

# CABINET

## Disposal of Land at the Former Shell ICI Site 5 March 2019

### Report of Director of Economic Growth and Regeneration

PURPOSE OF REPORT			
To report back to cabinet on the terms agreed in relation to disposal of land as outlined above and as required under the cabinet agreement to the disposal dated 12 <sup>th</sup> February 2013			
Key Decision	X	Non-Key Decision	Referral from Cabinet Member
Date of notice of forthcoming key decision	4 February 2019		
<b>This report is public.</b> Appendices B & C are exempt from publication by virtue of paragraph 3 of Schedule 12A of the Local Government Act 1972.			

#### RECOMMENDATIONS OF Director of Regeneration and Planning)

- (1) **Agree the terms of sale, following exercise of the Option to purchase a lease by Clifton Marsh Power (now trading as Lancaster Power) and Lancaster City Council arising from an agreement dated 30<sup>th</sup> July 2014.**
- (2) **Director for Economic Growth and Regeneration be granted delegated authority to complete the transaction.**

#### 1.0 Introduction

- 1.1 Cabinet at its meeting on 12<sup>th</sup> February 2013 approved the principle that Lancaster City Council enter into an option agreement with Clifton Marsh Power for the disposal of land forming part of the former Shell ICI site at Middleton (shown edged black on the attached plan) appendix A.
- 1.2 The parties entered in to an option on the 30<sup>th</sup> July 2014, for Clifton Marsh Power to acquire up to 17.25 acres of land for energy generation and auxiliary related uses. Then option period was to expire on 29<sup>th</sup> July 2017.
- 1.3 Lancaster Power is now a wholly owned subsidiary of Clifton Marsh Power, who acquired the shares in Lancaster Power on the 6<sup>th</sup> March 2018. The sale agreement will be in the name of Lancaster Power. In October 2016 Lancaster City Council entered into a deed of novation with CMP transferring the benefit of the option to Lancaster Power. At the Cabinet meeting on 26 June 2017 it was agreed that a deed of variation be entered into to extend the original term to 2 April 2018.
- 1.4 Lancaster Power exercised the option on the 28<sup>th</sup> March 2018 by serving the prescribed notice on Lancaster City Council at appendix B.

1.5 On the 7<sup>th</sup> January 2019 the council's planning committee resolved to approve Lancaster Powers planning application, ref 18/01203/FUL for a 49.8 MW battery Storage facility. This facility will provide immediate electric power to the grid at times of peak requirements, during the capacity lag whilst other forms of generation come online and thus the original energy related use intention for the site remains true.

## 2.0 Proposal Details

2.1 The purpose of this report is to comply with the original cabinet requirement that the proposed terms of sale be presented back to cabinet prior to completion.

2.2 Lancaster Power originally served notice to acquire the full 17.25 acres subject to agreement on price as per the terms of the option agreement, through subsequent negotiations, terms have been agreed to dispose of the smaller area (2 acres) required for their proposed development.

2.3 The Council will retain an element of control as to the future use of the site via appropriate user clauses within the ground lease, and whilst the lease will not prevent a change of use, it would require the Councils consent and possible payment of a premium to release/revise this restriction dependant of the intended revised use and thus the council will be secured in terms of its obligation to obtain best consideration under section 123 of the Local Government Act. The terms of the lease will also provide for the Council to be informed/consent to any future assignments of the lease as is usual under landlord and tenant legislation.

2.4 The agreed terms are set out in exempt appendix C Heads of Terms.

## 3.0 Details of Consultation

3.1 This matter follows on from earlier cabinet decisions and as such no further external consultation has been undertaken.

3.2 Recommendation 4 of the exempt paper 12 February 2013 required any extension of the options to be approved by cabinet. The variation set out in paragraph 1.3 were agreed by cabinet on 26 June 2017.

3.3 The terms agreed accord with comparable transactions entered into by the City Council in the same location off Imperial road.

## 4.0 Options and Options Analysis [including risk assessment]

	<b>Option 1:</b> proceed with the legal completion of the transaction with Lancaster Power	<b>Option 2:</b> do not proceed with the transaction to Lancaster Power
Advantages	<p>Opportunity for the council to receive a capital receipt.</p> <p>Accords with the councils' corporate objectives and stated aims for the regeneration and growth of the Heysham gateway area</p>	<p>The potential to pursue other opportunities in relation to the site</p>

Disadvantages	The loss of opportunity to pursue other opportunities in relation to the site.	<p>Lost opportunity for capital receipt</p> <p>Ongoing liability for this parcel of land</p> <p>Possibility of legal challenge by not adhering to the terms of the legally binding option agreement between the parties</p>
Risks	None specifically identified	Strong probability of legal action against council and a possible direction to pay compensation

## 5.0 Officer Preferred Option (and comments)

- 5.1 The preferred option is Option 1 as it accords with the legal obligations contained within the option agreement between the parties.
- 5.2 It retains 'surplus' land for future alternative uses.
- 5.3 It secures the councils future position as to compliance with S123 of the Local Government act and provides the ability to 'control' the nature of uses across the Heysham Gateway area.
- 5.4 The proposed use accords with the Councils stated development aspirations for the area as outlined in the emerging local plan and Heysham Gateway Vision Document.

## 6.0 Conclusion

- 6.1 This transaction will provide a certain capital receipt to the council, allow the redevelopment of this brownfield site for energy related uses, attract valuable inward investment into the district, create immediate jobs during the construction phase and a lesser number of long terms jobs during the plants operational phase. It concludes the council's original decision to dispose of the land dating back to 2012.

### **RELATIONSHIP TO POLICY FRAMEWORK**

This proposal supports the Councils Corporate plan, local Plan and Vision document for the area, in its priority of economic growth and key themes of environmental sustainability and effective management of the Councils resources.

### **CONCLUSION OF IMPACT ASSESSMENT**

**(including Health & Safety, Equality & Diversity, Human Rights, Community Safety, Human Resources, Sustainability and Rural Proofing)**

This report is linked to the medium term Corporate Property Strategy by disposing of properties surplus to the requirements of the council.

All environmental and sustainability issues have been dealt with via the planning process, and these will be imposed via the legal agreements associated with the grant of planning consent and lease.

#### **LEGAL IMPLICATIONS**

The proposed transaction gives effect to a previous cabinet decision which was translated into an agreement with Lancaster Power. The remaining transactional legal implications will be dealt with via the lease and planning agreements.

#### **FINANCIAL IMPLICATIONS**

If the recommendation is adopted, the City Council will benefit from a capital receipt as set out in exempt appendix C. The asset is currently held at Nil value and the proposed terms are deemed to be at best consideration taking into account market conditions, the latent contamination in the land, terms of the original option agreement and intended use.

The purchaser has advised they are in funds to complete the transaction.

#### **OTHER RESOURCE IMPLICATIONS, such as Human Resources, Information Services, Property, Open Spaces:**

Regeneration and Planning – officer time to support the finalisation of transaction documentation

Human Resources – none

Information Services - None

Property – none as the matter will be progressed by Regeneration and Planning.

#### **SECTION 151 OFFICER'S COMMENTS**

The Section 151 Officer has been consulted and has no further comments.

#### **MONITORING OFFICER'S COMMENTS**

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

#### **BACKGROUND PAPERS**

Cabinet decision 12<sup>th</sup> February 2013  
Copy of original option agreement  
Copy of option notice  
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**Contact Officer: Richard Crompton**  
**Telephone: 01524 582331**  
**E-mail: rcrompton@lanacster.gov.uk**  
**Ref:**