

**Title of Report :** Westgate - S106 and S278 approvals

**Report of :** Financial and Asset Management Business Manager

**To :** Executive Board

**Date:** 22<sup>nd</sup> January 2007

**Item No :**

**Purpose of report :** To seek the Executive Board's endorsement of the terms of the Section 106 and Section 278 agreements as they affect the Council's property landholdings

**Decision :** No

**Portfolio Holder :** Councillor John Goddard

**Scrutiny Responsibility :** Finance

**Ward(s) affected :** All

**Report Approved by :** Councillor John Goddard - Portfolio Holder

Msay Cane - Legal and Democratic Services

Penny Gardner - Financial and Asset Management Business Manager

**Policy Framework :** To improve the environment in which we live and work, provide more affordable housing, creating local prosperity and sustaining full employment, improving transport and mobility, and maintaining financial stability.

**Recommendation(s) :**

1. To authorise the City Council's entry into the S106 agreement on the terms set out in this report, noting that in so doing it is acting in its capacity as land owner, and not as planning authority.

2. To agree to the dedication as highway of certain relevant areas of Council owned land within the Westgate development site in accordance with the S278 agreement

## **BACKGROUND**

1. Members will recall that a full report on the land transaction negotiations concerning the Westgate redevelopment was considered and approved by the Executive Board at its meeting on 9 October 2006.
2. Following the Strategic Development Control Committee's approval in principle of the planning application for the Westgate redevelopment on 30 October 2006, negotiations between the developer, the County Council and the City Council over the terms of the S106 agreement have continued. This agreement has annexed to it the terms of an agreement under S278 of the Highways Act 1980, which relates to highways works and requires the dedication of certain Council owned land for highway purposes.
3. Negotiations are now drawing to a conclusion with officers of the City and County Councils having reached agreement in principle with the developer over the terms of both the S106 agreement and S278 agreement. Once the drafts of the agreements are settled, as the Secretary of State has now decided not to call in the application, the agreements may be sealed and completed following which planning permission may be issued.

## **TERMS OF THE S106 AGREEMENT**

4. Under the proposed terms of the draft S106 agreement, both the City Council and the County Council require contributions to be made to mitigate the impact of the development. The main contributions are:

### To the City Council

- Affordable Housing at 50% of all residential units. This represents 64 affordable units split between 32 shared ownership and 32 rented units
- Supervised play facility
- Sustainable energy (biomass or alternative): £1,200,000
- Improvements to Bonn Square: £500,000
- Noise mitigation (Tennyson Lodge): £75,000
- Provision of play equipment: £10,000
- Police Monitoring equipment: £33,000
- Way finding: £18,000
- Establishment of car club: £10,000

### To the County Council

- Transport infrastructure: £3,800,000
- Bus Stops: £5,000
- Education facilities: £88,233
- Library facilities: £3,960

- Museum Resource Centre: £1,565
  - Social and health care: £7,520
  - Waste management: £12,148
  - Variable message signage: £350,000
5. In addition to these financial contributions and the S278 agreement, the S106 also covers the appointment of a sustainable energy/transport manager, a sustainable travel plan, a training and employment strategy and the provision of a cycle shop.

## FINANCIAL IMPLICATIONS

6. The S106 agreement contains direct covenants on the part of the City Council as landowner to pay the above stated contributions and fulfil the obligations in the event that the developer were to default in its performance (but note the mitigation measures set out in paragraph 9 below).

## THE CITY COUNCIL AS LANDOWNER

7. S106 obligations are registerable as local land charges and as such are encumbrances on the Council land.
8. The direct covenants could place a financial burden on the Council as set out in paragraphs 5, 6 and 8 above.
9. Officers have, however, negotiated to ensure that the Council's position is safeguarded. The developer's parent company will provide a full indemnity package to safeguard the City Council's position as landowner.
10. In addition most of the contributions are only triggered by actual commencement of development, and as this will be strictly controlled by the City Council under the terms of the Development Agreement, there is little prospect of the payments becoming due in such a way that the developer would not be liable to meet them.

## CONCLUSION AND RECOMMENDATION

11. Now the S106 obligations and contributions are agreed in principle and the detail of the legal agreement virtually resolved, the Executive Board needs to consider the obligations which fall on the City Council as landowner.
12. The Executive Board is recommended to authorise the City Council's entry into the S106 agreement on the terms set out in this report. In so doing the Executive Board should note that it is acting in its capacity as landowner, and not as planning authority.

- 13 The Executive Board is recommended to agree to the dedication as highway of appropriate areas of Council owned land within the Westgate development site in accordance with the S278 agreement. A plan will be available at the meeting showing the relevant areas.

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