

You are requested to attend a meeting of the Council to be held in The John Meikle Room, The Deane House, Belvedere Road, Taunton on 26 July 2017 at 18:30.

Agenda

The meeting will be preceded by a Prayer to be offered by the Mayor's Chaplain.

- 1 To report any apologies for absence.
- 2 To receive any communications.
- 3 Declaration of Interests
To receive declarations of Disclosable Pecuniary Interests or personal or prejudicial interests, in accordance with the Code of Conduct, in relation to items on the agenda. Such interests need to be declared even if they have been recorded in the Register of Interests. The personal interests of Councillors who are County Councillors, Town or Parish Councillors will automatically be recorded in the minutes.
- 4 To receive questions from Taunton Deane Electors under Standing Order 15.
- 5 To receive any petitions or deputations under Standing Orders 16 and 17.
- 6 Land at Creedwell Orchard Housing Estate, Milverton. Report of the Asset Manager (attached), to be presented by Councillor John Williams. See also Confidential Appendix 2 at agenda item No. 7.

The following items are likely to be considered after the exclusion of the press and public because of the likelihood that exempt information would otherwise be disclosed relating to the Clause set out below of Schedule 12A of the Local Government Act 1972.

- 7 Confidential Appendix 2 - Land at Creedwell Orchard Housing Estate, Milverton (attached). See also agenda item No. 6. Paragraph 3 - Information relating to financial or business affairs.

07 August 2018

Members of the public are welcome to attend the meeting and listen to the discussions.

There is time set aside at the beginning of most meetings to allow the public to ask questions.

Speaking under “Public Question Time” is limited to 4 minutes per person in an overall period of 15 minutes. The Committee Administrator will keep a close watch on the time and the Chairman will be responsible for ensuring the time permitted does not overrun. The speaker will be allowed to address the Committee once only and will not be allowed to participate further in any debate.

Except at meetings of Full Council, where public participation will be restricted to Public Question Time only, if a member of the public wishes to address the Committee on any matter appearing on the agenda, the Chairman will normally permit this to occur when that item is reached and before the Councillors begin to debate the item.

This is more usual at meetings of the Council’s Planning Committee and details of the “rules” which apply at these meetings can be found in the leaflet “Having Your Say on Planning Applications”. A copy can be obtained free of charge from the Planning Reception Desk at The Deane House or by contacting the telephone number or e-mail address below.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

These arrangements do not apply to exempt (confidential) items on the agenda where any members of the press or public present will be asked to leave the Committee Room.

Full Council, Executive, Committees and Task and Finish Review agendas, reports and minutes are available on our website: www.tauntondeane.gov.uk



The meeting rooms at both the Brittons Ash Community Centre and West Monkton Primary School are on the ground floor and are fully accessible. Toilet facilities, with wheelchair access, are available.

Lift access to the Council Chamber on the first floor of Shire Hall, is available from the main ground floor entrance. Toilet facilities, with wheelchair access, are available through the door to the right hand side of the dais.



An induction loop operates at Shire Hall to enhance sound for anyone wearing a hearing aid or using a transmitter.

For further information about the meeting, please contact Democratic Services on 01823 219736 or email r.bryant@tauntondeane.gov.uk

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Council Members:-

Councillor H Prior-Sankey (Chairman and Mayor of Taunton Deane)
Councillor J Adkins
Councillor M Adkins
Councillor T Aldridge
Councillor T Beale
Councillor P Berry
Councillor J Blatchford
Councillor C Booth
Councillor R Bowrah, BEM
Councillor W Brown
Councillor N Cavill
Councillor S Coles
Councillor W Coombes
Councillor D Cossey
Councillor T Davies
Councillor D Durdan
Councillor K Durdan
Councillor M Edwards
Councillor H Farbahi
Councillor M Floyd
Councillor J Gage
Councillor E Gaines
Councillor A Govier
Councillor A Gunner
Councillor R Habgood
Councillor T Hall
Councillor R Henley
Councillor C Herbert
Councillor C Hill
Councillor M Hill
Councillor J Horsley
Councillor J Hunt
Councillor G James
Councillor R Lees
Councillor S Lees
Councillor L Lisgo, MBE
Councillor D Mansell
Councillor S Martin-Scott
Councillor I Morrell, BA LLB
Councillor S Nicholls
Councillor R Parrish
Councillor J Reed
Councillor R Ryan
Councillor F Smith
Councillor F Smith-Roberts
Councillor V Stock-Williams
Councillor P Stone
Councillor A Sully
Councillor N Townsend

