

# Public Document Pack



## PETERBOROUGH CITY COUNCIL SUMMONS TO A MEETING

You are hereby summonsed to attend an extraordinary meeting of the Peterborough City Council, which will be held in the Council Chamber, Town Hall, Peterborough on

**WEDNESDAY 31 JULY 2013 at 7.00 pm**

### AGENDA

**Page No.**

- |   |               |
|---|---------------|
| <b>1. Apologies for Absence</b>                     |               |
| <b>2. Declarations of Interest</b>                  |               |
| <b>3. Budget Allocation for London Road Stadium</b> | <b>3 - 30</b> |

A handwritten signature in black ink that reads "Julian Beasley".

Chief Executive

23 July 2013  
Town Hall  
Bridge Street  
Peterborough

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<b>COUNCIL</b> Extraordinary Meeting	AGENDA ITEM No. 3
31 JULY 2013	PUBLIC REPORT

Cabinet Member(s) responsible:	Councillor Marco Cereste, Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement	
Contact Officer(s):	Richard Hodgson – Head of Strategic Projects	Tel. 384535

**BUDGET ALLOCATION FOR LONDON ROAD STADIUM**

R E C O M M E N D A T I O N S	
<b>FROM : Councillor Cereste – Leader of the Council</b>	
<p>Council is recommended to approve the allocation of £1 million in the annual budget to enable the retrofitting or redevelopment of the London Road terrace at the Peterborough United football ground in order to provide an all-seater stadium.</p>	

**1. ORIGIN OF REPORT**

- 1.1 This decision is brought to Council by the Leader of the Council following consultation with Cabinet, the Chief Executive and senior council officers regarding the future development of the Peterborough United football ground.
- 1.2 The football ground is owned by the Council and this decision will allow the Leader to exercise executive powers to improve this Council asset. Copies of the intended Executive Decisions are included as an appendix to this report to enable members to understand all the decisions being taken in relation to this asset and its future development.
- 1.3 It will be necessary to retain one of the papers relating to an Executive Decision as an exempt annex because it contains information on tenders submitted in relation to the building of the new London Road (Moy’s End) stand and Sustainable Skills Centre. The exempt annex is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972. The public interest test has been applied to the exempt information and it is considered that the need to retain the information as exempt at this stage outweighs the public interest in disclosing it. This is because the information is considered to be commercially confidential as the contract has not yet been awarded. Once the contract has been awarded information regarding the successful tenderer can be released into the public domain. We have included details of the successful tenderer in the draft Decision Notice attached at Appendix 3.

**2. PURPOSE AND REASON FOR REPORT**

- 2.1 This report seeks to outline the history of the football ground since the Council purchased it in December 2009. It will set out the reasons for undertaking the purchase and the social, economic, environmental and community benefits that the city has, and can continue to derive, from its ownership of the ground. Details are given of the work undertaken since the purchase, to account for the manner in which it is proposed to use the additional funds requested through this decision, for the greater community benefit that can be provided in future.

**3. TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>	If Yes, date for relevant Cabinet Meeting	
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3.1 This is not a major policy decision. This decision comes to Council as no allowance is currently made within the Medium Term Financial Strategy for the funds to enable the retrofitting or redevelopment of the London Road terrace. Council is the decision making body for any decisions affecting the Council's budget.

3.2 In order to provide clarity, Council is only being asked to make the decisions relating to the budget for the London Road stadium. Many of the decisions referred to in this report are Executive Decisions, which by law can only be exercised by the Leader or those persons to whom he delegates his powers. The decision regarding the London Road stadium is however part of a wider network of decisions for the improvement of the Council's asset and are included to provide context for this decision.

#### **4. BACKGROUND**

4.1 The Council purchased the London Road stadium and car park from Peterborough United Holdings Limited (PUHL) on 24 December 2009 for £8 million following a decision by Council on 21 December 2009. Taking into account the additional £350,000 purchase costs incurred, mainly through stamp duty and legal fees, the total cost of acquisition was £8.35 million.

4.2 Although Council approved a budget of £8.65 million for the purchase of the ground, the final cost was less because the Council did not pursue an option to purchase a house on Glebe Road from PUHL.

4.3 Council decided to purchase the ground for four main reasons. These were as follows:

- Council realised the importance and community benefit of maintaining a football presence in Peterborough;
- Council saw the opportunity to create a first-class community facility with the new skills centre;
- Council appreciated the value of the site as a gateway to the proposed South Bank redevelopment;
- Council saw the potential negative impact that the proposed PUHL residential development to the Moy's End stand could have on the Carbon Challenge scheme.

4.4 Council also recognised the economic and social benefit of having a football club in Peterborough, which has since been evidenced in the Economic Impact Assessment commissioned by Peterborough United Football Club (PUFC), dated 8 March 2013, and considered by Council officers. The Council further recognised the wider benefits of having an enhanced Carbon Challenge scheme with increased New Homes Bonus contributions as well as enhanced business uses which will increase Business Rate contributions.

4.5 As a result of the decision by Council, two leases for the football ground are in place with PUFC, both of which expire in June 2014. Details of these are as follows:

- **Lease 1**

The original lease transferred to the council from PUHL. It sets out a rent of £280,000 and includes:

- Four stands
- Pitch
- Ground floor retail units

The obligation to keep the stadium in good repair under this lease falls to PUFC.

- **Lease 2**

A brand new lease agreed by PCC and PUFC setting out a rent of £220,000 and includes:

- Car park
- Approach roads
- Former crèche
- Probation offices
- Some conference areas

The rent per annum was therefore set for both leases at £500,000 per annum.

- 4.6 In 2011 plans were unveiled at a public exhibition for the first stage of the community stadium project. The current Moy's End would be replaced by a 2,500 all-seater stand which would also include a skills centre. Funding for the £9.5million scheme has been secured from an award of Targeted Capital Funding from Government of £5.5million, £2million from the Council's own funds for the Moy's End stand and a further £2million from our own funds for the skills centre which is supported by a short term interest-free £1.74 million loan from the Local Enterprise Partnership.
- 4.7 In 2012 it became clear that PUFC considered the rent arrangements to be commercially unviable and in excess of the true value of the lease and asked the Council to review this. In particular the rental streams under lease two had fallen short of what was expected. PUFC also expressed through its chairman the desire to acquire the freehold of the ground.
- 4.8 Discussions took place with PUFC and this led to the Heads of Terms (Appendix 1) being agreed by both parties on 6 September 2012 to provide agreement for the Council and football club to progress negotiations around a redevelopment of the ground and conclude these without further delay. The Heads of Terms included:
- An agreement that the Council will develop the Moy's End stand and skills centre at no cost to the club;
  - An agreement on a rent abatement period to the club during the development period of the Moy's End stand for PUFC's loss of revenue;
  - An agreement on a new long-term lease with rent based on an independent valuation to be carried out by expert property advisors;
  - That the Council and PUFC would work together on the redevelopment of the London Road stand options;
  - That PUFC would clear any rent arrears; and
  - That there would be provision made for PUFC to acquire the freehold of the ground.

