

| Report of | Meeting | Date |
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| Market Walk Steering Group | Full Council | 22/09/15 |

MARKET WALK EXTENSION

PURPOSE OF REPORT

1. To present members with a financial case and proposed plan to develop seven new retail and leisure units on the Flat Iron, and to seek approval to proceed with the development.

RECOMMENDATION(S)

2. That subject to:
 - a) Planning approval (due be determined at Development Control Committee on 29th September 2015);
 - b) Pre-let contract agreements being in signed for 65% or more of the new units; and
 - c) The conclusion of any planning or legal challenges in a favour of the scheme

Members agree to:

3. Proceed with the development of a new retail and leisure extension to Market Walk, delivery of associated highways improvements and public realm works, at a cost of up to £12.9m excluding VAT.
4. Use the Lancashire Regeneration Property Partnerships as the procurement route for the main contractor to develop the Market Walk extension.
5. The future appropriation of the council owned development land identified within the planning application for planning purposes (retail) with delegated power to the Head of Governance and Property Services to authorise the appropriation at the opportune time once the area is no longer required for car parking.
6. Authorise the use of the statutory process under section 237 of the Town and Country Planning Act 1990 in the event a negotiated settlement with AXA/ Booths cannot be reached.

EXECUTIVE SUMMARY OF REPORT

7. This report presents a proposal to develop a 7 unit retail and leisure extension to Market Walk. It sets out the plans, as they are now detailing how and why they differ from the planning application which submitted in April 2015.
8. The report also sets out current plans to address key issues such as the relocation of shop mobility, the impact of the development on the Flat Iron Market and car parking.
9. A lettings position is provided which shows that while the 65% pre-let agreements target is still to be achieved, good progress is being made towards it, and if all of the prospective tenants which we are working with sign up, 5 of the 7 units will be filled which amounts to

81% of the development. It should also be noted that should this happen, it is anticipated that the remaining two units will be filled with relative ease.

10. A further key element of the report, is the financial case. The report asks Members to approve a budget of up to £12.9m excluding VAT. A summary of the costs can be broken down as follows:
 - a. total cost of the development is estimated at £7.64m,
 - b. public realm improvements are estimated £2.87m
 - c. Other costs (relating to car parking and fees) are estimated at £2.34m

11. It is proposed to finance these costs through a combination of section 106 and CIL monies and through borrowing.

12. Based on full occupancy the net distributable income is estimated at £274,266 per annum. In addition the estimated value of the development on completion and again based on full occupancy is estimated to be between £13m-14m, and it is also expect to have a positive impact on the rental value and development value of the existing Market Walk mall.

13. Should the development be approved, there are a number of options for procuring a main contractor for the works. These are detailed in the report, with the preferred option being to use the Lancashire Regeneration Partnership. Further options which are currently being considered for client side support are also noted.

14. Finally the report also asks Members to consider the appropriation of the Flat Iron site for retail use. It also sets out the position of the covenant which restricts the use of part of the Flat Iron site, and the options for resolving the issue with it.

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| Confidential report Please bold as appropriate | Yes | No |
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CORPORATE PRIORITIES

15. This report relates to the following Strategic Objectives:

| | | | |
|--|--|---|---|
| Involving residents in improving their local area and equality of access for all | | A strong local economy | ✓ |
| Clean, safe and healthy communities | | An ambitious council that does more to meet the needs of residents and the local area | ✓ |

BACKGROUND

16. Ensuring Chorley has a vibrant and thriving town centre is set out as a priority area in both the Council's Corporate Strategy and Economic Development strategy.

17. An initial key action to help us achieve our vision for the town centre has been the development of the town centre masterplan which was presented to Executive Cabinet in October 2013. The masterplan set out a number of opportunities for the future development of the town centre to ensure its viability in the future.

18. During the development of the masterplan, Deloitte, who were commissioned to undertake this work, informed the council that they were aware the owners of the Market Walk shopping

centre were looking to sell the centre. With the agreement of Full Council, the council entered into an exclusivity agreement with the owners and undertook due diligence on the purchase of the centre. This work was overseen by a committee comprising members of the administration and the opposition (The Market Walk Steering Group, MWSG). The results of the work were then presented to Full Council in November 2013, when approval was given to purchase the centre.

