



SUPPORTING DELIVERY OF THE COUNCIL'S GROWTH PROGRAMME - DISPOSAL OF FLETTON QUAYS LAND AND PROPERTY ASSETS AND DISPOSAL OF PLEASURE FAIR MEADOW CAR PARK, PETERBOROUGH

COUNCILLOR DAVID SEATON, CABINET MEMBER FOR RESOURCES IN CONSULTATION WITH THE DEPUTY LEADER OF THE COUNCIL

September 2015

Deadline date: N/A

Cabinet portfolio holder:	Councillor David Seaton – Cabinet Member for Resources
Responsible Director:	John Harrison – Corporate Director Resources
Is this a Key Decision?	YES If yes has it been included on the Forward Plan : Yes Unique Key decision Reference from Forward Plan : KEY/06MAR15/08 and KEY/06MAR15/09
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 as it contains information on the valuation and price to be paid by the purchaser for the site which is commercially confidential at this stage. The Exempt Annex is NOT FOR PUBLICATION by reason of paragraph 3 of Schedule 12A of Part 1 of the Local Government Act 1972.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 sale has not been completed. 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?	NO

RECOMMENDATIONS

The Cabinet Member is recommended to:

1. Delegate authority to the Corporate Director Resources in accordance with Part 3 3.16.3 (b) for transferring the freehold interests of various Council owned assets at Fletton Quays to P.I.P (Fletton Quays) Limited and in the case of Pleasure Fair Car Park to P.I.P (Pleasure Fairs) Limited

1. BACKGROUND AND SUMMARY OF MAIN ISSUES

- 1.1 In December 2014 the Council set up a growth and regeneration joint venture partnership, the Peterborough Investment Partnership LLP (PIP). Growth is important to the Council as it creates jobs, new homes and new incomes as well as regenerating sites which are underutilised. PIP's purpose is to bring forward commercially viable schemes that will help deliver growth for the city. The PIP will develop a scheme appropriate for a given site and obtain a planning consent. During the period that the scheme is being developed, the PIP will work with potential partners who will deliver the scheme - in part or whole – after planning consent is obtained, ensuring that the scheme is subsequently built-out and delivered on the ground. The PIP operates through a Members Agreement (parties are Peterborough City Council and Lucent Peterborough Partnership SARL forming together the Peterborough Investment Partnership LLP - PIP) signed on 24 December 2014, to support the growth, regeneration and development of Peterborough.
- 1.2 PIP has been working with the Council on a number of such sites across the city centre since being set up with the focus on bringing forward development of Fletton Quays (FQ), approximately 16 acres of derelict land fronting the River Nene and Pleasure Fair Car Park (PFCP), 2.2 acres of underused car park at the junction of London Road and Oundle Road, Peterborough. Both of these assets are already listed for sale in the Council's Medium Term Financial Plan (MTFP).
- 1.3 PIP has now reached the stage where the Council has approved their outline proposals in the form of a Project Plan for both FQ and PFCP. This was approved by the Council on 29th July 2015 and the PIP has submitted their first planning application for FQ. The next stage in the process of development is to transfer Council assets to PIP. To do this PIP has set up two special purpose vehicles (SPV's), which will hold the assets and effectively take forward development of these sites which is the subject of this decision notice.
- 1.4 The Council has entered into 2 separate option agreements with PIP which outline the legal position over how land is to be transferred. The authority to enter into option agreements was part of the original CMDN for the setting up of PIP –
- Fletton Quays Site - land and buildings at East Station Road (the FQ site) This includes the former Council offices known as Bridge House, the former Matalan and B & Q sites, the listed engine and goods sheds (plus adjacent land) and Aqua House – see plan in Appendix B – approximately 16 acres. The PIP has requested the Council to transfer Fletton Quays to P.I.P. (Fletton Quays) Limited.
 - Pleasure Fair Car Park (PFCP) – 2.2 acre site currently under used as a car park - see plan in Appendix B. The option agreement on PFCP provided for the Council to take a lease back of the PFCP so it could continue to operate as it presently does as a car park until such a time that the PIP are sufficiently advanced with their development proposals to require vacant possession. The PIP has requested the Council to transfer Pleasure Fair Car Park to P.I.P. (Pleasure Fairs) Limited.
- 1.5 These options now form the basis upon which sites will be transferred pending approval of this Cabinet Member decision. The PIP has now reached the point where it is able to exercise the option and the Council is contractually obligated to transfer. However, this needs formal Member approval within the Council for this to happen. If the site fails to come forward for development after transfer then there are provisions for the Council to take back ownership within a 5 month window.

