



Herbert Warehouse
The Docks
Gloucester
GL1 2EQ
Friday, 1 November 2013

TO EACH MEMBER OF GLOUCESTER CITY COUNCIL

Dear Councillor

You are hereby summoned to attend a **MEETING OF THE COUNCIL** of the **CITY OF GLOUCESTER** to be held at the Civic Suite, North Warehouse, The Docks, Gloucester, GL1 2EP on **Monday, 11th November 2013 at 18:00** hours for the purpose of transacting the following business:

AGENDA

1. **APOLOGIES**

To receive any apologies for absence.

2. **DECLARATIONS OF INTEREST**

To receive from Members, declarations of the existence of any disclosable pecuniary, or non-pecuniary, interests and the nature of those interests in relation to any agenda item. Please see Agenda Notes.

3. **SUSPENSION OF COUNCIL PROCEDURE RULES**

To waive Council Procedure Rules to allow the relevant Officers to address the Council in respect of item 4 on the agenda.

4. **LLANTHONY SECUNDA PRIORY (Pages 1 - 68)**

To receive the report of the Chief Executive on the called-in decision from Overview and Scrutiny Committee concerning the release of covenants relating to Llanthony Secunda Priory (LSP).

Yours sincerely

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Julian Wain
Chief Executive

NOTES

Disclosable Pecuniary Interests

The duties to register, disclose and not to participate in respect of any matter in which a member has a Disclosable Pecuniary Interest are set out in Chapter 7 of the Localism Act 2011.

Disclosable pecuniary interests are defined in the Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 as follows –

<u>Interest</u>	<u>Prescribed description</u>
Employment, office, trade, profession or vocation	Any employment, office, trade, profession or vocation carried on for profit or gain.
Sponsorship	Any payment or provision of any other financial benefit (other than from the Council) made or provided within the previous 12 months (up to and including the date of notification of the interest) in respect of any expenses incurred by you carrying out duties as a member, or towards your election expenses. This includes any payment or financial benefit from a trade union within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992.
Contracts	Any contract which is made between you, your spouse or civil partner or person with whom you are living as a spouse or civil partner (or a body in which you or they have a beneficial interest) and the Council (a) under which goods or services are to be provided or works are to be executed; and (b) which has not been fully discharged
Land	Any beneficial interest in land which is within the Council's area. For this purpose "land" includes an easement, servitude, interest or right in or over land which does not carry with it a right for you, your spouse, civil partner or person with whom you are living as a spouse or civil partner (alone or jointly with another) to occupy the land or to receive income.
Licences	Any licence (alone or jointly with others) to occupy land in the Council's area for a month or longer.
Corporate tenancies	Any tenancy where (to your knowledge) – (a) the landlord is the Council; and (b) the tenant is a body in which you, your spouse or civil partner or a person you are living with as a spouse or civil partner has a beneficial interest
Securities	Any beneficial interest in securities of a body where – (a) that body (to your knowledge) has a place of business or land in the Council's area and

(b) either –

- i. The total nominal value of the securities exceeds £25,000 or one hundredth of the total issued share capital of that body; or
- ii. If the share capital of that body is of more than one class, the total nominal value of the shares of any one class in which you, your spouse or civil partner or person with whom you are living as a spouse or civil partner has a beneficial interest exceeds one hundredth of the total issued share capital of that class.

For this purpose, “securities” means shares, debentures, debenture stock, loan stock, bonds, units of a collective investment scheme within the meaning of the Financial Services and Markets Act 2000 and other securities of any description, other than money deposited with a building society.

NOTE: the requirements in respect of the registration and disclosure of Disclosable Pecuniary Interests and withdrawing from participating in respect of any matter where you have a Disclosable Pecuniary Interest apply to your interests and those of your spouse or civil partner or person with whom you are living as a spouse or civil partner where you are aware of their interest.

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For further details and enquiries about this meeting please contact Penny Williams, 01452 396125, penny.williams@gloucester.gov.uk.

For general enquiries about Gloucester City Council’s meetings please contact Democratic Services, 01452 396126, democratic.services@gloucester.gov.uk.

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- Do not stop to collect personal belongings;
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- Do not re-enter the building until told by a member of staff or the fire brigade that it is safe to do so.



Meeting:	Council	Date:	11th November 2013
	Cabinet		11th November 2013
Subject:	Llanthony Secunda Priory		
Report Of:	Chief Executive		
Wards Affected:	All		
Key Decision:	No	Budget/Policy Framework:	No
Contact Officer:	Julian Wain, Chief Executive		
	Email:	julian.wain@gloucester.gov.uk	Tel: 396200
Appendices:	A) Cabinet report – 11th September 2013 B) Overview and Scrutiny call-in decision – 14th October 2013 C) List of heritage assets D) S.106 agreement E) Transfer document F) Option agreement G) Llanthony Secunda Priory Trust’s position statement		

1.0 Purpose of Report

- 1.1 To receive the called in decision on the release of covenants relating to Llanthony Secunda Priory (LSP) from Overview and Scrutiny Committee, and to agree a way forward on this matter.

2.0 Recommendations

- 2.1 Council is asked to **RESOLVE**:

- a) Which of the options at paragraph 3.8 Council wishes to approve;
- b) To discharge the 2004 Section106 agreement;
- c) That authority be delegated to the Chief Executive and the Head of Legal and Policy Development, in consultation with Leader to negotiate and sign any documents necessary to effect the decision of Council.

and to **RECOMMEND** to Cabinet:

- d) Which parts of the Option agreement should be removed and whether or not such removal is conditional on changes being made to the Trust’s Memorandum and Articles of Association;
- e) What amendments should be made to the Transfer agreement;

- f) That the Trust's reasonable legal fees in effecting any necessary changes to the relevant documents be paid by the Council;
- g) That authority be delegated to the Chief Executive and the Head of Legal and Policy Development, in consultation with the Leader to negotiate and sign any documents necessary to effect the decision of Council.

2.2 Cabinet is asked to **RESOLVE**, subject to consideration of any views expressed by Council:

- a) Which parts of the Option agreement should be removed and whether or not such removal is to be conditional on changes being made to the Trust's Memorandum of Articles of Association;
- b) What amendments should be made to the Transfer agreement;
- c) That the Trust's reasonable legal fees in effecting any necessary changes to the relevant documents be paid by the Council;
- d) That authority be delegated to the Chief Executive and the Head of Legal and Policy Development, in consultation with the Leader to negotiate and sign any documents necessary to effect the decision of Cabinet.

3.0 Background and Key Issues

3.1 On 11th September Cabinet received a report recommending the removal of restrictive covenants contained within the transfer agreement (attached at Appendix E) and the S.106 agreement relating to LSP (attached at Appendix D). The Cabinet report is attached as Appendix A. Cabinet agreed the report in the terms set out below:

- 1) The restrictive covenants be removed in accordance with the request from the Llanthony Secunda Priory Trust (LSPT).
- 2) Planning Committee be requested to vary the S.106 agreement relating to the property.
- 3) The resolutions in (1) and (2) above be subject to agreeing a provision for continuing public access to the property and that the City Council shall have the continued right to nominate a Trustee.

3.2 However, the decision was called in by Councillor Hilton with the requisite number of supporters. The call-in was heard by Overview and Scrutiny Committee on 14th October and the matter referred to Council. The call-in decision is attached as Appendix B.

3.3 The call-in has been referred to Council as Overview and Scrutiny Committee was of the view that the decision of Cabinet on 11th September 2013 was contrary to the policy set by Council when it decided to transfer the Priory site to the LSPT in 2006, in particular, the Council decision to secure reversion of the site to the Council if the Trust failed. It was also suggested that Cabinet had insufficient information on which to reach the decision it reached.

- 3.4 Article 4 of the Constitution does not specifically identify decisions in relation to the Priory land as being reserved to Council and decisions in relation to the site are not therefore considered by the Council's Monitoring Officer to be part of the Council's Policy Framework. Any decisions which are not reserved to Council are for the Executive to take (i.e. Cabinet, individual Cabinet Members or Officers acting under delegated powers).
- 3.5 However, it is not clear from the Council report and minutes of the decision in 2006 to transfer the land to the Trust whether or not Council intended to reserve any future decisions on this matter itself and it appears to be in the public interest to have the matter widely debated. This is one of the reasons why the Chief Executive and the Monitoring Officer concluded that the call-in request was valid.
- 3.6 Since the call-in, matters have moved on and further advice has been obtained. Further information is now available, the Trust's position has been updated and alternative options are being presented.
- 3.7 The Council's role on call-in is to consider whether or not Cabinet's decisions are in accordance with the budget and policy framework and Council normally has a number of options in relation to call-in. These are to:
- 3.7.1 Agree with Overview and Scrutiny Committee that the decision taken by Cabinet was contrary to the Council's policy framework and then either:
 - a) amend the Council's policy to encompass the decision made by Cabinet, in which case the original Cabinet decision stands; or
 - b) require Cabinet to reconsider the matter in accordance with the policy framework;
 - 3.7.2 Disagree with Overview and Scrutiny that the Cabinet decision was contrary to the policy framework and endorse the decision taken by Cabinet; or
 - 3.7.3 Disagree with Overview and Scrutiny that the Cabinet decision was contrary to the policy framework and refer the decision back to Cabinet with Council's comments.
- 3.8 The complication in this particular case is that Council is not now just being asked to consider a call-in of Cabinet's decision, but is also being asked to consider additional information and options and the revised position of the Trust. For this reason, the advice of the Monitoring Officer is that Council has the following options in this particular case:
- 3.8.1 If Council is of the view that its decision in 2006 amounted to a 'policy' decision, then it can either
 - a) amend its policy position to encompass the original decision taken by Cabinet, or
 - b) amend its policy position to allow for the updated requests being made by the Trust and refer the matter back to Cabinet to take a decision in light of the amended policy position.

