

Cabinet

Grand Jury Room, Town Hall

1 September 2008 at 6:00pm

The Cabinet deals with

the implementation of all council services, putting into effect the policies agreed by the council and making recommendations to the council on policy issues and the budget.

Information for Members of the Public

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COLCHESTER BOROUGH COUNCIL CABINET

1 September 2008 at 6:00pm

Leader (& Chairman): Councillor Anne Turrell (Liberal Democrats)
Deputy Chairman: Councillor Martin Hunt (Liberal Democrats)
Councillor Lyn Barton (Liberal Democrats)
Councillor Tina Dopson (Labour)
Councillor Theresa Higgins (Liberal Democrats)
Councillor Beverley Oxford (The Highwoods Group)
Councillor Paul Smith (Liberal Democrats)
Councillor Tim Young (Labour)

AGENDA - Part A

(open to the public including the media)

Pages

1. Welcome and Announcements

(a) The Chairman to welcome members of the public and Councillors and to remind all speakers of the requirement for microphones to be used at all times.

(b) At the Chairman's discretion, to announce information on:

- action in the event of an emergency;
- mobile phones switched to off or to silent;
- location of toilets;
- introduction of members of the meeting.

2. Urgent Items

To announce any items not on the agenda which the Chairman has agreed to consider because they are urgent, to give reasons for the urgency and to indicate where in the order of business the item will be considered..

3. Declarations of Interest

The Chairman to invite Councillors to declare individually any personal interests they may have in the items on the agenda.

If the personal interest arises because of a Councillor's membership of or position of control or management on:

- any body to which the Councillor has been appointed or nominated by the Council; or
- another public body

then the interest need only be declared if the Councillor intends to speak on that item.

If a Councillor declares a personal interest they must also consider whether they have a prejudicial interest. If they have a prejudicial interest they must leave the room for that item.

If a Councillor wishes to make representations on an item on which they have a prejudicial interest they may do so if members of the public are allowed to make representations. In such circumstances a Councillor must leave the room immediately once they have finished speaking.

An interest is considered to be prejudicial if a member of the public with knowledge of the relevant facts would reasonably regard it as so significant that it is likely to prejudice the Councillor's judgement of the public interest.

Councillors should consult paragraph 7 of the Meetings General Procedure Rules for further guidance.

4. Have Your Say!

(a) The Chairman to invite members of the public to indicate if they wish to speak or present a petition at this meeting – either on an item on the agenda or on a general matter not on this agenda. You should indicate your wish to speak at this point if your name has not been noted by Council staff.

(b) The Chairman to invite contributions from members of the public who wish to Have Your Say! on a general matter not on this agenda.

5. Minutes

To confirm as a correct record the minutes of the meeting held on 9 July 2008.

6. Call-in Procedure

To consider any items referred by the Strategic Overview and Scrutiny Panel under the Call-In Procedure. At the time of the publication of this Agenda there were none.

7. Regeneration and Planning

i. Queen Street Cultural Quarter - Approval of Heads of Terms for Disposal

1 - 20

See report from the Head of Strategic Policy and Regeneration

ii. Hythe Station Improvements

21 - 25

See report from the Head of Strategic Policy and Regeneration

8. Exclusion of the Public

In accordance with Section 100A(4) of the Local Government Act 1972 and in accordance with The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 (as amended) to exclude the public, including the press, from the meeting so that any items containing exempt information (for example confidential personal, financial or legal advice), in Part B of this agenda (printed on yellow paper) can be decided. (Exempt information is defined in Section 100I and Schedule 12A of the Local Government Act 1972).

**COLCHESTER BOROUGH COUNCIL
CABINET**

1 September 2008 at 6:00pm

AGENDA - Part B

(not open to the public or the press)

	Pages
9. Resources and Business	
i. Queen Street Cultural Quarter - Approval of Heads of Terms for Disposal	26 - 30
See report from NPS Consultants Ltd	

1 September 2008

Report of	Head of Strategic Policy and Regeneration	Author	Fiona Duhamel
Title	Queen Street Cultural Quarter – Approval of Heads of Terms		
Wards affected	All		

This report seeks approval of the draft Heads of Terms (which include the key financial terms) between the Council and Garbe Real Estate Limited for the development of a mixed use Cultural Quarter scheme within the St. Botolph's Regeneration Area

1. Decision(s) Required

- 1.1 To note the significant progress made in the last nine months in respect of the milestones contained within the Collaboration Agreement.
- 1.2 To approve in principle the proposed Heads of Terms, which will form a basis for the Development Agreement.
- 1.3 To accept the basis of the financial structure proposed for the Council in the context of the overall development within the St. Botolph's Regeneration area. It should also be noted that during the course of negotiations in respect of the Development Agreement and planning application this structure may be subject to change, especially in the current economic climate and as a result of any phased development agreed. A report will be submitted to Cabinet at the appropriate time, seeking approval to the terms of the finalised Development Agreement, including confirmation that the best consideration, in the context of the Council's statutory requirements and Strategic Plan, has been met and including confirmation of any phased programme of development.
- 1.4 To give delegated authority to the Head of Strategic Policy and Regeneration to conclude the Heads of Terms substantially in accordance with the approved draft and commence negotiations on Development Agreement and associated documents.

2. Reasons for Decision(s)

- 2.1 The proposed Heads of Terms form the basis of the Development Agreement which will be the legal contract between the Council and Garbe Real Estate Limited. to build the Cultural Quarter scheme in St. Botolph's Quarter on land adjacent to firstsite. In accordance with the existing Collaboration Agreement the approval of the Heads of Terms will enable each party to instruct legal representatives to commence the negotiations in respect of the Development Agreement.
- 2.2 The formal approval of the Heads of Terms signifies the achievement of a significant milestone within the set timescale of the Collaboration Agreement, which reflects the parties' determination to progress the development in spite of the current adverse economic climate.

3. Alternative Options

- 3.1 The Council could refuse to accept that the proposed Heads of Terms offer the Council the best overall consideration for its landholding taking into account the delivery of key non financial objectives for the St. Botolph's Regeneration area and could sell it's landholding to the highest bidder on the open market for an alternative form of development. However an alternative form of development or use on the site would not necessarily complement or provide a suitable setting for the firstsite building and may not meet the objectives of the wider regeneration of this area as set down in the St. Botolph's Masterplan, adopted by the Council in 2005.

