St James Quarter Update on Progress

Executive summary

This report seeks to update the Council on the exercise by the Chief Executive of the authority delegated to her by the Council on 29 May 2014, namely the delegation of authority to the Chief Executive, in consultation with the Council Leader and Depute Leader, to (i) make a Compulsory Purchase Order in respect of the property interests required for the redevelopment of the St James Quarter by the developer, St James Edinburgh Limited, and (ii) finalise and have entered into a Minute of Agreement with St James Edinburgh Limited to reimburse the Council for all costs, fees, expenses and compensation claims incurred by the Council arising from the Compulsory Purchase Order and the subsequent transfer to St James Edinburgh Limited of the interests acquired.

This report also provides a general progress update on the St James Quarter redevelopment. In addition, this report asks the Council to note the action taken under urgency procedures set out at paragraph A4.1 of the Committee Terms of Reference and Delegated Functions to allow the Compulsory Purchase Order to include a further single plot of land.

This action was taken by the Acting Director of Community Services, in consultation with the Lord Provost, Council Leader, Depute Leader and Planning Convener.

Links

| Coalition pledges | P8, P15, P17 |
| Council outcomes  | CO7, CO8, CO9, CO19 |
| Single Outcome Agreement | SO1, SO4 |
Report

St James Quarter Update on Progress

Recommendations

That Council:

1.1 Notes the satisfactory exercise by the Chief Executive of the authority delegated to her to make and implement a Compulsory Purchase Order for the St James Quarter redevelopment area and to enter into a Minute of Agreement on behalf of the Council with St James Edinburgh Limited, all as set out in recommendations 1.1 and 1.2 of the report to Council on 29 May 2014.

1.2 Notes the action taken under urgency procedures set out at paragraph A4.1 of the Committee Terms of Reference and Delegated Functions to allow the Compulsory Purchase Order to include a further single plot of land.

1.3 Refers the report to Economy Committee for information.

Background

2.1 In accordance with the Recommendations of the St James Quarter Compulsory Purchase Order report to Council dated 29 May 2014, a Compulsory Purchase Order has been made and implemented for the St James Quarter redevelopment area, for the purpose of acquiring the land and property interests shown in the CPO Plans and Schedule of Interests.

2.2 This Compulsory Purchase Order (“CPO”) was made on 8 September 2014 and included a plot, plot 47, which had not been included in the report to Council dated 29 May 2014. This Order and its extent was considered necessary by the Chief Executive, in conjunction with the Council Leader and Depute Leader.

2.3 The signing of the Minute of Agreement by St James Edinburgh Limited and the City of Edinburgh Council was completed on 4 September 2014 in terms which were considered acceptable by the Chief Executive, in consultation with the Council Leader and Depute Leader, to suitably protect the interests of the Council and secure reimbursement of all costs, fees, expenses and compensation claims which might be incurred by the Council arising from the CPO and the subsequent transfer to St James Edinburgh Limited of the property interests acquired, and such other terms as the Chief Executive considered necessary or desirable. Prior to the Minute of Agreement being signed Group Leaders were consulted on the proposed final terms and how the risks reported in the 29 May 2014 report were to be mitigated.
2.4 It should be noted that St James Edinburgh Limited ("SJEL") is continuing in its efforts to seek negotiated acquisition of the affected properties and interests in parallel with the CPO procedures.

2.5 Acquisition terms for the Council land required for this development will be referred to Committee in due course.

2.6 Now that the CPO has been made and the Minute of Agreement entered into, final confirmation of land and property interests will be reported to the Planning Committee, as noted at recommendation 1.7 of the 29 May 2014 report.

2.7 The CPO having been made has been submitted to the Scottish Government, an advertisement has been published in a national newspaper and notices have been service on the parties concerned.

Main report

Progress Update

3.1 Management, governance, risk control and financial control are being implemented and are controlled through the Minute of Agreement.

3.2 All-party briefings on progress by a joint representation of Council Officers and SJEL have been agreed and scheduled.

