre at the same time to deliver the regeneration. TOWN submitted a planning application for the regeneration in December 2020, although earlier the developer encountered viability issues which meant they could not deliver the regeneration, unless the Council stepped in to purchase the completed the development.

2.11 Supporting the regeneration of Agora remains a Council Plan priority.

3. Placemaking context

3.1 A fundamental placemaking feature of the scheme is the reinstatement of Radcliffe Street which was removed when the Agora centre was developed. The new section of Radcliffe Street to be built as part of the development Scheme will re-establish the connection of Church Street to the Square. This will not only improve pedestrian accessibility through the town centre but will provide additional high quality public realm.

3.2 Replacing the Agora with the new development Scheme, the Agora being viewed by many locally as a blot on the townscape, will improve the amenity for both the town's residents and visitors to the town centre. The development Scheme re-uses brownfield land and so by definition is an efficient use of land whilst improving the general amenity of the town centre.

3.3 It is a residential led mixed use development in a highly sustainable location that removes a significant divide to the town, the Agora centre, which undermines the town centre. It adds to the vibrancy and economic prosperity of the town centre, it will reconnect the site back into the urban fabric of the town centre improving accessibility, creating a walkable, healthy development (and wider town centre) and have a distinct identity that both complements the existing conservation area as well as recreating some of the key historic features of the conservation area. The well landscaped, pedestrian friendly and shared nature of much of the public realm within the scheme will promote a strong sense of community – a key feature of good placemaking.

3.4 It is located in a highly accessible sustainable location adjacent to one of our most well used bus interchanges, with frequent services as well as within walking distance of a train station. Being located within a town centre means residents of the development will be within walking distance of a range of daily needs, with the fine grain of the development making it a walkable neighbourhood. It also enables the Square and the shops around it to be much more easily accessible to the surrounding area.

3.5 The Council Plan Vision includes being the greenest city in the world and carbon neutral by 2030. This town centre scheme in a highly sustainable location but with reduced parking provision it begins to demonstrate the council's commitment to this agenda. The scheme furthermore has been designed to mitigate the impact of development on the climate but incorporates opportunities to reduce embodied and in-use carbon emissions and incorporate renewable energy generation.

3.6 A new sustainable mobility hub is included, with an upgraded bus stop on Church Street, a 10-bike Nextbike bike dock, an 8-bike Brompton Bike Hire Dock, and two car club spaces; in addition to new town centre and residential car and cycle parking.

3.7 It also addresses the Healthy City Aim Priority within the Council Plan by supporting development in sustainable locations where people are less reliant on the car and conversely can walk more which encourages healthy lifestyles.

3.8 The scheme responds well to the context and identifies with the conservation area but in a contemporary / 21st century way through the use of red brick and an interpretation of the railway and doorway arches. The overall design of building elevations is high quality and has created a strong identity for the scheme but one that complements the existing conservation area.

3.9 The scheme comprises a significant mix of uses that complement the existing town centre uses and will add to the vibrancy and pedestrian animation of the town centre through the day and evening all year. The ground floors contain active frontages helping to enliven the public realm and the co-housing element (block C) is particularly welcomed from a placemaking perspective.

3.10 The scheme includes floorspace that could adapt overtime to respond to changing needs e.g. the community space proposed as well as the workspace facing the mews streets.

3.11 The well landscaped internal streets are 'shared surface' meaning that they are pedestrian scaled (some pedestrian only) so that residents can see them as shared extensions to their homes and areas for urban play. This will promote active and healthy lives as well as help create a strong sense of community within the development.

3.12 The COVID-19 pandemic has also shown that 'local' has become more important to people (rather than travelling long distances). By providing this residential led mixed use development within a town centre it is allowing new and existing residents access to a range of opportunities within walking distance of where they live.

3.13 In summary, this Scheme from a placemaking perspective is a much needed addition to Wolverton town centre, improving the overall quality of the town centre for residents, workers and visitors. The location and design of the Scheme helps to demonstrate the Council's aspiration to be the greenest city, as well as being an exemplar in delivering the 'healthy city' agenda and the 'Healthy City' aim.