19. Parallel to the purchase of Market Walk, the town centre masterplan noted that to prosper town centres need to offer much more than a retailing function. They are places to shop, but also places to live, places to meet, places to undertake leisure activities.
20. To address these and other findings, the masterplan identified a number of opportunities one of which was to improve the public realm around the Flat Iron and to extend Market Walk.
21. This builds upon the findings of the 2013 residents' survey which from 1,234 responses showed that 78.5% identified the range of shops to be the most important aspect of a town centre in terms of encouraging visitors, but also that the variety of other offers such as restaurants, leisure and cultural facilities is also important to residents.
22. Together, the purchase of Market Walk and the opportunities and conclusions presented as part of the town centre masterplan; the findings of the 2013 residents survey and feedback from our lettings agents led to the initiation of a piece of work to investigate the feasibility of extending market walk.
23. The feasibility study, which was carried out by Deloitte was presented to the Market Walk Steering Group in May 2014. It presented and assessed six options for extending Market Walk. Each option was assessed in terms of servicing and car parking as well as the financial viability, with all options required to meet certain criteria such as improving the town centre offer, enhancing public realm, and developing high quality units, etc.
24. The MWSG agreed that the feasibility study demonstrated that there was merit in progressing further with the extension plans and selection one of the six options as a basis for further work.
25. Full Council had previously agreed in April 2014 that, subject to one of the options being viable and being recommended by the MWSG, a further budget of up to £100,000 would be allocated to progressing one of the options developed as part of the feasibility study, to the full planning application stage. Then, if full planning permission was approved, a further report would be brought to full council detailing proposals for the development. This increased the total budget for the feasibility stage to £190,000.
26. Two rounds of public consultation have been carried out throughout this process, which together resulted in approximately 750 responses. The first took place in August 2014, and the second in March 2015. Both included stakeholder presentations, face to face public consultation events, and online surveys and were widely promoted. Findings from each were very positive with over 75% of respondents in favour of the scheme. Concerns were raised in relation to car parking, the markets and the design of the scheme, all of which have been considered and addressed as appropriate, throughout the process of developing the application. Full details of the consultations can be found in the statement of community

involvement, which forms part of the planning application and is referenced as a background document to this report.

THE PROPOSED DEVELOPMENT

27. The vision for the development is to improve the retail and leisure offer in the town centre, attracting quality national retailers and more visitors, creating growth and opportunity for the future.
28. A planning application was submitted on 20th April 2015 for:

Full application for the demolition of the Civic Offices, shop mobility units, public toilet 'kiosk' and electricity sub-station and the erection of a two storey retail, restaurant and leisure unit on the Flat Iron car park along with the erection of a two storey restaurant/retail/office unit with replacement substation on the southern portion of the site. The creation of a temporary car park on the Civic Offices site alongside various public realm improvement works, relocation of the existing statue and associated servicing, access, soft landscaping and enhanced pedestrian linkages. Outline application for the erection of a retail unit on the existing Civic Offices site all matters reserved save for access.
29. The set of planning application documents is available through the Council's website and is referenced as background documents, however Appendix A of this report includes a site plan and some CGI's images for the proposed development as set out in the application.
30. Since then work has continued to develop the scheme, secure lettings and resolve key issues such as car parking and the relocation of shop mobility.
31. This section of the report provides an update on the current plans for the development and how and why they have been updated from the plans submitted in April 2015. The main proposed changes from what is outline in the planning application are:
 - a. The civic offices on Union Street would not be demolished.
 - b. Additional car parking will be created on the derelict site behind Oak House, creating 23 temporary car parking spaces.
 - c. A further 23 spaces will be made available to the public through opening the current 'permit holders only' parking available to the side of Gala Bingo.
 - d. Unit 9, which has outline planning approval, would not be developed.
 - e. The pals memorial would not now be moved, across the road to the Civic Offices site as proposed in the application.
 - f. It is also proposed that units 8 and 10 are not developed for the time being; and finally
 - g. Units 4 and 5 have changed based on the requirements of the likely tenant of Unit 4.
32. Firstly, demolishing Union Street was included in the application as a way of creating additional car parking spaces in the town centre close to those that would be lost through developing on the Flat Iron. In parallel to this, officers and members have been investigating a number of options for the relocation of staff and services, and also a range of further options for creating additional town centre car parking.
33. During these investigations, and through listening to the concerns raised by Members and the public, it has become clear that there are better alternative options to creating additional car parking spaces in the town centre, which mean that the Council offices do not need to be demolished.

