

REPORT TITLE: STATION APPROACH PROPOSALS FOR DELIVERY AND FURTHER PUBLIC REALM DEVELOPMENT

28 AUGUST 2019

REPORT OF CABINET MEMBER: CLLR ANNE WEIR, CABINET MEMBER FOR LOCAL ECONOMY

Contact Officer: Ian Charie Tel No: 01962 848420 Email ichtarie@winchester.gov.uk

WARD(S): ST PAULS / ST BARTHOLOMEW

PURPOSE

The Council has been leading the development proposals for the Station Approach Carfax site. This is the opportunity for a market-leading, low carbon office building in the heart of the city which will underpin the city centre economy for decades to come, creating a new hub of vibrant activity and acting as a catalyst for future regeneration opportunities. The project has now reached the stage of several key decisions:

- scheme delivery through disposing of the site to a purchaser who will then develop the scheme
- preparing the site and progressing the adjoining public realm improvements with the benefit of a £5m grant from the EM3 Local Enterprise Partnership
- ensuring that the development links strongly to the city centre by improving accessibility, particularly focused on the connection along Upper High Street and Sussex Street

Following approval of the Outline Business Case in March 2019 (CAB3144(SA)) additional work has been undertaken to further investigate the three approaches for disposal of the Carfax site, to test the market appetite for this type of development, and to progress design development for the public realm proposals.

This report has 3 objectives;

1. To set out the options for disposal of the Carfax site, on suitable terms that enables the market to respond positively and deliver an office-led development which provides long-term economic benefits for the city.
2. To set out the RIBA equivalent Stage 3 (Developed Design) work for the public

realm improvements linked to the £5m EM3 Local Enterprise Partnership (LEP) Grant and recommend progression of this work to RIBA equivalent Stage 4 (Technical Design) to meet the LEP timetable for spend of the awarded grant, subject to signing the Grant Agreement.

3. To further enhance public realm in and adjacent to Station Approach by improving the links from the Carfax site to the city centre by foot and cycle.

### RECOMMENDATIONS:

That Cabinet:

#### **Notes:**

1. That the Scrutiny Committee considered the contents of this report and the proposed recommendations to Cabinet on 14 August 2019 and made comments as set out in the draft minutes.
2. The three specific areas for consideration raised by the Scrutiny committee along with associated comments as set out in the report and detailed in Appendix 8
3. The amendments made to the outline planning application, including reduced height, reduced parking and additional areas of active frontage to the public route through the site.
4. The introduction of an Open Forum to continue stakeholder engagement in the development of this proposal.
5. The feedback from the soft market testing as detailed in Appendix 3.
6. The RIBA equivalent Stage 3 report (Appendix 10) and cost plan for the Public Realm project.
7. That this report concludes the review of the Station Approach scheme led by the Cabinet Member: Local Economy.

#### **Approves**

8. The allocation of a revenue budget of up to £220,000, as set out in Appendix 1, to undertake the selection process to enable the site disposal.
9. The progression of the Public Realm project to RIBA equivalent Stage 4 (Technical design) and Stage 5 (Construction Management) and that this work proceeds at a financial risk to the Council (see para 2.8).
10. That a request be progressed for the allocation of up to £500,000 CIL funding

to enable development of public realm works to improve connectivity between the Station area/Carfax site and the High Street and Sussex Street.

11. That the Strategic Director: Place be authorised to enter into the necessary agreement with Hampshire County Council (and any other necessary associated parties) to progress public realm design and construction management work.

**Approves, contingent on the approval of the outline planning consent**

12. The disposal of the Carfax site to a selected purchaser by way of a long leasehold, subject to agreed terms and conditions following a competitive selection process.
13. That detailed arrangements for the selection process for disposal are subject to a further report to Cabinet.

**Recommends to Council;**

14. Approval to agree and to enter into the LEP Grant Agreement for a total sum of £5M based on the Heads of Terms (Appendix 6), with final amendments to be delegated to the Strategic Director: Place in consultation with the Cabinet Member for Local Economy.
15. Approval to incur capital expenditure in stages totalling £5M to be funded from the LEP Grant recognising the terms and conditions attached to the grant agreement and that such expenditure will be subject to payback to the LEP should the scheme not progress and achieve the grant objectives.

## IMPLICATIONS:

### 1 COUNCIL STRATEGY OUTCOME

- 1.1 Successful regeneration of Station Approach/Carfax is central to fulfilling high value, private sector employment opportunities to deliver the Council Strategy (2018-20). It also will be a landmark exemplar of sustainable office development in the heart of the city and act as a regeneration catalyst for other development and enhancements, as well as being of wider economic benefit to the city and district.

### 2 FINANCIAL IMPLICATIONS

- 2.1 A revenue budget of £1.5 million was set by Full Council on 02 November 2016 (CAB2852) to commission the masterplan and a public realm strategy for the Station Approach area encompassing the Carfax and Cattlemarket sites, and the design work and other professional services for the Carfax site.
- 2.2 Following completion and approval of the public realm strategy (CAB3021(SA) refers), the Cabinet (Station Approach) Committee approved an additional revenue budget of £225,000 to take forward the initial design work for the public realm adjacent to and in support of the Carfax design development as a first phase of implementing the wider strategy. The Enterprise M3 LEP has agreed to a £5 million grant for works to support the development of office accommodation on the Carfax site, subject to conditions which include the requirement: that Planning Permission for the Carfax development is issued by 31 October 2019 with confirmation of the delivery model the Council intends to pursue, and that the grant has to be spent by the end of March 2021.
- 2.3 Full Council approved in February 2019 (CAB3134) a budget of £5m (2019-21) for implementation of the Station Approach public realm project subject to appraisal. This budget is contingent on the LEP £5m grant being confirmed through signing the necessary Grant Agreement with EM3
- 2.4 A capital budget of £1.8m was agreed in February 2018 to take the Carfax development project through planning and detailed design. In October 2018 (CAB3083(SA)) approval was granted to draw down £400,000 of this capital budget to cover work for planning application preparation, submission and follow up work for the Carfax site.
- 2.5 The current expenditure for the project is set out in Appendix 1.
- 2.6 To select a site purchaser, the budget requirement is set out in Table 4 of Appendix 1 and Cabinet is asked to approve the necessary revenue budget of £220,000 for undertaking the disposal of the Carfax site.

