**ACQUISITION OF LAND AT MORNING LANE & SIMULTANEOUS GRANT OF OPTIONS FOR MIXED USE DEVELOPMENT SUBJECT TO PLANNING**

**KEY DECISION NO.FCR N49**

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<tr>
<th>CABINET MEETING DATE</th>
<th>CLASSIFICATION:</th>
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<tr>
<td>23rd January 2017</td>
<td>OPEN</td>
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<td></td>
<td>Exempt Appendices BCDE&amp;F</td>
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<td>If exempt, the reason will be listed in the main body of this report.</td>
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<th>WARD(S) AFFECTED</th>
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<td>Hackney Central</td>
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<th>LEAD MEMBER</th>
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<td>Mayor Glanville</td>
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<th>KEY DECISION</th>
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<th>GROUP DIRECTOR</th>
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<td>Ian Williams Group Director Finance &amp; Corporate Resources</td>
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1. CABINET MEMBER’S INTRODUCTION

1.1 This proposal to acquire land on Morning Lane in Hackney Central/Homerton comes after a period where Tesco has been looking at options for its Morning Lane site that would allow them to keep a store, but find a buyer to enable redevelopment to take place.

1.2 This proposal represents an opportunity for the Council to acquire a key development site in the middle of Hackney Central and give the Council greater control over what happens to this large strategic site in Hackney.

1.3 This is a significant investment by the Council, but the benefits to Hackney are just as significant; space for 1,500 jobs, genuinely affordable workspace, at least 50% of the retail jobs prioritised for Hackney residents and affordable homes.

1.4 Beyond the site’s importance in Hackney Town Centre and local regeneration, Government policy is encouraging or even forcing councils to be more reliant on their own resources rather than on grants; it is therefore essential to identify and evaluate opportunities to secure income streams for the future.

1.5 Hackney anticipated this some years ago and has already taken steps to invest in other strategic assets around the borough or make better use of our own existing buildings which have assisted in protecting the Council’s budgets for front line services. The subject of this report is a proposal which would give the council a non-Council Tax income, ultimately equivalent to a 1.5% increase in the current Council Tax. The proposal is built upon a concept for a genuine mixed-use, town centre regeneration scheme that will also deliver additional business rate income.

1.6 The proposed acquisition of the Tesco site on Morning Lane which is the subject of this report provides the Council with a rare opportunity to facilitate:

- a town centre regeneration scheme within what is regarded to be one of the most strategically important sites within Hackney Central and indeed the Borough (and not leave it in exclusively private hands),
- the provision of affordable workspace and a mix of commercial space which could support more than 1500 jobs, of which about 400 are expected to be retail jobs with 50% given priority to Hackney residents via the Council’s own Ways into Work service, and which will include a brand new purpose built supermarket; balanced with affordable homes with a 20% minimum contractually guaranteed (without prejudice to any
higher contribution which might be secured in the course of the Planning viability process),

- a long term investment asset which can:
  i) be financed by borrowing from the PWLB but paid for over time by a private developer, at nil cost to LBH throughout,
  ii) provide income to the Borough on an annual basis from the moment that contracts are signed, and
  iii) an annual share of the rent from the commercial space equal to 5%, or a guaranteed minimum annually, whichever is the greater in perpetuity.

1.4 This report is presented following the consideration of the possibility of leaving the site to wholly private ownership. We have given consideration to the likely outcomes in that case, as compared to the benefits set out above and below, that would accrue to Hackney by securing the freehold for the site. Tesco has indicated it has received competing bids from private housing developers, and the Council expects that such bids were made on the condition of planning consent being in place, as is typical for private house builders. In the event that Tesco sold to a private house builder, some of the benefits of the redevelopment of the site might still be obtained even if the Council were not involved: new housing would be built at some point in the future; some of it would no doubt be affordable; more people living in the area would bring more spending power into the area to support existing and new businesses. However if development of this site were left to a private residential developer it would be considerably less likely than the current proposal to deliver some of the Council’s other social and economic objectives. This is a key town centre site within Hackney Central which is presently under-utilised and therefore represents a prime opportunity for town centre regeneration with the focus being on comprehensive mixed use rather than solely a housing scheme that seeks to minimise the inclusion of employment space to maximise short term profit, albeit there will still be a significant residential component.

