1. SUMMARY

1.1 The Marlowe Road Estate was identified as a priority for intervention in 2010. The preferred route for the regeneration was for the Council to deliver this in partnership with a developer, with the Council retaining the social housing element.

1.2 The Council went through a competitive process using the London Development Panel (LDP) framework and selected a preferred bidder and a reserve bidder at its March 2014 Cabinet meeting, subject to approving the terms of the development agreement.
1.3 Following a successful legal challenge from the reserve bidder, Countryside Properties Ltd (CP) the Council is now proceeding to work with them to bring the project forward.

1.4 This report outlines the proposed details of the development agreement and other associated agreements for the redevelopment of Marlowe Road and sets out various recommendations for approval by Cabinet.

2. RECOMMENDATIONS

2.1 For the reasons set out in this report Cabinet is recommended to:

2.1.1 Agree that the Council enter into a development agreement together with other associated documentation as detailed in this report with Countryside Properties (UK) Limited as the development partner for the redevelopment of the Marlowe Road Estate.

2.1.2 Agree that the Council will dispose of an interest of part of the development site to CP for the provision of private sales homes with the final terms of such disposal to be delegated to the Assistant Director of Asset Management and Delivery in consultation with the Portfolio Member for Growth and High Streets.

2.1.3 Agree that the Council enter into a Compulsory Purchase Indemnity Agreement (CPOIA) with Countryside Properties (UK) Limited to enable the Council to proceed (if necessary) with a compulsory purchase as set out in the Cabinet Report dated 9th July 2013.

2.1.4 Agree that the Council proceeds (if required) with the acquisition of freehold site of 176 Wood Street and 97 Vallentin Road as shown edged blue on the attached plan at Appendix (6) with the final terms of such acquisition to be delegated to Assistant Director of Asset Management and Delivery in consultation with the Portfolio Member for Growth and High Streets.

2.1.5 Delegate to the Special Housing Advisor, in consultation with the Portfolio Member for Housing and the Directors of Finance and Governance, the authority to agree the terms of development agreement and other associated documentation in their final form.

2.1.6 Agree that option of an “Equity Transfer” scheme is made available as set out in paragraph 3.25 and 3.26 to enable some existing leaseholders to remain on the estate.

3. PROPOSALS

3.1 The Marlowe Road Estate is a system built estate constructed in the 1960’s comprising of 298 Council homes. 48 of these homes have been purchased under the Right to Buy scheme (RTB). The estate is characterised by deck access, poor pedestrian walkways and linkages. It also includes the 20 storey Northwood Tower (100 council homes)
which is not currently intended to be included in the proposals. The development site is shown in the attached plan edged red and attached at Appendix (6) (“Development Site”) The estate has suffered crime and deprivation associated with poor quality housing and poor public realm design, resulting in low resident satisfaction.

3.2 The regeneration proposals were developed in consultation with residents and provide for the demolition and re-provision of 150 tenanted homes and the development of around 280 new private homes to cross subsidise the development. An initial feasibility study demonstrated that this was a viable option, (subject to obtaining the Secretary of State’s consent, CPO and planning approval) and the returned tenders have supported this.

3.3 Cabinet approved the appointment of Mulalley and Co Limited (Mulalley) as the preferred developer and (CP) as reserve developer in March 2014. This followed a formal tender process using the GLA’s LDP framework. CP challenged the decision to appoint Mulalley as preferred developer on a technical legal point. The Council decided in August 2014 to set aside the decision to appoint Mulalley. As CP was the reserve developer, they were automatically then appointed as preferred developer.

3.4 The Council have since been working with CP, developing their proposals, agreeing the terms and details of the development agreement and associated documentation. These agreements will set down the terms of the development and place obligations on both parties. CP will construct the development subject to terms of these agreements.

3.5 A pre-planning application was submitted by CP in December 2014 and a full planning application is due to be submitted by CP in May 2015. The target date for obtaining planning consent is currently September/October 2015 with a start on site early in 2016. The development is currently programmed to complete in 2021.

3.6 The main points agreed with CP that will be set out in the Development Agreement and other associated agreements are as follows:

3.7 CP will submit a planning application for the development and obtain a satisfactory permission. The Council and CP currently plan to start on site early in 2016 but the contract does allow CP a period of time from entering into the development agreement to satisfy the conditions. This period is still subject to negotiation but is likely to be not less than one year and not more than two years. Upon satisfaction of conditions, CP have a further period (currently six months subject to negotiations) in order to commence the development.

