



# EXECUTIVE BOARD DECISION

<b>REPORT OF:</b>	Executive Member for Regeneration Executive Member for Resources
<b>LEAD OFFICERS:</b>	Deputy Chief Executive
<b>DATE:</b>	5 July 2018

<b>PORTFOLIO/S AFFECTED:</b>	Regeneration	Resources
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<b>WARD/S AFFECTED:</b>	Blackburn South and Lower Darwen
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<b>KEY DECISION:</b>	YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>
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<b>SUBJECT:</b> Investment Opportunity, Land at Milking Lane, Lower Darwen
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## 1. EXECUTIVE SUMMARY

The Milking Lane site in Lower Darwen has attracted negative publicity over the years with a long and chequered site history of stalled development activity and more recently incidents of anti-social behaviour, vandalism and trespass as reported by local residents, businesses and Ward Councillors.

This report recommends investment by the Council as a minority shareholder in a new Special Purpose Vehicle (SPV) along with a local developer as majority shareholder who has now secured exclusivity of the site from the administrators. The Developer is local and a well-regarded development company and a partner on the Council's Growth Framework.

The site is ideally located and will provide much needed employment land for new businesses for local expansion and inward investment in the Borough. The minority investment by the Council will help ensure the site is developed and that development is accelerated to generate a positive return for the Council and directly support growth in jobs and housing.

## 2. RECOMMENDATIONS

That the Executive Board:

- i. Notes the Lower Darwen site has attracted negative publicity over the years with several stalled developments and more recently incidents of anti-social behaviour and vandalism;
- ii. Approves the Council to invest in the Special Purpose Vehicle (SPV) as a minority shareholder with a local developer as majority shareholder for the purposes of acquiring the site, preparing the site for development and disposing of land parcels to 3<sup>rd</sup> parties for development;
- iii. Notes the proposed development will contain a mix of employment and residential end uses;
- iv. Approves a capital allocation to invest in the SPV for a 25% investment in the SPV which will be in accordance with Council's accounting framework; and

- v. Delegate's authority to the Deputy Chief Executive in consultation with the Executive Member for Resources to agree final terms for the Shareholders Agreement (SHA) and SPV legal, financial and ongoing management arrangements.

### **3. BACKGROUND**

#### **3.1 Site Location**

The site is located in Lower Darwen and is circa 9 hectares or 22 acres in site area. The site is bounded by Milking Lane to the east, Greenbank Terrace to the west, Lower Darwen Primary School to the north and the M65 to the south. **Annex 1** attached contains a site location plan with **Annex 2** containing an aerial photograph of the site.

#### **3.2 Site Context**

The site was formerly home to the Lower Darwen Paper Mill before its demolition and is now relatively undeveloped with the exception of two derelict office buildings which front Greenbank Terrace. Due to the land topography, the site effectively splits into 4 land parcels; two of which are accessed from Milking Lane (C&D) and two from Greenbank Terrace (A&B) as identified on the attached **Annex 3** Indicative Land Parcels diagram. The northern parcels (C&D) are in a predominantly residential area with parcels (A&B) located in an employment area. The Council's Local Plan allocates parcels A and B as a development opportunity site.

The site is causing blight and is a nuisance to the local neighbourhood with regular vandalism and trespassing with the Council receiving many complaints over several years from residents, businesses and local Ward Councillors.

#### **3.3 Site Ownership**

The site is currently owned by River Street Assets LLP. Duff & Phelps were appointed administrators in November 2016 following River Street Assets LLP going to administration. Title to the site is freehold and is registered under Title Numbers LA58170, LA540260, LA852143 and LA788020 with title absolute. A summary of the land ownership is attached as **Annex 4**.

#### **3.3 Planning History**

No planning permissions are currently in place for development of the site, however the below provides a summary of the recent activity with regards to planning.

##### **2015**

Planning reference 10/15/1119 – Planning permission was refused in November 2015 for the erection of up to 180 dwellings, open space and associated works including the construction of a link road together with the demolition of the existing redundant office buildings. The application was refused because the Section 106 agreement for an affordable housing contribution was not signed after a protracted period of failure by the applicant to communicate with the planning authority.

##### **2010**

Planning reference 10/10/0551 – Outline planning permission was approved in November 2012 for a residential development and link road, subject to 24 conditions and a section 106 agreement for affordable housing. This permission expired in 2015.

##### **2005**

Planning reference 10/05/0317 – Planning permission was approved in June 2006 for the redevelopment of part of the former Lower Darwen Paper Mill site to create a business park comprising 12 office / commercial buildings. Two of the buildings were built during 2007 but were never occupied and so the development was abandoned.

