

PROPOSED DEVELOPMENT OF NORTH WESTGATE: COLLABORATION AGREEMENT WITH HAWKSWORTH SECURITIES PLC

COUNCILLOR PETER HILLER – CABINET MEMBER FOR STRATEGIC PLANNING, COMMERCIAL STRATEGY AND INVESTMENT

March 2020

Deadline date: *April 2020*

Cabinet portfolio holder:	Councillor Peter Hiller – Cabinet Member for Strategic Planning, Commercial Strategy and Investment
Responsible Director:	Steve Cox – Executive Director Place and Economy
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/30 MAR20/04
Is this decision eligible for call-in?	YES
Does this Public report have any annex that contains exempt information?	YES – Appendix 2
Is this a project and if so has it been registered on Verto?	NO

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

The Cabinet Member, in consultation with the Leader of the Council, is recommended to:

1. Authorise the Council to enter into a land assembly collaboration agreement with Hawksworth Securities plc to enable the development of the first phase of North Westgate to proceed within the scope of the outline planning permission 18/01374/OUT approved by the Planning and Environmental Protection Committee on 27th November 2018.
2. Authorise the Council to procure the services of a Land Referencing Agent and Valuation Surveyor (not expected to exceed £60k) for the purpose of clarifying land ownership title and constraints across the proposed development site and completing accurate valuation of all remaining third party owned land and property to inform and update the Council's budget for assembling the third party land and cleansing title to enable development to proceed.
3. Authorise the procurement by the Council of necessary expert legal advice and other expertise to support the Council at a CPO Inquiry (not expected to exceed £100k), should it prove

necessary for the Council as Planning Authority to make a CPO (Compulsory Purchase Order) resolution.

4. Authorise financial arrangements proposed in this report and set out in the summary Heads of Terms shown in the commercially protected information at Appendix 2 whereby the Council can be required by Hawksworth Securities plc to purchase third party properties, on terms and at a price negotiated by Hawksworth Securities plc, but approved by the Council (such approval not to be unreasonably withheld or delayed). In relation to any such land so acquired, and in relation to the Council's existing land on site, the Council could recover all its costs and transfer properties at Market Value to the scheme promoter Hawksworth Securities plc if the necessary conditions for the scheme to progress to construction procurement have been met;
5. Agree that, in the event of failure of a CPO to be confirmed by the Secretary of State (and for the avoidance of doubt, the Cabinet or Cabinet Member would first need to approve the making of a CPO at a future date and following a further report), the costs incurred in the making and pursuit of the CPO and related CPO Inquiry costs would be shared on a 50:50 basis by the Council and the scheme promoter Hawksworth Securities plc.
6. Agree that in the event that the scheme promoter is unable to progress the scheme through failure of a CPO, or for other reasons, (a) that the Council having by then expended up to an estimated £9m to secure land assets (as set out at item 2 above) may, depending on market demand and fluctuations, not be able to recover the entirety of such expenditure, and (b) that the Council should retain an option that will allow it to acquire the land assets at North Westgate then owned by Hawksworth Securities plc at market value and progress the scheme either itself or with and through another developer.
7. Delegates the authority to agree the finalisation of the necessary legal contract documentation to give effect to the Heads of Agreement at Appendix 2 to the Executive Director of Place and Economy and the Director of Law and Governance for PCC and CCC.

1. PURPOSE OF THIS REPORT

- 1.1 This report is for the Cabinet Member to consider exercising delegated authority under paragraph 3.4.3 of the constitution in accordance with the terms of their portfolio at paragraph (q).
- 1.2 There is an exempt annex (Appendix 2) which is NOT FOR PUBLICATION in accordance with paragraph (s) 3 of Schedule 12A of Part 1 of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of the Council namely the summary of commercially sensitive Heads of Collaboration Agreement. The public interest test has been applied to the information contained within the exempt annex and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it as to do so would compromise the Council's position.

