

Report to:	Cabinet Member - Regulatory, Compliance and Corporate Services	Date of Issue:	12th August 2020
		Date of Decision:	20th August 2020
Subject:	Amendment to the Terms of the Building Agreement and Lease of the Carnegie Library, College Road, Crosby		
Report of:	Executive Director of Corporate Resources and Customer Services	Wards Affected:	Blundellsands and Victoria
Cabinet Portfolio:	Regulatory, Compliance and Corporate Services		
Is this a Key Decision:	No	Included in Forward Plan:	No
Exempt / Confidential Report:	No but the figures appearing in Appendix 1 of the Report are NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). The Public Interest Test has been applied and favours the information in Appendix 1 being treated as exempt.		

Summary:

Cabinet Member approval is sought to waive the premium sum, as detailed in Appendix 1 and to minor amendments to the Lease terms, that were contained in a Cabinet Member Report dated 12th May 2020 'Lease of Carnegie Library, College Road, Crosby', which was subsequently approved.

Recommendations:

- 1) That the premium sum Cunard Construction Ltd (CCL) had agreed to pay to the Council on the signing of the Building Agreement be waived and instead the money will be reinvested into the repair and refurbishment of the Library by CCL
- 2) That minor amendments be made to the Lease terms as detailed within the Report

Reasons for the Recommendations:

Since Cunard Construction Ltd (CCL) submitted their offer for the premises in November 2019 they have commissioned further surveys at their own expense which have identified that the costs for the works originally identified in the survey commissioned by the Council have increased and that additional works to those detailed in the report are required to reinstate the property to its former condition. To assist with meeting these additional costs, CCL have requested that the Council waive the premium payment and they in turn will invest this sum and more in the refurbishment of the Library

Alternative Options Considered and Rejected: (including any Risk Implications)

If the Council does not agree to the waiving of the premium CCL have advised that they would not be able to proceed to enter into the Building Agreement and Lease.

As the offer made by CCL was the only one received as a result of the Expression of Interest exercise, the Council would continue to be responsible for the repair and maintenance of the Library which it does not have the resources to do.

What will it cost and how will it be financed?

(A) Revenue Costs

There will be no further revenue costs as the repair and maintenance of the property will become the responsibility of the Lessee.

(B) Capital Costs

There are no capital costs

Implications of the Proposals:

Resource Implications (Financial, IT, Staffing and Assets): There are no additional resource implications arising from the recommendations of this report
Legal Implications: There are no additional legal implications arising from the recommendations of this report
Equality Implications: There are no equality implications

Contribution to the Council's Core Purpose:

Protect the most vulnerable: The proposed development will provide start up space for new and small businesses and a community café which will benefit the wider community
Facilitate confident and resilient communities: Not Applicable
Commission, broker and provide core services: Not Applicable
Place – leadership and influencer: Not Applicable
Drivers of change and reform: Not Applicable

Facilitate sustainable economic prosperity: Modern office facilities will be available for new and small local businesses. Regeneration of a vacant property.
Greater income for social investment: Premium will be reinvested in the premises.
Cleaner Greener: Not Applicable

What consultations have taken place on the proposals and when?

(A) Internal Consultations

The Executive Director Corporate Resources and Customer Services (FD6079/20) and the Chief Legal and Democratic Officer (LD4263/20) have been consulted and any comments have been incorporated into the report.

(B) External Consultations

Not Applicable

Implementation Date for the Decision

Following the expiry of the “call-in” period for the Minutes of the Cabinet Meeting

Contact Officer:	Dominic Ellis
Telephone Number:	0151 934 2751
Email Address:	dominic.ellis@sefton.gov.uk

Appendices:

The following Appendix is attached to this report:

Appendix 1 – Financial Information

Background Papers:

Cabinet Member Report 12th May 2020 Lease of Carnegie Library, College Road, Crosby

[http://smbc-modgov-03/ieDecisionDetails.aspx?ID=11008&\\$LO\\$=1](http://smbc-modgov-03/ieDecisionDetails.aspx?ID=11008&LO=1)

1. Introduction/Background

- 1.1 A Cabinet Member Report titled 'Lease for Carnegie Library College Road, Crosby' was considered on the 12th May 2020 and the recommendations made therein were subsequently approved. A copy of this Report is attached as a web link

