

OFFICER DELEGATED DECISIONS FORM

Subject of decision:

Acquisition of Homes England Land at Middlehaven – Dockside North – Due Dilligence Prior to Option Agreement

Text of decision:

The Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support to be presented with the due diligence checks/documents relating to SubZero Ltd, prior to the legal completion on the Option Agreement relating to the Dockside North Land as per the Executive report.

Declarations of Interest by any member or relevant local government body:

Not applicable.

Date of decision:

11th April 2019

Reason for decision:

1. The Executive report requires the presentation of Subzero (Middlehaven) Ltd due diligence, including company credit check(s) and Director checks, to be presented, prior to the final sign off of the Option Agreement documents. Legal were consulted on what checks would be deemed sufficient, and this has been collated. All checks were completed and a summary is provided below.
2. A range of checks were carried out and information obtained from SubZero (Middlehaven) Ltd. This due diligence process supersedes all previous checks and arrangements with previous companies related to the developer (Twenty13 Developments Limited and Cool Runnings NE Ltd). The current legal arrangements have been consolidated so that all related transactions lie solely with SubZero (Middlehaven) Ltd. Please see below for details:

Certificate of incorporation combined with proof of identity and address for each director and company secretary – SubZero (Middlehaven) Ltd is a standalone company with no legal relationship with any other company. (attached Certificate of Incorporation and proof of identity)
3 years of company accounts – New Company therefore no accounts available -
company structure – Rachael Howson Director and 100% shareholder (Director Check attached).
The due diligence process relates to the company structure as at the publication of this paper. Should the company structure change between the grant of the option agreement and the completion of the lease agreement, Middlesbrough Council reserves the right to conduct additional due diligence checks on the company, and its directors, at the time of contractual completion.

List of company assets – No Assets

List of company liabilities – No Liabilities

Public Liability Insurance Certificate – N/A

Equality & Diversity Policy – N/A

Environmental Policy – N/A

Health & Safety Policy – N/A

Quality policy – N/A

Credit Check – (attached – this was carried out on all known former companies relating to current Director)

OFFICER DELEGATED DECISIONS FORM

Based solely on the limited trading history of SubZero (Middlehaven) Ltd, the financial information available and received, does not allow for a definitive conclusion to be drawn. However, the extensive pre-conditionality included within the (multiple) legal agreement(s) relating to this transaction, is deemed appropriate to protect Middlesbrough Council's position and value for money considerations; ensuring that the land transaction does not complete without significant evidence being presented, and approved, by Middlesbrough Council.

Developer and Scheme Credentials – SubZero (Middlehaven) Ltd has not delivered any specific related scheme that can be assessed as part of their credentials; So far, the majority of the work has been in preparation for the delivery of the snow centre and therefore has been centred on viability assessments, demand studies and work to secure the development plot, this includes detailed negotiations with Homes England (with whom the previous Option and Lock Out Agreement was held with) as well as discussion with other snow box operators and potential funding models have been explored. In addition to this, a substantial amount of work has been carried out with potential operators (for both the main snow box, as well as food and leisure operators) to determine market interest, potential rents, floorspace, etc. At this stage, this is work in progress, and will be determined once detailed planning exercise is concluded, in parallel with QS costing for the overall scheme. Pre-planning detailed application advice has taken place, with the snow centre delivery team, and is progressing against expectations.

It is entirely typical for businesses to create a special project vehicle (SPV) company as a mechanism to deliver a given scheme. This is a common business structure, which has been referenced in the body of the associated report. This arrangement raises no material concerns, particularly given the comprehensive pre-conditionality included within the contractual arrangements.

Given the legacy legal agreement inherited from Homes England, as part of the land acquisition arrangements; and the background work undertaken to bring forward the development proposal, SubZero (Middlehaven) Ltd are best positioned to deliver the development proposal, as outlined.

Funding – at this stage the detailed funding package is yet to be determined, although detailed discussion with potential funders and operators is nearing conclusion. Therefore no financial information accompanies this form. However, the Council is protected via the legal agreements (see below for specific clauses) and requires evidence of the final funding package and assurances on developer delivery potential, prior to releasing the land, therefore absence of such at this stage is not a valid reason not to conclude the Option Agreement.

