

RECORD OF DECISION MADE UNDER DELEGATED AUTHORITY

***PART 1 – PUBLIC DOCUMENT**

Any interest to declare/ or conflict and any dispensation granted *[if applicable]*

SERVICE DIRECTORATE: Resources

1. DECISION TAKEN

Agreement to not require a deed of covenant from Eclipse Power Networks Limited in relation to the transfer of land (and granting of other rights) from settle to Eclipse Power Networks Limited at John Barker Place, Hitchin. This is to facilitate the development of John Barker Place.

2. DECISION TAKER

Ian Couper, Service Director: Resources

3. DATE DECISION TAKEN: 14 July 2021

4. REASON FOR DECISION

The land being transferred from settle is intended to be used as the site of an electricity sub-station. The associated rights being granted relate to the laying of electricity cables from the sub-station across the site. All of this is to enable the redevelopment of the John Barker Place site. Insisting on a deed of covenant could delay the redevelopment works, and it is considered highly unlikely that it would provide any benefit to the Council.

5. ALTERNATIVE OPTIONS CONSIDERED

The Council could require a deed of covenant that Eclipse Power Networks Limited will observe the covenants set out in clause 5 of the 2003 Stock Transfer. This would mean that the land being transferred would continue to be subject to the restrictions set out in the Stock Transfer. This is likely to cause delays to the redevelopment. Any covenants with financial implications imposed on Eclipse Power Networks Limited are likely to be unacceptable in its role as a utility provider.

6. CONSULTATION (INCLUDING THE EFFECT ON STAKEHOLDERS, PARTNERS AND THE PUBLIC)

Settle have made the request that a deed of covenant is not required.

7. FORWARD PLAN

- 7.1 This decision is not a key Executive decision and has therefore not been referred to in the Forward Plan.

8. BACKGROUND/ RELEVANT CONSIDERATIONS

NHH changed its name to settle in May 2018.

Settle have requested that the Council does not require a deed of covenant in relation to land being transferred from settle to Eclipse Power Networks Limited, and the granting of rights over land to lay electricity cables. The land being transferred is the site of an electricity sub-station, and is expected to remain as such.

A deed of covenant would mean that the obligations placed upon settle by the Stock Transfer would be passed on to the new owner of the land. The only significant impact on the Council would be if the new owner was to subsequently sell the land. If a deed of covenant was in place then, up to the year 2033, the Council would be entitled to 25% of the proceeds from the sale, less allowable expenses. In reality the site is extremely likely to remain an electricity sub-station over that period.

Requiring a deed of covenant is unlikely to provide any benefit to the Council, and could delay the John Barker Place redevelopment. The company that the land is being transferred to would need to review the implications that arose from the Stock Transfer. They may determine that any risk is too great and refuse to sign the deed of covenant, thus delaying progress in the re-development. It is therefore more pragmatic for the Council to use its discretion, as permitted in the Stock Transfer, and agree that in this instance a deed of covenant will not be required.

It is in the Council's interests to support the redevelopment of John Barker Place to enable the delivery of additional and improved housing in the area.

9. LEGAL IMPLICATIONS

9.1 The Service Director: Resources has delegated authority for 'Approvals for any overage, claw back or similar arrangement pursuant to the Stock Transfer'.

9.2 The obligation on settle to pay clawback to NHDC in respect of property disposals arises as a consequence of a deed of covenant contained within the Stock Transfer dated 31 March 2003. Clause 5.2 (e) sets out that the Council can require a deed of covenant from the subsequent land owner in this situation, but also allows the Council to use its discretion that this does not need to apply.

10. FINANCIAL IMPLICATIONS

10.1 The Council is potentially foregoing 25% of the receipts from a future sale of the land, up to 2033. After 2033 the Council ceases to be entitled to any of the receipts. However the chances of the land being sold are considered to be very small given the intended use of the land as an electricity sub-station.

11. RISK IMPLICATIONS

See 10.1. The benefits of the John Barker Place redevelopment continuing outweigh any potential future lost income.

12. EQUALITIES IMPLICATIONS

None

13. SOCIAL VALUE IMPLICATIONS

13.1 *The Social Value Act and "go local" policy do not apply to this decision.*

14. HUMAN RESOURCE IMPLICATIONS

None

15. BACKGROUND PAPERS

None


16. APPENDICES

None

NOTIFICATION DATE

Signature of Executive Member ConsultedN/a- Non-Executive.....

Date

Signature of Decision Taker 

Please Note: that *unless urgency provisions apply* EXECUTIVE decisions cannot be implemented until 5 clear working days have elapsed after the decision has been taken to allow for scrutiny call-in.

Call-in does not apply to NON-EXECUTIVE DECISIONS