4. Supporting information

- 4.1 Previous reports to Cabinet have emphasised the Strategic importance of the St. Botolph's regeneration area of which the Cultural Quarter land adjacent to the new firstsite building forms a key element. The proposals are intended to create a suitable setting for firstsite in the form of high quality public realm capable of being used for a variety of events, together with environmentally sustainable new homes, a new 120 bed hotel, cafes/restaurants, retail units suitable for occupation by local/independent traders and a new Creative Business Centre. The development will form a unique vibrant new destination within the town centre which seeks to provide complementary uses to the new gallery and "open up" existing heritage features in this part of Colchester.
- 4.2 Cabinet agreed in July 2007 to enter into a Collaboration Agreement with Garbe Real Estate Limited. following a detailed development competition process which was won by the Garbe/Ash Sakula team. The Collaboration Agreement set out a number of milestones which the parties have now met, with the exception of the agreement of the Heads of Terms and subsequent drafting and sign off of the Development Agreement. The negotiations in respect of the Heads of Terms and Development Agreement have both been slightly delayed due to viability issues arising from the current instability in the financial markets:

The key milestones within the Collaboration Agreement are set down below

- ❖ Within one month of the commencement of this agreement agree a brief to commission Creative Space Management to establish a business case and the content design for the Development. Such brief will invite Creative Space Management to report upon:
 - the factors making the Development a cultural quarter as opposed to a mixed use development;
 - how can the Development can be made commercially viable;
 - the approach to lettings, site management, demand, mix and the use of public space; and
 - the optimum objectives and specification for the creative business centre.
- ❖ Within two months of the commencement of this agreement prepare an indicative interview schedule.

- ❖ Complete and publish the business case and preliminary content design by 31 December 2007.
 - ❖ Review draft financial appraisal monthly until agreement of Heads of Terms.
 - ❖ Complete all other elements of the PID by 15 January 2008.
 - ❖ Agree Heads of Terms (including key financial terms) for the proposed development agreement and lease and finalise key financial terms by 31 January 2008.
 - ❖ Enter into the development agreement in accordance with the Heads of Terms agreed pursuant to the above provisions by 29 February 2008.
- 4.3 Advice from the Council's valuers, NPS, confirms that the financial structure agreed between the parties offers the best opportunity for the Council to benefit from the longer term growth expected from this type of development, whilst still benefiting from some immediate income. This financial structure must also be assessed alongside the key deliverables in terms of the regeneration of this area: new homes, a new 120 bed hotel, a Creative business centre for approximately 20 new businesses and circa 290 employment opportunities created from the commercial/retail space. As mentioned above, the design will continue to evolve as consultation progresses and therefore Cabinet will be required to consider a further report prior to the signing of the development agreement to ensure that the best consideration criteria has still been met.
- 4.4 The various amendments to the scheme design do have impacts on the financial position of the project and the level of return to the developer. Although viability of the current scheme is still subject to uncertainty in the current climate, the developer is prepared to continue to move forward the project to the next stage, which will include the preparation of significant design work towards a planning application and in doing so, will be required to input significant resources. The developer will continue to work at risk until a Development Agreement is completed.

5. Proposals

- 5.1 The Council proposes to agree Heads of Terms with Garbe Real Estate Limited for the development of a Cultural Quarter scheme on land adjacent to the firstsite building in the St. Botolph's regeneration area. The Heads of Terms will form the basis of negotiations in respect of the Development Agreement, due for completion within three months from the Heads of Terms approval date. The agreement of the Heads of Terms represents the achievement of one of the key milestones set down in the Collaboration Agreement, entered into by the parties in September 2007.
- 5.2 The Heads of Terms are based upon the scheme put forward by the Ash Sakula/Garbe team which won the Council's development competition in respect of this site and were agreed by Cabinet as its preferred developer in July 2007. However, following the formal agreement of Heads of Terms, a significant design process will be undertaken and the scheme may still be subject to changes following the public and stakeholder consultation process, which may in turn affect the final terms of the Development Agreement. Cabinet will therefore be required to consider a final report prior to the signing of the Development Agreement, which will highlight any substantial changes from these Heads of Terms.

- 5.3 The draft Heads of Terms, which have been negotiated with the Developer, are attached to this document. In negotiating these we have been minded to ensure that the proposed terms are structured on the basis that key development risks and responsibilities rest with the Developer.
- 5.4 As this project moves into the legal documentation phase there will be a number of detailed matters to discuss and agree and in due course a report will be brought back to the Council confirming agreed terms for the purposes of entering into the Development Agreement. Given the current economic climate, it is likely that the development will be carried out in phases, with the first phase likely to be the development of a hotel on land currently occupied by St James House and Roman House. Further phases will include the land currently occupied by the temporary bus station and discussions regarding the relocation of this facility are ongoing.

The proposed financial terms as set out in the Heads of Terms will provide the Council with an immediate income upon the sale of the residential accommodation and hotel elements of the scheme, in the form of a fixed ground rent. In addition, a geared ground rent will be secured from the commercial element of the scheme which may be increased on a percentage share basis of the developer's profits if they exceed expected profit levels.

6. Strategic Plan References

- 6.1 Colchester's Renaissance is a priority for the Council and the St. Botolph's area is detailed in the Strategic Plan as being a key project which is to be given financial and resource priority.

7. Consultation

- 7.1 Substantial consultation was undertaken prior to the approval of the St. Botolph's Quarter Masterplan. In addition, further consultation has been carried out during the competition process including public exhibitions and discussions with key stakeholders, English Heritage Inspire East, EEDA, firstsite, Essex County Highways and the local transport operators in respect of the current scheme.
- 7.2 Once the design options are finalised then the proposals will be subject to the normal consultation process through the planning application route due later this year. As previously mentioned, the developer remains sensitive to the Council's concerns, particularly in respect of the quality of architecture and materials used, the creation of a suitable setting for the firstsite building and the creation of a unique environment for people to visit, work and live.

8. Publicity Considerations

- 8.1 The original competition process attracted significant publicity both locally and nationally and the public have been kept informed of progress during the Collaboration Agreement period through press releases, presentations to local groups and newsletters to traders in the area.
- 8.2 The Council will continue to ensure that contact is maintained with the trader's informing them of the latest position and a copy of the St. Botolph's Traders Newsletter will be issued detailing the way forward.
- 8.3 A campaign to fill the empty buildings on the site with temporary uses which provide complementary activities to firstsite and begin to develop the area as a Cultural Quarter

even before construction starts, is already underway and a leaflet has been sent to all potential users such as the University and Institute.

- 8.4 The Developers are proposing a public exhibition later in the year from which comments can be fed in to the scheme prior to the submission of a planning application by the autumn.

9. Financial Implications

- 9.1 The detailed financial proposals in respect of the Heads of Terms are highlighted in the report by NPS, attached as a confidential background paper to this report.