4. Social value creation

4.1 The Council commissioned an independent report by Greengage to assess the social value that would be generated by developing the scheme. This report is included at Annex E, detailing local social value of £22,859,029.

4.2 Social value is a term describing the economic, environmental and social benefits that will be experienced by people as a result of the regeneration, both now and in the future. These benefits are assessed as a financial figure reflecting the value that accrues to the end user as a result of the regeneration.

4.3 The approach for valuing social outcomes is based on Social Return on Investment (SROI): a calculation of total benefits and total costs resulting from the regeneration.

4.4 This assessment is based on assumptions and formed without post occupancy surveying of residents.

4.5 The social value generated demonstrates the commitment of the regeneration to deliver a sustainable, inclusive and integrated community in Wolverton.

4.6 Overall, the regeneration will reduce existing socio-economic and human health inequalities and improve the lives of local people and new residents through the following:

- Provision of 86 high-quality new homes including 31% affordable rent; and over 1000 sqm of commercial and community units, and Still Green cohousing 29 homes of which 14% are social rent
- An inclusive approach to community building and design leaves the community feeling respected, heard and that they've participated
- A design that encourages the use of active travel through improved roads, additional walkways and cycle ways and careful landscaping
- A portion of the proposed development for mixed use space encouraging of activity, gathering of the community in places and economic stimulation
- Intergenerational living that supports an ageing population and offers accessible accommodation
- Safe streets for families and elder population to feel comfortable to be in
- Communal gardens and public realm that encourages social interaction.

4.7 A portion of the social and economic benefits are calculated using the HACT social value calculator. The proposed development scores highly in the qualitative measures, with Healthy Streets and Sport England Active Design principles incorporated.

5. Why is the decision needed?

5.1 The forward funding option and the purchase option have been considered in detail, The purchase option is the preferred structure to deliver the regeneration as explained below.

Forward Funding Option

5.2 The forward funding option involved the Council entering into a lease with a pension fund, for 52 years at a rental that enabled the Council to pay the fund a lease rent, cover the Council's costs with a view to making a surplus every year of the lease by letting the development. At the end of the lease the Council had the option to acquire the unencumbered freehold of the development from the fund free of the fund lease for £1.

5.3 The lease was subject to a cap and collar (0% and 5%) annual rent increases linked to CPI plus 0.5%.

5.4 The Council instructed Avison Young (AY) to consider this option. AY concluded the terms on offer were aligned to terms agreed between Local Authorities and pension funds.

5.5 Finance commissioned our Treasury Management Advisors to review funding options for the scheme in detail. They concluded that the Forward Funding Option presented a material risk to the council due to the guarantee CPI increase on the lease payment for a period of 50 years (compound risk), not being matched /linked to the net rental income. In addition, the cost of the scheme included a profit element for L&G, a developer profit and higher financing costs than those offered through the Public Works Loan Board. This demonstrated that the direct purchase option was circa £10m lower over the life of the proposed lease. In addition the purchase option does not expose the Council to the indexation risk which is a key feature of the Forward Funding option.

5.6 The risks of indexation on the rent and sensitivity on the cost to the council have been reviewed. The indexation increases expose the Council to risk as the same increases in rent from the letting of the development by the Council may not materialise and inflation on running costs may be higher. A movement of just 0.5% increase in CPI could increase the cost paid by MKC by £13m over the life of the proposed term. With the forward funding option this sum would be paid to the funder, whereas in a purchase option this would remain within the MKC Group. On the basis of cost and indexed risk to the Council the forward funding option was discounted.

Purchase Option

5.7 The purchase option involves the Council buying the land (Agora centre and lease of the Council car park) from the current owner, Trivselhus or its parent company, appointing a development manager or another party, to manage the development delivery on behalf of the Council who assumes the role of developer. This is the preferred option.

5.8 With the purchase option it is now estimated that it will cost £36,590,668 to deliver the development. These costs are broken down in Annex B.

5.9 The Council cannot lawfully hold the completed development as a whole in its general fund due to the residential content, and therefore the residential part of the completed development will be leased to the Council's LLP, Milton Keynes Development Partnership (MKDP), on terms set out in Annex D. The commercial elements of the completed development will be retained by the Council in its general fund. This is also more appropriate than the housing revenue account and builds on our commitment for MKDP to take forward the local housing company and to hold and manage residential assets.

