

**LAND AND PROPERTY OPTIONS REPORT
PORTBALLINTRAE AND WEST BAY PORTRUSH LAND ISSUES**

17 February 2015

Linkage to Corporate Plan	
Strategic Priority	Providing Civic Leadership
Objective	Ensure good governance and management of Council business and the delivery of services
Lead Officer	Chief Executive

Background: Council considered a detailed report on Portballintrae and West Bay Portrush land issues at its September 2014 meeting and agreed, inter alia, to authorise the preparation of a more detailed land and property Options Report, including independent valuations and legal advice.

Section 5.1 of the September 2014 report referred to the following 11 issues to be resolved:

- (1) Public access to Shelly Beach
- (2) Request for an automated barrier.
- (3) Condition of Seaport Avenue
- (4) Regularisation of ownership and repairing conditions of slipway
- (5) West Bay Promenade Title
- (6) Regularisation of title to beach and infrastructure opposite Seaport Lodge
- (7) 150 year Lease for hotel site – covenant issue
- (8) Amendments to lands currently on a 15 year lease at Sweeney’s Wine Bar
- (9) Lands immediately to the west of Sweeney’s Wine Bar
- (10) Land to the front of Seaport Lodge
- (11) Land surrounding Seaport Lodge

Mr Ciaran Campbell, Solicitor and Mr Kenneth Crothers, Chartered Surveyor have provided legal and valuation advice on the issues: (Appendix 2 and 3).

Based on legal advice, items **1, 2, 3 and 4** can be dealt with individually and recommendations on these issues are contained in Section 2 of the report.

SECTION 1

1.1 West Bay Promenade Title

This issue relates to disputed title. As indicated at section 5 of the legal report two separate legal opinions have confirmed that Council has by acts of occupation and maintenance obtained possessory title to land at West Bay Promenade. Council could pursue the matter through two legal routes, namely First Registration of the land at Land Registry or litigation seeking a declaration as to ownership.

	Options	Pros	Cons
1	Apply for first registration of the West Bay promenade lands	<ul style="list-style-type: none"> • Council likely to succeed 	<ul style="list-style-type: none"> • Lengthy and costly process • Likely to be challenged by Sweeney family
2	Litigation, seeking declaration as to Council ownership of West Bay promenade lands	<ul style="list-style-type: none"> • Council in strong position. Potential for award of costs if Council successful 	<ul style="list-style-type: none"> • Could be costly legal process and uncertain outcome
3	Accept unencumbered Title to the promenade running from the boundary of Sweeney family property to the High Water Mark	<ul style="list-style-type: none"> • Minimal cost • Secures Council's ownership of West Bay Promenade 	<ul style="list-style-type: none"> • Requires Council agreement to other land exchanges

1.2 Regularisation of title to beach and infrastructure opposite Seaport Lodge

Section 1b of the Legal Report, confirms that paper ownership to the beach area from High Water Mark to the grass bank is vested in the Council, but signage and physical barriers assert ownership by the Sweeney family.

	Options	Pros	Cons
1	Assert Council ownership of the beach from High Water Mark to the grass bank	<ul style="list-style-type: none"> • Meets public demands 	<ul style="list-style-type: none"> • Likely to be challenged by Sweeney family • Council unlikely to succeed in litigation due to acts of ownership by Sweeney family • Council could incur substantial legal costs
2	Grant the Sweeney family unencumbered Title to the disputed beach and infrastructure opposite Seaport Lodge	<ul style="list-style-type: none"> • Potential to settle other land issues in Portrush and Portballintrae 	<ul style="list-style-type: none"> • Negative public opinion

1.3 150 Year Lease – Removal of Covenants

In March of this year, Council agreed not to remove covenants from a 150 Year Lease that Mr & Mrs Sweeney hold for lands fronting Bayhead Road Portballintrae and for which planning approval has been granted for a 21 bedroom boutique hotel.

In light of the Sweeney family's challenge to Council's ownership of the West Bay Promenade and in conjunction with a number of land exchange proposals submitted by the Sweeney family, there is scope for Council to revisit this decision.