34. Demolishing the civic offices would enable the creation of 32 car parking spaces and would cost in the region of £300,000, excluding any costs to relocate staff and services. However, developing the derelict site behind Oak House into a public car park and opening up the Gala Bingo permit holders car park would achieve 46 spaces and cost significantly less.
35. Clearly this would mean developing unit 9 would not be possible, however this does not impact on the financial viability of the scheme, and would be a positive for residents of Stanley Place and Byron Street who have expressed their concerns about the unit and the potential disruption, particularly due to the evening trading that would have been associated with the let of the unit to a leisure tenant.
36. A further impact of not demolishing the civic offices is that it impacts on the plans to relocate the Pals Memorial. Therefore the proposal is to keep the memorial in its current position and to continue to work with Chorley Pals to support and minimise disruption to any centenary events being planned for 2016, and also if possible enhance the public realm around the memorial.
37. On the main development site, units 8 and 10 were originally included for leisure/office space, however as the costs plans have been worked up and as the letting agents have marketed the development it has been found that these two units are both expensive to build and due to the size and location of the units are less attractive to potential tenants.
38. Again, the financial impact of not developing the units is minimal and therefore it is proposed that these two units are not developed, at least for the time being.
39. The final change is to the layout of units 4 and 5. The floorspace of unit 4 has been increased to approximately 3,500 sq.ft. to accommodate a tenants requirements. This has reduced unit 5 to 2113 sq. ft (see appendix B). It should be noted that further changes to the sizing's and layout of the units is likely to occur as negotiations with prospective tenant's progress.

SHOP MOBILITY

40. Chorley shop mobility provides an important and much used service helping people with mobility problems to come into the town centre, hire a scooter or a wheelchair to enable them to go shopping or to meet friends. They have a stock of 15 scooters and a number wheelchairs, which are predominately accessed from their unit near the interchange however they do also have a small satellite site within the bus station too.
41. The proposed development will necessitate the displacement of the Shop mobility unit currently located between Market Walk and the bypass. The Council have been in discussions with Shop mobility to ensure that any new placement of their service meets their needs.
42. A range of options were developed which aimed to meet the requirements requested by shop mobility which include seven dedicated car parking spaces, a drop off point for taxis and dial a ride, connections to services, as well as kitchen and disabled toilet facilities. The options were reviewed by shop mobility, with two options (Fleet Street and Portland Street) being selected for further investigations into the costs and deliverability.
43. Following some initial investigations it appears that siting the service on the Fleet Street Car Park would be the better location. It would provide the requested number of dedicated parking spaces and would place it near to existing services. There would be a loss of parking revenue relating to the occupation of this space but as there is an over supply of parking in Chorley town centre it is hard to quantify this.

44. On the basis that the new facility can be sited on Council land and is capable of being serviced (water, waste and electricity) then the estimated cost would be in the region of £100k for the move. This is an “upper limit” estimate based upon the provision of new portacabins. This cost will be significantly reduced if the existing cabins are capable of being moved and re-sited or the Council can source good quality previously used portacabins. If suitable second hand cabins can be sourced then the likely cost including servicing would be in the region of £50k.
45. The Council will continue to work with shop mobility to develop, agree and implement the relocation proposals with any relocation being delivered before work starts on the flat iron site in order to minimise disruption to the service.

THE FLAT IRON MARKET

46. The impact of the proposed extension on Chorley’s Flat Iron market has been a key consideration of developing the plans right from the start. The markets are an important part of the town’s history and economy and we want to ensure the markets continue to thrive well into the future.
47. To ensure that the impact on the proposed development was fully considered the council commissioned a specialist markets consultant, Quarterbridge, to provide an independent report on the likely impacts of the proposed development to both the markets and wider town centre, and to develop recommendations to not only mitigate, but also to improve the viability of the outdoor market in the future.
48. In carrying out this work the independent consultants consulted with market traders who did recognised the efforts being made by the Council to support the Flat Iron market and to protect their future.
49. The findings of the report recommended that the Market is relocated during the development of the extension. The reconfiguration of the Flat Iron West car park itself will require the market to be moved off site to enable some parking provision for Booths and Market walk to be retained in close proximity. During construction of the extension the whole of the Flat Iron East will be required for the construction site and contractors compound. This together with delivery access is likely to impact to some extent on the west side of the car park.
50. Car parking spaces will be reduced from approximately 384 to 150 spaces during this period, however additional parking will be available behind Oak House as detailed elsewhere in this report. The changes to car parking are likely to result in changes to pedestrian routes during this period too.
51. These factors present an opportunity to relocate the market to areas where there will be less disruption from the construction process, with high footfall and close to other, currently underused, car parks which their customers can easily access.
52. This also means that the west side of the Flat Iron will be available for Booths customers throughout the construction period.
53. Quarterbridge identified seven possible alternative locations for the relocation of the outdoor markets and then ranked them in order of preference based on location, size, trader preference and deliverability.
54. The recommended relocation is to Fazakerley St, Cleveland St, Chapel Street and New Market Street. These streets are considered wide enough to accommodate a double row of

stalls; however the number of stall which could be accommodated is likely to be in the region of 30 compared with the current 70 on the Flat Iron car park.

