

Subject:	Grant of new leases Shoreham Airport		
Date of Meeting:	29 March 2018		
Report of:	Executive Director Economy Environment & Culture		
Contact Officer:	Name:	Angela Dymott	Tel: 01273 291450
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Ward(s) affected:	All		

Note: The special circumstances for non-compliance with Council Procedure Rule 7, Access to Information Rule 5 and Section 100B (4) of the Local Government Act as amended (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were due to ongoing commercially sensitive negotiations and officers were awaiting a the draft valuation report. The report could not have been deferred to a later committee meeting because the administrator requires the certainty of a committee decision before they can complete an agreement with the Environment Agency for the Adur Tidal Walls Scheme. This is needs to happen in March or April to ensure the works can commence this year.

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 A report presented to and approved by Policy, Resources and Growth Committee on 13 July 2017 sought to grant one new 350 year lease to the tenant in administration. The July committee papers are attached at Appendix 1 which detail the recommendation
- 1.2 Following lengthy and detailed discussions with the administrators on their proposals at Shoreham Airport, Brighton & Hove City Council and Worthing Borough Council ('the councils') as freeholders have now been requested to grant four new leases across the site, and additional changes to the lease terms. Most of these terms have now been provisionally agreed and a further Committee consent is required to proceed.

2. RECOMMENDATIONS:

That the Committee:-

- 2.1 Authorises the grant of four new leases across the airport estate in line with draft Heads of Terms in Part II and subject to the delegation set out in recommendation 2.2 below.
- 2.2 Grants delegated authority to the Executive Director for Economy, Environment and Culture and Executive Lead Officer, Strategy Governance and Law to

negotiate any further amendments to the Heads of Terms in order to secure the best position for the councils. Any proposed amendments to the Heads of Terms to be reported to Leaders Group prior to the granting of the four new leases

- 2.3 Grants delegated authority to the Executive Director for Economy, Environment and Culture and the Executive Lead Officer, Strategy Governance and Law to finalise the legal documents and to take any other necessary steps to give effect to the agreement described in the Heads of Terms.

3. CONTEXT/ BACKGROUND INFORMATION

BACKGROUND

- 3.1 The previous report was brought to members with outline details on the request for an extended lease as requested by the administrators of the airport.
- 3.2 This paper was presented prior to detailed heads of terms being negotiated and based on a high level agreement of principle requests from the administrator.
- 3.3 Since this report council officers have met with the administrators a number of times to reach an understanding on the detail of the changes requested.
- 3.4 The current Heads of Terms include many of the amendments requested by the administrators, resulting in the following key changes in exchange for a premium as well as payment of the deferred consideration of £1 million:
- (i) An extension from circa 140 years to 350 years
 - (ii) Various widened users across the site to facilitate development in accordance with the submitted planning applications on the airport site and adjoining New Monks Farm development
 - (iii) Changes to the overage clauses for better enforceability, removal of the overage on the development land (in lieu of up-front payment) and increased overage on the airport land
 - (iv) Changes to the airport operation provisions in the lease, as set out in the Part 2 report on the agenda.
 - (v) Work with the environment agency to dedicate land for the delivery of the Adur tidal walls project.
 - (vi) Ongoing investment into the current estate buildings.
 - (vii) Cooperation with regards to provision for a memorial for the Shoreham airshow crash.
 - (viii) Various other modernisations to the leases as recommended by the council's advisers.
- 3.5 There are still some areas that require further negotiation to ensure we have a deliverable scheme that meets the councils' best consideration requirements, and so it is recommended that delegation is given to the Executive Director for Economy, Environment and Culture, and Executive Lead Officer Strategy Governance and Law to make any further amendments to the Heads of Terms in order to secure the best position for the councils. However, this would be subject to the statutory requirements that the overall deal either meets the council's legal obligations to obtain best consideration or is within the threshold permitted under General Disposal Consent 2003 having regard to the social,

economic and environmental benefits arising; and complies with state aid rules. Any proposed amendments to the heads of terms would be reported to Leaders Group prior to the granting of the four leases.

