

## **CABINET MEMBER DELEGATED DECISION 3 MAY 2022**

**Report title:** The Waterloo Undercroft – Agreement for Lease

**Wards:** Bishop's Ward

**Portfolio:** Cabinet Member for Finance and Performance: Councillor Andrew Wilson

**Report Authorised by:** Fiona McDermott: Strategic Director for Finance and Investment

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### **Report summary**

To grant an agreement for lease and subject to due diligence and the proposed tenant satisfying the conditions precedent set out in the Part II report, a ten year lease of the four subterranean undercrofts, collectively the Waterloo Undercroft, to a food and beverage operator for use as a culture, entertainment and food venue (sui generis use), as categorised under the Town and Country Planning (Use Classes) Order 1987 (as amended). This will ensure the space is enlivened and brought into a use which is complementary to the arts and cultural uses and aims of the South Bank, pending any future redevelopment of the wider area, and will provide additional social value, including the provision of local jobs and training for local residents.

Due to the unique characteristics of the space and its general poor state of repair, the space is to be let in shell condition and the tenant is to be granted an agreement for lease, followed by the lease once certain conditions are satisfied, principally obtaining planning and licensing consents for the proposed use including late night trading. The tenant will meet the cost of carrying out essential works and the Council will work with the tenant to ensure the requirements of the Minimum Energy Efficiency Regulations, essential for letting, are satisfied. A statutory consultation, in accordance with the Council's Statement of Community Involvement, would be carried out upon receipt of a planning application, and the Council will support the development of an operational management plan, and any other measures deemed necessary, to mitigate any impacts of the development.

### **Finance summary**

The proposed lease will generate a revenue income which will cover the costs of awarding the lease and ongoing monitoring and help to offset some of the costs of the Council's acquisition of the headlease in 2020. Further details are provided in the exempt part II to this report.

The expectation is to complete the agreement for lease within a month of approval of terms and for the tenant to be trading by late 2022. Associated legal costs and surveying fees for

documenting the lease, approving works proposals, monitoring and sign off on completion will be met from the commercial portfolio revenue budget.

## Recommendations

1. To grant an agreement for lease to Vinegar Yard and subject to due diligence and the tenant satisfying conditions precedent, a ten-year lease to the food and beverage operator submitting the preferred bid for a culture, entertainment and food venue, on the basis of the Heads of Terms proposed (details are provided in part II of this report) and subject to satisfaction of conditions and due diligence.

## Reasons for Exemption from disclosure

The accompanying part II report is exempt from disclosure by virtue of the following Paragraphs of schedule 12A to the Local Government Act 1972:

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

## 1. CONTEXT

- 1.1 Cabinet gave approval in June 2019 to the acquisition of the long leasehold interest in the Waterloo Undercroft. The Undercroft comprises four subterranean, high-ceilinged vaults, totalling 25,781 sq ft, which are enclosed by the underside of the Waterloo Bridge road deck and painted breeze block topped by timber panels, immediately adjacent to the lower level of the IMAX cinema. The units are typically 5m plus high and their approximate unit sizes are set out in Table 1 below:

**Table 1**

Unit	Sqft GIA	Sqm GIA
1	5,208	484
2	4,595	427
3	10,545	980
4	5,434	505
<b>TOTAL</b>	<b>25,782</b>	<b>2,396</b>

The supports for Waterloo Bridge, which must remain accessible at all times, penetrate the space as do ramps (now closed off) previously connecting with the network of tunnels and public walkways above and are specifically excluded from the Council's registered ownership title. The nature of the 'roof' means it is subject to water ingress in places. Vehicular access to the space is possible via Charlie Chaplin Walk (off Belvedere Road) and this is also used by the IMAX cinema for deliveries.

- 1.3 Subsequent to the creation of the long leasehold interest in the Undercroft, the Council transferred part of its freehold to Transport for London (TfL) which means that TfL is the Council's landlord in respect of two of the individual vaults. While the permitted use under the lease aligns with the proposed use, because of the split freehold ownership, consents may need to be obtained from

TfL in relation to underletting and alterations depending upon the works proposed by the tenant. Provision has therefore been allowed for TfL's surveying and legal costs.

- 1.4 The undercrofts are located within the Waterloo Opportunity Area. Waterloo is one of the three key growth areas identified in the Lambeth Local Plan 2021-2026 and the South Bank as the focus of culture, arts and leisure in the borough. The proposed use is complementary to the arts and cultural uses and aims of the South Bank and will help to create economic activity and jobs within the borough. The lease will contain provisions for the preferred operator to pay its staff and, ensure its supply chain pays, the London Living Wage and wherever possible give preference to Lambeth residents when taking on new staff, which accords with Council policies.

