

<b>Agenda Item No:</b>	<b>10</b>	
<b>Committee:</b>	<b>Cabinet</b>	
<b>Date:</b>	<b>12 December 2022</b>	
<b>Report Title:</b>	<b>Land Transfer to Fenland Future Ltd</b>	

**This item comprises EXEMPT INFORMATION in Appendices A and B which are not for publication by virtue of Paragraph 3 of Schedule 12A of the Local Government Act, 1972 (as amended).**

Cover sheet:

**1 Purpose / Summary**

1.1 This paper seeks Cabinet approval to transfer Council owned land to Fenland Future Ltd at market value to enable development to progress as agreed by the Investment Board.

**2 Key Issues**

2.1 The Investment Board has asked Fenland Future Ltd to progress work on the development of two Council owned sites namely The Elms in Chatteris and the Nene Waterfront in Wisbech.

2.2 Fenland Future Ltd has been progressing these sites and has included them in their Business Plan which was approved by the Investment Board on 11th July 2022.

2.3 The Business Plan assumed that the land would be transferred using the existing use plus hope valuation methodology and formal valuations have been carried out to support the proposed transfer values.

2.4 Outline Planning permission has now been applied for by Fenland Future Ltd on both sites and the outcome of these submissions is still awaited.

2.5 Both sites have been allocated for a significant period of time but have stalled mainly due to viability issues.

2.6 Market Value has been determined by an independent valuation report and conforms to the definition of market value as required by VPS4 of the RICS "Red Book" governing valuation standards.

2.7 Fenland Future Ltd, being a Council owned Company, has carried out appraisal work on both sites and feel that both sites are viable for development although at a lesser return than a traditional developer expected profit.

2.8 As Fenland Future Ltd will be fully financed by the Council it is anticipated that a lower capital receipt for the land initially is significantly offset by the potential revenue return offered when these developments complete. These returns include financing and recharge of Council costs.

2.9 The benefits of progressing with the land transfers for both sites are summarised as:

- FDC receiving a capital receipt during 2022/23
- Removal of the liability from FDC to FFL

- Enables FFL to progress the delivery of each site once Outline Planning Approval achieved (winter 2022).
- Speeds up delivery and financial returns to FFL and ultimately the Council
- Enables the delivery of new homes in FDC

### 3 Recommendations

#### 3.1 Cabinet are requested to

- approve the land transfer of FDC owned land at The Elms, Chatteris at the value of £200,000 to FFL as determined by the independent red book valuation in the attached appendix A
- approve the land transfer of FDC owned land at Nene Waterfront, Wisbech at the value of £1 to FFL as determined by the independent red book valuation in the attached appendix B
- instruct the FDC legal team to prepare land transfer documents

Wards Affected	All Wards
Forward Plan Reference	
Portfolio Holder(s)	Cllr Chris Boden – Leader of the Council and Chairman of the Investment Board Cllr Benney – Portfolio Holder for Economic Growth and Vice- Chairman of the Investment Board Cllr Steve Tierney – Portfolio Holder for Transformation and Comms and Member of the Investment Board
Report Originator(s)	Peter Catchpole, Corporate Director and CFO Mark Greenwood, Head of Property, Assets and Major Projects
Contact Officer(s)	Peter Catchpole, Corporate Director and CFO Mark Greenwood, Head of Property, Assets and Major Projects Amy Brown, Head of Governance and Legal
Background Papers	Investment Board papers Valuation report, The Elms, Chatteris - Appendix A Valuation report, Nene Waterfront, Wisbech – Appendix B

## Report:

### **1 REASONS FOR EXEMPTION**

- 1.1 Appendices 1 and 2 of Appendices A and B to this report are NOT FOR PUBLICATION in accordance with paragraph 3 Schedule 12A of the Local Government Act 1972 in that it contains information relating to the financial or business affairs of a third party. The public interest test has been applied to the information contained within this exempt report and it is considered that the need to retain the information as exempt outweighs the public interest in disclosing it.

### **2 PURPOSE**

- 2.1 The purpose of this report is to seek Cabinet approval to transfer the land at The Elms, Chatteris and the Nene Waterfront in Wisbech to Fenland Future Ltd at market value as determined by the red book valuations carried out by Carter Jonas.