3.8.2 If Council is of the view that its decision in 2006 did not amount to a 'policy' decision, it can still refer the decision back to Cabinet with its comments in light of the current information.

3.9 Discharge of the S.106 agreement would ordinarily fall within Planning Committee's Terms of Reference. However, Council can choose to exercise these powers itself and, in the case of the current matter, it would be helpful for Council to consider the S.106 aspect at the same time as it considers the land aspect, as both are interlinked. The Council's Planning Code of Practice requires that Members are trained in planning before they determine planning applications. Whilst the discharge of a S.106 agreement is arguably not a 'planning application', it would be advisable for relevant Members to receive appropriate planning training and this will be arranged in advance of the meeting.

4.0 Matters for Consideration

4.1 Llanthony Secunda Priory

4.1.1 The Priory lies to the south of the city centre, adjacent to the Gloucester and Sharpness Canal next to Gloucestershire College, and in the midst of the Gloucester Quays mixed use regeneration scheme. It was established by Augustinian monks fleeing from their attacked priory in Wales, and has had a rich and varied history from times of prosperity to times of misuse and neglect. The Council acquired the site in 1975 and held it until 2007, protecting the site from almost certain destruction and investing significant sums in repairs and protection measures, but without achieving significant enhancement, regeneration or any lasting solution.

4.1.2 For much of the time that the Council held the Priory it was constrained by its context, as it was surrounded by low grade and unsightly land uses which made it an unlikely site for heritage or amenity purposes. However, the biggest difficulty was that the Council could not raise the major capital investment required to restore the buildings, particularly as some grant sources were denied to it as a local authority.

4.1.3 The surviving buildings are of national significance and include the grade 1 Mediaeval two-storey roofed 'Range' between Outer and Inner Courts. The building is known as the 'Priory Lodgings' and has an attached Grade 2 Listed Victorian Farmhouse. This is the central focal heritage building in the site. In addition, there are five sets of Grade 1 listed remains, all protected as a scheduled ancient monument. The full list of heritage assets is attached at Appendix C.

4.2 The S.106 agreement

4.2.1 As members are aware much change and regeneration has been effected in the area of the Priory in recent years, the most significant of which was the building of the new college. Planning permission for this was granted in September 2004 and it was considered that the development would enhance the setting of the listed buildings and the scheduled ancient monument. In October 2004, a S.106 agreement was entered into between Gloscat, as they were then known, British Waterways Board (BWB), and the

Council (acting as both Local Planning Authority and Land owner). Gloscat was the developer of the land and British Waterways Board was the owner of the land, for the purposes of the S.106 agreement. This S.106 agreement, which was intended to begin the process of bringing the priory back into use, is attached at Appendix D.

- 4.2.2 There are three significant and relevant parts to the agreement. Part 1 gives the Council the right to hire college facilities built on the land for a minimum of 12 days per annum (toilet, car parking, surveillance etc).
- 4.2.3 Under Part 2, the Council permits BWB to use the Priory grounds for educational and recreational purposes, in a manner sensitive to the character of the Priory for so long as the college development is occupied for educational purposes and grants a right to BWB to pass and repass over Priory grounds.
- 4.2.4 Part 3 commits BWB to using reasonable endeavours to work with the Council to secure a management agreement comprised of a strategy between BWB and the Council, for beneficial use of the Priory for the citizens of Gloucester and the future use and preservation of the Priory.
- 4.2.5 Since the S.106 agreement was entered into, Gloscat has become bound by the S.106 agreement obligations relating to BWB.

4.3 The establishment of the Trust

- 4.3.1 Council agreed to sell the land to the Trust in February 2006, resolving to keep a budget to sustain the Trust in the early years and for a covenant to be imposed so that, if the Trust failed, ownership of the site and grounds would revert to the Council.
- 4.3.2 The Trust was incorporated as a company in February 2007 and, in May, correspondence between Council officers and the Trust clearly shows that the Council was of the view that it must have a “guaranteed executive two person presence on the Trust at all times” and that it was agreed that this would consist of an elected Member and a senior Council officer.
- 4.3.3 The Trust’s objects were changed in May of that year to read as follows:
 - The objects of the Trust are to preserve for the benefit of the people of Gloucestershire and of the nation the historical architectural and constructional heritage that may exist in and around Gloucestershire in buildings (including any structure or erection and any part of a building) of particular beauty or historical architectural or constructional interest.
 - In particular to manage, restore and preserve for the benefit of the public Llanthony Secunda Priory in the City of Gloucester.
 - To advance the education of the public in the historical, architectural and constructional heritage in Gloucester, in particular the Llanthony Secunda Priory building.

4.3.4 The Trust was granted charitable status in June 2007. The Trust is a charitable trust, established as a company limited by guarantee.

4.3.5 Following the flooding of July that year, the Council meeting of 26th July 2007 was cancelled, so the Chief Executive used his urgency powers to take a decision that:

- 1) The freehold of Llanthony Secunda Priory be transferred to the Trust and a 'perpetuity' of 21 years for reversion to the Council be agreed.
- 2) To support the provision stating that the Council will have an option not an obligation to buy back the priory in the event of the Trust's failure.
- 3) To endorse and note the appointment of Councillor Martyn White and Philip Staddon as Directors of the LSP Charitable Trust.

4.3.6 This decision was subsequently endorsed by Council in September and the land transferred and the option agreement completed in November 2007. A small dowry was provided for the first few years.

4.4 The transfer document and the option agreement

4.4.1 A copy of the transfer document and option agreement is at Appendix E and F.

4.4.2 The property was transferred subject to, and with the benefit of, the 2004 S.106 agreement (Appendix D). The LSPT covenanted with the Council to observe and perform the S.106 obligations insofar as they related to the property and to indemnify the City Council against claims for breach of those obligations. In terms of the Council's use of the property, the transfer required the LSPT to allow the Council to make use of the property for a minimum of 12 days and a maximum of 20 days per annum. The LSPT also covenanted not to use the property for any purpose other than the preservation of an historical building and site including culture education and recreational access for the public.

4.4.3 The Council, by the terms of the option agreement, has an option to repurchase the property at a price of one pound if certain trigger events take place. These trigger events are:

- insolvency of the Trust;
- a failure to keep the property clean and tidy;
- a deterioration in the condition of the property;
- removal and non-replacement of the City Council's Directors.

Additionally, the Trust cannot transfer, lease, agree to lease, charge mortgage or grant easements within the perpetuity period (21 years).

4.5 The Trust Board

4.5.1 The current trustees are:

- Jeremy Williamson
- Sir Henry Elwes, KCVO
- Sarah Gilbert
- Paul Toleman
- Elizabeth Griffiths
- Graham Howell
- Philip Staddon
- Martyn White
- Peter Evans
- Ian Stainburn

4.6 Progress of the restoration

4.6.1 LSPT has matured and achieved some success. It has to date invested around £350,000 and removed a number of grade 1 Listed buildings from the national 'at risk' register. It has undertaken some extensive site clearance work around the heritage structures and around the pond. It has developed strong links with neighbours, both businesses and residents, as well as the College. There has been significant local volunteer input.

4.6.2 The Trust has now developed a major heritage project for which it seeks funding, in particular, from the Heritage Lottery fund. The project proposes the restoration and reuse of the main range which would then be let to Gloscol to use the space for a variety of learning activities. The rent for this would provide the core funding for maintenance of the site in the longer term.

4.6.3 An interpretation centre would be developed in the stable block in which it is proposed to develop a programme of events, including commercial hires, the revenue from which will further support the site's running costs and activities.

4.7 The request for release of the obligations and the rationale

4.7.1 The Trust believes that, in order for the project to succeed, they need to be released from the obligations of the 2004 S.106 agreement and the transfer and option agreements.