## **5. THE CURRENT POSITION**

- 5.1 Since the Heads of Terms were entered into in September 2012, lengthy and detailed discussions have taken place to secure a long term lease of the land on commercially acceptable terms in light of the current economic climate. Securing a long term tenant is in the best interests of the Council, its taxpayers, PUFC and the city as a whole. New Heads of Terms dated 18 July 2013 to reflect those discussions are attached at Appendix 2 and the decisions required to implement those Heads of Terms are set out in paragraph 5.2 below.
- 5.2 As stated above, the decisions to effect this deal are partly within the remit of full Council and some are Executive Decisions. Summarised below are each of those decisions and the basis for them. Further details of the Executive Decisions can be found in the draft Cabinet Member Decision Notice at Appendix 3 and at paragraph 7 of this report.

### **a) Rent under current leases (Executive Decision)**

Under the Heads of Terms set out above an independent valuation of rental values was undertaken by expert property advisors Lambert Smith Hampton. This valuation demonstrated that rent under the current lease should be £300,000pa. Therefore the

negotiations concentrated on how we could agree rental values for the stadium, both undeveloped and developed, which were in line with that independent valuation. Until the rent position could be established PUFC was not pursued to pay rent. Once the Executive Decision is taken to settle the annual rent based on the valuation, PUFC is expected to pay, in full, the revaluated rent owed since June 2012.

**b) Grant of new lease and rent under new lease (Executive Decision)**

When the works to the Moy's End stand and skills centre are completed the new rent will be £380,000pa, rising to £430,000pa when the London Road terrace retrofit is completed. These rental values are in line with the independent rental valuation undertaken by Lambert Smith Hampton. There will be an interim lease for the period between June 2014 and September 2014 which sets out a rental value of £300,000pa whilst the redevelopment of the Moy's End is completed.

The rental figures agreed under the new 25 year lease will be in line with the independent rental valuation. The new lease will only cover the football elements of the ground and will not include the skills centre, Moy's End car park and access.

**c) Surrender of part of the leases to enable construction of Moy's End (Executive Decision)**

In order to begin construction works parts of both leases need to be surrendered by PUFC to the Council to enable the Council to have access to the site for the works.

**d) Rent abatement during construction of Moy's End (Executive Decision)**

We have agreed rent abatement during the course of construction of £296,000 in line with the loss of income that PUFC will incur. This figure includes the loss of ticket sales, additional stewarding due to part of the site being a building site, additional policing within North Stand where away fans will be housed and loss of catering and advertising revenue from the Moy's End.

**e) Letting of contract to construct Moy's End (Executive Decision)**

The Council will need to award the contract for the works to Kier Construction Eastern in line with the tendering process.

**f) Terms for the sale and pre-emption rights under new lease (Executive Decision)**

The new 25-year lease will include an option for PUFC to purchase the stadium, excluding the skills centre, at any time during the first ten years of the new lease.

It will also allow PUFC first refusal if the Council chose to sell its freehold interest in the stadium within the first ten years of the new lease. In return, the Council will have a similar right of first refusal in the event that PUFC acquires the ground but then chooses to sell it or grant a long-term lease.

**g) Approval of £1million to retrofit London Road terrace (Council Decision)**

The additional £1million being requested is to retrofit the London Road stand to all-seater. This investment in the Council's stadium will increase the overall value of its asset and ultimately attract a higher rental value. It will also provide some wider economic benefits and enhance the amenity of the area. It will also future proof the use of the stadium and ensure the football club can play matches in the Championship if they are promoted. In the coming season (2013/14) PUFC will be playing in League 1 and therefore under league rules is not required to play matches in an all-seater stadium. However, if and when the club returns to the Championship, under league rules, matches must be played in a stadium which is all-seater.

- 5.3 In the time it has taken to secure the above agreements, the football club and the Council have worked together to invest in facilities in the city, including those at Nene Park Academy where an academy programme is run in partnership with the school. In preparation for the development of the Moy's End stand, the Council has also carried out various works including the relocation of the Airwave radio equipment from the Moy's End tower to the London Road lighting tower, relocation of the stadium generator and upgrading of some of the electrical systems. Replacement of the lighting will enable the Moy's lighting tower to be taken down as part of the demolition works on Moy's End. The replacement lighting system already installed and in use last season brought the ground's lighting up to Championship standard.
- 5.4 The specific and wider benefits of the decisions being made by Council and through Executive Decisions now are set out below in paragraph 6 and are consistent with and build upon the reasons Council decided to purchase the ground in 2009.

## **6. THE VISION FOR A SUSTAINABLE FUTURE**

- 6.1 Council's decision will provide the essential funding to unlock the development potential of an important Council asset. The wider benefits which will arise from the development of the site are explained in further detail below.

### **6.2 Sustainable Skills Centre**

- 6.2.1 The Council maintained from the start that it wanted to create a community stadium as part of the wider regeneration of the South Bank area. Integral to this is providing an educational facility which supports the Council's aims of giving every young person the best start in life and to up-skill the city's workforce.
- 6.2.2 The Sustainable Skills Centre will provide vocational training for young people aged 14 to 16 in areas such as electronics, plumbing and the installation of energy generators including solar panels. In the post 16 sector it will be a training centre to support the industry in the above areas through apprenticeship training and short courses. From a higher education perspective the centre will be the base for the delivery of undergraduate and postgraduate courses focussing on the sustainable environment.
- 6.2.3 Through skills training and research in one building next to the football ground, young people will be encouraged to engage with the training and innovation offered at the skills centre, which in turn will substantially increase their chances of gaining employment. The skills centre will be the skills engine which will drive Peterborough's economic aspirations to grow inward investment from the environment/sustainability manufacturing sector.
- 6.2.4 If Council approves the recommendation in this report, it will be the trigger for securing vacant possession of the site, currently let to the football club, on which the new Sustainable Skills Centre will be built.
- 6.2.5 In 2009 the Council was awarded a Targeted Capital Funded grant from the Government. Of this, £5.5million was set aside to develop a specialist city centre based education facility.
- 6.2.6 The Council proposes to spend £2million from its own funds to supplement the grant for the skills centre. It is anticipated that there will be some financial benefits for the Council arising from its operation which would help offset some of the costs of developing it.
- 6.2.7 The Council has also secured a £1.74million short-term interest-free loan, repayable over three years from the Local Enterprise Partnership (LEP), which will assist with the fit-out and start-up costs of the skills centre. This will mean that the Council does not have to borrow the full £2million required to deliver the skills centre upfront, but can phase this over the three years that the LEP funding is available.

6.2.8 As well as working with a range of educational providers who could operate the skills centre in partnership with the Council, there are also discussions taking place with some national companies who have an interest in the skills centre.

### **6.3 A sustainable asset**

6.3.1 The Council has obtained planning permission for the demolition of the Moy's End terrace. The new skills centre has been designed to achieve BREEAM (the UK recognised standard for environmentally sustainable buildings) Excellent standard, which is highly energy efficient and contributes towards the Council's aspiration of becoming the UK's Environment Capital.

6.3.2 The Council has also completed the design and specification for a retrofitted all-seater London Road terrace. Having an all-seater stadium is necessary for the club to use all four stands whilst playing in the Football League Championship.

6.3.3 A redevelopment of the stadium will also produce an up-lift in the value of the land and asset owned by the council.

### **6.4 Maintaining a football presence**

6.4.1 Maintaining a footballing presence in the city was one of the key reasons Council committed to purchasing the football ground.

6.4.2 The economic and social benefits of having a football club in Peterborough are apparent. The club employs in the region of 300 staff, uses the services of local suppliers and attracts large numbers of visitors to the city from other areas of the country for matches. The football club also delivers community benefits, including work with a range of schools and youth groups and there are thousands of fans of the club in the city who benefit from their association.