1.7 The Council’s ownership of the freehold to the site, together with the vision of Hackney Walk to expand the amount of retail and commercial units, whilst still retaining a significant Tesco presence will bring a contrasting additionality. If Cabinet agrees to this proposal, it will be the responsibility of Hackney Walk to come forward with a planning compliant scheme in consultation with the Council as landowner, the local community and other stakeholders. While this work has not yet been undertaken by Hackney Walk the Council has sought to set out some clear principles it would need to see in any acceptable scheme under the option agreement.
1.8 The scheme will provide a step change in the number of jobs on the site, ensuring jobs are accessible to Hackney residents, as well as creating a genuinely beneficial amount of integrated affordable workspace. The quantum of affordable workspace provision to be delivered will be agreed within the Planning process: Hackney’s policy being that affordable workspace should remain so in perpetuity, as the starting point for negotiations.

1.9 This scheme will provide new housing and affordable housing with a guaranteed minimum of 20% committed to in contract, not so as to constrain any greater potential shown through the Planning viability process in the future. It should be understood that existing Planning policy applies as ever (Core Strategy Policy 20: subject to site characteristics, location and overall scheme viability Hackney Work will seek to provide 50% housing in the delivery of the project) and as such if the Planning viability assessment demonstrates that a greater percentage of affordable housing can be provided this should then be applied. If the planning viability assessment identifies less capacity for affordable housing than 20%, then the developer will still be obliged under the option agreement to provide the minimum 20%.

1.6 Further additionality to Hackney arises because the freehold investment that will be created can be retained to provide the Council with the income stream referred to above, which can be deployed to fund services into the future, or alternatively can be sold in part or in whole to institutional investors, releasing new capital for the Council to use elsewhere. There are also overage provisions to ensure the Council will further benefit from uplifts in both residential values and floor area achieved in the future.

1.7 I commend this report and the recommendations to acquire the freehold interest in this land along with the grant of options to the developer, Hackney Walk, enabling it to seek planning consent for future development of this site for a mixed use Town Centre regeneration scheme.

GROUP DIRECTOR’S INTRODUCTION

2.1 This report seeks approval to purchase the freehold interest in the site (as shown edged red on the plan at Appendix A) from Tesco and to simultaneously grant options for long leasehold interests to Hackney Walk enabling them to seek planning consent for and to build out their mixed use retail/commercial and residential scheme. It is envisaged that this site is capable of accommodating at least 580,000 square feet net floor space. The developer has agreed in contract to an overall mix of
55% commercial and 45% residential, plus or minus 15%. It is the commercial floor space that provides the accommodation for around 1500 new jobs, in addition to the jobs available in the new supermarket.

2.2 As noted in the introduction above, the proposed land deal is structured to provide the Council with a long term income stream and the involvement of Hackney Walk will enable it to promote a genuinely mixed use development in support of the Council’s ambitions to lead and sustain a drive for more truly affordable homes and simultaneously create a step change in opportunities for residents to access new skills and employment opportunities.

1.3 The purchase price agreed with Tesco which is as detailed in the agreed Heads of Terms in Exempt Appendix B, is predicated on the basis of current market values reflecting both the value of the existing freehold interest and also its potential value with planning consent. One of the Council’s framework surveying practices has provided red book valuations which support and verify that the price being paid is not in excess of market value, and represents value for money for the Council. Partners in this surveying practice have represented the Council throughout in this matter, and the valuation provided by their independent expert valuation team is provided in Exempt Appendix E.

1.4 The red book valuations in Exempt Appendix E also demonstrate that the proposed transaction for the option to grant a long leasehold interest over the site represents market value having regard to the proposed development and is in line with current, generally accepted market conditions which respects the 'best consideration' and value for money requirements which the Council has to meet.

2.5 The commercial terms agreed with Hackney Walk which comprise a mix of capital and licence fee payments are as detailed in the agreed Heads of Terms in Exempt Appendix C. These have also been negotiated in conjunction with the negotiation of the Tesco commercial terms to ensure that the best possible outcome for the Council is achieved by mitigating as far as is practical, the potential risks associated with the granting of options and the relevant timeframes.

