CABINET

Royton Town Centre Regeneration

Report of the Chief Executive.

Portfolio Holders: Cllr Jim McMahon [Strategic Projects and External Relations)
Cllr S Akhtar (Business, Skills and Town Centre)

23 July 2012

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Purpose of Report
To outline proposals for the regeneration of Royton Town Centre and seek approval to take the necessary steps to implement the scheme.

Executive Summary

The report outlines the progress made since February 2012 when a Memorandum of Understanding with Dransfield Properties Ltd was approved. The commitment that Dransfield Properties Ltd and its team have shown is to be commended. A scheme for the retail core has been developed, consulted upon and amended in light of those consultation responses. Overall the feedback received at the consultation events has been positive with a strong desire to see the scheme being brought forward to implementation.

There are however some matters that are outstanding, these include:
1. The Heads of Terms of the Commercial Agreement with the Council need to be agreed prior to the submission of the planning application
2. Agreeing the best approach in relation to both securing and delivering the Council’s interests
3. How the Council and its partner need to ensure that they secure all the land and property required for the scheme.
In order the maximise the overall scheme’s impact it is essential that the Council gives consideration to utilising its powers of Compulsory Purchase. Approval is also being sought to delegate authority to enable the completion of agreed acquisitions as quickly and cost-effectively as possible.

The proposed scheme includes the use of land which is currently designated as Public Open Space and Amenity Land. It is necessary to advertise proposals for the disposal of such land. The scheme also includes adopted highways which will require formal closure. It may also be necessary to ensure that any third party rights on Council owned land are extinguished via the formal appropriation of the necessary land. Authority is being sought to make progress in this regard.

**Recommendations**

Members are recommended to

1. Note the proposals for the regeneration of Royton Town Centre and in particular the proposals for a retail led phase 1

2. Note the potential need for a Compulsory Purchase Order under section 226(1a) of the Town and Country Planning Act 1990 to facilitate the comprehensive regeneration of Royton Town Centre, confirm the Council’s support in principle to the progression of a Compulsory Purchase Order and delegate authority to the Chief Executive to progress the necessary actions towards the potential making of a Compulsory Purchase Order.

3. Delegate authority to proceed with the acquisition of any assets required as part of any site assembly exercise to further the regeneration of Royton Town Centre to the Chief Executive in consultation with the Cabinet Members for Special Projects and External Relations and Business, Skills and Town Centre, the Borough Solicitor and the Borough Treasurer.

4. Approve the proposal to advertise the disposal of Public Open Space and amenity Open Space required to implement the proposed scheme.

5. Approve all necessary actions to secure the necessary Road Closures (under section 247(1) Town and Country Planning Act 1990 and appropriations (under sections 237(1) and 237 (1A) Town and Country Planning Act 1990 to ensure that the proposed scheme can be implemented.

6. Approve appropriation for planning purposes (pursuant to section 122 of the Local Government Act 1972) of the parts of the site owned by the Council where required.

7. Delegate to the Chief Executive in consultation with the Cabinet Members for Special Projects and External Relations and Business, Skills and Town Centre, the Borough Solicitor and the Borough Treasurer the authority to agree the structure, Heads of Terms and commercial agreement with Dransfield Properties Ltd.
Royton Town Centre Regeneration

1 Background

1.1 The Council has for a number of years had aspirations to bring about the regeneration of Royton Town Centre. In recent years these aspirations have been undermined by the failure of the private sector owners of the former Royton Assembly Rooms to deliver the promised refurbishment. Following action by the Council the Banks eventually took steps to take ownership of the Hall and subsequently took the property to auction.

1.2 In November 2011 Dransfield Properties Ltd successfully acquired the Hall, outbidding the Council’s offer for the property.

1.3 In February 2012 the Council entered into a Memorandum of Understanding with Dransfield Properties Ltd. The purpose of the Memorandum of Understanding was to provide the Dransfield Properties Ltd with assurances that the Council would not, for a limited period, seek to negotiate with any other potential development partner.

1.4 Since February 2012 the Council and Dransfield Properties have been working to develop proposals for the regeneration of the Town Centre. On the 26th March 2012 Dransfield Properties Ltd undertook a consultation exercise on a draft scheme for a proposed food store and reconfiguration of the Royton precinct.

