CABINET
1 MAY 2012

ITEM NO. ....

CENTRAL PARK – REFRESHED SCHEME AND CONSEQUENTIAL CHANGES TO THE DEVELOPMENT AGREEMENT

Responsible Cabinet Members –
Councillor Chris McEwan, Economy and Regeneration Portfolio and
Councillor Stephen Harker, Efficiency and Resources Portfolio

Responsible Directors – Richard Alty, Director of Place and
Paul Wildsmith, Director of Resources

SUMMARY REPORT

Purpose of the Report

1. To seek Members' endorsement of the refreshed masterplan for Central Park;

2. To seek Members' endorsement of other changes to the scheme, including the consequential changes required to vary the Development Agreement and Joint Venture.

3. To seek delegated powers for the Director of Place and the Director of Resources to negotiate the terms and conditions of and for the completion of the Deed of Variation and Joint Venture.

Summary

4. Since the Developer Consortium for the Central Park development was selected in 2007, and Development Agreement negotiated and signed in April 2009, there have been significant changes in the economic market, together with an increase in development costs which have rendered the original scheme commercially unviable. The development partners, namely the Council, Homes and Communities Agency (HCA) and the development consortium (CKY) have been working closely to unlock this stalled development.

5. An initial revision of the masterplan commenced towards the end of 2010 led by CKY. A collaborative approach to refreshing the masterplan has now reached the end of the process, with the final masterplan being recommended by the Project Committee to the public sector Project Board. The Project Board is therefore recommending to the Council and the HCA that the revised masterplan be approved as the framework for delivering Central Park together with consequential variations to the Development Agreement and Joint Venture Agreement. The Joint Venture Agreement is the agreement between the public sector partners and the Development Agreement is the agreement between the public sector partners and the developer consortium.

6. In addition to the changes to the masterplanning and its phasing, there has been a change to the scheme costs, in order to help achieve a viable development. These have been achieved through a reduction in costs in relation to the Vicarage Road depot relocation and the use of Single Programme Funding to complete some site acquisitions via negotiation, together with a decrease in finance charges resulting from the potential to access Get Britain Building funding. A further change relates to the form of guarantee offered by the developer consortium for the delivery of the comprehensive scheme, as well as the transfer of assets from One North East to HCA and the change in compulsory purchase authority to the Council from ONE.

7. As a result of these changes there are a number of consequential changes required to the development agreement. A draft Heads of Terms which reflects these changes has been negotiated between the parties and is presented for Members' consideration and endorsement.

Recommendation

8. It is recommended that :-

   (a) Cabinet endorses the refreshed Central Park Masterplan;

   (b) Cabinet endorses the draft Heads of Terms for the Deed of Variation required to the Development Agreement dated 9 April 2009;

   (c) Cabinet delegates authority to the Director of Place and the Director of Resources for the negotiation and completion of the Deed of Variation, in line with the principles set out in the Heads of Terms attached; and

   (d) Cabinet delegates authority to the Director of Place and the Director of Resources for the negotiation and completion of revisions to the Joint Venture required from the transfer of assets from ONE to HCA.

Reasons

9. The recommendations are supported by the following reasons :-

   (a) The masterplan represents an appropriate planning framework to achieve the regeneration of Central Park site, delivering both the quantum and quality aspirations envisaged by the public sector partners in challenging economic conditions;

   (b) The Heads of Terms to the Deed of Variation for the Development Agreement seek to protect the Council's interests and minimise its risks through the development process;

   (c) To enable the Deed of Variation to be negotiated and agreed in line with the agreed Heads of Terms within the project timetable.

Richard Alty – Director of Place
Paul Wildsmith – Director of Resources

Background Papers

(i) Gillespies Central Park Masterplan (2006)
(ii) Development Agreement (09/04/2009)
(iii) Refreshed Central Park Masterplan (April 2012)

Jill Thwaite : Extension 2629

S17 Crime and Disorder	This report has no implications for Crime and Disorder. Secure By Design principles have been considered through masterplanning exercise.
Health and Well Being	Development will make positive contributions towards Health and Wellbeing through the provision of open space and pedestrian and cycle ways for recreational and functional use.
Carbon Impact	Will increase carbon emissions as increase in development by way of new homes and commercial floorspace. However, the site is in a sustainable location reducing demand for travel. Impacts will be minimised through the adoption of Code for Sustainable Homes Level 3 (residential) and BREEAM Very Good (commercial) as minimum design standards. Linear Park would enable district heating provision at later stage if viable.
Diversity	Masterplan has been prepared to ensure DDA compliant design. Delivery of homes which reflect Lifetime Homes principles increase the adaptability of homes to meet varying needs.
Wards Affected	Lingfield, Central, Bank Top
Groups Affected	All
Budget and Policy Framework	This report does not recommend a change to the Council’s budget or policy framework
Key Decision	Yes. Regeneration of Central Park will have regenerative benefits of the communities living and working within the Borough.
Urgent Decision	No
One Darlington: Perfectly Placed	The LDF Core Strategy is the spatial representation of One Darlington: Perfectly Placed. Central Park is identified as a strategic location for new development, second only to the Town Centre. The Central Park development will contribute towards all themes within One Darlington: Perfectly Placed.
Efficiency	The workload resulting from the recommendations assumes resources at existing levels in the Programmes and Projects Team and will continue to require staff time from key officers across the Council who contribute towards the delivery of the project.