4.7.2 As far as the S.106 agreement is concerned, while it made sense at the time, the events obligation has not been used, and the Council has never called on the use of Gloscol facilities for events. Events that have taken place at the Priory have been put on by the Trust. The obligation predates the establishment of the LSPT which wishes to have exclusive use of the grounds for events, in order to generate funds for its activities. Finally, the proposal to grant Gloscol a new lease of the restored mediaeval range complex signals a new chapter in the life of the Priory and will provide the Trust significant income. It is proposed to grant a new deed of easement to allow Gloscol access across the Priory.

4.7.3 In the transfer, the restrictive covenant that prevents, amongst other things, the grant of a lease, prevents the securing of income to sustain running costs in future. Secondly, the option agreement is difficult for LSPT from the perspective of prospective tenants, may be unattractive to other potential funders and could in itself prevent the securing of mortgages or grants against the property. Given the maturity and success to date of the Trust, this does feel at this time an unnecessary provision. Finally, the Trust originally requested the removal of the Council's right to nominate trustees or directors. However, by the time of the Cabinet decision they had already conceded this point while noting that it was important to have the right balance of skill sets on the Trust.

4.7.4 Your officers advised, and continue to advise that the Trust's case is sensibly based and that there is no need for these restrictions at this point in time.

4.8 The requirements of members at Overview and Scrutiny Committee

4.8.1 The discussion at Overview and Scrutiny Committee, confirmed by subsequent conversations with Group Leaders, indicates that the three areas where Scrutiny still required agreement with the Trust were:

- 1) The maintenance of public access to the Priory Grounds.
- 2) The continued right of the Council to appoint Directors.
- 3) Most importantly, the opportunity for the Priory to revert to the Council in the event of the Trust failing.

4.9 Charity Law

4.9.1 External legal advice has been sought from Veale Wasbrough Vizards LLP on how charity law interacts with the restrictions in the Option agreement, in particular the option for transfer of the Priory land back to the Council if a Trigger Event occurs and the restriction on selling, leasing or otherwise disposing of the Priory land. A number of scenarios are set out below to explain the consequences of potential decisions on this matter.

4.9.2 **If the Option remains in place and there is a Trigger Event**

- 1) The Option would be in place until 2028. If a Trigger Event within the definition in paragraph 1.1.9 of the Option Agreement during this period, the Council could seek to exercise the Option.
- 2) Part 7 of the Charities Act 2011 (the "2011 Act") would apply to the disposal of the Property by the Trust. Guidance issued by the Charity Commission in CC28 indicates that the grant of an option is not in itself a disposal of land but is rather an agreement to dispose. The disposal does not take place unless and until the option is exercised and a sale is completed. However, the Guidance indicates that Trustees should normally comply with the requirements in Part 7 before granting the option. If they do not do so, it will not usually be possible to comply with

these requirements when the time comes to complete following the exercise of the option, and it will then be necessary to obtain an Order from the Charity Commission before the sale can be completed. There is no suggestion that the Charity Commission was involved at the time of the Option Agreement and it therefore appears that no consent was obtained to the grant of the Option.

- 3) If the Council were to seek to exercise the Option, the Trustees of the Trust would need to comply with the restrictions in Part 7 of the 2011 Act. Part 7 provides that if the disposal is to a 'connected person', the disposal can only take place if it is authorised by an Order of the Charity Commission. The definition of 'connected person' under the 2011 Act includes "a person who is the donor of any land to the charity." On the basis that the transfer of the Property to the Trust would be treated as a gift of land to the Trust, the Council would be a 'connected person' for these purposes so that a transfer of the Property to the Council following the exercise of the Option could only take place if it was first authorised by an Order of the Charity Commission. This would be the case even if the Council were to pay full value for the Property.
- 4) The Option Agreement provides at paragraph 3 that the Trust "shall not transfer, agree to transfer, lease, agree to lease, charge, mortgage or grant any easement or otherwise deal with or dispose of the Property during the Option Period." This means that during the Option Period, the Property could not be sold to meet the liabilities of the Trust if it were to be dissolved. After the expiry of the Option Period, or if the Option is removed, there would be no such restriction so that the Property could potentially be sold to meet the liabilities of the Trust. The provisions in the Option Agreement and the Transfer to the Council, including in particular the restrictions on use (clause 11.4 of the Transfer), may mean that it would be difficult for the Trust to sell the Property to a person to be used for commercial purposes.

4.9.3 If the Option agreement is removed

- 1) If the Option is removed and the Trust becomes insolvent, the Trust would be wound up in accordance with its Memorandum and Articles of Association. The dissolution clause in the Memorandum and Articles of Association of the Trust provide that:

"If the Trust is dissolved, the assets (if any) remaining after provision has been made for its liabilities must be applied in one of more of the following ways:

- (a) By transfer to one of more other bodies established for exclusively charitable purposes within the same as or similar to the Objects [of the Trust].*
- (b) Directly for the Objects or charitable purposes within or similar to the Objects [of the Trust].*
- (c) In such other manner consistent with charitable status as the Commission approve in writing in advance."*

- 2) It is clear from the wording of the dissolution clause that assets are to be applied first in meeting the liabilities of the Trust. After the expiry of the Option Period, or if the Option were removed, there would be no such restriction, so that the Property could potentially be sold by the Trust as long as they could comply with the restrictions on disposal of land in Part 7 of the 2011 Act. In essence, these restrictions mean that they would need to obtain a qualified surveyor's report and having considered that report be satisfied that the proposed terms were the best that could reasonably be obtained.
- 3) The Option Agreement provides that the Trust "shall not transfer, agree to transfer, lease, agree to lease, charge, mortgage or grant any easement or otherwise deal with or dispose of the Property during the Option Period." This means that during the Option Period, the Property could not be sold to meet the liabilities of the Trust if it were to be dissolved. After the expiry of the Option Period, or if the Option agreement is removed there would be no such restriction so that the Property could potentially be sold to meet the liabilities of the Trust.

4.9.4 If the Option agreement remains in place and the Trust is solvent but is wound up

- 1) If the Trust was solvent on winding-up, so that there was no need for the Property to be sold to meet the liabilities of the Trust, the restriction on disposal in the Option Agreement as referred to in paragraph 4.9.2 (4) above would mean that the Property could only be sold or transferred during the Option Period if the Council were to agree to the sale or transfer in question.

4.9.5 If the Option agreement is removed and the Trust is solvent but is wound up

- 1) If the Trust was solvent on winding-up, so that there was no need for the Property to be sold to meet the liabilities of the Trust, the Trust would be wound up in accordance with its Memorandum and Articles of Association and its assets applied as set out in paragraph 4.9.3(1) of this report.

4.9.6 Removal of the restriction on disposal in clause 3 of the Option Agreement

- 1) From the Council's perspective, the risk in removing the restriction on disposals completely is that the Trust could not only enter into a lease with Gloucestershire College (the "**College**"), but could sell other parts of the Property or mortgage the Property.
- 2) The Option Agreement containing this restriction could be amended by supplemental agreement so as to allow the lease to the College to be granted. Careful thought would need to be given to consequential changes needed to the Option Agreement, particularly in relation to the definition of "the Option" in paragraph 1.1.2. Consideration could also be given to amending this provision so as to allow other disposals if the Council gave prior written consent to the disposal in question.

4.9.7 Position regarding rights of the Council to appoint Trustees of the Trust

- 1) There is no provision in the Memorandum and Articles as they stand that gives any right to the Council to appoint or nominate any persons to be Trustees of the Trust. The Memorandum and Articles provide for one-third of the Trustees to retire by rotation at each AGM and for persons to be appointed at the AGM to fill vacancies arising. The Trustees have a power to co-opt Trustees, but a co-opted Trustee only holds office until the next AGM.
- 2) The Trust's negotiating position indicates that the Trust would be prepared to amend the Memorandum and Articles so as to provide that the Council would have the right to nominate one Trustee (see paragraph A of the Position Statement). Such an amendment would need to be approved by a special resolution of the members of the Trust.
- 3) The Trust Articles could, however, be amended at some point in the future by a further special resolution of the members of the Trust to take out the Council's right to appoint a Trustee. A special resolution is a resolution passed either (a) at a general meeting by 75% of the members voting on the resolution in person or by proxy or (b) by way of written resolution by 75% of the members.
- 4) There are mechanisms that could potentially be used to prevent the provision in the Articles regarding the appointment of a Trustee by the Council being amended, such as the use of a member's agreement or the use of entrenched provisions under section 22 of the Companies Act 2006. The Council would need to be a member of the Trust for any of these mechanisms to be used. The Trust's Articles currently provide for an 'open' membership, i.e that membership is open to any individual or organisation interested in promoting the objects who (i) applies to the Trust in the form required by the Trustees (ii) is approved by the Trustees and (iii) signs the Register of Members or consents in writing to become a member either personally or (in the case of a member organisation) through an authorised representative.

