

The payment of an annual grant to Derbyshire Wildlife Trust for the management of Land called Derwent Meadows at Derby Commercial Park, Raynesway, Derby

SUMMARY

- 1.1 In 2007, Derby City Council granted planning consent for a large commercial development that is now known as 'Derby Commercial Park'. One of the conditions of the planning approval was for the developer to gift to the Council (by way of a 99 year lease) circa.60 acres of land adjacent to the River Derwent (referred to as Derwent Meadows) and for this land to be managed by the Council as a nature reserve. The lease to facilitate this has not yet been granted.
- 1.2 The developer is to pay to the Council for the term of the 99 year lease an annual sum to fund the management of Derwent Meadows and this sum is linked to the amount of space on the development which is occupied. However for the first ten years of the lease (2018 to 2028) the developer is obliged to pay a minimum sum of circa £147,000 pa (subject to annual RPI changes).
- 1.3 Derbyshire Wildlife Trust (DWT) has been involved with the Derwent Meadows site for a number of years. They have helped to write the framework plan for the future management of the land and are currently advising the Council on the current and future management of the land.
- 1.4 DWT have expressed an interest in managing Derwent Meadows on the Council's behalf. This report therefore seeks Cabinet approval to use the developer's contributions to award a grant to DWT to fund the management of the Derwent Meadows site for the first ten years of the lease.

RECOMMENDATION

- 2.1 To approve the Council in making a grant award to DWT each year for the period of 2018 to 2028. This grant to be less than or equal to the annual sum received by the Council from the developer for the management of Derwent Meadows under the s106 Agreement arrangements.

- 2.2 To give effect to Recommendation 2.1 above, that the Council enter into a ten year grant funding agreement (and all necessary associated documentation) with DWT for the management of the Derwent Meadows Nature Reserve.
- 2.3 To note that the Council will grant a lease of the Derwent Meadows site to DWT, such lease to be co-terminus with the grant agreement referred to in Recommendation 2.2 above.
- 2.3 To note that a further Report will be brought to Cabinet in the financial year 2027/8, to seek approval to the future financial and management arrangements for the Derwent Meadows Nature Reserve.

REASONS FOR RECOMMENDATION

- 3.1 To ensure that the land is maintained and managed effectively, the Council wish to outsource the contractual obligation under the s.106 Agreement. DWT have expressed an interest in managing this land at no cost to the Council.

DWT are the Council's partners and advisors on matters associated with wildlife conservation and land held for nature conservation. They have been involved in this site for many years and have helped to write the framework plan for its future management. They have spent several years preparing to take over the management of the land.
- 3.2 There have been ongoing problems with antisocial behaviour on the land, including travellers, children lighting fires and the theft of stock fencing. This proposal ensures that the liability for management of land will be transferred to DWT – they have the resource to monitor and manage the land including dealing with such antisocial behaviour in an effective and timely manner.
- 3.3 The habitat is wetland/grassland and woodland which are priority habitats under the Habitat Directive. It requires specific and particular management to ensure that it mitigates for the impact of the adjacent commercial warehouse development. The wildlife at the site must be monitored (and if necessary the management adjusted from time to time) to ensure that the objectives of the mitigation are met.

SUPPORTING INFORMATION

- 4.1 Derby Commercial Park is a large warehouse development located two miles to the East of the city centre, close to the River Derwent (please refer to the two plans attached). The development land extends to nearly 100 acres and once it is fully built the total space will be c. 2,000,000 sq ft. A Macdonald's restaurant and a public house called 'The Blue Jay' are located to the front of the site. Occupiers of the warehouse accommodation include Ted Baker and Heineken.
- 4.2 Planning consent for the development was granted in December 2007.
- 4.3 The land cannot be developed in the future for a commercial use, both because of the restrictions put on its use by the s.106 Agreement, and also because it is located within the Derwent flood plain.
- 4.4 The developer is to pay to the Council for the term of the 99 year lease an annual sum to fund the management of Derwent Meadows and this sum is linked to the amount of space on the development which is occupied. However for the first ten years of the lease (2018 to 2028) the developer is obliged to pay a minimum sum of circa £147,000 pa (subject to annual RPI changes).
- 4.5 Between the completion of the s.106 Agreement in 2007 and the granting of the lease to DCC (proposed for 1 April 2018) the developer is obliged at its own cost to manage the land as a nature reserve. The developer accepts that it has not entirely fulfilled this obligation to date and has undertaken to rectify this by carrying out works, particularly in relation to replacing fencing, and by making a payment to DWT, who will carry out other remedial work on their behalf.
- 4.6 The habitat is wetland/grassland and woodland which are priority habitats under the Habitat Directive. It requires specific and particular management to ensure that it mitigates for the impact of the adjacent commercial warehouse development. The wildlife at the site must be monitored (and if necessary the management adjusted from time to time) to ensure that the objectives of the mitigation are met.
- 4.7 A 10 year sublease and grant funding agreement has been negotiated with DWT for the management of the land. It is expected that this arrangement will continue for a longer period than this, and that a new grant funding agreement and lease will be granted to DWT when this one expires. All options for the future management of the land will be considered in full at the expiry of the proposed lease and grant agreement

in 2028.

It must be remembered that at the end of the this ten year period the annual payment from the developers (or their successors in title) may fall, so this is an appropriate time to review the future management needs of the land in the light of the projected income to the Council over the next 10-20 year period.

