

<b>Subject:</b>	Lee Quarry Trail Head Centre	<b>Status:</b>	For Publication
<b>Report to:</b>	Cabinet	<b>Date:</b>	7 <sup>th</sup> March 2012
<b>Report of:</b>	Chief Executive	<b>Portfolio Holder:</b>	Leader of the Council
<b>Key Decision:</b>	<input checked="" type="checkbox"/> Forward Plan <input checked="" type="checkbox"/>	<b>General Exception</b>	<input type="checkbox"/> <b>Special Urgency</b> <input type="checkbox"/>
<b>Community Impact Assessment:</b>	Required:	No	Attached: No
<b>Biodiversity Impact Assessment</b>	Required:	No	Attached: No
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1.	<b>RECOMMENDATION(S)</b>		
1.1	That Cabinet approve a procurement exercise to appoint a suitable developer for the creation of a trail head centre based on Plot 5 Futures Park, Bacup.		
1.2	That agreement to the terms of the lease or sale of the site be delegated to the Director of Business in consultation with the Portfolio Holder.		
1.3	All future minor amendments to the project to be delegated to the Head of health Housing & Regeneration in consultation with the Portfolio Holder.		

## 2. PURPOSE OF REPORT

- 2.1 To provide members with an appraisal of the options available to bring forward the development of a trail head centre to support the Lee Quarry mountain bike trails.

## 3. CORPORATE PRIORITIES

- 3.1 The matters discussed in this report impact directly on the following corporate priorities:
- **A clean and green Rossendale** – creating a better environment for all.
  - **A healthy and successful Rossendale** – supporting vibrant communities and a strong economy.
  - **Responsive and value for money local services** – responding to and meeting the different needs of customers and improving the cost effectiveness of services.

## 4. RISK ASSESSMENT IMPLICATIONS

- 4.1 There are no specific risk issues for members to consider arising from this report.

## 5. BACKGROUND AND OPTIONS

- 5.1 During summer 2011 officers from Lancashire County Developments Limited commissioned a feasibility study to explore the potential for the development of a supporting facility for Lee Quarry mountain bike trails based on sites at Futures Park.
- 5.2 Place First were engaged to undertake the commission and over the following months undertook a series of studies and consultations with the private sector with the view of identifying a viable option that would be deliverable and sustainable on the site.
- 5.3 The studies identified that there was private sector interest in developing the site and that whilst profits would be marginal in the early years a more acceptable profit margin could be achievable over the longer term.

- 5.4 The trails themselves have become increasingly popular with successive year on year growth in visitor numbers to the trails (estimated 30k in 2010). They received acclaim from mountain bike professional and industry experts including British Cycling and the market outlook for cycling is also positive with participation rates up and predicted to grow.
- 5.5 There is now an opportunity to cement and build the offer, brand, identity and unique attributes of the Quarry and to use this proposed development to leverage broader economic development impact both on the site and in the wider area.
- 5.6 Other options have been explored including the availability of public funding through agencies such as Sport England. However, discussions with governing bodies suggest that the project cannot fulfil key criteria and would need to include two National Governing Bodies to be suitable. This would mean dilution of the project which would be unattractive to the private sector.
- 5.7 The proposal is to offer plot 5 Futures Park as a development opportunity to the Private Sector via a Land Transaction. Here, the Council would enter into a straightforward land transaction with a development partner – either through a sale of its freehold interest in the Trail Head site or through the grant of long leasehold arrangements.
- 5.8 The Council might receive payment for the site (complying with its requirement to obtain the best consideration reasonably obtainable or satisfy itself payment isn't possible to create a viable scheme and then rely on its general power of competence to dispose of the site for social, environmental, economic benefit of the area). Depending on the outcome of an independent valuation we may also need to obtain a general consent from the Secretary of State to dispose of land at an under value depending on the value of the land.
- 5.9 There is the potential for the Council to share in profit generated by reserving that right in the contractual documentation but we would not normally expect to see the Council to have the ability to exert controls and specifications on the development partner in this structure over and above normal planning controls. This is because any disposal of land with those controls/specifications is exempt from the Public Contracts Regulations 2006 as a simple land transaction (as no procurement of anything is taking place).
- 5.10 However, it should be noted that recent developments in European case law, and subsequent OGC guidance, have confirmed that where the Council has approval rights or rights to specify design over works, even where those works are private in nature, there is a risk that this will be classed as a public works contract and the Regulations will apply, requiring a full OJEU procurement.
- 5.11 The plots on Futures Park have received only limited development interest since their completion and in the current economic climate it is unlikely that any acceptable development offer will be received in the foreseeable future.
- 5.12 Development of a trail head centre has will not only support users of the quarries but also has the potential to attract further development on the adjacent plots over time.

