

Item No. 7.2	Classification: Open	Date: 7 December 2005	Meeting Name: Council Assembly
Report title:		Future Management of Potter's Field Park	
Ward(s) or groups affected:		Riverside	
From:		Strategic Director of Environment & Leisure	

RECOMMENDATIONS

1. That members agree to enter into an 'Agreement to Lease' with the London Development Agency and the Potter's Field Park Trust that will commit the Council to lease the area of metropolitan open land known as Potter's Field to Potter's Field Park Management Trust, a newly constituted trust (in the form of a company limited by guarantee) and once the conditions in the agreement to lease have been met, to dispose of Potter's Field by entry into a lease between the Trust and the council.
2. That members agree the proposal to enter into a Service Performance Agreement with the newly constituted Trust following negotiation as a single supplier in due course.

BACKGROUND INFORMATION

3. Potter's Field Park occupies a unique position within the borough in juxtaposition to Tower Bridge, The Tower of London, City Hall and the More London Development. It is one of the most significant green spaces on the south bank of the Thames within the metropolitan area. In addition to its role as a green corridor between these major tourist landmarks the park performs a vital function as a local green space in the London Bridge area.
4. As part of its s106 agreement with the London Borough of Southwark (LBS), More London Ltd has committed £1.5 million for the refurbishment of the site. This budget will be augmented with a contribution of approximately £1.1 million single regeneration budget (SRB) funding from the London Development Agency (LDA) via the Pool of London Partnership (POLP).
5. Landscape architects Gross Max has completed the design to tender stage and planning permission has been obtained. It is envisaged that works will start on site in the spring of 2006 and be completed by the autumn of 2006.
6. At Stage D, the consultants have identified a potential on-going annual management cost of between £80,000 and £120,000. This cost reflects the quality of the landscape that the scheme aspires to create and presents a challenge to the approach to the future management of the site. In part this challenge is being addressed through the capitalisation of three years post-completion maintenance. However, no means has been identified of securing the necessary resource to safeguard the quality of the site in the longer term.
7. The council currently manages the site with a revenue budget of approximately £20,000 per annum. The council also holds a revenue-generating trust fund for Potter's Field from which it accrues approximately £12,000 per annum. The site has the capacity to generate significant additional revenue through the licensing and

staging of events but the council's financial regulations eschew the ring fencing of these revenue monies to this site alone. In order to address this problem the council's regeneration department commissioned a POLP-funded study of the financing of public open space from Scott Wilson consultants. This study concluded that a management trust would be the best form of financial and administrative governance for the park. This form would permit the ring fencing of all current and future revenues into Potter's Field and give local residents, businesses and non-governmental organisations (NGOs) direct input into the future management and development of the park.

8. The proposal to create a trust for the future management of the park was discussed at length at meetings of the Potter's Field Park refurbishment steering group (that includes community representatives from the Tooley Street Shad Thames areas). Broad agreement was reached in terms of business case for the proposal and the degree to which this proposal would foster local control of the park. Further consultation with local tenants and residents associations and the voluntary sector has confirmed that a considerable level of support exists in the community for this approach.
9. In order to further consolidate the business case, the POLP has commissioned a separate business case assessment from Ove Arup and Partners. The brief for this study has included a consideration of the following:
 - Future revenue funding (i.e. cost of managing the site and of running the Trust), the transfer of current LBS revenue budgets and of the capital endowment fund
 - The management structure of the trust
 - An events policy that responds to the sensitivity of the design for the park and complements the events policies of neighbouring sites (specifically Shad Thames, the Greater London Authority (GLA) and More London).
10. The study has demonstrated that a business case exists for the future management of the park based around an assumption that the income that Potter's Field Park generates can be ring-fenced to the park.
11. As a consequence of these studies and assessments, the LDA has made it condition of its SRB funding that Southwark Council agrees to enter into a lease with a trust for the future management of the Potter's Field Park. The council, through the POLP has agreed to these terms, and agreement to the proposals in this report will enable the council to fulfil those obligations. The activities of the newly constituted trust, will occur in accordance with its memorandum and articles of association; in accordance with the terms of the lease (in relation to property obligations); and in accordance with the terms of the service performance agreement (in relation to service delivery obligations). Further information about these obligations is contained within appendices to this report.
12. It is intended that the trust will deliver services for which it will be accountable to the council, as well as under the terms of its memorandum and articles of association. The provision of this service delivery has not been externally advertised, since the only provider able to provide this service is the trust itself, because of the restrictions placed upon the council by the terms of the LDA grant. Accordingly, this report seeks approval to this route for procurement of service provision.

