

Agenda item:

Decision maker: Planning, regeneration and economic development, 18th March 2015

Subject: Ben Ainslie Racing (BAR) - The Camber, Old Portsmouth

Report by: Owen Buckwell, Director of Property

Wards affected: St Thomas

Key decision (over £250k): No

1. Purpose of report:

1.1 The report is to advise the Cabinet Member of the principal terms of the proposed lease to be entered into with Ben Ainslie Racing Ltd (BAR).

2. Recommendations:

2.1 It is recommended that the Cabinet Member agrees:

2.1.1 The principal terms for the lease to Ben Ainslie Racing Ltd (BAR) as set out in this report

2.1.2 The City Solicitor and the Director of Property be authorised to complete all legal documentation in order to give effect to the above recommendation.

3. Background:

3.1 As reported to Planning, regeneration and economic development in June 2014 Ben Ainslie Racing Ltd (BAR) approached PCC with a view to locating a team base on the site in order to develop and build a boat for the next Americas Cup challenge in 2017; and if successful to use their best endeavours to host the subsequent race in the UK based in Portsmouth.

3.2 Following the June report, and the granting of planning consent for the BAR team base, the Council has relocated the existing tenants on the Camber providing vacant possession for BAR to construct their team base under licence, and continued negotiations with BAR regarding the proposed lease agreement.

3.3 Whilst the June report provided authority for the legal documentation to be completed as negotiations between the parties were in their infancy it was not possible to detail all the terms of the proposed agreement at the time. With negotiations now concluded and the principal terms being different from those as

at June this report sets out the agreed terms for consideration by the Cabinet Member.

3.4 Principal terms:

1.	Lease Areas	The property at The Camber, Sites 1 & 2, Old Portsmouth and shown edged red on the attached plan [Appendix 1], including all buildings constructed on those Sites, additions, improvements and services in place when the Lease is granted.
2	Term	The term is for 25 years with options for the tenant to renew several times for a term of 10 years, followed by 10 years, followed by 5 years (fifty years in total)
3	Rent and Consideration	<p>The Tenant (at its own cost) will enter into an agreement to build a new boat building shed, of a design suitable to house a boat participating in The Americas Cup.</p> <p>There will be a rent free period for the first ten years whilst the Property is used for the purpose of securing The Americas Cup.</p> <p>In the event The Americas Cup ambition ceases in the first ten years then the rent free period will stop and rent for surfaced industrial land will become payable with immediate effect</p> <p>In the tenth year, irrespective of the Americas Cup ambition, rent will become payable for the site and will be calculated as the greater of £110,000 per annum or the market rent for surfaced industrial land.</p>
4	Rent Review	When a rent is charged, then that rent will be reviewed every fifth year thereafter. The review of rent will be upwards only.
5	Interest	Interest at a rate of 4 % above the base rate of the Co-operative Bank Plc will be charged if any sum due under the terms of the Lease remains unpaid for a period in excess of 14 days after the due date.
6	Outgoings	The Tenant shall be responsible for the payment of rates, taxes, gas, electricity and water charges or any other charges which may arise from the Lease or the Tenant's use of the Property.
7	Insurance	The Tenant shall insure the Property and their contents against fire, explosion, storm, lightning, tempest, flood,

		burst pipes, impact, aircraft and articles dropped therefore, riot and civil commotion up to the full cost of rebuilding or reinstatement. The Tenants shall arrange for their own contents and public liability insurance, as necessary. The Tenant will be under an obligation to reinstate the building in the event it is damaged / destroyed by an insured risk.
8	Repairs / Decoration	<p>The Tenant shall keep the Property in good and tenantable repair and condition throughout the Term. The Landlord shall keep the sea wall surrounding the Property in repair and condition, and appropriate rights shall be granted to the Tenant to allow it to use/oversail this area and to gain access to the water.</p> <p>At the end of the Term, the Tenant is to yield up the Property with vacant possession in a state of repair and decoration in accordance with the condition required by the provisions of this Lease. Buildings to remain on the Property.</p>
9:	User	<p>The Tenant shall not use the Property or any part thereof for any purpose other than for:</p> <p>Site 1 - (a) During Americas Cup - boat development and construction, storage and ancillary maintenance work in relation to the Ben Ainslie Racing team, with the purpose of securing the Americas Cup; offices for 1851 Trust's use; ancillary PV cells in roof space (b) Should the Americas Cup ambition cease - light industrial on ground floor and offices above; ancillary PV cells in roof space.</p> <p>Site 2 - Car parking only with occasional use for events and event preparations</p>
10	Alterations	<p>The Tenant shall not make any alteration or additions to the Property or any part thereof, whether internal or external without the prior written consent of the Council (not to be unreasonably withheld) but internal non-structural alterations shall not require Landlord's consent. The Tenant shall pay the Council's reasonable costs in processing any such application for consent, whether or not the consent is actually granted</p>
11	Assignment / subletting / mortgaging	<p>During the America's Cup, the Tenant shall not assign, share or part with possession of any part of the Property. BAR want to be able to assign the whole Property to its Founding Investors during and after the America's Cup without landlord's consent. This proposal is under review, Group sharing shall be permitted without consent. After the America's Cup period, a more typical alienation clause shall apply to enable the Tenant to assign or underlet the</p>