6.4.3 In negotiating the new lease the Council has been able to ensure that PUFC can remain at the London Road stadium after its leases expire in June 2014, subject to entering into a new long term lease with the Council. This is commercially beneficial for the Council as landlord of the site.

6.4.4 A new all-seater stadium of superior quality will also provide a significant visitor attraction for the city.

### **6.5 South Bank Opportunity Area and Carbon Challenge Site**

6.5.1 Another key reason for purchasing the football ground was its location. The football stadium sits within the South Bank Opportunity Area which is a gateway to this vitally important area for future regeneration.

6.5.2 Purchasing the football ground also allowed the Council to overcome a number of challenges around the Carbon Challenge residential scheme, known as Vista, which also sits within the South Bank Opportunity Area. The purchase enabled the adjacent land set aside for the Vista development to proceed without legal challenge from the previous owners PUHL.

6.5.3 In addition, a former proposal for a high density development of flats proposed by PUHL, which could have been a potential obstacle to achieving the ideal design and layout of the Vista development, was removed as a result of the Council buying the ground.

6.5.4 Since completing its purchase of the stadium, the Council has been able to resolve the issues outlined above, helping significantly in the delivery of the Vista development, one of only two projects out of an original 14 national projects in the Government's Carbon Challenge programme.



- 6.5.5 Vitally important is that the Council's original purchase of the stadium has helped increase the size of the Vista development from an original scheme of approximately 145 units accessed via Glebe Road to a much larger 295 dwelling scheme predominantly accessed from London Road. The increased scale of the Vista development will help the Council generate significant revenues in the form of New Homes Bonus funding over six years and additional Council Tax over the same period. This could amount to an approximately £900,000 in New Homes Bonus and a similar amount over the same six year period in Council Tax.

## **7. DECISIONS REQUIRED UNDER EXECUTIVE POWERS**

- 7.1 If Council approves the funding outlined in the recommendation to Council, a number of Executive Decisions will realise the benefit of the additional investment (see attached CMDN). These decisions are summarised here and broadly fall into three areas:

### **a) Letting a contract for the construction of Moy's End stand and Sustainable Skills Centre**

The Executive Decision required is for the award of contract for the demolition and reconstruction of the Moy's End stand and its replacement with a combined stand and Sustainable Skills Centre to Kier Construction Eastern, the recommended contractor following the tender of the contract in accordance with the OJEU procedure. The value of this contract is up to £7.569 million.

### **b) Surrender of the current lease with PUFC**

In order to be able to construct the new Moy's End stand and skills centre, PUFC will have to surrender part of the existing leases to the Council and the Council will need to accept the part surrender of these leases.

In addition, during the build period, expected to be from September 2013 to September 2014, the Council will have to agree a variation in the rent in relation to the current leases to take into account the loss of revenue to the club as a result of the loss of stand during the playing season. This will take the form of rent abatement during the construction period for Moy's End from September 2013 to June 2014 when the current leases expire. From June 2014 to the end of the period of construction, an interim lease will be entered into, excluding the Moy's End stand, when a new lease will begin. The rent for that lease will be £300,000pa.

All rental sums during these periods have been agreed based on the independent valuation of the ground and its assets by Lambert Smith Hampton. Any sums abated during this period are based on evidence provided to the Council by PUFC on its loss of income which has been examined by officers.

### **c) New lease**

Before a new lease is granted on completion of the Moy's End stand, the Council will enter into an agreement for a lease with PUFC. This agreement will obligate the Council to carry out the works to Moy's End and on completion will obligate PUFC to take a new long-term lease. Once the works are completed, the new lease will be entered into for 25 years at a rent of £380,000pa to represent the increase in value to PUFC of the new stand and the new concessions in the stand. The lease will exclude the skills centre which will be leased separately to the operator of the facility. Once the retrofitting of London Road is completed the rent will increase to £430,000pa. All rental values are based on the independent valuation completed by Lambert Smith Hampton.

The lease will have provisions to:

- grant an option to PUFC, in its capacity as tenant, to purchase the London Road stadium at any time during the first 10 years of the new lease. If PUFC exercises

this option the decision to sell and the price will be subject to the Council's decision making processes;

- grant a pre-emption right for PUFC which will allow it first refusal if the Council chose to sell its freehold interest in the ground within the first 10 years of the new lease. In return the Council will have a similar pre-emption right, which has no end date, if PUFC acquires the ground but chooses to dispose of its interest. The decisions in any of these cases on sale and price will be subject to the Council's decision making processes; and
- allow the Council to take from PUFC a 150-year lease at a peppercorn rent for the skills centre, if PUFC acquires the freehold interest.

## **8. REASONS FOR RECOMMENDATIONS**

Therefore, in conclusion, this decision will begin a series of further decisions to provide a first class community stadium and skills centre which will bring about wider benefits to the South Bank area and the city as a whole. The decisions will:

- Allow the Council to progress its aspiration to create a Sustainable Skills Centre which will support the aim of giving every young person the best start in life and to up-skill the city's workforce;
- Allow the Council to use its £5.5million Government grant to provide a new form of educational facility for the city;
- Allow the Council to progress its aspiration to create an all-seater community stadium;
- Allow the Council to enter into a new long-term lease with the football club which will provide a rental income for the Council over the next 25 years;
- Allow the football club the right to buy-back the football ground in time will allow the Council to recoup its investment in the stadium in whole or part in the future;
- Ensure a footballing presence can continue in the city;
- Ensure that Championship level football can be played in the city with a ground that is compliant with Championship rules;
- Through a rental settlement, allow the Council and the football club to agree on a rental value that is consistent with an independent valuation. It also ensures a new contract is in place for a 25 year period which will include annual rental for the Council;
- Create a community stadium which will form a key part of the wider South Bank Opportunity Area, helping to regenerate this key area of the city;
- Demonstrate a clear economic and social benefit of having a football club in Peterborough, which was evidenced in the Economic Impact Assessment commissioned by Peterborough United; and
- Ensure the Council will not need to secure an alternative site on which to construct the Sustainable Skills Centre.

## **9. ALTERNATIVE OPTIONS CONSIDERED**

If the Council did not allocate funding for the London Road terrace, this would lead to a complete renegotiation of the Heads of Terms and the likelihood that the skills centre would have to be delivered on an alternative site. In the event that the football club returned to the Championship, the London Road terrace would have to be closed as it is not all seating. Consequently the club's ability to pay rent to the Council would be

significantly impacted. It could also jeopardise the Council's stated aim of creating a quality community stadium as part of a wider regeneration of the South Bank Opportunity Area.

## 10. FINANCIAL IMPLICATIONS

- 10.1 It is currently expected that the costs of retrofitting the London Road stand would not exceed £1million. Assuming that this work is completed during the 2014/15 financial year, this would mean that the Council incurs the following revenue borrowing costs:

	2014/15	2015/16	2016/17	2017/18	2018/19
	£k	£k	£k	£k	£k
London Road - borrowing costs on £1m	20	64	64	64	64

These costs will need to be built into the next Medium Term Financial Strategy.

- 10.2 The council, as landlord, has a requirement under the lease to ensure that all four stands are available to the tenant. If the work was not completed, and the stand was unavailable as a result, then the tenant would have potential grounds to seek compensation from the rental sum for loss of income.
- 10.3 The independent valuation undertaken by Lambert Smith Hampton outlined that the rental would increase by £50,000 from £380,000 to £430,000 (these total figures assume Moy's End and London Road works are also completed).
- 10.4 There are no immediate financial implications from the option available to the club to purchase the ground in the future. Any such proposal would be subject to the Council's decision making process, and the relevant financial implications would be outlined at that stage.
- 10.5 The financial implications arising from the Cabinet Member Decision Notice are outlined within that decision notice.