KEY ISSUES FOR CONSIDERATION

13. Pursuant to the objective, Council officers have entered into discussions with a shadow trust board. The members of the trust, which will provide individuals to sit on the trust board as directors, consist of the following:
- London Borough of Southwark (2 Directors)
 - More London Development Ltd
 - Tenants' and Residents' Associations from Tooley Street, and Tower Bridge Community Association
 - The GLA
 - Pool of London Partnership
14. The Trust has now been established in the form of a company limited by guarantee and the following parties have become directors of the company:
- Nick Stanton Member representative, London Borough of Southwark
 - Jay Yeats Officer representative, London Borough of Southwark
 - Liam Bond More London Ltd
 - Janet Worth Greater London Authority
 - Linda Houston Pool of London Partnership
 - A representative Shad Thames tenant and residents
 - A representative Fair Housing Association
15. The memorandum and articles of association of the trust contain the terms of the Trust's purpose.
- The primary purposes of the trust will be:
- to occupy, promote, manage and maintain Potter's Field Park as a world class park in the interests of public welfare, including the educational and recreational benefit of visitors;
 - to advance education and awareness;
 - to assist in the provision of recreational facilities.
16. It is intended that the LDA will make available SRB funding of £1.075m for the development of Potter's Field Park. This will be paid to the Pool of London partnership, with the council as accountable body. Before this money can be released, the LDA require that the council enter into an 'agreement to lease' between the LDA, the Potter's Field Park Trust and Southwark Council. The heads of terms for preparation of this document is contained within Appendix A of this report. This document will, assuming the various conditions are met, compel the Council to enter into a lease with the Potter's Field Park management trust. A decision to dispose of council owned metropolitan open land (which would include the granting of a lease) is one which can only be taken by Council assembly.
17. Discussions have been initiated between solicitors respectively instructed by the shadow trust board and the Council that have culminated in agreement being reached with the POLP on behalf of the Trust on the terms of a lease of the park to the Potter's Field Park Trust. These terms will need to be finalised.
18. In parallel, discussions have been taking place to agree heads of terms for a service performance agreement (SPA) that will regulate the day-to-day management of the park when it is under the Trust's control. Further negotiation of these terms will be required.

19. The risks attached to the pursuit of the trust option and their controls are as follows:

The Council is proposing the trust management model for Potter's Field as the best option to maintain the quality of landscape that the capital project will deliver.

A business case has been made for the establishment of the trust as a self-sustaining organisation capable of managing the site to this standard.

The lease and service performance agreement place certain obligations upon the trust. In the event that these are not met, both lease and service performance agreement detail the means by which these agreements can be terminated.

The Council will continue to manage the majority of the Council's public open space and would be in a position to reassume responsibility for the management of the park at short notice and without any serious impact on overall service delivery.

20. As currently envisaged, the key milestones for the creation of the trust and the completion of the capital project are as follows:

On-going consultation	December 2005 – April 2006
Works commence on site	April 2006
Works complete on site	December 2006
Capitalised maintenance period	December 2006-December 2009
Transitional management arrangements	December 2006-December 2009
Trust assumes full management	December 2009

Resource Implications

Financial

21. The Council currently manages a trust fund endowment for the benefit of Potter's Field Park that generates an approximate annual income of £12,000. It is a requirement for the implementation of this proposal that the annual income from this endowment fund will transfer to the Trust upon its creation as an annual revenue grant; or, if advice shows that this is not possible, that another mechanism is put in place which produces the same result for the Trust.
22. In addition, the park generates an annual income of approximately £90,000 from events and on-site trading licenses.
23. These two sources of income will form the basis of the revenue that will support the future activities of the trust in managing the park.
24. It is envisaged that an internal revenue bid will be submitted to resource the loss of income accruing to the parks department as a consequence of this project.

Staffing

25. There are no directly employed staff associated with this site but a full TUPE assessment in terms of the current grounds maintenance contract will be undertaken as part of the business planning exercise.

Consultation

26. A full process of consultation has been implemented in parallel with the process of progressing the trust management idea. This process has revealed on-going local support for the trust management model being proposed.

Community Impact Assessment

27. The impact of this proposal will impact on and enhance the capacity of local people to directly influence the operational management and future development of Potter's Field Park.

It is unlikely that particular communities/groups will be affected differently by this proposal. The community representatives sitting on the board will represent local community organisations with membership open to all.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Borough Solicitor

28. The report notes that a decision to dispose of Council-owned metropolitan open land may only be taken by the council assembly.

It is intended that the trust will provide leisure services under the terms of the service performance agreement. Usually, there are requirements for the tendering of service provision; even though the full requirements of the EU procurement regulations do not apply, the council's contract standing orders do apply. However, as the report sets out, due to the conditions of the capital grant from the LDA (which requires a lease to be granted to the trust in due course), and the trust's purpose (as noted in the report), it is not possible to tender the service in the usual way. For those reasons the report seeks permission to negotiate a contract with the trust as a single provider. Such action would not, in the circumstances and subject to approval which is here sought from council assembly, be in breach of contract standing orders.

Director of Finance

29. This report refers to a loss in income of some £102,000 as a result of the lease agreement with the London Development Agency, £12,000 for a trust endowment and a further £90,000 for event income and on-site trading licences.

Officers have submitted a 2006/07 growth bid for £100,000 to resource this loss of income.