MAIN REPORT

Background

10. Following discussions with One NorthEast, English Partnerships and Tees Valley Regeneration over the land south of Haughton Road, the Council signed a Joint Venture Agreement to ensure the area, which later became known as Central Park, was brought forward and developed as a Tees Valley Regeneration (TVR) flagship regeneration scheme. An initial masterplanning exercise was undertaken to identify the nature and scale of development suitable on the site. Following this, outline planning consent for the site was secured in 2005 which reflected the content of the Gillespies Masterplan, which then formed the basis of a comprehensive tendering process in 2006. This exercise sought to select a developer/developer consortium which understood the Central Park concept and had the necessary skills and experience to bring forward this high quality, mixed use development. The two stage process resulted in the developer consortium CKY (Commercial Estates Group Ltd, Keepmoat Homes Ltd and Cecil M Yuill Ltd) being selected as the Agencies preferred developer in 2007. Negotiations on the Development Agreement were subsequently undertaken, with the Development Agreement being signed in April 2009.

11. The Haughton Road allotments were relocated in order to make the site available for development. In addition a number of acquisitions on Green Street have occurred, funded through Single Programme, under the Business Incubator project. A new Darlington College campus also formed a major element of the scheme; this was delivered and opened in 2007 with the Teesside University Building added in 2010/11.

12. Building upon its location on the East Coast Main Line, situated halfway between Edinburgh and London, and close to Darlington's town centre, Central Park sought to deliver a high quality, mixed use development, at the heart of which was nationally iconic public realm. By delivering top quality architecture, landscape and a functioning development, the project aspired to putting Darlington on the map. 'Postcards from Darlington' was a key design concept underlying the masterplan and procurement exercise.

13. The Gillespies masterplan, which formed the basis for the planning consent and developer selection process, included:-

    (a) 600 new homes, including apartments, family town houses and 15% affordable units;
    (b) Around 2,000 jobs;
    (c) Hotel and facilities close to the railway station;
    (d) Leisure and community facilities;
    (e) Green open space;
    (f) High quality office accommodation;
    (g) Impressive new link to the railway station

14. Through the developer selection process and negotiation of the resulting Development Agreement, a Regulating Plan was agreed. This Regulating Plan was based on the successful submission bid and revised as part of the process of working up the scheme detail in advance of the planning process.

15. The development agreement sets out that development should be brought forward in line with this Regulating Plan. There are provisions in the Development Agreement to vary the

Regulating Plan, subject to the 'Qualified Approval of the Agencies'. This approval cannot be unreasonably withheld. The responsibility to 'agree any changes or refinement to the masterplan, design code, regulating plan and programme' falls with the Project Committee, who as appropriate recommends that each Party seeks the necessary board approval for such changes.

16. These provisions were provided as Central Park has always been a large scale development delivered over 15 or so years; it was envisaged that changes would be required in order to respond effectively to changing or emerging markets. The Development Agreement makes similar provisions for other matters pertaining to the delivery of the development, such as the Development Appraisal and Phasing.

17. Increased development costs, together with the economic downturn make it prudent to vary the scheme and legal agreement relating to Central Park. This includes refreshing the masterplan and the resulting phasing, agreeing the resulting Development Appraisal and reducing the scheme costs and the form of guarantee offered by the development partners.

18. In addition there are other variations required due to external, procedural or consequential changes.

19. **Appendix 1** contains in tabular form the requirements for Central Park as identified in the developer selection process, whether this was translated in to the resulting development agreement and the current proposal now offered.

20. This report focuses on those areas where there are variations from the agreed scheme (also referred to as the 'Regulating Plan') and contract as set out in the Development Agreement signed 9th April 2009.

Refreshed Masterplan

21. The increased development costs, together with the economic downturn, have undermined the viability of the agreed scheme. The reduced demand for apartments and the inability to secure funding for speculative commercial development, together with the current projected yields associated with commercial development, are key contributors to this. Development costs have also increased, these predominantly relate to the decrease in HCA funding for the affordable housing element plus a greater understanding of the site constraints which have indicated an increased cost for site remediation. In relation to site constraints the refreshed Masterplan has responded to these by reconfiguring the layout to minimise costs and take advantage of the sites' topography rather than working against these factors.

