

Public Report with Exempt Appendices  
Cabinet

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**Committee Name and Date of Committee Meeting**

Cabinet – 17 October 2022

**Report Title**

Forge Island Final Delivery Arrangements

**Is this a Key Decision and has it been included on the Forward Plan?**

Yes

**Strategic Director Approving Submission of the Report**

Paul Woodcock, Strategic Director of Regeneration and Environment

**Report Author(s)**

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**Ward(s) Affected**

Boston Castle

**Report Summary**

This report sets out a recommended delivery approach to allow the Forge Island scheme to progress to the construction phase. The approach involves the Council acting as funder for the scheme and contracting with Muse Developments Ltd to facilitate delivery.

**Recommendations**

That Cabinet: -

1. Approves an increase in the Council's Capital Programme to allow the upfront capital costs of the Forge Island development to be funded by the Council rather than a private investor, in order to provide best value to the taxpayer.
2. Approves the award of the contract for the delivery of the Forge Island Development to Muse Developments Limited.
3. Delegates authority to the Strategic Director of Regeneration of Environment, in consultation with the S151 Officer and the Cabinet Member for Jobs and Local Economy, to enter into the agreements necessary to give effect to the Forge Island Scheme.

## List of Appendices Included

- Appendix 1 Exempt Financial Modelling
- Appendix 2 Equality Analysis Screening (March 2022)
- Appendix 3 Carbon Impact Assessment (March 2022)

## Background Papers

[Rotherham Town Centre Masterplan](#)

Cabinet report: [December 2018](#)  
[March 2022](#)

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**  
Council – 05 October 2018

## Council Approval Required

No

## Exempt from the Press and Public

Yes or No? If yes, use text below.

*An exemption is sought for Appendix 1 – Financial Modelling under Paragraph 3 (Information relating to the financial or business affairs of any particular person (including the authority holding that information)) of Part I of Schedule 12A of the Local Government Act 1972 is requested, as this report contains sensitive commercial information with regards to commercial agreements which could disadvantage the Council in any negotiations if the information were to be made public.*

*It is considered that the public interest in maintaining the exemption would outweigh the public interest in disclosing the information, as the parties' commercial interests could be prejudiced by disclosure of commercial information.*

## Forge Island Final Delivery Arrangements

### 1. Background

- 1.1 On 11 September 2017 Cabinet resolved to adopt the Town Centre Masterplan and go out to the market to secure a development partner for Forge Island.
- 1.2 Forge Island occupies a central location within Rotherham Town Centre, with excellent public transport links and an attractive waterside setting. The Masterplan suggested the site would be suitable for a leisure-led mixed-use development, to act as a catalyst for future public and private investment into the town centre. Through an open and competitive process, Muse Developments Ltd. (Muse) was selected as the Council's preferred development partner in September 2018. Since this date, Muse has been working alongside the Council to bring the Forge Island development forward.
- 1.3 Muse and the Council entered a "Development Agreement for Lease" which sets out a conditional leasehold structure for the redevelopment of the site. It also documents the various pre-conditions which apply to the project and responsibility for satisfying these. The agreement allows for delivery arrangements that may include (but not be limited to) the Council acting as a funder or purchaser of the whole or part of the Development (but without obligation on the part of the Council to enter any such arrangements).
- 1.4 Key milestones required for construction of the development to start have been achieved: -
  - Through a competitive process Muse identified a private funder which offered to provide development funding on attractive terms that met the requirements previously agreed by the Council.
  - Muse has selected a main contractor for the development under a two-stage design and build approach.
  - The demolition and the removal of the pedestrian footbridge has been completed.
  - Site investigations and archaeology is completed.
  - Designs have been finalised and tender construction packages returned so the scheme is now fully costed.
  - Pre-letting agreements have been secured with Arc Cinema and Travelodge. Pre-letting agreements have also been secured with Cow and Cream and with Thistle Group. Thistle will bring their brands Estabulo, Sakku Samba, Casa Piri Piri and Café Noor to the scheme.
- 1.5 The March 2022 Cabinet Report set out the principal terms for the Strategic Director of Regeneration and Environment and the Cabinet Member for Jobs

and the Local Economy to agree the final scheme arrangements, which included the lease and rent arrangements, and the level of capital contribution to the scheme (subject to applicable subsidy control law).

