

Officer Non Key Executive Decision

Report to:	Chief Executive
Relevant Officer:	Neil Jack, Chief Executive
Relevant Cabinet Member:	Councillor Simon Blackburn, Leader of the Council
Date of Implementation:	14 January 2020

SALE AGREEMENT RELATING TO BLACKPOOL CENTRAL

1.0 Purpose of the report:

- 1.1 To outline and seek approval of the proposed final terms of the legal contract between the Council and Nikal Limited and Media Invest Entertainment (MIE), ('the Developer') for the delivery of the 'Blackpool Central' scheme

2.0 Recommendation(s):

- 2.1 To approve that the Council enters into the legal contract 'Sale Agreement relating to Blackpool Central' with the Developer. This overarching agreement includes Conditional Agreement to Lease between the Council and the Developer for the area of land to deliver the Enabling Phase / Multi-Storey Car Park (MSCP) of the scheme, together with a number of Option agreements which will enable the drawdown of subsequent areas of the site, to deliver Phases 1, 2 and 3 of the Blackpool Central scheme.
- 2.2 In accordance with the above agreement, to approve that the Council enters into the subsequent 250 year long lease arrangements for the land for each relevant phase of the development (subject to satisfactory completion of the required Conditions and the request to drawdown sites by the Developer).
- 2.3 To note that under the terms of the above agreement and in accordance with the Conditions relating to delivery of the Enabling Phase, the Council and the Developer have agreed to negotiate and agree the 'MSCP Agreement for Occupational lease'. This will result in the Council taking a lease back from the Developer for the new Multi-Storey Car Park, the Heads of Terms for which have been previously agreed but require final approval upon appointment of a successful Investor.
- 2.4 In addition to the above, to delegate authority to the Head of Legal Services to enter into any proposed legal agreements relating to the scheme.

3.0 Reasons for recommendation(s):

3.1 To enable the Developer to deliver the 'Blackpool Central' development proposals, to ensure the comprehensive redevelopment of the site and to protect the Council's interests.

3.2a Is the recommendation contrary to a plan or strategy adopted or approved by the Council? No

3.2b Is the recommendation in accordance with the Council's approved budget? Yes

3.3 Other alternative options to be considered:

3.3a The alternative option not to enter into the 'Sale Agreement relating to Blackpool Central' and subsequent future lease arrangements would have a significant deleterious impact upon the delivery of the project and would delay or prohibit the long term delivery of the scheme. It would also have a detrimental impact on the relationship with the Developers who have been working with the Council over the past two years to bring forward their plans for Blackpool Central project.

4.0 Council Priority:

4.1 The relevant Council Priorities for this project are:

- "The economy: Maximising growth and opportunity across Blackpool"
- "Communities: Creating stronger communities and increasing resilience"

5.0 Background Information

5.1 This report follows previous Executive Decisions relating to the proposed 'Blackpool Central' project.

5.2 Executive Report EX57/18 December 2018 and EX22/19 February 2019 provided information in relation to the proposals for a comprehensive private sector leisure led investment scheme, which has the potential to see £300m of regeneration and investment on the former Central Leisure Quarter site.

5.3 The Executive made the decision to delegate authority to the Chief Executive for the approval of the final terms of the land sale arrangement. The Executive agreed also to delegate authority to the Head of Legal Services to enter into any proposed agreements relating to the scheme.

- 5.4 The Council appointed DWF Legal Advisors and JLL Property Consultants LLP to support in the negotiations with the Developer and prepare the final legal terms for the transaction.
- 5.5 Discussions and negotiations have continued with the Developer and their respective legal teams over recent months. This document is intended to set out the contractual terms of the legal documents that have been agreed between the parties, throughout the course of these negotiations.
- 5.6 The terms proposed for the transactions are those which are assessed by the Council and its professional teams to meet the desire and ambitions of the Council for the comprehensive redevelopment of the former Central Leisure Quarter site. They are set out to ensure the deliverability of the project, whilst ensuring that the Council meets its statutory obligations under Section 123 Local Government Act 1972, achieving the best price reasonably obtainable for the Blackpool Central site and the desire to retain revenue income for the Council in the long term.

5.7 **Basis of the Agreement**

5.7.1 The land disposal will be based upon agreement for the long lease (250 years) of areas of the site to deliver the following phases, in accordance with the concept masterplan approved by the Council's Executive in December 2018.