1.5 The outcome of the consultation was an overwhelming support for the proposed scheme with 86% of respondents in favour of the proposals.

1.6 A further consultation took place specifically with the Market Traders on 26th April 2012 and again the proposals for the reconfiguration and enhancement of the market were welcomed.

1.7 At its meeting on the 13 March 2012 Cabinet decided that the proposed new leisure facility would be located in Royton Town Centre.

1.8 The Council is also undertaking a wider “Working Smarter with Assets” review and part of this work focuses on Royton Town Centre.

2 Current Position

2.1 Following a period of discussion, consultation and feedback a detailed scheme for a proposed food store and reconfiguration of the Royton Precinct has been prepared. Dransfield Properties Ltd have made some final amendments and are currently gathering the necessary information in order to submit a planning application. (Plan 1)
2.2 The Council has made it clear that the submission of the planning application should not precede the preparation and approval of the Commercial Agreement between Dransfield Properties Ltd and Oldham Council. The Commercial Agreement will ensure that the Council receives the appropriate financial consideration for its interests. Any state aid and all procurement requirements will be fully considered. The Council has appointed a commercial specialist to negotiate the Commercial Agreement and specialist lawyers to specifically advise on any state aid and all procurement issues arising from the Commercial Agreement.

2.3 It is recognised that the developer’s scheme primarily concerns the west side of Rochdale Road. It is clear that Royton Town Centre requires regeneration on both sides of Rochdale Road, although the current focus is on the west side. The Planning Application to be submitted by Dransfield’s will include material to both demonstrate how the East side of Rochdale Road would be developed and provide design codes and specifications for materials that would inform future planning applications for Phase 2. This will ensure a coherent approach to the development of Royton Town Centre and ensure the highest design standards.

2.4 The Council and Dransfield Properties Ltd are continuing to negotiate with all property owners affected by the wider proposals with a view to securing voluntary acquisitions. However it has become clear that some key property owners are unwilling to negotiate. It is proposed therefore that the Council signals its intentions and commitment to ensuring that the comprehensive regeneration of Royton Town Centre is neither stymied nor delayed by protracted negotiations by approving the resolution above (Recommendation 2) to support in principle work to progress a Compulsory Purchase Order for Royton Town Centre Regeneration Scheme.

2.5 The Council could also seek the right to implement physical improvements to certain properties should the landlord (and tenants/occupiers) decline to participate in the scheme. This is to ensure that regeneration of the Royton Town Centre is comprehensive. The preferred option is clearly that the landlord (Brookwide Properties) and others fully participate in the scheme and every effort is being made by both the Council and Dransfield Properties Ltd to ensure that this happens. Officers are continuing to consider (with the Council’s advisers) the potential implications of including the properties or rights to implement works within any CPO and will update members in due course.

2.6 The proposed Phase 1 scheme includes the development of public open space and amenity space and it will be necessary to advertise the Council’s intention to dispose of these sites. The sites include amenity open space which surrounds the main precinct and King Street Car Parks; the public realm space within the precinct area; the amenity space adjacent to the former Health Centre; the public open space at the junction of Radcliffe Street and Sandy Lane, adjacent to the Trinity Methodist Church; and land at Royton Park. (See attached Plan 2).
2.5 Subject to the granting of planning permission for the proposed scheme the developer will be required to progress a series of road closures and footpath diversions in order to implement the scheme.

2.6 The Council’s appointed Commercial Agent is currently in negotiations with Dransfield Properties Ltd assessing values and costs of the proposed development, seeking to ensure that Dransfield Properties Ltd have in place all the agreements with necessary partners to bring the scheme to fruition. It is proposed that the authority to agree the Commercial Agreement between Oldham Council and Dransfield Properties Ltd is delegated to the Chief Executive in consultation with the Portfolio holders for Special Projects and External Partnerships and Business, Skills and Town Centres, the Borough Treasurer and Borough Solicitor.