- 1.6 Very recent volatility of the financial markets and the challenge this now poses to private funders providing up-front capital within the requirements previously agreed by the Council has resulted in Muse (in line with the Development Agreement for Lease) re-assessing delivery arrangements and proposing options for the Council to consider, including the Council acting as funder of the whole or part of the development. Consideration of this option is urgent as a result of ongoing and rapidly changing upheaval in the financial markets which is reducing both the availability and the attractiveness of private funding as a route to deliver the scheme. This is combined with time pressures that are created through the commercial agreements with prospective tenants and contract prices.
- 1.7 On 5<sup>th</sup> October 2022 the Council is considering agreement of an addendum that gives Cabinet the option to act as funder of the whole development and approve the necessary increase in the Council's Capital Programme to allow for this.
- 1.8 In this report, approval is sought to enact that option, to allow the agreement of terms for the development to be fully funded by the Council and to award the contract for the delivery of the Forge Island Development to Muse.
- 1.9 It should be noted that irrespective of the source of upfront capital funding, it is expected that the cost of repayment of capital costs will be met wholly or largely over the long term by revenue generated from commercial activity in the Forge Island development.
- 1.10 It is recognised that changing the delivery arrangements for the Scheme to a position where the Council acts as funder will change the nature of the arrangement with Muse. To do so will require the Council and Muse to enter into a forward funding agreement (otherwise known as a "development funding agreement") which would create a public works contract. For reasons of transparency, a Voluntary Ex-ante Transparency Notice (VEAT) Notice was issued on 26 September 2022 putting into the public domain the fact that the Council was considering this option.

## **2. Key Issues**

- 2.1 Rising inflation and volatility in the economy and financial markets has made it increasingly difficult to secure private development funding within the requirements previously agreed by the Council (December 2018, and March 2022 Cabinet reports). Inflation has driven up the estimated capital cost of the development, whilst pressures in financial markets means that the level of private development funding is reduced.
- 2.2 These external market conditions are likely to persist and potentially become more difficult. On the 13<sup>th</sup> of September 2022 Muse was informed that the markets were not prepared to lend on the terms previously agreed and

consequently the Council is required to reconsider the approach to financing the development as a matter of urgency. There have been further significant movements in the financial markets following the Governments fiscal event on 23<sup>rd</sup> September and the outlook remains unpredictable. As a result, a decision on a way forward to deliver the scheme is highly time sensitive due to external factors that were unforeseen and not within the control of the Council.

- 2.3 If the Council is not able to find a suitable funding package for the development of Forge Island quickly, there is a significant risk that the current development costs (secured for a limited time) will increase due to ongoing inflationary pressures together with the expiration of the period of time in which the existing contract price remains valid. In addition, delays would risk the Council losing agreements that are in place for third party tenants secured for the development that generate income to underpin the financing of the scheme.
- 2.4 Following changes in the private investment market and based on the analysis to date, a review against other delivery options indicates that Council funding now offers the most efficient and effective funding mechanism for the scheme, whilst minimising risk to delivery. Over the lifetime of the development, it offers significantly better value for money for the Council and the public purse. A financial assessment of each option is provided in the exempt financial Appendix 1.

### **3. Options considered and recommended proposal**

- 3.1 The options considered comprise:
- i. Seek to renegotiate terms with the existing or a new private investor
  - ii. Proceed on the existing terms with a private investor and increase the level of Council capital contribution
  - iii. Withdraw from the scheme
  - iv. Delay delivery
  - v. The Council fully fund the upfront capital costs of the scheme
- 3.2 Details of the analysis and financial modelling of these options is included in Exempt Appendix 1.
- 3.3 **Option 1 - Seek to renegotiate terms with the existing or a new private funder.**

On the 13<sup>th</sup> September 2022 the Council's development partner was advised that the pricing could not be held on the terms competitively secured with the investor. Yield rates have moved out significantly over the last month and look likely to continue along the same trend which increases the cost of borrowing through this route. To raise the amount of capital required the Council could increase the annual payment or commit to payments over the longer term. Both options increase the cost to the Council over the lifetime of the development and the scope for making such changes is limited by long-term affordability considerations. The option to secure the same or better

terms than previously negotiated, in a market which is becoming increasingly difficult is not considered to be a realistic or viable option.

