AGENDA ITEM 3

BRISTOL CITY COUNCIL

CABINET

16 JUNE 2015

Report of: Sanjay Prashar, Service Director - Legal & Democratic Services

Title: **Reconsideration of Mayor's decision on Avonmouth & Portbury Docks freehold**

Ward: Avonmouth

RECOMMENDATION

That the Mayor considers the views of Full Council, as expressed at the Extraordinary Full Council held on 2 June 2015, and decides whether or not to confirm the original decision taken at the Cabinet meeting held on 3 March 2015.

BACKGROUND

Mayor's original decision:

1. A report was submitted to the 3 March 2015 Cabinet meeting seeking approval of the transfer of the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and land adjoining, for a payment by First Corporate Shipping of £10m; and to authorise the Strategic Director – Place to approve the legal property transaction to conclude the sale.

2. A copy of the 3 March Cabinet report is attached at appendix 1.

3. On 3 March, the Mayor took the following decision:

1. That approval be given to the transfer of the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and associated land adjoining, for a payment by First Corporate Shipping of £10m.

2. That the Strategic Director – Place be authorised to approve the legal property transaction to conclude the sale.

4. A copy of the 3 March Mayor's decision recording form (decision no. 45.3/15) is attached at Appendix 2.

Call-in of the Mayor's decision:

5. The 3 March Cabinet decision was then the subject of a Call-In from Councillors Hopkins, Jackson, Leaman, Negus and Pearce.

6. A copy of the Call-In form submitted by the councillors is included at Appendix 3.

7. A meeting of the Call-In Sub-Committee was held on 2 April 2015 to review the Mayor's decision.

8. The Call-In Sub-Committee resolved that the Mayor's decision should be referred to the Full Council for debate.

9. The minutes of the 2 April Call-In Sub-Committee are set out at Appendix 4.

Extraordinary Full Council meeting:

10. The Mayor's decision was accordingly debated at the Extraordinary Full Council meeting held on 2 June 2015.

11. Following the debate on 2 June, the Full Council resolved:

- That Full Council objects to the Mayor's decision on Avonmouth and Portbury docks freehold, and that it be referred back to the Mayor, together with the views of Full Council.

12. The draft minutes of the 2 June Extraordinary Full Council are set out at Appendix 5. These include a summary of the views of members as expressed during the Full Council debate.

Exempt information:

13. The original 3 March Cabinet report referred to an exempt appendix – an exempt valuation report.

14. Under arrangements approved by the Service Director - Legal and Democratic Services, all members of Council were given an opportunity to inspect /read the exempt appendix in advance of the 2 June Extraordinary Full Council meeting.

Mayor's reconsideration of the original decision:

15. The Mayor is accordingly asked to consider the views of Full Council, as expressed at the Extraordinary Full Council held on 2 June 2015, and to decide whether or not to confirm the original decision taken at the Cabinet meeting held on 3 March 2015.

16. If the Mayor should decide to confirm the original decision, it will take immediate effect.

Appendices:

Appendix 1 - Cabinet report - 3 March 2015 - Avonmouth and Portbury Docks freehold

Appendix 2 - Mayor's decision recording form - 3 March 2015 (decision no. 45.3/15)

Appendix 3 - Call-In form submitted by Councillors Hopkins, Jackson, Leaman, Negus and Pearce

Appendix 4 - Minutes of Call-In Sub-Committee - 2 April 2015

Appendix 5 - Draft minutes of Extraordinary Full Council - 2 June 2015 (including a summary of the views of members as expressed during the Full Council debate)

APPENDIX 1

CABINET REPORT – 3 MARCH 2015

AVONMOUTH AND PORTBURY DOCKS FREEHOLD

CABINET – 3 MARCH 2015 EXECUTIVE SUMMARY OF AGENDA ITEM 6

Report title: AVONMOUTH AND PORTBURY DOCKS - FREEHOLD
Wards affected: Avonmouth
Strategic Director: Barra Mac Ruairí / Strategic Director - Place
Report Author: Robert Orrett / Service Director - Property

RECOMMENDATION for the Mayor's approval:

1. **To approve the sale of the freehold interest in property comprising land and building which were sold on a long leasehold basis to First Corporate Shipping by the Council in 1991. The freehold interest would be sold for £10m to First Corporate Shipping.**

2. **To authorise the Strategic Director - Place to approve the legal property transaction to conclude this sale.**

Key background / detail:

a. Purpose of report: To report to Cabinet that due diligence investigations have been completed, confirming that no new information has been identified to change the recommendation to sell the Council's freehold interest in this property to the Port Company. To recommend that the freehold sale is approved.

b. Key details:

1. The City Council sold in 1991 the business comprising the Port of Bristol (Avonmouth and Portbury Docks) together with 150 year leases at a peppercorn rent in all the land used by and directly supporting the port. The Council retained a shareholding, through which it continues to receive a share of the profits, and the residual freehold interest in the land, subject to those long leases.
2. At its meeting of 1 April 2014 Cabinet approved the proposed sale of the Council's residual freehold subject to formal external valuation advice that the payment and terms represent best consideration, and conclusion of legal due diligence including confirmation that the Council's position as minority shareholder in the port business is not materially changed by the freehold transfer.
3. External valuation advice has been obtained from Jones Lang LaSalle (JLL). The content is commercially sensitive as publication of their valuation advice at this stage would make it also available to FCS which is inappropriate prior to legal completion of the freehold purchase. The advice does conclude that "we are of the opinion that the purchase price of £10million for the freehold would appear a favourable price for Bristol City Council." The valuation report confirms that the price represents the best price reasonably obtainable.
4. External legal advice has confirmed that "a sale by the Council of the freehold reversion to the various leases ….. would not have a specific impact on the Council's shareholding in the Company". This conclusion is drawn following previous consideration of the same question by this adviser.

5. Due diligence research has been completed by Council officers from Legal, Finance and Property for legal and other matters relating to the proposal to sell the Council's freehold. Nothing has been identified from the due diligence which conflicts with the advice given in the report for Cabinet 1 April 2014.

6. The JLL report is an exempt appendix and the summary of the due diligence is an appendix to the Cabinet report.

AGENDA ITEM 6

BRISTOL CITY COUNCIL
CABINET
3 MARCH 2015

REPORT TITLE: AVONMOUTH AND PORTBURY DOCKS - FREEHOLD

Ward(s) affected by this report: Avonmouth

Strategic Director: **Barra Mac Ruairí / Strategic Director - Place**

Report author: **Robert Orrett / Service Director - Property**

Contact telephone no. & e-mail address: **0117 922 4086**
robert.orrett@bristol.gov.uk

Purpose of the report:
To report to Cabinet that due diligence investigations have been completed, confirming that no new information has been identified to change the recommendation to sell the Council's freehold interest in this property to the Port Company. To recommend that the freehold sale is approved.

RECOMMENDATION for the Mayor's approval:

1. **To approve the sale of the freehold interest in property comprising land and buildings which were sold on a long leasehold basis to First Corporate Shipping by the Council in 1991. The freehold interest would be sold for £10m to First Corporate Shipping**

2. **To authorise the Strategic Director - Place to approve the legal property transaction to conclude this sale.**

Background/context:

1. Bristol City Council was the owner of the Avonmouth & Portbury Docks (the Port) until 1991. The Council decided to sell the Port as there had been a long period of substantial financial losses. Evidence was that shipping operators would not increase business with the Port whilst the Council continued as port owners. The Council sold the Port to First Corporate Shipping (FCS), the only party willing to purchase and operate the port. There were significant risks involved: (i) FCS was formed specifically to operate the Port; (ii) Whilst the principals had previous industry experience, this was a new company without a wider business or asset base to support this loss making operation; (iii) It was uncertain that the Port could be turned into a profitable business thus there was risk that the large port property holdings may be diverted away from port uses to general development; (iv) there were technical aspects relating to transfer of statutory port authority status which need to be dealt with via legislation after the port sale transaction. The Council sold FCS long leasehold property interests to provide an element of protection against these risks.

2. Selling the ownership of the Port land and buildings in the form of long leases enabled the Council to retain some limited involvement with the property. The Council

also retained an ability to share in future profits of the new Port Company. The three long leases were granted each for 150 years with peppercorn (effectively nil) rent. This meant that all normal returns from the land by way of rents or benefits from occupation are owned by FCS throughout the 150 year period. The leases provided some initial management controls which fell away when the Harbour Revision Order was approved by Government. Beyond these, the leases provide very little involvement with or control over management decisions affecting the Port or the property. The leases do provide for the core port operational area to continue in use as an operational port and entitle the Council to a 50% share in any value above values for port, industrial or storage uses if property is sold on subsidiary long leases for alternative uses.

3. The residual freehold interest of the Council is a very minor share of the total ownership value of the property. The external valuation advice provided to the Council indicates that ownerships held respectively by FCS and the Council are in the ratio 249:1.

4. Since the sale of the Port with the long leasehold ownership to FCS, there have be a number of approaches by FCS to the Council seeking to purchase the Council's freehold interest. The Council has obtained external professional advice on several occasions to consider its response. The current proposal started with discussions between representatives of the Council and FCS in 2013. It became evident that FCS were prepared to offer a purchase price for the freehold interest that was several times greater than levels previously offered creating a once in a generation opportunity to be considered by the Council.

5. On 1 April 2014, a report on this matter was considered by Cabinet. The report is attached as appendix A. The Mayor's decision at the Cabinet meeting was:

1. That subject to 2. below, approval be given to progress negotiations to transfer the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and associated land adjoining, for a payment by First Corporate Shipping of £10m.

2. Proceeding with the freehold transfer is to be subject to formal external valuation advice that the payment and terms represent best consideration, and conclusion of legal due diligence including confirmation that the Council's position as minority shareholder in the port business is not materially changed by the freehold transfer. Conclusion of this due diligence will be followed by a final recommendation for the Mayor's approval before a transfer is concluded.

Proposal:

6. This proposal has been prepared to report on the completion of the action required to implement the Mayor's decision of 1 April 2014. Formal external valuation advice has been obtained. Due diligence has been completed. Further negotiations with FCS have been carried out, informed by the valuation advice and due diligence conclusions.

7. External valuation advice has been obtained from Jones Lang LaSalle (JLL). The valuation report from JLL is attached as exempt appendix 1. The content is commercially sensitive as publication of their valuation advice at this stage would make it also available to FCS which is inappropriate prior to legal completion of the freehold purchase. The advice does conclude that "we are of the opinion that the purchase price of £10million for the freehold would appear a favourable price for Bristol City Council." The valuation report confirms that the price represents the best price reasonably obtainable.