- 2.7 For the public realm works, the budget requirements set out in Tables 3 and 4 are estimated to take this part of the project forward through RIBA equivalent Stages 4 and 5 at an estimated cost of circa. £575,000. These works are to be financed from the EM3 LEP £5m grant following the signing of the Grant Agreement. Works must be agreed and carried out in accordance with the Grant Agreement before the spend is claimed back as a drawdown for completed works, or, by agreement with the LEP, a contract for works placed. It is important to note that if the works are not completed, or the conditions of the grant not met, any drawdown would be re-payable to EM3 LEP, including if the end outcome of the built Carfax scheme is not achieved. There is no new budget request required for these works, but the Council is retaining funds in the Major Investment Reserve to cover for an eventuality should the LEP grant conditions not be met and any monies received become repayable. Once there is certainty that the conditions of the grant will be met this reserve can be released into other projects and activities for the Council.
- 2.8 There is, therefore, a critical interdependency between signing the LEP Agreement enabling the drawdown of LEP grant), and the next stage design work to be undertaken. This has implications for meeting the LEP deadline for grant spend to be completed by 31 March 2021. To stay on programme to meet this deadline, RIBA equivalent Stage 4 design work needs to start promptly – in advance of any grant of outline planning permission for Carfax and final signing of the LEP grant agreement, but at financial risk to the Council. HCC Stage 4 Design spend, ahead of the LEP Grant Agreement being signed may amount to approximately £40,000.
- 2.9 To deliver wider public realm and connectivity works, as set out in paragraph 11.35, a recommendation has been included noting the submission of an application for CIL funds of up to £500,000. This is being further progressed through the CIL approval process, and from a technical point with HCC as Highway Authority. As the works are proposed to be funded by CIL, there will be no ongoing borrowing costs to the Council but any money allocated reduces the amount of CIL available for other schemes across the district.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The Council has statutory powers to bring forward regeneration proposals by reliance on its powers under the general power of competence provided for in Section 1 of the Localism Act 2011, as well as its powers to dispose of land under Section 123 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1990.
- 3.2 Recommendations 12 and 13 are that the Council follow a competitive selection process to enable site disposal, based upon successful negotiation of a legal agreement under which it is proposed at this stage that the Council commit its existing land interests to the scheme, on a conditional and time limited basis. Officers are to bring a report to Cabinet setting out details of selection process(s) available within statutory guidelines.

- 3.3 External legal advice has been obtained (Browne Jacobson LLP) which confirms the principle of such arrangements, to be lawful. The advice is on the basis that the Public Contracts Regulations 2015 (PCR) do not oblige the Council to pursue an OJEU process where the main object of the transaction is land disposal. Only where the purchaser is under an enforceable obligation to carry out specified works (conferring pecuniary benefit on the authority) will that obligation arise.
- 3.4 The proposal is to enter into an agreement where the main object is land disposal. No services are proposed to be provided by the potential purchaser to the Council for payment. The proposed legal agreement transferring the land interests will therefore serve to regulate the transfer of Council's land interest to the purchaser so that they may carry out the Scheme based upon the outline planning permission for which they will secure reserved matters planning permission(s).
- 3.5 In pursuing the scheme and the agreement with the purchaser, the Council will observe its statutory duties, including in regard to the duty to obtain best consideration on the disposal of land, and duties to consult. It should be noted that by carrying out a competitive process to select a purchaser to acquire the site, the Council will be in a stronger position to demonstrate compliance with the duty to obtain best consideration.
- 3.6 Legal risks identified relate to a potential challenge brought under PCR on the basis of ineffectiveness and a risk of a judicial review challenge to the direct award. Recent case law has set a high bar for bringing such a judicial review and procedural steps below to mitigate the risks are included by officers:
- (a) Ensuring there is a fully documented audit trail to justify the transaction being undertaken outside of the PCR.
  - (b) Conducting the competitive process to select a purchaser in a manner which clearly demonstrates the intention to enter into a land transaction (Recommendation 12, the purchaser selection and appointment process is to be brought back to Cabinet for consideration).
  - (c) Ensuring that the legal agreement entered into satisfies the relevant tests and is therefore not a contract for works or services.
  - (d) If/when an agreement with the selected purchaser is successfully negotiated, publishing a "voluntary transparency notice" in the Official Journal of European Union, describing the nature of the agreement to be entered into and the reasons for not publishing an OJEU.
- 3.7 Recommendation 9 is for Cabinet to approve progression of a request for allocation of CIL funding which will enable public realm works to improve public connectivity between the Station and High St. Confirmation of a CIL funding approval request is by way of separate governance procedures.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The budget request set out in Section 2 of this report is necessary to ensure adequate resources are allocated to both the Carfax site and adjacent Public Realm projects.
- 4.2 Day to day project management will be retained by the Council's project team and contracted consultants. Further support from the Design Team (led by LDS) and their technical consultants will be necessary to progress the agreed delivery route.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The report sets out (Section 11) the recommended option for disposal of the Carfax site.
- 5.2 The future development of the Carfax site will be viewed as a litmus test for future development opportunities in the City. The process of engaging with the market has so far been successful to date and will hopefully give investors confidence to consider further investment in the district should opportunity arise.

