



**CABINET REPORT**

<b>Report Title</b>	<b>CAR PARK REPAIRS IN CONJUNCTION WITH PROPOSED DEVELOPMENT AGREEMENT FOR GROSVENOR/GREYFRIARS SCHEME</b>
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**AGENDA STATUS: PUBLIC**

<b>Cabinet Meeting Date:</b>	5 <sup>th</sup> August 2009
<b>Key Decision:</b>	YES
<b>Listed on Forward Plan:</b>	YES
<b>Within Policy:</b>	YES
<b>Policy Document:</b>	NO
<b>Directorate:</b>	Management Board Planning & Regeneration Finance & Support
<b>Accountable Cabinet Members:</b>	Cllr. Richard Church, Cllr. David Perkins
<b>Ward</b>	Castle

**1. Purpose**

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1.1 This report requests Cabinet authorisation for capital funding to enable major capital improvements to the Grosvenor Centre car park. The works are required to protect the Council in respect of current contractual liabilities and to assist the final negotiations of the proposed Conditional Development Agreement relating to the Grosvenor / Greyfriars complex.

**2. Recommendations**

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2.1 To approve a capital allocation of up to £1.75m in 2009/10 to fund essential Capital works to enhance the standard of the Grosvenor Centre Car Park.

### **3. Issues and Choices**

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#### **3.1 Report Background**

- 3.1.1 For in excess of eight years planned maintenance to the Grosvenor Car Park has been minimal due to proposed plans to expand the shopping centre. Works undertaken have been limited to addressing essential maintenance and compliance with health and safety issues. At one time, under a previous proposed scheme, a portion of this car park was due for demolition, which formed the reasoning behind this strategy.
- 3.1.2 As a result the Grosvenor Car Park now has a significant number of defects. Whilst the building is currently safe to use, essential work is urgently required to prevent further progressive deterioration.
- 3.1.3 The main problem is the ingress of water to parts of the reinforced concrete structure, which has caused the steel reinforcement to corrode resulting in the surrounding concrete to crack and spall. In addition, the waterproof membrane to the upper exposed floors has failed together with the majority of the movement joints. Water is ponding on the running lanes at all floor levels.
- 3.1.4 The Grosvenor car park is situated immediately above the Grosvenor Centre, which itself is subject to a long lease to Legal and General, (L&G). However, the car park itself is not let to L & G and its management and maintenance is the responsibility of this Council. Nevertheless, the Council has direct obligations to L & G under the terms of the lease of the Centre. In default of this Council complying with these obligations, L & G ultimately have an enforceable contractual right to complete necessary work and to recover the cost from this Council as a debt. This Council receives the parking fee income generated from the car park.

#### **3.2 Issues**

- 3.2.1 The Council is entering the final stage of negotiations with L&G in respect of a Conditional Development Agreement which would enable the regeneration of the adjacent land available for the expansion of the Grosvenor Centre. An issue raised by L&G is the current poor condition of the car park, which is proposed in their development scheme to be upgraded. L&G are concerned that in three to four years when they might take over the car park for refurbishment it could have serious structural defects.
- 3.2.2 L&G commissioned a construction cost consultant Cyril Sweett, in 2007, to undertake a structural assessment of the car park. The report highlighted a series of major works necessary to prevent further deterioration to the building and to extend its life. Separate reports were considered about the extent of works required. For the purposes of assessing the value of Council land to be incorporated in the proposed development scheme, a compromise figure was agreed as to the cost of works required (£1.75m).

- 3.2.3 In February 2009, L&G commissioned a further structural assessment by the specialist consultant AECOM, formally Faber Maunsell. Their report forecasts a rapid increase in the rate of deterioration, which ultimately could result in the closure of some of the upper floors unless necessary works are effected. The report identifies essential works deemed necessary to satisfy the requirements of the lease to prevent further deterioration. These essential works include: addressing failed movement joints, re-waterproofing the upper floors, structural concrete work and new drainage measures. The estimated cost of the works, including professional fees, will be in the region of £1.65m. These are not the full extent of works which would be required under the lease, but would address the essential elements required to arrest further deterioration and extend the car park's life.
- 3.2.4 Following lengthy negotiations with L&G, a proposed qualified cap has been provisionally agreed on the expenditure that this Council should make on addressing major works (i.e. beyond day-to-day maintenance issues) during the period between the signing of the Conditional Development Agreement and that Agreement either becoming unconditional or terminating. The qualified expenditure cap suggested is £1.75m (inclusive of professional fees).
- 3.2.5 The nature of the suggested capital scheme is such that it is very difficult to predict the likely extent of structural works, which may be necessary to bring the car park back into a satisfactory condition and thereby extend its life. In undertaking structural concrete works of this kind it is not easy to predict with precision the full extent of works required from initial visual inspection of the surface. However some areas of the work, such as renewing the waterproofing coating, can be more easily defined and therefore firmer costs can be obtained at the outset.
- 3.2.6 Under the proposed arrangements if and when the Development Agreement became unconditional, L&G would repay all of this Council's expenditure incurred to remedy the major works up to the £1.75m cap. If no Conditional Development Agreement were completed with L&G, then this expenditure would still be required to meet the Council's existing contractual responsibilities to L&G. If the Conditional Development Agreement did not become unconditional then L&G would not be obliged to repay any monies to the Council.
- 3.2.7 If, when the Council addresses these works in detail, the actual full cost of works is established to exceed £1.75m, then the Council can elect to exceed this expenditure ceiling. A further report would, of course, in these circumstances be presented to Cabinet. If the Council chose to incur any additional expenditure this would be subsequently recoverable from L & G – but only in the same circumstances as set out in 3.2.6 above.
- 3.2.8 The £1.75m cap is qualified to the extent that if L& G consider that further and additional works are required to prevent further material deterioration of the car park (during the period of the development agreement), beyond those agreed at the outset, then they can require the Council to do such works at the Council's cost (with recovery from L&G subsequently if the Conditional Development Agreement later became unconditional). Alternatively, in those circumstances, L & G could choose to do the additional work at its own initial

