

DECISION-MAKER:	CABINET
SUBJECT:	SOLENT SKY MUSEUM – VARIATION TO PROPOSED LEASE TERMS
DATE OF DECISION:	16 JANUARY 2012
REPORT OF:	CABINET MEMBER FOR RESOURCES, LEISURE AND CULTURE
STATEMENT OF CONFIDENTIALITY	
None	

BRIEF SUMMARY

This report seeks approval to the variation of the approved terms of the lease of the Solent Sky Museum at Albert Road South including an extension of the term to 125 years from 2012.

RECOMMENDATIONS:

- (i) To approve an extension of the term of the lease of the Solent Sky Museum to 125 years from 2012.
- (ii) To approve the removal of the condition for the Trustees to pay a profit rent.
- (iii) To approve a variation to the current agreed terms to enable future redevelopment of the Museum either on the existing site or to enable the Trustees to sell their interest in the site for an alternative use to finance the re-location of the Museum to an alternative site in the City.

REASONS FOR REPORT RECOMMENDATIONS

1. To help secure the long term future of Solent Sky Museum.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. Not to permit variations to the lease. However, this would not assist in securing the long term future of the Museum.

DETAIL (Including consultation carried out)

3. A report was presented to Cabinet on 4 July 2011, concerning the long outstanding matter of the lease for the Solent Sky Museum. Cabinet approved revised terms to enable the lease and under lease to be completed. All parties are currently working to complete the leases by December 2011. A verbal update on the position will be given at the Cabinet meeting.
4. Upon further consideration, the Trustees of the Solent Sky Museum have approached the Council to request amendments to the agreed terms which will help secure the long term future of the Museum.
5. The Trustees of Solent Sky Museum have requested that the term of the head lease be extended to 125 years. The longer term is requested as it will enable the Trustees to invest in the building and facilities in the knowledge that their future is secure for the longer term. Solent Sky is an important element of the City's heritage strategy. With the imminent opening of Sea City, the re-opening of Tudor House and the potential Maritime Heritage

Centre at Trafalgar Dock; Solent Sky completes the picture telling as it does Southampton's extensive aviation history. Although it is the intention that Solent Sky re-locate to Aeronautica at Trafalgar Dock; the cost implications are a real issue and the Trustees of Solent Sky would like to feel that if such a move is not possible, they could rest assured that they were safe with a long term lease at Albert Road South, thus continuing to support the City's Heritage Strategy. A longer term will also give the Museum access to grants, as the conditions imposed by grant administering bodies usually require a longer fixed term than the Museum have at present.

6. The Trustees have also requested if the condition in the lease requiring them to pay to the Council as rent, 65% of any profit made by the Museum, can be removed. Although circumstances to date have meant that the Museum has never made a profit and therefore no profit rent has been paid to the Council; the Museum would like to be in a position whereby any profit made in the future could be re-invested in the Museum and building to produce an improved facility for the City. However, the Basic Rent (currently £1200pa) would continue to be paid under the lease.
7. Finally, given that the current building has a limited expected life; the Trustees would like the current lease terms to be amended to give them the ability to demolish and rebuild the Museum or to sell their leasehold interest in the site for an alternative use to support any potential re-location of the Museum within the City at a future date, subject to the Council's consent, not to be unreasonably withheld.
8. It has been decided not to delay any completion of the leases in their current agreed form, in anticipation of this Cabinet decision, given the prior undertaking of all parties to work to complete the leases by December 2011 (and given the considerable negotiations it has taken to get to this position). If Cabinet approves the amendments proposed within this report, a deed will be required to amend the terms of the head lease if it has already been completed.

RESOURCE IMPLICATIONS

Capital/Revenue

9. Capital – There are no implications for the capital budget.
10. Revenue – The estimated annual rental income forms part of the Resources and Workforce Planning Portfolio Investment Property account and is based on the current rent of £1,200 rather than a potential market rent of £45,000 per annum.

Property/Other

11. The Museum is currently let by the Council for less than market rent at £1200 pa plus a 65% share of any profit made by the Museum. However, the current proposals offer additional benefits to the Museum in granting them a longer term at a low rent and by removing their obligation to pay a profit rent.
12. The estimated rental value of the Museum is £25,000 pa and adjacent SERFCA accommodation is £20,000pa in good repair. These figures could not be achieved by the Council until the currently agreed lease term ends in 2024.

