



# EXECUTIVE BOARD DECISION

<b>REPORT OF:</b>	Executive Member for Resources Executive Member for Regeneration
<b>LEAD OFFICERS:</b>	Executive Director Resources Director of Growth and Prosperity
<b>DATE:</b>	9 <sup>th</sup> June 2016

<b>PORTFOLIO/S AFFECTED:</b>	Resources	Regeneration
<b>WARD/S AFFECTED:</b>	Little Harwood	
<b>KEY DECISION:</b>	YES <input checked="" type="checkbox"/>	NO <input type="checkbox"/>

**SUBJECT: Expansion of Whitebirk Industrial Estate, Blackburn.**

## 1. EXECUTIVE SUMMARY

1.1 This Report seeks approval to the sale of Council owned land, situated off Lower Philips Road, Blackburn.

## 2. RECOMMENDATIONS

That the Executive Board:

- 2.1 Approves the sale subject to the provisionally agreed heads of terms as detailed in the Part 2 Report.
- 2.2 Delegates authority to the Director of Planning and Prosperity in consultation with the Executive Member, Resources to approve the final purchase price and the remaining heads of terms.
- 2.3 Authorises the Council Solicitor to complete the necessary legal formalities relating to the sale of the land.

## 3. BACKGROUND

- 3.1 The land (shown edged black on the attached plan) comprises 21.55 acres or thereabouts and includes the former Whitebirk Tip together with the former GB Oils and Akzo Nobel sites fronting Lower Philips Road.
- 3.2 The land adjoins the Whitebirk Industrial Estate and is allocated for employment use (Policy 13/1) within the Council's Local Plan Part 2.
- 3.3 The site has attracted interest from a number of adjoining users wanting to expand their existing business operations in advance of any marketing exercise and this reflects the growing demand for employment land across the Borough.
- 3.4 The Council is keen to retain employment uses within the Borough and to respond to this level of local demand officers sought Executive Board approval to market the site by way of a competitive process but limited to interests adjoining the subject site.

3.5 On 8<sup>th</sup> October 2015 the Executive Board considered the earlier Report relating to the disposal of this land and, in so far as the land sale was concerned, approved the following:-

A marketing exercise for the disposal of the Council's combined interests in the former Whitebirk Tip site and the adjoining former GB Oils and Akzo Nobel sites.

That the exercise be treated as a straightforward disposal but undertaken as a single lot through a competitive process but limited to parties with adjoining interests, although the Council may consider splitting the site where possible. It was recommended that this should be undertaken by a 2 stage process - Expressions of Interest followed by detailed proposals and financial offer.

That the form of agreement to dispose of the land should incorporate terms which require development to take place within an agreed timeframe.

3.6 In accordance with the above Executive Board approvals, letters were sent to the qualifying owners/occupiers inviting expressions of interest in the land together with a brief rationale and outline proposals, to include the proposed use, floor area and timescales. The letter also included a brief description of the known site constraints together with a summary of the Council's preferred disposal strategy as detailed in the Part 2 Report.

3.7 Two expressions of interest were received by the closing date, one of which was a joint expression from those parties who had previously expressed interest and the other was a separate expression of interest but this was subsequently withdrawn.

The result of the Expressions of Interest exercise is to propose disposal to Pets Choice as a single purchaser and for Pets Choice to then deal with Hippo.

3.8 A formal letter has since been issued to the parties providing full details and plans of the site constraints which the prospective purchasers will be responsible for. The letter asks the prospective purchasers to confirm certain issues as detailed in the Part 2 Report.

3.9 In response to the above, representatives from the Council and Capita met with the parties to discuss and to clarify certain issues, particularly timescales and it was agreed that the parties should submit the necessary information as a matter of urgency.

3.10 Sufficient detail and 'best offer' has now been received from the parties and following an independent valuation the Council is satisfied that the gross figure represents 'best consideration' on the basis of the conditional offer.

3.11 It should be noted that the intrusive site investigation works may reveal additional abnormal costs in terms of foundation design and contamination and these together with any planning issues may reduce the 'best consideration'. The parties have agreed that these costs will be shared on an 'open book' basis with the Council and any requests for a reduction/s in the purchase price will be reviewed in detail by Capita's Quantity Surveyors.

3.12 Based on the information submitted by the parties the heads of terms as detailed in the Part 2 Report have been provisionally agreed.

#### **4. KEY ISSUES**

4.1 The limited marketing exercise approved by the Executive Board in October 2015, outlined in Paragraph 3.5 above, was considered appropriate under the circumstances, particularly as the Council would commission an independent valuation to confirm it had achieved 'best consideration'.

4.2 The alternative exercise would have been to advertise the site on the open market. This method is usually selected to ensure that a transaction is fair and transparent and that 'best consideration' has been achieved.

4.3 However, in this particular case it was not considered appropriate for the following reasons:-

It would limit any control the Council had in assisting adjoining owners/occupiers to expand their existing businesses on the subject land.

Given the serious enquiries the Council had received this could have prevented those local businesses from expanding, possibly forcing them to relocate outside of the Borough.

4.4 The companies currently provide 230 jobs and if the expansion proposals are successful these jobs will be protected together with the creation of approximately 360 vacancies over the next few years.

