

THE OVERVIEW AND SCRUTINY COMMITTEE

7 JULY 2014

CABINET

10 JULY 2014

SILVER HILL REGENERATION

REPORT OF SILVER HILL OFFICERS PROJECT TEAM

Contact Officer: Steve Tilbury Tel No: 01962 848256

RECENT REFERENCES:

CAB2526 - Silver Hill Update and Land Transaction, 4 November 2013

EXECUTIVE SUMMARY:

The report considers the revisions proposed by TIAA Henderson to the consented scheme for the regeneration of the Silver Hill area of Winchester town centre. It provides advice on a range of issues which arise from the proposals, and suggests that the Council as landowner supports the revised scheme and agrees to the necessary variations being made, as provided for in the Silver Hill Development Agreement. This will enable TIAA Henderson to seek planning consent for the revised scheme. Should planning consent be granted, development should commence in January 2015.

Decisions under the Development Agreement are an executive matter for Cabinet to determine. However, because of the significance of the project, Cabinet is consulting both The Overview and Scrutiny Committee and full Council for their views. Matters raised by The Overview and Scrutiny Committee are to be considered by Cabinet on 10 July 2014. If full Council raises any material matters, then a further Cabinet meeting will be necessary.

RECOMMENDATIONS:

TO CABINET:

1. That in accordance with the provisions of the Silver Hill Development Agreement dated 22 December 2004 approval be given to the variations to the consented scheme for the regeneration of Silver Hill, as set out in a letter from Silverhill Winchester No. 1 Limited dated 12 June 2014 and the accompanying documents entitled "Volume 1 – Planning Drawings" and "Volume 2 – Strategy in respect of the evolution of the detailed design" enclosed therewith ("the Application"), including in particular:-
 - a. a reduction in the number of residential units from 287 (plus 20 live/work units) to 184 residential units only (or such lower number as the local planning authority may require);
 - b. the removal from the scheme of a bus station (in the form set out in the Development Agreement) and the provision in its stead of an on-street bus interchange and facilities (public toilets and a ticket office) on Friarsgate as detailed in the Application;
 - c. the deletion of a requirement for a Shop Mobility Centre and Dial A Ride premises in the development;
 - d. The deletion of a provision for a Market Store within the development.
 - e. the changes to the external elevations, massing and servicing arrangements as set out in the Application;
 - f. provision of one shop unit of up to 60,000 sq ft as detailed in the Application;
 - g. a reduction in the number of public car parking spaces from 330 to 279;
 - h. the amendment of the provision in respect of affordable housing by the substitution of a financial contribution to be assessed on the basis of the future viability of the scheme up to the equivalent of 40% affordable housing provision;
 - i. an increase in retail provision from 95,000 square feet to 148,000 square feet;
 - j. the inclusion in the scheme of 153 High Street (subject to appropriate terms being agreed).
2. That Silverhill Winchester No. 1 Limited be authorised to procure the construction of the whole scheme (residential and retail) by a construction company with a housebuilding subsidiary, rather than as

set out in the Development Agreement.

3. That the Head of Legal and Democratic Services be authorised to settle the detailed legal documents to give effect to 1 and 2 above.
4. That the Chief Executive, in consultation with the Leader, be authorised to:-
 - a. give the Council's consent to any further minor variations which the Head of Development Management advises are required if the Council as local planning authority is to grant planning consent for the scheme;
 - b. appropriate for planning purposes within the meaning of Part IX of the Town and Country Planning Act 1990 the land owned by the Council which it will put into the scheme;
 - c. agree the final number of retail units in the scheme.
5. That the principle of including 153 High Street, Winchester in the scheme be approved and a further report be made to Cabinet for approval of terms.
6. That a further report be made to Cabinet on options for the increase of the rent payable to the Council to up to 10%, and the purchase of the car park to be provided as part of the scheme.
7. That Cabinet consider the further recommendation set out in Exempt Appendix 6 (Legal Advice).

TO THE OVERVIEW AND SCRUTINY COMMITTEE:

That the Committee considers the report and determines whether it wishes to raise any matters with Cabinet and Council.

TO COUNCIL:

That the decision of Cabinet be supported.

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DETAIL:

1 Introduction

- 1.1 In 2004 the Council in its capacity as a landowner entered in a Development Agreement with Thornfield Properties (Winchester) Limited (Developer) and Thornfield Properties plc (Guarantor) to regenerate a large and run-down area of Winchester town centre known as Silver Hill. The Council is one of the major landowners in this area, as well as being the local planning authority. Thornfield Properties developed proposals for the area, having regard to a Planning Brief and requirements of the Development Agreement.
- 1.2 In 2009, the Council granted planning consent for the redevelopment scheme. The proposals included approximately 95,000 square feet of retail space, 287 residential units, 330 public car parking spaces, a new bus station, a small quantity of office space and extensive proposals for public realm improvements.
- 1.3 In 2010, Thornfield Properties plc entered administration as their bank finance was withdrawn. Thornfield Properties (Winchester) Limited, the developer under the Development Agreement and a subsidiary company of Thornfield Properties plc, was put up for sale by the administrator and eventually purchased by a fund of Henderson Global Investors, now TIAA Henderson. In doing so, TIAA Henderson effectively acquired the rights (through Thornfield Properties (Winchester) Ltd) to develop out the scheme. Henderson changed the name of the developer from Thornfield Properties (Winchester) Limited to Silverhill Winchester No. 1 Limited, but in legal terms the identity of the developer did not change, and the Development Agreement remained in force. Although technically the Council is dealing with Silverhill Winchester No. 1 Limited as the Developer under the Development Agreement, TIAA Henderson effectively controls the Developer (being the ultimate owner of all the shares in the company). Accordingly, for convenience in this report, the term "TIAA Henderson" is used as a generic term to describe both the Developer and TIAA Henderson.
- 1.4 In 2012, the Council made a Compulsory Purchase Order to enable assembly of the land and property rights needed to undertake the development. A number of objections were received, the principal one being from London and

Henley Properties, which (through various companies) held a significant land interest in the Silver Hill site. The objections were considered at a public inquiry, and the Secretary of State subsequently confirmed the Order. Subsequent negotiations secured London and Henley's land interests.

- 1.5 Large scale developments of this type frequently take years to bring to a conclusion and Silver Hill has been no exception. It is therefore not surprising that TIAA Henderson considers that the consented scheme now requires updating to reflect changes in the aspirations of retailers and the residential property market. There has also been a recent change in the requirements of Stagecoach, the bus operating company which owns the existing bus station, which mean that the configuration of the public transport interchange needs to be revised from that which is defined in the Development Agreement and planning consent.
- 1.6 As a result, TIAA Henderson carried out an extensive and detailed review of the scheme. The revised scheme has been the subject of detailed discussions with officers, as well as consideration by the cross-party Informal Policy Group of elected Members. The Informal Policy Group comprised Councillor Wood (chairman), and Cllrs Gottlieb, Godfrey, Humby, Learney and Pines, with other Members of Cabinet in attendance, and was advised by officers on the Silver Hill Project Team (Corporate Director Operations, Chief Finance Officer, and Heads of Estates, Legal and Democratic Services, and Major Projects). The Informal Policy Group was assisted by an independent architect appointed by the Council. The Developer subsequently made further changes to the design and layout of the scheme, which has now been finalised and formally submitted by TIAA Henderson (through its developer subsidiary, Silverhill Winchester No. 1 Limited). The submission is set out in the letter from Silverhill Winchester No. 1 Limited dated 12 June 2014, attached as Appendix 1, together with accompanying plans and drawings which are too large to attach with this report but which will be before the meeting and are available to the public on the Council's website. In TIAA Henderson's opinion, the revised scheme provides an improved form of development, and which is financially viable in current market conditions.
- 1.7 A three-day public exhibition, showing plans and models of the revised scheme, was held from 27 March 2014, and copies of the exhibition materials were made available on the Council's website.
- 1.8 Members will also have received a number of emails and letters on the proposals, as a result of a website recently set up by Councillor Gottlieb.
- 1.9 Throughout the process, officers have taken independent expert advice from a number of consultants, including the Council's retained solicitors (BLP), Leading Counsel, NLP (retail consultants), and Deloitte (valuation and financial advice).

2 Proposed Changes to Approved Scheme

- 2.1 The Development Agreement provides for the Developer to work up a scheme, taking account of certain minimum requirements in the Development

Agreement, and then to submit the scheme to the Council for approval, as landowner. Following such approval, the scheme would then be submitted to the Council (this time as local planning authority) as a formal planning application, which is then processed and determined in the same way as any other planning application.

- 2.2 This process was followed by Thornfield, which led to the 2009 planning consent for the current approved scheme. TIAA Henderson are now applying under the Development Agreement to the Council, as landowner, for approval to various changes to the approved scheme. As well as “landowner” approval, planning applications will need to be submitted to the Council as local planning authority, to authorise the revised scheme from a planning viewpoint.
- 2.3 The Development Agreement includes provisions allowing the Developer to apply to the Council for landowner consent to alterations to the approved scheme. As set out in Section 4 of this report, the Council has varying degrees of discretion in deciding whether or not to agree such alterations.
- 2.4 The detailed changes are set out in the letter from the Developer dated 12 June 2014 attached as Appendix 1, and the accompanying drawings and plans. The principal alterations sought by TIAA Henderson can be summarised as follows:-
 - Changes to the external elevations, massing and servicing arrangements;
 - a reduction in the number of public car parking spaces from 330 to 279;
 - a reduction in residential units from 287 residential units (originally 364 but reduced to 287 in 2009 by agreement of the Council), plus 20 live/work units to 184 residential units;
 - removal of a minimum number of affordable housing units and substitution of a financial contribution to be assessed on the basis of the future viability of the scheme;
 - the removal from the scheme of a bus station (in the form set out in the Development Agreement) and the provision in its stead of an on-street bus interchange and facilities (public toilets and a ticket office) on Friarsgate;
 - an increase in retail provision from 95,000 square feet to 148,000 square feet;
 - the inclusion in the scheme of 153 High Street, a property owned by the Council and leased to Oxfam, which is outside the CPO boundary but which is needed to open up another access to the scheme from the High Street;
 - the deletion of a requirement for a Shop Mobility Centre and Dial A Ride premises in the development);

- The deletion of a provision for a Market Store within the development.
- Authorisation to procure the construction of the whole scheme (residential and retail) by a construction company with a house building subsidiary, rather than TIAA Henderson being required (as under the Development Agreement as it stands) to seek competitive tenders from three tenders drawn from a specified list.

