

Cabinet Member Delegated Decision

Decision Due 24 March 2016

Report title Proposed changes to the lease held by the Coin Street Community Builders relating to land on the South Bank

Wards: Bishop's

Report Authorised by: Sue Foster, Strategic Director – Neighbourhoods and Growth

Portfolio: Councillor Jack Hopkins, Cabinet Member - Jobs and Growth

Contact for enquiries:

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Report summary

This report relates to part of the Queens Walk on the South Bank, where the Council is the freeholder, (marked on the plan attached at Appendix A). It describes a proposed variation to the existing lease with the Coin Street Community Builders Ltd, (CSCB). This has arisen as a result of a request by the Garden Bridge Trust (GBT). If supported, the negotiation and resultant variation will allow the construction and occupation of a new, permanent building ('the South Landing Building' (SLB)), which will form the landing point of the proposed Garden Bridge ('the Bridge') on the South Bank. Construction of the South Landing Building is conditional upon completion of the Bridge. If the Bridge is not completed, any permanent building will have to be removed. The Council has granted planning permission for the Bridge, (Lambeth Planning ref: 14/02792/FUL), subject to 45 conditions and the completion of a S106 legal agreement to secure a number of planning obligations. The construction of the Bridge and the South Landing Building is at no cost to the Council. Agreement to the proposed draft Heads of Terms is requested. The conclusion of the negotiation is to be delegated to officers in consultation with the Cabinet Member for Jobs and Growth.

Finance summary

There is no direct cost to the Council in terms of a capital contribution for the construction of the Bridge arising from this variation.

The Council will not incur any financial liabilities arising from the construction/maintenance of the South Landing Building and the surrounding area in the event of GBT failing to fulfil its obligations. A guarantee has been sought from Transport for London (TFL) and the Greater London Authority to meet the obligations of the GBT for the ongoing maintenance and upkeep of the bridge and therefore the South Landing Building. This will be legally secured.

The S106 Agreement secured as part of the planning permission requires GBT to make an annual payment as a contribution towards any operational and maintenance costs associated with relevant off-site impacts. In the first year after opening this will be up to a ceiling of £250,000 (index linked and subject to an open book assessment of actual costs incurred), and each year thereafter it will be a sum to be agreed with the Council based on the actual impacts derived from monitoring during the previous year. This funding must be paid to the Council as the accountable body.

An undertaking by the GBT has been agreed to cover all professional costs incurred by the Council in any part of this transaction.

Recommendations

- (1) To agree to the variation of the lease between the Council and CSCB as set out in the draft Heads of Terms for a Deed of Variation, at Appendix B. This will allow CSCB to grant a sub lease to the Garden Bridge Trust, (GBT), to enable the Bridge to be built. On completion, GBT will lease part of the South Landing Building back to CSCB to enable them to occupy and use it for a range of activities in accordance with the planning permission. Further sub lease arrangements will be required should CSCB choose to let their part of the building to other providers.
- (2) To authorise the Head of Asset Strategy in consultation with the Strategic Director of Corporate Resources and the Strategic Director of Neighbourhoods and Growth to conclude the negotiations for the Deed of Variation with the proviso that any material changes from the draft Heads of Terms set out in Appendix B are referred back to the Cabinet Member for Jobs and Growth for approval.
- (3) Subject to recommendation (1) to (2) above, to authorise the Head of Asset Strategy to enter into the Deed of Variation.

Context

- 1.1 The Council granted planning permission, subject to conditions, for the proposed Garden Bridge, in December 2014. The Bridge is to be located between Waterloo Bridge to the west and Blackfriars Bridge to the east and will span the River Thames between Victoria Embankment and the South Bank.
- 1.2 A number of planning conditions require the submission of further details to the Council for formal approval in writing. These process is currently ongoing.
- 1.3 The Council's Planning Applications Committee required that the S106 agreement cannot be signed until the GBT has a legal interest in the land. The Council is the freeholder.
- 1.4 Therefore in 2014, the Garden Bridge Trust, (GBT), approached the Council and CSCB Ltd with a view to acquiring an interest in part of the South Bank to erect a landing building, (the South Landing Building), for the proposed Garden Bridge on land adjacent to Queens Walk. This single-storey landing building will incorporate maintenance, management and welfare facilities for GBT's operational purposes, provision of public

toilets and up to 410sqm of A1,A3 and or D1 flexible floorspace with additional ancillary services and plant.