13. The current site value is in the region of £1,000,000 - £1,200,000 for redevelopment purposes. However, given the terms of the current lease this could only be realised by the Council in 12 years time when the current lease term ends. This is a more financially valuable option to the Council than leasing out the building at market rent. The present value of this to the Council is in the region of £400,000 - £480,000.
14. The value forgone in terms of the removal of the right to a profit rent is negligible. The Museum has never to date carried forward a profit and is unlikely to do so on the basis of the existing lease terms.
15. The Museum Trustees have previously agreed to accept full repairing responsibilities for the premises. Whilst they will receive a grant of £240,000 towards the cost of necessary works, the estimated cost of all necessary work is considerably higher. The grant is funded through the advance rent paid by the Ministry of Defence for the occupation by the Air Cadet Corps
16. Enabling the Museum to benefit from the proceeds of any sale of their long leasehold interest in the site achieves the same objectives in helping to secure the future of the Museum. If the Museum decides to re-locate, the Council will have the comfort that any re-development of the current site will be subject to the usual planning and building controls.
17. Appropriate conditions will be incorporated into the lease to ensure any capital receipt from the sale of the Museum's leasehold interest in the site is used for outcomes supporting the Council's aspirations.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

18. With reference to the proposal to let the Museum at less than market rent - The Local Government Act 1972 General Disposal Consent (England) 2003, enables the Council to dispose of land for less than its full market value where the undervalue (i.e. the value being foregone in the transaction) does not exceed £2 million without the need for obtaining specific consent to the transaction from the Secretary of State. However, in reaching any decision to dispose of land at an undervalue Members must:
 - take into account their general accountability and fiduciary duty to local people;
 - consider that such disposal will help secure the promotion or improvement of the social economic or environmental well being of the area – this disposal will help to secure the future of the Museum and so enhance visitor attractions in the City, thereby encouraging tourism with its associated financial benefits;
 - have regard to the transaction in the context of the Community Strategy – the Museum is an important part of the City's heritage strategy;
 - comply with all normal and prudent commercial practices – the proposal reflects general practices associated with other non-profit making leisure/Museum property transactions;
 - have clear and realistic professional valuation advice available to verify the actual amount of the under value - The estimated undervalue of this transaction is £400,000-£480,000;

- Comply with EU State Aid Rules - For a proposed arrangement of this nature it is necessary to consider the application of the rules relating to State Aid. These are complex but the consequences of infringing them should not be treated lightly. The primary remedy/sanction for infringing the State Aid rules is such that the substance of the risk falls on the recipient, Solent Sky in this case, who would be required to pay back a sum equal to the value of the aid plus interest. Nevertheless, the Council too would be affected by the fall-out from a potential infringement in terms of the additional workload involved in co-operating with any investigation; a potential reputational issue in terms of being associated with wrongdoing and the risk of third parties seeking financial redress against the Council to the extent that they have suffered loss or damage as a result of the Council having breached the State Aid rules.

However, amongst other considerations for finding that a measure is deemed to be State Aid; the benefit conferred must lead to distortion of competition and an effect on trade between member states (the advantage must be able to affect the competitive conditions and cross-border trade within the EU). With that in mind, officers have carefully considered the nature and effect of the proposed arrangement in order to reach a reasoned opinion as to whether in practice it would have such an effect. Accordingly, given the scale of the Museum and its operation, and the fact that it exists to tell the local story of the history of flight in Southampton and its surrounding areas; officers have taken the view that on balance, it is unlikely that the proposal would breach State Aid rules and that consequently, there should be no more than a very small risk of a finding to the contrary.

Other Legal Implications:

19. The Council has power to enter into the proposed Lease by virtue of Section 123 Local Government Act 1972.

POLICY FRAMEWORK IMPLICATIONS

20. The proposals in this report are consistent with the Council Policy Framework Plans.

AUTHOR:	Name:	Sharon Bishop	Tel:	023 8083 2754
	E-mail:	Sharon.bishop@southampton.gov.uk		

KEY DECISION? No

WARDS/COMMUNITIES AFFECTED:	Bargate
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SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	None
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Documents In Members' Rooms

1.	None
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Integrated Impact Assessment

Do the implications/subject of the report require an Integrated Impact Assessment (IIA) to be carried out.	No
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Other Background Documents

Integrated Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)

Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)

1.	None	
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