5.10 The lease to MKDP provides for the Council to receive a rental payment. The lease rent paid by MKDP must satisfy s123 of the Local Government Act 1972 as being best consideration. The Council will receive a starting rent from MKDP of £750,000 pax rising annually by CPI subject to a cap and collar as set out in Annex D. MKDP will let the residential units generating an income to pay the lease rent to the Council, cover its costs with a view to generating a surplus every year. The rent of £750,000 pax represents best consideration, which is independently verified by Avison Young. These terms are agreed at MKDP Board, with further due diligence to be carried out. It should be noted that the rental sum payable by MKDP is subject to an overall cap based on 65% of ERV. This is explained further in Annex D.

5.11 It should be noted that the Council cannot proceed with the development scheme until and unless a leasing arrangement is in place with MKDP. This will enable the Council to progress its key council priority regeneration scheme and hold, via a separate entity, housing at both market and affordable rental levels, together with a small number of commercial properties. The residential properties would otherwise need to be held in the Council's HRA with the commercial units sitting in the general fund. MKDP's Board has considered this proposal and is supportive of this route with appropriate due diligence following the Council decision.

5.12 The purchase option involves the Council entering into a development management agreement with TOWN as set out in Annex C, subject to the value engineering review. TOWN propose to develop Block C themselves and for this to happen the Council will dispose of the Block C land for best consideration (LGA 1972) on the terms set out in Annex C . Should the value engineering review not be agreed, the Council would need to reconsider the TOWN appointment as development manager and work on further options.

6. Implications of the decision

Financial		Y	Human rights, equalities, diversity	N
Legal		Y	Policies or Council Plan	Y
Communication		N	Procurement	Y
Energy Efficiency		Y	Workforce	Y

Financial Implications

Accounting Treatment

6.1 Both the option to forward fund the development and the option to direct purchase expose the Council to financial risk and a general fund revenue budget pressure.

6.2 If the option to forward fund the development was undertaken, this would require the transaction to be treated as a finance lease. The asset would be recognised on the Council's balance sheet and would require the Council's Capital Financing Requirement (CFR) to be increased. Lease payments would also be recognised and written down over the term of the lease.

6.3 If the preferred option to purchase the site and for the Council to develop the site is approved, the Council would be required to finance the scheme up to £36,590,668 (maximum cost cap) to deliver the completed development. The scheme will require resource allocation and spend approval within the Council's 2021/22 Capital Programme.

6.4 Currently all capital resources are applied in the financing of the Capital Programme, therefore initially the source of funding would need to be Prudential Borrowing. This would increase the Council's CRF and mean that the sum would need to be applied against the Council's current Borrowing Limit. As a result the scheme falls outside the Councils Budgetary Framework.

6.5 Under this option the land and asset would also be recognised on the Council's balance sheet, with the building constructed being depreciated over 50 years in line with the Council's depreciation policy. The asset is being acquired and held for regeneration purposes and not an investment property.

Financing

6.6 The Council's Treasury Strategy lays out how the funding of capital schemes is related to management of long-term cash flow requirements. This may involve the borrowing of long or short- term loans or utilisation of stable cashflow balances. The Council is currently maintaining an internal borrowing position. This means that the underlying capital borrowing need (the CFR) has not yet been fully funded with loan debt, as cash supporting the Council's reserves, balances and cash flow has been used as a temporary measure.

6.7 The decision on whether external borrowing is required is taken in the context of the Council's overall cashflow position, rather than as a direct response to the undertaking of a capital scheme. The Council's primary objective when borrowing money is to strike an appropriately low risk balance between securing low interest costs and achieving certainty of those costs over the period for which funds are required. Cash levels are reviewed daily, and any external borrowing would be based on both the Council's ability to repay debt and future cashflow needs.

6.8 The council has not undertaken any external borrowing since 2014, and with no requirements to undertake borrowing in the medium term.

Financial Modelling

6.9 To assess the financial implications to the Council of the preferred option, calculations have been made using the current PWLB lending rate for 50 year loans. This will enable the true cost to the council to be determined and compared to other council priorities.