- 9.2 However, in summary, in spite of the viability issues surrounding this type of development, the developers have accepted the need to provide an immediate income to the Council for the site from the sale of the residential units and hotel element, although it should be recognised that these could come forward at different times if development is phased. They have also accepted that the Council should share financially in the overall success of the development, although any income on this basis must be viewed as a long term gain.

The preferred proposal includes both a rental payment upon the sale of the residential units at the completion of this element of the scheme and the option of either an increased income share from the overall development or capital payment if the overall profit level is higher than anticipated. CBC costs are initially restricted to the project management costs and professional fees. These costs have been allowed for within the Council's Capital Programme as part of the St. Botolph's funded project costs.

10. Human Rights Implication

No implications can be identified at this stage, however as matters progress to a Compulsory Purchase, it is likely that concerns will be raised over Human Rights issues.

11. Community Safety Implications

None identified at this stage

12. Health and Safety Implications

There will be no Health and Safety implications at this stage.

13. Risk Management Implications

- 13.1 The agreeing of the Heads of Terms with the developer does not guarantee progression of the project to planning application stage or the signing of a development agreement. If the developer fails to meet the deadline in respect of the development agreement set out in the Heads of Terms the Council has the right to treat with another party, but this will add further delays to the regeneration of this area.

- 13.2 The overall development of the scheme is reliant upon the relocation of the bus station and delays in securing this could lead to delays in certain phases of the development.

- 13.3 The current economic climate does mean that nationally all development projects are more vulnerable in terms of viability and due to the nature of this scheme, there is a risk that the developer may choose not to proceed. In addition, any potential income due to the Council is at risk if values continue to fall and costs rise

Background Paper

1. Ash Sakula winning Scheme concept drawing
2. Draft Heads of Terms including principal terms for Estate Management Strategy and Lettings Policy

Appendices- Not for publication by virtue of paragraph 8 of Part 1 of Schedule 12A to the Local Government Act 1972 (subject to any obligation of confidentiality).

1. Report from NPS regarding how the financial aspects of the Heads of Terms represent the best consideration possible from the scheme taking into account the non financial deliverables of a regeneration area.

Draft Heads of Terms

St. Botolph's Cultural Quarter - Colchester

A. DEVELOPMENT AGREEMENT

1. Parties

The parties to the agreement will be the Borough Council of Colchester (the "**Council**") and Garbe Real Estate Limited or a group company of such entity (the "**Developer**").

The Developer's obligations under the Development Agreement will be guaranteed by Garbe Investment GmbH.

2. The Property

The Council own the freehold of all the land shown hatched in blue on the attached plan.

The Council and the Developer shall agree which parts of the land hatched in red on the attached plan are going to be included within the proposed scheme. The proposed scheme is known as the "**Development**". The proposed scheme will include the Bus Depot and part of 34/35 Queen Street (sometimes known as the Chicago Site). The Council and the Developer will agree in the period between approval of these heads of terms and completion of the Development Agreement whether the balance of 34/35 Queen Street and 13 Queen Street is to be included within the Development.

The land hatched in blue together with those elements of the land hatched in red that are going to be included with the Development will be known as the "**Property**".

3. Design Development

The Development will be developed on land currently owned by the Council and a number of third party ownerships. A current land ownership plan is attached for ease of reference. The Development will broadly be in accordance with the scheme concept produced by the development team for the Council run completion.

The Development Agreement will have annexed to it detailed plans, specifications and method statements prepared for planning purposes. These will have been agreed between the Council (acting as Land Owner) and the Developer.

The intention is that the Development will include the following elements:

- (i) High quality public realm in the form of formal and informal event space capable of supporting a substantial animation programme and including the provision of a covered events space;
- (ii) A minimum 3 star hotel;
- (iii) Private residential accommodation [*The number of units will be finalised when the size of the Development has been agreed*];
- (iv) Affordable residential accommodation;

- (v) Mixed commercial uses, below including B1 studio space, retail units suitable for occupation by independent/local operators and A3 café/restaurant; and
- (vi) a creative business centre of a minimum of 5,000 sq. ft.

The Developer will work up the design for the Development prior to submitting a planning application.

The Developer shall submit these worked up plans and specifications to the Council as landowner for approval. The Development must be constructed to achieve at least a "very good" BREEAM rating and should include at least 10% renewable energy sources as outlined in Colchester Borough Council's Supplementary Planning Guidance.

The Developer will be responsible for creating within the design of the Development a suitable setting, viewing and movement corridor to the Visual Arts and Cultural Centre whilst ensuring that proper and effective links to the adjacent town centre are also formed.

4. Conditionality

The Development Agreement will be conditional upon the following:

4.1 Site assembly

This includes two elements.

The Developer acquiring or entering into an unconditional contract or a contract which is subject to conditions which are the same or less extensive than those contained in the Development Agreement, to acquire those parts of the Property which are not within the ownership or control of the Council.

The Council will agree to use its CPO powers to try and acquire any land required for the Development. The Council will suspend this if the Developer advises that it is able to acquire the land independently.

To the extent that any of the Property hatched in blue on the attached plan is occupied by third parties, the Council demonstrating to the Developer that it has entered into unconditional contracts to provide vacant possession of these elements by the Lease Completion Date (see below).

4.2 Satisfactory Planning Consent

The Developer obtaining a planning consent for the Development of the Property which is free of onerous planning conditions and which is no longer subject to potential challenge. The Development Agreement will define what constitutes an onerous planning condition.

The Developer is entitled to waive its rights to treat something as an onerous planning condition.

4.3 **Environmental Matters**

The Developer having satisfied itself acting reasonably that the Property is free of ground contamination. The Developer is in the process of carrying out a desk top environmental survey of the Property. Once it has received these and obtained advice, it may need to carry out some additional investigations. To the extent that it is possible for it to carry out investigative works during this phase, then the Development Agreement will need to provide them with a licence to go onto the Property to do so. If the Development Agreement does not go unconditional then the Developer will be under an obligation in order to make good any damage to the Property caused by carrying out such investigative works.

The Developer is entitled to waive this condition.

4.4 **Hotel Pre-let**

The Developer has entered into an unconditional contract or a contract which is subject to conditions that are the same or less extensive than those contained in the Development Agreement to grant an underlease over that part of the Property which is intended to be used as a hotel.

The Developer is entitled to waive this condition.

The Developer and the Council will use their respective reasonable endeavours to satisfy the conditions in the Development Agreement,

If all of these conditions precedent have not been satisfied or (to the extent that they can be) waived by [] subject to normal planning extensions, either party is entitled to determine the Development Agreement on notice to the other, unless the relevant conditions have all been satisfied or (to the extent that they can be waived) in the intervening period.