#### **3.4 Option 2 – Proceed on the existing terms with a private funder and increase the level of Council capital contribution**

This option requires the Council to “top up” the difference between a reduced funding offer from an investor on otherwise the same terms in respect of annual cost and lease length. The level of funding needed would be significantly above the provision agreed in the Cabinet report of March 2022 and would require a virement to be agreed from other existing budgets or new funding to be made available. The cost to the Council of delivering through this route will include both the annual payment to the investor and annual borrowing costs. The financial modelling at Exempt Appendix 2 shows this is not considered to be the most efficient and effective method of funding the scheme and this option is not therefore recommended.

#### **3.5 Option 3 Withdraw from the scheme.**

Delivery of Forge Island is a strategic regeneration priority and a pre-requisite for successful delivery and sustainability of other schemes in the wider regeneration programme including those being delivered through the Towns Fund, Levelling Up and the Future High Street Fund. It is an essential step in re-positioning the town centre and attracting further investment in the town centre and the local economy. As a viable option for delivery is available, this option is not recommended.

#### **3.6 Option 4 - Delay delivery.**

Significant progress has been made towards delivery of this scheme despite challenging market conditions including the Covid pandemic, lockdown and the economic impact of inflation. The scheme has not been scaled back from the original proposals and the scope and quality of what the scheme will deliver has been maintained. Delay would risk losing the benefits of progress to date, including the occupiers secured to the scheme and open the risk of further inflationary cost pressure rendering the scheme unviable. This option is not recommended

#### **3.7 Option 5 - The Council fully fund the upfront capital costs of the scheme**

This approach removes the need for a private sector funder and replaces it with the Council acting as the total upfront funding provider for the scheme. This approach provides greater certainty in that funding is not dependent on the market of private investor decisions and allows the Council options to manage its capital borrowing over the long term. Moving quickly to this approach will allow the Council to maintain the current projected development costs at the current secured prices. It also allows the Council to maintain the current third-party tenants that provide the ongoing revenue income to enable the Council to finance the project over the project life. This is the recommended option.

3.8 It is recommended that Cabinet:

1. Approves an increase in the Council's Capital Programme to allow the upfront capital costs of the Forge Island development to be funded by the Council rather than a private investor, in order to provide best value to the taxpayer.
2. Approves the award of the contract for the delivery of the Forge Island Development to Muse Developments Limited.
3. Delegates authority to the Strategic Director of Regeneration of Environment, in consultation with the S151 Officer and the Cabinet Member for Jobs and Local Economy, to enter into the agreements necessary to give effect to the Forge Island Scheme.

#### **4. Consultation on proposal**

4.1 To ensure interested parties were made aware that the Council was considering the recommended approach of fully funding the scheme and entering into a public works contract with Muse Developments Limited a VEAT notice was published on 26 September 2022. The response to the VEAT will be reported to the meeting.

#### **5. Timetable and Accountability for Implementing this Decision**

5.1 Subject to Cabinet approval of the recommendations in this report the Council will target entering a 'development funding agreement' with Muse Developments Ltd before the end of October 2022 to allow practical commencement of the Forge Island development.

5.2 Subject to matters described in 5.1 (above) construction for main works will start in November 2022.

#### **6. Financial and Procurement Advice and Implications**

6.1 The financial implications of the Forge Island Development are included within the exempt financial appendix 2, along with detailed analysis of all funding options considered. The longer-term financial risks that this project presents relate to the Council's ability to maintain the incomes levels from the lettings, car parking and business rates at the modelled levels. However, the chosen model does present the most financially viable option and the most value for money option of those considered.

6.2 If Cabinet approve the recommendation the Council's Capital Programme will be updated to include the cost of the Forge Island Development and the revised modelling of the ongoing revenue implications of the development will be factored into the Council's Medium Term Financial Strategy.

6.3 The procurement implications associated with the recommendations detailed in this report are fully explained in Section 7 below.