		<p>whole or part of the Property in all cases with the Landlord's consent not to be unreasonably withheld or delayed. However, before any assignment (other than to the Founding Shareholders) can take place, BAR must have given the Council the opportunity to buy the property back.</p> <p>The Tenant shall not underlet the Property (Site 2) at any time.</p> <p>The Tenant shall not underlet the Property (Site 1) except (a) the part consisting of the roof space of the Tenant's building for solar panels, the lease to exclude the security of tenure provisions (Landlord and Tenant Act, Part II) and (b) to the 1851 Trust for use in connection with its own charitable objects (youth sailing activities), the lease to be excluded from the above security of tenure provisions.</p> <p>BAR will be allowed to charge the Property both in favour of any its individual 'Founding Investors' and HSBC Bank plc (or similar bank).</p>
12	Re-entry	<p>The Council reserves the right to re-enter the Property and forfeit the Lease whenever:</p> <ul style="list-style-type: none"> a) any payment due under the terms of the Lease remain unpaid for a period in excess of 14 days after the due date whether or not it has formally been demanded. b) the Tenant has not complied with any of the material terms of the Lease. <p>The Tenant becomes insolvent or declared bankrupt. The forfeiture of the Lease will not cancel any outstanding obligations of the Tenant.</p>
13	Host City Nomination	<p>If Ben Ainslie Racing wins the Americas Cup, it shall use all reasonable endeavours to nominate Portsmouth as the host city for any event for which they are entitled to choose the location of as a result of victors rights, provided that it considers (acting reasonably) that such a nomination is a commercially, practically and economically viable option (such considerations to include but are not limited to whether Portsmouth City Council fully supports the nomination and whether the required space is made available to host the America's Cup and any associated events) and provided that there are no reasons out of Ben Ainslie Racing's control which mean that it has to hold the event in another location.</p>
14	Pre-emption	<p>The Landlord has the right of first refusal for buy-back of the lease if and when either (a) the America's Cup Project</p>

		is discontinued or (b) the Tenant defaults under the terms of the charges referred to in term 11 (above).
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4. Reasons for recommendations

- 4.1 The principal terms set out in this report are recommended. On balance, noting the benefits to the Council (including the contingent and wide-ranging economic benefits accruing to various operations of the Council, and the re-entry terms, which allow the Council the benefit of a highly developed facility) these terms are considered to be the best terms that can reasonably be agreed with BAR in order to facilitate the Americas cup challenge base as described within this report and the previous report on this subject.
- 4.2 The money being expended by BAR on constructing their team base and the economic impact this development and subsequent activity will have on the local economy have been taken into account when considering the proposed terms.
- 4.3 The City Council is not investing in the construction of the building, and is providing land only for the development, and as such the terms set out above are recommended to be accepted.

5. Equality impact assessment (EIA)

- 5.1 This decision has been screened for impact on groups with protected characteristics, as that term is defined under the Equalities Act 2010, and no adverse impact requiring mitigation measures has been indicated.

6. City Solicitor comments

- 6.1 The Council in a leasehold disposal of 7 years or more such as this, must secure the best consideration that can reasonably be obtained, or rely on the consent of the secretary of state. As no express consent has been obtained, the Council may rely on the General Disposal Consent (England) 2003 order (Circular 06/03) in instances where the promotion of economic, social, or environmental well-being is anticipated, in relation to undervalues up to £2,000,000. In these instances, no express consent is required. Circular 06/03 provides a technical appendix by which the valuation is conducted.
- 6.2 All disposals must comply with the European Commission's State Aid rules. Provided the Corporate Assets department considers that the value is at a market rate then the disposal does not constitute State Aid.

7. Head of Finance's comments

- 7.1 The proposed lease terms state that BAR will not be required to pay a rent while the site is being used to compete in the Americas Cup. Whilst this results in a net reduction in rental income from the Camber site in the short term, it is anticipated that the Property Portfolio will continue to operate within its existing cash limit. In addition, the considerations of the Council's valuer as to the wider commercial benefits and returns of the proposed arrangements, although not quantified, do demonstrate an economic benefit compared to the status quo.
- 7.2 As stated within the report, in the event that the America's Cup ambition ceases, and in any event after ten years the rent free period will stop and the higher of £110,000 or open market rent for surfaced industrial land will become payable with immediate effect, resulting in an increase in rental income from the site overall, compared to the status quo.
- 7.3 It should be noted that the property built by BAR on the Camber will return to PCC ownership upon lease expiry for future commercial/development use.

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Signed by: Owen Buckwell, Director of Property

Appendices:

Appendix 1 - Site Plan

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location
13 th June 2014 - PRED report - East St and Broad St	http://democracy.portsmouth.gov.uk/ieListDocuments.aspx?CId=158&MId=2838&Ver=4

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by Cllr Luke Stubbs, Executive Member for Planning, Regeneration and Economic Development