

## **BABERGH DISTRICT COUNCIL**

**FROM:** Pin Mill Task Group

**REPORT NUMBER:** **K49**

**TO:** COUNCIL

**DATE OF MEETING:** 30 June 2010

### **IMPROVEMENTS AT PIN MILL**

#### **1. PURPOSE OF REPORT**

- 1.1 This report seeks approval for the Council to enter into a lease with Ipswich Borough Council for the Hard at Pin Mill, Chelmondiston. This will allow the implementation of the project to carry out improvement works to the Hard designed to restore a historic maritime working environment at Pin Mill, with the added bonus of improving the tourism viability.
- 1.2 The lease will allow for the Hard to be sub-let by the Council to the management company that will operate the Hard in the future.

#### **2. RECOMMENDATION**

- 2.1 That the Head of Contract and Asset Management be authorised to enter into a lease with Ipswich Borough Council in accordance with the Heads of Terms attached as Appendix 'A' to this report (subject to any minor amendments by the Head of Contract and Asset Management and the Chairman of Strategy Committee).

#### **3. FINANCIAL IMPLICATIONS**

- 3.1 The financial liability under the lease is 'one peppercorn'.

#### **4. RISK MANAGEMENT**

- 4.1 This report is most closely linked with the Council's Significant Business Risk No.9 – Management of Projects & Programmes.
- 4.2 Other key risks are set out below:

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness or Impact</b>	<b>Mitigation Measures</b>
Approval for the project to proceed is not received from the landowner	Significant	Catastrophic – the project cannot be started and the grant will be lost	Heads of Terms for a lease agreed
The project cannot be started during the available construction 'window'	High	Critical - the grant funding would almost certainly be lost	Seek Council approval on 30 June 2010, as opposed to later Strategy approval

<b>Risk Description</b>	<b>Likelihood</b>	<b>Seriousness or Impact</b>	<b>Mitigation Measures</b>
The management company fails to become financially viable in the longer term	Low	Critical	Lease to be between IBC & BDC, with the provision to sub-let to the management company.

## 5. EQUALITY AND DIVERSITY IMPACT

5.1 There are no Equality and Diversity implications.

## 6 KEY INFORMATION

6.1 For several years the Pin Mill Task Group has endeavoured to carry out improvement works to the Hard designed to restore a historic maritime working environment at Pin Mill, with the added bonus of improving the tourism viability.

6.2 It has been a difficult and complex process, with many hurdles to overcome.

6.3 The proposed scheme involves two specific elements:

- Repairs to the Hard (which is a historic launching and landing facility extending from high to low water) adjacent to the Butt & Oyster. These involve reinstatement to the concrete/hardcore running surface such that it can be used again all the way to low water, and repairs to the upstream support to the Hard such that the stream (or grindle) that runs parallel to it can again be used for dinghy access.
- Reconstruction of a Thames Barge repair facility

6.4 Both of these elements will contribute to the economic and tourism viability of Pin Mill.

6.5 As indicated earlier the development of this project has been complex e.g.

- The site lies within a Site of Special Scientific Interest (SSSI). The works have therefore had to be licensed by the Maritime & Fisheries Agency, supported by approval from the Environment Agency and Natural England.
- Planning permission was necessary, supported by a full Environmental Assessment.

6.6 Unusually, the river bed to high water level is not owned by the Crown, but by Ipswich Borough Council. Their approval to carry out the works is therefore also required.

- 6.7 A further complication is that, having undertaken repairs to the Hard and constructed the barge repair facility, there must be provision for future maintenance and operational management. If this is not in place there is no guarantee that the substantial capital investment can be protected. The best solution for future management is the establishment of a 'Not for Profit' Management Company is the best solution.
- 6.8 Strategy Committee, at its meeting on the 11<sup>th</sup> February 2010 (Paper J179 refers) agreed to the works being carried out, and the establishment of the Company, subject to the granting of a licence (or similar arrangement) by Ipswich Borough Council.
- 6.9 The original intention was for the Council to have a licence to carry out the construction work, and the Company would have a lease to operate the facility. Paper J179 identified in its risk assessment that, if no legal arrangements were put in place, the project could not be started and external funding would be lost.
- 6.10 During the process of negotiating the legal details with Ipswich Borough Council it became evident that the least risk option was for the Council to enter into the lease for the Hard, and then sub-let the lease to the Company. This would ensure that, if the Company failed to stay financially viable, then the facility would revert to the Council, thus allowing it to put an alternative management arrangement in place. This financial risk was also identified in Paper J179.
- 6.11 This arrangement is different to that proposed in Paper J179, so a further approval is required. Ordinarily this paper would have been submitted to Strategy Committee on the 29<sup>th</sup> July for approval.
- 6.12 However, one of the other complications on this project is that a construction 'window' is only available between June and August to avoid disturbing nesting birds. This was a recommendation of the Environmental Assessment. Having just agreed the Heads of Terms, we are unable to wait until the 29<sup>th</sup> July, hence this report to Council.
- 6.13 Approval is therefore sought to enter in a lease with Ipswich Borough Council under the Heads of Terms attached as Appendix A to this report. This will allow construction works to commence on the 5<sup>th</sup> July 2010.