6.10 The model assumes that repayment of the capital cost will be over 50 years and reflects both repayment of principal through the charging of Minimum Revenue Provision (MRP) and interest charges. This cost is offset by the lease payments from MKDP and the net income from the running of the commercial elements. Costs are higher during the construction period as borrowing would require repayment prior to lease income being received, however with the interest on the lending rate being fixed at the point the loan is taken, and CPI being applied to the lease from MKDP and the commercial revenue streams, the annual net cost to the Council decreases over time, with a positive cashflow being generated from year 20 onwards, and a surplus at the end of the period modelled as £11.9m. Given both the period of time and variables this projected surplus is sensitive to relatively small changes.

6.11 Table 1 shows the financial investment appraisal impact on the General Fund (GF) over both the next 10 years and the total scheme over 50 years.

6.12 Assumptions include, borrowing at 1.89% based on current rates (with expenditure profiled over 3 years), CPI at 2% based on the Bank of England target, commercial income reviewed 5 yearly and including rent free periods in line with AY assumptions, commercial running cost at 10.27% in line with AY assumptions.

Table 1: Financial Investment Appraisal

Year	Borrowing Cost	Lease income	Net Commercial Income	Cost/(Surplus)to GF
	£000	**£000**	**£000**	**£000**
1	79	0	0	79
2	655	0	0	655
3	1,215	0	0	1,215
4	1,215	(750)	(162)	303
5	1,215	(765)	(162)	288
6	1,215	(780)	(162)	273
7	1,215	(796)	(162)	257
8	1,215	(812)	(162)	241
9	1,215	(828)	(101)	286
10	1,215	(845)	(171)	200
Total over 50 Years	**60,745**	**(63,435)**	**(9,303)**	**(11,992)**

6.13 Further work will be required to determine the spend profile of the development, this will impact on the timing of the borrowing costs and projected cost, particularly in early years.

6.14 As stated in 6.7 above, actual costs to the council may be lower depending on overall cash requirements and the use of internal borrowing.

6.15 For the financial investment appraisal of the scheme, using current borrowing rates the scheme is forecast to have a net cost to the council of £4,915m before it starts to generate surpluses in year 20. Payback of the scheme is forecast in year 41, with a total return of £11.9m over 50 years.

Budget Impact

6.16 It is expected that the completed development has an estimated value of £21.9M assuming the units are sold individually after completion, this is around £15.1M less than the cost to the Council of acquiring the land and delivering the development as developer. This difference reflects the cost of build given for example the conservation area location and quality of placemaking development sought for the location, addition of affordable housing and reflective of the land purchase price greater than market value As this is a regeneration scheme the intention is to hold the development for at least 50 years. This enables the returns on the development to be used to finance the long term borrowing costs of the project. The development will be revalued on a 5 year rolling programme in accordance with the Council's accounting policies, with unrealised valuation losses held in the revaluation reserve whilst the asset continues to be held on the balance sheet, and therefore will not impact on the Council's cost of service.

6.17 The impact on the General Fund budget of proceeding with this project will be different from the financial investment appraisal. Whilst the appraisal assumes for evaluation purposes a cost of borrowing, with the level of cash balances currently held by the council there is no immediate need to undertake new external borrowing. As the Council invests in other projects and cash balances change in position will be reassessed as outlined in the borrowing strategy. Interest rates over the next 5 years are forecast to increase slightly with the 50 year PWLB rate increasing from 1.89% to 2.4%. Whilst rates are not expected to rise any further there is a low risk that rates may be higher in the future.

6.18 Without undertaking new borrowing, the real cost to the General Fund, and therefore the budget pressure, will only equate to the annual MRP payment for repayment of the principal sum and the interest foregone on council investments. Investment income is currently 0.01%, equating to an annual cost of £36.6M for the full cost of this scheme.

6.19 Table 2 shows the budgetary impact over the next 5 years if the project was funded internally for 3 years (development period), with external borrowing at the forecast rate in 2024. Total borrowing costs in this option are higher than shown in table 1 due to a higher forecast PWLB rate in 2024, however as explained in 6.7 the amount borrowed would need to be assessed against the council's overall cashflow requirement at that time and therefore this is unlikely to be the actual position. This cost will be financed from the Councils Debt Financing budget and reflected in the Councils MTFP.

