

To: City Executive Board

Date: 31st March 2010 **Item No:**

Report of: Interim Head of Corporate Assets

Title of Report: Westgate Redevelopment –
Novation of Development Agreement

Summary and Recommendations

Purpose of report:	To seek approval to the terms and conditions for a novation (assignment) of the existing Development Agreement in relation to the Westgate Project to Crown Estate.
Key decision?	No
Executive lead member:	Councillor Oscar van Nooijen, Service Transformation Councillor Colin Cook, City Development
Report approved by:	Mel Barrett, Executive Director, City Regeneration
Finance:	Gillian Chandler
Legal:	Lindsay Cane (TBC)
Policy Framework:	West End Area Action Plan and Regeneration Strategy
Recommendation(s):	City Executive Board is recommended to: 1. Approve the terms and conditions for the novation (assignment) of the Westgate Development Agreement, as set out in confidential annex to this report, and otherwise on detailed terms to be approved by the Executive Director, City Regeneration in consultation with the Lead Members for Service Transformation and City Development.

2. To agree proposals to pursue discussions with the Crown Estate in relation to their future development intentions, subject to a report back.

Background

1. Officers were approached by Liberty (Capital Shopping Centres) shortly before Christmas 2009 and were advised, in commercial confidence, that they were in advanced discussions with the Crown Estate regarding the purchase of their property interest in the Westgate Centre. That transaction involves the assignment of Liberty's head leasehold interest in the property and under these circumstances the City Council as freeholder does not have an opportunity to object as the lease is subject to "landlord's consent not to be unreasonable withheld" provisions, which is not unusual in the context of a headlease held for investment purposes. We are advised that a conditional contract between Liberty and Crown Estate in this respect has now been exchanged.
2. Liberty made it clear that at the same time the Crown Estate would be looking for a novation (assignment) of the existing Development Agreement, the situation in this regard is quite different, with the assignment of the Development Agreement from Liberty to Crown Estate requiring the consent of the Council completely at the Council's discretion. Until the purchase of the existing head leasehold interest is finalised the Council does not have a formal relationship with Crown Estate. As part of any transaction the Council will be undertaking due diligence, which will be proportionate to an organisation of Crown Estate's reputation and standing.
3. The Crown Estate manages a substantial property portfolio comprising commercial, industrial, agricultural and marine holdings on behalf of the Monarch to a value of some £6 billion. Annual revenue surpluses are paid to the Treasury. Principally their main commercial assets are centred on Regent Street and St James's in London, however they have recently made a decision to diversify away from non core London holdings by developing their "diversification portfolio". They are now looking for suitable assets where there are good property supply and demand dynamics. On that basis they have identified their interest in the Westgate Centre in Oxford. Crown Estate advise that they take a long term strategic view, and are by their very nature a long term investor. Crown Estate undertake direct development utilising their own resources as well as Joint Venture/ Partnership arrangements with like minded organisations in order to share development costs and risks.
4. The immediate issues therefore are based on an assignment of the leasehold interest in the Westgate Centre, together with a novation (assignment) of the existing Development Agreement.

5. The assignment of the lease is a procedural issue and is not referred to further in this report. This is approved utilising Officers' delegated authority.
6. Members will be aware that City Executive Board at its meeting of 2nd December 2009 recently determined that the existing Development Agreement should not be brought to an end for at least six months, until 30th June 2010, following that date it can be terminated by either party.
7. The potential involvement of Crown Estate is viewed positively. It has the potential to breathe new life into the project from an investor with a track record of taking a long term view, producing high quality schemes of redevelopment which respect important historic environments. It should be understood however that there will be no immediate firm development commitment from Crown Estate as part of this initial transaction. In the event that the sale to Crown Estate proceeds then we would anticipate that they would wish to undertake a detailed and considered process to review the scheme of development in the context of changed market circumstances, the views of John Lewis Partnership as the potential anchor tenant, together with the aspirations of the City Council and other stakeholders. Early indications are however that they would wish to progress those discussions quickly.
8. Property advisors CBRE and solicitors Lawrence Graham (both of whom originally advised the Council in relation to the Westgate Development Agreement and have continued to provide ad hoc advice since) are being retained to advise the Council in this matter, and to deal with any required legal matters. Their associated costs will be met by Liberty and an undertaking in that respect has been obtained from them.

Report

9. In a number of areas negotiations with Liberty/Crown Estate are very much work in progress, and for that reason delegated authority is being sought for the final detailed terms to be approved by the Executive Director, City Regeneration, in consultation with the Lead Members for Service Transformation and City Development.
10. Because negotiations are in progress and/or issues are commercially sensitive, those details are included solely within the confidential appendix to this report. None of the contents of that confidential appendix are repeated in this report.