8. A process of due diligence has been carried out. This has included obtaining

external legal advice that the Council's position as minority shareholder in the port business is not materially changed by the freehold transfer. Other due diligence has been carried out by Council officers from Legal, Finance and Property.

9. External legal advice has confirmed that "a sale by the Council of the freehold reversion to the various leases ….. would not have a specific impact on the Council's shareholding in the Company". This conclusion is drawn following previous consideration of the same question by this adviser.

10. Due diligence research has been completed for legal and other matters relating to the proposal to sell the Council's freehold. The range of matters that have been reviewed is set out in Appendix B. The response to each matter is then shown in the subsequent Appendix C. Nothing has been identified from the due diligence which conflicts with the advice given in the report for Cabinet 1 April 2014.

11. Once the due diligence had advanced sufficiently, further negotiations were held with FCS. These negotiations established that:

a. The price of £10m for the purchase of the Council's freehold is the maximum amount FCS is prepared to pay. This will only be paid for a sale of the freehold interest without significant additional restriction. Historic restrictive covenants already affecting the Council's freehold title will transfer and continue insofar as they still have effect.

b. FCS is not prepared to consider part or all of the consideration for the purchase of the Council's freehold being in the form of additional shareholding or profit share in the company. In the event, advice from Finance officers is that such an option would not be recommended to the Council. This possibility has therefore been taken no further.

12. Proceeding with this sale achieves the outcome of good asset management for the Council. The capital sum receivable is considerably greater that the current market value of the Council's freehold interest. No income return is provided by the current freehold interest before 2141. There will be immediate return from the purchase price by reducing the Council's borrowing costs. The negotiating position of the Council has been optimised by previous decisions not to sell the freehold, and the lack of specific need for the Council to achieve this sale now or in the foreseeable future.

Consultation and scrutiny input:

a. Internal consultation:

This report will be considered by Place Scrutiny Commission before being presented to Cabinet.

There has been consultation with the following officers:

- City Director
- Strategic Director – Place Service Directors for Legal, Finance, Economy, Energy, Planning, Transport and Property

b. External consultation:

The principle of this proposal was report to Cabinet and considered at the Cabinet meeting on 1 April 2014. The following were recorded in the decision record:

- Four public forum questions and replies (copies have been placed in the decision record book).
- Seven public forum statements (a copy has been placed in the decision record book).
- The Mayor noted that Cllr Janke had indicated at this meeting that she was unable to support the decision. Cllr Janke noted the fact that formal external valuation advice was being sought and suggested that scrutiny members should be given an appropriate opportunity to comment before the final decision was taken.

Consultations with First Corporate Shipping Limited.

Other options considered:

1. Retaining the freehold with no change in arrangements. This would not provide FCS with the support they seek for long term further capital investment in the Port of Bristol. This would be to the detriment of the city region generally. The opportunity for additional current capital return from the property asset would be declined.

2. Alternative changes to the freehold/leasehold property interests. There could be other property title changes which would give business confidence to FCS, but fall short of the unconditional freehold sale. The premium price would not then be achievable by the Council, but the incentive to pay such a premium would in effect have been removed. The effect would be to decline the premium currently being offered, without financial benefit being likely for decades to come.

Risk management / assessment:

FIGURE 1

The risks associated with the implementation of the *(subject) decision* :

No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls)		RISK CONTROL MEASURES Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	CURRENT RISK (After controls)		RISK OWNER
		Impact	Probability		Impact	Probability	
1	A sale would mean that FCS no longer has a contractual obligation to keep open the facility or to only use the property for certain uses.	**High**	**Low**	Whilst there is no mitigation it is considered extremely unlikely that the facility would close.	**High**	**Low**	Robert Orrett
2	Further development of the port depends on long term capital investment. FCS will be reluctant without an improved property interest	**High**	**Medium**	Transfer of the freehold will improve future prospects	**High**	**Low**	Robert Orrett
3	The transaction may have adverse impacts that have not been evaluated	**Medium**	**Low**	Detailed due diligence has reviewed the overall documentation and issues	**Low**	**Low**	Robert Orrett Sanjay Prashar
4	The transaction may not be concluded	**High**	**Medium**	There is some risk as with any property transaction. Concluding legal work and achieving a transaction as soon as is reasonable will help reduce the risk	**High**	**Low**	Robert Orrett Sanjay Prashar

FIGURE 2

The risks associated with <u>not</u> implementing the *(subject) decision*:

No.	RISK Threat to achievement of the key objectives of the report	INHERENT RISK (Before controls) Impact	INHERENT RISK (Before controls) Probability	RISK CONTROL MEASURES Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	CURRENT RISK (After controls) Impact	CURRENT RISK (After controls) Probability	RISK OWNER
1	The significant capital receipt would be lost.	**High**	**High**	The transaction may take place in the future	**Low**	**Low**	Robert Orrett
2	An alternative property restructure may be agreed	**High**	**Medium**	The capital returns and financial benefit will be much reduced	**High**	**Medium**	Robert Orrett
3	FCS investment priorities will be diverted away from Bristol	**High**	**Medium**	Alternative property restructure may provide a satisfactory position whilst not releasing significant capital to BCC	**High**	**Medium**	Robert Orrett

Public sector equality duties:

Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

Guidance:

**** Insert a note on how the public sector equality duties are relevant to the proposals and how these duties have been taken into account in developing the proposals. Where an equality impact assessment has been undertaken, summarise its findings here, and provide a link to the full document, or include the equality impact assessment as an appendix. Where no equality impact assessment has been undertaken, give the reasons why this has not been carried out.***

Freehold transfer

The freehold transfer is considered to have no identifiable equalities impact.

Eco impact assessment

The freehold transfer does not directly change any environmental impacts.

Resource and legal implications:

Finance

a. **Financial (revenue) implications:**
The report contains comprehensive financial and valuation analysis.

Upon the sale of the freehold assets to FCS, the current waiver on receiving profit share on revenue as rental income will be reverted, the equivalent sum will thereafter be received as a dividend payment; with no net financial impact to BCC, subject to financial performance of FCS and payment of dividends.

In accordance with the Council's Treasury management strategy, the capital receipt can be used to offset the costs of capital borrowing to significantly reduce/minimise the impact of capital borrowing/financing costs.

Advice given by Peter Gillett Service Director, Finance
Date 23 January 2015

b. **Financial (capital) implications:**
It is noted that the £10m capital receipt proposed is assessed by external valuers as "the best price reasonably obtainable." The receipt will support the aims of both the City Council's Asset Management Strategy and the Treasury Management Strategy, and will contribute to any future opportunity for capital investment in alternative assets.

Sale of the freehold would however, mean that council would forgo its current entitlement to a share in any future uplifts from development potential - if the value of land were to rise in future; the council would forgo its current entitlement to receive 50% of the amount by which the value of the land is enhanced thereafter, if FCS subsequently disposes of the land for a capital sum under freehold ownership.

Advice given by Peter Gillett Service Director, Finance
Date 23 January 2015

Comments from the Corporate Capital Programme Board:
No comments on the proposal from the Corporate Capital Programme Board.

c. Legal implications:
Section 123 of the Local Government Act 1972 applies to the disposal of any land owned by the Council. Under S.123(1) The Council may dispose of land held by it in any manner it wishes. Under S.123(2), except with the consent of the Secretary of State, the Council is not to dispose of land under Section 123, otherwise than by way of a short tenancy, for a consideration less than the best that can reasonably be obtained. Valuation advice has confirmed that the stated price of £10m is the best available for the Council's interests in the land.

Advice given by Shahzia Daya / Service Manager and Deputy Monitoring Officer: Legal Services
Date 23 January 2015

d. Land / property implications:
This proposal offers an exceptional opportunity to deliver a major capital receipt from the Council's property portfolio with no income reduction. The price proposed is considered to be the best that the Council may achieve unless it waits for many decades before transacting. Property due diligence has been completed and external valuation advice obtained. Neither causes any change to the advice given to Cabinet in the report dated 1 April 2014.

Advice given by Robert Orrett / Service Director - Property
Date 21 January 2015

e. Human resources implications:
There are no Human Resources implications arising from the recommendations.

Advice given by Mark Williams, People Business Partner
Date 23 January 2015

Appendices

A. Report to Cabinet - 1 April 2014
B. Due diligence matters considered
C. Due diligence reports

Exempt Appendices

1. Valuation Report

Appendix A

Report to Cabinet - 1 April 2014

CABINET – 1 APRIL 2014 EXECUTIVE SUMMARY OF AGENDA ITEM 10

Report title: **Port of Bristol – Freehold Property**
Wards affected: **Avonmouth**
Strategic Director: **Neil Taylor, Strategic Director - Place**
Report Author: **Robert Orrett, Service Director - Property**

RECOMMENDATION for the Mayor's approval:

1. That subject to 2. below, approval is given to progress negotiations to transfer the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and associated land adjoining, for a payment by First Corporate Shipping of £10 million.

2. Proceeding with the freehold transfer is to be subject to formal external valuation advice that the payment and terms represent best consideration, and conclusion of legal due diligence including confirmation that the Council's position as minority shareholder in the port business is not materially changed by the freehold transfer. Conclusion of this due diligence will be followed by a final recommendation for the Mayor's approval before a transfer is concluded.

Key background / detail:

a. To approve the sale of the Council's freehold interest in land held on long leases by the port company.

b. Key details:

1. Sale of the Council freehold to First Corporate Shipping (FCS) will improve the expectation of future economic impact to the city region by the Port of Bristol.

2. The freehold owned by the Council does not provide any meaningful influence over management or use of the land.

3. There is no rental income under the leases which have 127 years to run, and prospects for other financial returns from the leases are low.

4. The financial offer of £10m provides the Council with a very full recognition of the benefit being gained by FCS, well above the level indicated by technical property valuation assessment.

5. This amount can only be achieved by a transaction between the specific parties. The value of the Council's freehold on the general property market is currently about £1m.

AGENDA ITEM 10

BRISTOL CITY COUNCIL
CABINET
1 APRIL 2014

REPORT TITLE: PORT OF BRISTOL – FREEHOLD PROPERTY

Ward(s) affected by this report: Avonmouth

Strategic Director: **Neil Taylor, Strategic Director - Place**

Report author: **Robert Orrett, Service Director - Property**

Contact telephone no. & e-mail address: **0117 9224086**
robert.orrett@bristol.gov.uk

Purpose of the report:

To approve the sale of the Council's freehold interest in land held on long leases by the Port company.

RECOMMENDATION for the Mayor's approval:

1. That subject to 2. below, approval is given to progress negotiations to transfer the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and associated land adjoining, for a payment by First Corporate Shipping of £10 million.