##### Soft Market Testing – purchaser information event

- 5.3 On 7 June an information event was held in the Guildhall Winchester for prospective purchasers and investors. The Council widely publicised the potential opportunity and sought informal views of the development market. Twenty four people attended and there were presentations from WCC, HCC, Propernomics (WCC Economic/Development advisors) and JLL (Strategic Placemaking Consultants). Interest in the market came from purchasers and investors locally and nationally. Feedback forms were sent out after the event asking questions on the three potential disposal options, parking provision, phasing/timeline for letting and development, carbon neutral development, and other environmental best practices. Valuable feedback was obtained from interested parties. A summary of feedback is included in Appendix 3.

#### 6 CONSULTATION AND COMMUNICATION

##### Previous Consultation and communications

- 6.1 As reported at Cabinet (Station Approach) Committee on 25 March 2019 CAB3144(SA)), a series of public consultation and stakeholder engagement events were held in March 2019, giving people the opportunity to provide feedback on the emerging design proposals for the Carfax development and surrounding public realm. Over 210 people attended public drop-in events at the Old Registry Office, and an unstaffed exhibition in the Winchester Discovery Centre over a week long period. Feedback forms were provided, and responses sought.

- 6.2 At O&S Committee in March 2019, the Committee asked to see a developed response to this public engagement and for more information regarding the means by which the Council might be assured that its objectives for the development of the site would be met. Subsequently as part of the submission of the outline planning application, a Statement of Community Involvement was submitted which provided the information on the engagement events. This can be found on the Council's planning webpages <https://planningapps.winchester.gov.uk/online-applications/applicationDetails.do?activeTab=documents&keyVal=POB2Z0BP0SC00>
- 6.3 The outline planning application has been consulted upon and 51 public responses and 12 consultee responses have been received and are being reviewed and considered by the project team as well as the Local Planning Authority.
- 6.4 Responding to the public consultation, the planning application has been modified to reduce maximum height by 2m (with an amended rendered view of the scheme submitted from a key viewing point), maximum number of parking spaces reduced (from 135 to 95) and a revised plan to indicate active frontages to the scheme along the key pedestrian route within the scheme.
- 6.5 Previous public consultation and stakeholder engagement also took place in Autumn 2017 and Spring 2018.

#### Considerations of Scrutiny Committee 14 August 2019

- 6.6 The Scrutiny Committee considered the draft report and recommendations at its meeting on 14 August 2019. The committee explored a range of matters including the LEP grant conditions and mitigation of risks of grant payback, the committee considered the control mechanisms available to the council through leasehold disposal in particular in relation to design changes and stressed the importance of being clear as to what was being disposed of. The market risks relating to Brexit uncertainty were highlighted and key considerations in the disposal process such as reserve prices and go / no go criteria. Appendix 8 to this report itemises these points and gives further comment to assist cabinet.
- 6.7 The committee asked that three areas be further considered by Cabinet, namely:

*In addition to the other comments made, that Cabinet is further requested to specifically consider the following issues:*

- *Putting in place a realistic schedule and timing for spending LEP funding that manages the risk of repayment in the event of development problems and the possibility that LEP funding can be suspended by the Government at any time*



- *As well as defining desired outcomes, setting clear 'go / no-go' red-line criteria as a checkpoint in the developer selection process – including a clear reserve value and a robust process for managing design changes – including legal preconditions and other options to protect the council's interests*
- *Finding ways to adjust the marketing timing for the project, if necessary, to reflect the likely high levels of uncertainty in the Commercial Property market in November/December 2019 and early 2020.*

6.8 The comments of the scrutiny committee are set out in the draft minutes of the meeting which will be circulated in advance of the Cabinet meeting. A review of the comments made by Scrutiny Committee is set out in Appendix 8

## 7 ENVIRONMENTAL CONSIDERATIONS

7.1 The project brief identifies that the project will be designed to contribute towards the Council's objectives to build a low carbon economy. The BREEAM method of assessing the building design and impacts will be used to measure and test the designs as they evolve.

7.2 Local Plan Part 1 Policy CP11 Sustainable Low and Zero Carbon Built Development sets an aspiration for non-residential development to meet BREEAM 'Outstanding'. The outline planning application will demonstrate that the development can achieve BREEAM Excellent with full details secured at reserved matters stage. In addition, measures have been proposed at the current Outline stage (and will be further developed) which show how it will meet other requirements within BREEAM Outstanding where feasible.

7.3 The design will also be in accordance with BCO (British Council for Offices) standards, which similarly set a high 'best practice' requirement for environmental and other target areas for producing high quality, sustainable office development.

7.4 The proposed development achieves an overall 24.1% improvement over the Building Regulations Part L2A:2013 operational Carbon Dioxide Target Emission Rate. A number of measures have been adopted by the proposed development, including passive design and energy efficiency to reduce energy demand, systems to enable operational monitoring and benchmarking, and circa 180m<sup>2</sup> of photovoltaic cells at roof level to offset CO<sub>2</sub> emissions from energy consumption, following a review of low and zero carbon technologies.

7.5 A key part of the design progression is addressing parking in the wider context of key objectives in the Movement Strategy and key issues such as reducing traffic congestion, improving air quality and improvements for pedestrians, cyclists and public transport users. The Consultation document, Autumn 2018, for the emerging Movement Strategy notes that 'Current proposals for Station Approach are supportive of the emerging Movement

Strategy'. The outline planning application includes up to 95 car parking spaces (reduced from the initial submission of up to 135 spaces), this being a reduction from current public and leased parking spaces of 84. In addition, HCC is proposing to cease the use of the HCC owned land for their pool car area ('the Mini Cooper area'), timescale to be confirmed.