- 1.5 The report presented at the Council's Planning Applications Committee in November 2014 identified that a number of strategic benefits would derive from the Bridge and landing building, including contributing towards the Waterloo Opportunity Area's development potential, creation of new employment and training opportunities, economic benefits for existing businesses both on the south and north banks, improvements to London's cross-river pedestrian network, reduced pedestrian journey times between Temple Underground and South Bank, and provision of a new public park space in London.
- 1.6 The long leaseholder is CSCB who have a lease, (dated 9 April 1992), with an unexpired term of approximately 75 years, but with a right for CSCB to renew on the same terms for a further period of 99 years. The passing rent is a peppercorn.
- 1.7 The identified site and area required by GBT is within the area which is subject to the CSCB lease. A variation is required to enable the completion of the S106 legal agreement and the construction of the South Landing Building to proceed.

2. Proposal and Reasons

- 2.1 The terms of the existing CSCB lease do not permit any development on the land nor do they permit the grant of an under-lease or any sub-letting except in certain defined circumstances. If the Bridge is to go ahead the following sequence of events are required: Lambeth to vary the lease with CSCB; CSCB to agree a sub lease to GBT to enable the construction of the Bridge; GBT to agree to sub lease back to CSCB so that they can occupy the new commercial premises that will be constructed as part of the South Landing Building with further sub leases as required by CSCB with any tenants that they wish to contract with.
- 2.2 CSCB currently benefit from an income from the sub letting of the land in their lease to a variety of users for temporary, promotional or meanwhile activity. A recent example is the 'Virgin Holiday's treehouse'. CSCB is required to maintain the land within their lease and this source of income supports that requirement, which it is understood from CSCB can be significant. CSCB have stipulated that they should be 'no worse off' if the Bridge is constructed. The Council understands that they have required GBT to lease the commercial premises to them to ensure that they are not worse off than if the Bridge was not built. Therefore, the space lost for temporary activity when the bridge is constructed could potentially be mitigated by use of the permanent building. It should be noted that in the absence of a formal planning consent, the number of days that such activities can be carried out is limited to 28 days in any calendar year by virtue of permitted development rights granted through planning legislation.
- 2.3 The GBT initially asked the Council and CSCB to consider a surrender of the existing lease and regrant of the lease to CSCB for a term of 200 years with further sub-leases, and under-leases to satisfy the requirements of the Port of London Authority ('PLA') and their river license. This would have required a large scale surrender and regrant arrangement. Upon receiving this request, the Council advertised the 'disposal' of the land on the 19th May 2015 for a period of 2 weeks and subsequently the deadline was

extended from the 1st to 16th June. Objections were received in response to this, they are summarised in section 5 of this report together with the Council's response to the concerns raised.

- 2.4 Subsequently GBT have confirmed that the existing term of the lease is satisfactory for their purposes as although the river license will be for 200 years, it will include a break clause at year 75 so that it mirrors the provision of the lease relating to the land. A regranted arrangement is therefore no longer required and is not being pursued, but it is still necessary to make some changes to the lease.

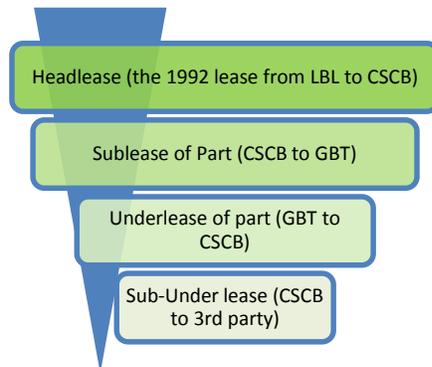
The proposed variation to the lease

- 2.5 The proposed draft Heads of Terms provide for a variation of the existing lease to allow, *inter alia*:

- the South Landing Building to be built
- the TfL/GLA guarantee to be effected
- an income sharing mechanism, described in paragraphs 2.10 and 2.14 of this report to be set out and documented
- The various sub, under and sub-under leases to be granted, in forms annexed to the Licence to Underlet forming part of the Deed of Variation completion documents.