2. Proceeding with the freehold transfer is to be subject to formal external valuation advice that the payment and terms represent best consideration, and conclusion of legal due diligence including confirmation that the Council's position as minority shareholder in the port business is not materially changed by the freehold transfer. Conclusion of this due diligence will be followed by a final recommendation for the Mayor's approval before a transfer is concluded.

The proposal:

Policy

1. Planning Core Strategy identifies the land outside the statutory operational port area as a priority area for industrial and warehousing uses, with support in principle for development for those uses. There are constraints in relation to environment, flooding and highways. For the operational port area, First Corporate Shipping (FCS) is the statutory undertaker for the port. As such, they benefit from permitted development rights which grant consent for development on operational port land for shipping and for the loading/unloading of passengers and goods at a dock or harbour.

Context

2. The Council owned and directly operated the commercial Port of Bristol at Avonmouth and Portbury until 1991. The port was then sold by BCC to FCS with the aim of improving the future success of the port and relieving the Council from the debts and losses involved with it. The sale decision was in line with decisions taken by other authorities in the same era selling operational infrastructure such as ports and airports to commercial undertakings which were better placed to raise new capital and employ specialist sector expertise to increase services and economic activity supported by those operations. Ports had experienced particular challenges with labour issues and also the impact of containerisation of goods changing the patterns of activity for deep sea shipping and ports serving that market.

3. The Council sold the port business and infrastructure, the land on which the port is situated, together with adjoining land used for related purposes and capable of some further development. The total land area is about 2,100 acres. The land transfer was by means of granting several leases on generally similar terms, each for 150 years at a peppercorn rent. These allowed for interim arrangements whilst the Council remained the statutory port authority and some influence in case the purchasers of the port were unable to sustain the port operations and secure the major capital needed to turn around the port business.

4. FCS has succeeded in placing the port business in a much stronger position. Between 1991 and 2007 throughput of goods increased from 4m to 12m tonnes, and that the port supports approximately 7,500 jobs in the sub-region economy. FCS directly employs around 550 staff and there are over 6,500 other jobs in the port. It is estimated that FCS have secured around £450m of capital investment in the port. There are proposals to develop a deep sea container terminal at Avonmouth which could create an additional 1,500 jobs. This would involve investment estimated at £600m.

5. There have been periodic approaches by FCS to the Council seeking to purchase the freehold. UK ports are generally owned freehold by the port operator. This provides the optimum basis as port infrastructure requires major capital investment which has long operating life and very extended pay-back periods. The last discussion was in 2012 when the proposal was declined by the Council. The highest offer for the freehold previously was £3.85m.

Freehold transfer

6. The stated objective for FCS to own the port freehold, is that they wish to invest further into their business, but would only concentrate this on the Port of Bristol if they own the freehold. Their position is that they would need to look elsewhere for further development if they cannot secure the freehold. Investment decision makers view the freehold ownership of land, as a more favourable prospect than leasehold, however long the lease, and therefore it is considered that the sale of the freehold would improve the prospect for long term growth and economic success.

7. FCS have offered £10m to purchase the Council's freehold interest. The objective of both parties is that the Council's minority shareholding in FCS would be unaffected by the freehold sale. The freehold sale helps increase the business performance of the port in future. The Council will share in that improvement.

8. The Council receives no rental income under the terms of the leases, which continue until 2141 – a further 127 years. Once FCS became statutory port authority, the Council no longer has any meaningful influence on management of the port or land via the port. There are lease obligations on FCS to keep the port open on competitive terms. It is considered that the scale of the capital investment secured by FCS and the value to FCS of the business provide sufficient reason for them to keep the port open on competitive terms if possible. It is also the case that there is very little prospect of a landlord succeeding in court for termination of such long leases for a claimed breach of covenant.

9. There is provision for the Council to share in future land value increase from uses outside the core permitted uses. Having regard to the amount of the land already developed, the character of the area and planning policy, the prospect for returns from this are considered low. When the possibility of freehold transfer was reviewed in 2012, recommendations were given that there was potential on some of the land for the Council to share in development potential, particularly if land values were to rise in future due to flood alleviation works. This encouraged expectations for future returns beyond those actually supported by the lease agreements. If development is for the permitted uses – port operational, industrial and warehousing – no value is receivable by the Council until the end of the leases in 2141. All of the value and return prior to that remains with FCS.

10. The current value of the Council's freehold on the general market is estimated at £1m or below. This would increase as the unexpired portion of the lease term reduces. However, the meaningful increase in value occurs from a point in time when there are around 40 years unexpired. If the freehold/leasehold arrangement were to be left unchanged, there will have been a significant harm to the business sustainability of the port many years before the financial growth in the Council's freehold interest starts to materialise.

11. The realisation of an amount for the freehold property interest above value which may be attained on the general market, can only be attained from the actual leaseholder. The reason they may pay a higher figure is because the improvement in the value of their property ownership and business position is uniquely affected. Applying the normal property valuation methodology to this situation indicates that a payment in the range £3m to £4m may be reasonable. However, there is no a precise formula and the scale of the overall capital sums involved in the port business are a reason why there has been resistance from the Council to transact at that level. The offer to pay £10m is a very full transfer of the benefit from the transaction to FCS.

12. The basis proposed for the freehold transfer is that it is unconditional. The intention is that there would not be restrictions within the freehold on FCS. It is the agreed intention on both sides to ensure that the value to the Council of its minority shareholding is not impaired by this sale, and the Seabank power station is also unaffected.

13. The potential financial benefit to the Council from receiving £10m capital now, rather than waiting decades is of major significance. The returns from prudent investment could provide significant returns or capital appreciation. Taken in the context of the full 127 years the compound growth impact is capable of being extremely large.

14. If the recommendation is approved, there will need to be detailed due diligence and legal drafting to confirm all details, before the transaction can conclude. It is not economically prudent to invest in that work until the decision in principle has been taken.

15. During the due diligence period, full assessment of the detail will be made, with appropriate discussions with FCS. The Council may explore scope for changes to the shareholding arrangements, subject to agreement. Potential for future development would also be carefully considered.

Consultation and scrutiny input:

Scrutiny update to be reported verbally

a. Internal consultation:

The proposal has been treated as commercially sensitive and therefore dealt with as a confidential matter. There has been consultation with the following officers:

- City Director
- Interim Strategic Director – Place
- Service Directors for Legal, Finance and Property

b. External consultation:

First Corporate Shipping

Other options considered:

1. Retaining the freehold with no change in arrangements. This would not provide FCS with the support they seek for long term further capital investment in the Port of Bristol. This would be to the detriment of the city region generally. The opportunity for additional current capital return from the property asset would be declined.

2. Alternative changes to the freehold/leasehold property interests. There could be other property title changes which would give business confidence to FCS, but fall short of the unconditional freehold sale. The large premium price would not then be achievable by the Council, but the incentive to pay such a premium would in effect have been removed. The effect would be to decline the premium currently being offered, without financial benefit being likely for decades to come.

Risk management / assessment:

FIGURE 1

The risks associated with the implementation of the *(subject) decision* :

No.	RISK	INHERENT RISK (Before controls)		RISK CONTROL MEASURES	CURRENT RISK (After controls)		RISK OWNER
	Threat to achievement of the key objectives of the report	Impact	Probability	Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	Impact	Probability	
1	A sale would mean that FCS no longer has a contractual obligation to keep open the facility or to only use the property for certain uses.	**High**	**Low**	Whilst there is no mitigation it is considered extremely unlikely that the facility would close.	**High**	**Low**	Robert Orrett
2	Further development of the port depends on long term capital investment. FCS will be reluctant without an improved property interest	**High**	**Medium**	Transfer of the freehold will improve future prospects	**High**	**Low**	Robert Orrett

3	The transaction may have adverse impacts that have not been evaluated	**Medium**	**Low**	Detailed due diligence will review the overall documentation and issues	**Low**	**Low**	Robert Orrett Liam Nevin
4	The transaction may not be concluded	**Medium**	**Medium**	There is some risk as with any property transaction. Concluding due diligence and achieving a transaction as soon as is reasonable will help reduce the risk	**Low**	**Low**	Robert Orrett Liam Nevin

FIGURE 2

The risks associated with <u>not</u> implementing the *(subject) decision*:

No.	RISK	INHERENT RISK (Before controls)		RISK CONTROL MEASURES	CURRENT RISK (After controls)		RISK OWNER
	Threat to achievement of the key objectives of the report	Impact	Probability	Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	Impact	Probability	
1	The significant capital receipt would be lost.	**High**	**High**	The transaction may take place in the future	**Low**	**Low**	Robert Orrett
2	An alternative property restructure may be agreed	**Medium**	**High**	The capital returns and financial benefit will be much reduced	**Medium**	**High**	Robert Orrett
3	FCS investment priorities will be diverted away from Bristol	**High**	**Medium**	Alternative property restructure may provide a satisfactory position whilst not releasing significant capital to BCC	**Medium**	**Low**	Robert Orrett

Public sector equality duties:

Before making a decision, section 149 of the Equality Act 2010 requires that each decision-maker considers the need to promote equality for persons with the following "protected characteristics": age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation. Each decision-maker must, therefore, have due regard to the need to:

i) eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Equality Act 2010.

ii) advance equality of opportunity between persons who share a relevant protected characteristic and those do not share it. This involves having due regard, in particular, to the need to:

- remove or minimise disadvantage suffered by persons who share a relevant protected characteristic.

- take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of people who do not share it (in relation to disabled people, this includes, in particular, steps to take account of disabled persons' disabilities);

- encourage persons who share a protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

iii) foster good relations between persons who share a relevant protected characteristic and those who do not share it. This involves having due regard, in particular, to the need to tackle prejudice and promote understanding.

Guidance:

**** Insert a note on how the public sector equality duties are relevant to the proposals and how these duties have been taken into account in developing the proposals. Where an equality impact assessment has been undertaken, summarise its findings here, and provide a link to the full document, or include the equality impact assessment as an appendix. Where no equality impact assessment has been undertaken, give the reasons why this has not been carried out.***

Freehold transfer

The freehold transfer is considered to have no identifiable equalities impact.

Eco impact assessment

The freehold transfer does not directly change any environmental impacts.

Resource and legal implications:

a. Financial (revenue) implications:

The sale of the freehold may reduce the Council's revenue attributable to the rent on the power station by £215k per annum. This income stream has been "discounted" to reflect the time value of the annual receipt over the life of the 127 year leasehold to provide a value of the income stream if received in full today of £3.8m. It is this amount which should be set against the potential capital receipt of £10m. The rental stream could be protected as therefore be collected as part of the dividend stream.

If the settlement sum of £10m was applied to reduce part of the Council's outstanding loans, the additional saving in borrowing costs (interest) would be approximately £450k per annum.