55. In addition, if Market Street was also to be closed to traffic each Tuesday, between High Street and St Georges Street (as it were previously), a further 40 stalls could be accommodated. Specialised markets have been held in Market street before so we know that it is a workable solution.
56. This would ensure that capacity of the markets could be maintained throughout the relocation period.
57. If approval is given to proceed then further consultation will be carried out with the Flat Iron traders over the relocation/ re-allocation of stalls and consultation with businesses which will have stalls to their frontages. Ideally this will commence in October following the planning decision. A further report will then be brought back to Members setting out the final options for approval.
58. Evidence of other markets in pedestrianised areas shows it has a positive impact on surrounding shops due to increased footfall. It is expected that the shops in these streets will see a boost in trade with up to 250% increase in footfall and 30% increase in sales turnover on market days, and the proximity of the Covered Market would encourage comparison shopping to the benefit of both.
59. To enable the relocation some remodelling of the public realm in these streets, primarily Fazakerley Street, will be required such as creating more space through removing some existing street furniture. In addition to this, amendments to the Traffic Regulation Orders (TRO) will be required in order to close these roads to traffic each Tuesday for longer than the existing TRO allows. Plans have been developed to re-pave Fazakerley Street to accommodate the maximum number of stalls and costs are in the region of £100k and would be completed as part of the Steeley Lane and Town Centre Action Plan early in the new year. This work needs to be completed prior to the commencement of any development on the Flat Iron site, to enable the market to relocate before any works start.
60. The original aim was to return the market back to its original location on the Flat Iron following the construction and opening of the new development. While this is still a possibility it will need to be reviewed against the success of the temporary location, alternative sites which may become available in the short term and of course the impact that it could have on Booths.
61. It is therefore proposed to closely monitor the success of the market and impact on the town centre during any relocation period and to present the findings back to Executive Cabinet, together with other options for positioning the market as a key part of the town centre in the future.

LETTINGS POSTION

62. The Council has been working with Mason Partners and Lambert Smith Hampton not only to secure lettings for the proposed scheme, but they have also played a key role since the feasibility stage of the project in feeding into the design the likely requirements of prospective tenants in terms of size, layout and access to servicing of the units.
63. In terms of the lettings, it has been a clearly defined target, that 65% of the development should have pre-let agreements in place before work is started. This target still stands, and therefore the recommendations of this report are subject to achieving it.

64. The vision for the scheme is to improve the retail and leisure offer in the town centre, attracting quality national retailers and more visitors to the town centre. The intention is to complement Chorley's existing offer of strong independent shops and traders and provide an additional offer which will, in turn, increase footfall to the benefit of existing traders, and make vacant units more attractive to other potential tenants. The development should therefore not result in existing traders relocating to the new space.
65. While there are vacant units in the town centre Chorley's town centre vacancy rates are low both in comparison to national and regional performance. The new units which are proposed in the development are larger in size than vacant units currently available within the town centre, which unfortunately would not be attractive or suitable to the national retailers or leisure providers which we are trying to attract.

THE PROCUREMENT OF THE CONSTRUCTION SERVICES

66. Effective procurement is central to delivering high quality, value for money services. The costs of the works are over the EU procurement threshold for works contracts (£4,322,021), therefore this section sets out the options for procuring the constructions services which will be required to deliver the scheme, should approval be given.
67. In 2012, Lancashire County Council (LCC) created two Regeneration Property Partnerships (RPP) with private sector partners. The two partnerships cover different geographical areas in Lancashire, essentially a North East partnership and a South West partnership, with the Eric Wright Group (EWG) appointed as the partners for South West Lancashire. All public sector bodies within Lancashire were named in the OJEU notice as part of the procurement, which enables Chorley Council to use the South West partnership.
68. There are clear benefits for using this partnership to deliver Market Walk Extension:
 - a. It removes the need for a long and expensive procurement process as this has already been managed as part of LCC's procurement process of the partnerships.
 - b. As part of the partnership the contractor has demonstrated their commitment to supporting wider economic development, including maximising apprenticeships, training and other workforce development activities and will support local SME's through the sourcing of goods and materials where possible. Their approach is to tender work packages to local companies as far as possible and to weight the tender award criteria to the use of local labour/suppliers and subcontractors who can demonstrate a commitment to training and local employment.
 - c. The risk of the development will be shared with contractor, in that if this delivered as a fixed price procurement, the contractor will carry the risk of any increase in the costs of the sub-contractors (if the specification remains unchanged) and will carry a reputational risk should the development run into difficulties.
 - d. The contractor will act as the single point of contact for the procurement and delivery of all the activities needed to deliver the project and integrate and manage a diverse range of supply chain sub-contractors.
69. It is therefore proposed that the Council approves the use of the Property Regeneration Partnership to procure a main contractor for the Market Walk development.
70. Clearly, we need to be reassured that this option will be value for money and as such an open book approach will be taken to cost breakdown to provide transparency.
71. It is felt that the risk associated with this development is low. The build is for a building to shell with the tenants taking responsibility for fit out and much of the M and E requirements. On the basis the initial specification of the build is properly completed most of the risk is financial, and this can be addressed through open book accounting and the appointment of a QS. However, this must be put against the context of the total spend (circa £12million) on the development, this level of spend ups the level of risk.