In all other respects, the original lease would remain largely unaltered.

- 2.6 Completion of the Deed of Variation will allow a hierarchy of sub-interests, as illustrated in the diagram below:



- 2.7 The lease will be varied between Lambeth and CSCB. A sub lease will be granted by CSCB to GBT. This sublease will demise the land required for the South Landing Building and the GBT will be granted rights to erect parts of the Bridge in the 'airspace' either side of the South Landing Building itself.
- 2.8 The commercial part of the property demised by the sublease referred to above will then be further underlet by GBT back to CSCB.
- 2.9 CSCB may then grant interests to third parties to utilise the space, if it wishes to.
- 2.10 The Council has a right of review and approval in all aspects of sub-letting. Construction of the South Landing Building is conditional upon completion of the Bridge. If the Bridge is not completed, any permanent building will have to be removed.

The income sharing mechanism

- 2.11 The Council considers the South Bank to be a unique location where the nature and type of activity, particularly temporary activity is exceptional. The Council's view is that the construction of the South Landing Building is an unprecedented windfall opportunity because it will enable a new and valuable and, most importantly, *permanent* income stream to be generated, albeit that the overall area of land available for temporary promotional events will be significantly reduced.
- 2.12 The draft Heads of Terms include a requirement for an income share mechanism to capture the income, should any uplift be evidenced.

The proposed income sharing mechanism is based on the following principles:

- To support the CSCB requirement that they should be 'no worse off', a baseline figure of the CSCB relevant income will be agreed. This will be verified by an independent auditor at the outset, based upon the financial year 2015/16. The audit will clarify costs that are incurred by CSCB to maintain the land defined by the lease.
 - The baseline figure will be the opportunity cost incurred by CSCB as the Garden Bridge extinguishes some of the riverside areas which CSCB currently hire out to third parties for temporary events.
 - Any 'income' above the agreed baseline figure, will, after costs, be split equally between the Council and CSCB.
 - The costs are anticipated to be management costs incurred in the running of the commercial element and are expected to include matters such as the preparation of the licence/lease to the new tenant(s), marketing, advertising, and other typical property management costs.
 - Audited accounts will be required each year for inspection, with third party dispute mechanisms in the event of disagreement. This mechanism will be incorporated as part of the Deed of Variation.
- 2.13 Any income above the index linked baseline is to be shared 50/50 between the CSCB and the Council. The baseline figure is still subject to audit.
- 2.14 The varied lease will permit CSCB to underlet the premises and also to make alterations (with LBL's consent) by way of a licence to underlet and a licence for alterations. The granting of underleases and the making of alterations are currently strictly limited in the 1992 lease. GBT will be a party to the licence to underlet and licence for alterations because GBT will be the undertenant. GBT will give LBL direct covenants in both licences (for example, GBT will covenant with LBL to comply with the terms of the 1992 lease (as varied) insofar as it relates to the underlet premises, GBT will also covenant with LBL to comply with the terms of the underlease) and LBL will therefore want these direct covenants guaranteed by GBT's guarantor in respect of the on-going maintenance and upkeep of bridge and South Landing Building.
- 2.15 As referred to above, the existing lease requires CSCB to maintain the area within their demise. This will continue. The Council acknowledges the costs of maintenance are likely to increase as the Bridge will attract significantly more visitors to the area. The

S106 Agreement secured as part of the planning permission will require GBT to make an annual payment as a contribution towards any operational and maintenance costs associated with relevant off-site impacts. This funding must be paid to the Council as the accountable body as detailed in the planning permission 14/02792/FUL.

2.16 Any income that the Council receives will be invested in the local area.

3. Finance

3.1 There is no direct cost to the Council in terms of a capital contribution for the construction of the Bridge arising from this variation.

3.2 The Council will not incur any financial liabilities arising from the construction/maintenance of the South Landing Building and the surrounding area in the event of GBT failing to fulfil its obligations. A guarantee has been sought from TFL/GLA to meet the obligations of the GBT for the ongoing maintenance and upkeep of the bridge and therefore the South Landing Building. This will be legally secured.

