

BRISTOL CITY COUNCIL

PLACE SCRUTINY COMMISSION

5 FEBRUARY 2015

Report of: Robert Orrett / Service Director - Property

Title: Avonmouth and Portbury Docks Freehold

Ward: Avonmouth

Officer Presenting Report: Robert Orrett / Service Director - Property

Contact Telephone Number: 0117 922 4086

RECOMMENDATION

To seek members comments prior to the matter being reported to Cabinet on 3 March 2015

Summary

The Cabinet Report seeks approval for the proposed sale of the freehold of Avonmouth and Portbury Docks

The significant issues in the report are:

At its meeting of 1 April 2014 Cabinet approved the proposed sale 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.

The report to Cabinet on 3 March 2015 will confirm these points and recommend that the sale is concluded.

1. Consultation

Internal

There has been consultation with the following officers:

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

External

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

- 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

Context

In accordance with the April 2014 report the following have been undertaken

- 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.
- 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.
- 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.

- Due diligence research has been completed 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.
- The JLL report is an exempt appendix and the summary of the due diligence is an appendix to the March cabinet report.

Proposal

Members of Place Scrutiny Commission are invited to make comments on the March 2015 cabinet report for consideration by Cabinet at that meeting.

Other Options Considered

These are contained in the Cabinet Report

Risk Assessment

A risk assessment is included in the Cabinet Report.

Public Sector Equality Duties

Before making a decision, section 149 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 who 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.

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

Environmental Impact Assessment

The freehold transfer does not directly change any environmental impacts.

Legal and Resource Implications

Legal

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.

(Legal advice provided by Shahzia Daya / Service Manager and Deputy Monitoring Officer:)

Financial

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.

Financial (capital) implications:

Advice Given by Peter Gillett Service Director
Finance

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. Consult Finance Division

Advice given by Robert Orrett / Service Director - Property

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.

Personnel

There are no Human Resources implications arising from the recommendations.

Advice given by
Date

Mark Williams, People Business Partner
23 January 2015

Appendices:

Cabinet report 3 March 2015
Exempt Appendix Valuation Report

BRISTOL CITY COUNCIL CABINET 3rd 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. 0117 922 4086
& e-mail address: 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 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.**

Background/context:

- 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.
- 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 affected 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 been 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. In 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.

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 reported to Cabinet and considered at the Cabinet meeting on 1 April 2014. The following were recorded in the minutes:

- 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)		RISK CONTROL MEASURES Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	CURRENT RISK (After controls)		RISK OWNER
		Impact	Probability		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	High	Medium	The capital returns and financial benefit will be much reduced	High	Medium	Robert Orrett
3	FCS investment priorities will be	High	Medium	Alternative property restructure may	High	Medium	Robert Orrett

	diverted away from Bristol			provide a satisfactory position whilst not releasing significant capital to BCC			
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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.

**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. 0117 9224086
& e-mail address: 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		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		(Before controls)			(After controls)		
	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 **not** implementing the *(subject)* decision:

No.	RISK	INHERENT RISK		RISK CONTROL MEASURES	CURRENT RISK		RISK OWNER
		Impact	Probability		Impact	Probability	
	Threat to achievement of the key objectives of the report	(Before controls)		Mitigation (ie controls) and Evaluation (ie effectiveness of mitigation).	(After controls)		
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 Council's 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-authorized 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-authorized 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.