



REPORT FROM THE OVERVIEW & SCRUTINY COMMITTEE

1 RE-NEGOTIATION OF EXISTING LEASE AND MANAGEMENT AGREEMENT FOR CANVEY LAKE

- 1.1 This item of business was considered by the Overview & Scrutiny Committee at its meeting on 30 July 2024 with recommendations to endorse the contents of a Deed of Variation to the Lease between the Council and Canvey Island Town Council in respect of Canvey Lake. An extract of the key elements of the report to the Overview & Scrutiny Committee is attached.

2 RECOMMENDATION

- 2.1 It is proposed that Cabinet **RESOLVES**
- (1) Approve the draft Deed of Variation as set out in Appendix 1 to this report; and
 - (2) To delegate authority to the Assistant Director Legal and Democratic Services to execute the Deed of Variation and complete the transaction.

3 SUMMARY

- 3.1 On 14 February 2024, the Committee considered the terms of the lease (the “Lease”) and the management agreement (the “Management Agreement”) between the Council and Canvey Island Town Council (the “Town Council”).
- 3.2 The Lease is a lease dated 1 March 2010 between the Council and the Town Council in respect of the Lake and its surrounding landscaped areas. The Management Agreement is contained within Schedule 5 to the Lease.
- 3.3 The Committee unanimously resolved that the Chief Executive liaise with the Town Council and the Monitoring Officer to negotiate a variation to the lease to reflect the replacement of the Common Liaison Committee (as described in the Lease) with a stakeholder group, and for the revised documentation to be brought back to the Committee for pre-scrutiny by the Committee with a view to providing recommendations to Cabinet before the documentation is legally executed.

- 3.4 The legal mechanism for achieving a variation to the Lease is through a Deed of Variation to expressly record what the parties have agreed.
- 3.5 The Monitoring Officer has prepared a draft Deed of Variation which proposed amendments to the Lease on the basis set out in the 14 February 2024 report to the Committee.
- 3.6 On 17 June 2024, at a meeting of its full council, the Town Council reviewed the draft Deed of Variation and resolved that it be agreed subject to some minor drafting proposals as set out below. These have been reviewed by the Monitoring Officer and are agreed in principle:
- a. To include more detail about the function of the Lake in Schedule 5 to make it clear that it has a purpose beyond the definition of Land as set out in the Lease.
 - b. Schedule 5 paragraph 7 – to include ‘or as and when required’ as it is envisaged that quarterly meetings may not be necessary in future years.
 - c. Schedule 5 paragraph 9 – to make it clear that the final decision will be for the Town Council.
- 3.7 Consequently, the agreed draft Deed of Variation is set out in Appendix 1.



RE-NEGOTIATION OF EXISTING LEASE AND MANAGEMENT AGREEMENT FOR CANVEY LAKE

1 PURPOSE OF REPORT

- 1.1 To present to the Committee a draft Deed of Variation to the lease for Canvey Lake (the “Lake”) for pre-scrutiny by the Committee with a view to providing recommendations to Cabinet before the document is legally executed.

2 LINKS TO COUNCIL’S PRIORITIES AND OBJECTIVES

- 2.1 This links to the Council’s priority of Environment.

3 INTRODUCTION

- 3.1 On 14 February 2024, the Committee considered the terms of the lease (the “Lease”) and the management agreement (the “Management Agreement”) between the Council and Canvey Island Town Council (the “Town Council”). The report presented to that meeting and the minutes of that meeting are Background Papers to this report.
- 3.2 The Lease is a lease dated 1 March 2010 between the Council and the Town Council in respect of the Lake and its surrounding landscaped areas. The Management Agreement is contained within Schedule 5 to the Lease.
- 3.3 The Committee unanimously resolved that the Chief Executive liaise with the Town Council and the new Monitoring Officer to negotiate a variation to the lease to reflect the replacement of the Common Liaison Committee (as described in the Lease) with a stakeholder group, and for the revised documentation to be brought back to the Committee for pre-scrutiny by the Committee with a view to providing recommendations to Cabinet before the documentation is legally executed.
- 3.4 The legal mechanism for achieving a variation to the Lease is through a Deed of Variation to expressly record what the parties have agreed.