2. PURPOSE OF THIS REPORT

- 2.1 This report is for the Cabinet Member for Resources to consider exercising delegated authority under paragraph 3.4.3 and 3.4.4 of Part 3 of the Constitution in accordance with the terms of this portfolio at paragraph (j) which includes asset management and property services.

- 2.2 It sets out the basis upon which the Council will transfer assets at Fletton Quays and Pleasure Fair Car Park.
- 2.3 Ordinarily, such property transactions are taken in consultation with the Leader of the Council, Councillor John Holdich. However the Leader has an interest in this matter by virtue of his appointment to the Board of the PIP by the Council. Consequently the Deputy Leader, Councillor Wayne Fitzgerald has been consulted and agrees to the transfers. Decisions to sell land, upon whatever basis, however does form part of the Cabinet Member of Resources remit.
- 2.4 The Exempt Annex is NOT FOR PUBLICATION by reason of paragraph 3 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 sales have not been completed. 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.

3. **TIMESCALE** (If this is not a Major Policy item, answer **NO** and delete second line of boxes).

Is this a Major Policy Item/Statutory Plan?	NO	If Yes, date for relevant Cabinet Meeting	N/A
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4. **DETAILS OF DECISION REQUIRED**

- 4.1 The Cabinet Member for Resources authorises the Corporate Director for Resources in accordance with Part 3 3.16.3 (b) the responsibility for the transfer of the freehold interest to P.I.P (Pleasure Fairs) Limited in the case of Pleasure Fair Car Park and P.I.P (Fletton Quays) Limited in the case of various assets at Fletton Quays. The transfer is in accordance with existing contractual arrangements as defined in both the Members Agreement and Option Agreements.
- 4.2 This Decision Notice covers two sites, that consisting of Council assets at FQ and PFCP. These were the same assets for which the Council approved on 29 July 2015 a Project Plan. Approval of the Project Plan is a pre-condition of the exercising by PIP of the options.
- 4.3 In September 2015 the Council received a formal notice from the PIP exercising the option to take a transfer of these sites to the newly created companies – P.I.P (Fletton Quays) Limited and P.I.P (Pleasure Fairs) Limited. The option agreements require these to be transferred within a prescribed number of days of the notice being served failing which the Council is likely to be in breach of contract.
- 4.4 The Council's constitution requires transfers of assets that fall outside of officer delegations i.e. those with a value in excess of £250,000 to be approved by the Cabinet Member, in this case Cabinet Member for Resources in consultation with the Deputy Leader of the Council. The price to be paid for these sites in totality will be in excess of £500,000 so falls within the scope of a Key Decision. The proposed Decision has already been listed in the Council's Forward Plan – reference KEY/06MAR15/08 and KEY/06MAR15/09. An exempt Annex has been included as the valuation and price to be paid are considered to be commercially sensitive. The transfer values for both sites are consistent with the valuation assessment carried out by independent valuation experts GVA Grimley Ltd (GVA). GVA is one of the largest commercial property advisers operating throughout the UK and Ireland who specialise in providing valuation advice on large scale complex and mixed use developments.
- 4.5 The Council does still have the choice of not approving this recommendation but in doing so has to recognise that it would be in breach of the Option Agreement and Members

Agreement if it did and the PIP could sue for damages. However it is considered that this transfer offers the Council the best method of securing development of these city centre sites. In the event that ultimate physical development were not forthcoming the Council has made provision in the legal agreement by which the PIP operates, to transfer back the sites (Members Agreement dated 24th December 2014). The process to do so would take around 5 months and would be based on an updated valuation at that time to establish the transfer value back to the Council.

