

Agenda Item No:

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Report of : Land and Property Services

Report to : Director of City Development

Date: 11 August 2014

Subject: Leeds (River Aire) Flood Alleviation Scheme – land acquisitions

Are specific electoral Wards affected?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
If relevant, name(s) of Ward(s):	CITY AND HUNSLET BURMANTOFTS AND RICHMOND HILL	
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
If relevant, Access to Information Procedure Rule number:		
Appendix number:		

Summary of main issues

1. The purpose of this report is to seek approval to terms provisionally agreed for the entering into a development agreement with the Canal and River Trust (CRT) for flood alleviation works, approval to a lease for 250 years with CRT and leases of an easement with CRT and DB Schenker to accommodate the diverted route of the Trans-Pennine Trail (TPT). The proposals for the development agreement and 250 year lease are subject to the Secretary of State for the Environment's approval, which the CRT is seeking.
2. The proposals form part of the wider Leeds Flood Alleviation Scheme (LFAS) which is intended to protect part of the City from the effects of a 1 in 75 years flood event as approved by the Executive Board on 4 April 2014.
3. The development agreement with the CRT will enable the Council to access property owned by the CRT and to carry out works to remove a length of Knostrop Cut Island, dispose of the spoil, alter existing weirs through remodelling and installation of moveable weirs (at Crown Point and Knostrop), provide a control cabin for the weir at Knostrop, replace a footbridge and upgrade an existing footbridge at Knostrop.

4. The CRT lease includes :
 - two sections of river bed and associated weirs
 - the remaining section of Knostrop Island
 - the right to install and operate a proposed hydro-electric plant at Knostrop Weir
 - the bridge footings and bridges across the canal and the River Aire (or in the alternative a right of way across the bridges for use by the public as part of the Trans-Pennine trail route, and a right of access to such of CRT land as is required for maintenance. The Council will be responsible for maintaining the bridge structures.
(one of the control cabins is to be cantilevered over the weir at Knostrop. The other control cabin is to be sited on land in private ownership near Crown Point Weir.)
5. A 25 year lease from CRT of an easement for a path over sections of the north side of the river bank at Knostrop to accommodate the TPT
6. Also a 25 year lease from DB Schenker of an easement for a path over sections of the north side of the river bank at Knostrop to accommodate the TPT (adjoining the land in CRT ownership referred to in paragraph 5 above.
7. The subject sites are noted within this report and shown on plans LFD/ARP/Z3/XX/DR/CH/01002-4, LFD/ARP/Z3/XX/DR/CX/02014 & LFD/ARP/Z3/W2/DR/CX/03100 and are required to facilitate works to construct hydraulic, moveable weirs and control cabins as part of the Flood Alleviation Scheme, for the replacement or upgrading of footbridges and for the provision of a footpath (as part of the planning requirements for the Scheme). Additionally there is a desire to install hydro-electric equipment at Knostrop Weir.

Recommendations

8. It is recommended that the Director of City Development approves entering into the development agreement, agreements for leases and proposed leases on the terms outlined in this report.
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1 Purpose of this report

- 1.1 The purpose of this report is to seek approval to terms provisionally agreed for the entering into a development agreement with the Canal and River Trust (CRT) for flood alleviation works, approval to a lease for 250 years with the CRT and a lease for an easement with DB Schenker to accommodate the diverted route of the Trans-Pennine Trail (TPT). The proposals are subject to the Secretary of State for the Environment's approval, which the CRT is seeking.

2 Background information

- 2.1 The Leeds Flood Alleviation Scheme (LFAS) is a high priority scheme for the City which has the aim of defending the City Centre against 1 in 75 year river flood events and the significant physical and economic damage that can result from flooding.
- 2.2 The Council is the Lead Flood Authority and co-ordinates this project.
- 2.3 In line with the Council's Best City ambitions, the Scheme should ensure and support the further growth and regeneration of the Leeds economy, particularly in the South Bank area and also protect key transportation infrastructure and the high quality public services it supports.