Councillor C Tucker
Councillor J Warmington
Councillor P Watson
Councillor D Webber
Councillor D Wedderkopp
Councillor J Williams - Leader of the Council
Councillor G Wren

Taunton Deane Borough Council

Full Council – 26 July 2017

Land at Creedwell Orchard Housing Estate, Milverton

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

Report Author : Tim Child, Asset Manager

1 Executive Summary / Purpose of the Report

- 1.1 The Option Agreement with S Notaro Limited (SNL) for the purchase of land at Creedwell Orchard Housing Estate must be triggered by 19 July 2017 or the option falls away. This trigger date has already been extended on a number of occasions at the request of SNL. The option is not expected to be triggered and therefore by the date of this Corporate Scrutiny meeting is expected will no longer exist.
- 1.2 SNL indicated to the Council in late May 2017 that current planning issues with delivering the extant scheme as intended meant that SNL did not wish to exercise the existing option agreement. Under the circumstances this is not an unreasonable decision. An alternative proposal was made to the Council by SNL to acquire the land outright to enable SNL to start developing a smaller number of units under the extant scheme. This proposal was fundamentally different to the option – the Council would receive a smaller sum up-front but with overage built in providing that if all 72 dwellings under the extant permission were constructed the Council would ultimately receive the same as intended under the previous option. Likewise, the same principles applied should SNL build out a new scheme.
- 1.3 The land is currently worth circa £75,000 if we were to ignore that the land provides access to a development site. Whilst disappointing that the option which would have provided circa £1,200,000 is not expected to be exercised, the revised proposal still represents a sound commercial transaction.
- 1.4 Actions have been taken by the Council to mitigate the risk of the option falling away and the Council achieving no capital receipt. A conditional contract is intended to be entered into between the Council and SNL for the outright sale of the Council land needed to access SNL's land. The contract is conditional only on Council supporting this transaction and the receipt if supported will be payable by 31 July 2017.
- 1.5 The capital receipt from the sale and any subsequent overage will be ring fenced for affordable housing as per the previous resolution.

2. Recommendation

2.1 It is **recommended** that the Council sells the freehold interest of its land edged red, cross hatched black to SNL for the sale price together with overage and other provisions as set out in the confidential appendix to this report.

3. Risk Assessment (if appropriate)

Risk Matrix

Description	Likelihood	Impact	Overall
If the sale to SNL does not proceed then the Council will have failed under its obligation to achieve best consideration for its land and property assets by missing out on this proposal presented by a 'special purchaser' able to pay an enhanced land value. The Council would lose a potential capital receipt and it may be possible that ultimately SNL will be able to develop its land using an alternative access.	5	4	20
<i>The mitigations for this are to sell the land to SNL on the terms agreed.</i>	1	1	1

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	50 – 75%

	occurs occasionally	
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 in respect of Council owned land at Creedwell Orchard, Milverton. The extent of this land is shown edged in red and cross hatched on the indicative plan, attached at Appendix 1. The land was to be used to provide access to that land shown edged in blue on the attached indicative plan which is owned by SNL and has the benefit of an extant planning permission for 72 dwellings, comprising a mix of houses and bungalows.
- 4.2 The Option Agreement with SNL for the purchase of land at Creedwell Orchard must be triggered by 19 July 2017 or the option falls away. This trigger date has already been extended on a number of occasions at the request of SNL. At the date of writing this report it is anticipated that the option will have not been exercised and will therefore no longer exist.
- 4.3 SNL indicated to the Council in late May 2017 that current planning issues with delivering the extant scheme as intended meant that SNL were not in a position to exercise the existing option agreement. An alternative proposal was made by SNL to acquire the land outright to enable SNL to start developing a smaller number of units under the extant scheme. This proposal was fundamentally different – the Council would receive a smaller sum up-front but with overage built in providing that if all 72 dwellings under the extant permission were constructed the Council would ultimately receive the same as intended under the option. Should less than 72 dwellings under the extant consent be built then the Council would ultimately receive less than it would have under the option.
- 4.4 The land is currently worth circa £75,000 if we were to ignore that the land provides access to a development site. Whilst disappointing that the option is not expected to be exercised it still represents a sound commercial transaction as the sale price, ignoring any overage is significantly greater than the alternative value.
- 4.5 Commercial discussions with SNL took place during June and detailed terms agreed subject to Council approval. On the basis the offer makes sound commercial sense it has been brought to Members for consideration.
- 4.6 It is anticipated that by the date of the Corporate Scrutiny Committee Meeting a conditional contract will have been agreed with SNL for the outright sale of the Council land needed to access SNL's land. The contract will be conditional only on Council supporting this transaction and the sale price will be payable by 31 July 2017. There are no other conditions.
- 4.7 Other than this now being a straightforward sale and at a lesser up front sum but with an overage incorporated, this new transaction does reflect the principal terms set out in the previous option. The principal terms of this proposed sale are set out in the confidential appendix 2.
- 4.8 This matter is to be presented to Corporate Scrutiny Committee on 20 July 2017 and a