2.6 Both of these transactions have been extensively modelled to ensure that the return on the Council’s capital commitment for this acquisition is sufficiently protected and that the risks identified arising from various scenarios are mitigated as far as practically possible. These scenarios and risks are detailed in the Table in Exempt Appendix D. Modelling allows for Stamp Duty Land Tax, VAT and fees.
2.7 History has demonstrated that opportunities to use key sites to provide this kind of combination of social, economic and income benefits very rarely occur, not least with a mixed use developer ready to take a long leasehold interest. Officers are conscious of a substantial responsibility to make good on these circumstances and have therefore employed a comprehensive range of professional advice to evaluate the opportunity and carry out the necessary due diligence to ensure that the proposed development is capable of delivery having regard to the site constraints and envisaged planning requirements.

3. **RECOMMENDATIONS**

3.1 To authorise the Council’s purchase from Tesco of the freehold interest in land at Morning Lane as shown edged red on the plan attached at Appendix A and upon the commercial terms set out in Exempt Appendix B.

3.2 To authorise the simultaneous grant of options to Hackney Walk for long leasehold interests to be granted on completion of two phases of development across the Tesco site on the commercial terms set out in Exempt Appendix C.

3.3 To authorise the Group Director of Finance and Corporate Resources to settle the commercial terms for this acquisition and the granting of options for mixed use development to achieve simultaneous exchange and completion of both transactions.

3.4 To authorise the Director of Legal to agree, settle, negotiate and complete the legal documentation for both the acquisition of the land and the option agreements and all other relevant and ancillary legal documentation arising thereto and to sign and complete them on behalf of the Council.

3.4 To delegate to the Group Director of Finance and Corporate Resources authority to determine the most cost effective option in terms of financing this acquisition including any subsequent ability to partner this acquisition with an appropriate third party provided that whichever option is adopted represents best value on the part of the Council.

4. **REASONS FOR DECISION**

4.1 To enable the Council to proceed with the acquisition of this strategically prominent site and its subsequent disposal for a mixed use development which is consistent with the Council’s vision and objectives to enhance and further develop Hackney Central.
4.2 The key strategies that underpin the rationale for this decision are firstly to encourage economic participation through regeneration of this currently under-utilised site which will reduce long term unemployment through the provision of space to support 1500 new jobs and secondly to help secure the future financial stability of the Council by securing and investing in an income generating asset that will have potential not only for long term growth but also provide security in the form of a saleable and appreciating asset.

5. DETAILS OF ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

The alternative is to leave Tesco to sell the site to another party. Thereafter, the Council's only input would be in a reactive capacity as local planning authority.

6. BACKGROUND

6.1 The Council already has a number of land and property holdings within Hackney Central and the acquisition and subsequent development of this land will compliment and significantly enhance Hackney Central as a town centre destination in accordance with the Hackney Central Area Action Plan.

6.2 The land which is the subject of this acquisition is as shown edged red on the attached plan at Appendix A. It presently comprises the Tesco store and car park on Morning Lane and has been identified by planning colleagues as part of the current Masterplan exercise as being of Strategic importance to the future well-being and enhancement of Hackney Central.

6.3 Officers were advised earlier this year that Tesco had been discretely marketing their store and car park on Morning Lane and that they had received interest from a number of residential developers. Hackney Walk were interested in the site as a substantial core element their fashion hub concept and were able to establish terms with Tesco on the basis of an unconditional purchase for a mixed use scheme driven by a substantial outlet retail and commercial offer, teamed with new housing.

6.4 Officers understand that while residential developers had bid for the site, their bids were subject to planning and therefore offered Tesco little certainty around timetable and quantum of financial benefit. Tesco was keen to secure a capital receipt this year and therefore accepted an unconditional and competitive offer from Hackney Walk. It was after this
deal had been struck with Tesco that Hackney Walk approached officers to establish whether the Council would entertain the idea of investing.

6.5 The mixed use nature of the proposal is consistent with the policy objectives of the Council (as set out in the Central Hackney Area Action Plan) to enhance Hackney Central and therefore officers agreed to investigate the potential for the Council to invest, but only on the basis that the investment would be backed by the ultimate ownership of the site itself. The Council took preliminary advice from specifically experienced development consultants, before committing substantial resource to the matter.