3 Main issues

- 3.1 The development agreement includes elements not forming part of the lease. It provides for the removal of a section of Knostrop Cut Island, the replacement of existing weirs at Crown Point and Knostrop with new moveable weirs construction of control cabins and apparatus on the river bank at both weirs, replacement of one footbridge and upgrade of another at the north west end of Knostrop Cut Island.
- 3.2 At all times during the works the Council (and/or its contractors) must maintain the operational requirements of the CRT in keeping the channel open for navigation and making provision for footpath diversions where necessary.
- 3.3 The removal of a substantial section of the Island will result in the loss of a section of the Trans-Pennine Trail (TPT). A condition of the planning permission for the Scheme is that a replacement footpath is provided. Realistically this can only be sited along the north bank. The proposed alignment is shown on plan LFD/ARP/Z3/XX/DR/CH/01003-4. Most of the path is on CRT land but sections are on land occupied by DB Schenker on a long leasehold basis from Network Rail. These will require a separate lease.
- 3.4 Control cabins housing the apparatus to control the moveable weirs are to be sited close to both weirs. At Knostrop this will be over the weir itself and therefore covered by the 250 year lease. At Crown Point the cabin will be sited on land in private ownership. The works comprising the Leeds Flood Alleviation Scheme will be carried out by the Council by agreement with the Environment Agency under Section 165 of the Water Resources Act 1991.
- 3.5 The Council has agreed that it will use all reasonable endeavours to create a permanent public right of way to permit the relocation of a section of the TPT.

3.6 The main provisions of the proposed development agreement are as follows:

Development agreement:

1. Land owner: The Canal and River Trust.
2. Consideration: £1.00.
3. Development works
Remove the existing weirs (other than a small section at Crown Point which is to be preserved) and construct hydraulically controlled moveable weirs. Install an operating cabin on CRT land at Knostrop weir;
Remove a section of Knostrop Cut Island;
Replacement of one foot-bridge and upgrade of another at the north west end of Knostrop Cut Island.
4. Works period: Five years from the date of the development agreement.
5. Leeds City Council obligations
To comply with the CRT's code of practice and agreed operational requirements to ensure the continued operation of the navigation.
5. Agreed operational requirements:
The Council must fulfil the agreed operational requirements as specified in the lease. If the CRT believes that the Council is not complying it can undertake 'emergency works' and claim costs from the Council or oblige the Council to undertake works as necessary. The Council can challenge the reasonableness.

Leases:

Lease of Weirs and remainder of Knostrop Cut Island

1. Term: 250 years.
2. Consideration: Peppercorn.
3. Leasehold transfers:
All the CRT lands within the areas edged black on the attached plan. To include river bed and weirs at Crown Point Weir and Knostrop Weir, site A at Crown Point, site B at Knostrop, the control cabin for the Knostrop Cut weir, the remaining section of Knostrop Cut Island,. In addition the right to install, operate and maintain hydro-electric plant at Knostrop.
4. Repairs and maintenance
The Council will undertake to keep the moveable weirs and control equipment in good repair and working order. The weirs and associated apparatus can only be decommissioned with CRT consent.
Should the operation of the LFAS result in additional

dredging, as defined by reference to a dredging report by Arup, the Council will undertake to have this carried out at its own cost.