### 3.4 Development Proposals

The focus for the overall site is to develop high quality new employment uses on the lower ground together with new family housing on the higher ground (adjacent to the existing residential community).

#### **Employment Scheme – Parcels A&B**

Parcels A&B adjacent to the M65 and Greenbank Terrace will comprise new employment uses which could include industrial buildings, offices or storage facilities complimented by roadside uses if appropriate. Circa 10 acres of employment land can accommodate a scheme of circa 130,000 sqft of business/industrial space set in an attractive location with easy access from Junction 4 of the M65 with good visibility from the motorway. Various sizes of commercial units would suit a number of end users who have recently enquired to the Council for sites and should generate in the order of 250 jobs. In addition The Developer has received several enquiries from business looking for sites. The SPV will therefore balance commercial return with end user suitability to ensure the site is maximised for high quality jobs and business growth.

#### **Residential Scheme – Parcels C&D**

Parcels C&D adjacent to the existing residential area and Lower Darwen Primary School off Milking Lane provide circa 5 acres of developable land set in an attractive neighbourhood. Previous proposals for a link road from Greenbank Terrace will be explored with the Planning & Highways Department together with options to upgrade the Milking Lane and Greenbank Terrace junction.

### 3.5 Investment Opportunity

A local developer submitted a confidential bid to the administrators along with a private sector investment partner. However during the bidding process the Developer's partner withdrew from the process leaving them in a position to either withdraw or seek an alternative investment partner.

Given the site history and complications of the site ownership local Developer could not find an alternative partner and therefore made representations to the Council to invite the Council as an alternative investment partner.

The invitation from the local Developer is for the Council to acquire a minority share ownership in the SPV and to benefit from development gains from disposing of the land for future development. The purpose of the SPV is to proactively promote development and not to land bank. The SPV will ensure this happens by preparing all necessary surveys and permissions to ensure the sites are ready for disposal.

The Developer has secured exclusivity of the site from the administrators and is in a legal process to transfer the ownership of the site into a new SPV.

The Developer has been dealing directly with the administrators and has sought independent legal advice in acquiring the land and has been keeping Council Officers updated and involved in the process.

Details of the Council's investment and expected returns are contained in the financial section of this report.

## **4. KEY ISSUES & RISKS**

There are several site constraints which are briefly outlined below. Risks associated with the constraints have been assessed by Council Officers and have been minimised to ensure the

Council's risk exposure is quantified and capped at the proposed initial investment.

## Site Constraints

### 4.1 Unregistered route of former Milking Lane

To the eastern boundary of Parcels (C&D) is a Public Right of Way on land which is referred to as Milking Lane on the Land Registry Plans. The land comprising the track is unregistered land and seems to have been the former Milking Lane road which is presumed to have been abandoned as a track when the new Milking Lane was constructed to serve the new housing. The track is now overgrown with a PROW designated. The land will be incorporated into the development and the PROW diverted. The SPV will make an application to claim this land with various legal mechanisms being discussed.

### 4.2 Topography stepped changes

The site is effectively split with higher ground (Parcels C&D) to the east and lower ground (Parcels A&B) to the west. The level difference between the lower ground and higher ground is significant and is circa 10 to 15 metres. In addition there is a valley with a watercourse separating Parcels C and Parcels D.

### 4.3 Ecology constraints

There are no details available to inform on any ecological constraints however from visual observation the lower ground (Parcels A&B) has been previously developed with the former Lower Darwen Paper Mill and the still visible derelict offices. There are no trees or vegetation except at the boundary and therefore ecological issues would appear to be low. Whereas the higher ground (Parcels C&D) has not been previously developed and therefore may have some ecological constraints which would have to be taken into account in any future development. Japanese knotweed Himalayan Balsam is present on the banks of Davy Field brook.

### 4.4 Ground conditions

Previous studies to date have identified the site as being underlain by Alluvium and glacial Sand & Gravel over Boulder Clay and Lower Coal Measures. There is no record of coal mining on or near the site. The Lower Coal Measures are classified as a minor aquifer which is overlain by low permeability drift deposits.

The groundwater sensitivity of the site is considered to be low to medium. A stream crosses the site from east to west, and joins the River Darwen adjacent to the site and is culverted within the lower ground area for approximately 90m. Davy Field Brook forms part of the south west boundary to the site. The site will contain the former foundations and concrete hardstanding of former paper mill remain.

### 4.5 Flood risk

Site is predominantly in flood zone 1 with the south west portion of site in flood zone 3 within the vicinity of Davy Field Brook.

### 4.6 Ground contamination

Previous investigations to date have confirmed the presence of contamination at the site, although the levels identified do not appear to represent a significant constraint to the proposed development, subject to further characterisation of the site and where necessary, implementation of appropriate remedial measures.