Table 2: Budgetary Impact

Year	Borrowing Cost	Lease income	Net Commercial Income	Budget Pressure to the GF
	£000	**£000**	**£000**	**£000**
1	5	0	0	5
2	20	0	0	20
3	37	0	0	37
4	1,302	(750)	(162)	390
5	1,302	(765)	(162)	376

Cost Summary

6.20 The high level cost summary at Annex B sets out the main elements of the budget for the development. It should be noted that these are still subject to further negotiation to ensure that these represent value for money and the outcome of the full PCR 2015 compliant procurement process.

Tax

6.21 The acquisition of the land, and the development of the site by the Council will result in a Stamp Duty Land Tax (SDLT). An allowance for SDLT on the land has been included in the total development costs. The transaction leasing the residential units to MKDP LLP will not generate a SDLT consideration for MKDP due to the structure of the Council's ownership of the LLP.

6.22 The Council will opt to tax the development site and will be able to fully recover the VAT on the capital costs of the development. VAT will be charged on the commercial units. Whilst the Council will be able to recover the VAT on the build costs (Zero Rated), VAT incurred by MKDP will not be recoverable as they will be making exempt supplies to their tenants. The cost of this has been allowed for within the AY model and MKDP calculations.

Key Financial Operating Risks and Modelling

6.23 Whilst the Council is seeking to dispose by lease the completed residential element of the development to MKDP, the operational risks are in effect retained as MKDP is wholly owned. Please refer to Annex H for the summary risk register.

<u>Legal implications</u>

Local Authority Powers

6.24 There are a number of powers councils can rely on to acquire property.

6.25 The most appropriate power for the Council to rely on for this matter is the 'General Power of Competence' contained in Section 1 of the Localism Act 2011 (the 2011 Act).

6.26 Using this power for the purchase option means the Council would purchase the Agora shopping centre and the Council car park lease to be accounted for in the Council's General Fund (GF) as the completed development will be disposed of to MKDP on terms to be agreed.

6.27 The General Power of Competence permits a Local Authority (LA) to do anything which an individual may do, subject to any legal limitations which were in place before the commencement of the Localism Act or any legal limitations following its commencement.

6.28 With regard to the proposal to transfer the development to MKDP LLP, the Council's main purpose for progressing with the scheme is to deliver the regeneration of the Agora which is a Council Plan priority, and in this respect the Council may transfer the management of the Asset to the LLP for a premium or a rent as it is merely acting in a commercial manner rather than for a commercial purpose.

6.29 If the Council sought to hold housing directly as landlord and not through a separate corporate vehicle such as a LLP in the GF and without offering secure tenancy agreements and the right to buy it may face the risk of an improper purpose challenge. This is because housing as a Council function is usually conducted under Part II of the Housing Act 1985 (the 1985 Act) and therefore the housing asset is held in the Housing Revenue Account (HRA). Council held housing under the 1985 Act in the HRA is subject to secure tenancy agreements and the right to buy.

6.30 If the Council directly acquires and holds the residential units, no matter what power is used, the landlord condition in Section 80 of the 1985 Act would be satisfied, and the tenants provided they were occupying as their only or principal home and none of the exceptions to security applied (student lets for example) would need to be secure tenants and as such the asset would need to be held and accounted for in the HRA which is not viable for the Council.

6.31 Where the Council does not directly hold the completed development, for example where it is disposing of it to MKDP, the Landlord Condition in the Housing Act 1985 is not satisfied and thus the residential tenancies would not be secure tenancies and the right to buy does not apply.

6.32 The Council will hold the scheme commercial element in the General Fund as this is not being leased to MKDP and there are no vires issues in doing so for the Council.

Procurement

6.33 The Council must consider whether the Public Contracts Regulations 2015 (as amended) apply to the various arrangements relating to this transaction.

