

TRAFFORD COUNCIL

DELEGATED EXECUTIVE MEMBER DECISION REPORT

Report to: Executive Member for Investment, Regeneration and Strategic Planning
Date: March 2019
Report for: Decision
Report of: Corporate Director, Place

Report Title

Proposed Deed of Covenant – Land known as ‘Westfield’ Banky Lane, Sale

Summary

This report seeks approval from the Executive Member, for the Council to proceed in entering into a Deed of Covenant with Mainline Pipelines and Mersey Valley Sports Club in order to carry out works to the land to create a new football pitch.

Recommendation(s)

It is recommended that the Executive Member:-

- (i) Acknowledges the potential risk to the Council in the event that the oil pipeline owned by Mainline Pipeline is damaged the works to install a new pitch or by the use of that pitch, but that this will be mitigated by requiring full indemnity and insurance from Mersey Valley Sports Club.
- (ii) Gives the approval for the Council to enter into a Deed of Covenant with Mainline Pipelines and Mersey Valley Sports Club as referred to in paragraph 1.9 of this report to allow for the club to carry out the Works :-
- (iii) Gives authorisation for:
 - a. the Corporate Director of Place to finalise the terms of the Deed of Covenant including any terms as are required to best protect the Council against the risk and any other ancillary document as needed; and
 - b. the Corporate Director of Governance and Community Strategy to enter into any legal document to give effect to the above.

Contact person for access to background papers and further information:

Name: Rachel Crawshaw Roberts – Amey
Extension: 07801 988123

Background Papers: None

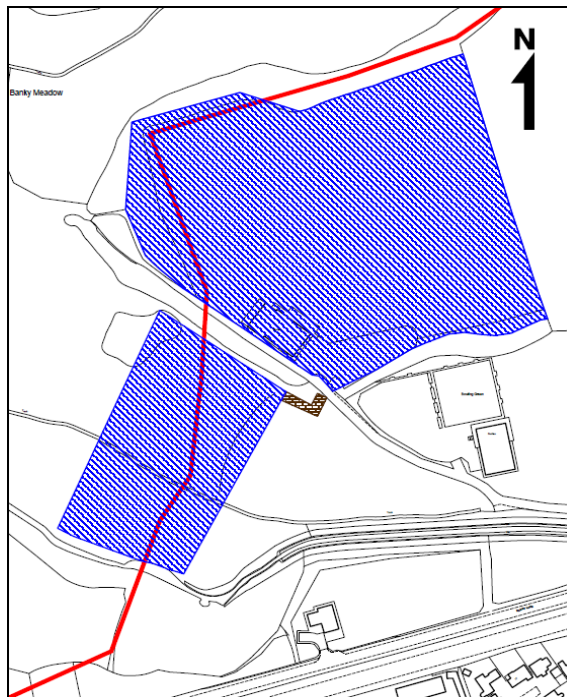
Relationship to Corporate Priorities	
Relationship to GM Policy or Strategy Framework	<i>This relates to the GM moving document and the wider health and wellbeing agenda.</i>
Financial	The proposal for the new pitch will require capital expenditure supported by Sports England Grant to be undertaken by Mersey Valley Sports Club, with no cost to be incurred by the Council. The Council will be party to a Deed of Covenant with the purpose to indemnify Mainline Pipes of any damage to its asset; however, all financial risk to the Council will be mitigated by the provision of sufficient insurance coverage by the Sports Club and relevant contractors.
Legal Implications:	The legal implications are set out in the body of the report
Equality/Diversity Implications	
Sustainability Implications	<i>No sustainability implications.</i>
Resource Implications e.g. Staffing / ICT / Assets	<i>Resource required to complete and supervise the works to be carried out on site, together with the ongoing lease implications. .</i>
Risk Management Implications	<i>No risk management implications.</i>
Health & Wellbeing Implications	<i>The larger proposed facility will have a positive impact on the health and wellbeing of the residents of Trafford</i>
Health and Safety Implications	<i>Potential damage during to the pipeline on site</i>

1. Background

- 1.1 Mersey Valley Sports Club (MVSC) holds a 30 year lease from Trafford Council (with 12 years unexpired). The Club are in receipt of a Rent Grant from Trafford Council for £6,500 per annum for the community sports services that they provide in the Borough.
- 1.2 Due to an increase in numbers attending the Club, MSVC have put together proposals to create an additional sports pitch on an area of land included in their lease demise known as 'Westfield'. The proposed new pitch will be smaller than their existing pitches and the site was chosen due to its close proximity to the existing pitches, club house and the site being relatively flat. Planning permission has been obtained for the new pitch (The Works).
- 1.3 The club have obtained funding of £65,000 from Sport England and are contributing £12,750 of their own funding to complete the works. The offer of funding from Sport England is time dependent.
- 1.4 In 1973, Trafford Council entered into a deed with Mainline Pipelines in order for them to lay the pipe (The Deed). The Deed requires Trafford Council to avoid damage to the pipe, not to excavate or alter ground levels without Mainline Pipeline's consent, obtain Mainline Pipelines Consent to the Works and indemnify Mainline Pipelines against loss if damaged. Trafford Council are an original party to the 1973

Deed so have original privity of contract under it and always retain primary responsibility under it.