The Council warrants and represents in the Development Agreement that it has sufficient power to grant the Lease.

5. **Transfer of Freehold and Completion of Lease**

The Developer and the Council will between the date of agreement of these heads of terms and completion of the Development agreement each take tax advice and each agrees to make any changes to the overall structure as may be reasonably required by the other to increase the overall tax efficiency of the transaction. Neither party can be asked to do anything which would prejudice its commercial position.

5 working days following the date that all the conditions precedent have been satisfied or waived the Developer shall transfer such interests as it acquired in the Development (i.e., the land hatched in red on the attached plan) to the Council.

Immediately thereafter the Council will grant the Developer a long lease of the Property (the "**Lease Completion Date**").

6. **Site Acquisition Strategy**

The Developer and the Council will before completion of the Development Agreement agree a site acquisition strategy and programme and the Developer shall use its reasonable endeavours to acquire all land or property in third party occupation and ownership required to carry out the Development (i.e., the red land shown on the

attached plan). Where the Developer cannot secure land and property required for the Development by agreement, the Council will use its reasonable endeavours to compulsory purchase such land subject to a cost indemnity from the Developer.

7. Developer's Obligations

- 7.1 The Developer will from the date of completion of the Lease of the Property be obliged to build out the Development in a good and workmanlike manner, using good quality materials, in accordance with the planning consent and other statutory approvals and the agreed plans and specifications to the reasonable satisfaction of the Council.
- 7.2 The Developer will fully indemnify the Council against all reasonable costs and liabilities arising from any Compulsory Purchase Order, Road Closure Order, Diversion Order or any other statutory requirement in relation to the Development.
- 7.3 The Developer will be responsible for meeting all reasonable costs, outgoings and expenses whatsoever associated with the provision and construction of the Development and subject to a cap will be responsible for making a contribution towards the relocation of the Bus Station.
- 7.4 The Developer shall be responsible at its own cost for the diversion, stopping up and provision of services and the application to the relevant Statutory Authorities and Undertakers required for the Development.
- 7.5 The Developer will be required to comply with all reasonable obligations placed upon it under any Section 106 Agreement and any Highways Agreement or other planning agreements. For the avoidance of doubt, the Developer shall not be obliged to enter into any such agreement that contains an onerous planning condition (see 4.2 above).
- 7.6 The Developer shall insure the Development in the joint names of the Council, the Developer, the Developer's mortgagee and any key occupiers for the full reinstatement value of all works, fees and other expenses in connection with the Development.
- 7.7 The Developer is responsible for agreeing terms with all statutory consultees including English Heritage and CABE and for inviting them to key meetings.
- 7.8 The Developer will be entitled to make
- (i) minor changes; and/or
 - (ii) changes to ensure the Development complies with statutory requirements; and/or
 - (iii) changes involving the replacement of materials with materials of no lesser quality in those circumstances where the specified material is in short supply or the Developer anticipates delivery problems,

to the plans and specifications without the approval of the Council provided that such alterations do not adversely affect the overall concept of the Development or adversely impact on the overall financial appraisal of the Development. All other changes to the plans and specifications require the approval of the Council (such approval not to be unreasonably withheld or delayed).

- 7.9 The Development Agreement will entitle the Developer to build out in phases, subject to these phases being agreed with the Council as set out in the Development Agreement.
- 7.10 The Development Agreement will list the professionals who the Developer will appoint in relation to the works. The Developer will be required to consult the Council's representative and consider its representations on the tender list prior to the tender of the principal building contract. The Council's representative will also be consulted on the tenders received and the proposed selection of the principal contractor (and the anticipated build price for the construction of the Development).
- 7.11 The Developer will appoint a reputable and substantial contractor for the purpose of carrying out the Development. The Development Agreement will list the Developer's current proposed contractors and the Developer shall use its reasonable endeavours (which does not oblige it to expend uncommercial sums of money) to comply with the Council's commitment to use local subcontractors and local labour where possible. The Developer will be entitled to replace the contractor and appoint a different contractor for different phases of the Development.
- 7.12 The Developer shall enforce the main provision of the building contract and the principal terms of appointment of any consultants (directly appointed by it in relation to the Development) and shall not terminate, waive or vary the same without the consent of the Council (such consent not to be unreasonably withheld or delayed) nor shall the Developer do or omit anything which would entitle the building contractor or any of the consultants to terminate the building contract or their terms of appointment.
- 7.13 The relevant professionals and building contractor will be engaged on institutional acceptable terms.
- 7.14 The Developer will use all reasonable endeavours to ensure it achieves practical completion of the relevant phases of the Development, by the dates within the draft construction programme which is to be agreed with the Council, in each case subject to normal force majeure extensions. Any variations to the construction programme need to be agreed with the Council.

8. Long Term Management Strategy

- 8.1 The Developer is required to agree with the Council a long term management strategy for the Development which will include a lettings policy, a company structure for the Management Company and key roles and responsibilities for the Management Company including a draft event management policy. (See attached key principles for Estate Management strategy and Lettings Policy)
- 8.2 The Developer to agree with the Council a management structure for the long term governance of the "Creative Business Centre" and identify key aims and objectives for this facility.
- 8.3 The Developer agrees to work with the Council to promote the growth of the Cultural Quarter prior to the commencement of development on site through the use of promotional events, short term lettings of vacant space, artists workshops and other relevant activities.

[9. Consideration

The Developer is not obliged to pay the Council any money or provide any other consideration until practical completion of the Development.

Upon the sale of the residential units and the hotel the Council shall be entitled to receive the ground rents payable on both these elements.

From the completion of the commercial element, the Council shall receive 10% of all rents received from this element, including the Creative Business Centre.

Within *[[] working days] [2 years]* of practical completion of the development (or each individual phase, if development is phased) the Developer shall pay the Council a proportion of the profit generated from the development:

First tranche of profit

The whole of that element of the profit that equates to *[15%]* of development costs shall belong to the Developer.

Second tranche of profit

For each 1% profit on cost over the required developers return of 15%, the Council and the Developer shall split the overage on a 50/50 basis and the Council will have the ability to decide whether this payment is received as capital OR as rental income (ie an increase in the commercial ground rent gearing of 10%. *[need to say that this applies to each individual phase and appraisal needs to be carried out for each phase]*

The Council can claim a maximum ground rent gearing on the commercial element of 15%. Any additional overage over this level must be taken as a capital payment by the Council.*[again this will apply to each phase]*

Balance of profit Calculations

The profit shall be calculated by deducting the development costs incurred by the Developer from the open market value of the Lease together with any capital already received or due in respect of the residential and hotel elements. The Development Agreement shall contain a comprehensive definition of both development costs and upon market value.