3.6 On 1st February 2018, Worthing Borough Council agreed the following at their Joint Strategic Committee:

- *agreed in principle to the grant of four new 350 year head leases as detailed on the Plan*
- *the payment of the outstanding deferred consideration owed;*
- *the payment of a lease premium to be apportioned across the four new leases (value to be determined by an external valuer)*
- *change of uses and other terms altered as per the heads of terms;*
- *noted that a joint external valuation of the above premium for the proposed lease structures is being commissioned with Brighton & Hove City Council and that the outcome of this will inform the final premium agreed;*
- *delegated agreement of the detailed lease terms and all other steps necessary to enable the proposals outlined in this report to proceed to the Director for the Economy in consultation with the Leader of Worthing Borough Council.*

4. Context

4.1 The current heads of terms detail the list of requests from the administrators that have been negotiated by the councils in an attempt to best protect the council's investment whilst seeking to facilitate both the New Monks Farm development as well as new employment space on the airport land. It is also hoped that by agreeing these terms that it will give certainty to the delivery of the Adur tidal walls project, a key element of the Greater Brighton City Deal that was agreed between Government and the Greater Brighton Economic Board in 2014.

4.2 The grant of four individual leases will provide lease terms, specific to the individual areas of the airport which can be sold off, to include 1) the airport and current built estate along with land to facilitate the Adur tidal wall scheme which enables new development, 2) the proposed eastern development site, 3) drainage and highway land to facilitate the New Monks Farm Development and a memorial garden to commemorate the Shoreham Air Crash and 4) an area currently used as grazing land. (See plan attached at Appendix 2). The 4 proposed leases may be sold by the tenant to different parties.

4.3 Draft Heads of Terms are provided as an appendix to Part 2 of this report. These terms will enable future tenants to have greater clarity on the detailed terms of the leases specific to that demise.

4.4 The leases will continue to protect any overage on the site as currently agreed and detailed in part II of this report. This negotiation is presenting the council with the opportunity to improve the overage clauses to ensure that they are sufficiently robust to ensure that the Council will be entitled to any future increase in the value of the site.

4.5 Overall the transaction presents a number of property challenges for the

councils in terms of recommending agreeing these terms. The development at the airport is co-dependent on the delivery of the highways infrastructure that is also required for the New Monks Farm development. For this reason discussions have been protracted and the wider context of housing delivery, employment generation and environmental protection have all had to be taken into account, with the following strategic economic, social and environmental benefits weighed against the goal of achieving best consideration:

- The delivery of the Greater Brighton City Deal funded Adur tidal walls flood defence scheme.
- The delivery of Greater Brighton City Deal supported new employment space on the airport development site.
- Replacement of the Sussex Pad junction on the A27 with a new roundabout.
- Delivery of new homes and employment in the New Monks Farm Development.
- The offer of an 18 month rent free period by the administrators to the operators of the airport to improve the airports viability.

The draft terms go a considerable way to meeting the requirements of the asset management plan in terms of regeneration and asset management strategy but, as with any negotiation, compromises to reach an agreement that is acceptable to all parties have been made.

- 4.6 The advantage for the Council of having just one head lease (as per the previous July 2017 Committee consent) is that if there is a breach of any terms of that head lease, the Council can threaten forfeiture of the whole site (including the valuable parts of the site). However, even if the Council could persuade the administrators to accept one lease, the head lessee would still be able to sell long underleases of the site effectively stripping the value from the site and weakening the threat of forfeiture.
- 4.7 The advantage for the administrators of having four leases rather than one is that if the site is split into four leases, it enables the individual tenants to carry on business without concern that a breach of covenant by the head-lessee or a sub-lessee of another part of the estate will lead to legal action or forfeiture affecting the head-lease and any associated risk, expense or inconvenience. The four headleases are therefore more attractive to tenants than an underlease would be and means it is more likely that investment in the airport land will be forthcoming.
- 4.8 The different leases can be assigned to new tenants that are better placed to manage and invest in the respective land uses, whether this is airport operation, commercial development or the delivery of New Monks Farm, development of new business space or for airport operation/investment.
- 4.9 The councils will still receive payment of the deferred consideration of £1m and the premium as previously detailed in the July report, and officers have negotiated a package of other terms that are expected to deliver best consideration. This includes changes to the overage clauses for better enforceability, removal of the overage on the development land (in lieu of an equivalent up-front payment) and increased overage on the airport land. Details of both the up-front payment and increased overage on the airport land appear

in part 2 of this report.

- 4.10 The Council has jointly appointed with Worthing Borough Council, specialist external advisers to comment on the terms offered by the administrator and to report back on the value including a report on whether these terms meet the requirements of S123 of the Local Government Act to meet best consideration reasonably obtainable. If the valuer is not able to sign the deal off as best consideration then it will be a sum that is within the threshold permitted under General Disposal Consent 2003, and we would be agreeing to receive less than best consideration having considered the proposal in the context of wider economic, social and environmental considerations.
- 4.11 A draft valuation report has been received and gives general advice on the requests of the administrators and the current negotiated position and acceptability of the terms proposed. Having taken advice from external solicitors and valuers a number of the proposed lease terms may require further discussion to improve the position with regards balancing best consideration against the strategic benefits.

5. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 5.1 If the terms proposed are not acceptable to the council, or the detailed drafting of the new lease terms are not agreed, then the council can 'do nothing'. This mean that no income is received, it will threaten the delivery of the Adur Tidal Walls project, present difficulties in the delivery of New Monks Farm development and mean the development of new employment space on the airport is put at risk.
- 5.2 As negotiations have moved on significantly since the July 2017 report, the administrator has made clear they could not proceed under that consent without reverting fully to the terms set out in this report. This would leave the council in the same position as in 5.1 above.
- 5.3 Without granting four leases on the terms requested the administrators may seek a fire sale of the airport which would jeopardise the current investment and asset management initiatives.
- 5.4 It is important to note that the councils do not have to consider any application by the administrator to assign (sell) the current leasehold interest if the councils have not received the £1m deferred consideration.

6. COMMUNITY ENGAGEMENT & CONSULTATION

- 6.1 There is no requirement for community consultation in relation to the proposals of this report. Any future development of the site on which these recommendations are premised will be subject to public consultation as part of the planning process which is currently ongoing.

7. CONCLUSION

- 7.1 It is recommended to proceed to grant four new long leases on the above site, subject to the recommendations above and conditions presented and approved

at July PRG for the following social, economic and environmental reasons:

- To facilitate new homes and economic growth within the Greater Brighton city region by delivering the development of new commercial premises on the airport and assisting in the delivery of the New Monks Farm housing development, which assists Adur Council in meeting the housing delivery earmarked in the Adur Local Plan.
- Enabling the delivery of the Adur Tidal Walls flood defence project.
- Recovery of the £1 million deferred consideration, as well as the lease premiums detailed in part II of the report,
- Enabling provision of a memorial to the victims of the Shoreham airshow crash.

8. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 8.1 The councils will still receive payment of the deferred consideration of £1.0m and the premium as previously detailed in the July report. In addition the council will receive a further premium in lieu of overage for the eastern development site area and the potential for further overage on future developments on the airport and grazing land. Any payments received as part of this agreement, after allowing for associated costs, will be split 2-3^{rds} for Brighton and Hove City Council and 1-3rd to Worthing Borough Council in line with the freehold ownership. These capital receipts will be used to support the council's corporate capital investment strategy.

Finance Officer Consulted: James Hengeveld

Date: 26/03/2018

Legal Implications:

- 8.2 Section 123 of the Local Government Act 1972 places the council under a statutory duty to dispose of land at the best price reasonably obtainable. In this case, the disposal has not been marketed but the council has been working closely with external surveyors to ensure that the deal will meet this test. The Secretary of State has issued a general consent which allows local authorities to dispose of land at an undervalue provided the authority considers that it will help to secure the promotion or improvement of the economic, social or environmental well-being of its area. The reasons why the deal is regarded as being in the economic, social or environmental well-being of the area are set out in the body of the report; particularly at paragraph 4.5. In order to rely on the general consent, the undervalue must be less than £2m. The final valuation report indicates that there will be an undervalue of approximately £175,000 which falls under the general consent threshold.
- 8.3 Disposing of the land for an undervalue is not unlawful state aid because the undervalue (the "aid") falls below the *de minimis* threshold (€200,000 over a rolling period of three financial years). £175,000 is currently almost precisely this figure. There is therefore no state aid risk.

Lawyer Consulted: Alice Rowland

Date: 25th March 2018

Equalities Implications:

- 8.4 There are no equalities implications directly arising from this report and an equality impact assessment has not been carried out.

Corporate / Citywide Implications:

- 8.5 The Airport has failed to deliver job creation due to poor management by the tenant, now in administration, despite numerous schemes being proposed and there has been no delivery to meet wider employment generation aims.
- 8.6 As set out elsewhere in this report, this recommendation presents an opportunity to continue to facilitate the delivery of the wider economic, social and environmental benefits for Greater Brighton as well as leading to wider investment in Adur District and promoting inward investment in the region.

SUPPORTING DOCUMENTATION

Appendices:

1. Committee report presented to 13 July 2017 PRG
2. Plan of proposed lease areas

Documents in Members' Rooms

1. None

Background Documents

1. None