22. The refreshed masterplan (**Appendix 2 – electronically with hard copies made available at Town Hall**) will still deliver many of the aspirations and aspects set out in the original masterplan. These include the original design concepts for the site, such as 'Postcards from Darlington' and nationally iconic public realm, and include:

    (a) Same level of commercial floor space;
    (b) Quality hotel (4*) with conference and leisure facilities;
    (c) Community provision with supporting retail and leisure uses including bars and restaurants;
    (d) High quality, examplar open space and public realm;
    (e) Multi Storey Car Park (MSCP) and surface parking;

(f) Spine Road to provide linkage from north to south for vehicles, cycles and pedestrians with strong pedestrian and cycle links to existing neighbourhoods;
(g) Quality or 'Landmark' buildings;
(h) Dynamic gateways to Haughton Road and Yarm Road;
(i) Sustainable Urban Drainage (SUDs) as the drainage solution for the site; and
(j) Same environmental and quality standards will be achieved for the development.

23. A summary of the changes, and their justification are set out below:

(a) **Change in housing mix and numbers following the decline of the apartment market** – The original scheme intended to deliver 600 residential units of a variety of dwelling types ranging from apartments to detached units with 15% being affordable. The agreed scheme identified that it may be possible to deliver up to 651 units by amending the housing mix to deliver an increased proportion of apartments. The decline of the apartment market means this is no longer a viable option.

A revised mix and type of residential dwellings are now being proposed which better meets the current housing demand; this has however reduced housing numbers on site to 450 units. This will still provide for some apartments (5%-10% of the overall mix) with an increase in the proportion of 2 and 3 bedroom houses. CKY are exploring with the public sector partners how, and in which phase, the 15% affordable housing requirement will be delivered. Funding has been secured from HCA for the provision of 20 affordable units as part of Phase 1.

The reduced level of dwellings on Central Park will impact upon the overall locational strategy as set out in the Local Development Framework Core Strategy (policy CS10). Central Park is identified as a strategic priority for residential development, contributing 205 units in the period upto 2016 and 340 units between 2016&21. The decrease in residential units from what was originally anticipated and the revised delivery dates (see Phasing Section below), has the potential to create a shortfall of new housing coming forward within the urban area in line with the Core Strategy. Efforts will be made to increase the level of units provided in the first phase per annum to minimise this potential impact; this will include both house builders and the affordable housing provider working on site simultaneously. Initial build rates are anticipated to be 50 units per annum between the house builders. If fewer than 450 residential units were to be delivered at Central Park, it would cause pressure to bring forward residential development on less sustainable sites in less sustainable locations.

(b) **Removal of the Metro reservation** – The agreed scheme included for a Metro reservation through the site linking the existing railway to destinations beyond Central Park. This was to enable a rail to road solution for the Tees Valley Metro. It is highly unlikely that the Metro will now take this format and as such there is no need to plan for a metro reserve of this nature within the development. This is evidenced through work of the Tees Valley Metro Board. There is potential for a Metro platform to be provided at Bank Top Station, as well as a potential halt adjacent to the university/college within the existing railway sidings. The refreshed masterplan therefore does not accommodate a metro reservation through the site. The Metro Reservation, which was a protected, undeveloped corridor through the site, has therefore been removed from the scheme.

24. Other more detailed changes to the scheme being delivered include:

(a) **Reconfiguration of open space on site** – The distribution of open space within Central Park has been reconfigured to reflect the site topography and ground conditions, including contamination. This has created a linear park adjacent to the main spine road, an ecological zone around the sub-station and a civic space to the south between the commercial and residential uses. This minimises costs associated with remediation and the ground works involved in creating the spaces included within the original scheme. The open space is to be developed to the same quality, delivering nationally iconic images and designed to enable the space to function ecologically in order to minimise the impact on the sites intrinsic qualities. The main park continues to incorporate the SUDs which will serve the site. Opportunities to 'play along the way' will be created to encourage the use of this space.

(b) **Yarm Road Bridge** – This remains in the scheme, but its specification has been reduced from that identified in the agreed scheme. It will still provide the pedestrian and cycle connectivity to the station as anticipated and is identified as a deliverable in Phase 2. In the short term the masterplan provides for a pedestrian and cycle access from the south of the university to Yarm Road and onwards to the station; the details for this link are currently being worked up for delivery within the current financial year.

(c) **Reconfiguration of retail floor space** – The retail floor space (including shops, restaurants and bars) remains the same level within the scheme (1,700m^2). The original scheme included some of these uses parallel to the college access road. These have been reconfigured to provide a frontage to Haughton Road to create a local centre serving the site and surrounding area, consisting small shops, café, bar and restaurant type uses with the potential for office use above the ground floor.

In order to minimise the impact of the Central Park development on the town and existing local centres and to ensure the retail offer of the site does not exceed 'local' importance, in line with the Core Strategy, floor space limitations are now included within the masterplan. Shops in the local centre have been limited to 1 x 400m^2 plus 3x 100m^2 units within the local centre. Other limited retail, bar, cafe or restaurant uses will be provided at key points through the remainder of the site to draw people through the site and provide natural surveillance, thus improving the sense of safety within the scheme.