4.9.8 Other points to note

- 1) The restrictions in Part 7 of the 2011 Act do not apply where the transfer is to a charity with the same or very similar charitable objects for less than the best price that can reasonably be obtained. If therefore the Council or a third party were to establish a charity with the same or very similar objects to those of the Trust, a transfer of the Property from the Trust to the new charity could take place without the need to first obtain an order of the Charity Commission.
- 2) There are a number of considerations to bear in mind when a local authority holds property as charity trustee, both at the stage of registering that charity with the Charity Commission and also on a

longer term basis in terms of the management and administration of the charity.

- 3) The Trust's Negotiating Position suggests that the Option in the Option Agreement should be removed, but does then indicate that one approach would be for the option to only fall away if and when a successful Round 2 HLF bid was made by the Trust. If a position that is acceptable to both parties in relation to the Option can be reached, appropriate amendments could be made to the Option Agreement.
- 4) The Transfer contains a provision restricting the use of the Property, providing that:

"The Transferee will not use the Property for any purpose other than the preservation of a historical building and site including cultural education and recreational access for the public."

It is likely that the legal advisers to the College would request that this wording be amended prior to the grant of any lease to the College by the Trust to make it clear that the use of part of the Property by the College was a permitted use.

4.10 Subsequent negotiations and the Trust's current position

- 4.10.1 A meeting was held on Tuesday 22nd October between officers representing the Council, the Trust and a legal representative on behalf of the College. At that meeting, it was agreed that the right to public access would be enshrined in the memorandum and articles of the company and the right to appoint directors would be contractually agreed, providing such appointment would be in consultation with the Trust. The right to appoint directors which had been in dispute at Scrutiny was conceded. The 2004 S.106 agreement could therefore be removed and all aspects of the transfer agreement relating to the Council's right to hold events at the Priory could also be removed, if Council was so minded. The Council proposed retaining the Council's option to repurchase in the event of the Trust's failure and the Trust representatives went off to consider their position with regard to the Council having the option to repurchase.
- 4.10.2 Following mature reflection, the Trust has arrived at a negotiation position a copy of which is attached at Appendix G.
- 4.10.3 In essence, the Trust confirms its agreement to have a nominated trustee by the Council, with discussion and consultation on the appropriate skill sets. The Trust would however, prefer to move to one trustee rather than two.
- 4.10.4 There is no difficulty with the right to public access and it is proposed to put this on the title deeds.
- 4.10.5 On the matter of the reversion, the Trust has continued difficulties with this and believes that the reversion may not be in accordance with charity law and the Trust's legal obligations under charity law. The Council has taken external legal advice on this issue and the advice is set out in paragraph 4.9

above. By way of compromise, the Trust is suggesting that the option should be offered until such time as financial security is attained. This would be defined by the Trust as and when they have obtained a successful Round 2 HLF pass. Their current application is for a Round 1 pass, and the typical time that will elapse to Round 2 is 18 months to 2 years. By the time this is obtained, the Trust should also have signed a long lease on the Priory which will guarantee a secure income for maintenance purposes. Your officers believe that this should be part of the definition and I understand this would be acceptable to the Trust.

4.10.6 Your officers would recommend this to you as a sensible and effective solution.

5.0 Financial Implications

5.1 There are no direct financial implications in the report as a result of the current debate. However, it is possible that financial implications would arise for the Council should the Council come into possession of the Priory.

5.2 In the position statement at Appendix F, the Trust has asked the Council to consider paying the Trust's reasonable legal fees to make the necessary changes to the title documents and Trust Memorandum and Articles, if the Council agrees to the Trust's proposals.

6.0 Legal Implications

6.1 The subject of this report is the legal implications concerning possible release of covenants and these are covered at length in the body of the report.

7.0 Risk & Opportunity Management Implications

7.1 The risks that are most critical at this point are:

- 1) That the trustees resign and wind up the Trust and hand the property back to the Council.
- 2) The HLF bid fails which may result in the same outcome.
- 3) In the longer term, it is possible that the Trust might fail.

8.0 People Impact Assessment (PIA)

8.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact; therefore a full PIA was not required.

9.0 Other Corporate Implications

Community Safety

9.1 None specific to the report.

Sustainability

9.2 None specific to the report.

Staffing & Trade Union

9.3 None specific to the report.

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Meeting:	Cabinet	Date:	11th September 2013
Subject:	Llanthony Secunda Priory Trust		
Report Of:	Cabinet Member for Regeneration & Culture		
Wards Affected:	Westgate		
Key Decision:	No	Budget/Policy Framework:	No
Contact Officer:	Richard Webb, Asset Manager	Tel: 396183	
	Email: richard.webb@gloucester.gov.uk		
Appendices:	Extract from LSPT correspondence		

FOR GENERAL RELEASE

1.0 Purpose of Report

- 1.1 A brief overview of current situation and implications of agreeing to Llanthony Secunda Priory Trust's (LSPT) requests, as set out in their letter dated 22.04.2013.

2.0 Recommendations

- 2.1 Cabinet is asked to **RESOLVE** that the restrictive covenants be removed in accordance with the request from LSPT.
- 2.2 Cabinet is asked to request Planning Committee to vary the S106 agreement relating to the property.

Both the above are subject to agreeing a provision for continuing public access to the property.

3.0 Background and Key Issues

- 3.1 The subject property is owned by Llanthony Secunda Priory Trust. The trust took a transfer of the property from Gloucester City Council in 2007. The transfer included a number of covenants for the benefit of the City.
- 3.2 Covenants included the right for the City Council to use the property for events (as defined within the agreement between British Waterways, the College and the City Council dated 13th Oct 2004) for a minimum of 12 days and a maximum of 20 days per annum.

- 3.3 The tripartite agreement, dated 13th October 2004, sets out the Section 106 Agreement as agreed and documented.
- 3.4 For 21 years, from date of the transfer, the Council retain a right to buy back the property for £1 if the Trust or successors in title fail to meet certain obligations; if the Trust become insolvent, do not upkeep the property to an agreed standard, or if the Trust dismiss and do not replace Council representatives from the board.
- 3.5 The Trust has a desire to develop and restore the medieval range in order to let this part of the property and generate income. We are informed that the revenue will cross fund the continued maintenance of the site. Gloscol have been identified as the potential tenant. The Trust also has plans to develop the stable block. We are informed that the project is supported by English Heritage.
- 3.6 In order to develop the property the Trust would require significant funding. They have identified Heritage Lottery Fund as the only real source capable of delivering the scale of funding required. A grant application has been submitted to HLF in April 2013.
- 3.7 LPST has requested that the Council discharge the obligations as set out in the original Section 106 Agreement. LPST have also requested that the restrictions on title contained in the transfer document are deleted. The Trust have set out the reasons for these requests in a letter dated 22.04.2013. An extract from this correspondence is attached as Appendix 1.
- 3.8 The aims of the Trust, as stated in their Articles of Association are as follows:
1. To preserve for the benefit of the people of Gloucestershire and of the nation the historical, architectural and constructional heritage that may exist in and around Gloucestershire in buildings (including any structure or erection and any part of a building) of particular beauty or historical architectural or constructional interest.
 2. In particular to manage, restore and preserve for the benefit of the public Llanthony Secunda Priory in the City of Gloucester.
 3. To promote the use of Llanthony Secunda Priory for educational, cultural and recreational purposes including skills training.
- 3.9 The Trust have held a number of events at the property that have been open to the public, these include: Stone Festival, Base for historic re-enactors, Giffords Circus, Public cinema screenings, outdoor theatre and various uses by neighbouring occupier Gloscol which will be further developed going forward.

4.0 Implications of agreeing to request

4.1 Removing restrictive covenants

- 4.1.1 The use is currently restricted to; "preservation of a historical building and site including cultural education and recreational access for the public". By lifting this restriction we would allow LPST to use the property for any purpose (subject to gaining necessary planning consents).

- 4.1.2 The current arrangement places repairing obligations on LPST. In the event that these are not met GCC have the ability to take back the property.
- 4.1.3 By removing restrictive covenants LPST will be able to let the property in order to generate income. We are informed this will be used to cross fund the repairs.
- 4.1.4 GCC would no longer have the right to take back the property (as per circumstances mentioned in clause 3.4).
- 4.1.5 There would no longer be the right of allowing public access.
- 4.2 Discharge parts 1, 2 & 3 of Schedule 1 of Sec 106
 - 4.2.1 Alteration of the Agreement would be by way of deed of variation. We believe that this would require consent from Planning Committee.
 - 4.2.2 GCC would waive the right to hold events at the property, either directly or via an approved 3rd party. This right has not been well used but does offer potential for generating revenue.
 - 4.2.3 GCC would forego their right to “introduce rules relating to the use of the Priory grounds by the Owner (LSPT)”
 - 4.2.4 Part 3 relates to the Management Agreement and would result in the deletion of the following LSPT obligations:
 - a) *the beneficial use of the Priory for the benefit of the citizens of Gloucester.*
 - b) *the future use and preservation of the Priory provided that the Council will not require that the Owner be responsible for the upkeep and maintenance of any buildings and structures within the Priory*
 - 4.2.5 Relinquish formal right to fill 2 director positions on the board of LSPT. This would result in a more autonomous structure for the Trust and less influence for the City Council.
- 4.3 The purpose of the report is to outline the potential implications of the requests made by LSPT. Once a decision has been made as to whether all, some or none of the requests are agreed to Officers will be able to advise on how any changes can be implemented.
- 4.4 By way of conclusion, if Members agree to the recommendations contained herein the Trust will be granted a greater amount of autonomy. They will be able to continue to develop the property which, in turn, will generate income to help cross fund the repairs and maintenance of this important heritage asset. The City Council will forego their rights to hold events at the property but will seek to formally agree a continuation of right of access for the public.

