

CABINET

**Luneside East Regeneration Project
3 June 2008**

Report of Head of Planning Services

PURPOSE OF REPORT			
To advise Cabinet that subsequent to the Council's compulsory purchase of land certain compensation claims from third parties will now likely be settled at the Lands Tribunal and this report is to seek decisions from Cabinet on how officers are authorised and resourced to proceed.			
Key Decision	X	Non-Key Decision	
			Referral from Cabinet Member
Date Included in Forward Plan	19 th May 2008		
This report is exempt from publication by virtue of paragraphs 3 and 5 of Schedule 12a of the Local Government Act 1972			

RECOMMENDATIONS OF COUNCILLOR BRYNING

- (1) That the Head of Planning Services be authorised to assemble a project team to prepare and make the Council's cases at Lands Tribunal in respect of compensation claims made
- (2) That the provisional transfer of any additional Local Authority Business Growth Incentive grant into the Capital Support Reserve be approved, to fund external professional support costs for Luneside up to a maximum of £200K and any 'Calderbank' offer in connection with recommendation (3) below, subject to the transfer being considered in more detail as part of the 2007/08 outturn, to be reported to Cabinet at the end of July.
- (3) That the Corporate Director (Regeneration) be authorised, in consultation with the Head of Financial Services and Legal Services Manager, to make any "Calderbank" offer if this is considered to be a prudent action in seeking to mitigate risks to the Council and its costs
- (4) That the proposed arrangements for the procurement of any external professional support required, on the grounds of urgency be noted.
- (5) That, in view of the fact that the decision is required urgently in order that the Council can begin to prepare for the Lands Tribunal, the Chief Executive be requested to waive the call in procedure in accordance with

overview and Scrutiny Procedure Rule 17 (a) to enable immediate implementation.

1.0 Introduction

- 1.1. The Council has successfully completed its land assembly for this challenging project which is a corporate priority. This involved both the negotiated acquisition of land, compulsory purchase proceedings and the decommissioning and removal of an operational gasholder.
- 1.2. The Council made its Compulsory Purchase Order on 31 January 2005. The Secretary of State confirmed the Order in June 2006 after a Public Inquiry and the Council vested land into its ownership that autumn. When land is compulsorily acquired, matters of compensation are very often not settled until quite some time after as the compulsory purchase does not concern matters of value and it is up to the acquiring authority (in this case the Council) to seek to agree settlements with the claimant affected.
- 1.3. The Council, after negotiations via its agents Keppie Massie, has now completed on many compensation settlements but as is quite normal for compensation settlements after a CPO, negotiations in some cases have proved very protracted and several settlements are still outstanding. The normal procedure where a negotiated settlement proves unattainable is that claims are determined by the Lands Tribunal. Either party (Council or claimant) can refer a claim to the Tribunal which considers the valuation arguments presented by both parties and then decides on a binding settlement figure
- 1.4. This report is to outline how the Council might proceed so that it presents as strong as possible cases at the tribunals and thereby might best protect the Council's financial interests.

2. Proposal Details

- 2.1. There are two claims outstanding which Keppie Massie advise will now almost certainly go to the Lands Tribunal.
- 2.2. The Council will need to make a robust defence of its valuation cases. This will require an expert team to both prepare and present the cases. Officers from Planning Services, Financial Services and the Heath and Strategic Housing Service will be required. In addition, specialist expertise will be required from external sources to cover for valuation, legal and other technical matters. Keppie Massie should provide the valuation services. A barrister will be needed to marshal the Council's case and interrogate that of the claimants. Other specialists may very well be required to cover geotechnical and building matters. In addition, it will assist the Council's case to be able to evidence having a developer in place actively taking the project forward. Developer Luneside East Ltd (LEL) could provide much to the Council's witness team, offering expertise in development economics / commercial viability.
- 2.3. It is advised that there is one particular tactic whereby the Council might seek to mitigate some of its risks. This is a "Calderbank offer". This is an offer made by the acquiring authority to a claimant prior to the Tribunal sitting. The offer is not disclosed to the Tribunal. Should the Tribunal determine on a valuation figure

less or no more than the Council's offer the claimant would be liable for not only its own costs but also the Council's. The mechanism does present risks to the Council as well as potential rewards. Expert advice would be required before making such an offer to ensure that the offer was pitched at the right figure to destabilise the claimant's position on their claim.