- A) Enabling Phase (Multi-storey car park and associated public realm works);
- B) Phase 1 (Chariots of the Gods attractions, food hall /artisan market, hotel and public realm works), and
- C) Phase 2 (Hotel, residential and music venue/nightclub).

The legal agreement also accommodates any potential future changes to the areas designated as Enabling, Phase 1 and Phase 2, subject to agreement between the parties.

5.8.2 The disposal of land to deliver Phases 3 and 4 of the masterplan will be dealt with by way of future market valuations and financial negotiations, with Phase 3 having an agreed minimum value. This will help to secure early delivery of the Blackpool Central project, whilst allowing the Council and Developer further time to resolve matters in relation to the relocation of Blackpool Magistrates and County Courts. It will also allow the Developer additional time to have dialogue with the proprietors of properties and assets along the promenade and understand their aspirations in the context of the wider development proposals and how they might be accommodated in the overall scheme, forming Phase 4 of the project.

5.8.3 Notwithstanding the above, the Developer will be under conditional obligations to set out the vision of their proposals within a hybrid Planning application for all areas of the site, in

line with requirements set out in the Leisure Quarter Development Brief Supplementary Planning Document Adopted March 2011.

6.0 Terms of Agreement relating to Blackpool Central

6.1 The terms of the Agreement relating to Blackpool Central, are set out as follows:-

6.1.1 The Council will enter into an overarching agreement, with the Developer for the area of land on the Central Leisure Quarter site, shown on Plan A. This will enable the Developer to deliver the 'Blackpool Central' scheme as outlined and proposed on Plan B. (Plans included within Appendix 1)

6.1.2 The agreement contains a conditional agreement for the grant of the initial lease for the 'MSCP / Enabling Phase'. The Developer will then have the ability to exercise a number of 'Options' to draw down land to deliver 'Phase 1' and 'Phase 2' of the proposal (illustrated on Plan C, Appendix 1). Phase 3 Option (illustrated on Plan D, Appendix 1) can be drawn down once the site has been made available by the Council. The value of Phase 3 will be that as being assessed as the 'market value' for the site at the time draw down is required by the Developer, but it will in any event have a minimum value.

6.1.3 The lease for the MSCP / Enabling Phase will be granted and each of the Options will be exercisable following compliance with specific Phase Conditions. These Options will lapse in the event that the conditions are not satisfied in a timely manner. The conditions as stipulated within the Agreement are as follows:-

Overarching and Enabling Conditions:

- Planning Condition
- Enabling Phase Condition
- Highways Condition
- Enabling Phase Funding Condition
- Enabling Phase pre-let condition
- Site Investigation Condition
- Enabling Phase Site Assembly Condition

Phase 1 Conditions:

- Phase 1 Planning Condition
- Site Assembly Condition
- Funding Condition
- Pre-Let Condition
- Building Contract Condition
- Drawdown Condition

Phase 2 Conditions:

- Planning Conditions
- Site Assembly Condition
- Funding Condition
- Building Contract Condition
- Drawdown Condition

Phase 3 Conditions:

- Planning Conditions
- Site Assembly Condition
- Funding Condition
- Building Contract Condition
- Drawdown Condition

The detail of each of the Conditions is contained within the legal agreement.

6.2 **Conditions placed upon the Council**

6.2.1 Whilst there are a series of Conditions placed upon the Developer prior to having the ability to draw down sites, there are also a number of Conditions which will be placed upon the Council and will be required to be satisfied to support the sale and draw down of land.

6.3 The Council's primary Conditions relate to:

- 6.3.1 A) Site Assembly - provision to secure and provide vacant possession of the site and existing premises. In order to satisfy this Condition the Council may have to consider the use of compulsory purchase powers and powers to appropriate.
- 6.3.2 B) The provision under the Highways Condition relate to the Council pursuing and securing that Seaside Way and Yeadon Way are formally adopted as Highways and maintainable at public expense by the Local Highway Authority.

6.4 **Enabling Phase an Occupational Lease of the Multi-Storey Car Park (MSCP).**

6.4.1 The Enabling Phase of the development will consist of the construction of a new multi-storey car park (1,300 car spaces), together with associated public realm works. On completion of the construction of the car park the Developer will be looking to dispose of the asset to a third party investor.