25. It has always been an aspiration for Central Park to deliver 'public art of real distinction'. The original development appraisal identified that £300,000 would be used to provide public art with an additional £200,000 available for match funding. Public Art is now incorporated in to the underlying principle for the development, delivered through the buildings and through the landscape and public realm solution. In addition the masterplan conveys that the scheme will also provide key pieces of public art in the civic space between the commercial and residential development between the university and Yarm Road. The development appraisal is currently being refined to provide more accurate figures for the various development costs. Until this is available it is difficult to assess the extent of this change.

Reduction in scheme costs

26. The agreed scheme, which is subject to the existing Development Agreement, generated a residual land value of c£13.8 million; this contributed c£5million to the remaining site acquisitions and c£8.1million to the depot relocation.

27. The refreshed Masterplan generates a residual land value of c£6.3million. This land value is now what the scheme can contribute towards its commitment to a) the remaining site acquisitions; and b) funding the depot relocation.

    (a) **Remaining Site Acquisitions -** The Agencies allocated some of their initial budget to acquire property on Central Park by way of private treaty or CPO if required. Any additional costs above this allocation were expected to be met by the selected developer. At the time the development Agreement was signed, these costs were anticipated to be in the region of c£5million.

    Subsequently, Single Programme Funding enabled some properties on Green Street to be acquired (in order to facilitate the delivery of the Business Incubator), which together with changes in the property market have meant that the anticipated acquisition costs have been revised downwards to £2.27million.

    (b) **Funding the depot relocation** - As part of the development, the developers were obligated to relocate the Vicarage Road depot facility to Salter's Lane South. The Council prepared a specification for this replacement facility which was costed at £8.1million to a maximum of £9million.

    CKY have stated that because of the collapse of the housing and commercial markets, the scheme is not viable if the new depot obligation of the agreed specification is required. Once the land acquisition costs have been deducted from the residual land value, the scheme can contribute £4million towards the depot relocation.

    The consortium have committed to pay over to the Council £1.2million on the draw-down of phase 1; this will be used, together with £400k from the Housing Growth Point Fund, to relocate the 'external' elements if the depot (ie everything excluding the offices at Vicarage Road), as still required following the Transformation Review of these services. The Council is able to make an early start on this work by utilising a loan from the Growing Places Fund, reported at Cabinet in April, and which will be covered by the receipt for the depot and by utilising the Housing Growth point funds allocated to Central Park. In addition, a further £2.8million will be generated through Phase 2 of the development. This will fund the relocation of the office facility currently at Vicarage Road. Under this revised offer, the depot offices at Vicarage Road will remain in situ until further phases of the development are drawn down. As part of this revised offer, the Council will not be obligated to provide its land at Salters Lane South for nil land value for the provision of the depot and hence the Council will be able to explore other opportunities for this land (see paragraphs 58-65).

Phasing and Delivery

28. Delays to the project and the adverse market conditions have meant that the original timescales identified in the Development Agreement are now unachievable.

29. The Project Committee are working towards Phase 1 commencing before the end of 2012, with Phase 2 coming on board within 5 years, although efforts will be made to bring forward Phase 2b as soon as practicable following the acquisition of the remainder of the site, whether through CPO or negotiation.

30. The scheme will be delivered in two main Phases. Phase 1, comprising c270 residential units, and the local centre, towards the north of the site will fund the delivery of:-

    (a) £1.2 million paid to the Council to fund the depot relocation (excluding the offices);
    (b) The remaining site acquisitions, via CPO if necessary;
    (c) The linear park and SUDs up to John Dixon Lane.

31. The proposed initial longstop date for Phase 1 is December 2013 for the residential and July 2014 for the local centre. The final longstop date for this phase (ie the date where by the phase must be completed) is June 2020.

32. The second phase will comprise of two elements: Phase 2a – the remaining residential development (c180 units); and Phase 2b – the commercial development, including hotel and will fund:-

    (a) £2.8 million paid to the Council to fund the relocation of the depot offices;
    (b) The civic space between commercial and residential development;
    (c) The new junction from Yarm Road; and
    (d) The foot and cycle bridge linking Central Park to Bank Top Station.

33. The longstop dates for Phase 2 are dependant upon the timing of the site acquisition, or CPO. The Development Appraisal is required to identify when in Phase 1 the development consortium can fund the CPO; it has been agreed that the commercial development will commence no later than 3 years from CPO confirmation or site acquisition. The final longstop date for Phase 2 residential has been agreed at June 2025.

Change to guarantee offered

34. The original procurement exercise specified that the successful developer/developer consortium must be able to fully guarantee the delivery of the comprehensive scheme. CKY's original bid offered a Joint and Several Liability clause, which would mean that all three parties were obligated to the delivery of the comprehensive scheme. Under this arrangement, should the lead developer defaulted on a phase of the programme, the other two partners would be obligated to step in and complete the phase.