### **3 BACKGROUND AND INTENDED OUTCOMES**

#### **Nene Waterfront**

- 3.1 This project is the final phase in the redevelopment of the Nene Waterfront Regeneration area in Wisbech, Cambridgeshire. Significant redevelopment works have already been completed as part of the regeneration scheme, including:
- The construction of the Foyer Project, a supported living and training facility;
  - The Boathouse Business Centre, a flagship quality designed facility;
  - Significant commercial and leisure marine related works and public realm enhancements.
  - The establishment of the Wisbech Yacht Harbour Moorings adjacent to the site which has generated new activity and lead to an enhancement in the town's retail and tourism role.
- 3.2 The final phase seeks the delivery of a residential-led mixed-use scheme, to provide high quality sustainable urban housing, together with assisted living, retail and commercial provision. The vacant sites, which extend to approximately 2.47 acres (1.57 Ha) are owned by Fenland District Council and were fully remediated in June 2009 (a lotting plan is attached).

- 3.3 Work to assemble the sites began in 2003 and was aided by public sector investment from the East of England Development Agency and English Partnerships. In 2007 the developer Taylor Wimpey (TW) was appointed to build-out the residential element of the scheme. TW subsequently submitted a planning application for 370 units but decided not to proceed with the development as a direct result of the housing market crash in 2008.
- 3.4 Since 2008 FDC has continued to deliver a number of other elements of the waterfront regeneration. These include:
- The construction of a link road between Chase Street and De Havilland Road;
  - Road junction improvements to Lynn Road and Freedom Bridge,
  - High quality public realm and pedestrianisation of Nene Parade.
- 3.5 Such improvements were all requirements of the original S.106 obligations and FDC have strived to ensure the site is 'spade ready' wherever possible.

### **The Elms, Chatteris**

- 3.6 The history of the land at Wenny Road and FDC's involvement with the other Landowners dates back over 17 years. FDC own approximately 10.20 acres (4.13 Ha's) of the 'Wenny Road' site in Chatteris which equates to approximately 15.7% of the overall area and forms part of the East Chatteris Broad Location for Growth area, a plan is provided at Appendix 2 (FDC's land is shown shaded blue).
- 3.7 Of the total site the subject site amounts to 8.6 acres (3.48 ha) and is numbered 1 on the attached plan at Appendix 2
- 3.8 At its meeting of 21<sup>st</sup> October 2020 Cabinet noted that discussions with adjoining land owners had broken down and authorised officers to proceed with the development of the FDC land in isolation.

## **4 REASONS FOR RECOMMENDATIONS**

- 4.1 Full Council at their meeting of 9<sup>th</sup> January 2020 agreed to the establishment of Fenland Future Ltd (FFL) as a wholly owned subsidiary of Fenland District Council (FDC). FFL was established in June 2020 to carry out commercial activities primarily to provide income returns to Fenland District Council.
- 4.2 Legal advice is clear that the transfer off market can be made between FDC and FFL at market value
- 4.3 Carter Jonas Surveyors have been commissioned by FDC to provide formal valuations of the sites in a report format consistent with and complying with the requirements of the RICS Red Book on valuation governance.
- 4.4 The valuation being reported on the basis of Market Value (MV) as defined in VPS4 of the RICS 'Red Book' as being: *'The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.'*

## **5 ALTERNATIVE OPTIONS CONSIDERED**

- 5.1 Both sites have been subject to various proposals by developers over the years and nothing has come to fruition mainly due to viability issues. After years of little or no progress the Council has decided to oversee the development themselves and plan to progress these sites through its own limited company.
- 5.2 Various options are detailed below with some pros and cons for each considered.