6.5 **Multi-Storey Car Park – 'Agreement for Occupational Lease'**

6.5.1 Under the terms of the 'Enabling Phase Pre-let Condition' contained within the legal contract, the parties will negotiate and agree the 'MSCP Agreement for Occupational

Lease' for the new multi storey car park from the Developer to the Council.

6.5.2 On satisfactory completion of all Conditions relating to the Enabling Phase, the Developer will then be contractually obliged to novate the 'MSCP Agreement for Occupational lease' to the third party investor. This will result in a direct relationship being formed between the Investor and the Council, with the contractual relationship with the Developer relating to the MSCP falling away.

6.5.3 The purpose of the grant of the occupational lease to the Council of the MSCP is to ensure that there is a continued long term revenue income to the Council. The financial assessment related to the MSCP is in Appendix 2.

6.6 **Short term arrangement for use of existing car parks**

6.6.1 The agreement with the Developer will allow the Council to continue to operate and take the financial benefit from the majority of existing car parking spaces on Central, Chapel Street and Bonny Street, throughout the Enabling Phase of the development. This will ensure that there is limited impact on car parking spaces in and around the town centre for visitor parking, whilst also reducing the impact on Council revenue income. However once the new MSCP opens the intention is to close the existing surface level car parks, allowing development of Phase 1 and 2 to take place.

6.7 **Non-Development (Landlords Break)**

6.7.1 Subsequent to the Developer having drawn down the land there will also be the provision of 'non-development' Landlord break within the terms of each phase lease.

6.7.2 The non-development provision is designed to protect the Council and incentivise the Developer into delivery of the proposed scheme. The effect of the non-development break clause enables the Council to take back the land in the event that there is no material development on site within a period of 5 years, after satisfactory completion of the conditions and having drawn down the land.

Does the information submitted include any exempt information?

Yes

7.0 **List of Appendices:**

7.1 Appendix 1: Plan A (Land Sale Plan)
Plan B (concept masterplan as agreed December 2018)
Plan C (Areas illustrating Enabling Phase, Phase 1 and Phase 2)
Plan D (Area illustrating Phase 3)
Plan E (Area illustrating Phase 4)

Appendix 2: Financial Terms and Assumptions

8.0 Legal Considerations:

- 8.1 The proposed 'Sale Agreement relating to Blackpool Central' incorporates Conditional Agreements to lease for land associated with the enabling phase of the Blackpool Central Scheme and the grant of options for leases of the remaining phases of the Blackpool Central Scheme as described in this report.
- 8.2 The proposed agreement also includes an obligation for the Council and the Developer to agree the form of agreement for lease relating to the proposed occupational lease back of the MSCP to the Council. Heads of terms have been agreed between the parties in respect of this lease but it should be noted that these are not legally binding. The agreement by the parties of the form of agreement to occupational lease of the MSCP is a condition which has to be satisfied before the grant of the lease of the enabling phase.
- 8.3 In order to satisfy conditions within the contract, the Council will need to take steps to secure vacant possession of land associated with each phased draw down. This will require the acquisition of the remaining properties and assets on the site which currently lie outside of Council ownership. In the event that these properties cannot be acquired through the normal routes of negotiation, then the Council will have to consider the possibility of using Compulsory Purchase powers to acquire the properties. Should this be required this will be the subject of a separate report seeking the appropriate authority.
- 8.4 The Council may have to consider using its powers of appropriation pursuant to sections 122 of the Local Government Act 1972 and/or section 237 of the Town and Country Planning Act 1990 in connection with the resolution of title issues. Should this be required this will be the subject of a separate report seeking the appropriate authority.
- 8.5 In order satisfy conditions within the contract, the Council may have to consider using statutory powers in connection with the closure of highways and/or footpaths which may be required in order to facilitate the development. Should this be required this will be the subject of a separate report seeking the appropriate authority.
- 8.6 In order to satisfy conditions within the contract, the Council is required to procure the adoption of extents of Seaside Way and Yeadon Way.
- 8.7 The Council has the power under Section 123 of the Local Government Act 1972 to dispose of land in any manner they wish for the best consideration that can reasonably be obtained.