These issues are considered in more detail below.

3 Consideration of the Revised Scheme

Block Layout and Design

- 3.1 The block layout and design concept for the scheme remain essentially as they were in the scheme consented in 2009, although the removal of the bus station from within the site means that Blocks B and C are extended into the area of the site previously earmarked for the bus station. In addition, two new small blocks (Blocks L and M) are proposed, details of which are set out in 3.3 below. Full details of the changes proposed are set out in the letter in Appendix 1.
- 3.2 Other amendments to the design of the scheme reflect the changes to the revised content which have been made following a great deal of work by the Informal Policy Group and Allies and Morrison, the scheme architects, to examine how the consented scheme could be refined and improved. A number of improvements have been made to the public realm proposals, and to the articulation of the building elevations. The palette of materials has been refined and many small but significant changes made to building elevations, the alignment of frontages and access arrangements. It is for the Planning Committee to consider these in detail but the amendments already take into account some of the aspirations of the cross-party Informal Policy Group which has provided elected Member input into the redesign process, supported by independent advice from outside consultants. The amended scheme is also supported in general terms by the Council's Urban Design Officer and Historic Environment Team who have given pre-application advice to TIAA Henderson in accordance with the Council's normal approach to engaging with major planning applications.
- 3.3 On the High Street/Broadway frontage, it is proposed to incorporate into the revised scheme and planning application the replacement of the existing 153 High Street building with a slightly narrower structure (Block L) to allow better access into the Silver Hill area from the main shopping street. It is also proposed to add a new building (Block M) to narrow the entrance from the Broadway through what is currently the bus station entrance. The overall effect will be to create a consistent pattern of entry points into Silver Hill along the High Street/Broadway which creates permeability, whilst respecting the way in which streets in Winchester relate to one another. 153 High Street is owned by the City Council and the Head of Estates is negotiating terms for its acquisition by TIAA Henderson which obtain best consideration for the Council in the context of the regeneration objectives.

- 3.4 Material changes to the external elevations and massing require the Council's consent, and it has absolute discretion to approve these (unless the changes are required by the local planning authority, in which case consent must not be unreasonably withheld or delayed).

Car Parking

- 3.5 The car parking provision within the scheme will be built to a high quality and will replace the existing Friarsgate Car park which is in very poor structural condition and partly closed.
- 3.6 Car parking provision has been redistributed to provide slightly more private spaces (now one per dwelling) and slightly fewer public spaces (279 rather than 330). The number of spaces still meets the minimum requirements of the Development Agreement (which was for 279 public car parking spaces) and therefore, although this is a material change to the level of provision previously agreed (therefore requiring the Council's consent as landowner), the Council's consent cannot be unreasonably withheld or delayed.
- 3.7 The Informal Policy Group considered whether parking provision was adequate for the scheme and were advised that, taking the parking available across the City, spaces available were sufficient to meet the anticipated increase in demand.

Residential Units

- 3.8 One significant proposed change in content of the scheme which affects the scheme design at upper levels is the proposed change in the number of residential units from 287 (plus 20 'live work units' – a concept which has fallen out of favour in new development) to 184. This proposed change is the result of a reassessment of market requirements which now suggests that fewer dwellings with a larger floor area would be more attractive, both commercially and in design terms. Configuring this number of units means that the residential environment at upper levels can be much more open, greener and more architecturally diverse.
- 3.9 The Development Agreement includes as a Required Element the provision of 364 residential units (including affordable housing). This requirement was reduced in 2009 to 287 (plus 20 live/work units) by agreement with the Council. As the latest proposals are below the minimum requirements specified in the Development Agreement, the Council's consent (as landowner) is required, and it has absolute discretion to agree the changes.

Affordable Housing

- 3.10 Under the Development Agreement, 35% of the residential units are required to be affordable, of which 20 units are to be for social rented housing. The Development Agreement was amended in 2009 to allow this provision to be by way of an off-site contribution. TIAA Hendersons are proposing to offer an off-site contribution calculated by reference to the viability of the scheme. Planning guidance makes it clear that viability is a factor which must be

considered when determining the amount of affordable housing a development can be required to provide, and the proposed change therefore reflects this. More details are set out in Section 5 (paragraph 5.3 onwards) below.