- 7.6 A key part of the upcoming site purchaser selection process will be for bidders to state how they would approach provision of a scheme promoting carbon neutrality. The Council is considering how to include this as part of the evaluation criteria in selecting a purchaser.
- 7.7 In addition to establishing strong environmental sustainability credentials, including an approach to carbon neutrality, at the current concept design/outline planning application stage, there is considerable scope to further meet best practice in these areas through the future detailed design/reserved matters submission stage. The aim is to secure the scheme as an exemplar of a very low carbon office-led mixed use development.

## 8 EQUALITY IMPACT ASSESSMENT

- 8.1 An Equalities Impact Assessment (EqIA) scoping process has been undertaken for the project. The EqIA scoping identified potential impacts for people with physical impairments or health problems. Through liaison with accessibility and disability groups, the work on the public realm design has addressed these impacts related to accessibility needs.
- 8.2 An Accessibility and Inclusion section in the Stage 2 report for the public realm prepared by Lifschutz Davidson Sandilands sets out design improvements for accessibility, particularly addressing the needs of older people and those with mobility challenges.
- 8.3 Accessibility and inclusion issues which are appropriate to consider through future design stages of the project have also been identified through this process and include the following:
- The design of the pedestrian areas outside the station and in the adjacent roads and Carfax scheme
  - The siting of bus stops (given the site is sloped)
  - Taxi rank and pick-up/drop off points and bay length for ramp use
  - Building entrance design and accessibility
- 8.4 The overall purpose of the public realm project is to enhance public accessibility by creating a pedestrian-friendly area together with a suitable area in terms of levels for bus stops and pick-up/drop-off points, and seating areas to provide rest points. Implementation of the public realm works will enhance compliance with the statutory equalities requirements through enhanced pedestrian and accessibility vehicular flow.

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required at this stage of the process. However data protection is ongoing and will be continuously re-evaluated, in particular throughout the selection process.

## 10 RISK MANAGEMENT

- 10.1 This project has a full risk register which is managed by the Head of Programme.
- 10.2 The key risk headings are listed below and detailed in the Key Risks Register in Appendix 2. The full Risk Register is listed as a Background Paper and provided as Appendix 11. The main risks relate to potential changes in the commercial market and construction costs including post Brexit. The risk of a no-deal Brexit and the possibility of a general election has recently increased with potentially more significant implications for the project in terms of increased cost and financing of the project. It is not possible to mitigate all these risks as there is currently a high degree of uncertainty in the United Kingdom political and macro-economic environment. These risks could have significant consequences on: 1) the cost of materials and labour affecting construction prices, 2) the required financial return (viability) (e.g. if sufficient office pre-lets are not secured and at the target rental values), 3) changes in the investment market, and 4) changes in financial markets /general economic sentiment including in to the cost of borrowing available to the Council.
- 10.3 Key Risks (the full Risk Register is available as a background document):
- Change in commercial market and/or financial markets affect finance, costs, pace of letting and/or rents.
  - Outline planning application decision delayed or refused, designs are rejected and gateways not approved.
  - Public realm design stages are rejected and gateways not approved.
  - Delays to agreement to disposal route/appointment of site purchaser.
  - Project does not result in development.
  - Pressure on delivery timescale to ensure securing tenants for site, LEP Grant and retain public support.
  - Change in Project Scope.
  - Network Rail governance and HCC approval or delivery process: Public realm design and implementation work delayed or agreement for works cannot be reached in a timely manner on land controlled by 3rd parties (Network Rail, HCC), results in not being able to meet required LEP spending programme.
  - Risk of challenge to the proposed disposal of the site being via a land transaction not being conducted under a procurement process (eg. by OJEU),

## 11 SUPPORTING INFORMATION:

### Disposal options for the Carfax site

11.1 The council has been leading the regeneration proposals for the Station Approach Carfax site for some years. The site presents the opportunity for a market-leading, low carbon office development in the heart of the city that will underpin the city centre economy for decades to come, and act as a catalyst for future regeneration opportunities. The project has now reached the stage of several key decisions

- delivery of the scheme through disposal of the site to a purchaser who will then develop the scheme;
- preparing the site and progressing the adjoining public realm improvements with the benefit of a £5m grant from the EM3 Local Enterprise Partnership; and
- ensuring that the development links strongly to the city centre by improving accessibility, particularly focused on the connection along Upper High Street and Sussex Street.

11.2 This section of the report focusses on an assessment of the three disposal options for the site, leading to Recommendation 12 in this report. The Council's Strategic Placemaking Consultant has reviewed the options for disposal available to the council and their technical report is attached in Appendix 4.

### Summary of options available.

11.3 The Outline Business Case (OBC) considered by Overview & Scrutiny Committee (OS225) and Cabinet (Station Approach) Committee (CAB3144(SA)) in March 2019 considered in detail, the following four options against a baseline 'do nothing' case for how the Council may deliver the Carfax site.

- Sell with Outline Planning Permission
- Joint Venture
- WCC Develops Site
- Income Strip

11.4 The OBC also confirmed the strategic objectives for the project:

- Achieve greater economic performance from land uses
- Maintain or improve the City Council assets
- Improve the aesthetic and environmental impact of the area

- 11.5 Following the approval of the OBC, CAB3144(SA) (25 March 2019), the Cabinet Committee authorised that further work be undertaken to investigate further the two preferred delivery approaches of
- (i) income strip, or
  - (ii) sale with planning permission.

Option (ii) is further identified as either a Freehold or Leasehold sale thus creating three different options.