3.3 Satisfactory levels of scrutiny have been agreed and will be reported through recognised project management tools, as agreed with SJEL.

3.4 Communications protocols have been agreed by the Council and SJEL.

3.5 Since 29 May 2014, Council officials had been finalising the form and content of the CPO, however shortly before officials could do so, SJEL identified an additional area of land that must be included within the CPO, but that was not shown in the CPO Plans and Schedule of Interests referred to in the May Report.

3.6 Given complications around the land referencing required for the CPO, and the impact of the summer holiday period, it had not been possible to finalise either the Minute of Agreement or the Compulsory Purchase Order before September. By this time, there was an urgent requirement for the Minute of Agreement to be entered into and the CPO to be made, failing which SJEL would have suffered a major impact to its development timetable. SJEL’s programme has a number of critical path items, which if affected by delay have a knock on effect to other elements of the programme. Several of those sequences cannot be simply deferred in time, but need to be re-sequenced and new links established. In re-sequencing, other factors need to be taken into account.

3.7 The additional area of land referred to above is that shown outlined red, shaded pink and numbered 47 on the plan annexed to this report, extending to approximately 113.61 square metres, being part of the St Mary’s Roman Catholic Cathedral, St James Place, Edinburgh (this area of land being “Plot 47”). Plot 47 is owned by the Trustees of the Archdiocese of St Andrews and
Edinburgh. Plot 47 does not form part of the actual Cathedral, but currently comprises an external open air parking space which would become incapable of access by its owner once the planned redevelopment takes place. Plot 47 also includes a boiler room, located below grade and adjacent to St Andrew’s Hall/Cafe Camino, and a brick enclosed ventilator which is located above grade within the car park. SJEL have advised Council officials that discussions are ongoing with the owner with a view to the provision of an alternative parking space in the close vicinity of the Cathedral and the relocation of the ventilator, which if agreed would enable SJEL to acquire Plot 47 by mutual agreement with the owner. However, such negotiations have not yet been finalised and there was a need, for the reasons outlined above, for it to be included within the CPO. SJEL have confirmed that such negotiations with the owner will continue.

3.8 The reasoning behind, and justifications for, the recommendations contained in the 29 May 2014 Report, apply equally to Plot 47 as they do to all other land and property interests which were proposed to be the subject of the Minute of Agreement and CPO in that May 2014 report. In particular, for the avoidance of doubt, the Council is satisfied that, (i) promoting and implementing a Compulsory Purchase Order and Minute of Agreement which also includes Plot 47 is the only practical way to achieve the redevelopment proposals for the area and secure the proper planning of the area within a reasonable time and in accordance with the relevant planning policies, (ii) it will also secure the best use of the land in acquiring Plot 47 for the proper planning of the area and the subsequent disposal of it to SJEL. This will also comply with Section 191 of the 1997 Act, and represent the best terms on which Plot 47 could be acquired and developed as it will ensure the delivery of the redevelopment within a reasonable timescale, (iii) it has sufficient comfort the necessary funding to implement the scheme will be available; and (iv) extending the use of compulsory purchase powers to Plot 47 is considered necessary and proportionate to enable the delivery of a key planning objective and secure the carrying out of the redevelopment of the St James Quarter in accordance with Section 189 of the 1997 Act.

3.9 Paragraph A4 of the Council’s Committee Terms of Reference and Delegated Functions provides that if a decision which would normally be made by a Committee requires to be made urgently between meetings of the Committee, the Chief Executive or appropriate Director, in consultation with the Convener or Vice-Convener, may take action, subject to the matter being reported to the next meeting of the Committee.

3.10 Given the fact the next meeting of Council was not until 25 September 2014, and the considerations noted above at paragraphs 3.6, 3.7, and 3.8, on 2 September and 3 September 2014, the Acting Director of Services for Communities, in consultation with the Lord Provost, as the Convener of the City of Edinburgh Council, and the Planning Convener, agreed:

to delegate authority to the Chief Executive in consultation with the Council Leader and Depute Leader:
(1) to make and implement a Compulsory Purchase Order for the St James Quarter redevelopment area pursuant to Section 189 of the Town and Country Planning (Scotland) Act 1997 all as set out in the 29 May 2014 report, and which also includes Plot 47; and

(2) to amend accordingly the Minute of Agreement to be entered into by the Council with St James Edinburgh Limited pursuant to Section 191 of the 1997 Act in terms of the 29 May 2014 report.