- 3.11 When the Development Agreement was signed, Social Housing Grant was available to subsidise affordable housing, and social rented housing in particular. Funding for affordable housing has changed significantly since then, with Social Housing Grant being withdrawn, and the emphasis now being on affordable rented housing (at rents higher than social rents). As a specified amount of Affordable Housing (or an equivalent off-site contribution) is a Required Element under the Development Agreement, the Council has absolute discretion to agree this change.

Bus Station

- 3.12 Stagecoach has now decided it does not want a direct replacement of its bus station facility for commercial and practical reasons. Neither the Council nor the developer is in a position to force Stagecoach to operate a bus station. It could be provided at wholly public expense, but there would be no justification for this given that the main service provider sees no need for it. Removing the bus station releases a substantial area of land which can now be developed in a different way.
- 3.13 It is important to stress that provision for convenient and high profile access to public transport remains at the heart of the scheme. A bus interchange facility will be provided along Friarsgate in a coherent and planned way, along with a ticket office, public toilets, a variety of forms of shelter for waiting passengers and real time information displays. This type of interchange is a well-established means of achieving public transport integration. The County Council as highway authority has considered the proposals carefully and although it regrets Stagecoach's decision regarding the bus station, it has agreed that the alternative proposal is a workable alternative. The final detail of the arrangements has not been finalised and will be dealt with as part of the planning process.
- 3.14 The Development Agreement has detailed requirements (including the precise location of the bus station, and layover bays), and as the revised proposals for bus arrangements do not conform to these, the Council has absolute discretion as to whether to agree these changes.

Changes in Retail Provision

- 3.15 The revised arrangement for buses allows for the expansion of the footprint of Block B to create a larger retail area, increasing the total retail area from 95,000 square feet to 148,000 square feet. This is consistent with the requirements of Local Plan Part 1 which has identified the need for additional retail space to serve Winchester and it is highly preferable for this to be provided in a sustainable town centre location - the alternative being growth of out-of-town retail.

- 3.16 The amendments to Block B are considered to be an improvement in the commercial prospects of the scheme and provide a good opportunity either to bring a high quality retailer looking for new premises or to enable the relocation of an existing business to larger and more sustainable location. To provide a better understanding of what effect this addition of retail space would have on the trading patterns in the town centre, the Council commissioned NLP, a highly regarded property and planning consultancy, to examine the nature and scale of the scheme and to compare Winchester's situation with other comparable locations. Their report is attached as Appendix 2. The NLP Report demonstrates that Winchester's retail offer is significantly less good than comparable town centres. Additional retail space is required to ensure that pressure for out of town retail development can be resisted. There is sufficient retail expenditure growth potential to sustain Silver Hill without a detrimental impact on the existing town centre.
- 3.17 A Required Element of the Development Agreement is the provision of 90,000 sq. ft. of retail space. The approved scheme provides for 95,000 sq. ft., and the increase in floorspace is clearly material. The Council has absolute discretion to agree changes (in excess of 10%) in the total gross internal area of the retail units.
- 3.18 In addition, the Council's approval is required for any material change in the number of retail units shown on the approved plans, or to any single unit comprising more than 30,000 sq. ft. Under the revised proposals, it is proposed that one unit should be 59,741 sq. ft., and specific approval for this is requested. Delegated authority is sought for the Chief Executive, in consultation with the Leader, to agree the final number of retail units to be included in the scheme (although the amount of retail space will still be 148,000 sq. ft. in total). In both cases, the Council has absolute discretion to agree this change.
- 3.19 **Oxfam Building (153 High Street)**
- 3.20 This is covered in 3.3 above.

Shopmobility Centre

- 3.21 Under the Development Agreement, a Required Element was the provision of a new Shop Mobility and Dial A Ride service facility in the development (as provided for in the Planning Brief). This facility is now well-established in The Brooks Shopping Centre and it is not considered that a new facility should be provided as part of the Silver Hill Scheme. As this is a Required Element, the Council has absolute discretion to agree to this change.

Market Store

- 3.22 Re-provision of a market store was also a Required Element in the Development Agreement. Since the Development Agreement was signed, new market arrangements have been made, and it is not considered that a market store as part of the development is now required. Again, as this is a

Required Element, the Council has absolute discretion to agree to this change.

Procurement of Construction Contractor

- 3.23 The Development Agreement contemplated a single contractor being selected by a competitive tender process, with tenders being invited from at least three contractors on a list set out in the Development Agreement. This list is now out of date. Residential development is usually undertaken by a specialist house builder, either on land they have acquired, or by a partnership agreement with another developer where there is a mixed development of a single site (as here). Henderson is proposing to appoint a construction company with a housing building subsidiary to construct the whole development (retail and residential) and then to market the residential elements, with Henderson retaining overall control of the construction and development process.
- 3.24 Henderson consider this arrangement will offer a more cost-effective method of procuring the construction, rather than a traditional tender process as envisaged by the Development Agreement. Henderson are therefore requesting that the requirements for a competitive tender process are replaced with a partnering arrangement with a suitable residential developer, subject to the Council being satisfied as to the overall terms of such an arrangement.
- 3.25 It is considered that the arrangement proposed will allow the development costs to be reduced, enhancing the viability of the project and potential overage for the Council, and it should therefore be agreed,

Sustainability Issues

- 3.26 Sustainability issues will be addressed strongly within the scheme. The commercial element will seek to achieve BREEAM 'very good' or 'excellent' and residential elements should meet Local Plan standards although it should be noted that the implementation of the Government's review of housing standards to be announced shortly may alter the policy context for this and all other residential development. A combined heat and power (CHP) plant will be included in the scheme which will provide CO₂ efficient energy, including cooling for retail premises. The size of the CHP plant will create the opportunity to link other buildings in the vicinity into the system.