6.6 The financial terms that have been agreed both for the purchase of this site from Tesco and for the grant of options to Hackney walk are as set out within Exempt Appendices B & C. The objective of these proposals is to use the Council’s borrowing capability to obtain control of a strategically located 3.5 acre site and to ensure that whilst the asset and investment created is retained by the Council, the costs of financing development will be borne by others. It is a condition of the deal that the Council must not be the body tasked with the cost and delivery of the new Tesco store that will be provided in the first of a two phase scheme, and as such, this responsibility is retained by Hackney Walk.

6.7 Hackney Walk’s vision is to create an inclusive retail offer building on Hackney’s reputation, atmosphere and location, coupled with an existing and growing momentum in fashion design. The driving principle will be fashion, with the aspiration that the fashion industry will increasingly establish itself in this location not only in terms of retailing but also design, administration training and even possibly light manufacturing. It is envisaged that the site could be developed to provide the following:

- 565,000 square feet net floor space across the entire site.
- 275,000 square feet would be retail/commercial floor space (10% being affordable workspace).
- 44,000 square feet replacement Tesco store and car parking spaces.
- 245,000 square feet would be residential floor space.

The overall mix being within the range of 55% commercial 45% residential, plus or minus 15%.
6.8 **Proposal**

**Acquisition from Tesco:**

- The Council will acquire and retain the freehold interest in the entire Tesco site.
- A 5% deposit will be payable on exchange of contracts.
- Completion targeted for early February 2017.
- The Council will grant a 999 year lease back of the existing store, to be continuously occupied until the replacement store in phase 1 is handed over and occupied.
- Tesco will pay an annual rent over the first 6 years subject to a 50% claw back.

Agreed Heads of Terms are as shown in Exempt Appendix B.

**Disposal to Hackney Walk:**

- By way of granting 2 Option Agreements which will lead to the grant of two long leasehold interests.
- Hackney Walk to fund and secure planning consent for the overall scheme within a defined timeframe.
- Initial Arrangement Fee.
- Capital Payment for exercising Call Option – Phase 1.
- Capital Payment for exercising Call Option – Phase 2.
- Capital Payment Practical Completion – Phase 1.
- Capital Payment Practical Completion – Phase 2.
- Excess Area Payment.
- Annual Call Option Payments throughout.
- Hackney Walk to fund cost of new Tesco store & Car Park to shell & core finish.
• Upon grant of Head Leases of Phases 1 & 2 Council to receive 5% of rents received or a guaranteed minimum rent (already agreed and contained in the exempt appendix), whichever is the greater.

• Guarantor arrangements in place if Hackney Walk default.

Agreed Heads of Terms are as shown in Exempt Appendix C

6.9 Hackney Walk’s technical team has already undertaken site investigations and the Council has appointed Faithful & Gould to independently review the scope and quality of their work as part of normal due diligence in respect not only of the site being acquired but also with regard to the Tesco requirements for the replacement store which Hackney Walk will provide as part of the first phase of the proposed development.

6.10 **Policy Context**

The purchase of the freehold interest in this site from Tesco together with the disposal to Hackney Walk is regarded as an intervention necessary to further enhance and improve the prospects and well-being of Hackney Central in the future. This is in accordance with both the Council’s Corporate Plan to 2018 which references both Town Centre Regeneration and Investment Strategy to increase income generation by acquiring and enabling development over its assets. To enable and facilitate development of this site is also an objective of the emerging Masterplan for Hackney.

6.11 **Equality Impact Assessment**

No equalities issues are believed to arise from this report because the decisions relate to the acquisition and potential disposal of land interests. However there may be equality issues associated with the proposed development of the site which will be addressed in the normal way through conditions to be attached to the planning permission which will be discharged separately from this decision when the Council is acting in its capacity as local planning authority when determining any planning application.

6.12 **Sustainability**

No sustainability issues arise from this report because the decisions
relate to the acquisition and potential disposal of land interests. However there may be sustainability issues associated with the proposed development of the site which will be addressed in the normal way through conditions to be attached to the planning permission which will be discharged separately from this decision when the Council is acting in its capacity as local planning authority when determining any planning application.

6.13 **Consultations**

There have been consultations conducted with Lead Cabinet Members together with the new Mayor who is the Lead Member for all property related matters. Any planning application made for the proposed development of the site will be addressed in the normal way through the planning process and the Council would fully expect that the applicant would both informally and formally engage with the local community and other stakeholders in this process.