- 11.6 If the Council chooses to dispose of the site under either a freehold or leasehold arrangement then it is required to achieve “Best Value”. Under section 123 of the Local Government Act 1972, a local authority has the power to dispose of land with the caveat that an authority must not do so for a consideration less than the best that can be reasonably obtained; i.e. the best achievable price in the open market. If the Council can demonstrate that value is being received in other ways that justify the monies foregone to the public purse it may dispose of land at less than best consideration with the consent of the Secretary of State for Housing, Communities and Local Government.
- 11.7 The site is currently used predominantly for car parking (108 public spaces, 71 leased spaces); therefore annual revenue income of approx. £348,000 will be lost when these uses are terminated following the required notice process. , The Outline Business Case has already set out the benefits from more sustainable development of the site to meet Council Strategy objectives. Typical 2018 and 2019 occupancy levels for the Centre Ring of parking (including Gladstone St and Tower St Car Parks) are 87% and 90% respectively. For ‘All’ spaces in the city (including Inner ring, e.g. Cattlemarket, and P&R parking sites), the capacity figures are 80% and 86% respectively. There is therefore capacity within city centre car parks, including the most adjacent to Station Approach, i.e. Tower Street.

The table below summarises the key benefits and risks for the potential delivery options:

**Table 1: Summary of key benefits and risks for each option**

Option	Benefits	Risks
<b>Sale Freehold</b>	<ul style="list-style-type: none"> <li>• Low financial risk</li> <li>• Meets LEP programme requirements</li> </ul>	<ul style="list-style-type: none"> <li>• Lose ownership of the site (and any retained rights); statutory planning authority rights remain.</li> <li>• Loss of management over the development</li> </ul>

<b>Sale Leasehold</b>	<ul style="list-style-type: none"> <li>• Low financial risk</li> <li>• Meets LEP programme requirements <ul style="list-style-type: none"> <li>• Landlord rights retained</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Additional time may be needed to agree long-lease; could risk delivery within LEP time requirements</li> <li>• Loss of management over the development</li> </ul>
<b>Income Strip</b>	<ul style="list-style-type: none"> <li>• Ownership of the site reverts to WCC at the end of the income strip period (typically 30 to 40 years)</li> <li>• Greater financial gain to the Council (though with significant additional risk)</li> <li>• Greater Council control over the development</li> </ul>	<ul style="list-style-type: none"> <li>• A more complex site disposal process would be required.</li> <li>• Longer process, and therefore may not meet LEP grant deadline for spend on Carfax site preparation – element of LEP grant funding may be lost, and viability adversely affected</li> <li>• The Council would have to find tenants for the buildings and meet the cost of refurbishment in future years based on the terms of their lease</li> <li>• Financial obligations may exceed the income from rents posing less overall income and potential long term financial risk</li> </ul>

### 1. Sale of Leasehold interest option

- 11.8 A leasehold sale will enable the Council to retain ownership of the land, while allowing the market to invest in the site and provide the wider economic benefits which will arise from site development, as set out in the OBC. The Council can retain necessary and appropriate rights over the site through mechanisms such as a conditional agreement for lease and negative covenants, but the details of any such process would need to be subject to legal and strategic development advisor review.

- 11.9 The soft market testing undertaken demonstrated that the principle of a leasehold sale option was supported by most of the respondents, dependent on the terms of the lease.

**Key points** raised through the soft market testing included:

- The terms of the lease will dictate how attractive this option is to the market (for example, covenants and ground rent levels).
- The lease term would be in the range of 125-250 years.
- A leasehold disposal could have an impact on value, as explained below.

**Risks** raised included:

- Purchaser may wish to amend planning application
- Onerous terms of the lease could lower the site value with the possibility of non-viability
- Could narrow the market – some international investors won't purchase leaseholds
- Rent sharing leases significantly reduce investor interest and values if too high a gearing is applied.

- 11.10 Further to the consideration set out in the Outline Business Case, the Council should note the following:

- This option retains long-term ownership of the site for the Council.
- The option has lower financial risk for the Council when compared to an income strip and lower financial opportunity.
- In comparison with undertaking the development itself (and therefore having full control), the Council will instead be relying on terms to be included in a lease to regulate, as appropriate, the development of the site, this in addition to, and separate from the local planning authority planning powers. Further legal and strategic advice on the best mechanisms for ensuring that this approach delivers the project's strategic objective of economic benefits will therefore be imperative.
- A leasehold disposal could be at a premium or a geared ground rent, where a percentage of the market rental of the development would be paid to the Council, or a combination of both. If a geared ground rent is secured the Council will benefit from future increases in rental value, which would not be possible if the lease was sold at a premium.

**Summary conclusion – Leasehold sale:**

- 11.11 There is considerable interest in this option in the market, but the Council will need to carefully consider the terms of the lease to ensure it does not impose terms that are unacceptable in the market, or significantly adversely impact on potential financial return to the Council. It is considered that this option can give the Council the level of assurance it seeks on the development to be

delivered on this site, while allowing the market to progress a viable and innovative scheme suitable for their investment requirements.

## 2. Sale of Freehold option

- 11.12 A freehold sale is a straight land transaction, where the asset is conveyed to the purchaser. The Council therefore retain no interest in the asset, other than through the imposition of covenants which have a limited impact over time or via its other regulatory roles. As per the sale of a long leasehold interest, a freehold sale can be conditional on planning. The soft market testing clearly showed this option as being of greatest interest to the market, but the Council must note the risks to delivering the project's strategic objective and the Council Strategy outcome sought.

**Key points** raised through the soft market testing included:

- Preferred option in market, although many respondents indicated it wasn't a prerequisite
- Ensures best financial value for the site
- Simplest route

**Risks** raised included:

- Purchaser may wish to amend planning
- Risk that it will not achieve the Council's strategic objectives
- Entails 'outright' sale, and therefore no retained rights for the Council as landlord over the site (other than as planning authority)

### **Summary conclusion - Freehold Sale:**

- 11.13 Further information on this option is set out in the OBC, but the key point to note is that there is a significant risk that this option won't deliver the strategic objectives for the project, or that the delivery of these objectives could be significantly delayed if the Council pass ownership of the asset to a third party, bar through their regulatory role as Local Planning Authority. It is therefore not recommended that this option is pursued, unless the Council wish to amend its objectives for the site and its portfolio.