35. The commercial developer CEG was unable to continue to be party to such an obligation due to difficulties in securing funding on such a basis. Instead they were willing to offer:

    (a) Proof of funding and a pre-let sufficient to cover build costs and the associated infrastructure costs in order to minimise the risk of a default once the building licence is granted;
    (b) Both a parent company *and* a bank guarantee to cover each phase should there be a default once the licence has been drawn down;
    (c) In addition there would be additional viability checks built in to the release of the land.

36. The residential developers will continue to be jointly and severally liable for the residential led phases.

37. It is considered by both the HCA and officers that this alternative to full Joint and Several Liability affords the Agencies with sufficient guarantees, should any party fault on delivering their obligations once a building licence has been granted.

Enterprise Zone

38. Central Park is one of the 12 sites included within the Tees Valley Enterprise Zone. The masterplan has built in flexibility to enable some commercial development, in line with the Enterprise Zone, to the south and east of the university and college, should the area to the south of the site (the commercial area) not come forward within the Enterprise Zone lifespan. This flexibility will enable offices to be delivered above the local centre or smaller office units to the south of the university within the next three years. However, should there not be the demand for development of this nature, or if the remainder of the land to the south of the site is acquired, these locations are also suitable for residential development; this has been built into the masterplan.

39. The Enterprise Zone does not enhance the viability of the scheme, but it will help lever in additional sources of funding as well as ensuring that Central Park is included within all marketing associated with the Tees Valley Enterprise Zone. The Business Rate Relief associated with the Enterprise Zone is not sufficient to encourage new development, but it may attract digital businesses to the site once office space is available.

Business Incubator

40. Through their Stewardship Model the HCA have earmarked £3million funding for a Business Incubator Unit on Central Park. Officers are working up a ERDF bid to secure match funding to this. This would be located within the Enterprise Zone area, in order to ensure that any eligible businesses could benefit from the financial incentives offered by the Enterprise Zone, and be brought forward as an integral part of the wider scheme, assisting in assembling the site and in opening up the site from Yarm Road.

41. The nature of the public funding on offer prohibits its use for ‘gap funding’. For this reason, the Business Incubator cannot contribute towards the developer profit for the scheme. Therefore, to enable the Agencies to bring forward a publically funded Business Incubator on Central Park an option to develop a parcel of land (specifically for this purpose) has been negotiated with CKY. Any decision to pursue this option will be reported separately. The principles of the option are set out below:

    (a) CKY have agreed to waive their rights to a parcel of land in the Central Park site (and their associated profits) to enable the public sector to bring forward a publically funded Business Incubator unit of up to c 2,780m^2.

    (b) This is on the basis that any such development:

        (i) Being an integral element of the wider scheme, brought forward as part of an early phase of the comprehensive development;
        (ii) Contributing at least proportionately towards infrastructure associated with the commercial phase or the wider scheme, and

(iii) Does not have a detrimental impact to the delivery of the comprehensive Central Park scheme.

42. Details are still to be agreed, including its exact location, phasing, size and impact upon the CPO strategy. Should this project proceed it would need to be procured separately from Central Park and a further report to Cabinet would be required to consider the relevant issues and risks.

Transfer of ONE assets to HCA and other governance changes

43. ONE assets have transferred to the HCA under the Stewardship Model, with ONE ceasing to exist on 1 April 2012. Moreover, the projects arm of Tees Valley Unlimited (formerly Tees Valley Regeneration (TVR)), who were undertaking the project management role for Central Park has also ceased to exist. There are a number of changes required to the Joint Venture and Development Agreement required in order to reflect the new Agencies involved.

44. Now ONE, which was identified as CPO authority, has ceased to exist, the Council has become CPO authority. As a result, officers have looked carefully at the clauses and obligations relating to the CPO and identified that a separate CPO Indemnity Agreement is required, in order to mitigate the risks to the Council.

45. As the likely site acquisition/CPO costs have reduced (see 21(b) above), there is a need to reflect the revised value within the Development Agreement. This will act as a trigger for other funding mechanisms/sources to come on stream should the CPO costs exceed the anticipated cost of £2.27million.

46. Officers also consider it is necessary to include an additional clause identifying that the Council needs to retain its statutory discretion as to whether there is a compelling case in the public interest to proceed with making the order. As currently worded the Development Agreement requires the CPO to be commenced once the Satisfaction Date, as set out in the agreement, has been met.

Development Appraisal

47. Under the Development Agreement, CKY are obligated to prepare a Development Appraisal for the comprehensive scheme and demonstrate the viability of individual phases to the Agencies prior to the draw down of each building licence. This obligation will be enhanced through the Deed of Variation so the consortium will need to demonstrate a) a viable phase and b) that the scheme wide viability is not undermined by the draw down of said phase.