Legal and valuation advice on this issue are contained in section 4 of the Legal Report and section 1-12 of the Valuation Report.

	Options	Pros	Cons
1	Adhere to Council's previous decision and allow this to go to the Lands Tribunal	<ul style="list-style-type: none"> • Meets public expectations 	<ul style="list-style-type: none"> • Sweeney family likely to succeed in Land Tribunal

			<ul style="list-style-type: none"> • Cost of defending Lands Tribunal application • Adverse costs awarded against Council if Sweeney family were successful before the Tribunal • Loss of negotiating power in terms of compensation and power to impose a positive covenant for hotel use only • Potential loss of economic benefits of hotel development
2	Extend the term of the 150 year Lease to 250 years and agree to the modification of the covenants to the extent necessary to enable development of the 21 bedroom hotel	<ul style="list-style-type: none"> • Avoid Lands Tribunal • Potential to settle other land issues in Portrush and Portballintrae • Negotiating power retained by Council for settlement sum • Positive economic benefits for Portballintrae from the construction of a hotel 	<ul style="list-style-type: none"> • Negative public opinion

1.4 Amendments to lands currently on a 15 year lease at Sweeney's Wine Bar

Mr Sweeney currently holds a 15 year lease for land adjacent to the proposed hotel site. The land is to be used only for amenity land appurtenant to Sweeney's Wine Bar. As the Wine Bar is no longer operating, the Sweeney family have submitted a proposal that this Lease is extended to be coterminous with the hotel site Lease.

	Options	Pros	Cons
1	Retain 15 Year Lease as is	<ul style="list-style-type: none"> • Secures land for future Council use 	<ul style="list-style-type: none"> • Unresolved issue • Potential impact on 21 bed hotel development
2	Existing 15 year lease to be merged with the hotel site Lease bringing it up to a 250 year Lease	<ul style="list-style-type: none"> • Potential to settle other land issues in Portrush and Portballintrae • Contributes to the hotel site development 	<ul style="list-style-type: none"> • Negative public opinion • Removes options for Council to use land in the future for amenity purposes

1.5 Lands immediately to the West of Sweeney's Wine Bar

A small parcel of land measuring about 180 square metres, immediately to the west of Sweeney's Wine Bar has been included by the Sweeney family as an exchange option.

	Options	Pros	Cons
1	Retain land	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None
2	Transfer land to the Sweeney family by way of a long term lease of around 250 years at a nominal rent.	<ul style="list-style-type: none"> • Potential to settle other land issues in Portrush and Portballintrae 	<ul style="list-style-type: none"> • Negative public opinion

1.6 Land to the front of Seaport Lodge

This land exchange proposal relates to a portion of land running from the eastern boundary of Seaport Avenue to the High Water Mark for a distance of approximately 100m and is included in the proposals by the Sweeney family to facilitate protection and stabilisation works to the cliff area.

	Options	Pros	Cons
1	Retain land	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Retain responsibility for maintenance
2	Transfer land to Sweeney family by way of a long term lease of around 250 years at a nominal rent	<ul style="list-style-type: none"> Potential to settle other land issues in Portrush and Portballintrae Transfer responsibility for maintenance to Sweeney family 	<ul style="list-style-type: none"> Negative public opinion

1.7 Land surrounding Seaport Lodge

The Sweeney family have submitted a proposal for the transfer of approximately one acre of land to the north and west of Seaport Lodge. The land is agricultural in nature and forms part of a 21 acre site which Council currently rents to a local farmer for grazing purposes. The land is within a Countryside Policy Area and Local Landscape Policy Area, where development is unlikely to get approval.

