

# COUNCIL

## Consideration of Options for the Regeneration of the Canal Corridor North 13 January 2016

### Report of Chief Executive

#### PURPOSE OF REPORT

To advise Council of the options open to it in relation to the existing Development Agreement for the Canal Corridor North and the ongoing requirement for regeneration of the site.

**This report is public, but the appended legal advice is exempt from publication by virtue of paragraph 5 of Schedule 12A to the Local Government Act 1972.**

#### RECOMMENDATIONS

That members note the options available to the council contained in this report, and that further consideration of the options be deferred pending the following:

- (1) That confirmation be sought in writing from British Land of their continued commitment to the project and how its financial viability would be secured. That confirmation be sought in writing from the University of Lancaster clarifying how they would propose to support the City Council and British Land in the delivery of this project.
- (2) That a detailed analysis of White Young Green's updated retail need assessment be undertaken and tested against the options contained in this report
- (3) That further legal advice be obtained to give clarity to members on the legal implications linked to the options in this report.

#### 1.0 Introduction

- 1.1 The Canal Corridor North is a description given to land between St Leonard's Gate, Moor Lane and the Lancaster Canal, which is one of the key regeneration priorities in the councils adopted Local Development Framework Core Strategy (Plan attached as Appendix 1). The council has two primary interests in the site. First as the Local Planning Authority it is responsible for guiding and regulating development to effect economic regeneration of the area, secondly as land owner of a significant part of the site it holds the land on behalf of the local community, and should use it to assist in the economic regeneration of the district.

- 1.2 The regeneration project for the Canal Corridor North has a long history which will not be known to newer members of the council. The council has had two successive development partners (Centros then British Land) but like many large regeneration schemes around the country, the recent recession and changes to the retail environment have had a considerable impact on progress. To assist new Members a summary of the history of the project is given in the next section of this report.
- 1.3 Critical background information to inform the recommendations in this report has only just been received. Officers have met with British Land accompanied by representatives of the University of Lancaster who are keen to support the scheme as its implementation is important to the university's future. British Land advise that whilst the original proposals for a two anchor store scheme no longer fit with current retail demand, they remain fully committed to working towards the delivery of a scheme with a reduced amount of retailing and a larger food and beverage quarter linked to growing the cultural hub on the site. The council's retail consultants White Young Green have re-examined the retail demand assumptions for retail growth in Lancaster District and its wider catchment.

## **2.0 The history of the regeneration project.**

- 2.1 The City Council adopted the Lancaster Canal Corridor North Development Brief (Appendix 2) in May 2002. This was a Supplementary Planning Guidance Note, which set out detailed guidance for the development of the site, which comprises an area of previously developed land forming the gateway to the commercial heart of the city, and linking the city centre with surrounding residential and industrial areas. The Brief highlighted the need to regenerate the site, and identified a range of potentially acceptable uses, including retail.
- 2.2 The site was in a variety of ownerships, with the major landowners being the Council itself and Mitchell's Brewery. In 2004, the Council was approached by developers Centros Miller, a company specialising in the development of retail led mixed-use developments. It was known that Centros Miller had entered into an exclusivity agreement with Mitchell's, and were preparing to enter into a sale by way of a development agreement. Accordingly, in March 2005, the Council approved the appointment of Centros Miller as its preferred developer for the Canal Corridor site.
- 2.3 In October 2006, the Council entered into a development agreement with Centros Miller, Miller Developments Holdings Limited and DV3 Centros Miller Limited. The agreement was on the basis that the developer would assemble all the land required for the scheme, transfer the entire freehold interest in the site to the Council and then take a long lease of the land back from the Council. The development agreement provided for there to be an "anchor store" of at least 50,000 square feet net lettable. Cabinet approved the Development Agreement on 25<sup>th</sup> July 2006. (Centros Miller restructured as a company and subsequently became Centros).
- 2.4 As a condition of the development agreement, Centros submitted various planning applications for the comprehensive redevelopment of the site, and, following a call-in request made by the Secretary of State, and a local inquiry into the proposals, the applications were refused in December 2009. This decision confirmed the need to regenerate the site, accepted (for the most part) that retail need existed for the proposed development, and confirmed that the transport implications of the proposal could be mitigated to an

acceptable standard. (The retail need came from evidence showing a significant loss of trade from the district and its catchment from shoppers travelling to higher order centres such as Manchester for a better quality shopping experience).