48. The initial Development Appraisals for the comprehensive scheme and Phase 1 have demonstrated a border line viable scheme. This is on the basis that the planning obligations are at no more cost than those included within the original outline consent and phase 1 only includes the 20 affordable units that have gained funding through the HCA. Additional work is being carried out by CKY to firm up a number of the associated development costs, in order to provide as clear a picture as possible. This work should be complete before the end of April 2012.

49. This additional information will firm up development costs and in turn may generate a positive residual land value which could fund some of the necessary planning obligations for the scheme, or create a receipt in the Development Trust Account which will be shared out between the parties upon completion of the scheme.

50. Planning Obligations, such as those typically secured by a section 106 Agreement (S106), as set out in Core Strategy policy CS4 will be negotiated on viability grounds through the planning process as per normal. If it is determined that a S106 is required, this will be secured outside the Deed of Variation negotiations.

Planning

51. The original development agreement was based upon the outline consent and a S73 application to vary the phasing of the development, followed by the respective reserved matter applications. The Government has introduced regulations preventing a further refresh of the existing planning permission meaning that the level of pre-conditions associated with the outline consent and S73 make it virtually impossible to implement the original planning consent. For this reason the partners have agreed new outline consent is required, followed by reserved matter applications at appropriate times. This needs to be reflected in the Deed of Variation to the Development Agreement.

52. It is anticipated that a hybrid application, which covers outline consent for the comprehensive scheme and detailed consent for Phase1 residential development will be submitted late April/early May, with matters relating to the phase 1 local centre and phase 2a and 2b being reserved.

Consequential changes to the Development Agreement

53. In order to ensure that the above variations are reflected within the legal agreement associated with the site, it will be necessary to enter in to a Deed of Variation with the other development partners. This will seek to vary the Development Agreement dated 09/04/2009 to incorporate the changes as set out above.

54. A draft Heads of Terms for the proposed deed of variation is set out in **Appendix 3**. This covers the points as they arise in the order presented within the Development Agreement.

55. The detail of these head of terms will be negotiated over the coming months resulting in a Deed of Variation, which will need completing prior to the developers being able to commence works on site. It is recommended that authority is delegated to the Director of Place and the Director of Resources for these negotiations and completion of the legal agreement.

Changes to the Joint Venture

56. Since the Joint Venture was negotiated and signed in 2006 there has been a number of changes to the agencies involved. Both English Partnerships and ONE assets now fall under the responsibility of the HCA and TVR no longer has a role in the project. In order to ensure the project and its risks are properly governed, there is a need to revise the Joint Venture to reflect these changes.

57. It is not intended that there will be changes to the Joint Venture beyond those identified above.

Financial Implications

58. The proposed changes have been assessed in terms of their financial implications for the Council. The most notable are those relating to the depot. In the original agreement, the developers were obligated to relocate the Council's Vicarage Road depot facility to Salter's Lane South, to a specification costed at £8.1million. It is now proposed that the consortium will pay £4million to the Council in staged payments, which the Council will then utilise to relocate its depot facility; the specification for which is currently being worked up. The specification for the revised Depot solution, including its operational format and location are being developed as part of a separate Transformation Project. This £4million is inclusive of any land acquisition required.

59. The financial agreement for Central Park Development allows for a £1.2 million contribution plus a possible further £400,000 to be made to move the operational part of the Depot as part of Phase 1, and for Phase 2, a further £2.8 million, which covers the office block accommodation and surrounding car parks. It is difficult at this moment in time to give any assurances that this funding will be sufficient to cover any relocation as, to date, no final site has been identified or negotiations entered into for either purchase or lease.

60. The funding allocation for Phase 1 to relocate the operational part of the Depot would not be adequate for a new build therefore we would need to relocate to an existing facility.

61. It is unlikely that all the existing services located at the Depot will be able to relocate to a single site for the funding available. Also alongside the Services for Place Review, work is ongoing with regard to some of the support services to the operations that work from the Depot, such as Joiners Shop, Stores, Electrical Stores and Fitting Shop with regards to their future requirements. The outcome of the work will help inform the size of the site required.

62. It is unlikely that the existing sites that are on the market would be large enough to cater for all requirements so it may be necessary to split operational services up; it is considered possible to operate the depot services from a split site without an impact on service. A number of buildings are currently available to either purchase or lease on an annual basis. If operationally, two sites are required and if it is possible to either purchase or lease two appropriate sized sites, then this should be possible within the funding allocation. If required some of the existing running costs of the current Depot could also be utilised, which are approximately £350,000 per annum; this however also includes the office element of the depot, whose running costs would have to continue to be funded out of this budget envelope.

63. More detailed work would be required to finally confirm this would be the case, i.e. negotiations with site owners, etc.