4 DEED OF VARIATION

- 4.1 The Monitoring Officer has prepared a draft Deed of Variation which proposed amendments to the Lease on the basis set out in the 14 February 2024 report to the Committee.
- 4.2 On 17 June 2024, at a meeting of its full council, the Town Council reviewed the draft Deed of Variation and resolved that it be agreed subject to some minor drafting proposals as set out below. These have been reviewed by the Monitoring Officer and are agreed in principle:
- To include more detail about the function of the Lake in Schedule 5 to make it clear that it has a purpose beyond the definition of Land as set out in the Lease.
 - Schedule 5 paragraph 7 – to include ‘or as and when required’ as it is envisaged that quarterly meetings may not be necessary in future years.
 - Schedule 5 paragraph 9 – to make it clear that the final decision will be for the Town Council.
- 4.3 Consequently, the agreed draft Deed of Variation is set out in **Appendix 1** and is now before the Committee for pre-scrutiny.

5 OPTIONS

5.1 Option 1: Do nothing

- 5.1.1 It is open to the Committee to recommend to the Cabinet not to agree to the terms of the draft Deed of Variation. Such a recommendation would, however, inhibit the ambition of the Town Council and the Cabinet to update the operational working arrangements of the partnership which underpins the lease.
- 5.1.2 This would mean that the Common Liaison Committee would remain as currently convened and would not be replaced by the proposed stakeholder group. The problems, risks, challenges and issues arising from the current arrangements, as set out in the 14 February 2024 report to the Committee would not be mitigated.

5.2 Option 2: Accept the draft Deed of Variation as drafted

- 5.2.1 The draft Deed of Variation has been drafted by the Monitoring Officer and agreed in principle by the Town Council. It is therefore in a position where, following Cabinet approval, the Monitoring Officer can make the necessary final amendments requested by the Town Council and it can be legally executed and come into immediate effect thereafter.
- 5.2.2 The Committee may have proposed amendments which are non-material e.g. typographical or formatting errors or minor drafting amendments e.g. those which clarify rather than change the meaning of existing agreed drafting.

These can be agreed by the Monitoring Officer without re-negotiation with the Town Council.

5.3 **Option 3: Recommend material amendment(s) to the draft Deed of Variation**

- 5.3.1 It remains open to the Committee to propose amendments to the draft Deed of Variation which are more than non-material. Those proposed amendments should be framed as recommendations to Cabinet for consideration and negotiation with the Town Council and voted upon by way of formal motion.
- 5.3.2 The draft Deed of Variation represents a consensus as to the Council's position as advised by its most senior legal officer but is yet to have member endorsement. If the Committee proposes additional, material amendments to the draft Deed of Variation then the Monitoring Officer will review the legal, commercial and practical efficacy of those proposed amendments and advise Cabinet as to whether they should be (or are capable of being) taken forward. Further negotiation with the Town Council will then be required to achieve a settled draft which can be re-presented to the Town Council and to Cabinet for final approval.
- 5.3.3 Cabinet is required to consider any such recommendations by the Committee but is not obliged to adopt them. Furthermore, as the draft Deed of Variation as presented to the Committee has been agreed by the Town Council, any additional non-material amendment required by Cabinet would need to go back to the Town Council for agreement, and only if it was so agreed, could it be incorporated into the drafting.

5.4 **Preferred Option**

- 5.4.1 The Preferred Option is Option 2.
- 5.4.2 If members have any non-material amendments, these can be submitted to the Monitoring Officer outside of the meeting.

6 **RISK IMPLICATIONS**

- 6.1 The Town Council is the leaseholder and is, therefore, the body which is legally responsible for the Lake. However, for the reasons set out in detail in the 14 February 2024 report, managing the quality of the water and the future ecological sustainability of the Lake requires the input of multiple agencies who would be represented on the Stakeholder Group. The Deed of Variation makes it easier for the Town Council (and the Borough Council as the reversionary owner) to engage with and receive support from those agencies. This will provide better direction and transparency compared to the Common Liaison Committee arrangements which currently exist.
- 6.2 Working in partnership with the Town Council and other partners enables the Council to protect its reversionary interest and also addresses any reputational risks arising from the management of the Lake. The Deed of Variation will modernise and update the legal arrangements.

- 6.3 A Deed of Variation is not a wholesale re-write of the Lease, it only amends it. A Deed of Variation is, therefore, based on consensus between the parties. If the Committee or the Cabinet decided to completely reconsider the material terms of the Lease then a Deed of Variation would not be possible, because such material changes would amount to the creation of a new lease. A new lease could only be created if both parties agreed it, the surrender of the current lease and it would require additional corporate governance on both sides..

7 CRIME AND DISORDER IMPLICATIONS

- 7.1 The Lake has, unfortunately, been the location of anti-social behaviour in the past. The draft Deed of Variation seeks to address these by creating a new stakeholder group and the terms of reference of that group means that if crime and disorder becomes an issue again, representatives from Essex Police can be invited to attend to provide insight and advice to the Town Council.