5.0 Financial Implications

5.1 Minimal.

(Financial Services have been consulted in the preparation this report.)

6.0 Legal Implications

6.1 All relevant legal implications have been considered.

(Legal Services have been consulted in the preparation this report.)

7.0 People Impact Assessment (PIA):

7.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact; there a full PIA was not required.

8.0 Other Corporate Implications

Community Safety

8.1 None.

Sustainability

8.2 None.

Staffing & Trade Union

8.3 None.

Background Documents: Extract from LSPT correspondence

The Legal Issues

There are two sets of legal legacies that need to be dealt with to enable the project to proceed. The first relates to a S. 106 Agreement under the Town and Country Planning Act 1990, entered in respect of the Gloscol development. The second relates to restrictions and obligations arising from the 2007 transfer of the site.

(i) The Gloscol S.106

Planning permission for the new Gloscol was granted in 2004 (several years before the establishment of LSPT). There was an associated S.106 Agreement. With regard to Llanthony, the Agreement principally obligated the college to make facilities (toilets, catering etc) available to the Council for up to 12 events per annum within the priory grounds. In return for this provision, the college was granted the rights to use the grounds for amenity purposes, subject to some low level maintenance such as litter picking. This made sense at the time. However, there are now good reasons to remove these obligations. The reasons include:

- The events obligation has been little used over the years – it is not thought that the council has ever called on the use of the Gloscol facilities for events.
- The obligation predates LSPT which wishes to have exclusive use of the grounds for events (to generate funds for its activities).
- The proposal to grant Gloscol a lease of the restored medieval range complex signals a new chapter and it is proposed to grant a new deed of easement (making the S106 access rights redundant)

LSPT formally requests that the Council agrees to formally discharge the S106 in its entirety.

(ii) Transfer Obligations and Restrictions

There are a number of obligations that need to be removed to enable the project to proceed.

First, there are restrictive covenants that would prevent the LSPT entering a lease with a tenant which will effectively provide the lifeblood of the site and sustain its running costs into the future.

Second, there is the "option agreement" which allows the Council to buy the site back should LSPT fail – this provision would be unacceptable to the prospective tenant and it, in any event, now feels unnecessary given the maturity and success of LSPT.

Third, there is the board representation from the city council – whilst it is highly likely that LSPT will continue to seek Council representation on its board it does not

feel that this should now be an on-going obligation. The board has a very strong skillset and low director turnover. It is now a mature, stable and competent Trust.

LSPT formally requests that the Council agrees to formally waive / delete the relevant terms identified in the Transfer dated 08 November 2007.

APPENDIX B

MINUTES OF OVERVIEW AND SCRUTINY COMMITTEE 14 OCTOBER 2013

CALL-IN OF THE CABINET DECISION RELATING TO LLANTHONY SECUNDA PRIORY

The Chair drew Members' attention to the guidance note which set out the procedures and time constraints to be adhered to during the debate.

Councillor Jeremy Hilton addressed the Committee in support of the Call-In

Councillor Jeremy Hilton summarised the reasons for his Call-In of the Cabinet decision made on 11 September 2013 relating to the Priory. In particular, he wanted to be certain that removing or amending the covenants relating to the land was the correct thing to do and that the right for the Council to appoint two Directors to the Trust Board needed to remain. He added that he was concerned that the financial and legal implications within the original report to Cabinet on 11 September 2013 including a letter from the Trust were not detailed enough. Despite receiving further information from the Trust since his Call-In he was not convinced that the restrictive covenants needed to be removed. Councillor Hilton queried if the Section 106 agreement could be amended to allow the grounds to be used for public access. Councillor Hilton believed there should have been cross-party consultation on this matter leading to a decision on the Trust's future being made by Full Council. He stated that the decision taken by Cabinet was unsound for the reasons given in his Call-In Notice.

Points of Clarification on Councillor Hilton's submission

The Chief Executive provided the Committee with points of clarification on matters relating to:-

- Cabinet's right to make the decision
- The fact that some documents referred to by Councillor Hilton were Trust documents and that the Council had no automatic right to see them
- The Heritage Lottery Fund (HLF) bid.

Councillor Haigh asked Councillor Hilton why he believed the Cabinet decision was unsound. Councillor Hilton responded that he had the right, as did any other Council Member, to call in the decision, for the reasons given in the Call-In notice.

Councillor James addressed the Committee

Councillor James explained that he would be sharing his presentation with Mr Jeremy Williamson who was representing the Trust.

Councillor James commented that he believed there was sufficient information within the body of the report and stressed the need to secure a sustainable long-term future for the Trust in order to build on the success of the organisation since its formation in 2007. He urged the Committee to listen carefully to Mr Williamson's presentation and to show confidence in the Trust.

Mr Williamson gave a presentation which highlighted the following points:-

- The history and importance of the site
- The Trust's objectives
- The Trust's achievements
- Research carried out
- The money already spent by the Trust to improve the site
- Events held
- Long term strategy and business plan
- Trustees both current and future proposals – Trust keen to formalise role of City Councillors
- Details of the HLF bid including anticipated outcomes
- Legal constraints
- Observations on step-in rights

Points of Clarification on the Decision Maker's submission

The Chair enquired if the HLF audited the approved bids afterwards. Mr Williamson confirmed that was the case.

Councillor Haigh commented that the Section 106 agreement and the restrictive covenants were quite different and asked what the Trust was seeking to vary. The Chief Executive responded that the documents were complex and that there were a range of issues tied to the Section 106. It was intended to remove all the restrictive covenants.

Councillor Haigh questioned paragraph 4.2.5 of the report which referred to the removal of the right to appoint two Director posts whilst Mr Williamson had suggested that there was no such right. The Chief Executive confirmed that there was a difference of opinion on this matter; the Council being clear that there was still such a right. However, as the Trust had conceded before the Cabinet decision its willingness to receive nominations, this was no longer relevant to the Committee's deliberations.

Councillor Beeley asked how the College intended to use the site. Mr Williamson responded that the College wanted access and also to use the restored central buildings as an exhibition/conference centre.

Cross-examination of Witnesses by Committee

Councillor Field queried whether the Trust would object to having City Councillors as directors if they lacked the necessary skills. Mr Williamson said that it was important that all trustees had useful and appropriate skillsets as the trustees had to work to make things happen.

Councillor Wilson was concerned that having 'faith' in the Trust as stated in the draft Cabinet minutes was not enough. He also believed it should not be left to one or two nominees to secure public access. Councillor James commented that the draft minutes did not entirely capture the discussion at Cabinet and stressed the importance of trusting organisations to work in accordance with their aims and objectives.

Councillor Haigh remarked that there was not enough clarity arising from the discussions or from the draft minutes of Cabinet and that she was uneasy about the way the decision had been made. She suggested that, as the original decision had been made by Council, that this matter should also be referred to Council. Councillor James responded that the Trust was now mature and allowing the Call-In would have an impact on its future. The Committee's decision should not be based on the draft Cabinet minutes.

Councillor S Witts noted a perceived contradiction between Mr Williamson's presentation and paragraph 4.1.5 of the report which stated that there would no longer be any right to public access. The Chief Executive confirmed that Cabinet had taken the decision in the full knowledge that access would be preserved, as the Trust had already committed to this.

Councillor Chatterton said that he believed that the City Council had a responsibility to protect the site and that it should remain with the Council should the Trust fail. He queried why continued public access should pose a problem and confirmed that he had no issue with the Section 106 which was an entirely separate matter for Planning Committee to consider, but was keen to keep the covenant. In response, Mr Williamson said that he had to be guided by the lawyers. The Heritage Lottery Fund was the only way of providing the necessary funding and unless the legal agreements were tied up there would be no anchor tenant and no Heritage Lottery monies.

Councillor Wilson speculated whether the agreement could be revised with the covenants left as they were. Mr Williamson remarked that his had not been discussed with the anchor tenant. He added that the recent newspaper coverage regarding the Call-In had already damaged the Trust's reputation.

Summing Up - Councillor Hilton

Councillor Hilton disagreed that any damage had been done to the Trust and said that effective scrutiny of a Cabinet decision was necessary to ensure it was the right one. He wanted to see the Trust succeed, but if it failed, he sought the reassurance of

knowing the grounds and buildings would come back to the City Council. He commented that Councillors might not have the skillsets of architects and accountants but they would ensure that matters were dealt with in the public interest. He asked the Committee to support the Call-In and refer it to Council.