## 11. LEGAL IMPLICATIONS

### 11.1 Constitutional issues

- 11.1.1 The Council's ability to deal with land arises from sections 120 to 123 of the Local Government Act 1972. These powers are executive powers, however as no provision currently exists within the budget for the development of the London Road stand, this financial decision falls to Council (Schedule 4 Local Authorities (Functions and Responsibilities) Regulations 2000).
- 11.1.2 As this is a decision of Council on a matter concerning the budget it is not subject to call in by the Scrutiny Committee. The decision of Council takes effect at the time it is made. Any executive decisions made subsequent to this budget decision will be subject to the Council's scrutiny process.

### 11.2 Property Implications

- 11.2.1 The retrofit of the London Road stand will be carried out by the Council under a Licence for Alterations with PUFC. The Licence for Alterations will be agreed at the same time as the documentation for the Agreement for Lease and Lease referred to in the draft CMDN.

### 11.3 State aid

- 11.3.1 Members are reminded that state aid is the unlawful practice of offering financial support to one party so that they have an advantage over others. This leads to competition in the commercial market being distorted.

11.3.2 To be clear no state aid issues arise in deciding whether to make this budget allocation for the works at the London Road stand. The state aid issues will arise predominantly in making the executive decisions, however members are advised that the allocation of funds for the retro-fit would not amount to state aid if it can be shown that a private investor would have provided the same funding to cover the costs of the improvements to the grounds under the same terms and conditions and would have agreed an equivalent rental income under the same terms and conditions.

11.3.3 In order to demonstrate this, all financial decisions are being made subject to independent valuation. Lambert Smith Hampton has already undertaken an independent valuation of the rental income for the ground in its current condition and expert property advisors GVA Grimley has been commissioned to verify the Council's position regarding the interim lease and in particular the rent abatement.

## **12. PROCUREMENT IMPLICATIONS**

The contract for the demolition and re-construction of Moy's End to provide an integrated skills centre and football stand has been procured through a fully compliant Official Journal of the European Union (OJEU) process. London Road terrace works will be subject to a further compliant tender process and formal decision making by the Council.

## **13. CONSULTATION**

13.1 Consultation has been held with Cabinet Members and the Leader of the Council in relation to the decisions that are required. A special briefing for Ward Councillors is being arranged before the Council meeting on 31 July 2013. The football club is separately consulting with supporters' groups and Trust on the proposed investment in the stadium.

13.2 It is considered that all necessary consultations have now been undertaken.

## **14. APPENDICES**

Appendix 1 Heads of Terms 6 September 2012

Appendix 2 Heads of Terms 18 July 2013

Appendix 3 Draft Cabinet Member Decision Notice

## **15. BACKGROUND DOCUMENTS**

Peterborough United Football Club Economic Impact Assessment dated 8 March 2013.  
Council report dated December 2009.

## **16. ANTICIPATED OUTCOMES**

If Council agrees to the recommendation before it and the Executive Decisions are made thereafter it will allow the Council to make a planning application for the works to the London Road terrace and begin a procurement exercise for the London Road terrace. It will also produce an up-lift in the value of the land and asset owned by the Council, an all-seater stadium and Sustainable Skills Centre and make the stadium attractive to a tenant who has aspirations to move to higher league football through the granting of a long-term lease. Finally, it will make the stadium attractive to visitors and users of the stadium through the Council's investment in facilities.

Head of Terms to be Agreed between PCC and POSH

1. The council will develop the Moy's end stand and STEM centre at no cost to the club.
2. The loss of income will be paid as compensation to the club during the development period based on a formula that reflects the loss of away terrace capacity (less the ability to redeploy elsewhere) the specific fixtures and attendance trends. This formula to be in the timescales set out in para 9 below. The council will also recompense the club any other loss of commercial income during this period e.g. advertising. The football clubs initial calculations indicate that no rents will be payable during the period of the construction. The money due will be offset from the quarterly rents due with effect from the quarter ending September 2012.
3. The council and the club will enter into a single new long term lease prior to the commencement of 1 above. The terms will be jointly agreed in negotiation with each party taking their own advice and in the events of disagreement with the assistance of an independent third party. This will include the council agreeing a framework that will enable the club to acquire the ground. This will include any necessary conditions to ensure the council's position on the STEM Centre is protected.
4. The council and the club will jointly work on achieving a major redevelopment of London Road as this is the preferred option for both parties.
5. In the event that the preferred option of the redevelopment of the stand cannot take place, then the council will commit to a retrofit of the London Road stand (at no cost to the club) to enable seating to be undertaken within league timescales in the event that a more structured development and funding are not possible. This is currently estimated to cost in the region of £1m and subject to further detailed studies.
6. The council will support the club in the 'safe standing initiative'.
7. The council will work with the club around income generation and cost saving via the ESCO Blue Sky Peterborough.
8. The club will pay all outstanding monies due under the lease by way of a fixed monthly sum (by standing order), with all monies due (September 2011 quarter to June 2012 quarter) being paid by 31<sup>st</sup> March 2013.
9. Both parties to use their best endeavours to conclude the detailed negotiations by 21st September 2012 by identifying a programme of work to achieve these objectives.
10. Subject to the conclusion of all negotiations and approvals it is anticipated that the redevelopment of the Moy's end stand will not commence until after the 27<sup>th</sup> October 2012 home fixture with Derby County. The council will work with its contractor to try and ensure, that if at all possible, that the stand is open by the start of the 2013/14 season.
11. All communications with the press and other stakeholders will be jointly agreed in respect of the above.

SIGNED: 

DATE: 06.09.12,

SIGNED: 

DATE: 6.9.12.

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EXEC DIRECTOR  
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## HEADS OF TERMS LONDON ROAD STADIUM

These heads of terms have been formulated following the agreement of Heads of Terms signed by PCC and PUFC in September 2012. The Terms have been formulated following extensive discussions and negotiations between the two parties and the involvement of specialist external valuers Lambert Smith Hampton.

PUFC currently occupy the ground under two leases. Both leases are due to expire in June 2014, approximately nine to ten months after the expected start of works on the Moys End Stand and Skills Centre. This, alongside the need to make the ground compliant with League requirements on seating, in the event that the Club returns to the Championship at some stage, has required the parties to ensure that a workable solution is reached which addresses these issues, alongside revenue issues relating to ongoing rents and rent arrears.

- (1) **Works** – PCC will seek Council approval to the letting of a contract for the construction of the Moys End stand, with the intention that work should start as soon as practicable after approval and completion of the OJEU process.
- (2) **Surrender** - Prior to commencing works on the ground PCC will take a surrender of the Moys End stand, access road and car park (as defined on the attached drawing)
- (3) **Current Lease Rent** - The rent under the current leases will be reduced from the current total amount under the two leases of £500K plus VAT per annum to £300k per annum, from the 24<sup>th</sup> June 2012. A Deed of Variation to the leases will be entered into to document the reduction in rent.
- (4) **Rent Arrears** – The rent arrears of £375,000 for the period July 2012- September 2013 will be paid in 12 monthly instalments in the amount of £30,000 commencing July 2013 for the first 11 months followed by a final payment of £45,000. In the event of surrender of part of the ground by PUFC, to enable the building works to commence, on or before 30<sup>th</sup> August 2013 the rent arrears will be reduced to £350,000 payable on the same instalments as set out above, but with the final instalment reduced to £20,000. Should the surrender take place after the 30<sup>th</sup> August the rent arrears will be reduced on a pro rata basis.