## 3. Income strip option

- 11.14 In an income strip arrangement, a sale and leaseback arrangement will be agreed. An internal WCC Officer Note is attached as Appendix 5 regarding the Income Strip approach.
- 11.15 An Institutional Fund will need to be found (through a competitive exercise) to purchase a long leasehold interest in the Council's land. An external purchaser enters into a development agreement with the Fund to construct the development. The Council will enter into an occupational lease with the



Fund and would have the option to purchase the reversionary property interest for £1 at the end of the lease term (typically 30 to 40 years).

- 11.16 The agreement in an income strip arrangement would set the rates for the lease at the start of the 40 year agreement. The Institutional Fund would be responsible for, and take on the risk of developing the site but the Council would be locked into the lease rates for the duration of the agreement. There is therefore a significant risk that at some point during the lease term, the Council's obligation to pay for the lease of the building exceeds the rental income it would receive from tenants. The Council would also be responsible for finding tenants for the buildings and meeting the cost of refurbishment in future years based on the terms of their lease.

**Key points** raised through the soft market testing included:

- some feedback questioned whether this route would be suitable if pre-lets had not been secured
- Could generate the Council a very large capital receipt and/or significant profit rent.
- Some interest in the option. The larger Institutional funders have a strong appetite for this type of disposal and the corresponding yields have a major impact of the fundability of a scheme.
- The speculative nature and size of the office building will be scrutinized to gauge the prospect of early pre- lets.

**Risks** raised include:

- Council locked into lease payment at start of lease. Risk of negative cash flow
- Council responsible for building occupation and void periods.

### **Summary conclusion – Income Strip**

- 11.17 The level of risk for this option may exceed the Council's risk appetite. This option would provide short term gains but higher long-term risks. If the Council decide to proceed with an income strip arrangement, this decision will need to be referred to Full Council due to the level of financial implications such a decision will have.

### **Overall conclusion regarding disposal options and way forward**

- 11.18 The Council's Strategic Placemaking Advisor, JLL, has considered the appropriate delivery routes, demand for the current office market, and development viability. This is detailed in the JLL report in Appendix 4.
- 11.19 On balance, for the reasons set out within this report, expressed by JLL, and summarised in Table 1, the recommendation is for disposal of the site by way of a land transfer of the long leasehold interest in the site. The Council will

need to ensure it achieves best consideration for the site as outlined in paragraph 11.6 above. The indicative programme for this process is illustrated in Appendix 7:

- Preparation for marketing including data room, marketing material, evaluation approach, commercial documentation and targeted soft market testing – Aug to Oct 2019
- Launch marketing – Nov 2019
- Bids back - mid Jan 2020
- Evaluation (including interviews with shortlisted parties) - mid Jan to early Feb 2020
- Agree contracts - early Feb to end March 2020

11.20 It is important to continually consider the market for office development. This has been set out in previous reports and in the Outline Business Case. JLL has provided an up to date analysis of the office market and an assessment of viability in confidential Appendix 4a which indicates interest in development remains likely. By entering into a long leasehold the council passes the risk of securing tenants onto the developer. The soft market testing indicates a degree of confidence in the development opportunity and the level of interest in the south east market for occupation is set out in the JLL report. Particular mention was made by the Scrutiny Committee of market uncertainty in respect of Brexit and this was responded to at the meeting. Further consideration has been given and JLLs view remains that they do not perceive that this should be considered as significant in relation to the marketing of Station Approach. Due to the medium-term nature of development, developers are well versed in looking beyond current micro and macro-economic environments. The occupational demand for the developed scheme is deemed to be strong despite the current economic climate. This coupled with the very limited supply of high-quality new build space means that the economic fundamentals underpinning development are good.

11.21 There was particular mention of adjusting the timing of the disposal due to Brexit and as set out above this is not generally seen as essential. The impact of a delayed start date would be a risk of loss of market confidence and likely loss of the EM3 LEP grant award due to likely non delivery of grant aided works by March 2021.

11.22 The committee also used the phrase 'red lines' in respect of the desired outcomes for the disposal, including consideration of a minimum rent or minimum capital receipt. It is difficult to define those matters in advance of determining the disposal method and in order to attract the greatest range of bids, maximum flexibility should be built into the disposal methodology. This will be considered in the future paper to Cabinet