On the basis that the potential capital receipt exceeds the discounted value of the rental stream by £6.2m, the offer represents good value to the Council.

Advice given by **Mark Taylor, Interim Section 151 Officer**
Date **24/3/2014**

b. Financial (capital) implications:

There are no capital implications arising from the disposal except for the potential capital receipt to be held for future capital investment in alternative assets.

However, the disposal of the freehold will prevent the Council from unlocking any potential development value which might arise in the future, albeit that any development value is likely to be restricted by the flood risk and the existing pre-emption agreement with the leasehold.

Advice given by **Mark Taylor, Interim Section 151 Officer**
Date **24/3/2014**
Comments from the Corporate Capital Programme Board:

Due to commercial sensitivity the proposal has not been reviewed by Corporate Capital Programme Board.

c. Legal implications:

Section 123 of the Local Government Act 1972 applies to the disposal of any land owned by the Council. Under S.123(1) The Council may dispose of land held by it in any manner it wishes. Under S.123(2), except with the consent of the Secretary of State, the Council is not to dispose of land under Section 123, otherwise than by way of a short tenancy, for a

consideration less than the best that can reasonably be obtained. Valuation advice must therefore confirm that the stated price of £10m is the best available.

In addition, whilst the freehold provides the Council with little direct influence over the activities of the port and FCS, it does, as is apparent from the report, have some benefits (albeit limited) and other impacts in more indirect ways (eg the obligation to keep the port open; the right to share in certain disposals; the very fact that as freehold owner the FCS are not able to deal as they please with the site). Rights which endure for the duration of the long lease. We can only speculate as to how the area may develop over the next 127 years. An unconditional sale (ie one free from any restrictions as to future use etc) will mean that these rights/influences, however marginal, will be lost. The Councils only remaining interest will be through its non-voting shareholding.

There are very clear advantages to FCS in acquiring the freehold, not least the apparent ability to access funding for further investment. As a shareholder the Council might also benefit from this. Nonetheless the Council needs to be satisfied that the £10m is acceptable compensation for giving up its existing rights and interests in the property.

Advice given by **Shahzia Daya / Service Manager and Deputy Monitoring Officer: Legal Services**
Date **21 March**

2014 d. Land / property

implications:

This proposal offers an exceptional opportunity to deliver a major capital receipt from the Council's property portfolio with no income reduction. The price proposed is considered to be the best that the Council may achieve unless it waits for many decades before transacting.

Advice given by **Robert Orrett / Service Director - Property**
Date **21 March**

2014 e. Human resources

implications:

The recommendations have no HR implications.

Advice given by **Mark Williams / HR Business Partner**
Date **21 March 2014**

Appendices:

None.

Appendix B

Due diligence matters considered

1. BCC Legal to contact FCS lawyers to identify any unforeseen aspects
2. BCC Property + Legal – consider any issues on demise boundaries and variation
3. Shareholding documentation review - Could freehold sale impact on share return?
4. Potential to receive payment by way of additional shares.
5. Seabank Power Station – review arrangements on “rent” and confirm no impact of sale
6. Freeholder’s past consent on disposals for non-authorised uses, include in JLL instruction
7. Community engagement by FCS
8. Review Deloitte valuation report (2012) and consider any points of concern on sale
9. Impact of sale on BCC retained land – need for access rights, services rights
10. Points raised by Cabinet members at 1 April 2014 meeting
11. Harbour Revision Order – points to check
12. JLL Valuation – matters arising – further involvement
13. Original sale contract, management agreement and any other outstanding points
14. Points raised by Cllr Negus
15. Henbury Loop interaction
16. Nature conservation area – outside sale boundary?
17. Deep sea port proposals – impact of sale?

Appendix C

Due diligence reports

1. BCC Legal to contact FCS lawyers to identify any unforeseen aspects

BCC Legal officers have been in written communication with the lawyers for FCS. The latter has historic familiarity with the FCS leasehold interest having been the advisers from the time of the original port sale, and onwards. Communication has confirmed the extent of BCC registered freehold title.

No unforeseen aspects have been raised by the FCS lawyers.

2. BCC Property + Legal – consider any issues on demise boundaries and variation

BCC Legal and Property officers have reviewed freehold and leasehold title documentation, and title to adjoining BCC owned land. BCC Legal and Property officers have visited the property, and inspected with particular regard to the physical boundaries.

No issues or reason to propose variation to the established boundaries have been identified.

3. Shareholding documentation review - Could freehold sale impact on share return?

Instructions were issued by BCC Legal to Clarke Willmott to advise on this aspect, due to that firm having previously considered the same point. Clarke Willmott have reviewed their previous advice and confirmed that a sale by the Council of the freehold reversion to the various leases would not have a specific impact on the Council's shareholding in the Company.

4. Potential to receive payment by way of additional shares.

This opportunity was raised during the Call-in inquiry. Response has been in two parts.

FCS has been approached with the request to confirm the basis of a share based consideration being offered as an alternative to a cash consideration. FCS has confirmed that they are unwilling to make a proposal for payment by increased shareholding.

BCC Financial officers have considered the benefit of payment in shares. The conclusion of the advice, because the shares are not generally tradeable nor do they carry voting rights is that Council should in this case opt for a cash payment as this would be the lower risk option and allow the Council to access value immediately, and not put value at risk. The lack of voting rights reduces the capability of the council to influence decision making at the Port of Bristol and in turn increases risk for the Council.

5. Seabank Power Station – review arrangements on "rent" and confirm no impact of sale

Arrangements relating to BCC income arising from the Seabank Power station were made with a waiver which enables BCC to receive its profit share related to revenue as rent, if it so elects. On sale of the freehold to FCS, the waiver will fall away and the equal sum will thereafter be received as dividend payment under the profit share which will continue.

6. Freeholder's past consent on disposals for non-authorised uses, include in JLL instruction

Under the current lease arrangement, use of the Port is restricted to certain use classes. FCS have made clear that its offer is only applicable to sale of a fundamentally unrestricted freehold interest. The Council would no longer have the protection provided by those covenants. In these circumstances the Council as planning authority will control use using established planning principles. Alternative future uses could have an impact on the adjoining property of the Council.

JLL has reviewed extreme scenarios for alternative future uses, to "stress test" the price offered by FCS in comparison with those scenarios. This approach has confirmed that given the amounts shown, the probability of this happening, and the optimistic view on the amounts of land included in these stress tests that the proposed purchase price adequately reflects the potential for such sums to be received.

One consequence of the sale of the Port would be the extinguishment of a number of second charges which the Council has the benefit of as a consequence of granting consent for additional uses under the three existing leases.

In accordance with standard practice each lease contains a clause authorising various industrial uses. In addition the Council is obliged to give consent for additional uses. In certain limited circumstances the Council is entitled to receive 50% of the amount by which the value of the land is enhanced by such consent if the Port subsequently disposes of the land for a capital sum.

This payment is secured by a legal charge in the Council's favour over any relevant land. In the years following the grant of the leases a number of variations were agreed largely as a result of vacant land within the Blue lease being developed. To date no payments have been received. The Council benefits from a second charge meaning that it ranks behind any prior charge so the Council is not guaranteed a payment.

Sale would mean that no further charges could be created therefore the Council would not participate in either payments secured by the existing second charges or enhanced value released by further development of land for uses not covered by the existing user clauses in the current leases.

Thus far approximately 10-20 such interests have been created, however to date no sums have been receivable by the freeholder due to values linked to actual uses which are deemed to be alternative uses, not exceeding market value for the permitted uses.

7. Community engagement by FCS

The Bristol Port Company has three main sources of support for community activities:

a. Funding via its Quartet Community Funds

Quartet currently has over £322,000 under management in Bristol Port funds; interest generated is available to use at the company's discretion to help good causes. The company adds to the fund around January each year and donations from the many port tours provided for free are added to the Quartet funds. It is the company's policy to focus this funding on good causes close to Avonmouth and Royal Portbury Docks and to keep the application process very simple to enable even the smallest, least well established groups to benefit without bureaucracy.

b. Financial donations direct from the company.

The Bristol Port Company makes many direct donations to causes locally, across Bristol and further afield.

c. In-kind support from the company

Including giving employees' time to support projects, donation of materials and providing other benefits such as not charging for utilities used by charities operating on port land.

Total funds in period 2007-14 in excess of £400,000

8. Review Deloitte valuation report (2012) and consider any points of concern on sale

BCC Property officers have reviewed the Deloitte valuation from 2012. There are aspects in the advice in that report which are not accepted. Opinion of BCC Property officers has been confirmed by cross-referring to contemporary advice from JLL.

Deloitte did not clarify the status of payments received from Seabank Power station and thus treated as core rent. This is incorrect as the income is only treated as rent due to a side agreement which will fall away if the freehold is sold to FCS, at which time the equal sum will be received through the dividend arrangement. Thus this element is neutral in effect upon sale. This inaccuracy distorted Deloitte's assessment of the value of BCC's current freehold interest.

Deloitte reported "The land has the ability to unlock development value in the future and we recommend the Council retain the freehold on this land. The land is not required for Port Operations."

BCC Property officers have carefully examined the situation, with advice from BCC Legal officers, and sought input from JLL. The Deloitte advice is not accepted, nor considered to be appropriate to the current situation.

9. Impact of sale on BCC retained land – need for access rights, services rights

Summary advice from BCC Legal:

The Port is currently leased to First Corporate Shipping Ltd under three separate leases and the Council has reserved rights in the leases for the benefit of its remaining adjacent property to ensure the adjoining property is fully operational and fit for purpose. The Council will be seeking to mirror the rights reserved by the Leases in the freehold disposal resulting in no impact on the Council's remaining estate following sale of the freehold reversion from an operational perspective. It is also the case that the Council will reserve any additional rights considered necessary to protect the future aspirations for use of its adjoining land. It will be a condition of the freehold disposal that the Council retains unfettered rights of access, use and services for all adjoining property in its ownership thereby endeavouring to secure the status quo that exists at the present time with the lease arrangements.

10. Points raised by Cabinet members at 1 April 2014 meeting

Cllr Janke noted the fact that formal external valuation advice was being sought and suggested that scrutiny members should be given an appropriate opportunity to comment before the final decision was taken. This report will be considered by Scrutiny Commission. However, the external valuation report will be an exempt appendix to be considered by cabinet members but the valuation report will not be reviewed by scrutiny members.

Cllr Hoyt asked if use of palm oil as fuel in a port power plant could be excluded. FCS are willing to agree a restriction to exclude use of palm oil as fuel in a power plant wholly or mainly in connection with the port operational business. Any proposal beyond this would be subject to the Council's decision making as planning authority. Statutory duties as a port operator mean that FCS cannot contract to exclude handling of legally acceptable goods and materials through the port.