verbal update on this will be provided at Special Full Council.

5. Links to Corporate Aims / Priorities

- 5.1 The eventual capital receipt obtained from the sale of the land, together with any subsequent overage, 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 This will lead to a significant capital receipt and the potential for further sums in the future.

7. Legal Implications

- 7.1 This matter has been dealt with by Davitt Jones Bould Solicitors who had advised on the previous option.

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

- 10.1 None associated with this report.

11. Social Value Implications

- 11.1 None associated with this report.

12 Partnership Implications

- 12.1 None associated with this report.

13. Health and Wellbeing Implications

- 13.1 None associated with this report.

14 Asset Management Implications

- 14.1 This is an Asset Management generated report.

15. Consultation Implications

- 15.1 None associated with this report.

16. Scrutiny Comments (if any)

16.1 To be updated verbally as per paragraph 4.8.

Democratic Path:

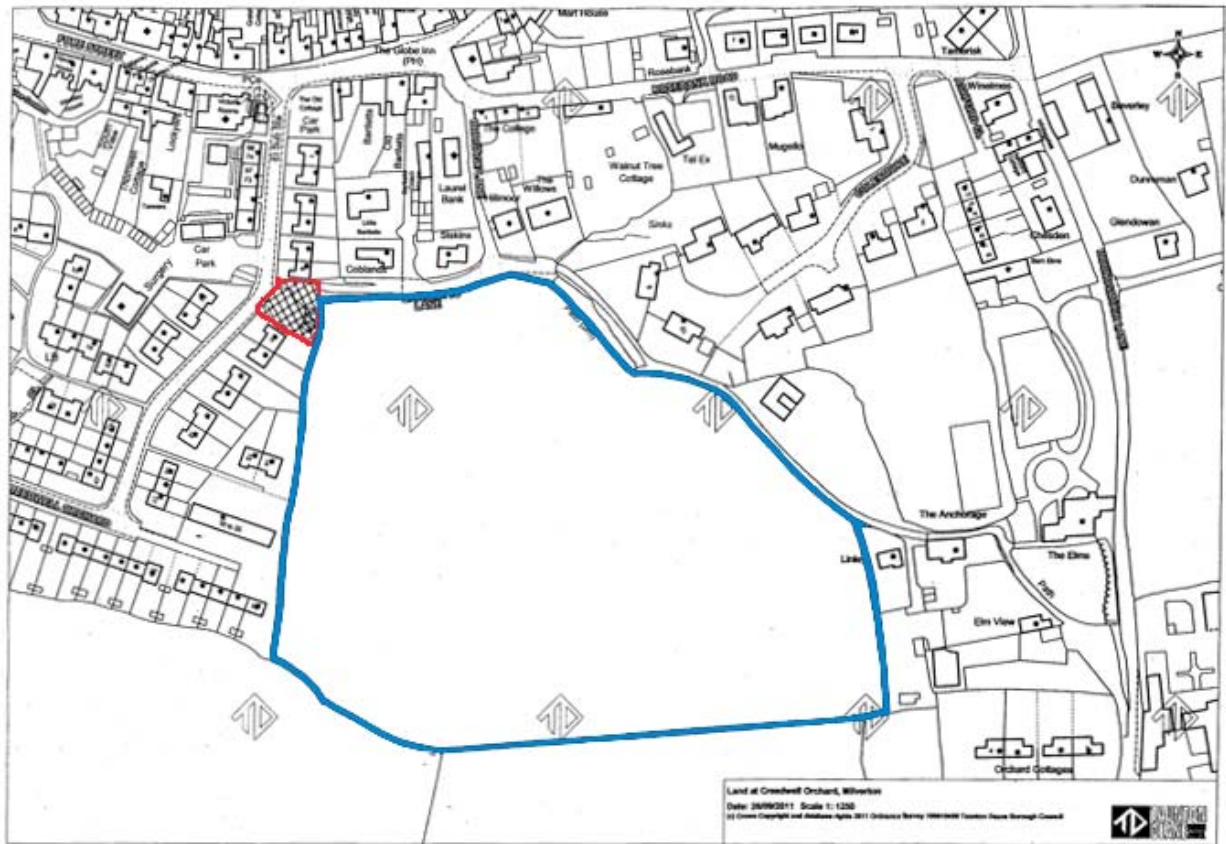
- **Scrutiny / Corporate Governance or Audit Committees – Yes**
- **Executive – No**
- **Full Council – Yes – Special Full Council**