3.8 CP will indemnify the Council’s Compulsory Purchase Order (CPO) costs currently estimated at just over £20M and will reimburse those costs on an agreed basis. They will also be liable to pay the Council any residual land value and overage payments (if any). CP will be required to enter to a CPOIA as set out in recommendation 2.1.3.
3.9 CP will develop 150 homes for the Council for social rent to an agreed standard as set out in the development agreement plus circa 280 homes for private sale. The Council will purchase 40 of these private units at an agreed price for shared ownership and, if agreed by Cabinet, will proceed with the equity transfer for existing leaseholders who wish to remain on the development. CP will also be obliged to develop the public realm and commercial properties in line with the planning permission.

3.10 CP will be required to make Community Infrastructure Levy (CIL) payments which are estimated at £2M plus.

3.11 A number of development strategies will form part of the development agreement including in relation to energy, training and apprenticeships, sustainability and waste.

3.12 The development is planned to be carried out in three phases:

**Phase 1** - Consists of 92 Social Rent and 98 Private Sale homes plus the commercial space.

**Phase 2** - Consists of 39 Social Rent and 135 Private Sale homes.

**Phase 3** - Consists of 19 Social Rent and 52 Private Sale homes. The 40 Shared ownership/equity transfer properties will be provided from the Private Sale homes.

3.13 At the start of each phase CP will be required to carry out a ‘Price Test’ to confirm the financial viability of a Phase. If the test shows that the Phase is not financially viable there are steps to be taken and options to be considered to proceed with the scheme in any event. This could involve either party deferring a proposed benefit until a future phase. If agreement cannot be reached the agreement may be terminated by either party. If the agreement is terminated for any reason CP’s funder has rights to step in and may appoint a replacement developer.

3.14 The development agreement includes provisions for settlement of disputes, and remedies for breaches and termination.

3.15 **The Council’s responsibilities are as follows:**

3.16 To obtain vacant possession for each phase for the development. This will involve rehousing the tenants and purchasing the leasehold interests of existing leaseholders or offering alternative options in line with the Council’s regeneration charter. The Council will be required to obtain a CPO of the Development Site as a last resort to ensure it can obtain vacant possession. A report will come to Cabinet in the summer regarding this.

3.17 Pay the CP £10.2M in staged payments for the 150 social rented homes on a phased basis.

3.18 To ensure the development is delivered to the specification agreed with CP and the development strategies are monitored and adhered to. A project monitor will be employed to support the Council with this.
3.19 The structure of the land transfers is that the Council will retain the freehold of the site but will grant CP an interest in the land for each phase to allow them to build the Council housing. The Council is currently intending to grant CP a lease for the provision of private sale homes for a term of 250 years; the final terms of the disposal are yet to be agreed. This will allow the units to be sold to purchasers. The Council will also have an option to purchase from CP the rights to receive the ground rent from the private sale properties should it wish to do so subject to obtaining the necessary approvals.

3.20 The Council will retain ownership of the Plaza and new play areas and will have the option to acquire the ownership of the new commercial properties.

3.21 There will also be separate agreement for the overage provision. The overage provisions will give the Council 50% of any increase in values after allowing for any increased build costs and agreed profit. This will be reviewed on a phase by phase basis.

3.22 The Council has been successful in obtaining an allocation from the GLA in its 2015-2018 programme for £1.2M for part funding of the first phase; these funds are intended to be used to purchase part of the additional 40 shared ownership units as set in paragraph 3.9. The Council intends to bid for further phases for an additional £4M which if successful will also be used to acquire the shared ownership units. Positive discussions have been on-going with the GLA but further grant funding cannot be guaranteed.

3.23 The freehold site on the corner of 176 Wood Street and 97 Vallentin Road shown edged blue on the plan attached as Appendix 6 is owned by three separate freeholders. Negotiations have commenced but the Council have so far been unable to agree an acceptable valuation for the site. One of the freeholders has a successful business that employs around 30 people and does not want to leave the area even on a temporary basis.