On a point of clarification, the Council's Head of Legal and Policy Development reminded Members that when they were appointed to serve on outside bodies their primary obligation was to that organisation and they were not required to represent the public interest when acting in this capacity.

Summing Up – Councillor James

Councillor James stated that Cabinet was fully entitled to make this decision. He considered that the Trust was now mature and competent and it needed the Heritage Lottery Funding to secure the future of the Priory. He said that referring the Cabinet decision to Council could endanger this. Councillor James suggested that the Committee should instead allow further discussions with the lawyers and the anchor tenant. He added that there was a risk that unless the Heritage Lottery Bid succeeded, the Trust could decide to wind-up and pass the Priory back to the Council. This was not something the administration wanted to happen.

Decision of the Committee

Having considered all the issues raised in the Call-In, the response of the Cabinet Member and Mr Williamson, and the advice of the Chief Executive and the Head of Legal and Policy Development, the Committee:-

RESOLVED That the Cabinet decision of 11 September 2013 (minute 35) relating to Llanthony Secunda Priory Trust be referred back to Council for reconsideration for the reasons stated in the Call-In request.

In referring the matter back, the Committee requested that the following recommendation be added:-

- **That the issue of the covenant be clarified and separated from the Section 106 agreement and simplified.**

List of Heritage Assets

- 1) Grade 1 Mediaeval two storey roofed “Range” between Outer and Inner Courts. Construction is timber framing above masonry. The building is known as the “Priory Lodgings” and has an attached Grade 2 Listed Victorian Farmhouse. This is the central focal heritage building in the site.
- 2) Grade 1 Remains of The “Great Stables” range on south side of inner court.
- 3) Grade 1 Remains of an impressive large Tithe Barn.
- 4) Grade 1 Remains of an impressive Outer Gatehouse.
- 5) Grade 1 Remains of precinct wall north of the outer gatehouse.
- 6) Grade 1 Remains of precinct wall south of the outer gatehouse.

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Dated 13th October 2004

GLOUCESTER COLLEGE OF ARTS AND TECHNOLOGY

-and-

BRITISH WATERWAYS BOARD

-and-

GLOUCESTER CITY COUNCIL

LEGAL OBLIGATION

under Section 106 of the Town and Country

Planning Act 1990 relating to

Land at Llanthony Wharf Llanthony Road Gloucester

 **BURGESS
SALMON**

THIS AGREEMENT is made the *13th* day of *October* Two Thousand and Four

BY:

- 1) **GLOUCESTER COLLEGE OF ARTS AND TECHNOLOGY** of Brunswick Road Gloucester GL1 1HU (hereinafter called the "Developer") of the first part and
- 2) **BRITISH WATERWAYS BOARD** whose offices are situated at Willow Grange Church Road Watford WD17 4QA (hereinafter called the "Owner") of the second part and
- 3) **GLOUCESTER CITY COUNCIL** of North Warehouse The Docks Gloucester GL1 2EP (hereinafter called the "Council") of the third part

WHEREAS:

- 1) The Owner is the freehold owner (subject to all matters contained or referred to on the charges register under title number GR272421) of the land at Llanthony Wharf Llanthony Road Gloucester shown for purposes of identification only edged red on the Plan
- 2) The Council is the local planning authority as defined in the Act for the purposes of planning obligations imposed pursuant to the provisions of Section 106 of the Act and the freehold owner of the Priory
- 3) The Developer made a planning application under reference number 04/00607/FUL for the erection of a further education college incorporating a nursery/creche facility with associated parking and landscaping to the Council
- 4) At a meeting on 7 September 2004 the Council resolved to grant the Planning Permission subject to the Owner and the Developer entering into this Agreement

NOW THIS DEED WITNESSETH as follows:-

1 **Definitions and Interpretation**

1.1 In this Deed the following expressions shall have following meanings set out below:-

- (a) **"the Act"** means the Town and Country Planning Act 1990 and reference to the Act shall include any amending or replacing legislation for the time being in force
- (b) **"Commencement of the Development"** means the carrying out of any act pursuant to the Planning Permission which constitutes a material operation within the meaning of Section 56(4) of the Act excluding any operations relating to soil investigations, investigations or works in respect of land contamination, archaeological investigations, site clearance, demolition of buildings or structures on the Property, diversion of services and/or the erection of temporary fencing, hoardings or site compound buildings and "Commence" "Commenced" and "Commence the Development" shall be construed accordingly
- (c) **"the Development"** means the development described in recital 3
- (d) **"the Events"** means events organised by the Council (or an approved third party provided that the provisions of clause 1(g) of Schedule One are adhered to) made available to all paying members of the public (or non-paying members of the public where the Council consider it to be appropriate) which are cultural or educational in nature and/or provide a form of entertainment or tourist attraction that is sensitive to the character of the Priory and any adjoining land including the Property
- (e) **"the Facilities"** means any combination of toilet facilities car parking refreshments (vending or full service) security surveillance and a reception desk (located in the building shown on plan number 1735 100 revision M as part of the Planning Application) all located within the Property

- (f) **"the Highway Works Contribution"** means the sum of One Hundred Thousand Pounds (£100,000) as Index Linked
- (g) **"Index"** means the Road Construction Tender Price Index (1990 = 100) Road Type Factors – New Construction Location Factors – South West (issued by the Department of Trade and Industry) or in default thereof is determined by reference to determination by a single Arbitrator appointed in accordance with this Agreement
- (h) **"Index Linked"** means adjusted in line with movements in the Index between the date of this Agreement and the date that the Highway Works Contribution falls due
- (i) **"the Licence Agreement"** means a legally binding agreement made in accordance with the terms of this Agreement between the Owner and the Council or an approved third party relating to the use of the Facilities by the Council or the said third party for the Events
- (j) **"the Occupation of the Development"** means the date on which the Development is open for use by students and "Occupied" and "Occupation" shall be construed accordingly
- (k) **"the Plan"** means the plan of the Property which is annexed hereto
- (l) **"the Planning Application"** means the application for planning permission described in recital 3
- (m) **"the Planning Permission"** means planning permission for the Development to be granted by the Council pursuant to the Planning Application in the form annexed hereto
- (n) **"the Priory"** means Llanthony Secunda Priory Llanthony Road Gloucester shown for purposes of identification only edged blue on the Plan
- (o) **"the Priory Grounds"** means that part of the Priory shown cross hatched in blue on the Plan
- (p) **"the Property"** means the land at Llanthony Wharf Llanthony Road Gloucester edged in red on the Plan (which does not include for the avoidance of doubt the canal walkway being the land to the east of

the Property between the points X and Y shown on the Plan and comprising not less than 8 metres in width throughout its length)

2. **General Provisions**

- 2.1 The expressions the "Owner" the "Developer" and the "Council" shall include their respective successors in title lessees and assigns
- 2.2 Words importing the masculine gender only include the feminine gender and words importing the neuter gender only include the masculine and/or the feminine gender
- 2.3 Words importing the singular number only include the plural number and vice versa
- 2.4 References to any statute shall include any statutory modification or re-enactment thereof and any order regulations directions or other subordinate legislation thereunder for the time being in force
- 2.5 The headings throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement
- 2.6 Nothing in this Agreement shall be construed as prohibiting or limiting any right to develop any part of the Property in accordance with a planning permission (other than the Planning Permission) granted by a planning authority or by the First Secretary of State on appeal or referred to him after the date of this Agreement
- 2.7 Nothing contained in this Agreement or implied shall prejudice or affect the rights discretion powers duties and obligations of the Council under all statutes byelaws statutory instruments order and regulations in the exercise of its function as a local authority
- 2.8 Nothing in this Agreement shall give any third party (not being a party to this Agreement) any right to enforce any of the obligations rights or covenants on the part of any of the parties to this Agreement under this Agreement whether

in accordance with the Contract (Rights of Third Parties) Act 1999 or otherwise

- 2.9 Any dispute under or arising out of this Agreement shall be referred to a single Arbitrator to be agreed upon the parties hereto or in default of agreement to be nominated by the President for the time being of the professional body relevant to the subject matter of the dispute and such reference shall be in accordance with and subject to the provisions of the Arbitration Act 1996 and any statutory modifications or re-enactments thereof for the time being in force
- 2.10 If the Planning Permission for the Development expires without Commencement of the Development or is quashed revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Owner and the Developer this Agreement shall cease to have effect
- 2.11 This Agreement is made pursuant to Section 111 of the Local Government Act 1972 and Section 106 of the Act to the intent that it shall bind the Owner and his successors in title and assigns and the Agreement shall be registerable in the Register of Local Land Charges pursuant to the provisions of the Local Land Charges Act 1975 and Section 106 (11) of the Act
- 2.12 The Owner is prepared to enter into this Agreement as detailed by Section 106 of the Town and Country Planning Act 1990 as amended whereby (subject to Commencement of the Development) the Owner undertakes to carry out the obligations on the part of the Owner set out in Schedule One below and the Council undertakes to observe and perform the obligations on the part of the Council contained in Schedule One
- 2.13 The covenants contained in Schedule One are the Planning Obligations for the purposes of Section 106 of the Act and are enforceable by the Council conditional upon the Council granting the Planning Permission and the Commencement of the Development
- 2.14 The liability of the Owner under this Agreement in relation to the Property shall cease (subject to and without prejudice to the Council's rights in relation to any antecedent breach of the obligations contained in this Agreement) after

the Owner has parted with its estate or interest in the Property or the part of the Property in respect of which a breach occurs