Conclusion

- 3.27 Taking into account all of the matters raised by the Informal Policy Group and the way in which the scheme has been updated in response to changing commercial requirements, it is considered that the revised scheme for Silver Hill proposed by TIAA Henderson would represent a considerable improvement on the consented scheme and should be supported.

4 Implications of Revisions to the Scheme

- 4.1 The revised scheme is not fundamentally different from that which has previously received planning consent. However, it does involve variations for which the Council's approval is required. If approval is given, TIAA Henderson will also require planning consent from the Council as Local Planning Authority.
- 4.2 The approvals required for the variations to a consented scheme are set out in the Development Agreement. They fall into three general categories. These are:-
- a) a variation to the Required Elements of the scheme (the changes to the Required Elements which are engaged by TIAA Henderson's revised scheme are):
 - i. The provision of 180 residential units, rather than 287 (plus 20 live work units) in the consented scheme, and not having 35% of those dwellings as affordable or providing an equivalent commuted sum.
 - ii. The provision of facilities for buses in a way which is different from that anticipated by the Development Agreement.
 - iii. Not providing new premises for Shop Mobility or Dial-a-Ride, or a Market Store.
 - b) A variation comprising a material change to various matters (which in the case of the revised proposals covers the following items):-
 - iv. Changes to the external elevations or massing of the Development Scheme
 - v. The positions or extent or layout of the public areas and streets forming part of the Development Scheme
 - vi. The servicing and delivery arrangements
 - vii. The position number or capacity of vehicular accesses to and from the public highway
 - viii. The number of the shop units as shown on the Approved Plans and provided that none of the units are more than 30,000 square feet and no more than 2 units in any one frontage are to be used for a purpose within use class A2 of the Town and Country Planning (Use Classes) Order 1987.
 - ix. The number and designation of residential units such that less than 35% are Affordable Housing and less than 15% of the Affordable Housing (or, if greater, 20 such units) is Social Rented Housing
 - x. The total Gross Internal Area of the Retail Units unless the variation is less than 10% of the total.

- c) Any other material variation to the approved plans.
- 4.3 In the case of a) above, the Council has 'absolute discretion' to agree or not to any variations requested which fall into these categories.
- 4.4 In the case of changes in b) above, the Council again has absolute discretion, unless the changes are as a result of the requirements of the local planning authority (in which case the Council cannot unreasonably withhold or delay its consent). As the changes which fall into this category are initiated by Henderson, rather than the Council as local planning authority, then the Council as landowner again has absolute discretion to agree these changes.
- 4.5 In the case of c) above, the Council cannot unreasonably withhold or delay its consent.
- 4.6 Advice on the implications of the opportunity to exercise 'absolute discretion' has been taken from Leading Counsel, whose advice is set out in Exempt Appendix 6. He has confirmed that the ability to exercise absolute discretion in respect of a number of variations which Henderson are seeking does not mean however that the Council can act capriciously nor can the willingness to exercise 'absolute discretion' safely be used to achieve some objective unrelated to the matter at issue. As a public authority, the Council must comply with public law obligations to act in good faith and for proper purposes, having regard to relevant considerations and its best value duty. Subject to this, it does mean that the Council can take its own view on the merits of what is put before it and exercise an unfettered judgement.
- 4.7 Moreover, any exercise of absolute discretion should be carried out in the context of the commercial nature of the Development Agreement, and the commercial and other implications of any decision the Council might take in response to the request from TIAA Henderson for approval to the variations. TIAA Henderson has put forward proposals they believe are necessary and desirable from a commercial perspective. If the Council does not agree to them, then there is no obligation on TIAA Henderson to revert to an alternative.
- 4.8 Refusal to agree to the changes may mean that the various conditions in the Development Agreement cannot be satisfied, and therefore the scheme would be undeliverable. The result would be that TIAA Henderson would be under no obligation to pursue the scheme, and the Council would then have to decide how to secure the redevelopment of the site, whilst at the same time dealing with the existing buildings on the site for which it was responsible (such as Friarsgate Car Park). Whilst it is impossible to be definitive as to how long it would take to secure a new developer for the site, the confirmation of a new CPO, and obtain planning permission for a new scheme, such a process will inevitably take a number of years, and it may well be impossible to secure a development agreement with another developer and/or secure a comparable return for the Council's assets.
- 4.9 While it is open to the Council to decide not to approve the variations which have been requested to the Development Agreement, advice has been

received from Deloitte that if this led to the Development Agreement with TIAA Henderson not proceeding, new negotiations with a different partner would be unlikely to deliver as favourable terms as are currently envisaged.