- (5) **Rent Abatement** – The Council will credit the Club the sum of £296K towards the annual rent as rent abatement during the period of 53 weeks for the overall works on the Moys End Stand.
- (6) **Interim Lease** – On conclusion of the current lease, the Council will grant a new interim lease on the same terms as the existing leases at a rent of £300K per annum, subject to the same abatement as provided for in (5) above. The interim lease will terminate prior to the grant of the lease of the ground incorporating the new Moys End stand referred to in paragraphs (7) and (8) below.
- (7) **Agreement for Lease** – PCC and PUFC will enter into an Agreement for Lease of the football related areas of the newly developed Moys End Stand, the remainder of the ground and associated rights to park. The new lease will exclude common parts such as the stairwells of the Moys End Stand, car park areas and the access road which will remain in PCC's ownership but will be subject to the payment of a service charge by PUFC. A full copy of the tender issue plans and specifications will be annexed to the Agreement.
- (8) **New Lease** - On completion of the Moys End, the Club will enter into a new 25 lease within ten working days from the certified Practical Completion date.
- (9) **London Road Terrace** – As soon as reasonably practicable following completion of the Agreement for Lease for the ground, the Council will apply for planning approval for the retro-fitting of the London Road Terrace. Subject to approval being granted by the Local Planning Authority, the Council will commit to spend a maximum of £1m on retro-fitting the London Road Terrace with seating and associated works. The start date of the retro-fit will be during June 2014 in consultation with PUFC. In the event PUFC do not want the works to proceed PUFC shall notify the Council by (1<sup>st</sup> February 2014). A Licence for Alterations is to be put in place between PCC and PUFC in the same format as the works to the floodlighting previously undertaken. The Licence for Alterations is to be entered into prior to commencement of the retro-fit.
- (10) **Rent** – The initial rent under the new lease will be £380K per annum, which will rise to £430K per annum, upon practical completion of the London Road Terrace works. A timetable will be agreed between the parties with regards to when the London Road Terrace works will commence, taking into consideration factors including the best time of the year for the works to take place.
- (11) **Rent Review** – The rent under the new lease will be subject to an upward only review every five years in accordance with the Retail Price Index (RPI) subject to a cap on the annual increase being no more than 1% per annum compounded.



(12) **Repair and Decoration of Ground** – PUFC will be responsible for:

- all structural, external and internal repairs of the ground excluding the Moys End stand, subject to a Schedule of Condition to be attached to the new lease;
- the internal repairs of the football related areas of the Moys End Stand comprising the concourse and seating area;
- for the repair and maintenance of the seating to be fitted.

The Council will be responsible for all structural and external repairs of the Moys End subject to the payment of a service charge by PUFC.

(13) **Football Income** – The tenant shall have the benefit of all football income in relation to the Property and over the car park on match days, which for the avoidance of doubt shall include but not be limited to such income as stadium naming rights, advertising and sponsorship, catering and other such incomes derived from the Tenant carrying out its business at London Road Stadium. The Tenant shall notify the Landlord of those days when the Car Park shall be used on match days.

(14) **Permitted User** - as a football and other sports stand and pitch including but not limited to the use of the stand and pitch for concerts, charity events and religious assemblies and such other ancillary uses of a football club together with other ancillary uses and events as are approved by the Landlord from time to time in writing (such approval not to be unreasonably withheld or delayed).

(15) **Alienation** – PUFC will be permitted to assign and underlet the whole. PUFC will also be permitted to underlet Permitted Parts as defined by the lease of the Property with the Landlord's prior written consent (such consent not to be unreasonably withheld or delayed).

(16) **Ss 24-28 Landlord & Tenant Act 1954** – the lease shall not be contracted out of the Act.

**Agreement to Purchase** – PUFC will be granted a right to purchase the ground at an agreed valuation within the first ten years of the Lease. On serving 12 (twelve) months written notice on the Council, the Club and Council will jointly instruct a firm of suitably qualified surveyors to value the freehold of the ground. The ground will only be sold subject to a covenant restricting future use to that of a football ground with ancillary community use. The valuation will be carried out on a depreciated replacement cost (DRC) basis, consistent with RICS guidance on the valuation of specialist assets. For the avoidance of doubt DRC is defined by the RICS as "The current cost of replacing an asset with its modern equivalent asset less deductions for physical deterioration and all relevant forms of obsolescence and optimisation.

Following completion of the valuation, the Club and Council will seek approval from the relevant decision makers to the principle of a sale at the valuers recommended figure.

PUFC will be granted a right of pre-emption for the first 10 years of the lease in the event that the Council wishes to sell the freehold of the ground.

In the event of a sale of the ground to PUFC under the Agreement to Purchase or under the pre-emption, PUFC will grant a 150 year lease back to the Council of the Skills Centre at a peppercorn rent. The additional terms of such lease to be discussed following any agreement to sell the ground, the lease to be within Sections 24-28 of the Landlord & Tenant Act 1954.

In addition PUFC will grant the Council an ongoing right of pre-emption in perpetuity in respect of any disposition of the Property. The pre-emption to the Council will apply to successors in title to PUFC.

- (17) **Confidentiality** – The contents of these Heads of Terms will remain in commercial confidence to both parties, until after they have been considered by the Council at an extraordinary meeting at the end of July (date to be confirmed).
- (18) **VAT** – For the avoidance of doubt all figures referred to in this Heads of Terms will be subject to VAT at the standard rate.
- (19) **Memorandum of Understanding** – (to be drafted to also reference NPA)
- (20) **Council Approval** – For the avoidance of doubt the detail of this letter will be subject to formal Council Approval.

Signed on behalf of PCC.....

Signed on behalf of PUFC.....

Date..... 18.07.13 .....

PETERBOROUGH



REPORT TITLE: PETERBOROUGH UNITED FOOTBALL CLUB GROUND
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CABINET MEMBER EXERCISING DELEGATED POWERS: Cllr M Cereste – Leader of the Council
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AUGUST 2013
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Cabinet portfolio holder: Responsible Director:	Cllr M Cereste – Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement. Executive Director of Strategic Resources
Is this a Key Decision?	The decision relating to the works to the stadium at Moys End is a key decision. The other decisions are non-key decisions  Unique Key Decision reference from Forward Plan: KEY/03APR/12 ]
Is this decision eligible for call-in?	YES
Does this public report have any annex that contains exempt information?	YES Appendix 1 contains an exempt schedule because it contains information on tenders submitted in relation to the building of the new London Road (Moys End) stand and sustainable skills centre. The exempt annex is NOT FOR PUBLICATION by reason of paragraph of Schedule 12A of Part 1 of the Local Government Act 1972. This is because the information is considered to be commercially confidential as the contract has not yet been awarded. Once the contract has been awarded further information regarding the successful tenderer will be released into the public domain. The public interest test has been applied to the exempt information and it is considered that the need to retain the information as exempt at this stage outweighs the public interest in disclosing it.
Is this a project and if so has it been registered on Verto?	YES Verto number PR001779

