

Taunton Deane Borough Council

Full Council – 12 April 2016

Land at Creedwell Orchard Housing Estate, Milverton

This matter is the responsibility of Councillor John Williams, Leader of the Council

Report Author : Adrian Priest, Principal Estates Surveyor

1 Executive Summary / Purpose of the Report

The purpose of this report is to consider and obtain approval to vary an Option Agreement with S Notaro Limited (SNL) for the purchase of land at Creedwell Orchard Housing Estate by amending the “Trigger Date”

2 Recommendations

2.1 The Council is recommended to approve the amendment of the Trigger Date within the Option Agreement to provide that the option to purchase the Council’s land must be exercised within 120 days (the Option Period) of 12 October 2016 (the new Trigger Date)

3 Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
If the Exercise Period on the trigger date is not amended an appeal against a recent refusal of a planning application may be pursued further by SNL resulting in time and costs to the Council in defending the appeal and a delay in obtaining a potential significant capital receipt	5	4	20
<i>The mitigations for this are to amend the Trigger Date in the Option Agreement, as reported</i>	2	4	8

Risk Scoring Matrix

Likelihood	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)

	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)	
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)	
			1	2	3	4	5	
			Negligible	Minor	Moderate	Major	Catastrophic	
			Impact					

Likelihood of risk occurring	Indicator	Description (chance of occurrence)
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%

4 Background and Full details of the Report

- 4.1 An Option Agreement was entered in to with SNL on 27 February 2014 for a period of 10 years following Executive approval given at its meeting on 13 July 2013.
- 4.2 The current terms of the Agreement provided that the option has to be exercised by Notaro within 120 days of the Trigger Date which is the later of:-
- the date of determination or withdrawal of the Town & Village Green Application (T&VGA) made by a Local Community Group in respect of the land owned by SNL (which was withdrawn on 3 July 2014)
 - **or** if at the time of the determination or withdrawal of the T&VGA a new planning application has already been submitted by SNL for an alternative development scheme using the Council's land as an access, the date that application has been determined, or appeal concluded, including allowing for any judicial reviews
- 4.3 The absolute longstop date for the exercise of the option is 12 years from the date of the Option Agreement.
- 4.4 Before the T&VGA was withdrawn a planning application for an alternative development scheme was submitted by SNL on 18 March 2014 which has been determined and a Notice of Refusal was issued by the Council as planning authority on

15 October 2015. Statute provides that an applicant has a period of six months in which to submit an appeal against the planning decision and following the determination of any appeal there is a period of up to six weeks in which to apply for a judicial review. The date upon which an appeal against the planning decision should be made by NSL is 13 April 2016.

- 4.5 As the Option Agreement is currently drafted it is considered that the Trigger Date for its exercise could, therefore, be some considerable time in the future if a planning appeal is to be pursued by SNL in order to protect its interests
- 4.6 Since the completion of the Option Agreement it has come to light that the formula for the sale price of the Council's land is based upon an incorrect valuation. This is as a result of incorrect information having been provided by SNL from the outset which was relied upon by both the Council and external valuers.
- 4.7 Further external valuation advice has been sought from the VOA who have been instructed to negotiate a revised option sale price formula with SNL based upon the correct floor areas of the extant scheme, which have been verified by the Council and the VOA.
- 4.8 In the circumstances, therefore, it is considered appropriate for the Council to complete a Deed of Variation to the Option Agreement to provide that the new Trigger Date becomes 12 October 2016 (six months from 12/4/16) with the Exercise Period remaining at 120 days from the trigger date. This will allow time for negotiations to be completed for a revised sale price formula and it should negate the need for the Council to deal with a planning appeal that has been made to effectively delay the establishment of the Option Trigger Date.

5 Links to Corporate Aims / Priorities

- 5.1 The eventual capital receipt obtained from the sale of the land, which is to be reinvested in to affordable housing will greatly assist the Council in fulfilling its Corporate Aim of Quality sustainable growth and development

6 Finance / Resource Implications

- 6.1 Other than costs incurred in varying the Option Agreement and a slight delay in obtaining a capital receipt by extending the Exercise Period there are not considered to be any significant Finance / Resource Implications.

7 Legal Implications (if any)

- 7.1 A formal Deed of Variation to the Option Agreement will need to be completed with each party bearing its own costs incurred

8 Environmental Impact Implications (if any)

8.1 None associated with this report

9 Safeguarding and/or Community Safety Implications (if any)

9.1 None associated with this report

10 Equality and Diversity Implications (if any)

10.1 None associated with this report

11 Social Value Implications (if any)

11.1 None associated with this report

12 Partnership Implications (if any)

12.1 None associated with this report

13 Health and Wellbeing Implications (if any)

13.1 None associated with this report

14 Asset Management Implications (if any)

14.1 This report has been generated through Asset Management

15 Consultation Implications (if any)

15.1 None associated with this report

16 Scrutiny Comments / Recommendation(s) (if any)

16.1 None associated with this report

Democratic Path:

- **Scrutiny / Corporate Governance or Audit Committees – No**
- **Executive – No**
- **Full Council – Yes**

Reporting Frequency : **Once only** **Ad-hoc** **Quarterly**
 Twice-yearly **Annually**

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