3.3 The S106 Agreement secured as part of the planning permission requires GBT to make an annual payment as a contribution towards any operational and maintenance costs associated with relevant off-site impacts. In the first year after opening this will be up to a ceiling of £250,000 (index linked and subject to an open book assessment of actual costs incurred), and each year thereafter it will be a sum to be agreed with the Council based on the actual impacts derived from monitoring during the previous year.

3.4 An undertaking by the GBT has been agreed to cover all professional costs incurred by the Council in any part of this transaction.

4 Legal and Democracy

4.1 Section 1 of the Localism Act 2011 empowers the Council to do anything individuals generally may do.

4.2 Section 111 of the Local Government Act 1972 grants the Council the power to do any thing (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions.

4.3 Section 144 of the Local Government Act 1972 empowers the Council to encourage persons, by advertisement or otherwise, to visit their area for recreation, for health purposes, or to hold conferences, trade fairs and exhibitions in its area.

4.4 Article 7 (a)(ii) & (f) of the Ministry for Housing and Local Government Provisional Order (Greater London Parks and Open Spaces) Act 1967 ("the Order") enables the Council to in any open space, provide and maintain open air facilities as the local authority think fit for any form of recreation whatsoever and to erect and maintain for or in connection with any purpose relating to the open space such buildings or structures as they consider necessary or desirable.

4.5 Article 8(1) of the Order enables the Council on such terms and conditions as to payment or otherwise as it may consider desirable, grant any person the right of

exercising any of the powers conferred on it by article 7 and let to any person, for any of the purposes mentioned in that article, any building or structure erected, and any part of an open space set apart or enclosed.

- 4.6 On 27 May 2015, the land at Queens Walk and associated public open space was listed as an Asset of Community Value (ACV) by the Council in their capacity as administrators of the ACV regime, which came into force under the Localism Act 2011. The proposed South Landing Station is within the land now currently listed as an ACV.
- 4.7 In the event there is any relevant disposal within the Section 96 of the Localism Act 2011 (the 'Act') the council will receive notice, and the appropriate officer will need to determine what, if any, action the council is required to take under Section 95(1) of the Act.
- 4.8 There is no impact on the ACV whether or not there was a surrender and re-grant or variation to the lease. CSCB is a community interest group as defined by regulation 13 of the Asset of Community Value Regulations 2012. The Council cannot force CSCB to surrender its lease, in order that the Council could grant it to a third party, CSCB's agreement to any variation, surrender and regrant would be required to enable it to do so.
- 4.9 In accordance with administrative law principles, the Council as a public body is required to act reasonably in exercising its functions and when considering matters of public interest.
- 4.10 When considering whether to adopt the recommendations of this report, the decision maker will be exercising discretion within the constraints of the duties referred to above and should therefore have in mind the following principles of administrative law:
- the decision must be within the Council's powers;
 - all relevant information and consideration, including the Council's fiduciary duty to the Council Tax payer, must be taken into account; and,
 - all irrelevant considerations, including unauthorised purposes, must be ignored.
- 4.11 Pursuant to Part II of the Equality Act 2010, public authorities must, in the exercise of their functions, have due regard to the need to:
- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act;
 - advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and,
 - foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 4.12 Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic (age, disability, gender reassignment; pregnancy and maternity, race, religion and belief, sex and sexual orientation) 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 persons who share a relevant protected characteristic that are different from the needs of persons who do not share it; and,
- encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

4.13 Under the Council's Constitution an Individual Cabinet Member has the power to take the decisions set out in the recommendations set out above.

4.14 This proposed key decision was entered in the Forward Plan on 19 February 2016 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 Lambeth Council published a report titled 'Garden Bridge – Heads of Terms' in May 2015 on the Council's website. A key recommendation being the legal requirement to advertise for two consecutive weeks the Council's intention to dispose of open space in accordance with s.123 (2A) of the Local Government Act 1972. At that time, it was anticipated that the Council would be effecting a disposal for the reasons noted in section 2.3 above.