## R E C O M M E N D A T I O N S

### Key decision

The Leader is recommended to approve the letting of a contract to Kier Construction Eastern for the building of a new integrated Sustainable Skills Centre and Moy's End away stand at the Peterborough United Football Ground owned by the Council

### Non-key decisions:

The Cabinet Member is also recommended to:

1. accept a surrender of part of the football ground currently demised under two leases to the Peterborough United Football Club in order to allow building work to commence for the redevelopment of the Moys End away terrace;
2. approve a rent abatement of £296,000 during the period of the construction works to reflect loss of income sustained by the football club;
3. approve a variation in the current rent from June 2012 until a new lease is granted to the Peterborough United Football Club to take account of the actual rental value of the land under lease;
4. enter into an Agreement to Lease with Peterborough United Football Club Ltd (PUFC) for the football areas of the new Moy's End and the remainder of the ground;
5. grant an interim lease from the end of June 2014 until the Council is in the position to grant a new lease for the whole area
6. grant a new lease for a term of 25 years at a rent of £380,000 pa and rising to £430,000 per annum on completion of the works to the Skills Centre, Moy's End and London Road;
7. to approve an option to be included within the new lease for the Peterborough United Football Club to apply to the Council to purchase the site at any time during the first 10 years of the lease;
8. to approve a right of pre-emption in favour of the Peterborough United Football Club to be included within the lease entitling the club first refusal to buy the freehold of the ground should the Council decide to sell the ground;
9. to approve a right of pre-emption in favour of the Council in perpetuity to be included within the lease entitling the Council first refusal to buy-back of the freehold of the ground should the Peterborough United Football Club decide to sell or lease the stadium;

## 1. SUMMARY OF MAIN ISSUES

- 1.1 This report is submitted to the Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement to approve investment into the redevelopment of part of the football ground owned by the Council. This investment enables the Council to grant a new lease to the current tenant, the Peterborough United Football Club (PUFC) from completion of the works.

## 2. PURPOSE OF THIS REPORT

2.1 This report is for the Leader of the Council and Cabinet Member for Growth, Strategic Planning, Housing, Economic Development and Business Engagement to consider exercising delegated authority under paragraphs 3.3.8 and 3.3.3 of Part 3 of the constitution in accordance with his portfolio at Paragraph 3.4 (g) (f)

2.2 It has been necessary to retain one of the appendices to this decision notice as an exempt annex because it contains information on tenders submitted for the building of the Sustainable Skills Centre and new London Road (Moy's End) stand. The exempt annex is NOT FOR PUBLICATION by reason of paragraph of Schedule 12A of Part 1 of the Local Government Act 1972. The public interest test has been applied to the exempt information and it is considered that the need to retain the information as exempt at this stage outweighs the public interest in disclosing it. This is because the information is considered to be commercially confidential as the contract has not yet been awarded. Once the contract has been awarded further information regarding the successful tenderer can be released into the public domain.

### 3. **TIMESCALE**

Is this a Major Policy Item/Statutory Plan?	<b>NO</b>
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### 4. **BACKGROUND**

4.1 Council purchased the London Road stadium in December 2009, for the purposes of preserving professional football at London Road, creating a community stadium, opening up adjacent land for development and kick-starting the regeneration of the South Bank area. Details regarding the original purchase of the ground and progress since that point are fully set out within the Council report for the Extraordinary Meeting held on 31 July 2013.

4.2 On completing the purchase of the football ground, Council had also agreed to lease the stadium to Peterborough United Football Club Limited (PUFC) until June 2014 at a rent of £500K pa.

4.3 In 2009 the Council was awarded a Target Capital Funded grant from the Government. Of this, £5.5million was initially set aside to develop a specialist city centre based specialist education facility for 14 to 19-year-olds concentrating on science, technology, engineering and maths subjects (STEM Centre). Following the change in Government in 2010, greater freedoms were available to use this grant for wider education and training purposes, which is the essence of the proposed Peterborough Sustainable Skills Centre. It is intended that the Skills Centre will deliver high added value courses aimed at sustainable skills, both practical and academic. The courses will be delivered by both educational and professional bodies. In addition the Centre will be able to deliver both small scale and larger scale (up to 200 delegates) for courses on related subjects. The Council has also secured a £1.74million short-term interest-free loan, repayable over three years from the Local Enterprise Partnership (LEP), which will assist with the fit-out and start-up costs of the Skills Centre.

4.4 One key question for Council was the location of the Sustainable Skills Centre. A city centre location would have clear advantages. A study has indicated the stadium to be an ideal location for a new Sustainable Skills Centre and this location would also prove to have other key advantages. It offers Council the opportunity to improve its asset by development of the Moys End stand and creates a research facility to work in conjunction with the development of the Carbon Challenge site.

## **5. DETAILS OF DECISIONS REQUIRED**

### **5.1 Letting a contract for the construction of the Sustainable Skills Centre**

The Executive Decision required is for the award of contract for the demolition and reconstruction of the Moy's End stand and its replacement with a combined stand and Sustainable Skills Centre to Kier Construction Eastern, the recommended contractor following the tender of the contract in accordance with the OJEU procedure. The value of this contract is up to £7.569 million.

The Council originally tendered the contract to a short-list of six contractors, with the intention that work should start on site in May 2012. Due to the need for further detailed negotiations between the Council and PUFC this did not prove possible.

The decision was taken to re-tender the contract in January 2013. The original six tenderers were all invited to submit a revised price. Of those six contractors, three firms – GB Building, ISG Jackson and Wimott Dixon – chose not to tender on this occasion.

The three firms that tendered were ranked as follows (the score being a 70/30 blend between cost and quality) as follows:-

1. Kier Eastern – 91.00%
2. Barr Ltd - 88.05%
3. Buckingham Group Contracting Ltd – 80.41%

Further details of the contract process are contained within the Exempt Annex.

### **5.2. Surrender of the current lease with PUFC**

In order to be able to construct the new Moy's End stand and skills centre, PUFC will have to surrender part of the existing leases to the Council and the Council will need to accept the part surrender of these leases. The parts of the ground to be surrendered comprise of the Moys End Stand, car park and access road. Alternative car parking provision is to be made available to PUFC on the former 7-23 London Road site during the period of the Moys construction works.

### **5.3 Abatement of rent during construction period**

During the build period, expected to be from September 2013 to September 2014, the Council have agreed a variation in the rent to be paid under the current leases to take into account the loss of revenue to the club as a result of the loss of stand during the playing season. This will take the form of rent abatement in the amount of £296,000. This amount has been agreed with PUFC following submission of a loss of income projection that PUFC estimate they will incur and includes the loss of ticket sales, additional stewarding due to part of the site being a building site, additional policing within the North Stand, where away fans will be housed, and loss of catering and advertising revenue from the Moy's End.

### **5.4 Variation of rent under current leases**

Under the Heads of Terms agreed on the 6 September 2012 an independent valuation of rental values was undertaken by expert property advisors Lambert Smith Hampton. This valuation demonstrated that rent under the current lease should be £300,000pa.

In order to document the rental levels of £300,000 a variation of the existing leases will be required which will backdate the rent payable from the 24<sup>th</sup> June 2012.

### **5.5 Agreement for Lease**

Before a new lease of the ground and the football areas of the new Moys End is granted on completion of the works to the Moy's End stand, the Council will enter into an agreement

for lease with PUFC. This agreement will obligate the Council to carry out the works to Moy's End and on completion will obligate PUFC to take a new long-term lease.

