
CALL-IN OF INDIVIDUAL CABINET MEMBER DECISION - DREAMLAND – COMPENSATION PAYMENTS

To: **Overview and Scrutiny Panel - 11th March 2014**

Main Portfolio Area: **Finance/Regeneration**

By: **Director of Community Services**

Classification: **Unrestricted**

Ward: **Margate Central**

Summary: To receive a report detailing the procedure for making an advanced payment for compensation following the CPO for Dreamland.

For Information

1.0 Introduction and Background

- 1.1 Following the confirmation of the CPO the Council appointed Bidwells to undertake an assessment of value of the freehold and leasehold interest of the land and buildings relating to Dreamland in order to establish the compensation position and to represent the Council in respect of responding to any compensation claims including any formal application for advanced payment as detailed within section 52 of the Land Compensation Act 1973 which provides a right to an advance payment of compensation from the acquiring authority (i.e. the Council).
- 1.2 Bidwells have assessed that there would be a compensation payment due on the loss of income from the Car Park and Amusement Arcade which has triggered the advance payment provisions of the Land Compensation Act 1973.

2.0 Statutory Provision for Advance Payments

- 2.1 Any request under section 52 must be made by the person entitled to the compensation (“the claimant”), must be in writing, must give particulars of the claimant’s interest in the land and (see section 52(2)) *“shall be accompanied or supplemented by such other particulars as the acquiring authority may reasonably require to enable them to estimate the amount of the compensation in respect of which the advance payment is to be made.”*
- 2.2 The amount of an advance payment is 90% of either an agreed compensation figure or the figure for compensation as estimated by the acquiring authority.
- 2.3 When the land is mortgaged, as in this case different rules will apply depending on whether the charge is more than or less than the advance payment. Where the mortgage is less than the advance payment (see section 52ZA), the acquiring authority must reduce the amount paid to the claimant by the amount required to clear the mortgage. The balance may then be paid to the mortgagee if the claimant so requests and the mortgagee consents to the making of the payment. However, a payment must not be made until the interest of any mortgagee whose interest has priority is released

(see section 52ZA(4)(b)). If the value of the charge is more than the advance payment (see section 52ZB), no payment is made to the claimant. Instead, payment is made to the mortgagee provided that the claimant so requests and the mortgagee consents to the making of the payment (see section 52ZB(3)). If there is more than one mortgagee (see section 52ZB(7)), *“payment must not be made to a mortgagee until the interest of each mortgagee whose interest has priority to his interest is released.”*

- 2.4 If it should appear to the acquiring authority that its original estimate is too low, there are provisions in sections 52, 52ZA and 52ZB which allow the estimate to be revised.
- 2.5 Section 52ZC(2) places the onus on the claimant to provide the acquiring authority *“with such information as they may require to enable them to give effect to those (ie sections 52ZA and 52ZB) sections.”* Section 52ZC(3) provides that a request for an advance payment under section 52ZA or section 52ZB must be made in writing and must be accompanied by the written consent of the mortgagee.
- 2.6 As the Dreamland site is subject to a number of charges which exceed the value of the advance payments that our valuers have recommended we are in the process of seeking clarification from the claimants’ representatives as to which of mortgagees should be paid.
- 2.7 It should be noted that where the amount or aggregate amount of any advance payment made on the basis of the acquiring authorities estimate of the compensation exceeds the compensation as finally determined or agreed the excess shall be repaid.

3.0 Options

- 3.1 Due to legal requirements payments are due to former landowners/mortgagees.

4.0 Corporate Implications

4.1 Financial and VAT

- 4.1.1 The Council has factored in sufficient monies in the capital programme to deal with the anticipated level of compensation.

4.2 Legal

- 4.2.1 There is a legal requirement to make an advance payment, regardless of any decision taken later at Lands Tribunal.

4.3 Corporate

- 4.3.1 The delivery of the Dreamland project supports the following priorities in the Corporate Plan Priority 1: *Economy and Growth*, Priority 2 *Tackling disadvantage*, Priority 5 *Parking & Transportation*, Priority 8 *Culture & diversity*, Priority 10 *Working in partnership*, Priority 11 *Preserving our public spaces*.

4.4 Equity and Equalities

- 4.4.1 There are no equity or equality issues arising directly from this report.

5.0 Recommendation

- 5.1 That the report be noted.

Contact Officer:	Madeline Homer – Director of Community Services
Reporting to:	Sue McGonigal – Chief Executive

Annex List

None	N/A
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Background Papers

Title	Where to Access Document
None	N/A

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager
Legal	Peter Reilly, Litigation Solicitor