Abbey Place

11. The confidential appendix sets out the detailed proposals for a sale of the existing Abbey Place building to the Crown Estate.

12. The way will then be open for Crown Estate to provide beneficial residential occupation of the currently vacant units in the property in the short term without fettering long term redevelopment potential.
13. That transaction requires the Secretary of State's consent to disposal under the provisions of Section 32 of the Housing Act 1985. This is principally because of the fact that it is a sale out of the Housing Revenue Account to a party not intending to use it for owner occupation, and on that basis does not fall within the ambit of the issued General Consent.

Financial Implications

14. Liberty gave the Council an indemnity on 18th October 2007 in respect of (1) lost income and (2) all fees, costs, compensation, expenses and other liabilities that may be incurred by the Council or payable by the Council directly or indirectly as a result of the Council terminating a variety of leases and agreements primarily relating to the erection of hoardings in and around the Westgate multi-storey car park and the lease of a kiosk. Those costs are in the process of being finalised. To this will be added the cost of Council officers own time associated with administering certain aspects of the matter.
15. All the Council's legal and surveyors fees in relation to the negotiation and legal formalities associated with the novation of the Development Agreement will be met by Liberty, and a formal undertaking has been obtained from them in that respect.
16. All other costs outstanding including the full costs associated with the relocation of the occupants of Abbey Place will be reconciled as part of the transaction in accordance with the CPO Indemnity Agreement.

Sustainability/Climate Change Implications

17. There are no direct environmental implications arising out of the contents of this report.

Planning Implications

18. Related to the assignment of the Development Agreement is a desire from Crown Estate to keep the existing planning consent alive. An application for renewal of the existing consent was submitted on 1st March and will be progressed in the usual way by the Planning Authority.

Equalities Implications

19. There are no direct implications arising out of this report. Any development of the site in due course will accord with current Building Regulations.

Risk Implications

20. A risk assessment has been undertaken and the risk register is attached as Appendix 1.

Recommendations

CEB is recommended to:

21. Approve the terms and conditions for the novation (assignment) of the Westgate Development Agreement, as set out in this report, and otherwise on detailed terms to be approved by the Executive Director, City Regeneration in consultation with the Lead Members for Service Transformation and City Development.
22. To agree proposals to pursue discussions with the Crown Estate in relation to their future development intentions, subject to a report back

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List of background papers:

CEB Report 26th November 2008 –
Westgate Redevelopment – Update and Proposal

CEB Report Risk Register

Risk Score	Impact Score: 1 = Insignificant; 2 = Minor; 3 = Moderate; 4 = Major; 5 = Catastrophic Probability Score: 1 = Rare; 2 = Unlikely; 3 = Possible; 4 = Likely; 5 = Almost Certain
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No.	Risk Description Link to Corporate Objectives	Gross Risk		Cause of Risk	Mitigation	Net Risk		Further Management of Risk: Transfer/Accept/Reduce/Avoid		Monitoring Effectiveness				Current Risk	
								Q	Q	Q	Q	I	P		
1.	Conditional agreement with the Council does not complete. Improve the local environment, economy and quality of life – West End Area Action Plan and Regeneration Strategy.	3	4	Agreement between Liberty and Crown Estate does not complete. Relationship with Liberty endures or they withdraw from the Development Agreement, impact potentially on timing and quality of development.	Mitigating Control: Adopt a reasonable negotiating position. Facilitate required programme through timely response. Level of Effectiveness: (M)	3	3	Action: Continue close relationship with Crown Estate, Liberty and Lead Members Action Owner: Steve Sprason Mitigating Control: Regular monitoring and review. Control Owner: Steve Sprason	Outcome required: Novation of Development Agreement completed. Milestone Date: 30 th April 2010	Q 1 ☹ ☹ ☺	Q 2 ☹ ☹ ☺	Q 3 ☹ ☹ ☺	Q 4 ☹ ☹ ☺	I	P
2.	Conditional agreement with the Council does not complete.	3	3	Failure of Council to obtain Section 32, Housing Act 1985 Consent. Relationship with Liberty endures or they withdraw from the Development Agreement, impact potentially on timing and quality of development.	Mitigating Control: Ensure professional approach, and full compliance with required technical aspects of consent application. Level of Effectiveness: (M)	4	2	Action: Close liaison with professional advisors in the formulation of the formal application. Action Owner: Steve Sprason Mitigating Control: Regular monitoring and review. Control Owner: Steve Sprason	Outcome required: Secretary of State consent obtained. Milestone Date: 30 th April 2010						