72. In addition it is estimated that roughly 70% of the construction costs will be undertaken through subcontracted works packages. Each of these will be fully market tested with invitations to tender being issued through the North West Procurement Chest and in line with our own contract procedure rules, a minimum of three organisations will be invited to tender for each of the packages of work.
73. Other options for procuring construction services have been considered. These include carrying out our own OJEU compliant procurement for the works, either through an open or restricted procedure. However, the council hasn't undertaken a procurement of this scale before and it likely to require specialist support and advice, in addition external support would be required to draft the tender documents. There would be time and cost implications in doing so, and finally the process is likely to take 6 months which significantly delay the project and possibly jeopardise it entirely.
74. Another option would be to use an existing construction Framework for example through the North West Construction Hub (although there are numerous others which are very similar and could be used). Each of the NWCH Frameworks have a number of partners which have been selected via a rigorous quality and cost process. Typically a mini competition would be held following an expression of interest stage. This essentially provides a second stage of competitiveness. This option would be significantly shorter timescales than procuring works ourselves, but would still take 2-3 months to the point of contract award.
75. Each of the options are OJEU compliant and would enable us to appoint a high quality, value for money contractor for the extension works however the LCC RPP is quicker and cheaper.
76. If approval is given to proceed with the development the next step will be to develop the employers requirements. They would form part of the contract and set out in detail the clients (the Council's) requirements, including the specification for the building, the scope of services required from the contractor and the allocation of risk for unknown items.
77. The employer's requirements is a very important document as it defines the success of the outcome. The better prepared they are, the keener the price from the contractor and the less likely there will be disputes. If the employers requirements are not properly developed the council could incur significant additional costs as any requirements which are not properly specified, or are changed, will require the issue of instructions for which the council would be charged by the contract.
78. The Council does not have the skills in house to develop the employers requirements for a scheme of this scale or importance. External support to develop the employers requirements is estimated to cost in the region of £80,000.
79. As a further level of assurance, consideration is being given to the appointment of a separate 'employers agent' or a 'quantity surveyor' (QS). An employer's agent would act on our behalf as the contract administrator and they would be appointed first. The employers agent role can vary but it is suggested that for the market walk development they would support us in agreeing other contractual documents such as the employers requirements, warranties and JCT construction contract. Following the appointment/award of the contract they would play a QS role, review any information prepared by the main contractor, oversee the procurement of subcontracts, manage any change control procedures, review the progress of work and prepare update reports, validate payments and support us to agree the final account. Simply, they would bring their expertise and skills to establish in detail, then to check and monitor the delivery of the scheme as the council envisages it and manage some of the risk.

80. In comparison a QS role would just review all tender proposals prior to the appointment of the subcontractors to ensure the costs provide us with value for money and have been market tested, and also to monitor the spend on the project. A QS is likely to cost in the region of £65,000 compared with £265,000 for an employer's agent. The table below summarises the options for additional client support:

| Professional client service | Estimated Cost |
|--|-----------------------|
| Support to develop the Employers Requirements | £80,000 |
| QS support | £65,000 |
| Total | £145,000 |
| OR | |
| Employers agent (which includes developing the employers requirements, QS support, and management of the contract. | £265,000 |

81. The approach to procuring one or more of the client services identified above will be dependent on which option is chosen. For example the estimated cost of an Employers Agent is above the OJEU threshold for services and therefore would need to be procured under an OJEU compliant process which is likely to take in the region of three months.
82. It may also be possible to employ someone directly particularly for the QS role. The benefit would be a reduction in the likely cost and a procurement exercise would not be necessary. However there are risks particularly delay in the event a suitable employee is not found.
83. RLB could provide continuity to the project by appointing them, however due to the level of our current contract with them, we could only appoint them using the waiver process to either develop the employers requirements or provide continued QS support throughout the development. Beyond this the level of spend would be above the OJEU services limit or £172,514, and while they could bid for the work, we could not guarantee their appointment.