## 5.6 Interim Lease

From June 2014 to the end of the period of construction, an interim lease will be entered into, excluding the Moy's End stand, when a new lease will begin. The rent for that lease will be £300,000pa in accordance with the independent valuation. It is intended that this will take the form of a supplemental lease based on the existing terms of the current leases. On completion of the works this lease will end on the date of completion of the new lease referred to below.

All rental sums during these periods have been agreed based on the independent valuation of the ground and its assets by Lambert Smith Hampton.

## 5.7 New Lease

On completion of the works to the Moys End Stand a new lease for the period of 25 years at a rent of £380,000pa to represent the increase in value to PUFC of the new stand will be entered into. The demise under the lease will comprise of the existing north, south and London Road stands, the pitch and the football areas of the new Moys End Stand (concourse, stand and related concession areas). The lease will exclude the skills centre which will be leased separately to the operator of the facility. The Council will retain the management of the car park to the rear of the Moys End Stand and the access road which will be used jointly with the Skills Centre.

The lease will have provisions to:

- grant an option to PUFC, in its capacity as tenant, to purchase the London Road stadium at any time during the first 10 years of the new lease. If PUFC exercises this option the decision to sell and the price will be subject to the Council's decision making processes;
- grant a pre-emption right for PUFC which will allow it first refusal if the Council chooses to sell its freehold interest in the ground within the first 10 years of the new lease. In return the Council will have a similar pre-emption right, which has no end date, in the event PUFC acquires the ground but chooses to dispose of its interest. The decisions in any of these cases on sale and price will be subject to the Council's decision making processes;
- allow the Council to take from PUFC a 150-year lease at a peppercorn rent for the skills centre, if PUFC acquires the freehold interest.

Additional terms of the lease are in accordance with the Heads of Terms signed on the 18<sup>th</sup> July 2013.

## 6. CONSULTATION

6.1 Consultation has been held with Cabinet Members, the Leader of the Council and Ward Members. In relation to the design of the Moy's End itself, a public open day was held and presentations have been made to supporter groups and the Safety Advisory Group for the stadium. Consultation on London Road will commence once the Council moves forward with the submission of a planning application for these works.

6.2 A Members Briefing has also been held to update Members on the proposed recommendation contained in the Council Report and the recommended decisions contained here.

6.3 It is considered that all necessary consultations have now been undertaken.

## 7. ANTICIPATED OUTCOMES

If the Cabinet Member agrees to the recommendations before it will allow the Council to proceed with the development of the new Skills Centre and football stand and provide a long term commitment by PUFC to the ground and an income flow to the Council for the next 25 years. The development will also produce an up-lift in the value of the land and asset owned by the Council and, along with the retro-fitting of London Road, make the stadium attractive to a tenant who has aspirations to move to higher league football through the granting of a long-term lease. Finally, it will make the stadium attractive to visitors and users of the stadium through the Council's investment in facilities.

## 8. REASONS FOR RECOMMENDATIONS AND ANY RELEVANT BACKGROUND INFORMATION

The decisions contained in this report will enable the Council to provide a first class community stadium and skills centre which will bring about wider benefits to the South Bank area and the city as a whole. The decisions will:

- Allow the Council to progress its aspiration to create a Sustainable Skills Centre which will support the aim of giving every young person the best start in life and to up-skill the city's workforce.
- Allow the Council to use its £5.5million Government grant to provide a new form of educational facility for the city.
- Allow the Council to progress its aspiration to create an all-seater community stadium.
- Allow the Council to enter into a new long-term lease with the football club which will provide a rental income for the Council over the next 25 years.
- Allow the football club the right to buy-back the football stadium in time will allow the Council to recoup its investment in the stadium in whole or part in the future.
- Ensure a footballing presence can continue in the city.
- Ensure that Championship level football can be played in the city with a ground that is compliant with Championship rules.
- Through a rental settlement, allow the Council and the football club to agree on a rental value that is consistent with an independent valuation. It also ensures a new contract is in place for a 25 year period which will include annual rental for the Council.
- Create a community stadium which will form a key part of the wider South Bank Opportunity Area, helping to regenerate this key area of the city.
- Ensure the Council will not need to secure an alternative site on which to construct the Sustainable Skills Centre.

## 9. ALTERNATIVE OPTIONS CONSIDERED

The alternative options have been considered:

- With PUFC's lease due to expire in June 2014 and with no automatic right to renew, the Council could have simply allowed the lease to run down and taken vacant possession at that time. It is considered that this would have led to too greater uncertainty and have adversely affected the Council's ability to deliver the Skills



Centre until late 2015 at the earliest. In the event of the Club leaving the ground at the end of its lease in June 2014, the Council would be left without the benefit of rentals being received and would also be required to cover all liabilities including all rates and other outgoings such as security.

- Let the lease run down and then re-negotiate a new lease with the club at that time. The risk is that there is no guarantee at all that the Council could negotiate better terms and the Council may also need to go to court at that stage to seek to recover outstanding rental payments which could prove very costly.
- Simply grant PUFC a lease now or at termination and not carry out any improvement works, at a proposed rent of £300K pa, in line with Lambert Smith Hampton's recommendation for the value of an unimproved stadium.
- Grant PUFC a new lease and spend the budgeted £2m on retro-fitting both terraces to all seater. Based on the independent valuation provided by Lambert Smith Hampton it is anticipated that the correct rent would be in the region of £375K pa following completion of work on both stands.
- Grant PUFC a lease at £300K, carry out no improvement works to the ground and build the Skills Centre elsewhere.
- Grant PUFC a new lease and carry out the retro-fitting as well as developing the Skills Centre on an alternative site.
- Source an alternative site for the Skills Centre.

None of the above options were considered to have either met the Council's originally stated aims of preserving professional football at London Road and creating a community stadium, which would in turn contribute towards the overall regeneration of the South Bank area.

## **10. IMPLICATIONS**

### 10.1 Constitutional issues

10.1.1 The Council's ability to deal with land under executive powers arises from sections 120 to 123 of the Local Government Act 1972. In addition there is already provision in the budget for the above decisions to be made.

### 10.2 Property implications

10.2.1 In summary, the Council will be entering into a Deed of Surrender for surrender of part of the ground, an Agreement for Lease with PUFC and a lease of the football areas of the Moy's End stand and the remainder of the ground save for the Skills Centre and a contract for the works to be carried out on the Moy's End stand.

10.2.2 Statutory authority for the new lease of the ground which is to be granted in accordance with the executive decision contained in the attached CMDN is given by section 123 of the Local Government Act 1972. Section 123 permits the Council to dispose of Property, which includes leasing, in any manner they wish subject to obtaining best value. As referred to in the body of this report, the rent payable under the new lease is in line with the independent valuation carried out by Lambert Smith Hampton.

### 10.3 State Aid

10.3.1 The Council have considered whether the decisions recommended in the body of this report would constitute state aid.

10.3.2 There are four transactions to which state aid may apply:

- The variation of the lease to reduce the rent payable from 24 June 2012 to £300,000;
- Rental levels under the new lease
- Reduction of the rent during the construction phase by £296k; and

- The construction costs of the Moys End Stand.

10.3.3 The Council have taken legal advice and an independent valuation from Lambert Smith Hampton in respect of each of the three transactions as follows:

- (i) Reducing the rent payable for the remainder of the term of the existing leases.

