

<b>MEETING:</b>	<b>CABINET</b>
<b>DATE:</b>	<b>5 APRIL 2012</b>
<b>TITLE OF REPORT:</b>	<b>SUPPLEMENTARY AGREEMENT AND DEED OF VARIATION TO THE RETAIL QUARTER (OLD LIVESTOCK MARKET) DEVELOPMENT AGREEMENT</b>
<b>PORTFOLIO AREA:</b>	<b>ENTERPRISE AND CULTURE</b>

**CLASSIFICATION:** Open

### **Wards Affected**

Central Ward/County-wide

### **Purpose**

To seek Cabinet approval to vary the terms of the retail quarter development agreement.

### **Key Decision**

This is a Key Decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.

It was included in the Forward Plan.

### **Recommendations**

**THAT:**

- (a) regard be had to the matters contained in the separate exempt report;
- (b) the terms of the Deed of Variation, Deed of Novation and Option Agreement with Stanhope Plc and British Land Plc described in this report be approved; and
- (c) authority be delegated to the Director for Places and Communities to finalise the necessary documentation.

### **Key Points Summary**

- The retail quarter development agreement (the development agreement) was approved by Cabinet on 25 June 2009.
- The then Cabinet Member for Economic Development & Community Services approved amendments to that agreement in respect of the phasing of the project (and changes

consequent on that re-phasing).

- Approval is now sought for further amendments to secure funding for delivery of phase 1.

## **Alternative Options**

1. Not to agree the amendments. This would leave Stanhope Plc without funding to deliver Phase 1 of the old livestock market redevelopment. This would defeat the long-held ambition to see the redevelopment of the former livestock market site and the community and economic benefits that redevelopment will bring.
2. To agree some but not all of the amendments. The amendments proposed form a negotiated package and it is not open to the council to be selective in this regard. It is therefore considered that this option would have the same result as not agreeing any of the amendments.

## **Reasons for Recommendations**

3. Most of the pre-conditions to enable development work to commence have been, or are in the process of being met including securing of detailed planning permission, and securing pre-lets under offer for food store, department store, cinema and other restaurant/retail uses. After months of negotiation, Stanhope Plc are seeking variations to the development agreement to enable them to secure the funding necessary for the scheme to proceed.

## **Introduction and Background**

4. After a European procurement process and subsequent detailed financial and programming negotiations, on 25 June 2009 Cabinet approved the move to conclude negotiations and enter into a development agreement for the retail quarter on the old livestock market site. This agreement was completed in November 2009.
5. Further detailed financial, design and programming negotiations took place as a result of which, on 24 September 2010, the then Cabinet Member for Economic Development & Community Services approved arrangements for the completion of a supplementary agreement to provide for changes to the phasing of the scheme.
6. The development agreement, as amended, includes a number of pre-conditions to be met by both the council and Stanhope Plc before construction work can commence, most of which are now satisfied.
7. This report sets out the variations sought by Stanhope Plc in order to satisfy the remaining pre-conditions and enable work to commence.

## **Key Considerations**

8. The variations sought would enable:
  - the appointment of a joint venture company made up of Stanhope Plc and Sir Robert McAlpine as the principal building contractor;
  - the requirement in the development agreement to achieve pre-lets amounting to 50% of the total estimated rental value to be reduced to 40% whilst retaining the key requirement to achieve pre-lets of 50% of the total floor space by area;
  - certain profit provisions (overage) within the existing agreement to be aligned to those of the funding agreement negotiated between Stanhope and British Land plc;

- provisions within the existing development agreement for a funder/investor rather than Stanhope Plc to take the head lease post-completion to be brought into effect;
  - the Lettings and Displacement Strategy to be varied;
  - the options provisions in respect of phase 2 development to be varied.
9. The variations do not alter the fundamental outcomes of the development agreement; rather they enable its implementation.
  10. Subject to Cabinet endorsement of the proposed variations, it is recommended that approval be delegated to the Director for Places and Communities to finalise the necessary documentation.
  11. Further information in respect of the recommendations is included in the exempt report.