3.24 CP has designed the scheme so that it can be delivered without this site, although it does make sense for it to be included within the Development Site. This site can be seen as a stand-alone development. The current freeholders have considered various options and are in the process of getting a professional valuation. The Council will also carry out its own valuation and officers anticipate being able to make a fair offer to purchase the site based on this valuation. The offer will be time limited and should it not be accepted the site be will be excluded from the development and therefore also from the area to be subject to any necessary compulsory purchase order (details of which will be provided in the next Cabinet Report).

3.25 A leaseholder regeneration charter has been developed in consultation with the leasehold residents on the Steering Group and this gives the various options available to the leaseholders. A number have lived on the estate since it was built and wish to remain on the new development. An option of equity transfer has been developed. This is
widely used by other Local Authorities and Registered Providers on regeneration projects such as this.

3.26 The scheme allows for the leaseholders to retain their equity plus the 10% compensation as a share in a new private home on the development. They will retain a percentage of the value in line with the current value of their existing property and the Council will pay the remaining sums to make up the purchase price. The Council will retain its contribution as a charge on the property. No rent will be recovered from the leaseholders on the Council’s share however the Council will benefit from any uplift in value when the property is eventually sold. The cost of £2M, has been allocated as part of Council’s (CPO) costs for the equity transfer scheme. There are currently 15 leaseholders/freeholders who have expressed a wish for this option. The remainder of leaseholders (33) are negotiating with the Council to sell their properties. Accordingly, Cabinet is recommended to agree that the Council offer the option of the equity transfer scheme to leaseholders on the estate.

3.27 A risk register for the project is shown in (Appendix 1).

The main risks are as follows:

3.28 There is a slow-down in the housing market. This could lead to CP not commencing construction and may put the delivery of the Council’s new homes and blight on the area. Officers are negotiating a clause in the agreement which will detail certain circumstances when this could occur. For example, this may involve a circumstance where a number of private sale homes remain unsold for a certain length of time. The bulk of the Council’s social housing (129) will be built in the first 2 phases and should therefore be at less risk.

3.29 The price test may not be met on a phase. The development agreement allows for either party to defer any benefit due on a particular phase to enable it to proceed and get the benefit from a future phase. This could mean the Council or CP deferring an overage payment, CP deferring some of their profit or the Council accepting a reduced land receipt (subject to obtaining the necessary approvals). The price test should only fail if build costs or CPO costs increase further than current estimates and therefore should only occur at two points in the programme at the start of the phases 2 and 3. It will be in the best interests of both parties to agree to the price test. Ultimately, if the parties are unable to agree the price test, the Council may need to consider looking for an alternative developer to complete the development. The Council would also be liable for certain costs that could be attributed to any future phase e.g. planning and design costs; currently the Council has provided an indemnity for planning and feasibility works up the sum of £800,000 in the event the agreement is not entered into by April 2015. The Council would be able to retain the rights to the work carried out so far, such as design. This would lead to delay in delivering the final scheme and there could be an increase in costs.
3.30 The other major risk to the Council is not being able to give vacant possession at the start of each phase. The first phase requires the Council to decant 16 residents before the end of this year. Five of these residents have moved already and the other tenants are bidding for other Council properties outside of the estate with assistance of officers. Decant status gives the residents high priority and officers believe the target date for decant of Phase 1 residents will be met. If the Council has not been able to negotiate the voluntary acquisition of the necessary properties a compulsory purchase order (CPO) will be required as a last resort; negotiations are currently underway. The first phase of the development will deliver 92 social rented homes which will be enough to decant the following phases and any residents wanting to return.

3.31 The current cost plan, which has not been agreed, shows a positive land value receipt due to the Council of £2M. This is before the repurchase the 1000m2 of commercial interest, if the Council intends to do so there will be no additional receipt if these monies are utilised in this way. In addition the Council will need to make provision for the Council’s external monitoring costs for the 5-6 years of the programme of £500K plus a contingency of £2M which will be reduced as most major risks regarding costs have been dealt with. Upon the final terms of the relevant agreements being entered into, the parties will agree a final financial appraisal which will be utilised for each phase draw-down. From these costs, the Council will deduct the £1.2M grant approved by the GLA however the scheme currently shows a remaining deficit of £1.3M. This is £100K less than reported to Cabinet in 2014.