Option	Positives	Negatives
<b>Do Nothing</b>	<ul style="list-style-type: none"> <li>• Reduced cost to FDC in officer time</li> <li>• Land Values may increase although development appraisals including a developer profit indicates that this may not be significant</li> <li>• Reduced potential for legal challenge from FFL transfer</li> </ul>	<ul style="list-style-type: none"> <li>• Land remains undeveloped leading to public criticism</li> <li>• Land values may reduce</li> <li>• Management and resource required to secure site and avoid adverse possession claims</li> <li>• No initial capital receipt (£200k)</li> <li>• No potential ongoing revenue stream through the funding and development of the sites. (£1m-£4m as extracted from the FFL 5 year business plan)</li> </ul>
<b>Sell without Consent to FFL</b>	<ul style="list-style-type: none"> <li>• Land is sold for development triggering an immediate capital receipt for FDC (£200k)</li> <li>• Potential for ongoing financial return to FDC from success of FFL (£1m-£4m as projected in the FFL 5 year business plan)</li> <li>• Vacant problem sites sold, risk transferred and delivered for redevelopment</li> </ul>	<ul style="list-style-type: none"> <li>• Deliverability reliant on ongoing FDC support of FFL</li> <li>• Evidence required to support best value being achieved due to lack of consent</li> <li>• Land could potentially be worth more with consent although developer appraisals indicate that this could be minimal.</li> <li>• Potential higher capital receipt more than offset by decreased revenue returns</li> </ul>
<b>Sell with Outline Consent to FFL</b>	<ul style="list-style-type: none"> <li>• Land is sold for development and potentially a higher capital receipt for FDC. Likely to only apply to The Elms though.</li> <li>• Potential for ongoing financial return to FDC from success of FFL (£1m-£4m as projected in the FFL 5 year business plan)</li> <li>• Vacant problem sites sold, risk transferred and delivered for redevelopment</li> </ul>	<ul style="list-style-type: none"> <li>• Deliverability reliant on ongoing FDC support of FFL</li> <li>• Additional resource within FDC required to achieve outline consent</li> <li>• No material change in value as sites are already allocated</li> <li>• Delay in capital receipt whilst planning obtained</li> </ul>
<b>Sell with Full</b>	<ul style="list-style-type: none"> <li>• Land is sold for development and potentially</li> </ul>	<ul style="list-style-type: none"> <li>• Deliverability reliant on ongoing FDC support of FFL</li> </ul>

<b>Consent to FFL</b>	<p>a higher capital receipt for FDC. Again, likely to only apply to The Elms.</p> <ul style="list-style-type: none"> <li>• Potential for ongoing financial return to FDC from success of FFL (£1m-£4m as projected in the FFL 5 year business plan)</li> <li>• Full control over delivered scheme and service delivery</li> <li>• Vacant problem site delivered for redevelopment</li> </ul>	<ul style="list-style-type: none"> <li>• Additional extensive resource required within FDC to secure consent</li> <li>• Approved scheme may not be what the market sees as deliverable and therefore no significant added value</li> </ul>
<b>Sell without consent, with outline consent or with full consent on the open market</b>	<ul style="list-style-type: none"> <li>• Reduced cost in officer time particularly if sold with no consent</li> <li>• Risk transferred</li> <li>• Reduced potential for legal challenge from FFL transfer</li> <li>• Potential capital receipt although why this would differ much from the FFL option is unclear</li> <li>• Vacant problem sites sold, risk transferred and delivered for redevelopment although this has proved difficult historically</li> <li>• Delivery not reliant on FFL and therefore FDC funding</li> </ul>	<ul style="list-style-type: none"> <li>• Control of the development lost</li> <li>• Land could remain undeveloped leading to public criticism</li> <li>• Both sites have been marketed previously and have failed to come to fruition</li> <li>• Development appraisals indicate that a full developers profit is challenging on both sites particularly on the Nene waterfront</li> <li>• No potential ongoing revenue stream through the funding and development of the sites.</li> </ul>

## 6 IMPLICATIONS

### 6.1 Legal Implications

#### 6.1.1 Power to sell the sites to FFL

- The disposal of the sites, even to FFL as a wholly owned entity, is subject to section 123 of the Local Government Act 1972 (the 1972 Act). This provides FDC with the power to dispose of land for best consideration i.e. it must get the best consideration that can be reasonably be obtained.
- It is not necessary to market the sites in order to dispose of them for best consideration. Caselaw makes it clear that section 123 imposes a duty to achieve a particular outcome and not a duty to conduct a specific process. In order to assess what is the best consideration for the purposes of section 123 FDC should consider:
  - The Royal Institution of Chartered Surveyors Valuation Professional Standards (the **Red Book**), which includes a definition of Market Value and UK Guidance Notes on “Local

authority disposal of land for less than best consideration". The latter also includes guidance on the definition of unrestricted value and under-value.

Circular 06/03: Local Government Act 1972 General Disposal Consent (England) 2003 - Disposal of land for less than the best consideration that can reasonably be obtained.

The Council must comply with normal and prudent commercial practices including obtaining the view of a professionally qualified valuer (which can include the District Valuer) as to:

- what consideration it should expect to achieve (and consideration does not necessarily have to include money); and
- the likely amount of any under-value.

For the purposes of section 123, the only consideration to which regard may be had is that which consists of those elements of the transaction of commercial or monetary value, capable of being assessed by valuers i.e. not wider public benefit considerations.