## **Community Impact**

12. Only one of the variations proposed (in respect of the Lettings and Displacement Strategy) has any potential impact on the community assessments already undertaken to inform previous decisions in respect of phase 1 of the development, and none adversely impact on the expected community and economic benefits expressed in previous reports.
13. In respect of phase 2, the variations do not of themselves impact either the community assessments or community and economic benefits previously expressed; however they do provide for a more flexible approach to further development to be considered better reflecting the current and projected economic climate.

## **Equality and Human Rights**

14. In the case of this report there is no direct impact on individuals or communities in terms of equality or human rights.
15. Stanhope Plc has signed up to the Hereford Futures Sustainability Policy which includes social sustainability indicators such as: demography, community involvement, accessibility, and equality and social justice.
16. Sir Robert McAlpine, as principal building contractor, will comply with all relevant equality and diversity legislation and will accord with the council's Equality and Human Rights Charter.

## **Financial Implications**

17. Under Phase 2 an additional car park with some 150 spaces will be built. The council will receive the net proceeds as a form of rent. These proceeds are estimated between £250k and £275k per annum. The developer will be responsible for the day to day management for which they will receive a management fee based on 7.5% of the gross parking revenue. The variation introduces a change to the lease extension for the Phase 2 car park. The differences are that in Years 1 to 5 the council can require the developer to buy a long lease of the site paying a capital receipt to the Council. If the Council choose not to require the developer to buy a long lease, at a point no sooner than 4 ½ years into the agreement a 15 year lease extension of the Phase 2 car park can be requested by the developer. Within the first 5 years of this 15 year extension, the developer can call for the purchase of a long lease of the car park at market value. The council can also require the developer to purchase a long lease of the site. A final 15 year right of renewal of the car park lease exists if the council or developer has not exercised their respective rights to sell or purchase a long lease of the site. The council will receive the net rental income if lease extension options are taken up.

18. The council's financial strategy assumes that a £5m receipt from the agreement will be received in the future; if the development does not go ahead the council will not receive this capital receipt. It is a matter for the council how it treats the receipts.

## **Legal Implications**

19. This development engages the European Procurement rules. The proposals outlined in this report represent a change to the contract as originally procured. It is therefore necessary to analyse whether the change is a material change, such that an entirely new procurement exercise should be commenced. The majority of the proposed changes are not material in this context and some steps can be taken to further reduce the effects and risk of challenge. Accordingly, officers would advise members that a re-procurement is not required.
20. The council may dispose of land held by them in any manner they wish by virtue of section 123, Local Government Act 1972. However there is a general obligation not to do so for a consideration less than the best that can reasonably be obtained. The advice of officers is that the proposed variation fulfils the statutory and fiduciary obligations of the council.
21. The exempt report includes a summary provided by Pinsent Masons, who have handled the legal negotiations and drafting throughout, describing how the elements of the variation will be structured in the documentation. That report was written at a recent stage of negotiations between the solicitors acting for the various parties. It is inevitable that negotiations and drafting will continue on the detail within that structure, and it will be necessary to authorise the Director for Places and Communities to approve final versions for execution. In doing so it will be necessary for him to obtain written confirmation from our external and internal advisors that they have completed their due diligence reports and are prepared to recommend the transaction to the council.

## **Risk Management**

22. Risks and opportunities arising from the proposed variations are included in the exempt report.

## **Consultees**

23. The Hereford Futures Board has reviewed and considered the terms of the proposed variations. The Board resolved to recommend that the council should support the amendments sought and sign the agreements listed on the terms reported herein. The development of the retail quarter has been subject to a significant consultation process, both through the selection of Stanhope Plc as preferred developer and as a part of the process to obtain planning approval.

## **Appendices**

Appendix 1 – Montagu Evans Commercial Report

## **Background Papers**

None identified