The open market value shall be agreed between the parties or in the absence of agreement determined by an independent surveyor who is a partner or director of a major firm of surveyors and who is acting as an expert.]

10. Cost Control and Information

10.1 The Developer shall maintain detailed open book accounting of all development costs and receipts reasonably and properly incurred during the Development. These shall include all employment costs and expenses incurred by employees of the Developer and associated companies.

10.2 The Developer will regularly inform, consult report to and liaise with the Council's representative, including attendance at project meetings. The Developer will promptly supply all information and details to the Council's representative or its consultants during the course of the Development in order for the Council to

monitor works, ensure full compliance with the agreed specification and verify total development costs for the purpose of calculating a "profit" for the purpose of paragraph 9 above.

- 10.3 The Developer will supply the Council with any information which it, the Council's Auditor, or the Government Office reasonably requires whether for audit or any other purpose.
- 10.4 The Council's representative shall monitor the performance of the Developer, its contractors, and consultants and will be on the circulation list to receive copies of any minutes for any meetings that the Representative cannot attend. The Council's representative is entitled but not obliged to attend regular site meetings with contractors and consultants relating to the Development and shall be given reasonable notice of such meetings. The Development Agreement shall provide the Council with rights to inspect the Development (during construction) and make representations to the Developer only where works or materials are not in accordance with the "Approved Scheme".

11. Phasing

- 11.1 Subject to Cabinet approval, consideration may be given by the parties to delivering the Development in a phased programme. Any such phasing will be underpinned by the key elements set out in Clause 3 above and the agreement of
- a Masterplan for the whole site. Future agreement to deliver the development in phases may result in further amendments to the Heads of Terms

12. Practical Completion

The Developer must notify the Council 7 days before it is proposing to certify practical completion of each phase of the Development and allow the Council to inspect the works along with the "employer's agent". If the certificate is not issued on this occasion then the Developer need only procure that 24 hours notice prior to any reinspection.

The Council will be entitled to make representations as to whether or not the certificate of practical completion should be issued and the Developer will procure that the employer's agent give due and careful consideration to these.

If the Council objects to the issue of the certificate of practical completion on the basis of concerns previously notified to the Developer, the Council may within 7 days of the date of the issue of the certificate to it notify the Developer that it wishes the question of whether the certificate of practical completion should be issued to be determined in accordance with the dispute resolution mechanism within the Development Agreement.

Within 3 months of the issue of the Final Practical Completion Certificate under the Building Contract the Developer shall deliver to the Council at no cost to the Council two sets of "as built" drawings. The cost of providing these drawings will be a development cost.

12. Dispute Resolution Mechanism

Any disputes between the parties in relation to the Development Agreement shall be referred to an independent third party expert agreed upon by the parties or in the event of dispute appointed by the president of the relevant trade association. The expert's decision will be final and binding on the parties.

13. Alienation

The Developer will be entitled to assign the benefit of the Development Agreement at any time. The Developer will not be entitled to assign the burden of the Development Agreement.

14. Good faith

The Developer and the Council will agree to act in good faith in exercising their respective rights and obligations under the Development Agreement.

15. Determination

15.1 Either party may determine the Development Agreement if the conditions precedent have not been satisfied as described in paragraph 4.

15.2 Either party is entitled to determine the Development Agreement if the other has materially breached a significant provision of the Development Agreement and has not remedied such breach within a reasonable period of being provided with notice of the same.

15.3 Mortgagee protection provisions shall be included.

15.4 Upon determination of this Agreement, prior to the conditions precedent having been satisfied, the Developer shall offer to the Council, any third party land it has acquired for the purposes of carrying out the Development, (including the transfer of any option agreements). The Council will have a period of *[a month]* from the date of determination within which to decide to buy such land. Completion will take place a short period after it has notified the Council that it wishes to acquire such land. The Council will be obliged to pay the Developer an amount of money equal to the *[original purchase cost plus reasonable costs in relation thereto]*.

16. Contribution towards Council's costs

The Developer agrees to pay a contribution towards the Council's costs in this project. A percentage of this figure will be paid upon completion of the conditional development agreement

B. LEASE

1. Parties

Within this section B, the expression Council, Lessee and Management Company includes their respective successors in title.

The parties to the lease will be the Council, the Developer or its nominee (the "**Lessee**") and a new English company established by the Developer (the "**Management Company**").

[Note: The Management Company is a party to the lease because it is responsible for the repair and estate management. The Lessee can by notice in writing to the Council and the Management Company assume the whole or part of this obligation. This is to cater for the possibility that an underlease for 150 (less 3 days) is granted to a hotel operator of the whole of the hotel site. Such operator would want to be responsible for the repair and maintenance of the building let to it.]

2. Term

[150] years from the grant of the lease.

The lease will not be excluded from the security of tenure provisions of the Landlord and Tenant Act 1954.

3. User

The Property will be subdivided in the Lease into the different user zones identified at A3.

The Lease will provide that the relevant part of the Property may only be able to be used for the use identified at A3, or an alternative use pursuant to an agreed cascade mechanism. The cascade mechanism will be set out in the letting policy described at A8.

4. Repair

The Management Company will be obliged to ensure that the buildings on the Property are kept in a reasonable state of repair and the external areas are generally tidy and properly maintained. The benchmark will be comparable areas within Colchester.

5. Alienation

The Lessee will not be entitled to assign the whole of the lease without the approval of the lessor (such approval not to be unreasonably withheld or delayed). The Lessee will not be entitled to assign part of the lease.

The outgoing tenant will not be obliged to provide an authorised guarantee agreement.

The Lessee is free to underlet the whole or permitted parts of the lease without consent.

The Lessee is free to charge the lease without consent.

6. Alteration

The Lessee will not be entitled to carry out material structural changes or construct any new building on that part of the Property zoned for hotel use (apart from rebuilding in the event of damage or destruction) without the approval of the Council,

As to the balance of the buildings and areas which constitute public realm on the Property the Lessee is entitled to make (i) any internal non-structural changes (ii) structural changes which do not adversely effect the structural integrity of the buildings; (ii) minor external alterations (including erecting masts, dishes, aerials etc) and (iv) any other changes consistent with a high quality development without the approval of the Council. All other changes (apart from rebuilding in the event of damage or destruction) require the approval of the Council

7. Estate Management

The Council and the Developer will agree a set of framework objectives for the running and management of the cultural quarter as described in A8.

[Note: The current intention is to let the retail/restaurant units together with cultural quarter to an entity who will be responsible for running and maintaining this operation. If this arrangement is put in place, Garbe envisages that the operating company covenants direct with the Council to how it operates the cultural quarter and retail/restaurant units and while this underlease is in place the Lessee is relieved of all its responsibility in relation to this element.]