- 2.15 In the event of any claim being made against the Owner for any breach occurring after it has transferred its interest in the Property or the part of the Property in respect of which such breach occurs to the Developer then the Developer shall indemnify and keep indemnified the Owner from and against all costs claims proceedings demands and any other liabilities arising directly or indirectly in any way relating to or arising out of such breach

IN WITNESS whereof this Agreement has been executed as a Deed in the manner hereinafter appearing and delivered the day and year first before written

SCHEDULE ONE

Part One - Use of the Facilities

1. The Owner will permit the Council to hire the Facilities free of any fee payable to the Owner provided that:-
 - (a) The Facilities are used by the Council solely for the Events
 - (b) The use of the Facilities by the Council cannot commence until the Occupation of the Development
 - (c) The use of the Facilities by the Council will not interfere with the use of the Development by the Owner
 - (d) The Owner will not be liable to bear any costs incurred arising directly or indirectly from the Events
 - (e) The Owner will ensure that the Council are permitted to use the Facilities for a minimum of twelve days per annum subject to the provisions in this Schedule One and being dates reasonably convenient and suitable for the Council's purposes
 - (f) The Council will enter into an Agreement with the Owner prior to the Council's use of the Facilities for the Events such Agreement to include:-

- (i) the period of time for which the Facilities can be hired
 - (ii) the maximum number of persons to be admitted to the Events
 - (iii) an indemnity made by the Council for the benefit of the Owner in respect of any injury to persons and loss or damage to the Property arising directly or indirectly from the Events
 - (iv) an obligation of the Council to have third party insurance in force during the period of time referred to in (i) above for the purposes outlined in (iii) above
 - (v) an obligation that the Council leave the Facilities in a clean and orderly state free of litter and free of all equipment brought in by the Council for the avoidance of any doubt this provision seeks to impose no further requirement than the Council leaving the Facilities in the same condition as they were in prior to the Event
 - (vi) such other matters that the parties consider to be appropriate
- (g) For the avoidance of any doubt the Council are permitted to allow an approved third party to manage or operate the Events and where they choose to do so the Council shall obtain a legally binding agreement from the said third party (prior to the Events) to ensure that the provisions in this Agreement are adhered to. The Council will provide a copy of the said legally binding agreement to the Owner immediately after its completion and at no cost to the Owner. Alternatively where the Council and the Owner have agreed wording for the Licence Agreement the Council shall ensure that the said third party will sign the Licence Agreement prior to the Event. The Council will provide a copy of the Licence Agreement to the Owner immediately after its completion and at no cost to the Owner.

Part Two – Covenants relating to the Priory

2. With effect from the date of the Occupation of the Development and subject to paragraph 3 the Council will permit the Owner and those authorized by the Owner (hereinafter collectively referred to as "the Users") to
 - (a) use the Priory Grounds for educational and recreational purposes in a manner sensitive to the character of the Priory for as long as the Development is occupied for educational purposes
 - (b) during the normal operating hours of the Development (which in this clause shall mean the times when the Development is open to students and staff during term time) the right to pass and repass on foot over the Priory Grounds (hereinafter called "the Pedestrian Access")

3. The rights for the Users to be granted pursuant to paragraph 2 shall be exercisable free of charge and strictly in accordance with the following conditions:-
 - (a) the right to use the Priory Grounds shall be exercisable on foot only (without vehicles cycles or animals (except dogs)) and shall be solely for recreation and education purposes which purposes shall not interfere with the quiet enjoyment of the Priory or any adjacent land uses and shall exclude the use of the Priory Grounds for the use of skateboards and ball games
 - (b) the Council shall be entitled to restrict or otherwise prohibit the Users from using the Priory Grounds (in accordance with paragraph 2(a) above) at any time should it become necessary to do so in the reasonable opinion of the Council in order to carry out works of repair maintenance or reinstatement or because the Priory Grounds have become a danger to members of the public or for the Events and their preparation provided that in exercising their rights under this provision the Council shall give reasonable notice to the Owner except in cases of emergency

- (c) nothing in this schedule shall imply that the Pedestrian Access is dedicated as a footpath maintainable at the public expense
 - (d) the Owner will indemnify the Council from and against all costs claims proceedings and demands in respect of any injury to persons and loss or damage to the Priory Grounds arising directly or indirectly from the rights granted pursuant to paragraph 2 above
 - (e) the Council will not be liable to bear any costs incurred arising directly or indirectly from the rights granted to the Owner pursuant to paragraph 2 above
 - (f) the Owner will ensure that the Priory Grounds are kept free of litter generated as a result of the rights granted to the Owner for the benefit of the Users pursuant to paragraph 2 above
 - (g) the Council shall be entitled to introduce rules relating to the use of the Priory Grounds by the Owner provided that the said rules are reasonable and considered to be necessary to protect the Priory and that reasonable notice of the said rules are given to the Owner except in cases of emergency
4. From the date of Commencement of the Development the Council will permit the Owner access to the Priory in perpetuity and free of charge to install and maintain any surveillance equipment (to be installed within the Property) subject to all necessary consents and provided that this clause will not permit the Owner to install any cables wires or other associated equipment within the Priory
5. The Council acknowledges that the Pedestrian Access facilitates access to a building forming part of the Development and that they will use all reasonable endeavours to ensure that the Pedestrian Access is not restricted or prohibited during the normal operating hours of the Development (which in this clause shall mean the times when the Development is open to students and staff during term time) except in cases of emergency or with the prior agreement of the Owner. For the avoidance of any doubt this provision does not oblige the Council to incur any sum of money in facilitating the use of the Pedestrian Access by the Owner except in cases where the Councils

negligence (or that of their contractors employees or agents) caused the restriction or prohibition to the use of the Pedestrian Access.

Part Three - Management Agreement relating to the Priory

6. The Owner will use all reasonable endeavours to work with the Council to secure a management agreement comprised of a strategy jointly agreed between the Owner and the Council incorporating the following matters:-
 - (a) the beneficial use of the Priory for the benefit of the citizens of Gloucester
 - (b) the future use and preservation of the Priory provided that the Council will not require that the Owner be responsible for the upkeep and maintenance of any buildings or structures within the Priory

Part Four – Travel Plan

7. The Owner will submit a travel plan ("the Travel Plan") to the Council not less than six months before the Occupation of the Development the Travel Plan will include objectives and targets (which are specific, measurable, achievable, realistic and time-bound), measures to promote and facilitate public transport use (including negotiations with operators to achieve service/route improvements, discounts on tickets and on-site promotion, shuttle buses and financial incentives), measures to reduce car use (including car parking restraint, charges and management, restraint on off-site parking (where necessary), promotion of car sharing and financial incentives), measures to promote and facilitate cycling (including safe cycle paths and secure parking, bicycle users groups, pool bikes, changing facilities and showers, financial incentives), measures to promote and facilitate walking (including improved walking access, on-site security and pedestrian route improvements), promotion of practices/facilities that reduce the need for travel (including flexible working practices, local recruitment, teleconferencing, on-site facilities for eating), monitoring and review mechanisms (including clear indicators, and monitoring and review arrangements), the provision of a travel

plan co-ordinator and associated support (steering groups, working groups, links to Travelwise), provision of travel information (including dedicated web site, leaflets, site specific travel information, displays, simplified timetables, targeted promotion and personalised journey planners) and marketing (including communication with staff, focus groups, branding/slogans and events), together with a timetable for the implementation of each such element. The Occupation of the Development shall not occur until the Travel Plan has been approved in writing by the Council ("the Approved Travel Plan").