2. TIMESCALES

Is this a Major Policy Item/Statutory Plan?	NO	If yes, date for Cabinet meeting	N/A
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3. BACKGROUND AND KEY ISSUES

- 3.1 This report relates to the Council's long-standing policy aspiration to achieve the comprehensive regeneration of the North Westgate area of the city (as defined in Appendix 1), and follows the approval given by the Planning and Environmental Protection Committee to the outline planning application made by Hawksworth Securities plc on 27th November 2018.
- 3.2 The purpose of this report is to seek Cabinet approval for the completion of a land assembly collaboration agreement between the Council and Hawksworth Securities plc, the key terms of which are set out in the commercially protected information at Appendix 2.
- 3.3 Such approval will enable the Council Officers to work with Hawksworth Securities plc to progress a development programme for implementing the scheme - the key stages of which are set out in Appendix 3.
- 3.4 It is anticipated that following exchange of the land assembly collaboration agreement, a report will be submitted to Cabinet seeking an "in principle" resolution to make a CPO in the event that Cabinet is satisfied that private treaty negotiations are unlikely to be successful in securing all outstanding third party owners' land and that there is a compelling case in the public interest to justify the exercise of the statutory powers.

Background and Key Issues

- 3.5 The regeneration of the North Westgate area of Peterborough City Centre is a longstanding policy aspiration of the Council dating back almost 30 years.
- 3.5.1
- 3.5.2
- 3.5.3 The site in question forms a pivotal connection between the City Centre, the Rail and Bus Stations and the communities along the Lincoln Road corridor to the North of the City Centre.

Hawksworth Securities plc are the principal landowner in the area bounded by the phase 1 scheme as shown in the land ownership plan at Appendix 1. The Hawksworth Securities plc proposals (as described in the outline planning permission) are for a mixed use scheme of up to 57,000sqm to include:-

- Restaurants and cafes (class A3)
- Retail units (Classes A1 and A2)
- A Food hall (Classes A1, A3, A4 and A5)
- Office space (Class B1a)
- 3.5.4 • A hotel (Class C1)
- Residential (Class C3)
- Non-residential institutions (Class D1)
- Leisure (Class D2)
- Car parking, new access arrangements for vehicles, pedestrians and cyclists, public realm improvements and landscaping.

3.5.5 The proposed site excludes car parks in the ownership of Invesco to the rear of the Brewery Tap accessed off Lincoln Road and to the west of the coach layover. A small slither of land lying immediately to the north and east of the Brewery Tap is proposed to be included to enable the improved integration of the Brewery Tap into the remainder of the scheme and to enhance pedestrian access between the scheme and the train station subject to any necessary planning consent. Hawksworth Securities plc carried out public consultation on their proposals including an exhibition of the scheme design proposals in late summer 2018

3.5.6 prior to the submission of their planning application.

3.5.7

Subject to the detailed land referencing process (referred to below) it is understood that the proposed development site includes approximately 10 third party land ownerships that will need to be acquired to enable the site to be redeveloped, and other freehold interests which may need to be overridden by use of appropriate statutory powers.

3.5.8 Hawksworth Securities plc has approached the Council to seek support for the necessary land assembly and the collaboration agreement summarised in the commercially confidential Appendix 2 outlines the main terms of collaboration.

3.5.9 Hawksworth Securities plc have asked the Council to appoint a land referencing agent to check all title ownerships and constraints such as historic covenants and also a valuation surveyor to carry out an independent valuation of the third-party properties that will need to be acquired to allow the scheme to proceed. This is the appropriate approach given the information from the referencing agent and valuer will need to be relied upon by the local planning authority should a CPO become necessary. Hawksworth Securities plc are working separately on plans to relocate the Methodist and United Reform Church congregations who currently meet in the Westgate new church hall to the rear of the Portuguese Church. The Peterborough Christian Book Shop will also be relocated.

3.5.10

Under the terms of the collaboration agreement it is proposed that the Council would transfer any properties it currently owns or acquires either through private treaty negotiations, or via a CPO, to Hawksworth Securities plc if the necessary conditions have been met for development to commence.

3.6

6.6.1

In the event that Hawksworth Securities plc are unable to progress the scheme for any reason the Council will retain a put and call option to acquire the land owned by Hawksworth Securities plc at market value. This would enable the Council to progress a development scheme on its own either independently or working through a joint venture arrangement with a private developer or investment partner. Under the terms of the proposed agreement, Hawksworth can withdraw should they decide that the "Viability Test" remains unsatisfied, even in circumstances where all conditions precedent are fulfilled. The agreement is therefore more in the nature of an option for Hawksworth to proceed, should they wish to do so.

3.6.2

The Council has already commenced land assembly at North Westgate having acquired nine properties on Cromwell Road. These are currently being used as temporary accommodation for households at risk of homelessness.