6. Break provisions: At any time during the term (but not less than four years before the end of the lease) the Council can terminate the lease for the whole of the property by serving a break notice, specifying a date not less than three years after the date of the break.
7. Replacement provisions: At the end of the term, or if the Council serves a break notice, CRT may serve a replacement notice requiring the Council to carry out such works as necessary (and in the most cost effective way possible) (a) to afford an equivalent level of flood protection as would have been present had the original weirs and Knostrop Cut Island remained and (b) so that the navigation remains navigable.
8. Agreed operational requirements: The Council must fulfil the agreed operational requirements as specified in the lease. If the CRT believes that the Council is not complying it can undertake 'emergency works' and claim costs from the Council or oblige the Council to undertake works as necessary.
9. Obligations and liabilities Should the actions of the Council or its contractor(s) result in the release of any hazardous substances during the term, the responsibility for remediation will be that of the Council.
The Council will indemnify CRT against any losses caused by a breach of the terms of the development agreement or lease, including loss of revenue relating to any hydro-electric plant installed by CRT.
10. Agreed compensation Compensable events and agreed compensation payable are defined in the CRT Code of Practice for Works.
11. End of term: The CRT can, on service of any break notice, require the Council to undertake mandatory re-instatement works, subject to a counter-notice provision to be served by the Council. On vacation the Council must carry out such works as necessary to ensure the river is navigable.

Trans-Pennine Trail leases

1. Land owners: Part of the proposed alignment is owned by CRT, part by DB Schenker Rail (UK).
2. Leases: The Council will take leases of easements along the strip of land required for the path.

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| 3. | Works: | To construct and maintain a footpath forming a right of way as identified on plan LFD/ARP/Z3/XX/DR/CH/01003-4. |
| 4. | Consideration: | The rent payable will be £1.00 per annum. |
| 5. | Term: | 25 years, then from year to year. |
| 6. | CRT requirement: | The CRT requires that the Council use reasonable endeavours to ensure that the footpath is designated a public right of way. |

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Ward Members have been kept updated as the LFAS has developed. In addition to the consultation undertaken throughout the planning permission process, Ward Members have been consulted on: 12, 18 & 26 April 2013; 23 July 2013; 21 October 2013; 26 November 2013; & 21 January 2014. Ward Members are supportive of the scheme.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 An equality, diversity, cohesion and integration screening has been undertaken on the proposals and is available as Appendix B.
- 4.2.2 The proposals will have a beneficial impact on a large number of residential properties in the Holbeck and City Centre area, as it will provide a standard of protection against a 1 in 75 year flood event. This positive impact benefits all people living in the area, particularly people with impaired vision, people with mobility difficulties and small children who may have had difficulty exiting their properties should a major flood event be realised.
- 4.2.3 In addition to the benefits gains by protecting the area with flood defences, the LFAS team has identified the following positive impacts:
- (i) All landscaping works and lifting of levels will be sensitive to the needs of disabled, wheelchairs, prams etc.
 - (ii) A bridge spanning the River Aire adjacent to Knostrop Locks will be refurbished. This bridge is currently in a poor condition with loose panels and trip hazards making access by wheelchair difficult.
 - (iii) The Knostrop Locks will be decommissioned removing the need to cross the canal over a narrow wooden bridge. The existing bridge does not permit two way accesses for wheelchairs and prams. A new pedestrian footway will be provided which will accommodate such two way movements.

4.3 Council Policies and City Priorities

- 4.3.1 The scheme is consistent with the objectives in the Best Council Plan 2013-17, notably, 'Supporting communities and tackling poverty', 'Promoting sustainable and inclusive economic growth' and the Vision for Leeds, including:

- 4.3.2 Best City for business – supporting the sustainable growth of the Leeds economy through safeguarding jobs in the area to be protected by flood defences, and provision of direct jobs through delivery of the construction work.
- 4.3.3 Best City for health and well-being – supporting people to live safely in their homes. There are approximately 3,000 residential properties and 500 businesses in the floodplain of the River Aire. Much of the key infrastructure for Leeds including the Inner Ring Road and key access routes to the railway station area, telecommunications and broadband facilities and sub-stations are also within the flood plain. Most of the residential properties are situated in blocks of flats on floors raised above flood level and so whilst the contents of these buildings are not at risk, the residents are vulnerable to the disruption caused by temporary loss of access. 154 businesses and 53 residential properties in central Leeds would be directly exposed to floodwater during a 1 in 75 year event.
- 4.3.4 Best City to live – the scheme is within the high profile waterfront area and has a civic importance.
- 4.3.5 Best City Region – the LFAS protects accessibility to the Leeds railway station new southern entrance, thus contributing to the Vision for Leeds 2030 by safeguarding part of the city region transport strategy..
- 4.3.6 Strong nationally and internationally – the movable weirs at Crown Point and Knostrop will make use of pioneering technology which will be the first of its kind in the UK, thus raising the profile of Leeds nationally and internationally.