5.2 Notice to Advertise and Consultation Period

A notice to advertise was subsequently placed in the South London Press on the 19th of May inviting any written comments /objections to be made to the Head of Asset Strategy. The public were invited to visit Lambeth Town Hall to view the Proposal and Location Plan. A consultation period of one month was given. The usual period for such a notice is two weeks but given the level of interest this was extended to the 16th June. The deadline for initial comments was 2nd June 2015. The second deadline was therefore 16th June.

5.3 Consultation Outcome and Analysis

As noted above, although the Council is no longer proceeding with a disposal, and is effecting a deed of variation instead, the reader's attention is nonetheless drawn to the following objections which were received during the consultation period. Objections received were as follows:

1. 1,255 letters of which 1,231 contained the same body of text.
2. Two petitions with the same premise - first petition arrived 1st June with 897 signatures, the second on 16th June with 1,138 signatures. The objectors are local residents and pan London. Total signatures therefore 2,035.
3. 304 emails were received which raised a variety of objections.
4. There were therefore a total of 3,594 individual signatures objecting to the Garden Bridge. Of those, from the addresses provided, 461 were Lambeth Residents. However, not all emails provided an address.

The objections covered a range of reasons and these have been summarised into the following principal areas. Some objectors objected on more than one ground.

Issue raised	Council response
<p>The petition objected to the disposal of 'precious public open space on the South Bank for commercial development in association with the Garden Bridge'.</p>	<p>This matter was carefully assessed by the Council in the consideration of the planning application by Planning Applications Committee in November 2014. It was recognised that the protection and maintenance of open spaces and their function is a key planning policy aspiration. In this instance the Council determined that the loss of open space on the South Bank and removal of a number of mature trees was outweighed by the significant amount of new planting and urban greening on the new bridge structure and other matters discussed in paragraph 1.5 above.</p>
<p>The letter which was signed by 1,231 contained the following identical text: The failure of the notice to mention that the new lease would allow for the construction of a commercial building on public open space.</p> <p>The loss of green open space and mature trees.</p> <p>The land represents a scarce resource for local communities which is in an area which suffers a deficit. Lambeth is a custodian of the open space for future generations and should protect it.</p>	<p>The nature of the development and the proposed flexible land use of the South Landing Building was detailed in the Council's PAC report to 11th November 2014 Planning Applications Committee which pre dated the notice.</p> <p>As part of the grant of planning permission, the Council determined that any loss of open space was mitigated by the construction and net gain of the garden that forms a key feature of the Bridge and other benefits specified in paragraph 1.5 above. Were there to be a disposal within the meaning of the Local</p>

	<p>Government Act 1972, that enabled the proposed development to proceed, officers recommend that those benefits specified in paragraph 1.5 above outweigh the loss of any loss of open space or trees that would occur as a result of the proposed development.</p>
<p>The remainder of the other objections via letter and email included:</p>	
<p><i>Environmental</i> These cover issues such as loss of trees; loss of protected iconic views; harmful effect to the river and archaeology.</p>	<p>These issues were evaluated as part of the grant of planning application, and officers recommended were to approve the application as the benefits referred to in paragraph 1.5 above, together with planning conditions imposed both mitigate and outweigh the environmental damage (if any) resultant on any development of the land.</p>
<p><i>Planning / infrastructure</i> These cover issues such as loss of open green riverside space; there being no need for a bridge in this location; the impact of overcrowding and the bridge being a tourist attraction.</p>	<p>These issues were evaluated as part of the grant of planning permission, and are properly matters to be considered by the Planning Authority.</p>
<p><i>Financial opposition</i> These cover issues such as opposition to a commercial development being erected on open space as well as any potential disposal being at a peppercorn rent which did not appear to represent the most advantageous financial deal particularly in times of austerity in the public sector.</p>	<p>The current lease granted by the London Residuary Body to CSCB is at a peppercorn rent. The Council has therefore proposed that an income sharing mechanism is included to capture any uplift in value, after Coin Street have recouped their opportunity cost, for the duration of the Bridge's existence.</p> <p>In response to the objection about development on open space, as noted above, this matter was carefully assessed by the Council in the consideration of the planning application by Planning Applications Committee in November 2014. It was recognised that the protection and maintenance of open spaces and their function is a key planning policy aspiration. In this instance the Council determined that the loss of open space on the South Bank and removal of a number of mature trees was</p>