8. Ground Rent

There will be no ground rent payable in relation to the affordable social housing, cultural quarter or public realm areas.

Ground rent will be payable in relation to [the private affordable areas and the hotel] at the rate of []. The ground rent will not be payable until practical completion of the development. The Lessee will only be obliged to pay ground rent actually received.

9. Services

The Management Company will agree to provide various estate management services at the Property. Unless the Lessee serves notice on the Management Company that it wants to take over this role.

The Council will not be obliged to provide any services and will not charge a service charge.

10. Insurance

The Lessee will be obliged to insure the buildings on those parts of the Property let to it against a comprehensive list of the risks that are typically insured against at the relevant time for buildings such as these (the "**insured risk**") and for the full reinstatement value with a reputable insurer.

If the buildings are destroyed or damaged by an insured risk, then the relevant Lessee will be obliged to reinstate the buildings (but not necessarily in an identical form and subject to obtaining planning). The Lessee will be obliged to make up any shortfall out of its own monies.

11. Forfeiture

The Council may determine the relevant lease if:

- (i) the Development Agreement has (prior to practical completion of the Development) been determined as a result of a breach by the Developer, or
- (ii) the consideration in respect of that Lessee and described at paragraph A.7 above has not been paid; or
- (iii) there has been a material breach of a significant term of the lease.

The lease will not entitle the Council to determine in the event of insolvency.

The forfeiture provisions will include mortgagee protection wording.

C. TIMETABLE

The target date for completion of the Development Agreement is [12] weeks from the signing of these heads of terms.

D. LEGAL AND OTHER ADVISERS

The Council

Legal

Eversheds LLP
Senator House
85 Queen Victoria Street
London EC4V 4JL

For the attention of Jeremy Brooks
D/D 0845 497 4893
Email jeremybrooks@eversheds.com

The Developer

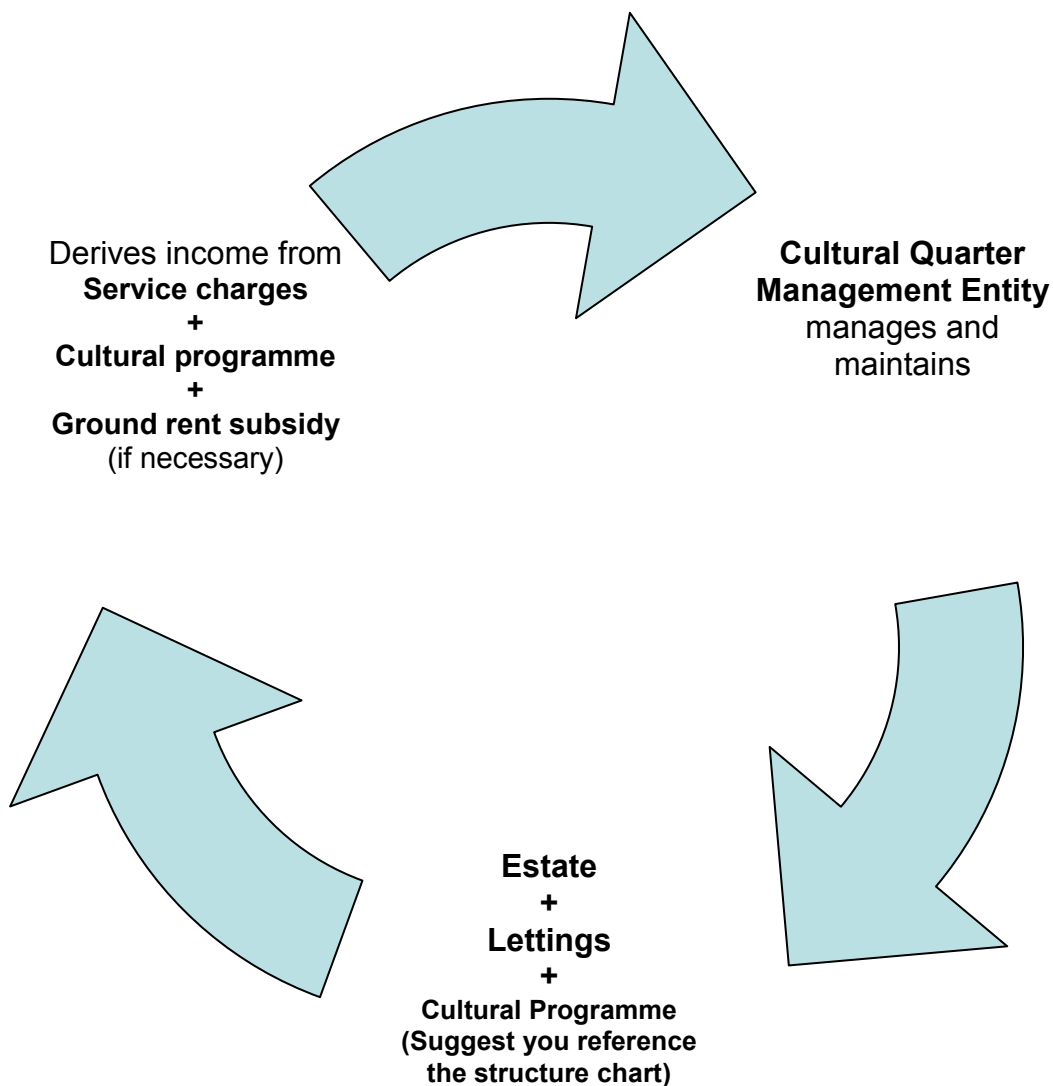
Legal

Travers Smith
10 Snow Hill
London EC1A 2AL

For the attention of Simon Rutman
D/D 020 7295 3379
Email: simon.rutman@traverssmith.com

E. IMPORTANT NOTE

These heads of terms are strictly subject to contract, due diligence and board approval of the Developer and the equivalent body at the Council.



KEY MANAGEMENT PRINCIPLES

- Ensure all elements of the Cultural Quarter are managed as an integrated mixed use estate with a strong focus on cultural animation, sustainable town centre living and delivery of an environment in which creative businesses will thrive in order to contribute to the profile of Colchester as a centre of excellence and destination of choice for residents, visitors and businesses.
- The area must be managed sensitively and proactively in line with the local Cultural Strategy, Destination Development Plan, Creative Spaces, Arts Development Plan and Heritage Strategy to complement the surrounding and contributing cultural infrastructure and market and street trading activity.
- The “cultural quarter” will contribute to the realisation of the wider vision for St Botolph’s and town centre improvements.

- The creation of innovative management policies, agreed through collaboration with key stakeholders and delivery partners, will deliver high quality services to business and residents.