## **2. PROPOSAL AND REASONS**

- 2.1 Following acquisition in February 2020, Union Street Partners, niche agents specialising in the South Bank area were appointed in October 2020 as the Council's agents to market the space which had previously been used for unheated storage only. Their view was that while the hospitality industry had been badly impacted by the pandemic, large space in strong locations where there is a deficit of opportunities, such as in Waterloo, will continue to attract interest as operators consider the longer-term potential post pandemic.
- 2.2 The undercrofts border some of the thoroughfares leading from around the Waterloo roundabout at surface level to the IMAX cinema at below ground level which are used by members of the public to access the IMAX and to traverse the area between Waterloo Station and Waterloo Bridge
- 2.3 The aspiration is to enliven and make better use of the space rather than being relegated to 'dead' storage use which fails to generate economic activity or employment opportunities. To drive footfall in this location requires any letting to be a destination of itself. However, the space presents physical, financial and potential legal and planning challenges, not least of which is the need to avoid incurring substantial capital expenditure on more conventional use of the space. The preference of most tenants is for lease terms of ten years to allow them time to become established and to recoup their investment in any fitting out of the space.
- 2.4 The MEES (Minimum Energy Efficiency Standard) Regulations 2015 currently require all new lettings of commercial properties and, from 1 April 2023 all properties subject to existing leases, to have a minimum rating of 'E' or better, with limited exceptions. The ability to satisfy this requirement will depend on how the tenant intends to use the space and the works proposed.
- 2.5 Although there was some interest in taking single units, mainly from theatre, cinema and performance sectors, these did not progress and a letting of a single unit in isolation would preclude letting of the undercrofts in their entirety for the proposed use as a cultural, entertainment and food and beverage venue, which has a minimum size requirement. Such a venue could not operate successfully within a smaller space. The two best all-round offers came from food and beverage operators with a solid track record of making creative use of unusual space and operating venues of the type now proposed.
- 2.5 Initial advice received from the Local Planning Authority indicates that a food and beverage/leisure use in this location could, in principle, be acceptable, as it would complement the arts and cultural uses and aims of the South Bank. The site sits within the CAZ (Central Activities Zone) and the Waterloo CAZ retail cluster. An operational management plan, as well as proposed mitigation measures, would need to support any future planning application.
- 2.6 The proposed key lease terms provide for:

- A ten year lease subject to landlord redevelopment breaks
  - For use only as a sui generis culture, entertainment and food venue as categorised under the Town and Country Planning (Use Classes) Order 1987 (as amended). This would be subject to securing planning consent.
  - Planning and licensing applications to be made by the tenant
  - Premises to be taken in existing shell condition and fit-out proposals to be submitted for landlord approval
  - Inclusion of a Joint Community Engagement Plan and an Operational Management Plan
- 2.7 Both food and beverage operators submitted attractive proposals at a level of rent considered by agents to be in line with the market for this type of space and well above that achievable for storage. Because both were acceptable in principle, best bids were invited to assist in reaching a decision and ensuring the best outcome for the Council. This has resulted in a preferred bidder, by a narrow margin. The transaction remains subject to further due diligence and satisfaction of conditions.
- 2.8 Once let, the property will form part of the Council's commercial portfolio managed by Valuation and Strategic Assets.

### **3. FINANCE**

- 3.1 The lease will generate additional revenue income for the Council's commercial portfolio, details of which are provided in part II of this report. The associated costs of letting including approving and monitoring the tenant's works and obtaining EPC clearance will be met from the same revenue budget. These one-off costs are anticipated to be up to £50,000 (including provision for anticipated TfL costs). The tenant will meet the cost of securing planning and licensing consents and carrying out essential and fit-out works and allowance for this is reflected in the rent-free period to be granted.
- 3.2 There will be revenue cost savings of approximately £30,000 per annum for security and empty rates.
- 3.3 The expectation is to complete the agreement for lease within a month of approval of terms and for the tenant to be trading by late 2022.

### **4. LEGAL AND DEMOCRACY**

- 4.1 Under Section 1 of the Localism Act 2011 Local Authorities have a general power of competence, this means that a Local Authority can do anything that an individual can do.
- 4.2 Section 123 of the Local Government Act 1972 provides that the council can dispose of land in any manner it wishes, save that it is not permitted to dispose of land, otherwise than by a lease of less than 7 years, at less than the best consideration that can reasonably be obtained, without the consent of the Secretary of State.
- 4.3 Section 149 of the Equality Act 2010 requires the Council in the exercise of its functions to have due regard to the need to:
- Eliminate discrimination, harassment, victimisation and other form of conduct prohibited under the Act; and,