8 ENVIRONMENTAL IMPLICATIONS

- 8.1 There are a number of environmental implications arising from the operation of the current lease and management agreement and these are set out in the 14 February 2024 report. The draft Deed of Variation seeks to address these by creating a new stakeholder group which will consider and recognise all stakeholders that have an interest in the function of the Lake.

9 FINANCIAL IMPLICATIONS

- 9.1 Preparing and finalising the Deed of Variation has and will take officer time, all of which is from within existing staffing budgets. There are no other financial implications.

10 LEGAL IMPLICATIONS

- 10.1 Once legally executed, the Deed of Variation will operate to replace the specified parts of the Lease, leaving the remainder intact.
- 10.2 The material changes which the Deed of Variation makes to the Lease are to remove all references to Management Agreement and Feasibility Study and to replace the existing Schedule 5 with a new Schedule 5 to include arrangements for multi-agency working including clarity over when multi-agency arrangements apply; the composition of the Stakeholder Forum; regularity of meetings of the Stakeholder Forum; and reporting requirements.

11 HUMAN RESOURCES IMPLICATIONS

- 11.1 None.

12 EQUALITY AND DIVERSITY IMPLICATIONS

- 12.1 An Equality Impact Assessment has been completed and found there to be no impacts (either positive or negative) on protected groups as defined under the Equality Act 2010.

Document title: Deed of variation.

DATED

DEED OF VARIATION

relating to

CANVEY LAKE, CANVEY ISLAND, ESSEX

Between

CASTLEPOINT BOROUGH COUNCIL (“the Council”)

and

CANVEY ISLAND TOWN COUNCIL (“the Town Council”)

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[HM Land Registry

Council 's title number: EX 23287

Administrative area: ESSEX

Town Council 's title number:

Administrative area:]

This deed is dated [DATE]

PARTIES

- (1) CASTLEPOINT BOROUGH COUNCIL at COUNCIL OFFICES, KILN ROAD, BENFLEET, ESSEX, SS7 1TF (**“the Council”**) **being the Landlord**
- (2) CANVEY ISLAND TOWN COUNCIL at 11 High Street, Canvey Island, Essex SS8 7RB (**“the Town Council”**) **being the Tenant**

BACKGROUND

- (A) This deed is supplemental and collateral to the Lease.
- (B) The Council and the Town Council have agreed to vary the Lease on the terms set out in this deed.
- (C) The Council is entitled to the immediate reversion to the Lease.
- (D) The residue of the term granted by the Lease is vested in the Town Council.

Agreed Terms

1. Interpretation

The following definitions and rules of interpretation apply in this deed.

1.1 Definitions:

Existing Rent: the yearly rent of £1 (one pound) reserved by the Lease.

Lease: a lease of the Property 1 march 2010 and made between (1) CASTLEPOINT BOROUGH COUNCIL and (2) CANVEY ISLAND TOWN COUNCIL

Property: CANVEY LAKE and all surrounding landscaped areas Canvey Island as the same is more particularly delineated on the plan shown edged red demised by the Lease in Schedule 1.

Rent Obligations: all obligations in the Lease relating to the yearly rent including, without limitation, the obligation to pay the yearly rent, the provision for re-entry on the non-payment of the yearly rent, the obligation to pay interest on any arrears of the yearly rent and the provisions for the review of the yearly rent.

- 1.2 References to the **Council** include a reference to the person entitled for the time being to the immediate reversion to the Lease. References to the **Town Council** include a reference to its respective successors in title and assigns.
- 1.3 A reference to the Lease includes any deed, licence, consent, approval or other instrument supplemental to it.
- 1.4 Unless otherwise specified, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.5 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.6 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.7 The Schedules form part of this deed and shall have effect as if set out in full in the body of this deed. Any reference to this deed includes the Schedules.
- 1.8 The expression **Tenant covenant** has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.9 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.10 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.11 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 Except where a contrary intention appears, references to clauses and Schedules are to the clauses and Schedules of this deed and references to paragraphs are to paragraphs of the relevant Schedule.

- 1.14 Clause, Schedule and paragraph headings shall not affect the interpretation of this deed.
- 1.15 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.16 Except to the extent that they are inconsistent with the definitions and interpretations in clause **1** of this deed, the definitions and interpretations in clause [NUMBER] of the Lease shall apply to this deed.

2. Variations to the Lease

- 2.1 From and including [the date of this deed OR [DATE]], the Lease shall be read and construed as varied by the provisions set out in the Schedule.
- 2.2 The Lease shall remain fully effective as varied by this deed and the terms of the Lease shall have effect as though the provisions contained in this deed had been originally contained in the Lease.