Measures of success

4.1 As was reported in the May 2014 Report, the making of the CPO on 8 September 2014 will allow progression of the regeneration of the St James Quarter and the wider City Centre retail area.

4.2 By entering into the Minute of Agreement on 4 September 2014 with SJEL, a clear programme of the development can now commence to deliver a new retail-led, mixed use development.

Financial impact

5.1 As was reported in the May 2014 Report, the making of the CPO in respect of the St James Quarter, including Plot 47, will incur costs to the Council. However, under the signed Minute of Agreement, SJEL fully indemnifies the Council for all costs and compensation claims in respect of the CPO and the subsequent transfer of those property interests to the developer, and is considered to suitably protect the Council.

Risk, policy, compliance and governance impact

6.1 The developer’s adherence to the terms of the Minute of Agreement will be monitored by the SRO, the Head of Finance, the Head of Planning and the Head of Corporate Property. Appropriate management systems and regularity of reporting, together with a governance structure, have now been put in place, reflecting the obligations of the Minute of Agreement.

6.2 The Minute of Agreement includes protections to ensure that no land will be compulsorily acquired until further suitable verification is given to the Council on the developer’s ability to carry out the redevelopment and that the estimated compensation is placed in a joint bank account with the Council.

6.3 There is a risk of damage to the Council’s reputation should, for whatever reason, the CPO be confirmed by the Scottish Ministers but the redevelopment does not progress. To mitigate against this the Minute of Agreement will, in essence, oblige the developer to commence the redevelopment within 3 to 5
years of the CPO being confirmed and it is considered that given the other protections the Council has obtained this is suitable security for the Council, especially when the developer’s investment to date is considered and the fact it would only have 5 years to implement its detailed planning permission.

6.4 SJEL have confirmed to the Council that they do not require further land through compulsory purchase procedures.

6.5 There is a risk that the Henderson Fund sells its shareholding in SJEL once the CPO is confirmed and/or the land interests conveyed to it, for another developer to take forward the scheme, and as such potential embarrassment to the Council in the Henderson Fund selling out in this fashion. SJEL has been unwilling to agree to any restrictions around such change of control. However, SJEL itself will be restricted in transferring its interest in the Minute of Agreement, and it is considered that the protections around this are sufficient for the Council, together with the other risk mitigation referred to, especially given that even if the ultimate owner of SJEL changed, if the scheme still goes ahead the positive benefits for the City would likely be of much greater importance, and it is difficult to see anyone other than a large, established developer wanting to take over the scheme anyway, and the discussions with SJEL have not disclosed any such intention to sell out of the scheme in this manner.

6.6 There is a risk that the CPO is not confirmed by the Scottish Ministers and/or the developer fails to secure all the requisite statutory consents for the scheme. As regards the CPO, as covered in the 29 May 2014 Report, it is considered that the inclusion of the various land interests in the CPO, including Plot 47, is justified under the relevant legislation. As such, and while recognising that it cannot be guaranteed such confirmation will be forthcoming, or when, it is felt there is suitable risk mitigation here. Equally, it is considered that given the consents already secured by the developer, and the nature of the proposals, the risk of such consents not being obtained is already suitably mitigated. However, for the avoidance of doubt, it has been made clear to SJEL that it will need to apply for all such consents in the usual way, and where the relevant authority is the Council they will be assessed and decided upon in the usual way, and no indication has been given to the contrary.

6.7 It is recognised that the development proposals are closely linked with those in the said report to Council of 1 May 2014. As such, a Project Team of senior officials, led by the Senior Responsible Officer, from all relevant Council departments, which has already been working together on these proposals, has been formalised under the remit of the Corporate Programme Office and reporting to the Acting Director of Services for Communities to ensure a suitable robust governance of the Council’s involvement in this project going forward, with reporting to the members as and when required.