- 1.5 The constructed pipeline, a high pressure oil pipeline carrying refined petrochemicals runs under the Westfield site where the new football pitch is to be sited (The Pipe). Owned by Mainline Pipelines, the Pipe is a cross country line taking fuel from a refinery to a terminal in Manchester. The Pipe is a commercial oil pipe so, if damaged, the potential for loss is greater than the norm.
- 1.6 The lease demise and the location of the pipeline is highlighted on the plan below (NB the blue hatched area highlights the lease demise and the red line highlights the route of the oil pipeline)



- 1.7 The proposed new pitch is to be laid out over part of the pipeline (shown hatched on the plan below). Consent from Mainline Pipelines is required in order to complete the works.



- 1.8 The new pitch is created by putting 1.25m of soil over the existing ground which will bury the pipeline further and then laying the turf.
- 1.9 Mainline Pipelines are willing to give written consent to the work proposed however, they require the Council and Mersey Valley to enter into a tripartite Deed of Covenant. The agreement makes the Council and Mersey Valley jointly liable for any damage to the pipeline.
- 1.10 The principle risk to the pipeline will be during the construction phase of the work. The construction will require an amount of plant and machinery to be moving and working around the pipeline whilst on site which poses a risk of the pipe being damaged.
- 1.11 Mainline Pipelines' agents Fisher German will work with Mersey Valley Football Club to outline their requirements for safe working and will provide a supervisor when they deem necessary in order to help keep the risk to a minimum. Fisher German will not accept any liability and will seek to recover costs if the pipeline is damaged in anyway as a result of the work.
- 1.12 The MVSC will be required to provide evidence of appropriate insurance coverage, from its own insurers and those of any relevant contractors, to reimburse the cost of any potential damage that could be caused to the pipeline during installation of the pitch. All insurance documents will need to be provided to and verified by the Council prior to the works commencing.

2.0 Access/ maintenance responsibilities to the oil pipeline (current and future)

- 2.1 The pipeline has been installed for over 30 years and no major works have been required to be carried out on the line. There are currently no plans to replace the pipeline. The pipeline will only be replaced if damaged or there is evidence that the pipe has corroded in parts (due to the risk that this could cause potential contamination to the oil)
- 2.2 Fisher German carry out checks on the pipeline 2-3 times a week with a more thorough survey carried out annually when representatives from Fisher German and others walk the line of the pipe.
- 2.3 In the event of a leak on the line, Mainline Pipes need to act on this immediately and can enter onto the land without notice.
- 2.4 If the pipeline ever needs to be repaired, the excavation will need to be stepped out wide to be safe from collapsing. Mainline will backfill the repair but they will not take the liability for bringing the pitch back into playable subsidence of the excavation. This is clearly a risk that Mersey Valley need to take on board and the Council would

need to make it clear that they cannot offer any assistance should the pitch have to be dug up.

2.5 The required legal documents will also include variations to the lease between Trafford Council and MVSC to give the Council greater powers of intervention and management given the risks associated with the pipe

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2.6 Executive Member approval is required due to Trafford Council's unavoidable exposure to commercial risk for entering into the Deed of Covenant for Mersey Valley carrying out the works. This risk will be mitigated in full by adequate insurance cover procured or acquired by MVSC prior to the commencement of any work.

3.0 Other Options

3.1 Refuse to enter into an agreement with Mainline Pipelines due to the associated risks that face the Council should they enter into a Deed of Covenant. This would mean that MVSC would be unable to install the new pitch.

4.0 Consultation

The report does not require a formal consultation. It should be noted that the works have already got planning permission in which statutory consultation will have been carried out.

5.0 Reasons for Recommendation

The recommendations are set out on the first page of the report. It is recommended that Executive Member Approval is granted to ensure the long term future of Mersey Valley Sports Club and to also continue to help promote the Council's .

Finance Officer Clearance **GB**
Legal Officer Clearance **TR**

CORPORATE DIRECTOR'S SIGNATURE



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To confirm that the Financial and Legal Implications have been considered and the Corporate Director has cleared the report prior to issuing to the Executive Member for decision.