6.14 **Risk Assessment**

Investments are never risk free, and investors should always understand the nature of investment they are making and be confident that they can manage and accommodate the associated risks. It is true to say that land in London has represented one of the most predictable asset classes for years, but one must still take care to buy sensibly, and over recent years, Hackney has always taken care not to over-pay, and to understand the associated risk when investing. The result is a very sound investment portfolio yielding a strong revenue income which contributes each year to mitigating some of the impacts of austerity.

This acquisition has been set up in order to meet the Council’s preference for low risk, but long term, consistent returns. The Council does not seek out speculative deals and fast returns. Here it will secure a valuable freehold, using debt paid for by a third party. That third party income provides a modest surplus until the debt is repaid, and it reflects a structure whereby the development risk is shouldered by the developer, and not the Council. If the developer fails, there will be a well-funded guarantor in place to honour the developer’s financial commitments to the Council. In every year of the option period, the developer has guaranteed an agreed income to the Council.

Officers have taken the advice of independent professionals in agreeing the financial terms with both Tesco and Hackney Walk to transfer the risks inherent in development, and mitigate those that essentially amount
to the debt liability. A number of practical ‘what if’ scenarios have been tested to assess the level of financial risk in each case and in each year. These scenarios and the associated risks are detailed within the schedule at Exempt Appendix D.

The principal risks are as follows:

- **Capacity**

  It is a fundamental of this deal that the Council will not be leading any construction or development, or even a planning application. It is simply taking ownership of the freehold to the site so that it can secure a strong income in the future and facilitate a much more socially valuable scheme than is likely to be delivered by a private house builder. That means that the resource required of the Council is very modest. It has negotiated the deals using best in class advisers and its own experience of past deals. Post contract, it will retain a best in class agent to act on its behalf in monitoring on site progress to ensure that the development is built in compliance with the critical specifications.

- **Planning Risk**

  A good planning consent is not forthcoming, or is delayed.

  This site is identified in the LDF Hackney Central Area Action Plan policies HCTC02 & HCTC09 and within the current Masterplan exercise. Hackney Walk’s proposals follow the broad parameters of the type of development that will be permissible under the current and proposed master plans.

  Under the terms of the option agreement, Hackney Walk is required to submit a planning application within an agreed timeframe. Extensions of time are permitted to lodge appeals against refusal of consent or onerous conditions. In the event that they fail, the Council has the right to take back the site.

- **Financial Risk**

  The Options proposed to be granted to Hackney Walk provide for a mixture of both annual fees and capital payments and these underpin the repayment of the debt required to meet the purchase
price the Council is paying Tesco for the site. As soon as planning consent is granted there will be an enhancement in the capital value of the site. If Hackney Walk were to default the Council could choose to either negotiate a new option agreement with another developer or sell on the freehold.

There are also to be guarantor arrangements in place to further protect the Council if Hackney Walk default.

- Development/Economic Risk

There are strict timeframes with termination provisions within the Option Agreements to cover a number of scenarios. In the event of default by Hackney Walk during the development phases there will be step in rights both for their funders and ultimately for the Council giving it the opportunity to either complete the development with another partner, or sell the site on.

Physical Site Risks

Although the Council will not be taking any of the construction risk associated with the proposed scheme, it must still be confident that the site is capable of bearing the scale of development proposed, since the site’s capacity for development directly affects its value. The Council has employed independent technical advisers to provide assurance on this and to do so with particular attention to the infrastructure that runs beneath the site; the most substantial of which comprises two Channel Tunnel Rail Links (which appear in the site plan at appendix A) and a sewer (not shown). The Council is satisfied that the site will bear the proposed development, and that it can do so using well tried and economic construction methods.
## Principal Risk Summary