### Award of EM3 LEP Grant

- 11.23 The Council was awarded a provisional £5m grant to support development of the Station Approach Scheme in March 2019. Of this grant approximately £1m is allocated to Carfax site preparation works, including archaeological works, and approximately £4m for public realm enhancements. The council is in receipt of a Draft Grant Agreement from EM3 LEP and several comments were made in respect of the document attached to that report as Appendix 6. Discussion has been held with the LEP who confirm that this is a standard document and issued in respect of all EM3 LEP grant awards. Clarification has been sought as to the completion date and the EM3 LEP advise that provided sufficient progress is being made against the milestones, then the LEP will not arbitrarily recall the funding if there is some justifiable overrun. Specific mention was also made of the commencement date. The LEP initially are considering an office development completion date of 31 March 2023, although this could be amended by mutual agreement with good reason.
- 11.24 Specific mention was made by the Scrutiny Committee of the risk of the existing LEP Growth Funding monies being withdrawn, but the EM3 LEP have had no indication this would occur.
- 11.25 Heads of Terms, as contained in the draft Agreement, are attached as Appendix 6. As is usual, at this stage, the Draft EM3 LEP Agreement is generic and requires details of the specific scheme to be included. This work is underway and recommendation 14 requests that amendments to the draft Agreement are delegated to the Strategic Director – Place, in consultation with the Cabinet Member for Local Economy. The Risk Register identifies that there is the risk that if the Carfax scheme is never built, any LEP funds spent on the public realm elements or as site preparation works for the Carfax scheme could be liable for clawback by EM3 LEP.
- 11.26 A significant part of this spend will be allocated towards the improvement of the public realm adjoining the Carfax site, to support the provision of grade-A quality offices, enhance the Gateway approach at the Station and achieve a rebalancing of road space – in favour of users other than car users. This is in line with ‘Priority 1 of the Winchester Movement Strategy’. It is proposed that the remaining portion of LEP Grant (approx. £1m) will be for Carfax site preparation works, including archaeology, decontamination and utility enhancement.
- 11.27 A spend profile, set against project milestones is one of the Terms and Conditions to be agreed with the LEP. A condition of the LEP is for drawdown against work undertaken, or, where agreed, against contracts for work let, prior to being undertaken (repayable if the work is not then undertaken). An outline spend profile is set out in Table 2 below and further expanded in Appendix 8.

Table: 2 LEP Grant Outline Spend Profile

<b>Spend Category</b>	<b>Amount £</b>	<b>Timescale</b>
Carfax site prep. Works (inc. Archaeology)	c. 1,000,000	Q3/4 2020 – Q1 2021
Public Realm Stage 4 (Technical) Design Fees	c. 215,000	Q3 – Q4 2019
Public Realm Stage 5 Construction Management	c. 360,000	Q2-4 2020 – Q1 2021
Public Realm works	c. 3,425,000	Q2-4 2020 – Q1 2021
<b>Total</b>	<b>5,000,000</b>	

- 11.28 The City Council, via an Agreement with HCC (as Highway Authority) will deliver the public realm works in Station Hill and Station Road (ca. £4m of LEP Grant) and the intention is that the selected site purchaser would undertake the Carfax site preparation works (ca. £1m).
- 11.29 As set out in this report, the LEP grant is central to delivery of the Station Approach initiative – both the Carfax and Public Realm elements. As part of the recent review of the project, the scope of the public realm improvements was also reviewed. The review team specifically requested greater connectivity of the scheme be sought with the Upper High Street and Sussex Street, as identified in the Public Realm Strategy undertaken as part of the initial Station Approach work.
- 11.30 The Leader of the Council and Cabinet Member met with the Chief Executive of the EM3 LEP who confirmed there was no flexibility in the allocation of the grant in respect of public realm works. Any changes would have to be subject to a further bid for funding and given constraints on LEP funding, this could not be guaranteed. Therefore, the Council must allocate its own funds to secure additional public realm work if this is required. CIL funding has been provisionally requested and it is proposed that up to £500,000 is allocated to this additional work.

### Public Realm

- 11.31 Since Cabinet (Station Approach) Committee on 25 March 2019, Stage 3 (developed design) work has been progressed. A presentation will be given of the updated scheme proposals. To satisfy the LEP timescale requirements, it is critical to move onto Stage 4 (Technical) design and Cabinet will be asked to approve the Public Realm RIBA equivalent Stage 3 proposals, enabling progress to Stage 4 Technical design.
- 11.32 The key objectives for the public realm improvements are stated in para 11.26 above, and will specifically create a more pedestrian-friendly and safe area outside the station and in front of the proposed key new addition of the redevelopment of the Registry Office as a bar/restaurant. These key outcomes improve pedestrian and, where possible, cycle connectivity around

the station area and, as set out later in this report (see para 11.35), enable wider improved connectivity with the city centre.

- 11.33 It is equally important to secure arrangements for existing operators (bus, taxis, deliveries/servicing) and make provision for enhancement of future operations, including rail-replacement bus services and passenger drop off/pick up arrangements.
- 11.34 Stakeholder engagement, including with HCC, South Western Railway, Network Rail, Taxi operators, continues to ensure that an appropriate balance is achieved between the need for change as outlined above. Discussions with Network Rail and South Western Railway continue regarding use of their land to assist with meeting this balance. A project Open Forum commencing on 16 September, will be an opportunity to further review matters related to the Station Approach initiative, along with future public consultation.

#### Wider Public Realm Enhancements and Connectivity

- 11.35 Following the review of the Station Approach project, a key addition is to extend connectivity for pedestrians, and where possible cyclists, between Station Road and the city centre in ways that will extend the benefits arising from the Station Approach improvements for the wider community. This includes a potential widening of the pavement on Upper High Street between the Clifton Terrace Bridge at the boundary of the LEP funded public realm scheme through to the end of Upper High Street at the Westgate. Further improvements to the pavement on Sussex Street outside the Tower Street car park will also be considered. Discussions are at an early stage with HCC on works within the highway to establish technical and cost information to support such potential works. An approximate cost estimate at this early stage for the two initiatives described above is up to £500,000.
- 11.36 A CIL funding expression of interest has been made to seek to secure improvements in Public Realm in the Station Approach area and it is proposed that this requested allocation be used to fund these works. If this approach is not taken, the Council will need to defer progress on this work and consider funding through the capital programme

#### Review of the scheme

- 11.37 The Cabinet Member: Local Economy has taken the opportunity to review the scheme as part of her portfolio responsibilities. This review took into account the outline planning application that was submitted to the Local Planning Authority on 29 March 2019 (planning reference 19/00601/OUT). The outline planning application has been consulted upon and 51 public responses and 12 consultee responses have been received and are being reviewed and considered by the project team as well as by the Local Planning Authority.
- 11.38 Following the review and in response to comments made during the consultation process, the following changes have been made to the planning application, including:

- Height – removal of flexibility in height and reduced plant height to lower total maximum height by 2m
- Car parking – reduction to a maximum of 95 car parking spaces (from a maximum of 135)
- Changes in design to enhance active frontages
- A reaffirmation, through the reduction in parking, and measures that can be addressed at future Reserved Matters stage, of an approach to development of the site that addresses the objective of a low carbon scheme. (It should be noted that, in addition, this aspect will be addressed as a criteria for selection during the purchaser selection Process).