3 Options/Alternatives

3.1 The successful and comprehensive regeneration of Royton Town Centre is dependent upon major change. The proposal for a food store, along with other and ancillary development alongside to drive the regeneration of the retail core is considered to be the only viable and realistic option which will achieve the necessary regenerative effects. Detailed consideration has been given to the location of the food store and ancillary retail development from both an urban design perspective and commercial viability angle. The current proposals are also supported by the general public as demonstrated at the public consultation event undertaken by Dransfield’s on the 26th March 2012, and the Market Traders at a consultation event held on the 26th April 2012.

3.2 To secure this comprehensive regeneration a number of properties and interests will need to be acquired. Whilst the parties have sought to secure all such acquisitions by negotiation individual owners may have undeliverable aspirations and delay the scheme. There may also be rights or other impediments belonging to unknown owners. The only option the Council has to ensure that it is able to deliver the scheme within the desired timeframe would be to utilise its Compulsory Purchase Order powers under section 226(1) (a) of the Town and Country Planning Act 1990.

3.3 To enable the Council to dispose of Public Open Space and Amenity Space it is required to advertise the fact and consider any objections to such proposals.

4 Preferred Option

4.1 It is considered that the Dransfield Properties Ltd proposal, subject to the satisfactory conclusion of the negotiations on the form, structure and content of the Commercial Agreement, provides the catalyst for the successful regeneration of Royton Town Centre.

4.2 The successful delivery of the scheme is dependent upon securing other private sector owned land and interests and therefore to signal the Council’s commitment it is proposed that it approves to progress the necessary actions towards the potential making of a Compulsory Purchase Order.
5 Consultation

5.1 Dransfield Properties Ltd have undertaken a public consultation event on the 26\(^{th}\) March 2012 at which in excess of 400 people attended and 229 provided formal feedback of which 86\% were in favour of the scheme.

5.2 The Market Traders were consulted on the revised layout proposals for the Market stalls on the 26\(^{th}\) April 2012 and those that attended supported the retention of the market in the precinct and welcome the opportunities to further extend the market should that be necessary.

5.3 The Royton North and Royton South ward councillors have been engaged from the outset and were consulted most recently on the 6 June 2012. The members attending supported the proposals being brought forward subject to some further details regarding wider improvements to the public realm.

5.4 A presentation was made to the Royton District Partnership meeting on the 18\(^{th}\) June 2012 at which the scheme received the full support of the District Partnership.

6 Financial Implications

6.1 In deciding whether and how to exercise its powers in relation to this proposal members must consider the Council’s fiduciary duty to conduct its administration in a business-like manner with reasonable care, skill and caution, and with due and alert regard to the interest of the Council Tax payers. However it is the Council’s discretion to determine what the interest of the Council Tax payers are and how they are best served following its analysis of the relevant costs and benefits. In considering its duty under this heading the question in relation to this arrangement is whether no reasonable authority could have entered into the arrangement on such terms having being considered all relevant matters and disregarded all irrelevant matters.

6.2 Thus in considering this matter in terms of fiduciary duty the Council must have regard to issues such as the burden of the terms of the arrangement and the expenditure involved for the Council Tax Payers as well as the benefits it will bring. This needs to be considered both generally and specifically to those who will directly gain or suffer from the proposal. The balancing exercise is for the Council to determine after having given due consideration to the appropriate weight to be afforded to the relevant factors.

6.3 The proposal to progress a Compulsory Purchase Order will give rise to financial implications for the Council. It is proposed however that all costs arising from the need for a CPO will both be underwritten by Dransfield Properties Ltd or form part of the Council’s contribution to the development and therefore taken account of prior to the allocation of any surplus arising from the development.
6.4 There will also be costs incurred in taking forward the various statutory steps outlined in the report and the cost of specialist advice required. These costs will be offset against the capital receipt received in respect of the Council’s interest.

6.5 It is proposed that the Commercial Agreement provides the council with both a capital receipt and ongoing revenue receipt arising from the scheme.