An independent valuation has been undertaken by Lambert Smith Hampton which concluded that the current rental value is £300,000. The Council have agreed that the variation of the rent shall take effect from 24 June 2012. The decision to reduce the rent was made in order to secure PUFC's commitment to a new lease of 25 years which would provide the Council with income security going forward.

The Council are satisfied that this is not state aid but are taking further independent advice on this.

- (ii) Rental levels under a new lease

The rental under the new lease will initially be £380,000 pa increasing to £430,000 on completion of the London Road retro-fit. The new rental is also in accordance with the Lambert Smith Hampton valuation and benchmarking has demonstrated that this rental sits at the higher end of the spectrum and is less likely to be successfully challenged.

- (iii) Reduction of the rent during the construction phases by £296,000.

The Council are satisfied that the reduction is not state aid but we are taking further independent advice.

- (iv) Construction costs of the Moys End Stand

The construction costs of the Moys End Stand would not amount to state aid if it can be shown that a private investor would have provided the same funding to cover the costs of the improvements to the grounds under the same terms and conditions and would have agreed an equivalent rental income under the same terms and conditions. In order to demonstrate this, an independent assessment is being obtained.

An independent valuation of the rental income for the ground in its current condition, and, following completion of the Moys construction works, has been carried out by Lambert Smith Hampton. The valuation has shown that the rental income will increase to £380,000 pa on completion of the works to the Moys End Stand and Skills Centre and will increase further to £430,000 pa on completion of the retro-fit of the London Road stand.

The risk of state aid is reduced as PUFC will be paying a rent under the terms of the new lease to be granted at the levels set out in the Lambert Smith Hampton report.

## 10.3 Financial Implications

10.3.1 The financial analysis outlined in this section is dependent upon the following timelines:

- Lease surrendered by the end of August 2013
- Works on Moy's starts end of September 2013
- Works on Moy's and London Road completed by October 2014

Changes in these timelines would impact on the financial analysis e.g. a delay in works being completed would increase costs.

10.3.2. Under the current lease, the rental income is £500k per annum. If the current lease expired, and the Council was left with no tenant, then there would be a shortfall in income of this level. The Council would have to look at other options to offset this loss.

#### 10.3.3 Current rent and lease

The rent under the current leases will be reduced to £300k per annum from 24 June 2012, in line with the independent valuation. This will last until June 2014, when the leases expire. Also, during September 2013, assuming the lease is surrendered at the end of August to enable preparatory work to start on Moy's End, the rent abatement period will commence. The financial impact of this is as follows:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Existing Lease	150	225	50			

#### 10.3.4 Rent arrears

Whilst discussions have been taking place with the club, including the review of the rental position, rent has not been paid. These arrears date back to the period these negotiations started i.e. June 2012. These arrears will be paid off under a payment plan over 12 months as already commenced and payment received. Given current low interest rates, the financial impact of this cashflow is negligible. The rent payable from 24<sup>th</sup> June 2012 has been reduced to £300K pa in line with the independent valuation undertaken by Lambert Smith Hampton.

#### 10.3.5. Interim and new lease

Between June 2014 and the completion of works, an interim lease will be in place. This will continue to be at £300k per annum. Following completion of Moys construction works and commencement of the new 25 year lease, the rent will increase in line with the independent valuation. Given that it is expected that both Moy's and London Road will be completed in October 2014, then the financial impact of this is as follows:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Interim and new lease			85	70	70	70

#### 10.3.6 Rent abatement during works

The Council will credit the club the sum of £296K towards the annual rent as rent abatement during the period of 53 weeks for the overall works on the Moy's End stand. The financial impact of this is as follows

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Rent abatement		148	148			

#### 10.3.7 Contract award for Moy's End

The contract for construction of Moy's and the skills centre is £7,569m. These costs, plus those incurred so far and the fit out costs of the skills centre are expected to be within the MTFS budget provision of £9.5m.

#### 10.3.8 Combined impact

The combined impact of all decisions contained within this CMDN is outlined below:

	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18
	£k	£k	£k	£k	£k	£k
Existing lease	150	225	50			
Interim and new lease			85	70	70	70
Rent abatement		148	148			
<b>TOTAL financial impact of all cabinet member decisions</b>	<b>150</b>	<b>373</b>	<b>283</b>	<b>70</b>	<b>70</b>	<b>70</b>

These costs will need to be covered as follows:

- 2012/13 – As this financial year has now closed, no specific action can be taken to cover this, and the costs of £150k will need to be met from the capacity fund.
  - 2013/14 – The costs of £373k will need to be factored in the current year's budget position, and appropriate actions brought forward by Cabinet to ensure that the budget balances for the year.
- 2014/15 and beyond - These costs will need to be built into the next Medium Term Financial Strategy.

#### 10.3.9 Skills Centre tenant and LEP loan

The tenant for the Skills Centre is not yet confirmed. However potential income from a tenant was not included in the MTFs assumptions. The borrowing costs that the Council will face for this element of the project are built into the MTFs. The Council has managed to secure a loan from the LEP, which is due to be repaid by August 2017, that will help reduce some of these costs in that period.

#### 10.4 Procurement Implications

The contract for the demolition and re-construction of Moy's End to provide an integrated skills centre and football stand has been procured through a fully compliant Official Journal of the European Union (OJEU) process. London Road terrace works will be subject to a further compliant tender process and formal decision making by the Council.

### 11. DECLARATIONS/CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

*Declarations by any Cabinet Member consulted by the decision maker and any dispensation granted by the audit Committee or Head of Paid Service (Chief Executive). Note, the Audit Committee grants dispensations where the member concerned has a pecuniary interest, whereas the Chief Executive may grant a dispensation for these purposes to any Cabinet Member consulted on these proposals whether by an officer or another individual Cabinet Member where there is a common law conflict of interest that may not amount to a pecuniary interest under the Regulations*

### 12. BACKGROUND DOCUMENTS

Used to prepare this report, in accordance with the Local Government (Access to Information) Act 1985 and The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Council report dated December 2009.

<b>Consultation (officers/Ward Councillors)</b>	<b>Section</b>	<b>Name</b>	<b>Outcome</b>	<b>Date</b>
<i>Legal and finance should be consulted regarding the proposals. Ward Councillors, other Cabinet Members and officers should be consulted if the proposals will have an impact on their service area/ward.</i>	<b>Ward Councillors</b> <i>(if decision is ward specific)</i>			
	<b>Legal</b>			
	<b>Finance</b>	Steven Pilsworth	Approved with amendments	18 <sup>th</sup> July 2013
	<b>Democratic Services</b>			
	<b>Procurement Project Director</b> <i>(if decision is contract/procurement related)</i>			
	<b>Head of Strategic Property</b> <i>(if decision is property related)</i>			
	<b>Other Officers/Members</b>			
<b>Director's approval</b> <i>Directors requested not to sign if the above section is incomplete</i>				<b>Date</b>
<b>Date sent to Cabinet Member if Key Decision</b>	To be inserted by Democratic Services			
<b>If Key Decision – date decision may be taken</b>	To be inserted by Democratic Services			
<b>Cabinet Member approval</b>				<b>Date</b>
<b>Reasons for making decision</b>	<b>Option 1</b> I agree with the officer's reasons for recommending the decision			
<b>Please tick one of the Options</b>	<b>Option 2</b> I agree with the officer's reasons for recommending the decision and have the following additional comments to make			
<b>Once signed by Director, please pass to Democratic Services. We will contact the Cabinet Member and arrange for signature.</b>				

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