2.0 Proposed Changes to the Lease Terms

- 2.1 The draft Building Agreement and Lease were prepared by the Chief Legal and Democratic Officer and forwarded to CCL for approval. CCL reverted to the Council and requested the following changes to terms that had been approved for the reasons detailed below

- 2.1.1 Request for the premium sum, as detailed in Appendix 1, to be paid on the signing of the Building Agreement to be waived:-

CCL commissioned their own survey of the building for cost validation purposes. This identified additional works that were not detailed in the survey commissioned by the Council, including further works to eradicate the dry rot which alone will cost in excess of £30,000. They have also indicated that the costs of materials have increased in the interim.

The survey they have commissioned has identified that due to changes in the market rates the cost of undertaking the works detailed in the original Council survey together with additional works they have identified will cost in the region of £80,000 more than those detailed in the original survey upon which CCL's offer was based. A detailed breakdown of this figure is saved on our files and can be provided if required. The situation has been compounded by Covid 19 and the shortage of materials whereby there has been a subsequent increase in costs of the same. For these reasons, CCL have requested that instead of paying the agreed premium to the Council these monies are used to help plug the gap between the Architect's costs and the true cost of the works. An additional clause will however be added to the Building Agreement and Lease requiring them to invest the waived premium in the property as detailed in 2.1.3 below

- 2.1.2 Request that the Lease be taken in the name of Cunard Living Ltd instead of Cunard's Construction Ltd: -

This has been requested as CCL is a trading construction company and Cunard Living will be the entity which will run the business hub. CCL will be undertaking and paying for the works to upgrade and refurbish the building and it is good practice to separate the asset to the trading company, lowering the risk to the asset and preserving it for future generations.

The Finance Service Manager and Chief Legal and Democratic Officer have been consulted on this proposal as outlined above. Given that CCL will be undertaking the works to complete the refurbishment of the Library before they are granted the Lease and thereafter will pay a peppercorn rental, the risks to the Council are minimal. This request is considered to be acceptable. However, as an additional assurance to the Council CCL will be required to act as a Guarantor under the Lease.

- 2.1.3 Other minor changes to the terms have also been requested as follows

Alienation:- The Lessee shall not assign, sublet or part with possession of the premises without the Landlords prior consent, such consent not be to be unreasonably withheld.

Opening Hours:- The permitted opening hours shall be as per the planning permission granted for the use of the premises.

Statutory Regulations:- to be amended to exclude the wording 'The Lessee shall be DBS checked in accordance with the appropriate legislation and provide evidence of such checks to the Council as necessary'.

Premium Payment:- The Council will agree to waive the premium payment due to the increased costs that been identified in connection with the works required to repair and reinstate the premises. The Lessee is however required to invest an equivalent sum into the repair and refurbishment of the premises.

- 2.2 The Council sought Expressions of Interest in the former Library from people who had previously registered an interest in the property, in October 2019. The particulars contained the following clause in respect of the Rent/Premium 'Rental or premium offers are invited. The rent shall be payable quarterly in advance, exclusive of rates, VAT and all other outgoings. Should a premium be offered this will be payable upon commencement of the Building Agreement.'
- 2.3 The offer made by CCL was a the only one received as a result of this process. The proposals put forward by them will see the Library converted in to a sustainable business hub and community café which will be beneficial and welcome addition to the local community. CCL are an ethical company with social values at the heart of their business and this an opportunity that the Council is keen to take advantage of.
- 2.4 The Chief Legal and Democratic Officer has been consulted on the proposals and he has advised that as procedures outlined above have been followed there are no issues around possible challenge to the proposed course of action.

APPENDIX 1 – FINANCIAL INFORMATION

1.1 The financial offer made by Cunard Construction Ltd as part of their Expression of Interest was to pay the Council a premium in the sum of £25,000 upon the signing of the Building Agreement. A peppercorn rental shall be payable thereafter under the terms of the Lease.

1.2 The availability of the premises has been advertised and marketed to interested parties. The Condition Survey was included with this documentation. The premium offered represents best consideration under Section 123 of the Local Government Act 1972 (as amended)