11. Harbour Revision Order – points to check

The Port of Bristol Harbour Revision Order 1993 - plan for "designated harbour" has been reviewed by BCC Legal and Property officers. No issues arise that would be affected by the sale of the freehold to FCS.

12. JLL Valuation – matters arising – further involvement

Valuation and property issues have been reviewed with JLL and specific advice provided based on stress testing scenarios, and in connection with second charges. These are reflected in their advice.

13. Original sale contract, management agreement and any other outstanding points

These documents have been reviewed by BCC Legal and Property officers. No outstanding issues remain that would be affected by the sale of the freehold to FCS.

14. Points raised by Cllr Negus

Cllr Negus raised several points at an informal meeting concerning port operations:

1. Loss of potential to use the port in connection with tidal power or similar from the Bristol Channel. Response – no potential exists under current lease arrangements beyond the potential any port customer enjoys protected by statute. This is unchanged by sale of the freehold.

2. Responsibility to dredge approaches to port and for tidal Avon below entrance to Cumberland Basin locks. These responsibilities are within the Harbour Revision Order, not the lease. This is unchanged by sale of the freehold.

3. Obligations arising from the original sale contract. These have been reviewed by BCC Legal officers. There are no outstanding obligations beyond those now within the Harbour Revision Order, not the lease. This is unchanged by sale of the freehold.

15. Henbury Loop interaction

Context

1. Proposals are being advanced to introduce passenger train services to the Henbury Loop, which is currently only used for freight train services to Avonmouth Docks.

2. Port of Bristol has raised its concerns that reopening the Henbury Loop to passenger traffic would affect access to the Avonmouth Docks as the road access is via a level crossing which would need to be closed for around a quarter of the working day.

3. The existing property arrangement where Bristol City Council is freeholder and thus landlord of the Port of Bristol provides absolutely no influence on this situation.

4. Neither the Henbury Loop line nor the level crossing are part of the port property. The change factor in this situation relates to passenger train proposals not port or freight activities.

5. Level crossings are a national issue for Network rail in terms of safety and risk management. They have funding for a programme to address replacement, albeit on a long term basis.

6. Rail transportation is highly regulated which supports consultation and management processes for network change.

Analysis

A. The landlord – tenant relationship between the City Council and the Port Company has no bearing at all on the rail transport proposals and their management. There is no reason to seek to connect the freehold transfer to it.

B. The price negotiated for the freehold transfer is considered to represent the absolute limit achievable for the transaction. If an unrelated obligation is imposed on the transaction, it may totally prevent the matter proceeding. If not, the impact would be directly reflected in revised price meaning that the true effect is for the City Council to commit to the related costs.

C. It is not possible to predict the outcome of the Henbury Loop proposals at this stage. The Port Company is engaging with Network Rail. The eventual technical needs, and source of funding will develop through this process. There is no benefit to be derived from attempting to lock in arrangements which effectively oblige BCC to meet cost at this stage.

16. Nature conservation area – outside sale boundary?

There is a nature conservation area south of the Portbury Docks land. This further land is owned freehold by BCC and subject to separate lease arrangements to FCS. There is no proposal to transfer the freehold of this area to FCS.

17. Deep sea port proposals – impact of sale?

FCS has obtained approvals to construct a Deep Sea Container Terminal (DSCT) although it is not currently in the processes of implementing that construction project. FCS had all necessary property interests to proceed with that project under the current leasehold basis, and their position will not be changed by the freehold being sold to them.

APPENDIX 2

MAYOR'S DECISION RECORDING FORM –

3 MARCH 2015

(decision no. 45.3/15)

Decision Recording Form

Mayor's decision determined at Cabinet meeting on 3 March 2015

Decision will come into effect on 11 March 2015
(subject to any call-in referral before that date)

(a) **Subject:** **Avonmouth and Portbury docks freehold**
(agenda item 6)

(b) **Ward:** Avonmouth

(c) **Decision taker:** George Ferguson, Mayor

Cabinet members present:
Cllr Geoff Gollop, Deputy Mayor
Cllr Mark Bradshaw, Assistant Mayor for Place, including Transport & Regeneration
Cllr Simon Cook, Assistant Mayor for Business Change, Resources & the Arts
Cllr Daniella Radice, Assistant Mayor for Neighbourhoods, including Health, Sport & Leisure
Cllr Brenda Massey, Assistant Mayor for People, including Education & Social Services

(d) **Declarations of interest:**

None.

(e) **Decision taken by the Mayor:**

1. **That approval be given to the transfer of the Council's freehold interest in all of the land held on a long leasehold basis by First Corporate Shipping forming the Port of Bristol and associated land adjoining, for a payment by First Corporate Shipping of £10m.**

2. **That the Strategic Director – Place be authorised to approve the legal property transaction to conclude the sale.**

(f) Other options considered and rejected:

As set out in the report.

(g) Exempt information?

An exempt appendix (valuation report) contained commercially sensitive information.

(h) Decision made in exempt session?

No.

(i) Additional information at the meeting /documents taken into account:

1. Three public statements.
2. One public question.
3. Three councillor statements.
4. One councillor question.
5. Comments of the Place Scrutiny Commission.
6. In taking the decision, the Mayor clarified / referred to the following:

    a. that he was approving the proposal as per the report, with the addition of the small areas of land as shown in the plans previously circulated to Cabinet members, copies of which were available for public inspection at the meeting, and have been lodged in the Cabinet decision record book.

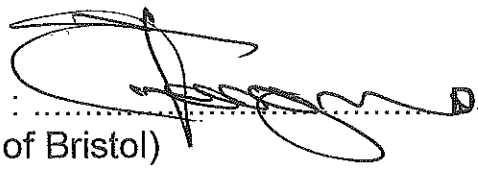
    b. that at the 1 April 2014 Cabinet meeting, he took an "in principle" decision regarding this freehold disposal. Since then, as documented in the report, officers had concluded extensive legal due diligence, including the particular issue of confirming that the Council's position as minority shareholder in the port business would not be materially changed by the freehold transfer.

    c. that he had taken account of the previous consideration of this matter by the Call-In Sub-Committee on 14 May 2014, where it had been decided that no further action was necessary.

    d. that in consultation with Cabinet members and the local councillors for Avonmouth and Kingsweston wards (the two wards most affected by operations at Avonmouth), a £1m local investment fund would be set up out of the proceeds of the sale to stimulate local regeneration projects.

(j) Reason for decision:

As set out in the report.

Signed :  **Date :** 3.3.2015

(Mayor of Bristol)

APPENDIX 3

CALL-IN FORM SUBMITTED BY COUNCILLORS HOPKINS, JACKSON, LEAMAN, NEGUS & PEARCE

BRISTOL CITY COUNCIL

REQUEST TO THE PROPER OFFICER TO CALL IN AN EXECUTIVE DECISION

Appendix B

(This form should only be completed after the accompanying guidance notes have been read. It should be completed fully in order that the Proper Officer has an adequate basis upon which to call in the decision)

Names of the non-executive members requesting the proper officer to call the decision in :	ANTHONY NEGUS GARY HOPKINS STEVE PEARCE CHRIS JACKSON TIM KEMP
Date and time request submitted :	Tuesday 3rd March at:
Details of Executive (or officer acting under delegated power)	Mayor
Decision number and date	CAB 45.3/15 - 3rd MARCH 2015 Report title: Avonmouth & Portbury Docks - Freehold CABINET – 3 MARCH
Description of decision or part of decision ***(if you only quote the subject then everything in the decision could be suspended pending the Call In's Sub meeting)***	Sale of freehold interest in land at Avonmouth and Royal Portbury Docks

State which principle(s) in Article13 of the Constitution you believe the executive has breached and set out any evidence to support this.	PROPORTIONALITY *The Council is required to act in the interests of the public as a whole.* The long term investment by Bristol City Council on behalf of all its citizens will be removed for short term advantage, reducing the options for future generations. PRESUMPTION IN FAVOUR OF OPENNESSS The financial aspects of this transaction and the consequential loss of strategic influence, and benefit from transactions by the present Bristol Port Company, and in particular uplift in value from a sale to another owner are all part of the exempt documentation. This information was only shared with the Place Scrutiny Commission when its absence was challenged by a Councillor. Access was restricted. The contents of this all-embracing document are the essence of this issue to which neither the public nor the press has been allowed access. CLARITY OF AIMS AND DESIRED OUTCOMES Thoughtful consideration of other options has not taken place. The Mayor has publically stated he wants to use this one-off windfall, but the Officer at Scrutiny presented a different scenario. Neither offer the potential benefits that creative engagement with the Port Company and its successes would offer.

Signed by Councillors .....

.....

Please now hand to any Democratic Services Section for actioning
- Floor 4, Brunel House, - Clifton Wing

APPENDIX 4

MINUTES OF CALL-IN SUB-COMMITTEE -

2 APRIL 2015

Agenda Item No:

Bristol City Council
Minutes of Call In Sub-Committee

Friday 2 April 2015 at 4.30pm

_____

Members Present:-
Councillor Lovell (Chair), Councillor Goulandris, Councillor Mead, Councillor Mongon, Councillor Bailey, Councillor Telford.

Officers in Attendance:- Shahzia Daya – Service Manager and Deputy Monitoring Officer, Legal and Democratic Services, Robert Orrett – Service Director – Property, Allison Taylor, Democratic Services

1. Apologies for Absence and Substitutes.

Apologies from Colin Smith and Councillor Mead as substitute.

2. Public Forum.

A question was submitted by Stephen Layland, the question and response is attached to these minutes as an appendix.

The supplementary question was as follows:-

'The evaluation of £10m did not seem a reasonable price and seemed to reflects 'seller beware' and not 'buyer beware'. Councillor Gollop had stated that the offer was larger than the previous offer.

Response from Robert Orrett.

The valuation approach used was an internationally recognised standard. The valuers used were leading experts, and highly expert in the area of property. They supported that £10 million was the best price.

The following Statements were received and are held as a public record on the Minute Book.

- David Redgewell (Ref PFS2.4.15/01);

- William Brunston (Ref PFS2.4.15/02);
- Jade Steinhovden (Ref PFS2.4.15/03);
- Ian Beckey (Ref PFS2.4.15/04);
- Geoff Collard (Ref PFS2.4.15/05);
- Julie Boston (Ref PFS2.4.15/06)

RESOLVED – that the response to the question and statements be noted.

3. Declarations of Interest.

There were none.

4. Whipping.

There was no whipping.