### Key:

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<th>Key</th>
<th>Probability</th>
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<tr>
<td>L</td>
<td>Low probability = 0-10%</td>
<td>Low impact = cost, delay or value erosion incurred by the council, but easily contained within scope of scheme</td>
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<tr>
<td>M</td>
<td>Medium probability = 10-30%</td>
<td>Medium impact = cost, delay or value erosion incurred by the council, can be contained but requires proactive mitigating action</td>
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<td>H</td>
<td>High probability = 30-50%</td>
<td>High impact = cost, delay or value erosion to the extent that the viability of the scheme is compromised beyond the bounds of the business case</td>
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<tr>
<td>VH</td>
<td>Very high probability = Over 50%</td>
<td>Very High impact = cost, delay or value erosion to the extent that the scheme becomes unviable, and could put the council's revenue position at risk</td>
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<td>FINANCIAL SUSTAINABILITY</td>
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<tr>
<td>1</td>
<td>Cost of debt not covered by developer during option period</td>
<td>1. Ensure developer contracts with suitable guarantor, and that contracts facilitate recovery from guarantor by LBH. 2. Deal structured in such a way that developer is both funded and motivated to apply for planning consent early. 3. Council taking professional advice as to suitability of developer's retained backer and guarantor.</td>
<td>L</td>
<td>L</td>
<td>The application for and granting of a planning consent are the principal risk mitigations here, since it is anticipated that a good consent will add substantially to the value of the site. In the event that LBH anticipates that developer is unlikely ever to draw down option, it can either dispose of the site and use the proceeds to repay the loan, or prepare to commit the site to an alternative development and retain it depending on prevailing priorities and resources.</td>
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<td>2</td>
<td>Development delayed or prevented by Tesco not accepting new store</td>
<td>Contract limits conditions under which Tesco can refuse to accept the new store.</td>
<td>L</td>
<td>H</td>
<td>Officers and the adviser team have approached the commercial negotiations on the basis of resolving the design of the new store with Tesco prior to contract signature. This limits Tesco's ability to refuse the new store to reasonable conditions such as the store being constructed in line with the agreed design and standards.</td>
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<td>3</td>
<td>Developer does not draw down options</td>
<td>A pre-condition of the Council signing contracts is that the developer is properly funded and led.</td>
<td>L</td>
<td>L</td>
<td>It is very unlikely that it will not pursue a good planning consent. If the market for outlet remains strong, then it is highly unlikely the consented scheme will not be developed. If the option is not drawn down, then the Council will have paid off a proportion of the debt already, and will have ownership of the asset to do with as it pleases.</td>
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<td></td>
<td>Council sells site without a planning consent</td>
<td>Red book valuation independently prepared by Council’s advisers gives assurance on value of site without a consent.</td>
<td></td>
<td>The Council appointed a highly experienced investment and development adviser to lead negotiations. The Council also has significant experience of investment in Hackney over the past 5 years and maintains an active network alongside the Regeneration Delivery team to ensure that its own intelligence can be usefully deployed in challenging the opinions of others - professional or otherwise.</td>
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<td>5</td>
<td>Inappropriate deal structure for LBH</td>
<td>The Council has adopted a model of which it has experience already, and has appointed a specialist adviser who has led similar deals for both the London Borough of Hackney and the City of London Corporation in the past.</td>
<td>L</td>
<td>LBH is using the same principles as used at Principal Place. Allsop is the lead adviser, who set up the Principal Place deal and has done the same for the City of London Corporation on a site just over the Borough boundary. Lessons learned on Principal Place and the experience of the Council’s advisers have been fed into the Option Agreements here, including conditions that the developer must meet before it is entitled to draw down the options.</td>
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<td>6</td>
<td>Affordable housing aspirations not met</td>
<td>LBH has one of the strongest track records in London for securing affordable housing through the planning process. Nonetheless, the contract will include a contractual commitment to a minimum proportion of 20% affordable homes. In the event that the planning stability process demonstrates capacity for a greater proportion, then that greater proportion will apply.</td>
<td>L</td>
<td>Affordable housing is a fundamental requirement for LBH. The developer is sufficiently confident to include this in the contractual documentation.</td>
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<td>7</td>
<td>Scheme does not deliver jobs for Hackney residents</td>
<td>1. Contract documents commit developer to using leases which prescribe recruitment prioritising LBH’s Ways into Work scheme. 2. Contract also commits developer to a minimum proportion of employment space within the scheme, which is crucial if it is to meet its long term obligation to pay the Council a minimum annual rent in perpetuity.</td>
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<td>8</td>
<td>Affordable workspace provisions not met</td>
<td>1. “Although this is a planning requirement, as with the affordable housing “minimum” described above, officers have sought to define this provision and are seeking ways to contractualise it without putting the Council in breach of procurement regulations. 2. It is difficult for the Planning system to administer the provision of affordable workspace in such a way that it accumulates across the Borough in a thoroughly beneficial way. In this case, the developer sees it as an intrinsic part of its business case and the sustainability of its scheme and so it has been motivated to plan and arrange it as part of the core design of the scheme and operations of its business. It has been operating and developing these principles in its existing locations in the Borough for some time already.</td>
<td>L</td>
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<td>9</td>
<td>Developer not capable of delivering proposed development</td>
<td>Developer has secured the continued backing of its existing funder to finance the obligations to LBH under the terms of the Option Agreements and to finance a high quality planning application. This is bolstered by the developer's appointment of a highly experienced and respected development leader, who is responsible for building the team consisting of top tier designers, technical consultants and contractors.</td>
<td>L</td>
<td>L</td>
<td>Notwithstanding the mitigations detailed against this risk, the Council can terminate the developer if it does not meet the conditions of contract. The Council would then be free to either dispose of the site or commit it to an alternative use according to its prevailing priorities. In the event that a valuable planning consent has been secured, it is likely that in the event of a site disposal, the proceeds could enable the Council to pay off the debt owing and secure a substantial uplift in capital value.</td>
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<td>10</td>
<td>Council in breach of contractual obligations</td>
<td>The Council will resource the implementation of the Option Agreement internally and with the assistance of experienced and informed advisers.</td>
<td>L</td>
<td>H</td>
<td>Strategic Property Services employs an experienced Property Strategy and Projects team which has presided over a number of strategic investments over the past 6 years. Where required to boost resource or provide specialist knowledge or skills, suitable advisers will be retained.</td>
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7 COMMENTS FROM INTERIM DIRECTOR STRATEGIC PROPERTY SERVICES