- 2.5 However, the application was refused mainly on built heritage grounds. Following this decision, and in order to deal with matters that had led to the refusal, discussions with Centros, Mitchells and English Heritage continued, and a new boundary to the Lancaster Centre Conservation Area was designated in May 2011, and an Appraisal of Heritage Assets was published in March 2012. In the meantime, in view of the planning position, and also the recession and changes in the retail sector, the plans for the development were effectively put on hold.
- 2.6 The 2006 development agreement had a “long stop” date of October 2011, by which time the conditions in the agreement had to be completed. The main condition was to obtain a suitable planning permission for the development. By January 2011, it was clear that this condition would not be met. However, at the request of Centros and Mitchell’s, the Council in January 2011 agreed to discuss with Centros the extension and amendment of the development agreement.
- 2.7 The discussions with Centros were reported to Cabinet in March 2012. Subsequently, in July 2012, Council approved the variation of the development agreement, and a deed of variation was completed on the 21<sup>st</sup> November 2012. The varied development agreement was between the Council, Centros Lancaster Limited Partnership and British Land Company PLC (their new funding partners). Rather than providing for one anchor store, the varied agreement provided for two or three large retail units performing an anchor role, one of which may be a supermarket.
- 2.8 On the 30<sup>th</sup> November 2012, British Land announced that it had acquired the Canal Corridor North Site, including the former Mitchell’s brewery, and that it had retained Centros as its Development Manager. It subsequently appointed a team of architects and consultants to progress the development.
- 2.9 Clause 2.6.2 of the amended development agreement provides that *“in the event that any of the following events has not occurred by the Interim Conditions Longstop Date, namely submission of a Planning Application by the developer in accordance with part 1 of Schedule 1 and/or satisfaction or waiver by the Developer of paragraph (a) of the Letting Condition in respect of each of the Anchor Stores and /or satisfaction or waiver by the Developer of the Survey Condition save where the same has not been satisfied due to reasonable access to any part of the Site necessary to satisfy the same not being available, then either party shall be entitled prior to satisfaction of the Conditions to determine the agreement by giving notice in writing to such effect to the other”*.
- 2.10 That longstop date was 21<sup>st</sup> November 2014 and that date passed without any planning applications being submitted to the council.

### **3.0 Options available to the City Council.**

- 3.1 With the passing of the date by which planning applications should have been submitted to the council, the council now has to consider how to act. This is a matter of strategic importance to the council and will also reflect on the council’s external reputation with the development industry. It is also now clear that the development of a stronger retail and cultural offer in Lancaster city centre is of key importance to the ongoing development of the University

of Lancaster one of the district's key economic drivers. Certainty about the scheme, and the council's approach to it also impacts on future investment decisions by third parties. Accordingly it requires careful assessment of a wide range of considerations. Some relate to planning policy matters, some relate to economic growth issues, and some relate to the need for commercial certainty in this matter. Officers have sought specialist legal advice to ensure that the council is fully aware of any legal consequences which could arise from either party terminating the Development Agreement. (That advice is provided as Appendix 3 to this report). **As legal advice this appendix is Exempt.**

- 3.2 Members will see that the council is free to give notice to terminate the Development Agreement if it should so wish. However, if the Council wished to continue with British Land, the advice states that any changes to the scheme that were more than minor in nature would raise new procurement issues that would need to be addressed. The council accordingly has a number of options to consider on how to proceed.
- 3.3 As an essential part of considering options officers advise council to first have regard to its emerging new Local Plan for the area. Along with many other considerations the Local Plan must reconsider the allocation of the Canal Corridor North for retail led development. The Planning Inspectorate will want to see evidence of the changing retail need for the area, and if this still supports such a development or a modification to a more mixed range of uses in the post-recession economy, that a revised scheme is deliverable within the plan period.
- 3.4 The council needs to revisit its evidence base for retail need in the district. Although the initial updating of figures has now been completed by the council's consultants White Young Green, some time is now needed to carefully analyse the implications of this new information. If there remains a continuing need for retail development, albeit revised in scale and mixed with other uses then the council should consider whether to continue to allocate this site to meet those needs in its new Local Plan. If there were no continuing retail need the council would have to consider how the site should be treated in the Local Plan for the next plan period.
- 3.5 The 2009 Local Inquiry and subsequent Secretary of State's decision acknowledged that the Canal Corridor North provides the only realistic option for extending Lancaster City centre should need require it. This presents the council with another dilemma. If there were no continuing retail need at this time for further retail/commercial growth would the council be wise to allow the site to be developed for other purposes, or should it seek to safeguard the land in some way should future needs arise, whilst enabling existing uses to remain? If the site were redeveloped for non-retail purposes and a future need arise then the potential threat of out of centre retail might arise. The new Local Plan would have needed to address this issue very carefully.
- 3.6 Council will also have to take into account the impact of the various land ownerships on their options. The council owns almost half of the site within the Canal Corridor North but that ownership mainly consists of open car parking which is an important community asset. It does not own the land and buildings closest to the city centre, the Mitchells Brewery or the Heron Chemical Works. (see 2.8) Even though it can attempt to influence the reuse of land and buildings through the Local Plan process, the council cannot force other landowners to develop their sites for other purposes if they do not want to.
- 3.7 With the complexities of land ownership therefore members need to

acknowledge that allocating the land for other uses is only realistic on a piecemeal basis which understands the land ownership issues. The ability of the site to be brought forward for comprehensive redevelopment is unlikely without a Development Agreement of a similar type to that which currently exists, whatever the form of redevelopment. Another way to achieve a comprehensive development could be through Compulsory Purchase but that would be a very high risk strategy with little prospect of success given all other factors associated with land ownership and economic viability.