3. Town Council's covenant

The Town Council covenants to observe and perform the Tenant's covenants in the Lease as varied by this deed.

4. Registration of this deed

- 4.1 Promptly following the completion of this deed, [the Town Council and the Council shall apply to register this deed at HM Land Registry against the Town Council 's registered title number AA61829
- 4.2 The Town Council and the Council shall ensure that any requisitions raised by HM Land Registry in connection with an application for registration are dealt with promptly and properly.

5. Endorsement

Promptly following completion of this deed both the Council and the Town Council shall each endorse a memorandum of variation upon the Lease and its counterpart in the following terms:

"This Lease has been varied by a Deed of Variation dated [DATE] and made between Castlepoint Borough Council and Canvey Island Town Council".

6. Costs

6.1 Each party shall be responsible for their own legal costs in this matter.

7. Governing law

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

8. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

9. Third party rights

This deed does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Schedule 1 Variations to the Lease

1. **Clause 2.5 of the Lease shall be deleted and be replaced with a new clause 2.5:**

“the Multi Agency Arrangements” are the arrangements for multi-agency working which the Parties will adhere to in deciding the future operating and maintenance arrangements for the Land as set out in Schedule 5”

2. **Clause 5.4.1 to be amended as follows:**

Delete the words “in accordance with the Management Agreement and the Feasibility Study contained therein” and **replace** with “in accordance with the terms of this Lease and, when applicable, in accordance with the Multi Agency Arrangements”

3. Clause 5.7.1.1 to be amended as follows:

Delete the word “Commission” to “Executive”

4. **Replace** the existing Schedule 5 entitled “Management Agreement” with a new Schedule 5 entitled “Multi Agency Arrangements” as appended to this deed.

Executed as a deed by
CASTLEPOINT BOROUGH
COUNCIL

.....

acting by ASSISTANT
DIRECTOR (LEGAL AND
DEMOCRATIC SERVICES)

Executed as a deed by
CANVEY ISLAND TOWN
COUNCIL

.....

acting by

Schedule 5

Multi Agency Arrangements.

1. The purpose of this Schedule is to facilitate the expectations of the Stakeholder Forum in managing and maintaining the Land as demised in the Lease.
2. Stewardship and day to day operations and maintenance of the Land is the sole responsibility of the Town Council under the terms of the Lease;
3. A Stakeholder Forum shall be set up appointed to by the Town Council as a member working group under the terms of its constitution for the purpose of;
 - I. to provide advice and recommendations to the Town Council in relation to the development of future plans for the operation and maintenance of Canvey Lake; and
 - II. to ensure transparency in the administration of the Lease of Canvey Lake by the Town Council.
 - III. to work alongside the Town Council in the event of an Emergency affecting Canvey Lake to review the Town Council's options and provide expert advice and assistance in the resolution and management of the Emergency.
4. The Stakeholders shall comprise of:
 - I. The Town Council as the Tenant for the Land
 - II. The Council as the Landlord for the Land
 - III. Essex County Council as the Lead Local flood Authority
 - IV. The Environment Agency as the national statutory body with responsibilities relating to the protection and enhancement of the environment
 - V. Anglian Water as the Statutory Undertaker
 - VI. Essex Wildlife Trust
 - VII. RSPB
5. Development of future plans for the operations and maintenance of the Land over the Term in so far as they differ from the obligations of the Lease shall be determined by the Town Council following consultation (in good faith) with the Stakeholder Forum;

6. In the case of an Emergency the Town Council must inform and engage with the Stakeholder Forum in good faith. Emergency is defined as “a serious, unexpected, and/or potentially dangerous situation requiring immediate action”
7. Meetings of the Stakeholder Forum shall be on a quarterly basis unless an Emergency in which case will be as soon as reasonably practicable. It shall be chaired by the Town Council.
8. Meetings must have a quorum of 3 any must include one representative from the Town Council, the Council and the Environment Agency present.
9. Voting shall be on a majority show of hands of persons present at the meeting.
10. The Town Council will support the Stakeholder Forum by providing a clerking and secretariat function.
11. Other invitees include one rep each from:
 1. Anglian Water
 2. ECC as the Lead Local Flood Authority
 3. Essex Wildlife Trust
 4. RSPB
 5. Residents
12. As the Stakeholder Forum is not a formal committee, meetings will be held in private and can be via TEAMS but for transparency should report to a meeting of the Full Town Council at least once a year for normal business and as soon as reasonably practicable after an Emergency.