- 4.6 When a site is transferred, the PIP/SPV issues a loan note to the Council for the agreed transfer value of the site. The details of this were set out in Section 9.1.3 of the background documents (the CMDN) to the Decision to approve the Project Plan taken on 29 July 2015. This is more specifically dealt with in the Legal and Financial sections of this Decision Notice.
- 4.7 Neither party receives a cash return until planning permission has been granted and the asset sold. The Council receives a loan note on transfer. Once the asset is disposed by the PIP, the value of the loan note plus a percentage in the uplift on disposal value is received by the Council. The share of the uplift will vary in accordance on how much has been invested by each party to get to sale. The Council and Lucent at their own discretion can decide to take this cash return or leave it in the PIP for investment in future schemes.
- 4.8 The transfer value is based on valuation advice by GVA, specialists in valuation of complex mixed use brownfield development sites. Their approach to valuing this site is more specifically set out in the Property Section below. A copy of their valuation is provided in exempt annex 2.

5. CONSULTATION

- 5.1 These proposals have been developed through extensive internal consultation with officers from Finance and Legal Services all of whom have been involved in developing and refining the proposals for the initial setting up of the JV and subsequent consideration of the PIP's Project Plans, as approved by Council on 29 July 2015.

6. ANTICIPATED OUTCOMES

- 6.1 That the Council will comply with its legal obligations in the matter in order to conclude a sale of the land in accordance with the legally binding option agreements it has entered into with PIP. This will help facilitate the development of brownfield land and the timely regeneration of those sites identified to realise its growth objectives.

7. REASONS FOR RECOMMENDATIONS & ANY RELEVANT BACKGROUND INFORMATION

- 7.1 The recommendations within this Report follow on from those decisions taken in February 2014 to create a development partner joint venture and in December 2014 the rationale and mechanics for the creation of PIP and the approval of a project plan in July 2015. The Council entering into option agreements and then transferring land following the approval of project plans is consistent with the legal agreements governing how PIP will work with the Council to deliver the underlying aims of the Council to bring forward development on key city centre regeneration sites.

8. ALTERNATIVE OPTIONS CONSIDERED

- 8.1 The following options were considered and rejected:

8.1.1 Option 1: Do nothing.

The Council has set up the joint venture partnership with the private sector (PIP) to take forward the development of these key sites by transferring land assets with PIP seeking

planning consent and identifying development partners. The way in which the PIP has been constituted and the processes for transferring land mean that the Council can marshal the proposed development of sites. It would not have done this if it had concluded that this was not the preferred way in bringing forward regeneration so a do nothing option is really contrary to detailed work that has been carried out by both PCC and its development partner Lucent since PIP was formed in December 2104.

The Council has already built into its budget the expectation of receiving a capital receipt for the sale of certain sites and has made limited revenue provision for covering ongoing liabilities. FQ includes two listed heritage railway buildings and former office block (Aqua House) all of which have recently been subject to vandalism. A transfer of land now, given that the PIP has advanced the planning application will mean the Council no longer having to cover the rates liabilities and other costs associated with holding vacant sites and buildings earmarked for redevelopment.

It is also important to note that the PIP is responsible for bringing forward the planning application and securing development partners to provide both on site infrastructure such as roads and utility supplies not the Council. Consequently the Council's risks are significantly reduced than seeking to bring these site development proposals through a different means.

Further, doing nothing, in this case not transferring the land will mean the Council is in breach of contractual obligations set out in the option agreements with potentially serious implications. See Section 9.2 Legal Implications.

8.1.2 Option 2 – Retain the assets and generate revenue.

The Council by setting up the PIP, entering into option agreement in May 2015 and approving the Project Plan in July 2015 have made a clear statement that it has no intention of retaining those assets now subject to the option agreements. The FQ site consists of listed former railway buildings; a 1970s built office block (beyond economic repair) and a cleared brownfield open area with identified constraints. It would require considerable expenditure to produce a revenue stream which would cover the capital cost of achieving a positive return in the short term. The Council will retain all income from the PFCP until the site is required by the PIP for development, by virtue of a leaseback arrangement.

This option is not viable and again there will be potentially serious implications of not transferring the assets. See Section 9.2 Legal Implications.

8.1.3 Option 3 – Transfer the various assets in accordance with the Option Agreement

Recommended option given it is consistent with the work the Council and its joint venture partner Lucent (Peterborough) SARL have been doing to initially set up the PIP and then bring forward planning applications. This is also the legally compliant option for the Council having already entered into Option Agreements covering the two sites.

9. IMPLICATIONS

9.1 Constitutional Issues

9.1.1 The Council's ability to deal with land under executive powers arises from sections 120 to 123 of the Local Government Act 1972. There is already an expectation in the Council's budget for the asset to be sold and the proceeds of sale to be used to fund the Council's capital programme.