KEY OBJECTIVES

- Administer service charge
- Management of the public realm and cultural programme in accordance with key principals set out in the local Cultural Strategy, Creative Spaces and Heritage Strategy and the accompanying delivery plans.
- Security
- Other FM services
- Lettings Policy and Property Management
- Manage the site with a striving but feasible strategy agreed by stakeholders that will ensure that environmental and sustainable initiatives are in place, a waste a recycling plan agreed and delivery arrangements in place
- Develop a marketing and communications strategy that engages with local residents, businesses and the cultural marketplace over the short to long term, as well as attracts inward investment from cultural and creative industries.

Lettings Strategy for Retail, Café and Restaurant Spaces

Objective

The overall objective is to provide a mix of occupiers that will contribute to the cultural development of the area whilst maintaining overall economic viability within the scheme.

Basic principles

- Voids are undesirable
- It is important to make available affordable space to encourage local businesses and in particular local independent traders to expand this sector of the retail market which already exists in Colchester
- To attract National organisations with known brands which meet the aims and expectations of the Cultural Quarter whilst increasing footfall thus enhancing the economic sustainability of local businesses in the area.

Mix

The desirable mix is one third local (as a minimum), one third regional and one third national (as a maximum) businesses.

Local businesses are those with their registered head office within Essex.

Regional businesses are those with their registered head office in other parts of the Government Office East region

National and international businesses are all others.

Intermediate Uses

During the time that rented lettings are being sought premises will be used for intermediate purposes. These will include allowing the use of premises for exhibitions, gallery space to student, cultural, charitable or public organisations. All of these uses must still be complementary to and seek to enhance the Cultural Quarter

Cascade

If a premise is marketed to local businesses for 12 months without a suitable tenant being found, it may be marketed to regional businesses.

If a premise is marketed to regional businesses for 18 months without a suitable tenant being found, it may be marketed more widely.

Report of	Head of Strategic Policy and Regeneration	Author	Peter Alder 863987
Title	Hythe Station Improvements		
Wards affected	St. Anne's, St. Andrew's & New Town. (Development in Harbour Ward is also facilitated by these improvements)		

This report concerns proposals for the improvement of the entrance and facilities for passengers using the Hythe Station in the context of the East Colchester Regeneration Area. It follows on from feasibility and design work carried out during 2007/8 on solutions to upgrading the station. This report recommends that the existing derelict station building be removed and that new waiting facilities, cycle shelters, lighting, CCTV and landscaping be installed.

1. Decision(s) Required

- 1.1 To approve the implementation of a project to improve the entrance and passenger facilities at Hythe Station and Hythe Station Road, for which a £600,000 grant has been earmarked within the Haven Gateway New Growth Point funds., and to authorise officers to seek tenders from suitable contractors for works to be undertaken by the Borough Council.
- 1.2 To delegate authority to the Cabinet Portfolio Holder for Planning and Regeneration to accept the most advantageous tender(s) for the various elements of the project to be undertaken by the Borough Council.
- 1.3 To accept the recommendation that no viable future use can be made of the existing Hythe Station building and note that this will be demolished and new facilities provided as part of the scheme.

2. Reasons for Decision(s)

- 2.1 To implement the recommendations of the feasibility study.
- 2.2 To ensure formal authority is given to the letting of a contract for the completion of these works.
- 2.3 To implement a scheme for which grant aid is available.
- 2.4 To achieve the implementation of another key element of the Colne Harbour Master Plan.

3. Alternative Options

- 3.1 Other options might include a "do nothing" scenario which effectively leaves the station as it is at present and relies upon Network Rail and National Express East Anglia to merely maintain a basic infrastructure with little passenger comfort and attraction. This

would be likely to have a negative impact upon the benefits that the current £1 million platform extensions scheme is designed to bring.

- 3.2 Another option might be to pave from the road up to the building and install limited new infrastructure such as a new shelter on the down platform, cycle racks and CCTV, as well as implementing the proposals for the improvement of Hythe Station Road and provision of bus shelters. Whilst this might improve the entrance to the station, the boarded-up building will still be unattractive and increasingly unsafe and may still impact upon the overall attractiveness of the Hythe station to prospective rail users with a similar negative impact to the “do nothing” scenario.
- 3.3 These options rely upon Network Rail not exercising their statutory right to remove the building which, in view of the fact that it is no longer required for the operation of the railway, they could decide to exercise at any time.
- 3.4 The retention of the building is not the responsibility of the Borough Council but is that of Network Rail and any potential developers, especially in terms of the cost and implementation of any renovation and its future use(s). (The feasibility study determined the renovation of the building not to be a commercially viable proposition and Network Rail have advised that they would not offer any long-term commercial lease on the building).

4. Supporting Information

- 4.1 Hythe Station, on the Colchester to Clacton railway line, has in recent times seen an increase in passenger traffic as a result of the new developments in East Colchester and greater accessibility. However, with the exception of one 8-carriage train each way, each weekday, on the direct London-Clacton service which stops at the Hythe, all trains using the Hythe Station terminate at either Colchester Town or Colchester North Station – in the latter case enabling connections to be made to the London trains. With further new developments coming on stream in East Colchester and an urgent need to reduce dependency on cars as a means of daily transport in the area, there is the need and potential for an expansion of rail passenger traffic from/to this station.
- 4.2 With the advent of longer trains (12 carriages) there is a need to lengthen the platforms and this will be done, using an agreed Section 106 contribution of £1 million from the Borough Council, during June to November this year. A programme of re-signalling along this line will also be underway at the same time and for a period the line will be shut to trains and a replacement bus service put into operation. These works will enable more (and longer) trains on the London – Clacton direct rail service to call at the Hythe Station and greatly improve the accessibility of the area.
- 4.3 During the last financial year, the Department for Communities and Local Government funded a feasibility study (under the New Growth Points scheme) into the viability of retaining, renovating and re-using the existing station building and the enhancement of the station entrance area. This feasibility report (April 2008) was carried out by NPS (Norfolk Property Services Ltd.) on behalf of the Borough Council. This in turn is supported by a survey report on the building carried out by Atkins Ltd in January 2006. Sketch drawings and technical drawings also support the report illustrating the way in which the forecourt can be enhanced and the type of facilities that can be provided for the benefit of rail users.
- 4.4 This study reported to the effect that it is not a viable proposition to save and repair the existing building, especially as the cost of doing so would exceed the value of the building upon completion and that it is unlikely to attract a sustainable occupier (i.e. one that would meet the market costs of purchase or lease.