## **7 CONCLUSION**

- 7.1 The Pin Mill Task Group has spent the best part of 5 years trying to arrive at a point where it is able to deliver this project. It has produced a scheme designed to generate employment and tourism. This has been recognised by the award of a substantial grant from the Haven Gateway Partnership.
- 7.2 The Task Group has recognised the need to ensure that the facilities created must be sustainable in terms of maintenance and management, and has developed the 'vehicle' to ensure this – a 'not for profit' management company with a membership formed from those who will use and benefit from these facilities.
- 7.3 Everything is in now in place apart from the lease from Ipswich Borough Council to carry out the work and manage the facility into the future.



**The Hard, Pin Mill, Chelmondiston, Ipswich, Suffolk.**

**Heads of Terms**

**(SUBJECT TO CONTRACT).**

	<b><u>Section</u></b>	<b><u>Terms</u></b>
1	<b><u>Landlord:</u></b>	Ipswich Borough Council, Grafton House, 15-17 Russell Road, Ipswich, Suffolk, IP1 2DE
2	<b><u>Tenant:</u></b>	Babergh District Council Corks Lane Hadleigh Ipswich Suffolk IP1 1SJ
3	<b><u>Demise:</u></b>	Plan PS/146 (Proposed Management Area – area bordered red).
4	<b><u>Area:</u></b>	Circa 11 acres (4.5 ha), subject to survey.
5	<b><u>Term:</u></b>	21 years.
6	<b><u>Rent:</u></b>	One peppercorn.
7	<b><u>Rent review provisions</u></b>	None.
8	<b><u>Consideration:</u></b>	The Approved Works are part of the consideration for granting the lease. The Approved Works required to be completed by the lease are not qualifying improvements for the purposes of the Landlord and Tenant Act 1927.
9	<b><u>Approved Works:</u></b>	The Approved Works incorporate timber, concrete and hard-standing repairs and improvements to the Hard between high and low water, as well as reconstruction of a derelict barge repair facility, which will be formed as a 'landing frame' with associated mooring posts.

The Approved Works will be required to be carried out by Babergh District Council in a good and workmanlike manner and to the satisfaction of Ipswich Borough Council in all respects and in accordance with Planning Permission from Babergh District Council (Application No: B/09/00821/DPA/NW) and the Marine and Fisheries Licence 34524/09/0.

The Tenant shall not carry out or commence the Approved Works unless all necessary consents have been obtained. The Tenant to allow the Landlord to enter the Demise (entirely at their own risk) for the purposes of viewing the state and progress of the Approved Works.

- 10 **Long Stop Date:** The Long Stop Date shall be the 31<sup>st</sup> December 2012.
- The Tenant shall use all reasonable endeavours to complete the Approved Works by the Long Stop Date, and will immediately inform the Landlord if there is likely to be any delay resulting in the Approved Works not being completed by the Long Stop Date.
- In the event of any delay in completion of the Approved Works beyond the control of the Tenant, the Long Stop Date shall be extended by a period equal to the delay.
- 11 **Landlord's Break:** If the Tenant has not completed the Approved Works (to the satisfaction of the Landlord) by the Long Stop Date, the Landlord will be entitled to break and finally determine the Lease on 1 month's written notice (at any time after the Long Stop Date) to the Tenant.
- 12 **Public Liability Insurance** Babergh District Council and their nominated contractor who will be responsible for undertaking the Approved Works will be responsible for arranging and maintaining a minimum of £5 million Public Liability Insurance for the duration of the Approved Works.
- The Tenant will also be required to arrange and maintain the same level of insurance cover during the term of the lease.
- 13 **Repairs and Maintenance:** The Tenant to be fully responsible for all repairs and maintenance to the Demise to a standard commensurate with the condition of the Demise upon completion of the Approved Works.
- This standard is to be evidenced by a Schedule of Condition (which shall include both narrative and photographic evidence) to be undertaken by a Structural Engineer (to be approved by the Landlord) and at the Tenant's cost.
- 14 **Disability Discrimination Act 2005:** The Tenant to be fully responsible for any works required to comply with the Act.
- 15 **Assignment / Subletting:** The Tenant shall be permitted to sub-let the whole of the premises with the absolute consent of the Landlord to a not for profit company on the same terms as those terms incorporated within the Head Lease.

- 16 **Insurance:** The Tenant to be responsible for insuring the premises to the full reinstatement value.
- 17 **Permitted Use:** The use of the Demise for launching, recovering, mooring, maintaining and repairing vessels
- 18 **Indemnity:** The Tenant will indemnify the Landlord against any third party claims howsoever arising. The Tenant will be required to arrange and obtain the appropriate insurance cover.
- 19 **Yield Up at the end of the Term** The Tenant is required to hand back the Demise at the end of the lease with all additions and improvements to the premises.
- 20 **Unfit Premises:** If the Property becomes unfit for occupation during the term of the lease for any reason then Ipswich Borough Council will be under no obligation to the Tenant to make the premises fit for occupation again.
- 21 **Alterations, etc:** Not to be carried out without the Landlord's written consent.
- 22 **Costs:** Each party to bear their own costs in this transaction.
- 23 **VAT:** Ipswich Borough Council has not elected to opt for tax in this instance and will not do so before the lease is completed.