Carter Jonas's reports state that their basis of value is Market Value (MV) as defined in VPS4 of the 'Red Book' i.e.:

'The estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.'

### **6.1.2 Sale at less than best consideration**

The recommendations are to sell the sites to FFL at market value in line with the Carter Jonas reports. It is therefore not necessary to set out here how FDC could satisfy the requirements of section 123.

### **6.1.3 Subsidy control**

6.1.4 By developing housing, FFL is undertaking "economic" activity and so is deemed to be an economic actor or enterprise for subsidy control purposes, so FDC needs either to ensure that no specific economic advantage is granted to FFL from public resources which will amount to an unlawful subsidy. To the extent that any "advantage" is received from FDC, this will be received from public resources. FDC does need to ensure that either:

- it engages with FFL on market terms to ensure that no "advantage" is provided; or
- it ensures that any subsidy is appropriately addressed.

6.1.5 If FDC obtains market value for the sites it sells to FFL, then generally these transactions would not amount to a subsidy. FDC should consider, however, the economic merits of selling before or after outline or full planning consent is obtained, as the market value of the sites will be different in each case. In

making that decision, FDC should consider what a private sector developer would do i.e. look at the comparative risks and benefits to FDC (and benefits will include which route is likely to result in the greatest economic benefit overall to FDC, via dividends, interest payments, land sale price and so on). FDC should not (for this purpose) take into account “public sector” considerations, such as the policy benefits of more affordable housing or regeneration generally).

### **6.2.1 Stamp Duty Land Tax**

FDC has taken external advice on whether SDLT will be payable on the sales of the sites to FFL and, subject to compliance with anti-avoidance clawback provisions, the advice is that full relief can be claimed on the sales. SDLT is payable on any land transaction over £150,000 and at the values indicated in this report a liability of circa £1,000 could materialise if group relief is not applicable.

## **7.1 Financial Implications**

### **7.1.1 General**

It is difficult to assess the full financial implications at this time as if the transfer of the sites is agreed at these values then FFL will have to update their business plan to reflect this and carry out full appraisals on each development. Equally it is recognised that there will be no negative impact on the Councils budget if the transfers take place as no capital receipt is as yet included in the Councils figures. It should also be stated that based on the FFL original Business Plan a revenue return to the Council derived from funding, cost recharges etc. could be in the range of £1m-£4m over the period of the MTFS along with a capital receipt in this financial year. The alternative is of course that we can retain these sites in FDC ownership and hope for a rise in market values to obtain a larger capital receipt although these sites have been dormant for a number of years now. The current MTFS being worked on for the Council assumes a revenue contribution in the range indicated above although this is only at draft stage at present.

It is also worth stating that once the land is transferred to FFL it will be the decision of the Board of that Company to determine the final viability of developing these sites.

### **7.1.2 Nene Waterfront**

7.1.3 The attached report shows a Nil land value after allowing for no affordable housing within the scheme. The full appraisal is shown in the report however, after allowing for a developers profit of circa 20% a negative land value of (£1,679,404) is produced although it is recognised that FFL does not have to make a full development profit margin.

7.1.4 It is also worth noting that if the land is transferred to FFL at NIL value all risks and liabilities are transferred to FFL.

7.1.5 With FFL being wholly owned and financed by the Council other financial benefits to the Council include loan interest for funding the development, cost recharges and any excessive profits arising from FFL. Secondary financial benefits will eventually include additional council tax, NNDR etc.



7.1.6 Additionally, the Council and the district will benefit in terms of this site being finally developed after years of inactivity.

#### 7.1.7 The Elms, Chatteris

7.1.8 The attached report shows a £200,000 land value after including for a 20% affordable housing element within the scheme. The full appraisal is shown in the report and is again after allowing for a developers profit of circa 20%. It is course as stated previously recognised that FFL does not have to make a full development profit margin.

7.1.9 It is also worth noting that if the land is transferred to FFL all risks and liabilities are transferred to FFL.

7.1.10 With FFL being wholly owned and financed by the Council other financial benefits to the Council include loan interest for funding the development, cost recharges and any excessive profits arising from FFL. Secondary financial benefits will eventually include additional council tax, NNDR etc.

7.1.11 Additionally, the Council and the district will benefit in terms of this site being finally developed after years of little progress.

7.1.12 Detailed advice is being sought on whether Stamp Duty land tax (SDLT) is payable on any transfer and initially it looks likely that we can rely on group relief to negate this liability as FFL is an FDC wholly owned company.