- 2.4. It is considered that some £200k may be required to properly prepare and make as strong cases for the Council as possible. The main costs will be in Kepple Massie's fees and in instructing a barrister. Options for the Council to mitigate its costs in this are limited.
- 2.5. In addition, the urgency apparent at the present time to commence case preparation requires that necessary procurements be made quickly. Therefore, for this reason, if Cabinet support the preferred option, then the Corporate Director (Regeneration) will authorise an exemption to any tendering procedure, as allowed for within the Council's Contract/Procedure Rules. Cabinet is required to note such action and the reasons for it. Should it however become apparent that the claims will not soon be referred to the Tribunal then it would be possible to follow standard procedures.
- 2.6. The best prediction is that the Tribunals late in financial year 08/09 or early in 09/10. Subsequent to tribunal determinations the Council would need to defray any payments to complete final settlements within a matter of weeks.

3.0 Details of Consultation

- 3.1 Internal consultations only and with the Council's professional advisors, i.e. Legal Services and Financial Services.

4.0 Options, analysis and preferred option (including risk assessment)

- 4.1 The Council has no real options. It has a duty to make its strongest possible cases at Lands Tribunal. To not do so increases financial risks to the Council. It is considered that this can be achieved via officers taking a project team approach resourced from both in-house capacities and with specialist external legal and other support as deemed necessary. Officers consider this option will require the Council to make an additional budget provision of £200,000 available for the regeneration project.

5.0 Conclusion

- 5.1 The Council must ensure that it defends robustly its valuations as sustained throughout the CPO process and it is essential that an appropriate professional team is established to represent the Council at the lands Tribunal.

RELATIONSHIP TO POLICY FRAMEWORK

The Luneside East regeneration scheme is a long standing corporate regeneration priority to which the Council committed irrevocably in making the Luneside East Compulsory Purchase Order 2005.

**CONCLUSION OF IMPACT ASSESSMENT
(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

No implications

FINANCIAL IMPLICATIONS

There is no provision within the Luneside East project budget for work to prepare and present cases at Lands Tribunal and therefore any provision must be agreed by Members as a revision to the 2008/09 General Fund Capital Programme.

As context, at present the overall funding for the existing approved capital programme in the current year is not yet guaranteed, and therefore many new schemes have not yet started. Delays have been experienced in receiving a significant capital receipt, but the outcome should be known in the next few weeks. A full update on the capital position is scheduled to be completed over the summer, in line with the Capital Investment Strategy. Nevertheless, this report identifies a need to allocate additional funding to the Luneside project now, in order to help protect the Council's financial interests.

The final quarter's monitoring report for 2007/08 highlights two potential sources of funding that could be used to assist with Luneside. Firstly, a general underspending in last year is currently forecast, although much work is still needed in order to finalise the position. Secondly, and more specifically, the Council has received information on its provisional Local Authority Business Growth Incentive (LABGI) grant award, which indicates that an amount of £930K is receivable, subject to the outcome of consultation that ended on 16 May. Government is expected to finalise allocations as soon as possible after that date; if more information is available this will be fed into the Cabinet meeting. It is highlighted, however, that the proposed allocation of £930K is some £843K higher than budgeted, and therefore it seems reasonable at this stage to assume that some additional funding will be forthcoming, even if final allocations are reduced as a result of the consultation.

Given the above, it is recommended that provisionally the additional LABGI grant be allocated to the capital support reserve to fund the external professional support, up to a maximum of £200K, and also to fund initially any Calderbank offer in respect of the claim.

It is again highlighted, however, that all external funding opportunities are also to be explored, in order to lessen the impact on the Council's own resources.

It should be recognised also that there is some risk that the final LABGI award will be insufficient to meet the estimated costs associated with Luneside. The proposed transfer to the Capital Support Reserve will be incorporated into the full Revenue and Capital Outturn report to Cabinet at the end of July, and reflected in the Capital Investment Strategy and Medium Term Financial Strategy (MTFS) updates over the summer. If, during this time, it transpires that the LABGI grant is not sufficient to cover estimated Luneside costs, then alternative funding proposals will be put forward as part of that financial reporting, for consideration by Cabinet/Council as appropriate. As a last resort, prudential borrowing would need to be considered.

SECTION 151 OFFICER'S COMMENTS

The section 151 Officer has advised regarding the funding proposals outlined in the above financial implications. Given the position and the urgent need to establish a way forward, earmarking the anticipated receipt from LABGI is felt the best option, pending consideration and reporting of the final outturn position, and identification of any alternative funding sources.

LEGAL IMPLICATIONS

Legal Services have been consulted and their comments are incorporated within the report.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Exempt.

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