9.2 Legal Implications

9.2.1 Statutory authority for the sale to be granted in accordance with the executive decision in this CMDN is given by Section 123 of the Local Government Act 1972. Section 123 permits the Council to dispose of property in any manner they wish subject to the provision that the property is not to be sold for a consideration less than the best that can reasonably be obtained. The Council has not actively marketed these sites as they form part of a portfolio of assets to be transferred to the PIP and/or a SPV set up by PIP. The Council has satisfied itself through the Independent Valuer's Assessment (GVA) that best consideration is being secured. This is the best price reasonably obtainable for a site which requires considerable investment in order to be marketable. If the Council does not transfer the land, the PIP would be entitled to claim compensation for the breach, the amount of which would be calculated by reference to the loss that has been suffered. The Council will also be liable for their own costs of defending the claim and may also be responsible for the costs incurred by PIP.

9.3 **Property**

9.3.1 The property implications of this decision notice are that it will permit the Council to now transfer FQ and PFCP assets.

9.3.2 The project plan included provision for office accommodation which the Council may choose to take up. However, the decision to transfer assets now does not in any way whatsoever commit the Council to relocate to new Council offices at Fletton Quays. The decision taken by the Council in December 2014 to set up PIP of which the Council has 50% control, set out the Council's aspirations of rationalising its office accommodation and if it is economically advantageous then the Council would relocate the majority of its back-office staff to new offices at FQ.

9.3.3 It was agreed between PIP and the Council that advice on transfer values for FQ and PFCP, provided by GVA, would be advice that the Council and PIP would rely on. Joint valuations are quite typical where dealing with joint ventures and for complex sites and the joint valuation approach (including agreeing the party to be appointed following a joint interview) is totally consistent with the Members Agreement which provides for joint reliance on independent valuations. Both Council and PIP staff were party to all meetings and briefings of GVA on the valuation.

9.3.4 GVA was appointed given their prior and extensive knowledge of the site having been the valuation advisors on previous draft Masterplan proposals (prior to PIP's involvement). The valuation was undertaken by GVA as qualified surveyors and in accordance with RICS Valuation – Professional Standards, Global and UK Edition, January 2014 ("the Red Book"). The Red Book sets out the internationally recognised standards for valuing assets and universally used for matters such as bank lending, asset valuation and the disposal and acquisition of assets.

9.3.5 The site was originally valued in February 2015. GVA have confirmed that their Valuation Report still applies as if their report were prepared as at the point of transfer - October 2015. A copy of GVA's letter reconfirming values at October 2015 is in exempt annex 3.

9.4 **Financial Implications**

9.4.1 The financial implications of the Council entering into the JV were covered in detail in a previous CMDN, including a full outline of how the JV would operate, along with an analysis of risks and mitigations. It is not intended to repeat that detail here. The Cabinet Member is referred to the Financial Implications contained within an earlier CMDN. There is nothing in these proposals that changes those overarching financial implications, we are simply proceeding with the first asset transfer as envisaged.

9.4.2 In summary the steps for the FQ and PFCP site (and indeed all sites) are as follows:

1. Approval of project plan (approved under previous CMDN)
2. Approval of disposal of site to JV/SPVs (subject of this CMDN) for which the Council receives loan notes
3. Planning permission sought
4. Site sold by the JV/SPV with planning permission

9.4.3 The return to the Council will consists of two elements:

- value of the site at stage 2 above (i.e. before planning permission). This is the value at which the asset transfers in advance of planning permission being secured
- a share of the uplift in value when it is sold on by the JV (stage 4 above)

The JV partner (Lucent) also has their investment (the costs of securing planning permission) repaid, plus a share of the uplift. It should be noted that the Council can elect to receive this return as cash once the site has been sold by the JV with planning permission (i.e. having its loan note paid). The Council may however elect to continue to invest in PIP projects and hence continue to hold loan notes rather than the loan note being paid out. This is a decision for a later stage.

9.4.4 An outline financial model for the project plan is included in the exempt annex. The model depends on three key values:

- Estimated sale values of the site with planning permission - outlined in the PIP's project plan at £6-9m
- Lucent's investment costs (the costs of securing planning permission) - outlined in the project plan at £1.5m
- The value of the site now i.e. the value of the Council's loan note

As the sale values for the third element are considered to be exempt information, any financial model that includes them must also be exempt information.