- 4.10 The approval of the variations proposed to the scheme cannot be taken in isolation – they are either acceptable ‘en bloc’ or not depending on the view taken on the revised proposals. If, as is recommended, Members agree that the revised scheme is acceptable to the Council as landowner then the Council should formally agree that variations it entails are approved. Members will be aware however that the formal planning process may itself give rise to further minor amendments. It is therefore recommended that delegated authority is given to the Chief Executive, in consultation with the Leader, to give consent to any such minor amendments which may be required.
- 4.11 In summary, the question that Members should consider is whether the whole scheme, as now proposed and set out in Appendix 1, is acceptable to the Council as landowner, taking account of the changes in circumstances since the Development Agreement was entered into, the commercial viability of the scheme as a whole, and the implications for the Council and the future of the site if the development were not to proceed.

5 Financial and Valuation Considerations

- 5.1 The Development Agreement between the Council and TIAA Henderson sets out the financial arrangements for determining rent and overage payable to the Council as a return for the Council’s property assets which are being contributed to the regeneration proposals. There is no proposal to amend these as a consequence of any changes to the scheme. The extent to which they represent best consideration is dealt with later in this report.
- 5.2 The Development Agreement also sets out a number of conditions which must be satisfied before development can commence so that both parties are satisfied that a successful development will be achieved, although some of the commercial conditions can be waived by TIAA Henderson if they are content to proceed without having fulfilled them.
- 5.3 One condition which cannot be waived is the requirement that the scheme will make a minimum level of profit. This condition is designed to ensure that the scheme will be commercially successful and is not started when it may fail to be completed. The Developer is required to submit a financial appraisal with their request for scheme approval which they have done. This appraisal is commercially confidential and is not attached to this report but Exempt Appendix 4 contains the key output figures for Members to consider. The appraisal demonstrates that the minimum development profit can be achieved (thus meeting the Development Agreement requirement) and also that TIAA Henderson can achieve a return on their investment risk which meets their commercial expectations. As part of their work, Deloitte have been asked to carry out an independent scrutiny of the appraisal.

- 5.4 The current appraisal shows that it is not viable for the scheme to fund the 35% affordable housing specified by the Development Agreement and the 2009 planning consent. If the Council insists on retaining a 35% affordable housing requirement on site, the scheme cannot meet the minimum profitability level the Council has specified and which, in any case, is well below an acceptable commercial level. In these circumstances, the scheme could not proceed, and no affordable housing would therefore be provided, either on or off site.
- 5.5 At this stage, it is not possible to be certain what alternative figure could be specified by the Council because the profitability of the scheme can only be finally determined on valuation of the finished development and the Development Account (which sets out the value of the completed development against the development costs and assesses the overall profit of the scheme). For this reason, the revised scheme does not include any on-site affordable housing. However, it does have the potential to make a substantial contribution to off-site affordable housing if market conditions continue to be favourable and the actual profitability of the residential element of the scheme exceeds the current appraisal estimate. The ability of the scheme to provide affordable housing contributions will be reviewed at the mid- point of the project and determined following its completion. This is an approach the Council have adopted on other schemes where the affordable housing contribution would otherwise be low or zero.
- 5.6 Government guidance is clear that the failure to meet affordable housing policy requirements must not be a reason for refusing planning consent for development where there is objective evidence that it is not viable for a full contribution to be made. Officers' advice to the Planning Committee in such complex circumstances (irrespective of the identity of the developer/landowner) would be that the best way to maximise an affordable housing contribution would be for a Section 106 agreement to be entered into, requiring an affordable housing contribution to be made, based on the final measured profitability of the scheme. It is suggested that Cabinet agrees a similar approach and amends the Required Element in the Development Agreement on affordable housing to a similar form of words which does not then fetter the discretion of the Planning Committee. This would include reference to a contribution up to the equivalent 40% affordable housing, based on the current policy in Local Plan Part 1, but subject to the viability test set out above.

6 Estates Issues

- 6.1 The Council owns a number of investment and operational properties which are to be demolished to make way for the scheme. The investment properties are a mixed portfolio of retail, office and ground leases, which currently generate an income of £227,301 a year. The Friarsgate car park is also to be demolished and the income from this car park is in addition to the rents referred to above. The Head of Estates has been increasingly concerned about the deterioration of the structure of the car park and accordingly has arranged for its condition to be monitored weekly by staff and regularly by consulting engineers to ensure that public safety is not compromised. The

consulting engineers have identified that the certain areas of the car park have reached the end of their economic life. For this reason much of the car park has been closed for safety reasons and the potential exists for the closure of the remainder by the end of the year. The car park gives an extremely poor impression of the City to visitors and nothing short of re-building can be done to extend its life.