6.34 Whilst pure land transactions which are acquisitions of interests in land or buildings by contracting authorities (such as the Council) are specifically exempted from the application of the Public Contracts Regulation under regulation 10 (1) (a), case law has established that such transactions are still caught by procurement rules where certain conditions are attached to them and thereby causing them to be deemed to be public works contracts. Some examples of conditions that would cause an otherwise land transaction to become a public works contract are:

- there is a work or works required or specified by a contracting authority;
- there is an enforceable obligation (in writing) on a developer/contractor to carry out that work or works, and
- there is some pecuniary interest for carrying out this work or works (this need not be a cash payment it could be another form of economic benefit).

6.35 As the Council will be carrying out the development by itself, the Council will follow compliant procurement exercises for the development and the development should therefore not fall foul of the procurement rules.

6.36 The appointment of any external advisors and consultant to oversee the development as detailed in the decision section of the report will also follow methods that are compliant with procurement law, either through open tenders or use of available frameworks which are a permitted route to market.

6.37 The appointment of TOWN as a development manager in accordance with recommendation 1.6 will result in a contract for services. A procurement exercise would be required to comply with the Public Contracts Regulations 2015 (as amended). However, The Council is proposing to appoint TOWN to this role without prior publication under Regulation 32 (2) (b) of the public contracts Regulation 2015 given that TOWN has produced and advanced the scheme and currently own intellectual property rights to the design to the scheme. TOWN's appointment will also be beneficial to the successful delivery of the scheme given their knowledge and detailed involvement to date. The Council will publish a voluntary transparency notice for the appointment of TOWN (VEAT Notice). A valid VEAT provides an absolute protection against the remedy of ineffectiveness. In order for the VEAT to be valid, the Council must meet three main conditions i.e. consider that awarding the contract without prior publication was permitted under procurement regulations ('good faith'); the Council publishes a VEAT and waits at least 10 days before entering into contract. If a contract award following VEAT is challenged successfully i.e. where the VEAT is found to be defective on any ground, a declaration of ineffectiveness against the contract could be made and this would carry a mandatory financial penalty for the Council, in addition to any legal costs that the Council may incur defending this claim.

6.38 The procurement approach set out in this report is necessary to achieve delivery of the scheme.

Subsidy

6.39 There is the need for the Council to consider and ensure it is compliant with the requirements for subsidy control (formerly known as state aid). The Government has published Technical Guidance to assist Local Authorities in understanding subsidy control and to make related decisions in compliance.

6.40 The relevant subsidy considerations and obligations that the Council needs to comply with for the Agora transaction are obligations under the UK-EU Trade Cooperation Agreement (TCA) by virtue of the EU (Future Relations) Act 2020. Subsidy under these obligations in summary is defined as financial assistance arising from public resources which confer an economic advantage on one or more economic entity and is specific in so far as it benefits certain economic actors over others in relation to the production of certain goods or services, and has or could have an effect on trade or investment between the UK and the EU. Where all these elements exist, then subsidy exists and in order for subsidy to be granted lawfully, there are 6 principles that a public body must assess the proposed subsidy against and evidence how its proposed subsidy complies with or satisfies the said principles. These principles are:

- **Principle 1** - It must pursue a specific public body objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns
- **Principle 2** - It must be proportionate and limited to what is necessary to achieve the objective
- **Principle 3** - It must be designed to bring about a change in economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided
- **Principle 4** - It must not normally compensate for the costs the beneficiary would have funded in absence of any subsidy
- **Principle 5** - It must be an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means
- **Principle 6** - Its positive contributions to achieving the objective must outweigh any negative effects in particular the negative effects on trade or investment between the parties.

6.41 Certain elements of the proposed payments from the Council to TOWN and the land owner for the Agora transaction satisfy subsidy elements.

6.42 The purchase option has been assessed against the subsidy requirements and the subsidy amount is estimated to be £5,719,270 as detailed at Annex B. An assessment has been conducted against each of the 6 principles as detailed in Annex G, where the six subsidy control principles are satisfied then the subsidy can be considered to be lawful. The subsidy assessment considers that all the principles are satisfied for the proposed grant of subsidy but the Council needs to satisfy itself in this regard.