11.39 Importantly, further reduction in parking numbers from the planning application maximum could enable the development to be built with a smaller basement, enabling building the development in phases, as raised by potential purchasers at the soft market testing event.

11.40 The review also highlighted the desire to maximise the sustainability features of the development. This was also supported by the soft market testing feedback, and the approach advocated by JLL.

11.41 The Local Planning Authority set up a Local Design Review Panel meeting in May 2019 and the consequent advice is available on the Council's Planning webpages. A recommendation from the Local Design Review Panel was for consideration of the scheme by a Regional Panel. A Design Southeast Regional Panel considered the scheme on 2 August 2019.

11.42 Pending receipt of the Regional Panel report, key issues raised related to street frontages, integration with the HCC Archive building and a steer for Reserved Matters stage on future detail of design, appearance, materials and landscape. The Panel considered that, whilst accepting the information submitted on the height of the buildings and proposed impact on views, this should be further tested at Reserved Matters stage.

#### Next steps

11.43 This report proposes continuing with the development of the Carfax and public realm schemes, accepting the EM3 LEP grant funding and disposing of the site, in accordance with the recommendations contained in this report, noting the risks identified in the Risk Register.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 No assumption has been made in the Medium Term Budget Strategy for potential income from this development. The council has incurred costs in bringing the scheme to this point but considers the proposals at each milestone in order to make an active decision to progress. The strategic

objectives for the project were confirmed within the Outline Business Case (OBC), which informed the consideration of OS225 and CAB3144(SA). The OBC explores a number of options for delivery of a development scheme on the Carfax site, their opportunities and risks. Key areas are further set out within this report.

- 12.2 The option of WCC undertaking the development was ruled out as an appropriate way forward after Risk Workshops in January/February 2019 on the basis of the significant development and financial risk that would be placed on WCC.
- 12.3 Wider project options were also discussed through two project Review Panel meetings as part of an Administration review held on the 5<sup>th</sup> and 20<sup>th</sup> June 2019. These are also detailed throughout the report and have been incorporated in scheme updates.
- 12.4 The council does not have to progress with the scheme. The Council could cease the scheme development. This would leave the car parking where it is and the associated revenue stream but with abortive project costs of £1,673,000 (Revenue) including costs for the 2016 scheme and £232,000 (Capital) reflecting the costs for submission of the 2019 Outline Planning Application. This approach would not deliver on the economic business case and Council Strategy, nor enhance the public realm and achieve the Gateway improvement sought at the Station and is therefore not the recommended option.
- 12.5 The Council has a choice for how to secure development of the site which had been shortlisted to Income Strip or Sale with outline planning permission. Income Strip and Freehold disposal have been discounted for reasons set out in this report. . The recommended approach, for reasons also set out in this report, is sale of the leasehold interest in the Carfax site.
- 12.6 There are options regarding the disposal route, namely disposal via an OJEU procurement process, or Land Transaction. These matters are addressed in the JLL and legal report and an OJEU procurement route discounted for the stated reasons. This results in the recommendation to dispose of the site through a land transaction – i.e. disposal of the leasehold interest in the site. The council does not have to accept the LEP grant, though this is not recommended as it would remove funding needed to support the delivery of the Carfax development and delivery of the stated public realm improvements.

BACKGROUND DOCUMENTS:-Previous Committee Reports:-

CAB3144(SA)	STATION APPROACH – OUTLINE BUSINESS CASE and associated matters	25 March 2019
OS225	Station Approach - Outline Business Case and Associated Matters (less exempt appendices)	20 March 2019
CAB3101(SA)	Economic Appraisal and Business Case Preparation	18 December 2018
CAB3083(SA)	Station Approach Update	4 October 2018
CAB3055(SA)	Station Approach – Update Report	12 July 2018
CAB3021(SA)	Station Approach - Public Realm Strategy and Masterplan Framework	27 February 2018
CAB3001(SA)	Station Approach – Update	28 November 2017
CAB2959(SA)	Station Approach – Appointment of Design Team	14 August 2017
CAB2864	Station Approach – RIBA Plan of Works Stages Documentation	20 March 2017
OS157	Station Approach – End Stage review report for the competitive dialogue process	30 November 2016
CAB2852	Station Approach - Procurement Process Update	17 October 2016
CAB2829	Station Approach - The Way Forward	7 September 2016

Other Background Documents:

- Browne Jacobson summary legal advice re Disposal of Carfax site

APPENDICES:

- Appendix 1: Project Expenditure and Budget Requirements
- Appendix 2: Summary of Key Risks.
- Appendix 3: Summary of Soft Market Testing Feedback
- Appendix 4: JLL Report on Disposal Options and Approach
- **Exempt** Appendix 4a: JLL Report on Disposal Options and Approach  
Chapter 3: (Market Interest and Viability)



- **Exempt** Appendix 4b: Additional information requested by a member of the scrutiny committee
- Appendix 5: Income Strip Lease Structures
- Appendix 6: EM3 LEP Heads of Terms
- Appendix 7: Illustrative Timelines for Carfax and public realm
- Appendix 8: matters raised by Scrutiny Committee 14/8/2019
- Appendix 9: draft minutes of Scrutiny Committee 14/8/19 **(TO FOLLOW)**
- Appendix 10: Public Realm RIBA equivalent stage 3 report
- Appendix 11: Full risk register