8.8 In light of the Court of Appeal decision in the Faraday Development Limited v West Berkshire Council, the Council is aware that if it seeks to impose legally enforceable obligations on the developer to carry out works specified by the Council, the arrangement risks comprising a public works contract. The Council's extent of control in the proposed agreement is limited to the exercise of its planning powers and specifying desirable outcomes of the transaction which are established principles of a land transaction and do not require a formal public procurement process to be undertaken. The Council also has the benefit of a break option in the leases, should material operations to commence development not occur.

9.0 Human Resources considerations:

9.1 None.

10.0 Equalities Considerations:

10.1 None.

11.0 Financial considerations:

11.1 The Council has taken advice from DWF LLP in relation to the contractual arrangements for the disposal of land to the Developer, this includes advice on Stamp Duty Land Tax. The advice received from DWF is contained within Appendix 2

11.2 This proposed purchase is currently exempt from publication by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972. It is considered on balance that the public interest would be not served by publishing information at this stage however once agreement with the other parties has been reached some of this information will be published.

11.3 The Council will receive a premium payment for the site, as outlined within Appendix 2. The premium payment will be received on the MSCP lease completion date.

11.4 In order for the Council to satisfy its obligations under the contract Conditions, the Council will be responsible for providing vacant possession of the site. This will require the acquisition of a number of remaining leasehold properties on Central Drive. The anticipated costs of pursuing the acquisition of these properties is contained within Appendix 2.

11.5 In order to effect delivery of Phase 3 of the project, the Council will be required to ensure vacant possession and clearance of the of the existing courts and former police buildings. The costs of this work fundamentally depends on the future

relocation of the Blackpool Magistrates and County Courts. The Council have previously undertaken feasibility assessments to identify the options associated with the clearance of the site and these are included within Appendix 2. The financial information included does not include the cost of new provision for the Courts Service.

- 11.6 In accordance with the contract terms, the Developer has allowed a sum of money and will be responsible for the remediation works associated with delivery of the Enabling Phase, Phase 1 and 2 of the site. Through the course of negotiations with the Developer the Council have agreed that, in the event that this sum is inadequate to carry out the required remediation works, then it will match fund the amount provided by the Developer. In the event that these combined funds are inadequate, then the parties have agreed to *'use their respective reasonable endeavours to agree how the excess costs shall be borne and shall consider any available options for reducing such costs or mitigating the impact of such costs on the deliverability of the development'*.
- 11.7 The Agreement includes the ability for the Developer to assign the terms of the agreement to another company i.e. Special Purpose Vehicle (SPV) which will be established for the purpose of delivering the Blackpool project, subject to the approval of the Council and the obligations of which will be guaranteed by Nikal Ltd.
- 11.8 Under the terms of the agreement, the Council and the Developer have agreed to enter into an 'Agreement for Occupational Lease of the Multi-Storey Car Park'. The anticipated income from the new multi-storey car park once in operation is included within Appendix 2.
- 11.9 Despite the significant capital receipt received there is likely to be a shortfall on Car Park revenue compared to the current yield (depending on the success of the development). This is likely to fall in 2023 and will be built into the Council Medium Term Financial Strategy.
- 12.0 Risk Management considerations:**
- 12.1 There are a number of risks associated with a project of the scale being proposed by the Developers. Many of the associated project risks will be managed and monitored throughout the duration of the project by both the Developer and the Council via a 'Risk and Issues Log / Tracker'. It should be noted however that the vast majority of delivery risks are those which will be managed by the Developer given the nature of the land sale arrangement and those which are project / phase specific.
- 12.2 There are however a range of direct Council risks which will have a bearing on the overall ability for the Developer to undertake the proposed Blackpool Central project

and those associated with protecting the Council's interest.

12.2.1 The headline risks are:

- a) Protection from lack of significant transformative development or material development.

The contractual agreement sets out to mitigate against the above risks, by placing a number of Conditions upon the Developer prior to drawing down each phase. The primary objective has been to enable development whilst not allowing the sale of the land without the Developer demonstrating a thorough intent to develop the site in accordance with pre-agreed scheme proposals, the Leisure Quarter Development Brief and subject to satisfactory completion of agreed conditions.

- b) Obligation for the Council to provide vacant possession of the site (each phase).

12.2.2 This provision requires the Council to provide the site to the Developer with vacant possession prior to draw down of each phased element. This may require the Council seeking to acquire using compulsory purchase powers.