	Options	Pros	Cons
1	Retain land	<ul style="list-style-type: none"> Meet public expectations 	<ul style="list-style-type: none"> Lost revenue Unresolved issue and deterrent to achieving overall settlement with Sweeney Family
2	Transfer land to the Sweeney family by way of a long term lease of around 250 years at a nominal rent with covenant preventing development	<ul style="list-style-type: none"> Potential to settle other land issues in Portrush and Portballintrae 	<ul style="list-style-type: none"> Could compromise permissive right of way secured at time of adverse possession land transfer Negative public opinion

CONCLUSION

With the objective of securing a global settlement in respect of all issues, the following proposal has emerged as being the best possible business solution for the Council:

Sweeney family will pay a net premium of £35,000 for Council's agreement to the following 7 proposals:

- 1.1 West Bay Promenade Title – Option 3
- 1.2 Regularisation of title to beach and infrastructure opposite Seaport Lodge – Option 2
- 1.3 150 Year Lease – Removal of Covenants – Option 2
- 1.4 Amendment 15 year lease at Sweeney's Wine Bar – Option 2
- 1.5 Lands immediately to the West of Sweeney's Wine Bar – Option 2

1.6 Land to the front of Seaport Lodge – Option 2

1.7 Land surrounding Seaport Lodge – Option 2

Recommendation: It is recommended that Council makes an offer to the Sweeney family on the basis of the recommended options listed at 1.1 – 1.7 above for a net premium of £35,000.

SECTION 2

2.1 Shelly Beach Access

The permissive right of way through lands recently acquired by the Sweeney family through adverse possession does not give access to the Shelly Beach. Legal advice suggests that Council should weigh the cost of providing and maintaining access to this beach against the relatively limited public use of the facility.

	Options	Pros	Cons
1	Construct public walkway through Council owned agricultural lands around Seaport Lodge and down to the Shelly Beach	<ul style="list-style-type: none">Meets public and tourist demands	<ul style="list-style-type: none">Cost outweighs benefits
2	Do nothing	<ul style="list-style-type: none">Allows long term strategy to be developed for coastal walkway in Seaport Avenue Area	<ul style="list-style-type: none">Negative public opinion

Recommendation: Council is recommended to accept Option 2.

2.2 Request for an automated barrier

Section 2 of the legal advice dismisses the claim by the Sweeney family that the current barrier constitutes an unlawful impediment of their right of way either currently or in the future.

	Options	Pros	Cons
1	Construct automated barrier	<ul style="list-style-type: none">Resolves issue with Sweeney family	<ul style="list-style-type: none">Unnecessary cost
2	Contribute to the cost of constructing an automated barrier	<ul style="list-style-type: none">Ditto	<ul style="list-style-type: none">Ditto
3	Do nothing	<ul style="list-style-type: none">No cost	<ul style="list-style-type: none">Unresolved issue with Sweeney family

Recommendation: Council is recommended to accept Option 3.

2.3 Condition of Seaport Avenue

Section 3 of the legal advice deals with the condition of Seaport Avenue and advises that Council has discharged its responsibilities with regard to the condition of the road and that, apart from regular monitoring, no further action is required in this regard from a legal perspective.

	Options	Pros	Cons
1	Monitor the condition of the road as recommended by RPS	<ul style="list-style-type: none"> Meets Council's responsibilities 	<ul style="list-style-type: none"> Officer time/cost
2	Interim targeted improvements to sea defences	<ul style="list-style-type: none"> Protect long-term stability of Seaport Avenue 	<ul style="list-style-type: none"> Costs unknown
3	Do nothing	<ul style="list-style-type: none"> No cost 	<ul style="list-style-type: none"> Possibly open to challenge by the Sweeney Family

Recommendation: Council is recommended to accept Option 1.

2.4 Regularisation of ownership and repairing conditions of slipway

This slipway is contained within the area of land covered by the 150 year Lease and legal advice is that responsibility for maintenance should rest with the Sweeney family.

	Options	Pros	Cons
1	Formalise responsibility for the slipway, placing responsibility for repair and maintenance with the Sweeney family	<ul style="list-style-type: none"> Remove liability for repair/maintenance from Council Formalises an otherwise vague arrangement for repair/maintenance of the slipway. 	<ul style="list-style-type: none"> None
2	Retain responsibility for repair and maintenance	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Cost of repairs and public liability

Recommendation: Council is recommended to accept Option 1.