PHASING OF THE WORKS

84. At this point it is difficult to provide a clear plan for the works. This would be developed as part of the employers requirements, if the scheme is approved but there are some key milestones and constraints which we expect the programme of works will be built around.
85. Firstly, no works would take place on the Flat Iron site, without first creating additional car parking in the town centre. As detailed in other parts of this report, this would include opening Hollinshead car park up to the public through relocating staff parking to either the Bengal Street or Apex House site, creating 23 new car parking spaces on the derelict site behind Oak House, and opening the Gala Bingo car park up to the public.
86. The aim would be if possible to have these additional car parking spaces available to the public by the end of November, in order to provide extra parking on the run up to Christmas to try and support local businesses and traders.
87. Secondly, no works would take place on the Flat Iron site before the new year. It is anticipated that the earliest start date would be January 2016. Additionally before any works start, the outdoor markets and shop mobility would need to move. In both these cases it is not expected that they would move before January 2016.

88. The build is expected to take approximately 12 months, therefore the aim would be to have the development ready for opening for Easter 2017.
89. Another key date during the development is for the Chorley Pals centenary commemorations on the 1st July 2016. An event must be held by the pals memorial on this date, and this will be clearly planned within the construction schedule to ensure that it can take place uninterrupted.
90. The works site itself will be kept as 'tight' as possible to ensure that the west side of the flat iron car park is still able to be used and to maintain access from the flat iron, through Market Walk. Additional compound areas are likely to be required to store materials and equipment during the development, however as far as possible use will be made of the existing market walk service yards.
91. Highway improvements as outlined in the planning application will be subject to a S278 agreement with LCC highways. This agreement will be finalised following planning approval and until that time the plans together with the phasing of the work are still to be agreed and therefore will remain a cost risk to the council until they agreed. As part of these negotiations, the Council will be seeking a financial contribution towards the scheme from LCC.

APPROPRIATION OF THE LAND FOR RETAIL USE

92. The land on which the proposed development is sited is owned entirely by the Council.
93. The current use of this land is for public car parking benefiting the town centre as a whole. To be clear the delivery of the Market Walk Phase II development will change the use of this land from car parking to retail. It is necessary therefore for the Council to consider whether this change is appropriate and in the interests of the Council, the town centre (as a whole and for individual businesses and stakeholders) and the interests of the residents.
94. It is not for Council to make a decision on the planning application, that is a matter for Development Control Committee but it is right for Council to consider the basis for bringing the planning application. Members are not being asked to consider the planning issues but the land use issues. There may be similar considerations but it is important that they are considered by Council in deciding whether this is an appropriate use of the land.
95. A significant part of the proposed development site has been allocated in the Local Plan for retail. The local plan process has undertaken an assessment of the town centre and the impact of this change of use, this decision does not need to be revisited. It is not unreasonable therefore for this area to be used for retail development.
96. Part of the proposed development falls outside the local plan allocation for retail. In relation to this part of the development Members should consider whether the appropriation of this land (in this context appropriation means to assign a use rather than ownership) for retail use is reasonable and whether the land will no longer be required for car parking immediately before the appropriation. It is, to all intents and purposes, impossible for members to consider the part of the scheme which falls outside the retail allocation in isolation. The scheme must be considered as a whole. This is not to say that the use automatically becomes reasonable because the majority of the development is within a retail allocation and the land use can be deemed to have been assessed. From a land use position the Council have to consider the impact of what is lost, i.e. the car parking.
97. At present the Flat Iron Car Park accommodates 384 parking spaces, the proposed development will deliver 189 spaces, a loss in spaces of 195. If the Flat Iron Car Park were

taken as a whole, with the whole of the area allocated for retail use being used for that purpose and not car parking, there would be a greater loss of spaces, in the region of 230.

98. Car Parking is something that the Council have considered carefully in developing this proposal. A car parking study has been commissioned, which has found that there is a surplus of town centre parking and that this development could be delivered (for planning purposes) without providing any additional parking. However, from the perspective of the local authority, whilst there may be sufficient parking there are issues as to whether it is in the right place (proximity to the town centre) and secondly the connectivity of that parking to the town centre hub.
99. The table below shows the current utilisation of ten town centre car parks, covering the two busiest days, Tuesday and Saturday, as well as the projected additional demand that will be created from the development.
100. At weekends the total capacity of all ten car parks included within the study shows 1683 spaces. During weekdays the Hollinshead car park is currently exclusively used for staff parking which reduces the capacity by 55 spaces. On Tuesday's the Flat Iron market further reduces the car parking spaces to 1477.