- 6.2 Following the acquisition of the London and Henley assets in January 2014, the Council owns all the significant property interests in the area bounded by Middle Brook St, Tanner St, Silver Hill and Friarsgate. The property is let with the exception of part of the former Post Office and former NHS offices. Both of these areas of accommodation are in very poor condition having been stripped out by the former owner to avoid rate liability. Neither property could be economically restored to beneficial use, requiring demolition and redevelopment to achieve this.
- 6.3 In order to facilitate the development of the area the majority of the tenants occupy property under agreements which are short term or subject to break clauses. While these arrangements are necessary to allow possession to be secured at the appropriate time, they threaten the security of the income stream over the long term.
- 6.4 Coitbury House is a well constructed stand alone office building with reasonable on site parking. The building is occupied by the NHS on a short term arrangement while the service is undergoing a rationalisation. The building would require a substantial investment to the interior to return it to an investment quality. This would require capital expenditure to replace the lift, introduce cooling, replace all doors, re-fit the toilets and kitchen areas, redecorate, renew carpets and remove partition walls to provide usable open plan space.
- 6.5 As referred to above, it is proposed to incorporate 153 High Street into the scheme. The property, along with the other assets owned by the Council which it will put into the scheme, will therefore have to be appropriated for the purposes of Part IX of the Town and Country Planning Act 1990 and delegated authority is sought to allow this to take place at an appropriate time.
- 6.6 The Head of Estates is negotiating with Henderson on the most appropriate basis for realising the value of the asset and will report the latest position on this at the meeting.
- 6.7 The proposed scheme will deliver a modern investment grade redevelopment and under the Development Agreement as it currently stands, the Council will enjoy a rent geared to a percentage of the rent receivable. This will be a very secure income stream of institutional standard. A minimum ground rent of £250,000 will be receivable and in the event that the anticipated income is secured by the letting of the retail units, there is the potential that this minimum rent will be significantly exceeded.

7 Legal Issues

- 7.1 The first legal issue to be considered relates to the agreement of the Council to those variations which are required to enable the revised scheme to proceed. The Development Agreement between TIAA Henderson and the Council is a contract and as such it can be varied either in a way that is explicitly provided for in the agreement itself, or, where there is a requirement for unforeseen changes to be made, by the mutual agreement of the parties.
- 7.2 If changes are made to the Development Agreement which have the effect of creating a new contract, the Council is at risk of challenge on the basis of the requirements of EU procurement rules, notably in the light of the “Roanne” judgment and subsequent cases. This particular issue has been considered by the Council at some length on previous occasions, in particular when TIAA Henderson made their acquisition of the relevant Thornfield companies.
- 7.3 Advice has been sought from Leading Counsel on the variations which TIAA Henderson are seeking, and whether agreeing to the package of variations required by the revised scheme could be unlawful or at high risk of successful legal challenge. The advice from Leading Counsel is that on the basis of the specific proposals, none of the variations to the scheme, changes to the Required Elements, or anything else proposed in this report, is unlawful or is likely to create the opportunity for a successful legal challenge in any jurisdiction. His full advice is reproduced as Exempt Appendix 6.
- 7.4 There is a further legal requirement in relation to the proposals which is that the Council obtains ‘best consideration’ for property assets which it is contributing to the revised scheme, including the proposals which are now incorporated for the bus station.
- 7.5 For the Council to be acting lawfully it must meet the requirements of S233 of the Town and Country Planning Act 1990. This requires that best consideration is obtained for the property which the Council is itself contributing to the regeneration project. These are listed in the Development Agreement and the mechanism for generating the return required on those interests was specified in the Development Agreement and is reflected in the financial appraisal. Section 233 does not require that the Council obtain the highest financial return possible under any circumstances, but instead requires best consideration *by reference to the scheme which represents the agreed form of regeneration*. In order to confirm that the Section 233 duty is being met under the revised proposals, the Council has obtained independent professional advice on the current valuation of the assets and on the mechanism and amounts of the return being generated from them as shown in the Financial Appraisal. A copy of the advice is attached in Exempt Appendix 7. The external advice is that the proposals do represent best consideration as required by S233 and further that the Council has obtained a commercial return which is at the high end of what might be expected were the market to be tested today.

8 Conclusion

- 8.1 TIAA Henderson has given careful consideration to updating the consented Silver Hill scheme. The requirement for amendments to the public transport infrastructure has been challenging but officers from the City and County Councils consider that a viable alternative approach has been proposed which gives public transport a prominent role in access to the town centre and which will be accessible and attractive to users. The additional floorspace created by not incorporating the bus station in its original form has provided an opportunity for more retail space which is supported by planning policy and by the Council's external advisors. There is no doubt that it will change Winchester's town centre shopping offer and the professional advice offered to the Council is that this change will be for the better, provided that it is supported by other measures to promote the town centre which are entirely consistent with the Council's approach. The amendments to residential numbers will allow the provision of high quality and attractive town centre living accommodation.
- 8.2 Members will be disappointed that it is will not be possible to obtain 35% affordable housing on site. TIAA Henderson has provided a full viability appraisal which demonstrates that the scheme could not proceed if this requirement were to be maintained. However, there is a real prospect that a substantial off site contribution will be obtained and this will help the Council building more affordable housing at a lower cost per unit than they would cost within Silver Hill. Members should bear in mind that it is unlikely that any viable scheme for the regeneration of the area could meet the 35% requirement, given the changes in finance for affordable housing and development economics since the Development Agreement was signed. The Planning Committee will consider this matter further as part of the planning process and will reach a final conclusion on how it should be dealt with.
- 8.3 Taken together, the design and content of the revised scheme are considered to improve upon the scheme consented in 2008. They provide more retail space which is consistent with the requirements of Local Plan Part 1, and address a number of design issues which have been raised in both public consultation and through the cross-party Informal Policy Group. It is therefore suggested that the Council, taking all relevant considerations into account, should give its approval to all the variations required to enable the revised scheme to be developed, should it be granted planning consent.