#### 4.5 Risks

Legal Challenge - the possibility of a legal challenge still exists in terms of the limited marketing exercise. However, the Council's disposal policy includes a requirement to obtain independent valuation advice, usually from the District Valuer, to either reduce the risk of a challenge or to be in a position to defend it.

The expansion plans of one of the interested parties takes up the majority of the site and if the other party cannot be accommodated then the Council could be exposed to further risk for not sufficiently protecting their expansion proposals.

Access - Should the site be sold in phases or as a whole with buy back agreements in favour of the Council further negotiations will be required to cover the provision of access roads for each phase of development to the next phase, together with appropriate rights of access in the event the purchaser does not complete the purchase of the whole site. The Council will need to monitor the construction of roads throughout the development of the site and ensure appropriate terms are agreed to minimise any risks of these not being completed.

Site Constraints - there are a number of site constraint issues including the Aftercare Monitoring procedures to satisfy the Environment Agency in terms of surrendering the Tipping Licence. The monitoring period could conflict with the proposed development timetable.

## 5. POLICY IMPLICATIONS

5.1 The release of this land for employment generating uses meets the Council's objectives and priorities in terms of providing good quality employment sites and achieving growth in industry /employment within the Borough.

5.2 The planned expansions will enable Pets Choice to protect approximately 160 existing jobs and create an estimated 200-300 new jobs and Hippo to create another 60 jobs. Additional rates income which is still to be determined will result once developments have completed.

## 6. FINANCIAL IMPLICATIONS

6.1 The Council will receive a capital receipt for the land. This payment may either be made in stages or as a single payment, subject to negotiation, and may need to take into account any abnormal site development costs. One option will be to align payment to the transfer of the freehold interest following completion of the development under a building licence.

6.2 The phasing and timescales of the development are still to be agreed, but it is expected that it would complete in 3-4 years, and the capital receipt would be payable within the period of the development.

## **7. LEGAL IMPLICATIONS**

7.1 There is inherently always some legal risk to any property transaction. In this case there are two potential risks. The first is that under s123 of the Local Government Act 1972 whereby the Council is obliged to obtain best consideration reasonably obtainable. There is no single mechanism which legally guarantees this is achieved, however open market sale is usually considered the closest method because it has low exclusivity and high transparency. Offers to a more restricted group such as the case here can still strongly demonstrate best consideration because there is a known interest from adjoining parties which is likely to ensure that offers are competitive to avoid the site being offered on the open market. The strong additional backstop in this case is that the values will need to be consistent with the District Valuer's independent views on open market value.

7.2 The second legal risk is considered to be less prominent; that a disposal that requires specific development obligations of a purchaser/developer has a potential risk of being considered to be a form of procurement which could fall under the EU procurement regime. Non statutory guidance from the UK Government has suggested that the risk is low if:

The proposed development is to be undertaken at the initiative and autonomous intention of the developer;

The development document is based on proposals put forward by the developer rather than requirements specified by the contracting authority;

There is no pecuniary interest passing from the contracting authority to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example, by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer.

7.3 In this case, following the identification of plot(s) to be sold and the selection of the purchasers, the only real obligation imposed by the Council would be for a timely build out by the purchasers for generally good estate management purposes. The Council is happy to rely on local and central government planning policies to be the only guidelines for the purchasers which again, the guidance considers acceptable. To ensure that the land is built out it is recommended that a building licence/s incorporating reasonable timescales are entered into prior to conveying any long leasehold or freehold interest. Alternatively a long leasehold interest with an option to terminate the agreement if the development is not built out within a set timeframe would be recommended.

7.4 The Council, in following it's own Disposal Policy and processes means it will be less susceptible to any judicial review of it's decision.

## **8. RESOURCE IMPLICATIONS**

8.1 Legal resources will be required to complete the transaction and may also be called upon during the negotiation process.

8.2 Dependent on the final agreed terms re the disposal of the site as a whole or in phases there may be additional resources needed to monitor development costs and access road issues.

## **9. EQUALITY AND HEALTH IMPLICATIONS**

**Please select one of the options below. Where appropriate please include the hyperlink to the**

**EIA.**

Option 1  Equality Impact Assessment (EIA) not required – the EIA checklist has been completed.

Option 2  In determining this matter the Executive Member needs to consider the EIA associated with this item in advance of making the decision. *(insert EIA link here)*

Option 3  In determining this matter the Executive Board members need to consider the EIA associated with this item in advance of making the decision. *(insert EIA attachment)*

**10. CONSULTATIONS**

10.1 The proposal has been subject to extensive consultations between Council Officers, Capita Surveyors, the Council's legal team and relevant Members of the Growth and Industry Board.

**11. STATEMENT OF COMPLIANCE**

The recommendations are made further to advice from the Monitoring Officer and the Section 151 Officer has confirmed that they do not incur unlawful expenditure. They are also compliant with equality legislation and an equality analysis and impact assessment has been considered. The recommendations reflect the core principles of good governance set out in the Council's Code of Corporate Governance.

**12. DECLARATION OF INTEREST**

All Declarations of Interest of any Executive Member consulted and note of any dispensation granted by the Chief Executive will be recorded in the Summary of Decisions published on the day following the meeting.

<b>VERSION:</b>	0.03
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<b>CONTACT OFFICER:</b>	Trevor James Ext 3578
<b>DATE:</b>	01 May 2016
<b>BACKGROUND PAPER:</b>	Location plan.