There appears to have been landfill activity within the area of Parcel C and in the southern area of Parcel A. Previous studies indicate only inert waste recorded at landfill site however there is a gas contamination risk.

#### 4.7 Planning

The development scheme proposed complies with the Local Plan Policy 28/9, which envisages a mixture of employment and residential development at the site. In addition Parcels A&B benefit from being on the Council's Brownfield Register.

#### 4.8 Highways access

The Highway's Authority has indicated there are capacity issues with the junction of Milking Lane and Greenbank Terrace. Therefore any residential development which increases traffic onto Milking Lane will need to consider highway junction improvements.

### **5. POLICY IMPLICATIONS**

The development scheme proposed complies with the Local Plan Policy 28/9, which envisages a mixture of employment and residential development at the site.

### **6. FINANCIAL IMPLICATIONS**

The Developer has secured exclusivity with the administrators for the acquisition of the land.

The Developer intends to incorporate an SPV to acquire the site in full and will own 100% of the shareholding.

The Developer's invitation to the Council is for a 25% ownership of the SPV shareholding.

The Council's 25% investment in the SPV will be used to support the acquisition of land and working capital requirements.

Working capital will help cover the SPV's activities which will include the demolition of the existing derelict office buildings and site clearance and the associated work involved in securing approvals. In addition the site will be made secure with hoardings. Other activities will include surveys, feasibility studies and investigations. It is anticipated that proceeds from early land sales will cover future working capital requirements.

The Council has commissioned independent advice from Capita to provide a financial assessment of the proposed investment and a summary of the assessment is provided in the Part 2 report

The Council will retain the investment in the SPV for a minimum of 3 years with the initial investment being repaid to the Council at year 3 with the expected returns being repaid by year 5.

With any development investment there is always a risk that the expected level of returns may not be achievable if the assumptions prove to be incorrect based on further studies and investigations, or due to changes in the development market. However based on the proposed levels of investment and abnormal allowed the appraisal demonstrates a market return for the proposed investment and development risk therefore satisfying the market economy investor principle ("MEIP") as required to ensure State Aid is not a consideration.

### **7. LEGAL IMPLICATIONS**

The SPV will be incorporated as a company limited by shares and will be registered at Companies House as a private company with the Developer appointed as Company Secretary. The Council will agree a Shareholders Agreement (SHA) with the Developer to ensure the Council has protections and safeguards to ensure compliance with Council procedures. The Council will be represented by a Senior Officer who will be appointed as a Company Director.

The SPV will not employ any persons and will instead have Service Agreements to cover any services required to operate the SPV. Services will be provided to the SPV by the Developer and the Council and will be by agreement.

The SPV will not undertake direct development and instead is a vehicle to acquire the site and then dispose of discrete parcels of land to developers and end users for development. The SPV will undertake surveys, investigations, demolitions and obtain any necessary approvals to assist in the process which may involve securing planning approvals. The procurement of these activities will be undertaken by either the Council or the Developer on behalf of the SPV.

Because the Council is intending to enter to a legal relationship with a legal person (a company) and invest the Council's resources to generate economic activity through that company then issues of public procurement have to be addressed. The Council's shareholding is set to be 25% and despite there being protections put in place in order to ensure that as a minority shareholder the Council's views are not automatically overruled, it is apparent that this is not an "in-house" company.

The Council does have general capacity under the Localism Act 2011 to enter into any legal arrangements just like any other legal person subject to pre-existing legislation. However, in nearly all cases where government bodies use state resources to assist in economic activity and because of that assistance there is the potential to affect or distort competition, then State aid is most likely to exist. There are a number of acceptable State Aid exemptions which can potentially apply to any given scheme. In this case any potential State Aid arises by the fact that the Council is investing money into the SPV as set out in the financial implications section.

Under the market economy investor principle ("MEIP") the Council is entitled to undertake the economic activity if it operates in a similar financial manner to that of a private economic operator, most relevantly here, in terms of the risk versus reward considerations. This is because while it is acting within the market, its use of state resources do not distort competition because it is acting as any other entrepreneur might and there is no "unfair advantage" by the use of the state resources. The financial implications have been detailed in respect of the potential returns on its investment to form a conclusion on this point.

## **8. RESOURCE IMPLICATIONS**

Current staff resources from the Council's Growth, Property, Planning and Legal teams will be utilised to complete the agreement and subsequently work with the Developer towards development of the site.

## **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

Public and stakeholder consultation on development of the sites will take place as part of the planning application process.

## 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>	1.1
<b>CONTACT OFFICER:</b>	Simon Jones, Growth Programme Director, Department of Growth and Development
<b>DATE:</b>	June 2018
<b>BACKGROUND PAPER:</b>	None