- 4.5 To this end a scheme has been designed to improve the station entrance and facilities, providing safer, cleaner and more attractive waiting/seating shelters, bus shelters in Hythe Station Road, covered cycle racks, CCTV, paving, lighting, landscaping and real-time information for bus passengers. This makes the station platforms more visible from Hythe Station Road, the entrance cleaner and more attractive and encourages more people to consider using the station and trains as an alternative mode of transport. Currently ticket machines provided by the Train Operating Company at the station are inoperable. It is proposed by that company that new machines will be provided and the scheme includes a dedicated shelter for that equipment to protect it from the weather.
- 4.6 The funding has been made available from the New Growth Point funds awarded to the Haven Gateway Partnership by the Department for Communities and Local Government and the project has been recognised as having a high priority in helping to fulfil the infrastructure needs of the growth area. The implementation of the project at this time would be opportune in that it will link to Network Rail's scheduled works to upgrade the signalling along this line and to extend the platforms at the Hythe station. It would also benefit from working closely with Network Rail in order that their "possessions" of the line (when the line will be closed to rail traffic and power to overhead lines turned off) could also be used to enable the implementation of works that are close to the tracks.
- 4.7 The Colne Harbour Master Plan is a key supporting document in respect of the need to enhance the station and make it more attractive to potential rail users as part of its policy of promoting modal shift away from car travel and onto public transport. The delivery of this project represents an essential element of the implementation of the adopted Master Plan for this area and the public infrastructure that is vital to the success of the regeneration area.

5. Financial implications

- 5.1 The scheme, as currently proposed, to replace the station building with new passenger facilities and improve the approach to the station will be funded by a £600,000 grant from the New Growth Point Fund (via Haven Gateway Partnership) and by part of the cost of removing the station building being met by Network Rail.
- 5.2 It is anticipated that the works will be achieved within budget through close co-operation between the Borough Council, Essex County Council, Network Rail and National Express (East Anglia). Works to demolish the existing structures would most likely be undertaken by Network Rail's contractors. The cost of that work would be met jointly by Network Rail and the grant (through the Borough Council). The installation of new passenger facilities would be carried out by National Express (East Anglia), the purchase of which would be by means of the grant. The other paving, lighting, seating and landscaping works, especially those within the highway, would be undertaken by Essex County Council Highway's appointed framework contractors, T.E Beach, to be arranged through ECC Development, Transportation and Highways department. (A similar arrangement was made in respect of the public realm paving scheme recently carried out at King Edward Quay). Costs associated with a Level Crossing Order that is required in connection with the paving scheme for the carriageway along that section of Hythe Station Road will be met by Network Rail who will undertake all necessary preparatory work for that Order.
- 5.3 Once completed, the new passenger facilities and the forecourt area would become part of the area leased by Network Rail to National Express (East Anglia) and will be maintained by them. There should therefore not be any ongoing capital or revenue costs to the Borough Council for these elements. The operation of any CCTV cameras, if linked to the Borough Council's central system, would have revenue implications in terms

of maintenance and telecommunications links. The maintenance of bus shelters, which are to be provided by Essex County Council Highways at no cost to the scheme, other than installation costs, would fall to the County Council to maintain.

6. Strategic Plan References

- 6.1 In the **Borough Council's Strategic Plan 2004-2007**, East Colchester, as one of four regeneration projects to which the Borough Council is committed, has always been made a priority for regeneration. The improvement of the railway infrastructure in East Colchester is a key objective to serve the existing and emerging communities, as well as the University of Essex and its proposed Research Park
- 6.2 The **Essex Local Transport Plan 2** recognises the importance of sustainable travel modes and providing a choice of travel modes. It also recognises the need to plan to reduce traffic congestion into and around Colchester and is looking to promote sustainable (significantly self-contained) communities where journey generation is minimised or where public transport offers viable solutions. The improvement of the Hythe Station and the provision of a rail/bus interchange meet these aspirations.

7. Publicity Considerations

- 7.1 The potential for this scheme to be brought forward, including the likely replacement of the existing station building with new passenger facilities was first brought to the attention of the public when an earlier version of this scheme was included in a public consultation event that took place in November 2007.
- 7.2 The removal of a Victorian station building may well be emotive but in the absence of a viable scheme to repair and re-use the building, and to have the space to separately provide the modern passenger facilities that would be attractive to rail users, it is an unrealistic proposition to retain the building to further deteriorate and become unsafe. Network Rail has the right to remove this structure and would not hesitate to do so should its condition at any time threaten the safety of the passengers, trains or railway infrastructure. Planning permission would not be required from Colchester Borough Council to demolish the building.
- 7.3 The building at Hythe Station is not unique in its form and architecture along this line with other examples existing at Alresford, Great Bentley and Weeley.

8. Human Rights Implications

- 8.1 The redevelopment of the station area, especially the Up platform area, will ensure greater accessibility for all passengers, regardless of any disabilities, etc.

9. Community Safety Implications

- 9.1 The redevelopment of the station area is designed to improve community safety through opening up the visibility onto and along the platforms and installing CCTV to monitor activities on the platforms.

10. Health and Safety Implications

- 10.1 Normal health and safety precautions will apply to this project as for any other building site. In addition the works will have to comply with such regulation and restriction as may be imposed by Network Rail in relation to any works carried out within the restriction zone set up alongside the operational rails, overhead lines and level crossing barriers.

11. Risk Management Implications

- 11.1 The risk that this project will not be delivered, delivered in full or on time is low to medium and as external funding has been secured the risk has been managed. A project schedule capturing all the elements of work required to deliver the project has been created and a cost breakdown of all associated costs has also been produced.
- 11.2 There is a need to deliver this project alongside the re-signalling and other improvement works along the Clacton line when Network Rail has “Possession Orders” in place. This enables certain works to the buildings, platforms and level crossing under this scheme to be undertaken when the line is closed to rail traffic and overhead power cables are turned off (over a series of weekends). If the project is delayed then new “Possession Orders” would need to be sought and this would be at a considerable cost to the project – Network Rail had estimated that the £1 million cost of the platform extensions project could have been quadrupled if the project had been delayed and missed the “Possession” dates.

12. Consultation

- 12.1 Consultation with the public was carried out on an earlier version of the scheme (fundamentally the same as the final scheme) in November 2007. There has been full consultation and co-operation with stakeholder bodies throughout the feasibility work and design process.

Background Papers

- i) Colne Harbour Master Plan, including its Technical Appendices.
- ii) Colne Harbour Design Framework
- iii) Colne Harbour Public Space Design Guide
- iv) Colchester Hythe Station Feasibility Study and Enhancement Proposals Report – April 2008 (NPS)
- v) Report on Survey of Hythe Station Building – November 2006 (Atkins Ltd)