| | Tuesday | Friday | Saturday |
|--|------------|------------|------------|
| Existing -parking spaces available | 1477 | 1628 | 1683 |
| Max Accumulation | 963 | 914 | 970 |
| Utilisation | 65% | 56% | 58% |
| | | | |
| Future Parking (based on the options in paragraph 118) | 1525 | 1676 | 1676 |
| Existing plus additional development demand | 1031 | 979 | 1045 |
| Projected utilisation | 67% | 58% | 62% |

101. Further details of the car parking analysis are contained within the transport assessment which forms part of the planning application documents.
102. The analysis shows that 2 existing town centre car parks in particular are under used, Portland Street and Friday Street. Both of these car parks are in very close proximity to the proposed development. As part of the development scheme it is proposed to improve the connectivity to these car parks across the A6 by installing a pedestrian supercrossing. Other actions including improved signage will encourage use of this parking by the public. This will substantially address some of the parking lost to the development.
103. The Council are also investigating delivering additional parking as follows:-
- a. Hollinshead Street Car Park. At present this is a staff car park Monday – Friday. It is proximate to the town centre with good access via Stanley Street. It presently has 55 parking spaces which can be made available during the week to contribute to public parking demand. It is intended to find alternative provision for the displaced staff rather than move them onto public car parks. The Council are investigating the use of part of the Bengal Street Depot or the former Apex House site which would adequately take the displaced staff.
 - b. Oak House and Vacant Adjacent Site. The Council are in negotiations with Northern Trust the land owners to purchase these sites. These land blocks form part of the Civic Space identified within the Town Centre Masterplan. The vacant area can realise 23 parking spaces very quickly. If the Council gain possession of the Oak House site as well the sites together could deliver in the order of 45 spaces.

- c. Private Car Park – Gala Bingo. There are at present 23 parking spaces in this area. The Council have approached Gala Bingo with a view to taking a lease of this site and opening this parking to the public.
- d. Bengal Street Depot Site. As indicated this is under consideration for staff parking. However if the staff parking can be delivered on the former Apex House Site on Stump Lane, this area can be made available for public parking. If half the area is used it is estimated you could position 120-130 parking spaces in that location.

104. These options are summarised in the table below:

| | No. parking spaces |
|--|---------------------------|
| Flat Iron current | 384 |
| Flat Iron proposed | 189 |
| Total reduction | (195) |
| | |
| Hollinshead opened to the public (weekdays | 55 |
| Oak House – derelict site | 23 |
| Oak House – main site | 22 |
| Gala Bingo car park | 23 |
| Bengal Street | 120 |
| Total increase | 243 |

105. If all these options were to be delivered then it would achieve a net increase of 48 car parking spaces in the town centre. While this may initially appear to create a number of smaller car parks around the town centre, the intention ideally would be that Oak House and Gala Bingo sites are combined into one large car park.
106. It should also be noted that there are a number of other options for providing additional car parking in the town centre which have been considered and for the time being, due to factors such as cost have been put on hold, such as decked parking on Portland St or Friday St car park. There are also other options which are still being investigated which may add to the options detailed in the table above.
107. There would be a cost attached to the delivery of some of these sites although the land for options (a) and (d) is already in the council's ownership. It must be recognised though that in addition to supporting the town centre these proposals will deliver income generating assets for the Council.
108. The second group of steps the Council would propose to take would be to improve the connectivity to existing car parks. Part of the proposed scheme is to introduce new or improve existing pedestrian crossing points. A pedestrian super crossing over the bypass is proposed to improve the connection between the new development and Portland Street and Friday Street Car Parks. It is apparent that these car parks whilst being in close proximity to Market Walk are underused and this is reflected in the parking study prepared in support of the planning application.
109. It is also proposed to improve the pedestrian crossing point across Union Street. This will improve the connectivity to the new Hollinshead Street car park but also to the Water Street car park.
110. As stated, the car parking study has not identified any additional parking requirement caused by the development, but the Council are committed to delivering more parking in the town centre to address the spaces lost.