7.1 The terms agreed with Tesco include a sensible value for the site. The structure agreed with Hackney Walk follows a tested formula which minimises the risk to the Council, but in time, leads to a consistent and substantial annual income. It provides the Council with options, either to sell an interest on, or retain the investment and the annual income which will be used to fund services into the future.

7.2 Crucially this acquisition does not affect the Council’s financial capacity to deliver other schemes in the Borough and does not impact on Council Tax because it is principally funded by a loan to be paid back and financed by payments, contractually agreed with a developer from the day of contract signature. The Council will borrow the required amount, and will pay the interest on the loan using fees and rent payments received from the private developer. The Council will use additional capital sums paid by the private developer to pay down the debt at key milestones, and can use future rental payments from the developer so that the whole loan can be repaid at zero cost to the Council. When the scheme is completed, the Council will receive a guaranteed minimum rent, or 5% of the rents payable on the commercial and retail space, whichever is the greater, in perpetuity or until the Council sells its interest if it is minded to. The Council has allowed for Stamp Duty Land Tax, VAT and fees in addition to the site’s purchase price, when modelling costs.

7.3 The scheme proposed for this important site, offers a step change in opportunity for local people, who will have priority in respect of 50% of the new retail jobs, via the Council’s Ways into Work scheme.

7.4 The scheme will yield affordable homes within the new development and affordable workspace, which also serves the ends of the developer who wishes to enhance the appeal and longevity of the fashion outlet centre by including start up fashion businesses on site.

7.5 It is very rare indeed that such a site comes available at a time when the terms are right, the development potential is right and the prevailing conditions can simultaneously suit the vendor, new landlord, developing tenant, and local planning priorities. This possibility arises from the coincidence of market conditions, Hackney’s history of prudent financial management, successful delivery of infrastructure and investment, hard-won reputation as an entity that can be trusted to engage professionally in commercial transactions, and of course, a business decision in the supermarket sector, to extract value from their more valuable land
assets. Officers in Strategic Property Services have, along with independent experts reviewed the integrity of the Tesco terms and requirements and the proposals put forward by Hackney Walk, and are satisfied that this represents a unique opportunity for Hackney.

7.6 The Interim Director of Strategic Property Services is satisfied that the price agreed with Tesco represents value for money, and this is supported by the red book valuation. Further, the financial payments associated with the sale of the option agreement to the developer represent the best consideration that can be reasonably obtained, as required under S123 of the Local Government Act 1972.