64. With regard to Phase 2, relocation of the existing office accommodation in 2017/18 or thereabouts, funding available of £2.8 million should be adequate to build an office block for approximately 100 to 120 staff. This is subject to DBC owning the site and appropriate infrastructure being available. In addition, the specification for the office block will also impact on costs therefore this will need to be taken into consideration by creating as much open plan space as possible.

65. To sum up, it should be possible to relocate the operational part of the Depot with the capital of £1.2 million, plus the £400,000 contingency funding (if required), and utilising some of the existing running costs. Depending on which location or locations the Depot is relocated to, there may be a surplus of up to £100,000 on existing running costs, which could be used to potentially borrow to add to the £1.6 million to help adapt the site to the Council's specific requirements. However, until the site/sites are chosen, the final detail will not be known.

66. In addition to those resulting from the changes to the depot (set out in 58 above), the following financial implications have been identified:

    (a) The Council will benefit from the introduction of the New Homes Bonus that rewards a net increase in housing stock provided in the Borough. This is currently £1,439 per property for 6 years with an additional £350 per property per annum for affordable homes.

    (b) As CPO Authority the Council could be exposed to financial risk associated with funding the Order. The partners have agreed to a new CPO Indemnity Agreement to minimise the Council's exposure to these risks. The details of this agreement will be negotiated alongside the Deed of Variation;

    (c) Delay to development results in the Council continuing to be liable for the maintenance of sites and properties, including the former allotment site, within the Central Park development site until the respective licences are drawn down. These are currently covered by the rental income of the properties in Council ownership on Central Park.

67. The Council and HCA consider that the revised form of Guarantee offered by CKY does not expose the Council to any additional financial risk.

68. There are no changes in the infrastructure the Council was expected to adopt from the original agreement. Highways will be provided to adoptable standard and adopted by the Local Highway Authority. Maintenance and management costs associated with the open space and public realm on site will be managed by a Management Company and funded through a ground rent paid by the owners/occupiers of the residential and commercial premises on Central Park.

69. The designation of the Enterprise Zone is an external factor, the financial implications of which have been assessed outside this report.

70. The Council has been successful (subject to Due Diligence) in its bid for Growing Places Fund to the Tees Valley Local Enterprise Partnership (LEP). This fund has provided the Council with a 3 year interest free loan for the purposes of bringing forward relocation of the Council depot. The Council will use this loan to facilitate the initial phase of the depot relocation in the knowledge that capital receipt for land will cover the repayment to the Tees Valley LEP. Growing Places Fund and its implications were reported to Cabinet on 2 April 2012.

Associated Risks

71. *Failure to secure Growing Places Funding* – Bid now undergoing due diligence before final award is confirmed. Failure to achieve GPF will influence the timetable for the relocation of the depot relative to cash flow within the project.

72. *Failure to secure Get Britain Building fund* – this is greatly dependant on the ability of CKY to meet the HCA deadlines, most notably a start on site date before the end of 2012. In order to achieve this, the HCA expect all successful schemes to have detailed planning consent by 30th June 2012, with conditions being discharged and legal agreements being signed by 31st July 2012, and a start on site before the end of 2012. Efforts are being made by all parties to facilitate the submission of a sound application before the end of April, in order to ensure that any planning application is as progressed as possible by these dates. The bid has yet to go through the 'Due Diligence' test at HCA head office. Failure to secure GBB will increase finance charges for Phase 1, having a negative impact on smoothing cash flow and programming. It would have an impact on overall development appraisal but unlikely to be critical to project.

73. *Failure to achieve planning consent* – Pre-application negotiations with the development partners, the Council (as local planning authority) and statutory consultees, are on going to mitigate this risk. The masterplan has been prepared in light of existing planning policy to ensure the scheme is not considered a departure from the adopted development plan. The consortium has also engaged in consultations with stakeholders and the public both in relation to the Masterplan and planning applications to shape the scheme. This has included presentation to the Pre-Applications Planning Committee.

74. *The refined development appraisal fails to generate a viable scheme and first phase* – At this stage the consortium are reasonably confident that the whole scheme is viable. As previously the Development Agreement contains pre-conditions to the release of land by the Public Sector partners to the consortium. This includes viability tests for the whole scheme and each phase to be drawn down. On the draw down of phase 1 land it should have been demonstrated that phase 1 would cover the relevant public goods to be provided in association with phase 1, together with the first receipt for land and funds to enable CPO processes to commence.

75. *Failure to agree a deed of variation* – despite the refreshed masterplan and a heads of terms being agreed between the parties, the parties could fail to agree the details associated with these principles. Work on site cannot commence until the legal agreement is brought up to date. This could undermine the ability to secure GBB and potentially result in longer term delays to the project. In such circumstances the existing Development Agreement would stand.

Legal Risks

76. The development proposal is complex and the legal issues associated with developments of this nature are necessarily fraught with risk. There is a challenge in balancing the risks between the various potential challenges that the Council could receive.