5. Call in of the Mayor's decision (taken at the 3 March 2015 Cabinet meeting) on Avonmouth & Portbury Docks – Freehold.

The Callers-in presented as follows:-

Councillor Negus.

- He had called the decision in to expose the weaknesses in the second stage information upon which the 'in principle' decision was made in April 2014. This was a valuation, risk and due diligence report. It was an exempt report and extracts made public were suitably anodyne and did not help the public understand what was contained and what was not. The only part of the deal noted was £10m for a freehold sale;
- The report was not made available to scrutiny until it was demanded and then under restricted access;
- The report was exempt but was hardly commercially sensitive. It was a document about a deal between one party uniquely placed and anxious to buy and the owner anxious to sell;
- It was a subjective report and plays down the Council's position. For a Council that was risk aversive, the report concentrated on what could go wrong and covered those situations and never stated what could go right and so did not provide a balanced appraisal to guide this Council's ability to evolve a truly considered best outcome;
    - He was not fundamentally opposed to relinquishing the freehold held in trust for the citizens of Bristol but the deal had to be credible. There was a lack of vision and consideration of what should be 'foreseen circumstances'

He then made the following key points:-

- The value would increase as the leasehold aged. There should be a long, municipal 150 year view and not a four year window of opportunity;
- First Corporate were desperate for the freehold. It had been reworked into the report the Port's assertion that sovereign wealth was the only source of support for Ports and that they insisted on freehold. These assertions were such important aspects of the sale that they needed to be questioned. Even if it were true, was the land freehold required by First Corporate essential to secure investment or so a much enhanced asset package could be sold for a higher value ?;
- Why was there no provision for an overage arrangement to cover this eventuality? It was not stated that our 12. 5 % was secure, but a transferred sale through a holding company could drop this. If First Corporate deny the land transfer, why did they insist on no increase in the share of any resulting uplift but instead to only agree to a one off £10m cash deal ?;
- Perhaps the landscape has changed. The City no longer had successive councillors and administrations that thought long term and municipally, seeing the privatised Port as an important asset now and potentially so much more valuable intrinsically and to the City and its people in the future. They kept us a part of that co-operative venture, rather than separating the city from future opportunities;
- The report focused on opportunity restricted by Planning Limitations. This might be true today but who could guarantee no change in 127 years. There were massive changes with respect to permitted development rights and the Council should not depend on planning now which limited now and would limit forever;
- Flood risk was another limiter. There was no estimate in the exempt report of the current or future value of the investment in the 746 hectares. Part of the land was needed by BCC for projected flood protection measures and so might need to be Compulsory Purchased to protect land in someone else's ownership;
- The sale was recently considered by the Place Scrutiny Commission and 4 broad resolutions were put forward for the Mayor to consider at Cabinet. However, those resolutions were not appended to the Cabinet report and the report, for such a huge decision, was just one page long. The public should have been able to see counter points from Scrutiny. At the Place Scrutiny meeting the Service Director, Property stated that a major consideration was that £10m invested over 127 years would be more valuable than holding onto the Port land. Why was the option to hold on to the land not tested in the valuation report ?

- The Mayor had already stated on Radio Bristol that he was minded to put the money into one of his vision projects to redevelop Castle Park. Councillor Negus had spent months working on that project and all approaches needed Council subsidy. What was the truth about how this second firesale money was to be invested in Bristol's lasting future ? He had no issue with a private company investing to take itself into profitability but the City Council needed to be more astute with its assets. This was now a very political decision and the answers, biased towards risk and focusing on the preferred outcome were partly in an exempt document with no other options and were not available to the public or Councillors without pleading. Only a small part of this document needed to be exempt and all the subjective contents have been denied to the public. It recommended selling the long term public asset for short term gain to a private enterprise and resigning the ability to claim back any of the benefits of any of the resulting enhanced commercial value. This was inept and had not been handled in a proper manner;

Councillor Hopkins.

- The Port was of massive strategic importance to the whole of the West of England and therefore all factors should have been taken into account when taking a decision and the other Unitary Authorities should have been consulted;
- There was no arguing of the pros and cons in the report, just the Mayor saying it would happen and therefore the report was written accordingly;
- He praised the deal that saved the Port in 1991, it had been good for this authority and asked why was it necessary to change the situation that had worked so well;
- He did not mind if First Corporate got very wealthy as long as the Council got a fair share which would not happen with the current proposal;
- In the past the Council had been approached with an offer for the freehold which had been declined. Naturally, good business people wanted to make lots of money and the Council needed to be certain it did too. Sovereign Wealth was an opportunity for them to make huge profit but there was no overage for the Council;
- How would the railway and transport infrastructure be safeguarded – it had not been referred to in the report. Would the Henbury Loop happen ? Negotiating after the sell

was not acceptable. The report was unconvincing as there was so much detail missing and he therefore concluded that it was omitted because it was not being properly looked at. The original in principle decision to sell had been called in and resulted in no further action and it was now ‘last chance saloon’. He urged the Sub-Committee to refer the decision to Full Council in order to get answers otherwise the citizens of Bristol would hold the decision against us.

Councillor Pearce.

- If you sell something, you need to know the worth you place on it and the worth to the buyer. The exempt report did not value the worth of the freehold for the purchaser, just the seller;
- There had been no assessment of the worth of 2100 acres to the eventual purchaser. This Council could currently decide what would happen with the land. If sold, the Port could submit a planning application for a change of use. The Port had not been a good neighbour because of noise, dust and rats, a planning application on the portion of land next to residents would not prove popular;
- He had calculated that selling 85 hectares of land for £1m and obtaining consent for 50/60 dwellings at £60,000 per unit could result in £200 m clear profit for the Port. If it came to light that a parcel of land that the Council had once owned had been sold for £200m profit and the Council’s share was £1m, there would be questions asked;
- The exempt report meant that members could not decide whether the Mayor had sufficient information to make an informed decision;
- There was no detail on what the freehold might be worth in the future with uplift and therefore a fair decision could not be made;
- He therefore urged the Sub-Committee to refer the decision to Full Council for debate so all Councillors could express an opinion and the public could submit statements.

The Mayor responded as follows:-

- To an outside purchaser, the freehold was worth less than £1m. This had been tested with investors. He also consulted a very successful investor who stated that he would not consider it as it would hold no value to his clients;
- the marriage of lease and freehold added value and there was only one customer – the Port;
- previous discussions had seen offers of £3/4 m. He was not a keen seller but he wished to get the best value and had a responsibility to use resources for the best interests of the city;
- the value of the sale was so good that it could be used to build further value for the benefit of Bristol. This was not about spending but about investing in order to build up greater value for the city. 10% of the money would be used for reinvestment in the local area;
- in tough times, it was necessary to take opportunities to be entrepreneurial and to invest in areas and bring back return for regeneration;
- every issue that had been raised so far had been raised by him and officers. He had been as immersed in the proposal as much as he could be. All information had been made available to Cabinet and was online. He believed the decision was likely to be referred to Full Council but there was not a good procedural reason for that. He shared the emotion and passion for the city as Councillors and this was why he wished to use an asset for the best interests of the city. This was an extraordinarily good deal. It was best to leave out the emotional statements and focus on the thoroughness of process.

The following comments were made by the Sub-Committee:-

- Councillor Bailey observed that the First Corporate was not offering £10m out of the goodness of its heart but for good business reasons. Regarding the process, most Councillors had not seen the exempt report and had not been given the opportunity to see it. The land was not the Council's or the Mayors. It belonged to the citizens of Bristol and the Councillors were its trustees. £10m was a vast amount of money but the Council was about to spend £90m on an arena. The decision had been confined to a small number of people but we were the representatives of Bristol residents. It was vital to protect the Council's assets and be open and transparent. He therefore suggested that the decision be

referred to Full Council and that all Councillors see the exempt report. The Mayor, in response, stated that this Sub-Committee had been arranged for some time and had not attracted a huge crowd and therefore indicated that it was not such a big matter for the public. The Cabinet meeting that made the decision had not attracted huge objection. £10m was a great deal in terms of beginning a regeneration fund which could possibly bring in hundreds of millions in the future;

- Councillor Mead asked what was the point of scrutiny if members did not have access to all the information. He asked whether being an entrepreneur was part of a Councillor's role. It was not possible to know the price in the future. Would the current guarantees remain if sold on in the future? The Mayor, in response, stated there had been a lot of agonising regarding the price. The Council stated that it would not consider selling unless there was an eight- figure sum. He was surprised that the Port came back with the offer as it was painful to them. There would be a disservice to the city if the sale was put at risk. As Mayor he had to be entrepreneurial and lead the Council in a more business like way by leaving its finances in a sound position. As Port owners, the Council would receive 12 % benefits from any gain;
- Councillor Mongon noted that there were 3 areas challenged by the Callers-In. With respect to proportionality – the Mayor had the benefit of his judgement based on the information he was given. Clarity and aims – the sell would bring about a firm financial footing and regeneration and was therefore good. The presumption in favour of openness was a problem for him. Why had there been no options, risks and reasons set out in the report ? The Mayor assured us that all issues had been properly considered but there was no evidence of this or what the freehold was worth to the buyer. There was not a great deal of detail in the report and the context regarding the decision made was missing. Robert Orrett replied that Councillor Pearce's assertion that there had not been an evaluation of the potential value to the buyer was incorrect as this had been covered in the exempt appendix. Councillor Mongon asked the Mayor if he felt the process had followed a presumption in favour of openness and all the information that could be shared had been? The Mayor replied that he absolutely believed this to be so. The element

of confidentiality was to not give information to the purchaser;

- Councillor Goulandris asked if there had been an independent valuation from a professional valuer. The Mayor confirmed that the valuations were based on a 3rd party purchase marriage value. The third valuation was undertaken later when it was known the price asked for was £10m. This raised the value but way below £10m;
- Councillor Bailey believed it was naïve to think the Port had not had valuations also. If the lease was kept, First Corporate would then have to keep the Port open. Robert Orrett replied that the lease was for the water and ships and First Corporate was obliged to operate as a port. If he Port went out of business, it would belong to the administrator as an asset to be disposed of. Councillor Bailey asked whether giving up the right to retain it as a port was a risk worth taking. A company could take over another company and the control would be lost once the sell was made.

At this point, the Mayor left.

- Councillor Mead asked whether there had been valuations from more than one company. Robert Orrett stated that an expert valuation consultancy had provided the valuation. In 2012 it had been a different leading firm. There had not been multiple valuations as that was not a reasonable and proportionate action;
- Councillor Telford believed that process had not been followed and therefore the decision should be referred to Full Council.