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

Contact Officers

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Appendix 1



Taunton Deane Borough Council

At a meeting of Taunton Deane Borough Council held in the John Meikle Room, The Deane House, Belvedere Road, Taunton on 26 July 2017 at 6.30 p.m.

Present The Mayor (Councillor Prior-Sankey)
 The Deputy Mayor (Councillor Mrs Herbert)
 Councillors Aldridge, Beale, Mrs Blatchford, Bowrah, Brown, Cavill,
 Coles, Cossey, Edwards, Farbahi, Gage, Gaines, Habgood, Hall,
 James, Ms Lisgo, Morrell, Parrish, Mrs Reed, Ross, Ryan,
 Mrs Smith, Mrs Smith-Roberts, Mrs Stock-Williams, Sully, Townsend,
 Mrs Tucker, Watson, Ms Webber, Williams and Wren

Mrs A Elder – Chairman of the Standards Advisory Committee

1. **Apologies**

Councillors Mrs Adkins, M Adkins, Berry, Booth, Coombes, Davies, D Durdan, Miss Durdan, Mrs Floyd, Govier, Mrs Hill, Horsley, Hunt, R Lees, Mrs Lees, Martin-Scott, Nicholls, Mrs Warmington and Wedderkopp.

2. **Declaration of Interests**

Councillors Coles and Prior-Sankey declared personal interests as Members of Somerset County Council. Councillors Brown, Cavill, Gaines, James, Mrs Reed, Ross, Mrs Stock-Williams, Townsend and Watson all declared interests as Members of Town or Parish Councils.

3. **Public Question Time**

- (a) Julie Richardson, the Chairman of Milverton Parish Council, reported that at the Corporate Scrutiny Committee meeting it was stated that approval of the sale of land would result in 'closure' for Taunton Deane of this longstanding matter. But what about the position of the residents of Milverton?

Reference was made to the Certificate of Lawfulness which had been issued by the Council on dubious grounds. She hoped that the current review of the evidence which had led to its issue would result in its revocation.

Creedwell Orchard had caused significant concerns about a variety of factors. The most recent planning application had been refused as the scheme was unsustainable and contrary to Taunton Deane's Planning Policies. Milverton was blighted by the possible development of this land as had the possibility of building affordable housing which was much needed.

In considering the sale of the land, there was a need to consider more than the pecuniary interest of the Council.

Sustainability should lie at the heart of decision making. So how could

the implementation of a 1970's development be sustainable when there would be no affordable or social housing, nowhere for people to work and no Community Infrastructure Levy (CIL) payments to meet anticipated strains on infrastructure.

There would be no benefit for Milverton but many problems for local residents offset by limited returns for Taunton Deane. Was it right residents should pay such a high price? If the proposed sale of land was approved it would commit Milverton to 25 years of development. It was time to stop this travesty.

Ms Richardson urged Councillors to reject the proposal.

- (b) Gill Lumby stated that Councillor Ms Lisgo had been very wise to ask for a summary of the Creedwell Orchard saga to be given to the Corporate Scrutiny Committee as, unlike many Milverton residents, most Councillors would be unaware of the whole story.

The Parish Council had always sought to act collaboratively in the best interests of local residents and therefore had an excellent reputation for ignoring party politics. She liked to think that Taunton Deane worked in the same way as this was how democracy worked best.

Taunton Deane had made a wise and considered decision in 2015 to refuse Mr Notaro's latest plans but this had left an extant permission for a typical 1970's housing estate.

How would this fit into the Conservation Area? Where were people going to park? Who would be speaking to those many elderly residents worried about traffic or explain why Milverton was now blighted with some unable to sell their houses? What about air quality and the further damage that would be caused to the raised cobbled pavements by lorries?