OTHER CONSIDERATIONS:

9 COMMUNITY STRATEGY AND PORTFOLIO PLANS (RELEVANCE TO):

- 9.1 The Silver Hill scheme is one of the Council's major projects and represents a major regeneration in the interests of the local economy and social well-being of the District.

10 RESOURCE IMPLICATIONS:

- 10.1 The Development Agreement provides for the Developer to meet the Council's costs in dealing with matters arising under the Development Agreement.
- 10.2 The Development Agreement requires that a Development Account be maintained, recording all "proper costs that are properly incurred by the Developer". This will be the basis for calculating any overage calculation when the scheme is finally valued. Under the Development Agreement the Council will be entitled to a share of profits as follows:
- 50% of the first £2m profit in excess of 110% of development costs, and
 - 50% of any profits in excess of 115% of development costs.
- 10.3 The development account has been reviewed under Agreed Upon Procedures by Deloitte, for the period up to November 2012, which is the date of the last published accounts for the Developer. A letter containing Deloitte's findings is provided at Exempt Appendix 5. Costs incurred to date relate to preliminary expenditures; clearly the more substantial costs relating to this development have yet to come and the Council is in the process of agreeing with Hendersons that the annual external auditors for the Developer will be contracted to perform some extended assurance work in relation to the costs that are proper to the Development Account.
- 10.4 When the scheme goes unconditional, the Council will be entitled to receive a sum of £700,000 in relation to a s106 agreement for the relocation of the CCTV control room. This replenishes costs previously expended by the Council. It will also be entitled to the repayment of the costs of the London and Henley assets which were purchased in 2014, for the purposes of putting into the scheme.
- 10.5 The Council is guaranteed a minimum of £250,000 p.a. to replace the rental income it will be losing from the properties it will put into the scheme. Based on the latest Development Appraisal, the proposed revisions are expected to produce a higher value which will in turn provide a higher return to the Council based on its income share.
- 10.6 The scheme will impact on Business rates; there will be a temporary reduction during the development period followed by an increase when the scheme is developed.
- 10.7 153 High Street is referred to in paragraph 6.5 above and will produce either a capital receipt or a replacement rental income stream.

11 RISK MANAGEMENT ISSUES:

- 11.1 The principal risks arising from the matters in this report are:-
- a) If the development does not proceed, the Council will not receive the rental income which it is entitled to under the Development Agreement.

Furthermore, it will incur additional unbudgeted costs in maintaining its assets in the site, and suffer reduced income as a result of the deteriorating condition of those assets.

- b) If the development does not proceed, it may not be possible to secure an alternative developer for the site (either at all, or on comparable financial terms), again leading to adverse financial effects on the Council.
- c) The risk of the development not proceeding if the Council either refuses to approve the variations being sought, or does so subject to conditions that mean the development is unviable;
- d) The risk of substantial delay in securing redevelopment of the area by another developer if the development does not proceed;
- e) The risk that the Compulsory Purchase Order expires due to delay in developing the site (the Order must be implemented before March 2016), and the consequent risk that it may not be possible to secure confirmation of a replacement CPO;
- f) The risk that an alternative developer cannot be identified, e.g. due to the unviability of the scheme, and the continued deterioration of the site and the properties comprised in it.
- g) The risk of challenge to the Council's decisions which are the subject of this report.

BACKGROUND DOCUMENTS:

Letter from Silverhill Winchester No. 1 Limited (Appendix 1) and the accompanying documents entitled "Volume 1 – Planning Drawings" and "Volume 2 – Strategy in respect of the evolution of the detailed design" enclosed therewith

NLP report on impact of Silver Hill (Appendix 2)

APPENDICES:

Appendix 1	Letter from Silverhill Winchester No. 1 Limited setting out proposed variations to the approved scheme.
Appendix 2	NLP report on the impact of Silver Hill on the town centre
Exempt Appendix 3	Terms for the disposal of 153 High Street (to follow)
Exempt Appendix 4	Summary Financial Appraisal
Exempt Appendix 5	Development Account assessment (to follow)
Exempt Appendix 6	Advice from Leading Counsel
Exempt Appendix 7	Report on valuations and S233 (to follow)