Robert Orrett presented as follows:-

- He was professionally qualified to advise the Councillors. He was a chartered surveyor, had been an expert witness in the High Court on a number of occasions and was a genuine expert in the field of valuation;
- The small area of land on the east side of the site was not developable;
- There had been criticisms that the valuation report had failed to consider a range of options. This was never the objective of the report. The valuers were the leading valuers in the country and had undertaken an exemplary piece of work.

The officers work covered other matters. Councillor Negus had made an incorrect representation as the value was not determined by acreage and location. If the Port was a long lessee for 126 years and paid nothing, the effective value was less than £1000. The 12% share had not been discussed as this was a property valuation. This did not change the risk to the share holding. Extensive legal advice had been taken for the officer report;

- First Corporate could now sell the long leasehold if they chose to and the Council had no say, they were not obliged to even inform us. If they sold the whole of the business and land, the Council's shares would be converted to an equivalent price as per the terms of the 1991 agreement;
- He refuted Councillor Hopkins comment regarding the report being written to ensure the sale happened. The valuers would not accept an instruction on that basis;
- The Council receiving a fair share depended on the terms of the 1991 agreement. If the port was sold now for many millions, the Council would be entitled to 12 % of that;
- It was important to benchmark the impact of keeping and selling the freehold;
- The Henbury Loop had been addressed in the report under due diligence.
- He referred to Councillor Pearce's assertion that the worth to the buyer had not been addressed in the report. He accepted that the report had been written in the terminology used by Chartered Surveyors but the matter had been addressed.
- He questioned the house building development proposition put forward by Councillor Pearce as a £200m profit would depend on the closure of the port. It was a matter of public record that £450m had been invested in the port which would be written off to acquire £200m. It was important to place this in context. The area in question was all hinterland. If this was sold for greater value than industrial uses, the Council would get 50% of the output;
- The 2014 report was misleading with respect to rental income from the power station. Under the lease the power station was a non approved use so there could be no uplift from industrial land values but it was possible to take rent in place of profit share. This was an accounting decision at the time. If this ended, it would come back to the Council as a share of the profit, there would not be a loss;
- The valuers had been asked to provide advice on four

scenarios on an extreme basis and to balance risk against opportunity. They were satisfied that the one off payment was preferable to the possibility of shares.

The Chair proposed that the meeting move to a conclusion.

Councillor Bailey moved that the decision be referred to Full Council for debate as he did not believe that due diligence would have taken place unless considered by Full Council. He added that all 70 Councillors should be invited to look at the exempt document as this was a major asset and Councillors had a right to know.

This was seconded by Councillor Telford.

Shahzia Daya acknowledged Councillors' right to know but stated it would be necessary to check legislation with respect to Full Council having sight of the exempt document. A system of managed access would need to be considered.

Councillor Mongon supported this motion as he did not feel the process had been open.

Councillor Goulandris believed that the Call In should be dismissed as it was the decision that Councillors were not happy with. Process had been followed and the decision was proportionate. The in principle decision had been called in last year and was then dismissed. The process used for dealing with commercially sensitive matters was on record.

Councillor Bailey accepted there was commercially sensitive information but maintained the right to have access. He accepted that it would need to be managed access.

On being put to the vote, the motion was carried 4:1 with 1 abstention.

RESOLVED: that the Mayor's decision taken on 3 March 2015 Cabinet to sell the freehold interest in Avonmouth and Portbury Docks, be referred to Full Council for debate.

END: 6:50PM

(Chair)

Appendix.

Given that re-newed interest in the sale of BCC's share in the FREEHOLD of Portbury Dock was triggered in 2012, please HIGHLIGHT the extent to which

[Q1] the accepted 10M value of BCC's share in the FREEHOLD had been assessed against the higher worth/value implications of the earlier announcement in that same year of the decision of a very young and wealthy Chinese multi-billionaire to excavate and construct a deep canal East/West across Nicaragua, which would effectively save 6,000 miles in both time and cost-saving/profit-generating advantages. That billionaire has pointedly asserted that his was not a shell-company on behalf of the Chinese State.

[Q2] Did the valuation account for the rise in both the number and really massive size of both luxury [world-touring] and container ship(s) - already up to 300m in length - that are already being built and planned throughout the world.

[Q3] Did the valuation take account of the historical record of the number and size of the ships/fleet of Great China - recorded as including so many huge wooden ships of 100m in length that one fleet was reported as being seen to reach from the far horizon to horizon - on all sides - when underway.

[Q4] Did the valuation take due account - in particular - of the pointed rationale and recommendations of Judith Rodin's extended blog/post/paper The City Resilliant June24 2013.
http://www.rockefellerfoundation.org/blog/city-resilient

[Q5] Did the valuation of just 10M take enough account of the announcement of any other noteworthy findings/knowledge/discoveries - published in that same 2012 year - that bear directly and substantively on the foregoing discussions and implications in the valuation of BCC's share in the FREEHOLD of the Portbury Dock. So please list the nature of such noteworthy publications/discoveries that have substantive bearing - in the negotiations - when assessing the true worth of BCC's share in the FREEHOLD.

[Q6] Would not the far greater capital obtained from the much higher sale of BCC's share in the FREEHOLD allow the city to indeed afford to fulfil the Directly Elected Mayor's original commitment to substantively

invest in the fitting redevelopment of the area around the Bristol Bridge corner and St Mary Le Port end of Castle Park, and most notably by first demolishing the unsightly modern buildings that currently detract from an open city-wide conversation about that site - a.k.a. as would thereby positively encourage and focus what would have to be a city-wide debate - in the name of really internalising the ownership that is necessary to city-wide "cohesion" - as the most effective way to engage ALL citizens in the creation of a more particular appreciation of the sort of city-wide sense of "meaningfulness" that would most fittingly celebrate the promise of the past, present and future history and heritage through the re-development of this [the original] birthplace of the "ur-city" of Bristol, and all WITHIN an place that Matthew Taylor - attached to the RSA and other dedicated [Heritage-aligned] bodies - has recognised and suggestively koined as amounting to a "Heritage-Shaped Hole".

Sincerely,

Stephen Layland

Response to Question.

1 – 5 The valuation is of the property interests in the port land. The basis is to reflect property values in the context of the property market. To the extent that the matters stated affect property values, they are implicitly reflected in the valuation. It is not possible or appropriate to list other noteworthy findings/knowledge/discoveries - published in that same 2012 year.

6 The funds received might be invested as described. That would be a matter for future decision.

APPENDIX 5

DRAFT MINUTES OF
EXTRAORDINARY FULL COUNCIL -
2 JUNE 2015

MINUTES OF AN EXTRAORDINARY FULL COUNCIL MEETING OF BRISTOL CITY COUNCIL
HELD ON 2 JUNE 2015 AT 6.00 p.m.

P The Lord Mayor - Councillor Campion-Smith
A The Deputy Lord Mayor - Councillor Watson
P The Mayor - George Ferguson
P Councillor Abraham
P Councillor Alexander
P Councillor Bolton
P Councillor Bradshaw
P Councillor Brain
P Councillor Breckels
P Councillor Budd
P Councillor Cheney
P Councillor Clark
P Councillor Clarke
P Councillor Cook
A Councillor Daniels
P Councillor Davies
P Councillor Denyer
P Councillor Eddy
P Councillor Fodor
P Councillor Frost
P Councillor Glazzard
P Councillor Gollop
P Councillor Goulandris
P Councillor Greaves
P Councillor Hance
P Councillor Harvey
A Councillor Hickman
P Councillor Hiscott
P Councillor Holland
P Councillor Hopkins
P Councillor Hoyt
P Councillor Jackson
P Councillor Jama
P Councillor Joffe
P Councillor Kent
P Councillor Khan
P Councillor Kirk
P Councillor Langley

P Councillor Leaman
P Councillor Lovell
P Councillor Lucas
P Councillor Malnick
P Councillor McMullen
A Councillor Massey
P Councillor Mead
A Councillor Means
P Councillor Melias
P Councillor Milestone
A Councillor Mongon
A Councillor Morgan
P Councillor D Morris
P Councillor G Morris
P Councillor Negus
P Councillor Payne
P Councillor Pearce
P Councillor Phipps
A Councillor Quartley
P Councillor Radice
A Councillor Rylatt
P Councillor Shah
P Jenny Smith
A Councillor Stafford-Townsend
P Councillor Stone
P Rob Telford
P Councillor Thomas
P Councillor Threlfall
A Councillor Tincknell
P Councillor Weston
P Councillor Windows
P Councillor Wollacott
P Councillor Wright

Honorary aldermen and alderwomen in attendance:
R Griffey, J McLaren, P Roberts, R Walker

13. DECLARATIONS OF INTEREST
(agenda item 1)

With regard to agenda item 4 (Call-in referral – Mayor's decision on Avonmouth and Portbury docks freehold), Councillor Harvey declared an interest relating to the fact he was an employee of Bristol Port Company. It was noted that Cllr Harvey would not take part in the discussion of that item of business.

14. STATEMENTS AND QUESTIONS FROM MEMBERS OF THE PUBLIC
(agenda item 2)

Note: at the suggestion of the Lord Mayor, statements and questions were dealt with immediately before the relevant agenda item.

Statements:
The Full Council received and noted the following statements:

Re: agenda item 3 - Call-in referral - Mayor's decision on digital advertising:

- Statement PS 3.1 from John Payne, Bristol Civic Society

Re: agenda item 4 - Call-in referral - Mayor's decision on Avonmouth and Portbury docks freehold:

- Statement PS 4.1 from David Redgewell, Martin Cinnamond and Ian Beckey, South West Transport Network

- Statement PS 4.2 from Robert McKeown

- Statement PS 4.3 from Paul Mugford

- Statement PS 4.4 from Rodney North, William Medd and Alderman Royston Griffey

- Statement PS 4.5 from Stephen Layland

Statements were presented by those individuals who were present at the meeting.

Questions:

The Full Council noted that the following questions had been received:

Re agenda item 4 - Call-in referral - Mayor's decision on Avonmouth and Portbury docks freehold:

- Question PQ 4.1 from Alderman Royston Griffey

- Question PQ 4.2 from Alderwoman Rosalie Walker

- Question PQ 4.3 from Christina Biggs

The Mayor gave verbal responses to those questioners who were present at the meeting, and also responded to supplementary questions.

It was noted that written responses would be sent to questioners following the meeting.

15. CALL-IN REFERRAL – MAYOR'S DECISION ON AVONMOUTH & PORTBURY DOCKS FREEHOLD

(agenda item 4)

At the suggestion of the Lord Mayor, the Full Council agreed to vary the order of items as listed on the agenda and proceeded to consider a report of the Service Director - Legal & Democratic Services requesting that (following a referral by the Call-In Sub-Committee) the Full Council debate the Mayor's decision on Avonmouth and Portbury docks freehold, with a view to determining either:

a. To object to the decision and refer it back to the Mayor, together with its views; or

b. Not to object to the decision, in which case the decision would become effective immediately.