expense. However, they would have the right to recover that expense from this Council if the Conditional Development Agreement terminated without becoming unconditional (unless it was terminated due to their breach of the Agreement). Importantly for the protection of the Council, the judgement of whether any additional work was required to “prevent further material deterioration” (during the period after the signing of the Conditional Development Agreement) would have to be determined by a third party expert in default of any agreement.

3.2.9 The timetable for the proposed works is linked to the signing of the Development Agreement. From that point in time both parties would use reasonable endeavours to appoint a specialist consultant within six months, subject to the Council’s procurement procedures.

3.2.10 Within twelve months of signing the Development Agreement the Council would need to have appointed a contractor to undertake the works, subject to a competitive tendering procedure.

3.2.11 If the Council undertook the proposed agreed programme of major capital works, then L&G would not enforce their existing contractual rights during the period between the Conditional Development Agreement being signed and it becoming unconditional or terminating. It is important to note that completion of the major works would not absolve the Borough Council from any further liabilities under the current repairing covenant of the lease. The Council would be expected to undertake operational maintenance, planned maintenance and works necessary to satisfy Health and Safety issues until the car park was transferred to L&G. This conditional period of time could range between four and eight years.

3.2.12 In the event of the Conditional Development Agreement terminating and not becoming unconditional, then the existing contractual position between this Council and L&G regarding car park maintenance would resume in full force.

### **3.3 Choices (Options)**

3.3.1 **Option 1** – Do nothing. The Council could choose to take no substantive action to address physical deterioration issues. This could lead to L & G serving a notice upon the Council requiring works to be undertaken. In default of action by the Council, this would lead to L & G organising works directly. This option would take control of any works from the Council and potentially cost in excess of £1.75m. This option would not enhance partnership working with L&G and resolution of the issue is a real current barrier to completion of the Conditional Development Agreement.

3.3.2 **Option 2** – Undertake the essential works to prevent further deterioration to the car park structure and to extend its life. The precise extent of the works would be agreed by both parties and if undertaken prudently are expected to be contained within the £1.75m cap. In return L&G would not, subject to the qualification at 3.2.8, enforce the repairing covenant in the existing lease. This option would enable the terms of the Development Agreement to be finalised. Further risks apply as set out in this report.

## **4. Implications (including financial implications)**

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### **4.1 Policy**

- 4.1.1 This project is in direct support of the Council's Corporate Plan priorities *"Priority 4 of the Corporate Plan is to promote economic development and growth in Northampton."*
- 4.1.2 This project is a Key action identified within the Economic Regeneration Strategy adopted by the Council and the Local Strategic Partnership.
- 4.1.3 The project also has East Midlands Development Agency backing in support of the Regeneration Economic Strategy and is also identified in the emerging Local Development Framework.

### **4.2 Resources and Risk**

- 4.2.1 Asset Management would undertake the project management of the specialist consultant appointed to directly organise and control the works at the property.
- 4.2.2 There are no monies set aside to fund this level of maintenance to the car park. As it is a capital scheme, enhancing and extending the life of the car part, the Council would have to fund the works either from capital receipts or prudential borrowing. The level of capital receipts available for this purpose is very limited therefore prudential borrowing is the likely option. The cost to the Council is dependant upon the timing of the planned works but essentially in the year the works are completed, and on the assumption that the cost is at the cap of £1.75m the interest payment would be circa £84k per annum (reducing annually due to the repayment of principal) plus a capital repayment of £87.5k on a straight-line basis over the life (assumed at 20 years) of the asset. These costs must be included as part of the medium term financial plan and budget process for 2010/11 onward.
- 4.2.3 There may be negative revenue implications arising from possible loss of car parking income, from some parts of the property, during the course of the works. Phasing of the works on site would need to have regard to this potential adverse impact. It is difficult to quantify what any reduction might be.

### **4.3 Legal**

- 4.3.1 L&G can under the existing lease serve a notice upon the Council requiring the Council to undertake works to the car park. In default of action by the Council, L & G can exercise a valid legal right to complete necessary repairs and seek repayment of costs incurred from this Council.

### **4.4 Equality**

- 4.4.1 This report in itself has no impact on Equalities and Diversity.

## **4.5 Consultees (Internal and External)**

4.5.1 This report has been subject of consultation with the Chief Executive, Director of Planning & regeneration, Director of Finance & Support, Councillors R. Church and A. Woods.

## **4.6 How the Proposals deliver Priority Outcomes**

4.6.1 These works will assist the final negotiation of the Development Agreement to bring forward the priority regeneration project in Northampton.

4.6.2 The delivery of economic development within the town centre is one of the Councils priorities in the Corporate Plan.

4.6.3 Delivery of this project supports the Council's Improvement Programme, particularly in strengthening Partnerships including East Midlands Development Agency, West Northamptonshire Development Corporation, Northamptonshire County Council and the Private Sector.

## **4.7 Other Implications**

4.7.1 None specifically

## **5. Background Papers**

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5.1 Project files: Regeneration & Development

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**Extension 8461**

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