- To advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic (age, disability, gender re-assignment, pregnancy and maternity, race, religion and belief, sex and sexual orientation) and persons who do not share it.
- 4.4 Having regard to the need to advance equality of opportunity between persons who share relevant protected characteristics and persons who do not share it involves having due regard, in particular, to the need to:
- Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
  - Take steps to meet the needs of the persons who share that characteristic that are different from the needs of persons who do not share it; and,
  - Encourage persons of the relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
- 4.5 The Equality duty must be complied with before and at the time that a particular policy is under consideration or decision is taken – that is, in the development of policy options, and in making a final decision. A public body cannot satisfy the Equality Duty by justifying a decision after it has been taken.
- 4.6 Section 17 of the Crime and Disorder Act 1998 imposes a duty on the council in the exercise of its functions to have due regard to the likely effect of the exercise of those functions on, and the need to do all that it reasonably can to prevent:
- (a) crime and disorder in its area (including anti-social and other behaviour adversely affecting the local environment); and
  - (b) the misuse of drugs, alcohol and other substances in its area; and
  - (c) re-offending in its area
- 4.7 This proposed key decision was entered in the Forward Plan on 2 August 2021 and the necessary 28 clear days' notice has been given. In addition, the Council's Constitution requires the report to be published on the website for five clear days before the proposed decision is approved by the Cabinet Member. Any representations received during this period must be considered by the decision-maker before the decision is taken. A further period of five clear days - the call-in period – must then elapse before the decision is enacted. If the decision is called-in during this period, it cannot be enacted until the call-in has been considered and resolved.

## **5. CONSULTATION AND CO-PRODUCTION**

- 5.1 Consultation has taken place with the Cabinet Member for Planning, Investment and New Homes and the Cabinet Member for Finance and Performance. Consultation has also taken place with the relevant reams across the Council, including Finance, Property, Legal and Economy, Culture and Skills and Planning.
- 5.2 Union Street Partners, who are niche agents specialising in letting in the South Bank area were consulted and their advice taken into account.
- 5.3 Further consultation will be enabled via the planning application process.

## 6. RISK MANAGEMENT

6.1 The unique character of the space, its condition and the challenges of satisfying energy performance requirements render the space difficult to let. It could only be let for certain types of storage or would require significant capital expenditure for more conventional use. If it remains unlet, empty holding costs will continue to be incurred and the opportunity to generate rental income and business rates, improve connectivity with the South Bank and Waterloo and support business growth and employment opportunities for local people, will be lost. The proposed letting is therefore the best option of the market interest expressed to date. The lease contains a provision for the landlord to be able to break the lease.

6.2 The main risks that impede on the successful delivery of this procurement and contract are:

**Table 2 – Risk Register**

Item	Risk	Likelihood	Impact	Score	Control Measures
1	Tenant is unable to secure planning consent.	2	8	16	Informal consultation with the Local Planning Authority indicates proposed land use could be acceptable in principle, subject to appropriate mitigation measures. Tenant will manage planning application.
2	Local objections to proposed use.	2	4	8	Consultation with neighbours to ensure no servicing/access issues. Requirement for Joint Community Engagement Plan and Operational Management Plan.
3	Tenant is unable to secure liquor licence.	2	8	16	Trading hours will be subject to planning and licensing hours permitted. For tenant to manage.
4	Inability to satisfy MEES regulations.	2	8	16	Initial advice indicates possible to meet subject to approval of tenant's works and proposed use.
5	Tenant unable to carry out desired works.	2	4	8	Survey information held has been shared. Further investigation required by tenant and approval of works by Lambeth.
6	Venue does not attract footfall.	2	4	8	Preferred operator is experienced with a good track record in marketing and running similar venues in unusual spaces.

**Key**

<b>Likelihood</b>	Very Likely	4	Likely	3	Unlikely	2	Very Unlikely	1
<b>Impact</b>	Major	8	Serious	4	Significant	2	Minor	1

## 7. EQUALITIES IMPACT ASSESSMENT

7.1 An EIA has been undertaken to understand the impact of this decision. Overall, the impacts are considered to be neutral for the majority of groups with Protected Characteristics, as well as local stakeholders who will be affected, either directly or indirectly. There are a number of positive impacts noted in the EIA, including the provision of jobs, employment and skills opportunities for local residents from Black, Asian and Minority Ethnic backgrounds. Local young and working aged people stand to benefit from the London Living Wage guarantee that is expected, as are Black, Asian and Minority Ethnic-led and female-led businesses.

## 8. COMMUNITY SAFETY

8.1 Community safety will be addressed for this site through the Planning and Licensing process. It is anticipated that any planning consent will include a requirement for an event and customer management plan.

## 9. ORGANISATIONAL IMPLICATIONS

### Environmental

9.1 The lease will make effective short-term use of what was once highway waste land and otherwise 'dead' space. Increased footfall will not have an impact on air quality, the circulation space being open to the sky above. Cooking and some heating may result in a small increase in carbon emissions and these will be addressed when considering energy performance certificate requirements to ensure these come as close as possible to meeting the Council's policy objective of achieving net zero carbon by 2030.