For the purposes of enabling the debate to take place, the Lord Mayor moved the report, and Councillor Jackson seconded the report.

Following the debate, the Full Council voted on the following motion:

- "That Full Council objects to the Mayor's decision on Avonmouth and Portbury docks freehold, and that it be referred back to the Mayor, together with the views of Full Council."

Upon being put to the vote, the motion was CARRIED (41 members voting in favour, 16 against, with 3 abstentions), and it was accordingly

RESOLVED:

- **That Full Council objects to the Mayor's decision on Avonmouth and Portbury docks freehold, and that it be referred back to the Mayor, together with the views of Full Council.**
  (Note: a summary of the views of members as expressed during the debate is set out at appendix A).

16. CALL-IN REFERRAL – MAYOR'S DECISION ON DIGITAL ADVERTISING

(agenda item 3)

The Full Council considered a report of the Service Director - Legal & Democratic Services requesting that (following a referral by the Call-In Sub-Committee) the Full Council debate the Mayor's decision on digital advertising, with a view to determining either:

a. To object to the decision and refer it back to the Mayor, together with its views; or

b. Not to object to the decision, in which case the decision would become effective immediately.

For the purposes of enabling the debate to take place, the Lord Mayor moved

the report, and Councillor Jackson seconded the report.

Following the debate, the Full Council voted on the following motion:

- "That Full Council objects to the Mayor's decision on digital advertising, and that it be referred back to the Mayor, together with the views of Full Council."

Upon being put to the vote, the motion was LOST (16 members voting in favour, 41 against, with 1 abstention).

It was noted therefore that Full Council was not objecting to the Mayor's decision on digital advertising and that the decision would become effective immediately.

It was also noted that in light of issues raised at this meeting, Cllr Gollop (on behalf of the executive) would meet with Cllr Pearce (Chair of the Overview and Scrutiny Management Board) and relevant officers to review the procedures around exempt / confidential information, with a view to ensuring that decision making was as transparent as possible, and that there was clear understanding about the circumstances when information would be classified as exempt and about members' rights in terms of accessing that information.

(The meeting ended at 8.18 p.m.)

LORD MAYOR

Appendix A to Minutes of Extraordinary Full Council - 2 June 2015

Summary of views of members as expressed during the debate on agenda item 4: Call-in referral - Mayor's decision on Avonmouth & Portbury docks freehold

1. Cllr Negus:
   - The Council had a responsibility to protect the assets of the city.
   - The proposal in his opinion was based on a short term realisation of a sum (£10m) for this land rather than based on a long term view of the asset, in the interests of the city and residents into the future.
   - Previous Council administrations (including the last Liberal Democrat administration, of which he had been a member) had taken a longer term view of the value of this asset and had resisted approaches from the port company regarding the freehold disposal of this land.
   - The officer report, in his view, gave a "one sided" view of the proposal. The exempt land valuation report gave one view of the proposed sale price; there was no recognition of the long term implications / cost to the city, e.g. if the value of the site was to rise at a future point during the remaining 127 years of the current lease. The sale would also mean that the Council would lose its ability to have influence (in the interest of Bristol's residents) in steering the future destiny of this commercial site, e.g. the opportunity would be lost for the Council to engage with future marine energy activity / tidal lagoon opportunities in the Severn estuary area.
   - In his view, if the land was sold now, this asset would inevitably be re-sold on at a later date at a higher price.
   - The Mayor should look again at this decision in light of the potential value of this land over time – the situation could change over the remaining lifetime of the lease.
   - In his view, the current proposal would represent a dreadful decision, for which the Mayor would be held accountable.

2. Cllr Holland:
   - There remained concerns and frustration about the way in which information about this proposal had not been shared properly with members and the failure to engage effectively with the wider council membership before the taking of the original decision. A number of questions and concerns raised by members since the original "in principle" decision taken by the Mayor in April 2014, and during the recent call-in process remained unaddressed.
   - There was a need to re-assess the procedures around "exempt" information (i.e. information that was not included in public reports), to ensure greater transparency in decision making and ensure there was clear understanding about the circumstances when information would be classified as exempt and about members' rights in terms of accessing that information.
   - As highlighted in the public forum statements, there were transport-related issues which needed to be fully assessed in the context of

the sale of this land, e.g. the extent of any impact on the Henbury railway loop line.
- The Mayor's decision was based on a view that £10m represented a good price for the land at the present time, but it was also important to consider and assess that against the value of any benefit and influence to be derived from retaining the leasehold in the longer term.

3. Cllr Abraham:
   - He was fully supportive of the Mayor's decision.
   - It was important to recognise the historical context - prior to the sale of the port in 1991, the port had been losing £12m a year; Bristol had benefitted from the port company's investment; 10,000 jobs had resulted from that investment. The Council had received £68m of income since 1991 via its 12.5% sharehold.
   - It was a misconception to think that the current leasehold arrangement meant that the Council had any real influence over the future of this land. He was concerned that there was a degree of misinformation about this point. The Council's real influence lay in its role as the planning authority.
   - It was important to be aware that the Council would retain its position as a 12.5% shareholder in the port company.
   - In his view, the sale price of £10m represented a good deal for Bristol.

4. Cllr Bolton:
   - He urged Full Council to object to the Mayor's decision and to refer it back to the Mayor for reconsideration.
   - The Green group supported the business operation of the port company at Avonmouth docks but was opposed to this freehold sale. This land should be regarded as a community asset, held for long term benefit, and not sold for a short term gain. The council should manage the land, and not look to sell it.
   - There were a number of transport related issues where safeguards were needed, e.g. in relation to the Henbury railway loop line.
   - If the sale did ultimately go ahead, he was not convinced that the sale price was sufficiently high.
   - The Mayor should reverse his decision.

5. Cllr Hopkins:
   - It was important to recognise the successful operation of the docks since the original sale of the port in 1991. However, the Council should not now give away its influence.
   - In his view, the exempt land valuation report had not presented a convincing, or balanced argument in support of the sale.
   - As indicated by other speakers, there were a number of transport related issues that needed to be addressed.
   - The Council had a responsibility to act on behalf of all Bristol citizens. Even if a sale was progressed, advantage should be taken of a "desperate purchaser" and a higher sale price negotiated.
   - The last Liberal Democrat administration had been told (at that point in time) that a sale price of £3-4m could be achieved for this land; that administration had refused taking forward that proposal.

- The Council should focus on the long term interest of keeping this land; it should not be treated as a “smash and grab” sale.

6. Cllr Brain:
   - The lease had 127 years to run; it was very difficult to predict the future and so make a judgement now that this sale was appropriate.
   - He was concerned that there was “more to this picture than meets the eye” and that there was a very real risk of a future re-sale realising much more than the current sale price of £10m.

7. Cllr Gollop:
   - He was very concerned about the misinformation being presented by some about the influence to be derived from the leasehold arrangement. It was important to recognise that the current arrangements effectively gave the Council no strategic influence over port operations.
   - He understood the deeply held concerns of some members about the decision to progress a freehold disposal. Ultimately though, in his view, the Council (given the history of investment made, and risks taken, by the port company) should show confidence in the company and give total support to its business. In his view, the Mayor’s decision should be supported.

8. Cllr Pearce:
   - He was concerned about this decision and, as a matter of political faith, he struggled with the sale of a public asset such as this.
   - Much had been made of the price (£10m) to be obtained by the Council from this sale, but he was concerned about the issue of value.
   - He retained concerns about the advice the Mayor had received on this matter. There had been a land valuation report, but questions remained, including the issue of whether a higher sale price could be achieved.

9. Rob Telford:
   - He had chosen not to read the exempt land valuation report because in his view, any member of the public should have been able to see this.
   - He was concerned about the difficulty in predicting the future if the sale progressed; for example, there could be a future sale of the port to another company, which might in certain circumstances look to disinvest in Bristol Port because of wider commercial considerations.
   - In terms of the £10m sale price, he was concerned that insufficient information had been made available about how that money would be used.

10. Cllr Weston:
    - Bristol as a city needed a thriving port and improved rail infrastructure. In his view, this sale would not impact on or jeopardise the Henbury railway loop line.
    - He was satisfied with the advice contained within the exempt land valuation report.

- If invested wisely, the sum of £10m to be realised from the sale would result in very substantial longer term benefits for the city. The issue of holding on to the lease for the longer term had been raised but in his view the Council would do much better in the longer term by progressing this sale and investing now.

11. Cllr Khan:
    - He felt that there were still a number of questions that had not been answered.
    - He was concerned, given that 127 years remained on the lease, a sale was being "rushed into". In his view, the Council should retain this asset for the longer term.

12. Cllr Melias:
    - It was important to recognise the importance of the port as an employer.
    - The Council should support the port company as a business. The acquisition of the freehold would enhance the port company's ability to attract investment in a deep sea container terminal.
    - The £10m to be realised from the sale would result in a positive impact for the city, including local investment in the communities closest to the port.

13. Jenny Smith:
    - Transport related issues needed to be addressed, e.g. in relation to the Henbury railway loop line.
    - She was concerned about longer term implications if the land was sold on a freehold basis now, including the issue of the land being re-sold at a higher price at a future date.
    - She was concerned that insufficient information had been made available about how the £10m to be realised from the sale would be used.

14. Cllr Mead:
    - He expressed particular concern around how the procedures around "exempt" information had been applied, which had led to difficulties in members being able to engage in effective scrutiny. It was essential to ensure that members had access to all relevant information.

Summary of points made by Mayor Ferguson in responding to the debate:

- He understood the "emotion" that some councillors felt about this issue, but felt that there was some misunderstanding about the degree of influence that the Council had in reality under the current leasehold arrangement.
- The £10m price was considerably higher than the site valuation.
- In relation to the use of the £10m to be realised if the sale proceeded, he had written to the 4 councillors for the Avonmouth and Kingsweston wards to advise that £1m from the proceeds would be invested locally, in consultation with those local

communities. The remaining £9m would be invested in regeneration schemes in the city.

- The sale should not be seen as “letting the family silver go” but as an opportunity to re-invest and add value both now and in the longer term. He suspected that whatever the proposed sale price might be, there would always be some who felt the price was not sufficiently high.
- He respected the points raised through the call-in process, and, if so requested by the Full Council, would re-consider his decision. He asked councillors to consider themselves, however, whether it was sensible to request this, or whether it would be best to proceed with the sale and use the £10m now and into the future on behalf of Bristol’s citizens.