9.4.5 At this stage this can only be an indicative model. Whilst it includes estimates of the likely sales value, this could vary depending on a number of factors, including the final scheme design, planning requirements, interest from purchasers etc. The Council has a number of protections regarding possible reduced value:

- It is in the interest of PIP, and our partner Lucent, to maximise returns from projects as they are investing in developing the project plans
- If the likely value drops 20% below the expected level (that set out in the approved project plan), then the previously approved project plan must be reconsidered by the PIP Board (and in turn a revised CMDN for the plan would be required).

9.4.6 Whilst these safeguards are in place, some of the issues outlined above are outside of the control of the PIP and the Council. In a scenario where a viable scheme cannot be developed, the Council does have the option to buy the asset back (effectively the sale proceeds to JV then repays the Council loan note, so the transaction should be net nil, although the Council would need to pay market value if the value had increased). Such a transaction would need specific approval in the Council.

9.4.7 The February Cabinet 2014 report outlined the viability gap in the business case for the Council to move into new offices on FQ, whilst agreeing in principle to move if that viability gap can be closed. Work on this is on-going, and agreement to the asset transfers does not commit the Council to this move.

9.4.8 The ultimate delivery of the scheme has benefits beyond bringing forward a key development site and adding another success to Peterborough's national reputation for strong, positive growth. Based on the indicative make-up of the scheme, the Council could receive around £250,000 a year in additional council tax from the residential component, a similar amount of new homes bonus (whilst this remains government policy). The provision of new office

and other commercial space would also deliver additional business rates. The scheme would also deliver new affordable housing, either on site or through a commuted sum.

9.5 Procurement Implications

The Council must act in accordance with the Public Contract Regulations 2015 (“Rules”) Under the Rules, the award of public contract works, services or supplies require competition.

There are no procurement issues to be considered because the sale of the land assets and lease of PFCP fall outside the Rules, and will not trigger a call for competition.

Even where the Rules do not apply, the Council has considered the application of the European Union General Treaty Principles (“Treaty”). The Treaty lays down the principles of freedom to provide goods, services, equal treatment and transparency. The JV structure for the sale of the land assets and the lease will not trigger a call for competition under the Treaty.

9.6 State Aid

Unlawful state aid occurs when a benefit is granted from a public resource for free or on favourable terms which distort competition. The transfer of the land assets at FQ and PFCP under the specific option agreements do not raise state aid implications. The Council has the power to dispose of assets in this way and in doing so it shall secure the best consideration reasonably obtainable. The Council will receive consideration for each land transfer based on the independent valuation undertaken by GVA by way of loan notes equal in value to satisfy the transfer price. This method of valuation satisfies best consideration reasonably obtainable, and loan notes can be issued as consideration (instead of cash). As such, no state aid implications will arise.

9.7 Other Statutory Considerations

The Council has a general duty to consider the Equality Act 2010 and there are no equalities implications which require action, or any discrimination on any protected group. Additionally, there are a number of other statutory considerations (Human Rights Act 1998, Crime and Disorder Act 1998 which have been considered and do not have any implications from the sale of the land assets and lease.

10. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

The Cabinet Member for Resources would ordinarily consult with the Leader of the Council, Councillor John Holdich and Cabinet Member for Growth, Planning, Housing and Economic Development – Cllr Peter Hiller. However as both are PIP Board Members this has not been the case when considering this decision. Consequently the Deputy Leader, Councillor Wayne Fitzgerald has been consulted. Decisions to sell land, upon whatever basis, however does form part of the Cabinet Member Resources remit.

11. APPENDICES

Appendix A – Exempt Documents
Appendix B – Site Plans.

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

Medium Term Financial Plan

<http://democracy.peterborough.gov.uk/documents/s22975/9b.%20Budget%202015-16%20and%20MTFS%202024-25.pdf>

Approval to progress the setting up of a Joint Venture

Feb 2014 - <http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=903>

Approval to create Peterborough Investment Partnership

Dec 2014 – <http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=1022>

Approval of Peterborough Investment Partnership's Project Plan

July 2014 - <http://democracy.peterborough.gov.uk/ieDecisionDetails.aspx?ID=1110>