## 7.2 **Equality Implications**

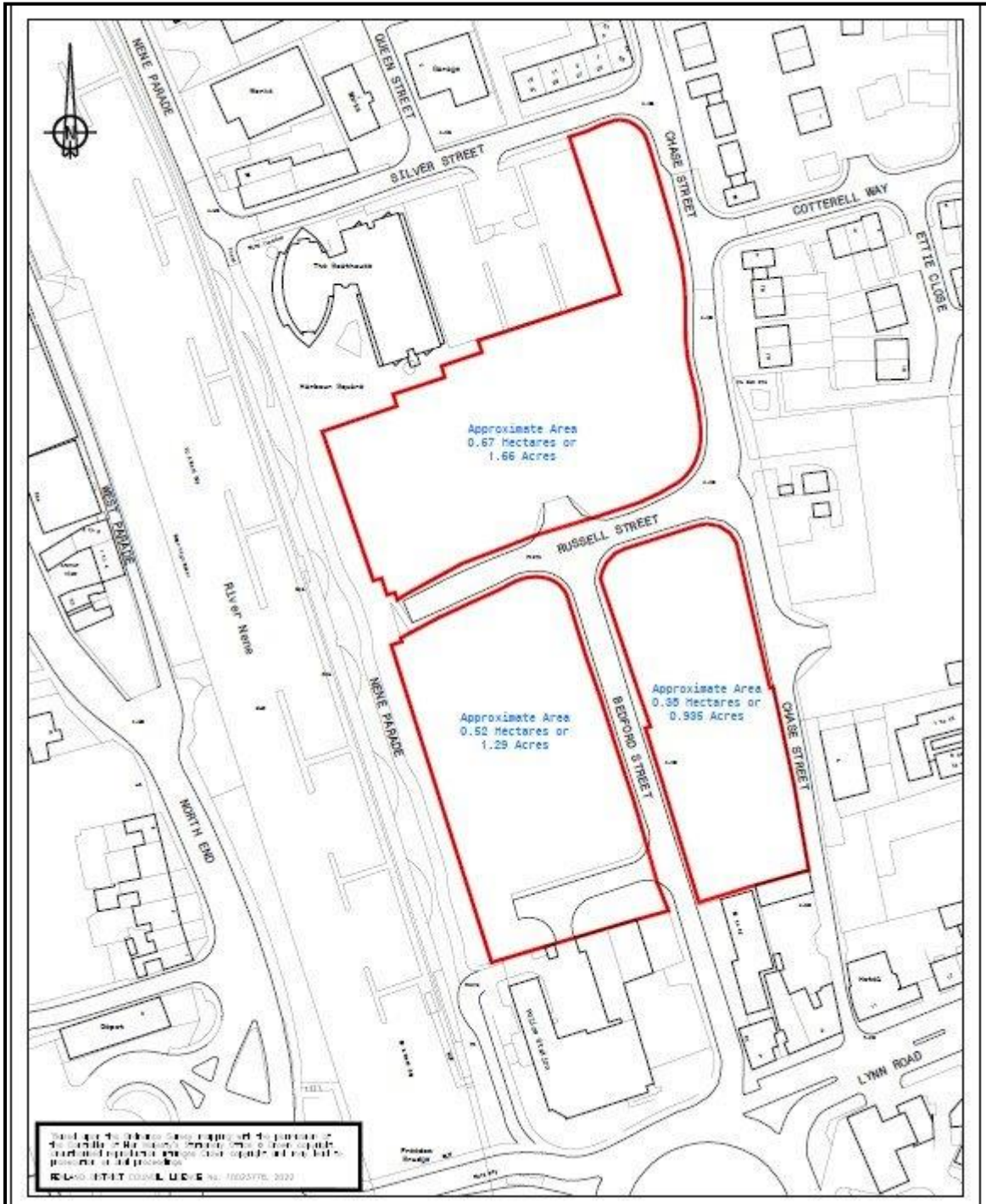
N/A

## 8 **Recommendations**

8.1 Cabinet are requested to

- approve the land transfer of FDC owned land at The Elms, Chatteris at the value of £200,000 to FFL as determined by the independent red book valuation in the attached appendix 3
- approve the land transfer of FDC owned land at Nene Waterfront, Wisbech at the value of £1 to FFL as determined by the independent red book valuation in the attached appendix 4
- instruct the FDC legal team to prepare land transfer documents

# Appendix 1



Appendix 2