3.32 There are a number of options that the Council could consider to meet this deficit such as additional grant (which may be available for additional units in the first phase that are likely to be ready within the GLA timescale) non-utilisation of contingency, possible overage, review the HRA contribution. Negotiations are still in progress to improve the land offer. Overall the scheme is considered viable at this stage.

3.33 In 2014, the Capital Strategy And Asset Management Group approved the use of £5million to meet the costs of acquiring the various interests; this expenditure will be at risk if the scheme is unable to proceed.

4. OPTIONS & ALTERNATIVES CONSIDERED

4.1 The Council could decide to retender the project. This would lead to considerable abortive costs due to CP for work done to date and result in considerable delays to the project and additional costs to the Council. Therefore, this option is not recommended.

4.2 The Council could defer the signing of the development agreement and associated documents until all of the details regarding the price test, planning permission and vacant possession for the first phase have been achieved. However, CP would be unwilling to proceed unless the Council is able to give further indemnities to pay all their costs- which
the Council have to a certain limit, currently indemnified (paragraph 3.29). This will not reduce any of the Councils risk and could damage the partnership relationship with CP and give uncertainty to the Council. Delays to the targeted start on site could also put the GLA grant at risk.

5. SUSTAINABLE COMMUNITY STRATEGY PRIORITIES (AND OTHER NATIONAL OR LOCAL POLICIES OR STRATEGIES)

5.1 The Council has ambitious targets for regeneration set out in a suite of documents under the Creating a better place: Waltham Forest 2014-18 umbrella including Better High Streets, Better Leisure, Better Schools, and Better Housing. As part of this regeneration programme, the Council is looking to facilitate and enable the delivery of 10,000 new homes of all tenures, with particular emphasis on providing affordable homes for local households.

5.2 This project will contribute to improving both the quality of the accommodation for Council tenants but will also make a major improvement to the neighbourhood. It will attract new economically active people and families into the area who will contribute to the sustainability of small local shops and businesses.

5.3 The scheme is part of the Council’s Mini Holland programme and will encourage cycling to the local Walthamstow village and Epping Forest and provide a hub for commuters using the Wood Street station.

5.4 As part of a development strategy and a condition of planning, the project will provide opportunities for apprenticeships and local labour.

5.5 The re-configuration of the Plaza and play area will provide a better and larger focal point and a more secure overlooked environment for children and young adults.

6. CONSULTATION

6.1 The Council has carried out detailed consultation with the residents, the wider community and the commercial interests. This is detailed in Appendix 2.

6.2 Initial consultation began with a survey of residents in 2012. This showed that 80% wanted the estate to be redeveloped. A resident steering group was set up and they have been involved in the plans and choosing the developer.

6.3 The wider community and commercial interests were consulted as part of the Wood Street Area Action Plan (AAP) during 2013 and further events have been held including an exhibition at the Xmas Fair on the Plaza and a Public meeting in a local school on the 7th February 2015.

6.4 The local Ward Councillors have also been briefed and have input into the scheme, in particular the Plaza and Wood Street First have been supportive of our proposals for the plaza.

7. IMPLICATIONS
7.1 Finance, Value for Money and Risk

7.1.1 The scheme is forecast to cost over £140M over 7 years. Details of these costs are still under negotiation and the project will be subject to review at each phased stage.

7.1.2 The housing revenue account (HRA) will contribute £10.2M to purchase replacement social rented housing and £2M for replacement commercial property. The main part of the funding will come from private sales of residential properties. The commercial property is a general fund asset which provides income to the general fund. The current overage provisions agreed with CP will give the Council 50% of any increase in values after allowing for any increased build costs and agreed profit. This will be reviewed on a phase by phase basis and the final percentage share will be detailed in the overage agreement.

7.1.3 The GLA has agreed to provide grant funding of £1.2M for part of phase 1. It is hoped that further grant will be agreed for the remainder of the phase and future phases. On current estimates including contingency and monitoring costs (but excluding possible future grant allocations) show a deficit of £1.3M for the whole scheme would fall to be met from the HRA in addition to the costs in paragraph 7.1.2 above. There is provision in the HRA capital programme 2015/6 to 2018/19 to meet all these costs.