4.4 Resources and Value for Money

- 4.4.1 There are no cost implications contained within this report beyond those approved by the Executive Board on 4 April 2014. Entering into agreement with the CRT is required to facilitate the delivery of the scheme which in turn provides clear economic benefits.

4.5 Legal Implications, Access to Information and Call In

- 4.5.1 Under Part 3 Section 3E Paragraph 2(a) of the Council's Constitution (Officer Delegation Scheme (Executive Functions)) the Director of City Development has authority to discharge any function of Executive Board in relation to the management of land (including disposals of land).
- 4.5.2 The Director of City Development has authority to take the decisions requested in this report under the Officer Delegation Scheme (Executive Functions).
- 4.5.3 The proposal constitutes a significant operation decision and is therefore not subject to call in.
- 4.5.4 The Environment Agency possess powers under Section 165(5) of the Water Resources Act 1991, giving it general powers to carry out works considered desirable having regard to national flood management strategies. In an agreement dated 13 August 2013 the Agency devolved these powers to Leeds City Council to carry out works in connection with the construction, maintenance and operation of the Leeds Flood Alleviation Scheme.

4.6 Risk Management

- 4.6.1 There is significant risk that, if the progression of the scheme is delayed for any reason, difficulties will be encountered in achieving deadlines and funding could be withdrawn.
- 4.6.2 Removal of a substantial part of Knostrop Cut Island will result in the loss of a section of the Trans-Pennine Trail (TPT) which is currently a permissive route. A condition of the planning permission for the Scheme is that a replacement footpath is provided.
- 4.6.3 In the short term DB Schenker and CRT have agreed in principle to grant a 25 year lease of an easement along the north bank of the River Aire. Negotiations are ongoing but there is a risk that the Council will not be able to provide the proposed route if the landowners refuse to complete the lease
- 4.6.4 Failure to create an acceptable path at Knostrop would place the Scheme in breach of a planning condition and a contractual obligation to the CRT to provide a public right of way on the north bank of the river.
- 4.6.5 A path can be accommodated only on CRT land, but this would require additional engineering works and would therefore be at a greater cost.
- 4.6.6 The long term aspiration is for the CRT, DB Schenker and the freehold owner, Network Rail, to dedicate the path as a public right of way. CRT has agreed to dedicate the path on their land. DB Schenker have indicated that once their plans for site development are more defined they may also be prepared to dedicate the path.
- 4.6.7 If any works relating to the LFAS or operation of the LFAS result in the release of hazardous substances (including historic substances) the Council will be liable for remediation.
- 4.6.8 The control cabin for the Crown Point Weir is to be constructed on land owned by a third party and the Council will be relying on statutory powers devolved to the Council by the Environment Agency to install and operate the cabin (see paragraph 4.5.4 above).

5 Conclusions

- 5.1 The LFAS has been developed to include the financial package, draft detailed design proposals and cost mitigation. The immediate progression of the LFAS is critical to ensure that the scheme can be delivered within the funding time constraints.
- 5.2 The Scheme is important for the City, not just because of the threat to property, business and possibly lives but also because of the long-term reputational damage a major flood event could have on the attractiveness and economic performance of the City.

6 Recommendations

- 6.1 It is recommended that the Director of City Development approves entering into the development agreement, agreements for leases and proposed leases on the terms outlined in this report.

7 Background documents¹

7.1 None.

¹ The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.