3.6.3

Options Appraisal

Given that Hawksworth Securities plc own 50% of the land at North Westgate there appears to be four main options.

3.6.4

Option One - Do nothing.

3.7

In this scenario Hawksworth Securities plc can be expected to implement the scheme without Council support potentially acquiring further properties as and when they come to the market. Hawksworth Securities plc may bring forward proposals for the incremental development of their land holdings at some point which would not be likely to provide a high-quality solution to the regeneration of the area but may be difficult to resist if the Council is unable to support the comprehensive scheme at this time. Hawksworth Securities plc could also continue to manage income from the car parks they own and, at some point, sell the land to a new investor. This option is unlikely to see regeneration taking place in the near future.

3.7.1

3.7.2

Option Two - Attempt to buy out Hawksworth's interest.

- 3.7.8 This option is likely to be achieved only at a premium to market value and would make it difficult for the Council to progress a viable scheme thereafter. Hawksworth Securities plc have not indicated any willingness to sell their assets at this time or any point in the future.

Option Three - Pursue a CPO to acquire Hawksworth assets.

- 3.7.9 This would have little prospect of success as Hawksworth Securities plc would be expected to resist the CPO. They would have good grounds for objecting given that they own 50% of the site and have already expressed a willingness to progress a comprehensive scheme, which the Council has supported through its role as the local planning authority. The risk would be that the scheme delivered in this way would be on a smaller scale, as it would not have the benefit of CPO powers, and therefore fall short of the Council's aspirations for the area.

Option Four – Collaboration (recommended option)

Pursue the proposed land collaboration agreement with Hawksworth Securities plc to facilitate the delivery of their approved scheme. This is the recommended option.

Risk Appraisal

There are several risks associated with the recommended option. Should the Cabinet approve the making of a CPO, in the event that the Secretary of State refused to confirm the CPO, under the terms of the agreement the Council would face abortive costs for the work by then undertaken by the land referencing agent and valuation surveyor. These costs are expected not to exceed £60,000 and work to understand title restrictions and property values would have some useful value for any alternative subsequent development.

In the case of the failure of the CPO the Council would also be faced with meeting 50% of the legal and technical expert costs for the CPO Inquiry. Given that only 10 third party land ownerships are involved it is reasonable to assume that the CPO Inquiry would be relatively short. Accordingly the Council's share of these costs is likely to be no greater than £50,000.

If the Council acquires further properties through private treaty negotiations and Hawksworth Securities plc fails to progress the scheme on grounds of development viability there is also a risk that the Council will not be able to recover the price paid (which might

amount to a total of up to £9m) for such properties or the additional costs associated with individual property transactions, However, because the Council retains a put and call option it will be able to acquire the Hawksworth Securities plc land assets in such circumstances at market value and would be in a position to progress the development of a comprehensive scheme independently at a point in the future when market conditions allow this to be achieved on a viable basis.

No major urban development of this sort is without risk and given that the Council has a longstanding aspiration to achieve regeneration in this area of the city centre, the aforementioned risks should be manageable ones especially given that the site in question is a highly sustainable location in close proximity to the city centre and both the bus and rail stations.

4. CONSULTATION

- 4.1 Public consultation on the scheme proposed by Hawksworth Securities plc took place in late summer 2018 and included an exhibition of their scheme proposals. Hawksworth Securities plc have maintained communication with the church and a number of the third party landowners. At this stage Hawksworth Securities plc have an outline planning consent with a number of reserved matters that will need to be dealt with. There will be a need for ongoing public consultation and a further opportunity for the public to comment upon the proposals once the detailed planning application is submitted. In the event that a CPO is needed (and subsequently approved by Cabinet) that process will ensure all evidence relating to the scheme proposals are properly examined through an inquiry. This will be a public process.

5. ANTICIPATED OUTCOMES OR IMPACT

- 5.1 Approval of the recommendations made in this report will enable the Council to collaborate with Hawksworth Securities plc. The work to acquire third-party land interests through private treaty negotiations will continue, and following exchange of the land assembly collaboration agreement, a further report will be presented to Cabinet to request a resolution to make a CPO. This will help expedite land assembly and make it more likely that North Westgate can be regenerated in the near future. The regeneration to this area will deliver a significant number of new homes, office space, hotel, restaurant, retail and leisure uses enabling North Westgate to make a more positive contribution to the sustainable growth of the city's economy.