7.1.4 The above costs exclude the purchase of shared ownership properties (see paragraph 3.9 above). About half of the proposed 40 shared ownership units will be for the equity transfer scheme (if approved) and the cost is part of the property acquisition costs included in the scheme. It is planned that the cost of the remainder will be met in part by grant and sales proceeds from shared ownership sales but the viability of this element of the scheme will be kept under review and varied if necessary. The equity transfer offer to residents (see paragraph 3.26) results in a loss to the Council because no income will result from the Council’s share in the dwellings until the property is sold. However the Council will potentially benefit from any increase in the value of the property and the offer is expected to facilitate and speed up the necessary acquisition and decanting of properties.

7.1.5 CP’s current costs include interest costs based on CP funding the acquisition costs of the interests to be acquired. However it is expected that part of these costs will be deducted from the acquisitions costs of the social housing units that will need to be met by the Council. Therefore, any costs met by the Council will be offset against the £10.2M due for social housing and the developers charge for interest will be adjusted accordingly.

7.1.6 There will be a separate overage agreement between CP and the Council which will include overage provisions for the Council to benefit if property prices increase by more than forecast over the period of the development.

7.1.7 There remain risks which are normal for a development of this size and complexity, (see Appendix 1).
7.2 Legal

7.2.1 The Council has power to provide housing accommodation under section 9 of the Housing Act 1985.

7.2.2 The Council may transfer land held for the Housing Revenue Account to a developer on either a freehold or leasehold basis in accordance with Section 32 of the Housing Act 1985 (the 1985 Act). The use of Section 32 is conditional upon obtaining the prior consent of the Secretary of State.

7.2.3 The Council has procured the development partner using the London Development Panel framework established by the GLA. The establishment of the framework was compliant with the Public Contracts Regulations 2006. The framework required procurement of a developer through a mini competition. This is in accordance with the Regulations and the Council’s Contract Procedure Rules.

7.2.4 The Council has the specific power to dispose of the part of the Development Site to CP pursuant to Section 123 Local Government Act 1972 which permits the disposal of its interests provided it is for the best consideration reasonably obtainable.

7.2.5 The consent of the Secretary of State will be required (unless the disposal is by way of a short tenancy) if the Council intends to dispose of land at a consideration less than the best that can be reasonably obtained. Specific consent from the Secretary of State is not required for the disposal of land if the Council considers that it will help secure the promotion or improvement of the economic, social or environmental well-being of its area (subject to such undervalue not exceeding two million pounds).

7.2.5 The Council has under Section (1) of the Localism Act 2011 the power to do anything that individuals may generally do (the general power of competence). The Council also has the power under section 111 of the Local Government Act 1972 to do anything which is calculated to facilitate or is conducive or incidental to the discharge of any of its functions.

7.2.6 The Council is able to acquire land by agreement under Section 120 Local Government Act 1972 for the purposes of any of its functions, or the benefit, improvement or development of its area.

7.3 Equalities and Diversity

7.3.1 The procurement process included an evaluation against equality requirements to ensure providers were compliant in respect of the Equality Act 2010. Whilst the appointment of a developer partner itself has a limited Equalities and Diversity impact, the activities undertaken by the developer are likely to contribute to promoting and advancing equality. An Equality Assessment of the Marlowe Road Redevelopment has been undertaken which has identified a number of mitigation measures to support those with protected equality characteristics and is attached at (Appendix 4).
7.4 Sustainability (including climate change, health, crime and disorder)

7.4.1 A sustainability strategy will be appended to the development agreement. The main negative impact will be in relation to the increase in number of homes but this will be partly mitigated with the improvements in energy efficiency of the buildings and Energy Centre.

7.4.2 The proposals include the provision of an Energy Centre to serve the development and both Northwood Tower and Walnut Court. The building provided as part of the development will also be able to house a wider energy network as part of the GLA’s programme of networks. A decision on this will be made later but the plans allow for the provision of the space and connections to join up with the network. The Council’s Energy and Carbon Reduction Manager has been working on this with the developer and the GLA’s consultants.

7.4.3 A sustainability Matrix has been included as appendix 5

7.5 Council Infrastructure

7.5.1 None.

BACKGROUND INFORMATION (as defined by Local Government (Access to Information) Act 1985)

The Estates Review 2010/11.
Leaseholders and tenants regeneration charters.