With regards to the delivery of Phase 3, this will require the Council to have reached agreement with Her Majesty's Courts and Tribunal Service on the relocation of the Courts facilities, with the Council and HMCTS having agreed and sourced appropriate funding to resolve any capital costs associated with said relocation.

- c) Remediation of the existing site and associated contamination costs.

12.2.3 Given the former historical use of the Blackpool Central site there remains a degree of uncertainty around the condition of the ground and potential contamination. This will only be fully understood once further more detailed site investigations have been undertaken. In reference to paragraph 11.6 the Council have therefore agreed a position with the Developer which is mutually acceptable and will enable progress of the scheme to be made under the terms of the Agreement.

- d) Quantity and quality control of development

12.2.4 It should be noted that the proposed agreement is that of a 'land disposal'. As such the level of development control that the Council can impose in relation to the quantity and quality of the development are predominantly limited to those that are conditional within the agreement and those which can be applied via the statutory Planning mechanism.

In addition to the above and given the agreement with the Council to take an

occupational lease of the new multi storey car park there will be some comfort with regards to the size and quality of the car park development. This will need to adhere to standards typically expected within the industry for medium/high quality secure car park and will have to be agreed with the Council and Funding partner prior to entering into the Occupational Lease.

e) Funding and Investment

- 12.2.5 The Developers proposal relies upon the ability to find suitable and appropriate funding/investment partners, with an intention of being able to deliver development packages across the scheme of circa £50m as a preference to seeking one investment partner for the whole £300m development. The scheme delivery is therefore reliant upon the Developer's ability to attract suitable Funders.

The Developer will continue to have discussions with potential investors / funders for the Blackpool Central scheme following signing of the Agreement. In order to mitigate against the risk of selling the land prior to the Developer obtaining suitable funding, the Agreement includes Conditions that are placed upon the Developer to have an approved 'Funding Strategy' in place prior to allowing draw down of each phase demise (or part thereof).

f) Uncertainty of financial exposure

- 12.2.6 Until discussions with the Courts progresses further it is not possible to quantify the Council's financial exposure of delivering a cleared site for phase 3 of the development. The Council will seek to manage this risk through a combination of:-
- i) seeking external funding to support the relocation of other public bodies;
 - ii) timing the sale of phase 3 land to maximise value;
 - iii) configure demolition contracts to minimise costs to the public purse.

13.0 Ethical considerations:

- 13.1 None.

14.0 Internal / External Consultation undertaken:

- 14.1 Internal consultation has been undertaken with the Director of Communications and Regeneration, Growth and Prosperity Programme Director, Growth and Prosperity Board, Finance, Legal.
- 14.2 External consultation has been undertaken with DWF LLP solicitors and JLL LLP Property Consultants.

Further external consultation with the public and wider stakeholders will be undertaken as part of the statutory planning process, as the proposals for the scheme are progressed by the Developer.

15.0 Background papers:

15.1 Executive Decision EX 57/2018

15.2 Executive Decision EX22/2019

16.0 Decision of Chief Officer

16.1 To approve that the Council enters into the legal contract 'Sale Agreement relating to Blackpool Central' with the Developer. This overarching agreement includes Conditional Agreement to Lease between the Council and the Developer for the area of land to deliver the Enabling Phase / Multi-Storey Car Park (MSCP) of the scheme, together with a number of Option agreements which will enable the drawdown of subsequent areas of the site, to deliver Phases 1, 2 and 3 of the Blackpool Central scheme.

16.2 In accordance with the above agreement, to approve that the Council enters into the subsequent 250 year long lease arrangements for the land for each relevant phase of the development (subject to satisfactory completion of the required Conditions and the request to drawdown sites by the Developer).

16.3 To note that under the terms of the above agreement and in accordance with the Conditions relating to delivery of the Enabling Phase, the Council and the Developer have agreed to negotiate and agree the 'MSCP Agreement for Occupational lease'. This will result in the Council taking a lease back from the Developer for the new Multi-Storey Car Park, the Heads of Terms for which have been previously agreed but require final approval upon appointment of a successful Investor.

16.4 In addition to the above, to delegate authority to the Head of Legal Services to enter into any proposed legal agreements relating to the scheme.

17.0 Reasons for the Decision of the Chief Officer

17.1 To enable the Developer to deliver the 'Blackpool Central' development proposals, to ensure the comprehensive redevelopment of the site and to protect the Council's interests.