111. Whilst this does not contribute to any lost car parking spaces, the proposed development has been designed to maximise its connection to both the railway station and bus interchange, encouraging the use of public transport.
112. It is also necessary to consider the impact of this development on individual town centre stakeholders and their interests.
113. There is a covenant which restricts the use of part of the Flat Iron Car Park in favour of the freehold owners of the Booths Store building. The covenant prevents a defined area of the car park being used as anything other than a car park. The exact definition does not matter for the purposes of this report but it is accepted that the proposed development crosses into the defined area. To be clear any encroachment would amount to a breach of the covenant although there are arguments to be had about how serious the breach would be which are explored below.
114. Both the land owner, AXA, and the occupier, Booths, have objected to the planning application on the basis of the existence of the covenant. The objectors argue that the development cannot be delivered as the covenant prevents the building of the new retail units in this area.
115. Upon receipt of these objections the Council reviewed the scheme with a view to assessing whether it was still viable if it did not cross into the "covenant area". The original scheme objectives were also considered.
116. It was apparent that the scheme could not simply be moved back from the covenant area. Doing so would push the retail units too close to the bypass and would prevent any servicing to the units.
117. The size of the units is dictated by the target tenant's requirements. By making the development smaller to fit onto the reduced site area the units would not be attractive to prospective tenants. The purpose of this development was to improve the retail offer of Chorley town centre, smaller units are available already and the Council have indicated previously that the development would not be implemented if it would simply bring more of the same retailers or offer into the town centre.
118. The smaller development was unviable financially as the build cost to potential income ratio was significantly reduced.
119. Based on the above factors, if this development is to be delivered it should be built in the current proposed form.
120. The covenant in favour of AXA / Booths is a contractual matter which does have implications for the planning application in that if the covenant is not released or altered the development could be prevented from being delivered by the beneficiaries of the covenant. It is not for Council to consider the implications for the planning application as such as these will be considered by the Development Control Committee, however, Council should consider the options for resolving the covenant issues in the role as land owner / developer.
121. The Council have 2 options for resolving the covenant issue.
 - a. Negotiation with the beneficiary of the covenant, in this instance AXA and Booths. Although technically the beneficiary of the covenant is the land owner AXA, in reality the covenant benefits Booths. The covenant is time limited to 35 years from the 27 February 2004 and expires before the termination of Booth's lease (35 years from

25 March 2005) therefore in reality only the tenant gets any benefit from the covenant.

- b. Statutory Compensation Process under section 237 of the Town and Country Planning Act 1990. This provision allows the Council, where they have appropriated land for planning purposes to interfere with another parties interest in the land in order to give effect to a planning consent. The Council will be obliged however to pay compensation to the holder of that interest.

122. The terms of a negotiated settlement are difficult to assess as they are not limited to financial settlement but may include changes which deliver the same benefits provided by the covenant or restrict the impact of the changes to the covenant. There is a clear benefit to the town centre of supporting Booths so the Council are able to have some flexibility in their approach. A preliminary discussion has been had with Booths and the Council have agreed to review the scheme to see what changes can be made to support them and ensure they remain a key stakeholder in the town centre.

123. The statutory process under s 237 of the Town and Country Planning Act 1990 authorises the Council to undertake the development in accordance with a valid planning consent even where to do so interferes with another parties interest in the land. The covenant in this instance is such an interest. The effect of relying on this provision is that the Council must pay compensation for this interference to the holder of the interest. Any assessment of a financial award will be based upon the injury caused by the breach of the covenant. Factors which will be considered in assessing this are as follows:-

- a. The term of the covenant. There remains around 24 years left to run. This is not a covenant in perpetuity.
- b. The breach of the covenant only relates to part of the land with the remainder being retained as a public car park.
- c. The minimum number of parking spaces provision. Whilst the covenant does require the whole of the land to be used as a car park it does have a minimum number of spaces (130) which the council are obliged to provide without breaching the covenant. The proposed layout provides in excess of this minimum figure.
- d. The loss of parking on the Flat Iron car park as a whole may be taken into account, as this on the face of it compresses users of this car park into a smaller area, however, this is being addressed by the Council and again the implications of this on the compensation process are uncertain.

124. The preference of the Council would be to negotiate terms with AXA and Booths, however Councillors are asked to agree in principle to the use of section 237 should those negotiations fail.

IMPLICATIONS OF REPORT

125. This report has implications in the following areas and the relevant Directors' comments are included:

| | | | |
|--|---|--|--|
| Finance | ✓ | Customer Services | |
| Human Resources | | Equality and Diversity | |
| Legal | ✓ | Integrated Impact Assessment required? | |
| No significant implications in this area | | Policy and Communications | |

COMMENTS OF THE STATUTORY FINANCE OFFICER

126. Comments contained within the Part II Report.

COMMENTS OF THE MONITORING OFFICER

127. Comments contained within the Part II Report.

GARY HALL
CHIEF EXECUTIVE

| Background Papers | | | |
|---|--------------------------|-------------|----------------------------|
| Document | Date | File | Place of Inspection |
| Town Centre Masterplan Baseline Report Opportunity and Delivery | June 2013 August 2013 | *** | *** |
| Market Walk Planning Application – 15/00375/FULMAJ | 21 April 2015 | | |

| Report Author | Ext | Date | Doc ID |
|---------------------------------------|------------|-------------|--------------------------|
| Rebecca Huddleston / Chris Moister | 5779 | 04/09/15 | Final Report to the MWSG |