3.8 If the council opts to engage in a new master planning exercise it could only realistically concentrate on promoting the regeneration of a number of individual key sites and buildings whilst encouraging the remainder of the private sector land holdings to remain in their current uses. Given the extent of British Land’s ownership a new Development Brief would have little credibility without their support for its contents. This could mean that the Dukes and Grand theatres might pursue their own regeneration schemes, and that attempts could be made to preserve or reuse the Mitchells Brewery and Heron Chemical Works. Council needs to appreciate however that its ability to attract external funding to assist with such an approach may be constrained by the lack of a wider comprehensive project.

**4.0 Details of Consultation**

4.1 The Council’s retail consultants White Young Green have been instructed to provide the council with an updated assessment of retail need for the district. That has only just been received and has yet to be analysed in detail.

**5.0 Options and Options Analysis (including risk assessment)**

	<b>Option 1:</b> Continue to work with British Land to promote retail led development addressing procurement issues as appropriate	<b>Option 2:</b> Terminate the Development Agreement and allocate all or part of the site for other non retail uses	<b>Option 3:</b> Terminate the Development Agreement, but safeguard the site for future retail growth by regenerating existing uses.
Advantages	Maintains confidence about commercial growth in the City centre, and provides for it in a sustainable location	Creates certainty for other investors in the city centre about the extent of the centre and capacity	Enables certainty for other investors in the city centre in the medium term but doesn’t prevent planned expansion in the future
Disadvantages	Unless there remains clear retail need, development could decant existing uses from the existing centre leaving vacancies	Potentially removes scope for expanding the centre in the future and reduces confidence that the retail experience will improve. British Land still controls almost half the site and may oppose the Local Plan. The council would lose its car	British Land still control almost half the site and may oppose the Local Plan. Removes confidence that the city’s retail offer will improve. The built form on the site will continue to fall into dereliction including heritage assets

		parks if it allocates its own land for other purposes	without proactive regeneration projects to restore them.
Risks	Predicting retail needs and trends in a post recession environment	Future demand returning could bring pressure for out of centre development Reputational/credibility risks with funders and investors	It may be very difficult to secure funding to undertake interim regeneration of buildings within the site because the investment will be isolated from a comprehensive scheme.

## 6.0 Officer Preferred Option (and comments)

- 6.1 In the time given to officers to prepare this report for council a view has been obtained from the developer about their commitment to the site, and their vision of what the development could contain in the post recession environment. Initial findings have also been provided by the council's retail consultants. Both have however been obtained very recently and officers need time to analyse them against the options available to the council.
- 6.2 It would also be necessary for commitment in writing to be obtained from British Land confirming how they would be prepared to proceed and on what terms. Equally commitment from other key parties who could have a major influence on the delivery of the scheme needs to be sought.
- 6.3 Further external legal advice would also be sought in the light of this additional information, to assess the further implications arising from the three options set out above.

## 7.0 Conclusion

- 7.1 This is a very important issue for the City Council to consider. The future of a major regeneration project for the whole district has wide ranging impacts including impacts on the attractiveness of future growth promoted by the new Local Plan, and the ability of the district to retain and attract a new workforce. The viability and vitality of the City Centre is important for all the communities who use it, and for many organisations in the local economy because of its influence in recruitment and attracting investment.

### RELATIONSHIP TO POLICY FRAMEWORK

The Corporate Plan promotes economic growth as one of its priorities. The Canal Corridor North is a key regeneration project in the adopted Local Development Framework Core Strategy.

### CONCLUSION OF IMPACT ASSESSMENT

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

Ensuring that the districts economy is sustainable is a high priority for the council and enables local communities to access a whole range of goods and services locally and in a sustainable location without the need to travel to other districts.

### **LEGAL IMPLICATIONS**

Preliminary legal advice is appended to the report, and further advice will be sought in the light of further information received and the emerging options.

### **FINANCIAL IMPLICATIONS**

The existing Development Agreement sets out the financial arrangements for the integration of the council's land into the scheme and the returns for the community arising from that in future years. If the Development agreement is terminated those arrangements will cease to exist. There would be no other direct financial implications arising as a result, however.

If the existing Development Agreement is to be amended significantly or a new agreement entered into in relation to any redesigned scheme, then those terms would need to be revisited. This may give rise to new financial terms and implications.

Council should note that for any development proposals to be considered, reasonable assurance is needed regarding their financial viability, to ensure that the Council demonstrates due diligence, and this is provided for in the recommendations.

At a more minor level, there would be some further legal costs incurred in support of the recommendations and these would be funded from within existing budgets.

### **OTHER RESOURCE IMPLICATIONS**

#### **Human Resources:**

This is a mainstream planning policy and development management issue for the council and is resourced through existing service budgets

#### **Information Services:**

None

#### **Property:**

How the council proceeds will have an impact on the council's property assets.

#### **Open Spaces:**

None

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

The s151 Officer has been consulted and has no further comments given that is an interim report with no final decisions being sought.

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

The Monitoring Officer has been consulted and has no further comments at this stage.

### **BACKGROUND PAPERS**

Appendices attached to the report

**Contact Officer:** Andrew Dobson

**Telephone:** 01524 582303

**E-mail:** adobson@lancaster.gov.uk

**Ref:**