## **PROCUREMENT CONSIDERATIONS**

- 5.13 In this market it is important to ensure that we run the most efficient and cost effective procurement process.

If the Council is procuring goods, works or services over a certain threshold then it will need to follow the Public Contracts Regulations 2006 (the “Regulations”). Regeneration and development projects can often fall within the scope of the Regulations because they can be classified as public works contracts, provided that the definition of a public works contract in the Regulations is satisfied:

“ “public works contract” means a contract, in writing, for consideration (whatever the nature of the consideration)

(a) for the carrying out of a work or works for a contracting authority; or

(b) under which a contracting authority engages a person to procure by any means the carrying out for the contracting authority of a work corresponding to specified requirements;

“work” means the outcome of any works which is sufficient to fulfil an economic and technical function.”

- 5.14 It is the second limb of this definition, “work corresponding to specified requirements”, which can lead to development agreements being brought within the scope of the Regulations.
- 5.15 In order for there to be a public works contract, there must be an enforceable legal obligation on the contractor to carry out the works (directly or indirectly) and the requirement for the works to be to the authority’s “specified requirements” is not met if the authority merely examines submitted building plans, or takes decisions in the exercise of its regulatory urban planning powers.
- 5.16 In this transaction, whether the development agreement is classed as a public works contract (and hence one to which the Regulations will apply) will therefore come down to what controls and specifications the Council (as landowner and regeneration authority) seeks to impose on its development partner over and above “normal” urban planning controls.
- 5.17 Put simply, if the Council can rely on its normal planning controls as local planning authority then it is possible to structure the selection of a development partner (for the Trail Head Option) as a land transaction which does **not** involve the procurement of goods, works or services (and, therefore, does not require the Council to follow an OJEU procurement).

## **COMMENTS FROM STATUTORY OFFICERS:**

### **6. SECTION 151 OFFICER**

- 6.1 Financial matters are noted above though not quantified at this stage.

### **7. MONITORING OFFICER**

- 7.1 Included within the report.

### **8. HEAD OF PEOPLE AND POLICY (ON BEHALF OF THE HEAD OF PAID SERVICE)**

- 8.1 There are no Human Resources implications arising from the Report.

**9. CONSULTATION CARRIED OUT**

9.1 Lancashire County Council, Sport England, trail users, private sector companies.

**10. CONCLUSION**

- 10.1 The development of a suitable support facility for the mountain bike trails at Lee Quarry is essential if the full potential of the facilities are to be realised.
- 10.2 The economic benefits from additional visitors to the facility will impact not only on the immediate vicinity but through the wider area with the potential to attract linked and complementary businesses.
- 10.3 The procurement exercise needs to be handled carefully to ensure that it complies with the formal regulatory framework.
- 10.4 The Council needs to exercise thorough planning controls to ensure that any development on the site complements the nature of the trails and provides an attractive environment for both users and the wider community.

**Background Papers**

Document	Place of Inspection
Place First Viability Report	Room 206: The Business Centre, Futures Park, Bacup.