7 Legal Services Comments

7.1 Compulsory Purchase Powers

7.2 The Council will be using its compulsory purchase powers to help implement this town centre regeneration scheme.

7.3 The CPO will be made using planning powers pursuant to Section 226(1) (a) of the Town and Country Planning Act 1990. Section 226(1)(a) enables a local authority with planning powers to exercise their compulsory acquisition powers if they think that in acquiring the land in question will facilitate the carrying out of development, redevelopment or improvement on or in relation to land. It must not be certain that it will be able to be acquired by agreement as the exercise of CPO powers are seen to be a matter of last resort when deferring such decisions will adversely impact on the delivery of the scheme. Section 226 (1A) provides that the acquiring authority must not exercise the power unless it thinks that the proposed development, redevelopment or improvement is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area. In deciding whether to make a CPO using planning powers, the Council would be required to demonstrate that there is sufficient justification for acquiring the land compulsorily and that there is a compelling case in the public interest for a CPO.

7.4 In addition, the relevant government guidance (Circular 06/2004) states that any programme of land assembly must be set within a clear strategic framework. The guidance goes on to state that such framework will need to be founded on an appropriate evidence base and to have been subject to consultation processes, including with those whose property is directly affected. Cabinet when deciding whether to make the CPO, and also the Secretary of State, when considering whether to confirm it, would be required to have regard in particular to whether the purpose for which that land is being acquired fits with the adopted planning framework for the Royton Town Centre.

7.5 Human Rights Act 1998 Implications

7.6 The Human Rights Act effectively incorporates the European Convention on Human Rights into UK law and requires all public authorities to have regard to Convention Rights. In making a decision, consideration therefore needs to be given to the Convention. The rights that are of particular significance to Cabinet’s decision are those contained in Articles 8 (right to home life) and Article 1 of Protocol 1 (peaceful enjoyment of possessions) as well as Article 6.
(right to a fair trial) in relation to the processes involved in making and confirmation of a CPO.

7.7 Article 8 provides that there should be no interference with the existence of the right except in accordance with the law and, as necessary in a democratic society in the interest of the economic well being of the country, protection of health and the protection of the rights and freedoms of others. Article 1 of the 1st Protocol provides that no-one shall be deprived of their possessions except in the public interest and subject to the conditions provided for by law although it is qualified to the effect that it should not in any way impair the right of a state to enforce such laws as it deems necessary to control the uses of property in accordance with the general interest.

7.8 In determining the level of permissible interference with enjoyment the courts have held that any interference must achieve a fair balance between the general interests of the community and the protection of the rights of individuals. There must be reasonable proportionality between the means employed and the aim pursued. The availability of an effective remedy and compensation payable to affected persons is relevant in assessing whether a fair balance has been struck.

7.9 Therefore, in deciding whether to proceed with the recommendations, Cabinet needs to consider the extent to which the decision may impact upon the Human Rights of the landowners, occupiers and residents and to balance these against the overall benefits to the community, which the Town Centre redevelopment will bring. Members will wish to be satisfied that interference with the rights under Article 8 and Article 1 of Protocol 1 is justified in all the circumstances and that a fair balance would be struck in the present case between the protection of the rights of individuals and the public interest.

7.10 In the event that the CPO was to be challenged by way of objection, this would result in a Public Inquiry taking place, that process (and the ability for the interested parties to potentially challenge through the courts the secretary of State’s confirmation of any CPO) provides a method through which a person’s right to a fair trial is protected. From the Council’s perspective these processes inevitably lead to costs and delay.

7.11 Public Open Space Land

Part of the land relating to this report is public open space according to the definition contained in Section 20 Open Spaces Act 1906 and therefore, the Council may not dispose of public open space unless, before disposing of the land, it gives notice of its intention to do so specifying the land in question to be advertised on two consecutive weeks in a newspaper circulating in the area in which the land is situated and it considers any objections to the proposed disposal which may be made to it before making a decision either for disposal or retention of the land having regard to those objections.

7.12 Disposal of Public Open Space Land
By virtue of Section 123 of the Local Government Act 1972, the Council has the necessary statutory powers of disposal. On a disposal of its land, the Council are under a statutory obligation to obtain the open market value and the best consideration that can be reasonably obtained.

7.13 Section 122 of the Local Government Act 1972 provides that a principal Council may appropriate land within its ownership for any purpose for which the Council is authorised to acquire land by agreement where such land is no longer required for the purpose for which it is held immediately before the appropriation.