The development of Creedwell Orchard was likely to have a detrimental effect on the value of all properties in Milverton. When would the Council instruct the District Valuer to comprehensively re-value them?

Why had some Councillors recently 'fallen over backwards' to accommodate the developer's requirements? Why had there been such a rush and lack of transparency about this matter? Finally, why had this parcel of land not been put up for public auction?

- (c) Roger Cotton stated that the proposed development of land at Creedwell Orchard had first been granted outline permission in December 1975. However, six years later a letter had been sent to the developer by the Council stating that the permission had expired. This letter remained on the Council's files.

However, in November 2006 an application for a Certificate of Lawfulness was received claiming that work had been commenced on site before the planning consent expired. The Certificate was granted

in 2007 without any debate by Councillors. If due diligence had been undertaken by the Legal Services Manager, the letter confirming that the planning permission had lapsed should have led to the Certificate of Lawfulness being rejected.

The Certificate had, up to now, not been subject to legal challenge – the cost of a Judicial Review was beyond the means of the people of Milverton. But it was understood that its validity was currently being researched by the Council's Solicitor.

Would it not be sensible to defer any decision on the access land until the Solicitor's findings were known?

If the sale was transacted and the Certificate was found to be invalid, the Council would face significant difficulty – possibly litigation for financial loss.

A particular concern was the fact that the sale of land had not been of a competitive nature but solely between the Council and one applicant. Why was the sale being conducted in undue haste? There must be some reason behind it.

- (d) Molly Burton stated that there were many things that concerned local people about the proposed sale of land. Why was there a lack of transparency about the agreement? Why could the full detail of the agreement not be open to the public? Surely it was in the public interest to know what value had been placed on the land. Why was the proposal tabled as a special full meeting with such short notice? Why had the Scrutiny Committee not had sight of this matter until all the documents had been prepared and were ready for signature? Why was the Scrutiny Committee not asked to vote on the principle of the deal?

Ms Burton felt that the development of Creedwell Orchard concerned local residents more than anything else and yet they had had little chance to challenge the proposal as they were not privy to all the information. This was a sad lack of democracy.

- (e) Michael Reynolds considered that the developer who wished to build on the land at Creedwell Orchard was no friend to affordable housing. Nor in fact was the contract agreement which Councillors were being asked to approve.

The agreement would result in the net loss of at least 20 affordable homes. In the last housing allocation Milverton's affordable housing target had been reduced from 40 to 20 because of the pending Creedwell Scheme.

The developer now proposed to implement the 1975 scheme which had no affordable housing component and a loss of a further 18 affordable homes. There would also be no CIL contribution so the Council would have to find money from other sources to meet infrastructure obligations.

It was clear that the assured capital receipt from the sale would deliver at best only three or four affordable homes.

Future overages were dependent on events, control over which would be forfeited to the developer, and subject to the usual hazards of overage agreements.

Councillors were being asked to approve an arrangement which would result in only three or four affordable houses being built against the loss of 23. What kind of bargain was that?

Mr Reynolds suggested a better way forward which would give control back to the Council. This was reserving the sale of the access land until such time as a deliverable, sustainable development with affordable housing was put forward and approved.

- (f) Chris Mann was confident that Councillors would base their decision not solely on financial gain but on Council Policy.

Back in 2007 the then Growth and Development Manager had written a letter stating that in his professional view the land at Creedwell Orchard should not be sold as it conflicted with the Council's current Planning Policies.

Despite the Executive first agreeing to the proposed sale in 2012, the Growth and Development Manager had subsequently confirmed that his previous views about conflict with policy remained the case.

This was one of many reasons why this unjust saga should come to an end. Not least among others were the views of the eminent QC John McDonald who was of the opinion that the Certificate of Lawfulness should never have been granted.

Councillors had recently raised the question as to whether the Certificate should be revoked. As a consequence, the entirety of the evidence which had led to its issue was, at last, under review.

Should the outcome be revocation, the Council would be placed in an awkward position if the access land had already been sold.

However, revocation would finally allow applications for smaller, sustainable developments in accordance with policy including much needed affordable housing plus, with the site available to all developers rather than just one, the Council would be sure of achieving best value.

The Mayor thanked everyone for their contributions.

4. Land at Creedwell Orchard Housing Estate, Milverton

Prior to consideration of this matter the Mayor requested the Council's Legal Officer, Mrs Lesley Dolan to clarify the status of the information contained in

the Confidential Appendix 2 to the report.