**Equalities impact**
7.1 Using the CPO powers to enable the redevelopment of the St James Centre will have significant positive impacts on the rights to physical security, education and learning, standard of living, productive and valued activities and participation, influence and voice as detailed in the Equality and Rights Impact Assessment.

7.2 Conversely, there will be a negative impact on the rights to legal security and productive and valued activities. The making of the CPO engages rights protected under Article 1 to the first protocol to the European Convention on Human Rights (ECHR).

7.3 These rights include the peaceful enjoyment of one’s property. The making of the CPO is in the public interest, in accordance with law and its consequences are proportionate to the purpose for which the CPO is sought. Accordingly the making of the CPO does not in the opinion of the Council violate Article 1 to the first protocol of the ECHR. Given the public benefits of the scheme, outlined elsewhere in this report, the impact on the private rights of the current occupiers/owners is felt to be proportionate due to the overall benefits to the city as a whole.

7.4 Furthermore, those property rights adversely affected by the CPO will be entitled to compensation under the Land Compensation (Scotland) Act 1963 and the Land Compensation (Scotland) Act 1973. Compensation will be payable in accordance with the Compulsory Purchase Code.

7.5 The redevelopment of the centre should have a positive impact on the Council’s equality duties through improved accessibility and design, the provision of a training academy to help those furthest from the job market into work and extensive public consultation.

7.6 There are likely to be negative impacts throughout the construction stage on the accessibility of the area which can be addressed through the Planning, Building Control and Road Construction processes

Sustainability impact

8.1 The impact of this report in relation to the three elements of the Climate Change (Scotland) Act 2009 Public Bodies Duties have been considered, and the outcomes are summarised below.

8.2 The sustainability impacts of the redevelopment of the St James Centre have been assessed in the determination of the application for planning permission in principle. The proposals are considered to have no significant environmental impacts and comply with the requirements of the Planning Service. The principle considerations are detailed below.

8.3 The proposed redevelopment of the St James Centre has been assessed against the most relevant, up to date sustainability indicators available, as the design of the Scheme has progressed. As a result, the principles of sustainability have been incorporated within the design, wherever feasible, in order to ensure that the proposals are as sustainable as possible.
8.4 The Sustainability Appraisal comprised a desktop policy review and development of a sustainability framework, two sustainability workshops with the design team, ongoing scheme review and evaluation and finally, appraisal of the final proposals and production of the sustainability statement.

8.5 Any negative impacts would be offset by a much more energy efficient development than exists in the current aging buildings. A combined, heating, cooling and power centre is proposed as part of the development as is wider access and shop mobility. There will be electric car charging points, extensive facilities for cyclists, photovoltaic panels, solar tubes and a city car club.

8.6 The applications for approval of matters specified in condition will be required to contain updated sustainability appraisal information.

Consultation and engagement

9.1 A full public consultation process was undertaken by SJEL as part of the application for planning permission in principle. Further consultation will be undertaken as part of the approval of Matters Specified in Condition.

9.2 Now that the CPO has been made, the Council has served notice of the making of the CPO on affected proprietors and thereafter will deal with any objections. If necessary an Inquiry or Hearing will be held by an independent Reporter appointed by the Scottish Ministers to consider objections. Throughout this process SJEL will continue to seek to negotiate voluntary agreements with all affected proprietors.

Background reading/external references

Report to Council by Director of Economic Development on 1 May 2014
Report to Council by Acting Director of Services for Communities on 29 May 2014

John Bury
Acting Director of Services for Communities

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Links

Coalition pledges P8 Make sure the City’s people are well housed including
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<td>Appendices</td>
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Land to be acquired.

Areas have been scaled from indicative floor plans and are only an approximate representation of the area within the lease agreement or required for construction activities.

This is Map 14 referred to in the St James Quarter, Edinburgh Compulsory Purchase Order 2014.