7.14 The land currently owned by the Council or to be acquired by the Council may be subject to existing third party easements (for example, rights of way) and covenants which could prevent or delay the proposed development and which would pass on disposal of any land interest by the Council. However, where land is appropriated for planning purposes, the consequence (by virtue of section 237 Town and County Planning Act 1990) is that the erection, construction or carrying out or maintenance of any building or works on such land in accordance with planning permission is authorised, subject to payment of any compensation, even if it involves interference with existing third party easements and covenants. The third party rights are overridden whether the Council or a person deriving title from the Council undertakes the development.

7.15 In order to be able to reply upon section 237 of the Town and Country Planning Act 1990, the whole of the area in the Council's ownership must be formally held for planning purposes. It is therefore necessary for any part of the land not currently held for planning purposes to be appropriated for planning purposes. The recommendation of this report secures this position.

7.16 It is envisaged that further reports will be required to be approved as the Town Centre regeneration scheme progresses in order to implement the comprehensive regeneration scheme.

7.17 The Council's Land and Property Protocols have been observed.

8. **Cooperative Agenda**

8.1 The proposal is a means by which the Council can deliver on its Co-operative values “Working together - We will work together and support each other in achieving common goals”

9 **Human Resources Comments**

9.1 Not applicable

10 **Risk Assessments**

10.1 **Potential Risks**
Dransfield Property Ltd is unable to deliver – will be dealt with in Development Agreement.

The preferred food store operator withdraws. Issue for Dransfield’s CPO resolution causes concern across the Town Centre – mitigation – information campaign

11 IT Implications

11.1 Not applicable

12 Property Implications

12.1 The Council currently owns a number of freehold and long leasehold reversionary interests in the land upon which the development will be carried out, representing approximately 50-60% of the total site area. More specifically;

- Asset Number 570; Freehold/Long Leasehold reversionary interest subject to i) 125 year lease commencing 25/3/2005 and ii) 125 year lease commencing 24/6/1987. The Council receives 7.5% of head lease rental received from retail units, which represents an income of circa £42,000 p.a.

- Asset Number 1900: Long Leasehold reversionary interest subject to 800 year lease commencing 14/8/1972 at annual rental £30.

- Asset Number 708; Freehold/Long leasehold; Public car park

- Asset Number 2552; Freehold; Landscaped land

- Asset Number 1424; Freehold/Long leasehold; Market Square

- Asset Number 1665; Freehold/Long leasehold; Former public conveniences

12.2 Further to Legal comments at paragraph 7.15 Members are also recommended to approve appropriation for planning purposes (pursuant to section 122 of the Local Government Act 1972) of the part of the site owned by the Council where required, to enable the powers in section 237 of the Town and Country Planning Act 1990 to be used to facilitate the proposed development.

12.3 Heads of Terms with Dransfield Property Ltd are still to be agreed, however it is proposed as part of the overall agreement, that the Council will receive a capital payment and additional consideration by way of rental income in compliance with its duty to obtain the best consideration that can be reasonably obtained.
13 **Procurement Implications**

13.1 Pinsent Mason’s Solicitors have been appointed to advise the Council on all state aid and procurement issues arising from the proposals and in particular the proposed Commercial Agreement.

14 **Environmental and Health & Safety Implications**

14.1 None arising

15 **Equality, community cohesion and crime implications**

15.1 The proposed scheme will assist the Council in the delivery of its equality and community cohesion agendas by providing space within Royton that will be attractive to all sections of the community. The proposed planning application will be subject to a Crime Assessment.

16 **Equality Impact Assessment Completed?**

16.1 Yes

17 **Key Decision**

17.1 Yes

18 **Forward Plan Reference**

18.1 EPS-31-12

19 **Background Papers**

19.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

- File Ref.: [insert]
- Name of File: [insert]
- Records held in [insert] Department, [insert address]
- Officer Name: [insert]
- Contact No.: [insert]

20 **Appendices**

20.1 Plan 1 Proposed development Scheme (awaiting revised plan)
20.2 Plan 2 Proposed Public Open Space and Amenity Open Space to be disposed.
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