6. REASON FOR THE RECOMMENDATION

- 6.1 The proposed recommendations will enable the council and Hawksworth Securities plc to progress the approved North Westgate scheme to the benefit of the City and its local economy.

7. ALTERNATIVE OPTIONS CONSIDERED

- 7.1 See above 'Options Appraisal'.

8. IMPLICATIONS

Financial Implications

- 8.1 Initially there will be a requirement for revenue expenditure to meet land referencing and valuation costs estimated at £60,000. Once valuations are agreed, private treaty negotiations to acquire outstanding third-party land interests within the approved valuation levels will proceed and, if and when terms are agreed, capital expenditure will be necessary on a case by case basis. The current provisional estimate to acquire outstanding third-party land interests is £9m. This will be recoverable, in due course, from the developer if the scheme is able to proceed or can be recovered from any subsequent development should the put and call option be exercised. If it becomes necessary to pursue a CPO additional revenue will be required to cover legal and witness support and related CPO Inquiry costs. In total, CPO costs are estimated at £100,000. Any CPO related costs would be recovered from the developer provided the scheme proceeds but there will be abortive costs if the CPO fails. These will be met on a 50:50 basis with the developer.

Legal Implications

- 8.2 In addition to the legal points referred to elsewhere in this report, the following issues need to be specifically addressed;

EU procurement implications

The Public Contracts Regulations 2015 (“the Regulations”) apply to contracts let by councils where the main or dominant purpose of the contract is the procurement of services, supplies or works and in the case of works (relevant here) the estimated value exceeds £4.73m. The proposed arrangement would not appear to constitute a works contract for the purposes of the Regulations, as the main purpose of the arrangement is the disposal of land. In any event, even if the contract did amount to a works contract the Council could rely on Regulation 32 of the Regulations that permits the direct award of contracts without having advertise the opportunity in the Official Journal of the European Union, where the party with whom a council intends to contract has the benefit of exclusive rights. Land ownership is widely recognised as an exclusive right. Hawksworth own 50% of the land required for the scheme. Any attempt to compulsory acquire the Hawksworth land is unlikely to succeed. The Council has no other option than to contract with Hawksworth if it wants the scheme to go ahead. In the circumstances, either no EU procurement implications arise from the proposed arrangement with Hawksworth or the Council could rely on the provisions that permit a direct award provided for in Regulation 32 of the Regulations.

Section 123 Local Government Act 1972

The Council’s role in the project is to facilitate the commercial development of land by disposing of key parcels to Hawksworth at its then open market value and to provide support (as required) in making and promoting a compulsory purchase order to acquire third party interests in neither parties’ ownership. These additional interests are to be transferred to Hawksworth in return for providing an indemnity to the Council to meet the costs it will incur by way of compulsory purchase compensation and the costs associated with making and promoting a compulsory purchase order. The disposal of the Council’s land interests on this basis would satisfy its statutory duty to secure the best consideration that it reasonably can on disposing of land.

State aid

State aid arises where State resources (i.e. any form of financial support or assistance) are provided to an economic undertaking operating in a market which may have the effect of distorting competition and/or affect intra-Community trade. Given that Hawksworth is to pay the full market value for the land required for the scheme that is owned by the Council and meet the cost of compulsorily acquiring land held in third party ownerships, the Council is not conferring a selective advantage on Hawksworth by entering into this arrangement. There are therefore no State aid implications that arise in these circumstances.

Equalities Implications

- 8.3 The development scheme will have an impact on existing third-party land holders and the Council will need to proceed with sensitivity in private treaty negotiations to take account of those residents and businesses whose properties are acquired through private treaty negotiations.

Carbon Impact Assessment

- 8.5 To be confirmed.

9. DECLARATIONS / CONFLICTS OF INTEREST & DISPENSATIONS GRANTED

- 9.1 None.

10. 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.

- 10.1 Web link to Hawksworth Securities plc Planning Application:
<http://plandocs.peterborough.gov.uk/NorthgatePublicDocs/01169240.pdf>

11. APPENDICES

- 11.1 Appendix 1 - North Westgate land ownership plan with site boundary
Appendix 2 (Exempt) - Summary of commercially sensitive Heads of Collaboration Agreement
Appendix 3 - Development Programme