	outweighed by the significant amount of new planting and urban greening on the new bridge structure and other matters discussed in paragraph 1.5 above.
'Other' issues such as the site has been listed as an asset of community value so should not be disposed of.	There is no impact on the ACV. CSCB is a community interest group as defined in regulation 13 of the Asset of Community Value (England) Regulations 2012. The Localism Act and ACV regulations do not require a moratorium period where there is a relevant disposal of an ACV to a community interest group within the protected period.

6 Risk management

6.1 If the lease variation is not agreed then the construction of the Bridge cannot proceed.

7 Equalities impact assessment

7.1 The planning application for the construction of the Bridge was the subject of an Equalities Impact Assessment (EIA) dated May 2014. To accompany this report a further EIA has been completed on the Deed of Variation, and is attached as Appendix C. Both reports conclude that there will not be a negative impact on any groups due to the bridge's construction. Consideration of the Equalities Impact Assessments undertaken evidences the due regard that is required to be taken of the impact of this decision on those with a protected characteristic under the Equalities Act 2010.

8 Community safety

8.1 Due regard to community safety conditions has been fully assessed as part of the planning application and appropriate conditions have been put in place.

9 Organisational implications

None.

9.1 Environmental

None, over and above those addressed by the decision by the Council's Planning Applications Committee.

9.2 Staffing and accommodation

None

9.3 Procurement

None

9.4 Health

None

10 Timetable for implementation

10.1 The recommendations from this report will be implemented with immediate effect.

Audit trail				
Consultation				
Name/Position	Lambeth Directorate	Date Sent	Date Received	Comments in para:
Sue Foster	Strategic Director, Neighbourhoods and Growth	09/03/16	09/03/16	Throughout
Jackie Belton	Strategic Director, Corporate Resources	09/03/16	15.3.16	Cleared
Adrian Smith	Director, Strategy And Commissioning	09/03/16	10/03/16	Noted need to ensure no additional cost are incurred by Council from the South Landing Building.
David Joyce	Programme Director, Planning	09/03/16		Cleared
Sophie Linton	Head of Asset Strategy	09/03/16	10/03/16	Throughout-sections 2 and 5
Alison McKane	Head of Legal	09/03/16	11/03/16	Throughout
Anne Corbett	Programme Director- Community Safety	09/03/16		Cleared
Frank Higgins	Finance	09/03/16	11/03/16	Section: 3
Legal Services	Corporate Resources: Corporate Affairs	09/03/16	16.3.16	Throughout
Maria Burton Democratic Services	Corporate Resources: Corporate Affairs	09/03/16	14/03/16	Recommendations and 4.13
Katy Shaw	Neighbourhoods and Growth	09/03/16	10/03/16	Throughout
Jack Hopkins	Cabinet Member-Jobs and Growth	09/03/16	15.3.16	2.14
Paul McGlone	Deputy Leader	09/03/16	15.3.16	Cleared

	(Finance and Resources)			
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Report history	
Original discussion with Cabinet Member	07.02.16
Report deadline	N/A
Date report sent	N/A
Report no.	N/A
Part II Exempt from Disclosure/confidential accompanying report?	No
Key decision report	Yes
Date first appeared on forward plan	19.02.14
Key decision reasons	Community Impact
Background information	Planning Applications Committee, 11 November 2014, item 6
Appendices	A-Location of Garden Bridge B- Draft Heads of Terms C-Equalities Impact Assesment

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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 _____

Sue Foster

Strategic Director- Neighbourhoods and Growth

I approve the above recommendations:

Signature _____ Date _____

Councillor Jack Hopkins, Cabinet Member for Jobs and Growth

Any declarations of interest (or exemptions granted): **details of any alternative options considered and rejected by the member when making the decision.**

Any conflicts of interest: a record of any conflict of interest declared by any executive member who is consulted by the member which related to the decision.

Any dispensations: in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.