- 4.8 At the end of each year, in order to ensure compliance with the grant agreement DWT will prepare a report summarising their activities over the previous year and will provide accounts to support their claim for the grant which will be equal to their expenditure. Whereas the Council will receive the funds from the developer annually in advance in full, the Council will pay the grant over to DWT in instalments.
- 4.9 DWT will only manage the land up to the maximum sum provided by the developer to the Council. Where the cost of managing the land is lower than this, the Council will retain the surplus funds and use them for the management of the land in the future. A reserve fund will be created for this purpose. The s.106 Agreement requires that the Council only spend this money on the management, maintenance and improvement of Derwent Meadows, therefore any surplus money cannot be used for other purposes. It is proposed that any surplus monies are held in a reserve account and carried forward to be spent on the management of the land in the future, if a situation arises where the annual sum received from the developer is not adequate to cover the full costs of the its management.
- 4.10 The Council intends to retain 5% of the annual sum paid to it to cover the cost of managing and administering the grant agreement with DWT.
- 4.11 Wards affected – Alvaston and Spondon.

OTHER OPTIONS CONSIDERED

- 5.1 The Council could manage the land using its own resource in house, but it is considered that DWT have the particular skills, knowledge, equipment and experience to manage this land, and to engage with the local community and to use the land as an educational facility for school children in the locality.

DWT will ensure that this site is a stepping stone in a wider habitat landscape to ensure that the wildlife is resilient to floods and drought or other events and challenges. DWT have invested much time over the last two years in advising the Council throughout the negotiations with the developer.

Also, the Council are reluctant to take on liability for a large area of land which has a history of antisocial behaviour, whereas DWT are adequately resourced to ensure the effective management of this.

This report has been approved by the following officers:

Legal officer Financial officer Human Resources officer Estates/Property officer Service Director(s) Other(s)	Emily Feenan, Principal Lawyer Amanda Fletcher, Head of Finance - Communities and Place Zoe Bird, HR Shared Services Manager Jayne Sowerby-Warrington, Head of Strategic Asset Management & Estates Greg Jennings, Director of Regeneration, Property & Housing Projects Rosie Watson, Planning, Implementation Team Leader Stephen Teasdale, Solicitor
For more information contact: Background papers: List of appendices:	Joanna Rees 01332 643329 joanna.rees@derby.gov.uk Two plans of Derwent Meadows, attached. Appendix 1 – Implications Plans

IMPLICATIONS

Financial and Value for Money

- 1.1 Under the s.106 requirements an annual payment is due from the developer of Derby Commercial Park for the maintenance, management and improvement of Derwent Meadows.
- 1.2 The minimum value of the annual payment in 2018 is £147,000, increasing by RPI annually, over the next ten years. It is proposed to pay Derbyshire Wildlife Trust (DWT) a grant to manage and maintain the site. This grant would be up to the value of the annual payment received from the developer.

Any balance will need to be carried forward to spend on the land in future years in line with the obligations contained within the s.106 agreement.
- 1.3 The Council intends to retain 5% of the annual payment from the developer to cover the collection of the s.106 payment and the management, overseeing and administration of the management of the land by DWT.
- 1.4 The net revenue impact of the proposal is £0.

Legal

- 2.1 As it is proposed that the Council award a grant to DWT, as opposed to awarding a contract, this arrangement is not covered by the Public Contract Regulations 2015. The grant agreement will be based on the delivery of broad objectives/outputs, as opposed to detailed specifications. The grant agreement will contain provisions to allow the Council to withhold, suspend or claw-back grant monies in the event that DWT fails to deliver the project or becomes insolvent.
- 2.2 The award of the grant does not constitute illegal state aid in contravention of Article 107 of the TFEU. In managing the Derwent Meadow Nature Reserve, DWT is providing a “Service in the General Economic Interest” (SGEI). An SGEI is a service that the Council considers should be provided in all cases, whether or not there is an incentive for the private sector to provide them. The circumstances of the proposed grant to DWT fall within the relevant European regulations and the requirements of the Altmark conditions and the proposed level of compensation are below European Commission notification requirements.
- 2.3 Legal services will advise in relation to the drafting of the grant agreement and licence arrangements.

Personnel

- 3.1 There are no HR implications.

IT

- 4.1 There are no IT implications.

Equalities Impact

- 5.1 None, save that where DWT install new pathways on the land they will be obliged to ensure that they are accessible and that they are maintained in good condition. Also, if they install bird hides some of the viewing windows will be of a height appropriate for wheelchair users and children.

Health and Safety

- 6.1 The land spans the River Derwent and there are several ponds on the site. The management of water safety will be a consideration of DWT in any plans for visitors to the nature reserve, especially children and vulnerable people.

Environmental Sustainability

- 7.1 There are no environmental sustainability implications associated with this matter.

Property and Asset Management

- 8.1 In implementing these recommendations the Council will transfer the land to an organisation that has the necessary expertise and experience to ensure its effective management, at no cost to the Council.

Risk Management and Safeguarding

- 9.1 The risks associated with the ownership of the land are transferred under the 99 year lease from the developer to the Council (which the Council are already contractually obliged under the s.106 to take up) and then on under the proposed 10 year lease to DWT. The management of these risks is funded by the developer and their successors in title to the land, by the charge which under the s.106 they are obliged to pay to DCC, and which the Council will pass on to DWT.

Corporate objectives and priorities for change

- 10.1 The recommendations in this report link to the Council Plan's Priority Outcomes of being more commercial and delivering services differently, and, as DWT will enable community activity on the land (especially volunteering), promoting health and wellbeing.