

**BOROUGH OF POOLE**

**COUNCIL**

**21 FEBRUARY 2008**

**ACQUISITION OF A COUNCIL ASSET – LAND AT BACK WATER CHANNEL:  
REPORT OF THE PORTFOLIO HOLDER FOR RESOURCES**

**1. PURPOSE**

- 1.1 To seek approval for the acquisition from the Crown Estate of the Freehold Interest in the foreshore and bed of the Back Water Channel which is the site for the Second Harbour Crossing.

**2. DECISIONS REQUIRED**

- 2.1 That Council approves:

- (i) an agreement for the purchase by the Council of the freehold interest:
  - (a) an agreement for the purchase by the Council of the freehold interest and other ancillary rights in land at the Back Water Channel, Poole subject to the conditions and under the terms set out in the Agreement for Sale, Transfer and Deed of Grant as described in paragraph 3.4 with other reasonable detailed and standard terms to be agreed by the Head of Legal and Democratic Services with the Crown Estates Commissioners solicitors;
  - (b) each party to bear their own costs, except as agreed by the Council as described in paragraph 3.7.

**3. BACKGROUND/INFORMATION**

- 3.1 Cabinet, at its meeting on 29 January 2008, considered the attached Report and unanimously approved its recommendation to Council.
- 3.2 As I explained to Cabinet, the land was required for the construction and use of the new Bridge across a tidal section of Poole Harbour to facilitate the regeneration of the Hamworthy area of Poole. It is essential to ensure that all land needed for the Bridge is acquired under the control of the Council before the constructor takes possession.
- 3.3 Urgent approval is required by Council as the acquisition of the land is principally funded by New Growth Points Capital Grants and the Department for Communities and Local Government and the transaction has to be completed and the liability incurred before the end of this current Financial Year with the remaining sum to be met by the Regeneration Budget.

- 3.4 The Head of Legal and Democratic Services will be agreeing detailed terms for the agreement of the Sale Transfer and Deed of Grant.
- 3.5 I would ask that you approve the acquisition of this asset.

**Councillor Neil Sorton**  
**Portfolio Holder for Resources**

**COUNCIL – 21 FEBRUARY 2008**

**REVISED REPORT ISSUED 23<sup>RD</sup> JANUARY 2008**  
**(greater financial details at paragraph 3.4)**

**This replaces the Report issued with the Agenda 21<sup>st</sup> January 2008**

**BOROUGH OF POOLE**

**CABINET**

**29<sup>TH</sup> JANUARY 2008**

**REPORT TO SEEK APPROVAL FOR THE ACQUISITION OF A COUNCIL ASSET**

Part of Forward Plan: **Yes.**

**1. PURPOSE OF REPORT**

- 1.1 To seek approval for the acquisition from the Crown Estate of the freehold interest in the foreshore and bed of the Back Water Channel which is the site of the works for the second harbour crossing, as depicted on the plan at Appendix A together with the right to relocate moorings to the areas shown on the plans at Appendix B.
- 1.2 There is an urgent need for approval to be given to the recommendations in this report as the acquisition is principally funded by New Growth Points Capital Grant from the Department of Communities and Local Government, and the transaction must be completed and the liability incurred before the end of this current financial year. The remaining sum will be met by the regeneration budget. (p 3.4)

**2. DECISIONS REQUIRED**

- 2.1 That Cabinet recommend to Council approval of:
  - (a) an agreement for the purchase by the Council of the freehold interest and other ancillary rights in land at the Back Water Channel, Poole subject to the conditions and under the terms set out in the Agreement for Sale, Transfer and Deed of Grant as described in paragraph 3.4 with other reasonable detailed and standard terms to be agreed by the Head of Legal and Democratic Services with the Crown Estates Commissioners solicitors;
  - (b) each party to bear their own costs, except as agreed by the Council as described in paragraph 3.7.

### 3. BACKGROUND

- 3.1 The Council needs to acquire the necessary land and rights to construct, use and maintain the second harbour crossing. Initially the Council negotiated to acquire an easement from the Crown Estate but have since been advised by the Crown Estates Solicitors that a conditional purchase of the relevant land and grant of ancillary rights is the Crown's usual way to proceed on construction projects on Crown land. The compulsory powers granted by the Borough of Poole under the Transport and Works Act Order are not exercisable against the Crown.
- 3.2 Poole Borough Council requires the land for the construction and use of the new bridge across the tidal section of Poole Harbour to facilitate the regeneration of the Hamworthy area of Poole lying to the west of the harbour and some of the waterfront land to the east. It is essential to ensure that all the land needed for the bridge is acquired or under the control of the Council before the constructor takes possession. The purchase is necessary now as funding is available and may not be in the future.
- 3.3 The Crown Estate is tasked with the management of Crown lands, particularly the foreshore and seabed rights as provided under the Crown Estate Act 1961. Section 3(i) of the Act relates to the management and operation of such foreshore and seabed rights. The Crown Estate operates through the Crown Estate Commissioners who have full power to act within the ambit of the Act. In particular the Crown Estate Commissioners are required to act commercially to seek the best possible return for the Crown, but without exploiting its monopoly situation if such should apply.
- 3.4 After negotiations advised by the District Valuer officers for Head of Property Services in August 2006 reached the position where, subject to Cabinet approval, the following terms have been agreed with the sums to be paid on completion of the Agreement for Sale. The grant is for £425,000:
- (a) Compensation of the agreed sum of £400,000 (four hundred thousand pounds) (plus estimated RPI £438,000)
  - (b) Agents fees at 4% of the agreed sum plus VAT (£20,000).
  - (c) Contribution towards legal costs of £10,000 plus VAT ( £12,000).

The figure of compensation (a) was agreed to be indexed at RPI from the 1<sup>st</sup> November 2005 to legal completion. Standard Commercial Property terms and conditions will apply.

The other main conditions in the Agreement for Sale are that the Council will submit to the Commissioners the drawings for the works in advance; the Commissioners will receive a plan of the works as completed; the works will be completed within 5 years of the Agreement or such longer period as agreed; the Council will pay additional costs for surveyors to inspect the works after completion and to complete the transfer deed. The Council will indemnify

the Commissioners against any claim or costs directly attributable to the works.

- 3.5 The initial agreement that payments were to be phased has been superseded with an agreement in principle to pay the whole sum on completion of the Agreement for Sale subject to repayment by the Commissioners in the unlikely event that the bridge project construction is not completed.

It is confirmed that Crown Estate Commissioners will be responsible for all compensation due to their tenants for the loss of any mooring rights.

- 3.6 The Crown Estate's solicitors are requiring completion of an Agreement for Sale which provides that the transfer of the freehold of the land will take place on completion of construction. The Crown will also grant the Council the necessary rights over Crown land to construct and maintain, including rebuilding, the bridge works after completion both before and after construction.
- 3.7 The detailed terms for the Agreement for Sale, Transfer and Deed of Grant are in the process of being agreed by the Head of Legal and Democratic Services.

Contact officer Property Services Sally Tomlinson.

Strategic Director Peter Pawlowski