8 COMMENTS OF THE GROUP DIRECTOR OF FINANCE & CORPORATE RESOURCES

8.1 The Council has the capacity to forward finance this scheme at the purchase price indicated in Appendix B. It is anticipated that the Council will finance this purchase through borrowing from the PWLB and all financial analysis has been carried out on this basis. However, at the point of completion the Financial Management function will review the Council's cash and financial position and may take an alternative financing option. Any alternative option will only be considered if it is financially better than the PWLB option modelled.

8.2 The Corporate Finance team however have been clear that purchase of this site should be at nil cost to the Council at any point throughout the life of the scheme. The Cash flows detailed within Exempt Appendix F will ensure all financing costs are covered as they arise through those revenue and capital receipts from the developer on the basis that the scheme is delivered as outlined within this report.

8.3 The Finance function is also aware of potential risks from this investment and has carried out analysis to assess potential impact of various scenarios; this has been detailed within Exempt Appendix D.

8.4 Based on the scenario presented within this report (base case scenario within Exempt Appendix D), it is expected that the Council should be able to pay back its borrowing and all financing costs by 2034/35. However, the Council can realise early return if the Council disposes the freehold before 2034/35, assuming the market value has increased.

8.5 Should the development complete as presented within this report, the Council will benefit from increased Council Tax and Business Rates income and also earn a minimum of £1m p.a. in income.
9 COMMENTS OF THE DIRECTOR OF LEGAL

9.1 The Council sought advice from external legal advisers on the proposed transaction in conjunction with advice from the Council’s Director of Legal. Their comments are set out below.

9.2 The Council has a clear power to enter into the proposed purchase pursuant to its general power to acquire land under S120 of the Local Government Act 1972 either for any of its functions (which can include its investment functions under S12 of the Local Government Act 2003) or for the benefit, improvement or development of the Council’s area.

9.3 The Council has a clear legal power to dispose of interests in land, under S123 of the Local Government Act 1972 provided that if this is for an interest exceeding a leasehold interest for seven years then the disposal must be in accordance with the best consideration reasonably obtainable. In this we understand that the red book valuation confirms that best consideration will be obtained.

9.4 When exercising its powers the Council must do so for a proper purpose and must take into account all relevant considerations. In this instance, the Council is clearly acting for a proper purpose and will be taking into account the relevant considerations of the Council’s adopted policy as set out in the Council’s Corporate Plan to 2018 (page 16) and its LDF Area Action Plan, policies HCTC02 & HCTC09.

9.5 The Council also has a common law fiduciary duty to obtain value for money and to act in a business-like manner and the private valuations are helpful in this respect.

9.6 As far as public procurement is concerned, the main purpose of the first transaction is the acquisition of an interest in the land which is expressly exempt from the Public Contracts Regulations 2015 (PCR). The main purpose of the second transaction is the grant of an option to obtain a long leasehold interest in the land which does not fall within the ambit of the PCR. The second transaction is also not a public works contract as defined in the PCR because Hackney Walk has an option agreement.

9.7 State Aid issues have been considered and the Council has duly sought the red book valuations as referred to above.

9.8 The Council’s Director of Legal has considered the application of the Council’s constitutional and governance requirements including its standing orders and financial regulations to these transactions and is satisfied that the requirements of those provisions have been taken into account in putting the recommendations in this report before Cabinet.
9.9 In the interests of openness and transparency, the Council will dispatch a public voluntary transparency notice in the Official Journal of the European Union before it exchanges contracts on this transaction.
APPENDICES

Appendix A Site Plan

Exempt Appendices B C D E & F

Appendices B C D E & F are classified as Exempt on the following basis:

By virtue of Paragraph (3) Part 1 of schedule 12A of the Local Government Act 1972 Appendices A & B to the Report are exempt because they contain information relating to the financial or business affairs of any particular person (including the authority holding the information) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

BACKGROUND PAPERS

NONE

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Appendices

The appendix has been classified as Exempt on the following basis:
That under S100 (4) of the Local Government Act 1972, the public be excluded from the meeting for the item of business on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 Part I of Schedule 12A of the Act as amended.

Information relating to the financial or business affairs of any particular person (including the authority holding the information).