At this stage in the budget process this bid has not been placed in the member arena. All growth bids are subject to internal scrutiny and departments will be asked to find alternative ways of meeting budget pressures.

It is therefore too early to predict whether this bid will be included in the budget agreed by Council on February 22nd 2006.

Strategic Director for Regeneration

30. Officers from the Property Division have negotiated heads of terms for a lease of Potter's Field Park to a self-governing trust. Members will note that the rent is set at zero. This is because there is no net profitability in the operation of the park and

therefore no market value. This position complies with the "Property Policy which states that 'any occupation of Council owned property by third parties must be formalised by an appropriate lease agreement and at a market rent'. It is considered that the terms negotiated are the best that can be obtained and are beneficial to the Council in terms of its service requirements. It is considered that the Council's obligations under Section 123 of the Local Government Act 1972 regarding best consideration are met.

BACKGROUND DOCUMENTS

Background papers held	Held at	Contact
Correspondence file Consultation Plan Heads of Terms – lease Heads of Terms – service performance agreement	Chatelaine House 186 Walworth Rd SE17 1JJ	Jon Sheaff 50874

AUDIT TRAIL

Lead Officer	Gill Davies, Strategic Director of Environment & Leisure	
Report Author	Jon Sheaff, Parks Manager	
Version	Final	
Dated	25 November 2005	
Key Decision?	No	
CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	Comments included
Borough Solicitor and Secretary	Yes	Yes
Strategic Director for Regeneration	Yes	Yes
Chief Finance Officer	Yes	Yes
Executive Member	Yes	Yes
Date final report sent to Constitutional Support Services	25 November 2005	

Potters Fields Park, Potters Fields, London, SE1

HEADS OF AGREEMENT

1. SCOPE OF DOCUMENT

This document sets out the main terms of an Agreement to be entered into between London Borough of Southwark (the Landlord), the London Development Agency (the Funder) and the Potters Fields Trust (the Tenant). This document does not create any contractual obligation between the parties but the eventual Agreement will. Terms are subject to formal approval by the Council (and to the consent of central government if required by law).

2. INTRODUCTION

The Council is the freehold owner of Potters Fields Park, Potters Fields, London, SE1. The Park is now sub-standard in relation to its design, planting and provision of services. It needs to be redesigned and improved to provide a world class facility in keeping with its location. In order to finance these improvements and the subsequent maintenance, a Trust company has been formed comprising the Council, the Pool of London Partnership and the GLA. Finance is available from a number of sources including the LDA who have agreed a grant of £1.075M. In order to secure their contribution, they have requested a legal agreement whereby the funding will be released enabling the works to be carried out. The Council will agree and complete a Service Agreement with the Trust simultaneously with the grant of a lease.

3. AGREEMENT FOR LEASE

- i. The Agreement will specify the scheme of improvements for which funding is available.
- ii. The LDA will on the entering into of the Agreement release the agreed funding to enable the works to proceed.
- iii. Subject to the release of the funds, The Council will use reasonable endeavours to procure the completion of the works and the subsequent initial maintenance contract.
- iv. The Council will use reasonable endeavours to agree and complete a Service Agreement with the Trust.
- v. On satisfactory completion of the works and the initial maintenance period, the Council will, subject to the completion of a Service Agreement, offer and the Trust will take, a lease on terms set out in the following section:-

vi. The Agreement will continue in force for a period of five years whereafter it can be terminated by either party on giving one month's notice in writing.

vii. Assignment of the Agreement will not be permitted.

4. **LEASE**

Terms and details as follows:-

Landlord	Southwark Council
Tenant	The Potters Fields Trust
Demised Premises	Potters Field Park, London, SE1 as shown delineated for the purposes of identification only on the attached plan. The Council reserves the right to take back by surrender the area of land shown hatched on the plan. The Council also reserves the right to adjust the boundary between the points marked A and B on the plan, giving and taking equal areas of land.
Use	The use of the premises shall be limited to that which is necessary in the performance of the contractor's obligations set out in the service agreement. Specifically, the tenant is not to use the Property other than open space parkland and for the sale of refreshments and on an occasional basis for public displays, events etc.
Rent	The rent will be set at the market rental value which has been determined at a nil rate. Rent will not be demanded or be payable during the continuance of the Service Agreement. The tenant will be responsible for payment of all outgoings.

Term	30 years.
Repairs	The tenant will keep the Property maintained in good repair and condition.
Disposals	The tenant is barred from assigning, underletting or charging all or part of the Property except in respect of an underletting of Blossom Square and the grant of licences to occupy kiosks.
Alterations	The tenant shall not make any structural alterations without the consent of the landlord.
Insurance	The tenant is to insure against fire and the other usual risks. The tenant is to maintain public liability and indemnity insurance.
Termination	The lease will automatically determine on the termination of the Service agreement.
Exclusion of Landlord & tenant Act 1954	This shall be done by agreement.

5. SERVICE AGREEMENT

This will be entered into between the Council and the Trust. Draft Heads of Terms to be produced.