Mrs Dolan confirmed that in her opinion the information fell within one of the categories of 'Exempt information' as outlined in the Access to Information Act 1985 (as amended). In the circumstances, when the public interest test was applied it was clear that greater harm to the Council would be caused if the information was disclosed.

Despite this advice, it was proposed by Councillor Morrell, seconded by Councillor Ross that the information should be made publicly available.

In accordance with Standing Order 18(2)(b), the Mayor called for a formal roll call of votes to be taken in respect of the above motion and recorded in the Minutes.

The motion was put and was lost with nine Councillors in favour and twenty four against, as follows:-

Yes	No	Abstain
Councillor Aldridge	Councillor Beale	
Councillor Coles	Councillor Mrs Blatchford	
Councillor Farbahi	Councillor Bowrah	
Councillor Gaines	Councillor Brown	
Councillor Ms Lisgo	Councillor Cavill	
Councillor Morrell	Councillor Cossey	
Councillor Ross	Councillor Edwards	
Councillor Mrs Smith-Roberts	Councillor Gage	
Councillor Wren	Councillor Habgood	
	Councillor Hall	
	Councillor Mrs Herbert	
	Councillor James	
	Councillor Parrish	
	Councillor Prior-Sankey	
	Councillor Mrs Reed	
	Councillor Ryan	
	Councillor Mrs Stock-Williams	
	Councillor Mrs Smith	
	Councillor Sully	
	Councillor Townsend	
	Councillor Mrs Tucker	
	Councillor Watson	
	Councillor Ms Webber	
	Councillor Williams	

Following the above vote the Mayor invited Councillor Williams to introduce the item.

Considered report previously circulated, concerning the Option Agreement with S Notaro Limited (SNL) for the purchase of land at Creedwell Orchard Housing Estate, Milverton.

An Option Agreement was originally entered into with SNL on 27 February 2014 for a period of 10 years following Executive approval given at its meeting on 13 July 2013 in respect of the small area of land outlined on the plan included in the report which was currently owned by the Council.

The land was to be used to provide access to land to the south-east which was owned by SNL and had the benefit of an extant planning permission for 72 dwellings, comprising a mix of houses and bungalows.

The Option Agreement with SNL for the purchase of land at Creedwell Orchard should have been triggered by 19 July 2017. Reported however that the option had not been exercised and it therefore no longer existed.

SNL had indicated to the Council in late May 2017 that current planning issues with delivering the extant scheme as intended meant that SNL were not in a position to exercise the existing Option Agreement. An alternative proposal was made by SNL to acquire the land outright to enable SNL to start developing a smaller number of units under the extant scheme.

Reported that this proposal was fundamentally different – the Council would receive a smaller sum up-front but with overage built in providing that if all 72 dwellings under the extant permission were constructed the Council would ultimately receive the same as intended under the option. Should less than 72 dwellings under the extant consent be built then the Council would ultimately receive less than it would have done under the option.

The land was currently worth in the region of £75,000 if the Council was to ignore that the land provided access to a development site. Whilst disappointing that the option had not been exercised it still represented a sound commercial transaction as the sale price, ignoring any overage was significantly greater than the alternative value.

Further reported that commercial discussions with SNL had taken place during June and detailed terms agreed subject to Council approval. On the basis the offer made sound commercial sense it had been brought to Members for consideration.

Noted that a conditional contract had been agreed with SNL for the outright sale of the Council land needed to access SNL's land. The contract was conditional only on the Council supporting this transaction and the sale price would be payable by 31 July 2017. There were no other conditions.

Other than this now being a straightforward sale and at a lesser up front sum but with an overage incorporated, this new transaction did reflect the principal terms set out in the previous option. The principal terms of this proposed sale were set out in the Confidential Appendix 2.

Noted that the eventual capital receipt obtained from the sale of the land, together with any subsequent overage, would be reinvested into affordable housing which would greatly assist the Council in fulfilling its Corporate Aim of quality sustainable growth and development.

The Corporate Scrutiny Committee had considered this matter at its re-convened meeting on 25 July 2017. After a long discussion, the Committee had agreed to support the sale of the land to NSL.

Resolved that the Council's freehold interest of its land, as outlined on the plan included as Appendix 1 to the report, be sold to S Notaro Limited for the sale price together with overage and other provisions as set out in Confidential Appendix 2.

(The meeting ended at 8.29 p.m.)