Option Agreement

3. The onward disposal to Subzero (Middlehaven) Limited, is governed by four legally binding agreements. It is understood that collectively they provide sufficient protection for the Council, and require a cohort of detailed information and financial assurances prior to the land being released. Please see below for a selection of key points taken out to relay such. The four documents are named listed A-D.

A) Option Agreement – conditional agreement whereby the developer must satisfy two main elements of conditionality, PRIOR to securing a formal lease on the site. The principal controls are:

"Planning Obligation" a statutory obligation that is acceptable to the Developer and otherwise necessary for or will materially assist in either:(a) the obtaining of Outline Planning Permission, Detailed Planning Permission and/or Reserved Matters Approval; or

OFFICER DELEGATED DECISIONS FORM

(b) the carrying out of the Proposed Development, including an obligation under section 106 of the Town and Country Planning Act 1990, sections 38 or 278 of the Highways Act 1980 or section 104 of the Water Industry Act 1991;

"Planning Longstop Date" means 14 May 2020; (*Planning permission must be submitted and determined by May 2020 - 10 months to submit – 3 months to be determined*)

(B) Lease agreement – Setting out the terms of a premium leasehold. Upfront lease premium followed by peppercorn rent. 250 years from September 2006. £875k lease premium plus clauses for cost cover inflation / cost of borrowing (93,375) Total payable is 971,625.

(C) Building License agreement – Indemnifying the Council when allowing the developer on site to construct the development, prior to financial completion of the lease agreement – NB – lease would be activated by this time but payment may not have been completed.

(D) Overage agreement – entitles Middlesbrough Council to a share in any uplift value of the development over the next 25 years of the lease agreement. Capped at £381,300 and subject to allowable deductions.

- **"Funding Condition"** means the Developer providing satisfactory written evidence to the Owner (who shall act promptly and reasonably and where necessary shall notify the Developer of any outstanding requirements) that the Developer has sufficient financing or funds pledged or committed to it to pay the proper costs of carrying out and completing the Proposed Development including but not limited to: (a) a final development appraisal and cashflow reflecting the approved scheme (in order to identify, inter alia, the peak funding requirement); (i) confirmation as to how the scheme will be funded and evidence from an independently regulated third party that:

(A) the funding has been secured

(B) the funding has been ring-fenced for the Proposed Development and should be for no less than the peak funding requirement

- if funds for the Proposed Development are coming from a related party or if a borrowing facility has been obtained and it is not in the name of the Developer, confirmation that a performance guarantee will be provided to the Owner from the company whom is providing the funding or by a company with sufficient resource to fund the development or if not available that a Performance Bond has been obtained (and/or including a Guarantor entering into the Building Licence to give a guarantee of the Developer's obligations thereunder)

"Conditions Longstop Date" means 14 January 2021; (following satisfaction of the planning obligation – the developer have eight months to demonstrate funding capacity (against a current development appraisal) – to the Council's satisfaction)

4. Existing scheme of delegation for Officer Decision

- 1.1 The scheme of delegation derives from the Executive Report dated 14th March 2019 – Acquisition of Homes England Land at Middlehaven – Dockside North This report approved:

The grant of these options to Subzero will be subject to appropriate due diligence. Albeit the lease contract has recovery mechanisms and performance milestones, this process will include Middlesbrough Council conducting a credit check on Subzero and the directors of the Subzero will

OFFICER DELEGATED DECISIONS FORM

be assessed for their background and suitability, via a number of due diligence checks including business/ director verification, developer credentials, such as director disqualification check conducted through Companies House and a consideration of track record. These checks will be presented to the Executive Director of Growth and Place and the Strategic Director of Finance, Governance and Support, for approval.

Service area:

Growth and Place / Finance Governance and Support

Name of officer making decision:

Officer	Position	Signature
Kevin Parkes	Executive Director for Growth and Place	
James Bromiley	Strategic Director Finance Governance and Support	

Other options considered (if any):

No realistic alternatives at this stage given the acquisition of land from the HCA was purchased on the predication of the back-to-back disposal (via Option Agreement) to SubZero Ltd

Has an Impact Assessment been completed Yes/No – if yes please attach to the decision.

The Executive Report dated 14th March 2019 determined that *"this acquisition is not judged to present any equality and diversity issues"*.

List of background papers (do not list if contain exempt/confidential information)

Executive Report – Acquisition of Homes England Land at Middlehaven – Dockside North – 11th April 2019