6.43 By making the recommended decisions, a subsidy is being agreed and the Council must retain robust records of the assessments made in each step particularly how the subsidy complies with the 6 principles as these may be required by the central government as part of any remedial measure processes under its agreement with the EU. The Council will be required to record the subsidy within 6 months of the subsidy being made or/decision to grant subsidy being made. The following information should be made publicly available on the Council's website:

- the legal basis, policy objective and purpose of subsidy
- name of the recipient of the subsidy
- the date of grant of subsidy along with its duration and other limits attached to subsidy, and
- the amount of the subsidy or the budgeted amount of the subsidy.

Lease to MKDP

6.44 The Local Government Act 1972 s123 requires Local Authorities to obtain the best consideration reasonably obtainable in the disposal / lease of land and this applies to the disposal of the completed development to MKDP. This is a duty to obtain an outcome. S123 does not prescribe a process by which best value is obtained. There is no specific method/route to be used to achieve best value. It is for the Local Authority to assess and come to a decision, acting reasonably – taking into account relevant factors, disregarding irrelevant factors.

6.45 MKDP will need to complete their own separate due diligence on the project before it can proceed to enter into the lease with the Council which terms are subject to MKDP board approval.

Critical Project Milestones

6.46 The project is a complex scheme and will involve a number of significant steps to achieve delivery. Summarised below is positive view of the critical stages that will need to be completed in order for the scheme to be successfully delivered:

Pre-contract

- Cabinet and Council approvals – July 2021 (Month 1)
- Resolution to grant planning permission for the Scheme – August 2021 (Month 2)
- Completion of due diligence by MKDP – September 2021
- Commencement of RIBA Stage 4 design development and value-engineering review; issue of demolition tender – September 2021 (Month 3).
- Exchange of contracts for the purchase of the Agora Centre; Section 106 agreement signed; Agora Centre purchase completed; Development Management Agreement – November 2021 (Month 5).

Post-contract

- Demolition contractor appointed – December 2021 (Month 6)
- Demolition commences – January 2022 (Month 7)
- Completion of RIBA Stage 4 design and issue of main contract tender – February 2022 (Month 8)
- Demolition completes – April 2022 (Month 10)
- Main contractor selected and appointed – May 2022 (Month 11);
- Practical commencement – July 2022 (Month 13)
- Practical Completion: March 2024 (Month 33)
- Completion of Defects Period: March 2025 (Month 45).

Other implications

6.47 Policy (Council Plan 2016 – 2020)

Decision making

6.45 The decisions to proceed with the scheme are executive in nature. The executive is responsible for implementing the Council's priorities within the approved budget and policy framework.

6.46 As set out above the scheme is consistent with the policy framework, but delivery of the scheme will require capital funding and some borrowing in excess of the current budget framework. Therefore, it will require Council to amend the budget framework in order to accommodate it. Cabinet will refer the matter to Council on Wednesday 14 July for consideration.

7. Alternatives

7.1 There are three alternatives:

7.2 Do Nothing – The Council does not intervene and invest in the Agora, in which case the Agora regeneration development will not be delivered due to viability issues, the site will remain unused and the wider economic and social benefits of the proposed scheme will be lost. This option has been discounted. Any future redevelopment would be dependent upon the current owners disposing of the site and any potential market appetite.

7.3 Site Acquisition – The Council acquires the site from the current owners with design rights to the scheme and funds to develop the current scheme or a new designed scheme including providing a subsidy as outlined in this report, in which case the Agora regeneration development can be delivered in accordance with the Council Plan. This is the preferred option.

7.4 Forward Funding Deal – This deal has been evaluated and carries greater financial risk for the authority and would be more expensive due to the financing costs, and indexation risks. This option has therefore been discounted.

List of annexes

Annex A – Agora Regeneration Scheme Summary
Annex B (confidential) – Land & Development Costs, Subsidy Summary
Annex C (confidential) – Heads of Terms with TOWN as development manager and for Block C land disposal
Annex D (confidential) – Lease Heads of Terms with MKDP
Annex E – Greengage Social Value Report
Annex F – (confidential) Summary Risk Register
Annex G – (confidential) Subsidy

List of background papers

Delegated Decision 23 March 2021, The Agora Regeneration, Wolverton