### Health

9.2 It is expected that the scheme will contribute positively to enhanced health outcomes in the immediate area through direct and indirect factors, such as public realm improvements and the provision of good quality jobs for local residents.

### Corporate Parenting

9.3 Not applicable.

### Staffing and Accommodation

9.4 Valuation and Strategic Assets will continue to manage the property once leased and Area Regeneration will have an input into the tenant's works, marketing, events and activities of the tenant's business.

### Responsible Procurement

9.5 This report concerns the grant of a contract in land and does not involve the procurement of goods or services, however, the tenant will commit in advance of its lease to the following:

#### *Good Quality Jobs with Fair Pay and Decent Working Conditions*

9.6 Under its own Environmental, Social and Governance (ESG), the tenant is already committed to paying its staff the London Living Wage and will ensure, as far as possible, that its supply chain suppliers do likewise.

*Quality Apprenticeships, targeted Employment for Lambeth residents and Lambeth Priority Group*

9.7 The tenant will work with the Council's Skills and Employment Team and give a commitment on jobs, apprenticeships and hospitality career training to benefit the area by employing locally where possible and to work with other local businesses (supply chain).

*Reduce Emissions: Lambeth Council has a commitment to being Zero Carbon by 2030*

9.8 The venue is located below ground level with vehicular access for delivery vehicles only. Given its proximity to Waterloo mainline railway and Underground stations, it is easily accessible by public transport, walking and cycling, which will have no impact on emissions. The tenant will work with the Council's Energy Performance Assessor to ensure its works comply with the Minimum Energy Efficiency Standards Regulations and ensure any operational emissions come as close to net zero as possible.

*Single Use Plastics*

9.9 The tenant operates a re-useable plastics policy as part of its ESG to minimise the use of single use plastics.

*Positive Health and Wellbeing*

9.10 The tenant will provide a variety of social value benefits, including the employment of Lambeth residents who will be paid the Local Living Wage. Further social value initiatives to be discussed and agreed with the tenant.

*Other Offers (Innovation)*

9.11 Not applicable

## 10. TIMETABLE FOR IMPLEMENTATION

10.1 The table below details the stages and deadlines for implementing the recommendations:

Activity	Proposed Date
Date published on Forward Plan	02.08.21
Publication on Decisions online	22.04.22
Officer or Cabinet Member Decision	03.05.22
Execution of Contract (Agreement for Lease)	01.06.22

## AUDIT TRAIL

### Consultation

Name and Position/Title	Lambeth Directorate	Date Sent	Date Received	Comments in paragraph:
Councillor Matthew Bennett	Cabinet Member for Planning, Investment and New Homes	11.03.22	11.03.22	For information only
Councillor Andrew Wilson	Cabinet Member for Finance and Performance	11.03.22	11.03.22	
Councillors	Ward Councillors for Bishop's Ward	21.04.22	11.03.22	For information only
Fiona McDermott, Strategic Director	Finance and Investment	11.03.22	15.03.22	
Matthew Gaynor, Finance	Finance and Property	03.02.22	04.02.22	3.1 to 3.3
Greg Carson, Legal Services	Legal and Governance	04.02.22	04.02.22	4.1 to 4.6
Julia Skinner, Democratic Services	Legal and Governance	03.03.22	09.03.22	
Andrew Anderson, Assistant Director, Development, Sustainable Opportunity & Growth	Sustainable Growth & Opportunity	10.02.22	15.02.22	

## REPORT HISTORY

<b>Original discussion with Cabinet Member</b>	13.12.19
<b>Report deadline</b>	28.04.22
<b>Date final report sent</b>	21.04.22
<b>Part II Exempt from Disclosure/confidential accompanying report?</b>	Yes
<b>Key decision report</b>	Yes
<b>Date first appeared on forward plan</b>	02.08.21
<b>Key decision reasons</b>	Financial
<b>Background information</b>	Cabinet report 2 August 2019 - Waterloo Undercroft acquisition
<b>Appendices</b>	EIA

**APPROVAL BY CABINET MEMBER IN ACCORDANCE WITH SCHEME OF DELEGATION**

**I confirm I have consulted Finance, Legal, Democratic Services and the Procurement Board, and taken account of their advice and comments in completing the report for approval:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Kay Milstead, Assistant Head of Strategic Capital, Valuation and Strategic Assets

**I approve the above recommendations:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Yvonne Hardy, Head of Valuation and Strategic Assets

**I confirm I have consulted the relevant Cabinet Members, including the Leader of the Council (if required), and approve the above recommendations:**

**Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Post:** Councillor Andrew Wilson, Cabinet Member for Finance and Performance

**Any declarations of interest (or exemptions granted):** None.

**Any conflicts of interest:** None

**Any dispensations:** None