## **7. Legal Advice and Implications**

- 7.1 In light of the fact that the previous funding arrangements are no longer practicable the Council is required to consider the other options available that are outlined in this paper. Should the Council decide to proceed then it is required to have a lawful mechanism to enable it to do so. This means one of 3 potential routes:
- a. A full tender process;
  - b. Contract award notice;
  - c. VEAT Notice.
- 7.2 The recommended approach in the Report is the Award following the VEAT Notice. In order to ensure that Cabinet were able to proceed with this route then the Council published this Notice on 26<sup>th</sup> September 2022 to provide Notice of the intended approach.
- 7.3 The advice therefore is that the Council is permitted to utilise the negotiated procedure on the basis of exclusive rights as a result of competition being absent for technical reasons (as provided for in Public Contracts Regulation 2015 32(2)(b)(ii)) and, or in the alternative, on the basis of urgency (as provided for in Public Contracts Regulations 2015 32(2)(c)). For the reasons that are provided in the Report.
- 7.4 The Notice provides for a 10-day standstill period before the award of any contract and provides that should a claimant wish to make a challenge to the approach and claim damages then this must be done within 30 days of the publication of the Notice.
- 7.5 There is a 6-month period from the point the Council enters into contract for a challenge to be issued to seek to ask the courts to declare the Notice ineffective.
- 7.6 The Council has sought to ensure that these risks are mitigated by issuing the Notice in sufficient time to enable the expiration of the period of claim for damages before it would be required to enter into the contract. It should be noted that there is little the Council is able to do in order to mitigate further the risk of challenge during the period in which a Notice could be found to be ineffective.
- 7.7 In short, the award of the Contract does carry a residual legal risk of challenge. This risk is considered to be similar to the risk of challenge that is found in the making of any significant decision by a public body. This Report sets out the reasons that the Council considers that the approach would be lawful and the ways in which the Council has sought to mitigate this risk.

## **8. Human Resources Advice and Implications**

- 8.1 There are no direct human resources implications arising from this report.



## **9. Implications for Children and Young People and Vulnerable Adults**

- 9.1 There are no direct implications for Children and Young People and Vulnerable adults arising from this report.
- 9.2 Consultation has highlighted that “things to do and see” in the town centre is important to young people with a cinema high on the list of amenities that young people would like to see delivered to improve the town centre offer.

## **10. Equalities and Human Rights Advice and Implications**

- 10.1 A screening assessment and an Equality Analysis Form is attached.
- 10.2 Further consultation will be ongoing with protected characteristic groups to inform the operation and accessibility of the scheme and to monitor the ongoing equalities impact of the development.

## **11. Implications for CO2 Emissions and Climate Change**

- 11.1 A carbon impact assessment is attached.
- 11.2 The development is expected to achieve a BREEAM Very Good rating and is located on a site that is within walking distance of the bus interchange, tram train and railway station. The development will reduce the need for travel outside of the borough to access facilities which are not currently available in Rotherham.

## **12. Implications for Partners**

- 12.1 There are no direct impacts from this decision on the delivery of services by partners. The delivery of the Forge Island scheme is widely seen as an important catalyst in regenerating Rotherham town centre and progress towards delivery is likely to be welcomed by partners.

## **13. Risks and Mitigation**

- 13.1 The purpose of this report is to seek approval for the Strategic Director of Regeneration and Environment in consultation with the S151 Officer and the Portfolio Holder for Jobs and Local Economy to agree the most advantageous terms for the scheme to be delivered, balancing delivery options with risk and affordability.
- 13.2 The Council's development partner maintains detailed risk registers with respect to development and delivery of the scheme. Substantial risks are identified relating to potentially unacceptable delays to the current delivery programme and unaffordable uplift to the construction costs associated with the Forge Island development. Mitigation is possible through progressing with delivery of the scheme under the recommended option in this paper, thereby securing the current programme and returned costed tender packages.

#### 14. Accountable Officers

Tim O'Connell, Head of Rotherham Investment and Development Office

Approvals obtained on behalf of Statutory Officers: -

	<b>Named Officer</b>	<b>Date</b>
Chief Executive	Sharon Kemp	03/10/22
Strategic Director of Finance & Customer Services (S.151 Officer)	Judith Badger	29/09/22
Assistant Director, Legal Services (Monitoring Officer)	Phillip Horsfield	29/09/22

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