77. *Risks associated with acting as CPO authority* – In order to deliver the comprehensive scheme, the Council may need to exercise its CPO powers if only to clean title. This exposes the Council to a number of risks. A CPO Indemnity Agreement will be negotiated

and agreed which sets out each partners' roles and responsibilities in relation to the CPO as a means to limit the Council’s exposure to risk. Cabinet considered issues around the Central Park CPO in March 2011.

78. *CKY fail to draw down subsequent phases (for whatever reason) leaving Depot Offices in existing location* – CKY could complete Phase 1 but be unable/unwilling to commit to further phases or complete the comprehensive scheme. This would result in the depot office remaining in situ, until such time the relocation could be funded by other means. Clauses exist in Development Agreement, to provide the Agencies with termination rights should CKY default in this manner. Should the Agencies exercise these rights, the obligation to fund the relocation the offices could be transferred to any subsequent developers selected to bring forward the remainder of the development. At this stage the public partners should have acquired the whole of the site through CPO and of course would be in a position to re-procure development. However it should be clear to members that the proposed changes to the development agreement do not require the developer to complete anything other than Phase 1 of the development.

79. Change to the Masterplan – Since the original development agreement was signed there has been a significant change in market conditions which has impacted on the viability of the scheme. Whilst it is recognised that if a developer was being sought now the nature of the agreement would be very different, any change to the nature of the deal raises a question as to whether a new procurement is required and therefore carries risk of challenge. The Council has received a threat of challenge from one of the companies who submitted a bid at the outset of the project. If however the Council decides to proceed with a procurement, this would require terminating arrangements with the existing developer which would also incur a risk of challenge. A detailed risk assessment has been carried out and explained to decision makers, alongside the other legal risks.

80. It has also been identified that the proposed funding which is helping with the viability of the project carries the risk of relieving the current developer of some of its obligations under the existing agreement. If this is the case this could provide public sector aid to a private company in contravention of European law. Specialist legal advice is being sought in relation to this risk, and the project will not proceed unless there is advice that it is appropriate to do so.

81. The alternative course of action to that presented in this report, is to continue under the existing development agreement and original scheme, stipulating new dates by which they have to bring the scheme forward by. If the developer consortium fails to bring forward the scheme within the stipulated dates, the contract could be terminated under the existing development agreement. This carries a risk of challenge from CKY for costs to date and potentially loss of earnings. There are additional risks also associated with this course of action, including a delay to realising the regenerative benefits the scheme will bring and to the delivery of the locational strategy as set out in the Borough-wide Core Strategy.

Consultations

82. To maintain stakeholder involvement within the scheme, consultation been undertaken alongside the masterplanning exercise. This involved:-

    (a) Leaflets posted to c1,400 properties in the immediate surrounding area;

(b) A display at the College for two weeks;

(c) The masterplan brief and consultation documents were published on the Council's website, with links from the Council's Social Networking pages;

(d) A Pre-Applications meeting of the Council's Planning Applications Committee was held for the masterplan, with a follow-up meeting on the forthcoming planning application;

(e) Copies of the masterplan were sent to Darlington College, Teesside University and Network Rail as key stakeholders in the development for comment;

(f) A stakeholder meeting was also held with the University and College to discuss the masterplan and planning application in more detail; and

(g) Separate pre-application discussions have been taking place as part of the planning application process, including statutory consultees for the development.

83. Only one written response has been received in response to the development. This response was favourable for the development and welcomed the high quality commercial development and local centre in particular, as well as encouraging a move to more affordable, open market small and family homes. Several queries in relation to land assembly and the potential CPO were also received over the phone; this seems to be the main area of concern within the local community.

84. Planning Applications Committee raised a number of queries and suggestions which have been incorporated in to the masterplan, or will be addressed through the planning application and landscape design processes. In particular Members raised the following: the nature and management of the open space provided on site, the importance of high quality commercial development, the link from the University and College to Bank Top Station and the need for a hotel with quality conference facilities close to the Station. Meeting notes from both these pre-application PACs meetings are attached in **Appendix 4** for information.

85. A stakeholder meeting with the University and College will be held on 20th April. Feedback will be provided verbally to Cabinet.

86. As part of the pre-application process, the developer consortium will undertake a further round of community consultation, with stakeholders and the local community. This will be summarised in a consultation statement accompanying the application

Conclusion

87. Central Park is the key regeneration project in Darlington. All partners have committed significant time and investment on progressing this stalled development. This has resulted in a refreshed masterplan and phasing being recommended by the Public Sector Project Board to Cabinet for approval. Other changes, resulting from changing external factors and the lapse of time have resulted in other variations required to the Development Agreement currently in place.

88. This report summarises the changes that are proposed and seeks Member endorsement of the refreshed masterplan and the other changes to the development agreement which are

necessary in order to bring forward this significant regeneration scheme for the Borough in the existing climate.