8. No part of the Development shall be Occupied prior to the implementation of those parts identified in the Approved Travel Plan as capable of being implemented prior to Occupation. Those parts of the Approved Travel Plan that are identified therein as being capable of implementation after the Occupation of the Development shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the Development is Occupied
9. To review the effectiveness of the Approved Travel Plan at the end of July in each year that the Development shall remain Occupied on the Property the Owner shall provide a written report to the Council on the results of such review including any recommendations received from the Owner's transport consultants with regard to any additional steps that the Owner should take to improve the effectiveness of the Approved Travel Plan or whether the Approved Travel Plan or any components of the Approved Travel Plan should be reduced or discontinued without detriment to achieving the objectives of the Approved Travel Plan and to implement the same after agreement with the Council

Part Five – Highway Works Contribution

10. Within six months after Commencement of the Development the Owner will pay the Highway Works Contribution to the Council
11. The Council will use the Highway Works Contribution solely for

- (a) Improvements to the highway at Llanthony Road and the provision of a raised kerb at Llanthony Road
- (b) Traffic lights on Llanthony bridge (if required)
- (c) The provision of a bus shelter on Southgate Street
- (d) The provision of parking restrictions in the vicinity of the Property
- (e) Any other works ancillary to items (a) to (d) above

hereinafter collectively referred to as "the Highway Works".

- 12. Any part of the Highway Works Contribution which is not utilised by the Council within a period of five years from the date that it is received by the Council shall be returned to the Owner together with any accrued interest
- 13. The Council will not seek any further sums of money from the Owner in respect of the Highway Works after receipt of the Highway Works Contribution

Part Six – Joint Review

- 14. The Council and the Owner shall jointly review the items listed below not earlier than five years from the Occupation of the Development and every five years thereafter or such other period agreed between the parties
 - a) the use of the Facilities by the Council for the Events referred to in part one of this Agreement and whether the said use by the Council shall continue for a further period of five years or such other period agreed between the parties
 - b) the use of the Priory Grounds and the Pedestrian Access by the Owner referred to in part two of this Agreement and whether the said uses by the Owner shall continue for a further period of five years or such other period agreed between the parties

15. Where the Council determines that the use of the Priory Grounds and/or the Pedestrian Access by the Owner shall cease the Councils use of the Facilities will automatically terminate unless the parties agree otherwise
16. Where the Owner determines that the use of the Facilities by the Council shall cease the Owners use of the Pedestrian Access and the Priory Grounds will automatically terminate unless the parties agree otherwise

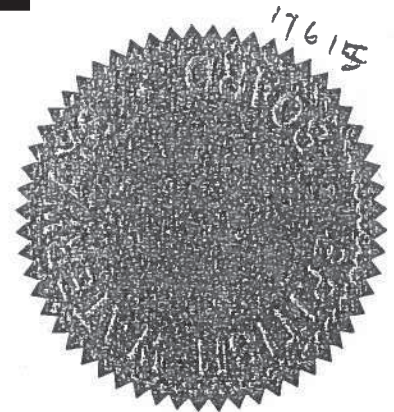
Part Seven – Commencement of the Development

17. The Owner will notify the Council in writing that the Development has Commenced within fourteen days of the same

SIGNED ON BEHALF OF
GLOUCESTER COLLEGE OF
ARTS AND TECHNOLOGY
IN THE PRESENCE OF:

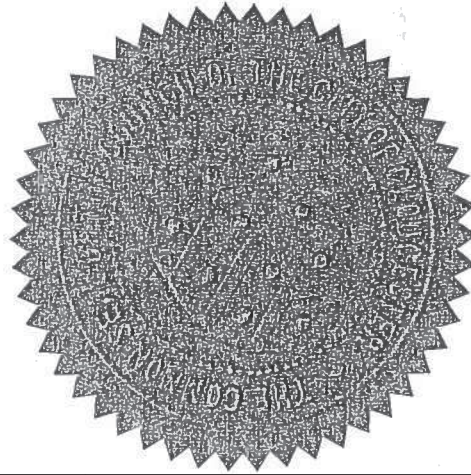


THE APPLICATION HERETO OF
THE COMMON SEAL OF
BRITISH WATERWAYS BOARD
IS AUTHENTICATED BY



AUTHORISED SIGNATORY

THE COMMON SEAL of
THE COUNCIL OF THE
CITY OF GLOUCESTER
affixed hereto is
authenticated
by the undersigned
a person authorised by
the said Council to act
for that purpose



SEAL NO 15062





CITY OF GLOUCESTER PLANNING SERVICES

APPLICATION NO: 04/00607/FUL

VALIDATED ON: 14th May 2004

DRAFT

TO:

Gloscat
c/o Atkins Walters Webster
Berkeley House
25 King Square
Bristol
BS2 8JN

LAND AT:

Land At Llanthony Wharf
Llanthony Road

**TOWN AND COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995**

RE: Erection of a Further Education College incorporating a nursery/ creche facility with associated parking and landscaping.

In exercise of its powers under the above-mentioned Act and Order the City Council as the Local Planning Authority **GRANT PERMISSION** for the development described above in accordance with the terms of the application and the plan/s submitted therewith subject to the following conditions:

In accordance with Section 91 of the Act the development hereby permitted shall be begun not later than five years from the date of this notice.

Condition 1

Before the commencement of any building works, hereby permitted, samples, schedules and precise details of the following items shall be submitted to and approved in writing by the City Council's Development Control Manager:-

- (a) all external facing and roofing treatments to the buildings, including the appearance, design and construction of the glazing systems, panel systems, louvres, wind cowls; brickwork; mortar type and pointing; the location, design, material and colour of rainwater goods; timberwork ; metal work ; the security measures to all ground floor openings; all means of ventilation and external plant, including extract ventilation ducts, termination points and inlets ;the systems of protection from bird nesting to the buildings; 1:20 scale horizontal section drawings through the external wall to room G060 showing the junction between the masonry cladding and the render to the south west elevation and through the external wall of rooms G021 and G027 showing the junction between the glazing and cladding systems;
- (b) the precise location, design and appearance of all new and altered boundary treatments and other means of enclosure and of any existing heritage features;
- (c) cross sectional drawings of the existing and proposed ground levels, the finished floor levels of all buildings and their entrance thresholds generally and in relation to the canalside and roadside;



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

- (d) the precise details of all hard surfacing materials, including the retention/relocation of any existing canalside artefacts;
- (e) the precise details, including cross sections, of the design and appearance of the new paths and ramps in the vicinity of the Tithe Barn;
- (f) the provision of adequate external lighting and security arrangements; and
- (g) details of any new inlets/outfalls in the canal wall for the water cooling system.

Sample panels of the masonry, brickwork, rendered walling and glazing systems shall be provided on site and the approved sample panels shall be retained in place for inspection throughout the entire construction phase. All such works shall be carried out in accordance with the approved details and approved programme of works.

Reason

In the interests of the quality design and appearance of the buildings, the visual amenities of the area and designing out crime.

Condition 2

The stone from the dismantled boundary walls adjacent to the Tithe Barn and railway building adjacent to Llanthony Road shall be stored, adequately protected and reused in forming the retaining walls of the new ramped approaches and provision shall be made in agreement with the Local Planning Authority to retrieve and set aside architectural and sculptural fragments.

Reason

In the interests of safeguarding the setting of the listed building.

Condition 3

No part of the development hereby permitted, including demolition work, shall commence until:-

- a) an appropriate desktop study of the site has been carried out, to include details of the site history, a conceptual model for the site and a preliminary risk assessment. If potential contamination is indicated by the desk-study then an appropriate intrusive site investigation shall be undertaken to characterise the nature and extent of contamination present. Details of this investigation shall be submitted to, and approved in writing by, the Local Planning Authority prior to it being undertaken.
- b) A Site Investigation Report containing the results of any intrusive investigation and, where necessary, a Remedial Strategy for the site has been submitted to and approved in writing by the Local Planning Authority. Any Remedial Strategy shall include details of remedial works and justification, method statements, indicative programme and completion/validation proposals.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

No part of the development hereby permitted shall be occupied until any remediation identified as necessary within the Remediation Strategy has been undertaken and a Completion/Validation Report submitted to, and approved in writing by, the Local Planning Authority.

Reason

The Local Planning Authority wishes to ensure that any potential risks to the development, human health or the environment which may arise as a result of potential land contamination are satisfactorily addressed.

Condition 4

No development shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a controlled watching brief during ground works on the site, with provision for excavation of any significant deposits or features encountered.

Reason

The site is within an area of significant local and national archaeological interest and the Council will wish to record and protect the archaeological remains.

Condition 5

No development shall take place within the site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work, relating to the south-east part of the application site and in the area identified by the evaluation report to contain significant remains of the medieval priory, in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a controlled excavation of all significant deposits and features which are to be disturbed by the proposed development. Thereafter the building works shall incorporate any building techniques and measures necessary to mitigate the loss or destruction of any archaeological remains. Foundation details and associated working methods are subject to agreement by the City Council, and shall minimise disturbance to underground archaeology and to all standing structures within Llanthony Secunda Priory.

Reason

The site is within an area of national archaeological interest and the Council will wish record and protect the archaeological remains.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 6

Before the commencement of any works on the construction of the buildings details of the means of undertaking foundation works shall be submitted to and approved in writing by the Local Planning Authority and such engineering works shall be carried out using the approved equipment.

Reason

In the interests of the general and rural amenities of the area, and the stability of the adjacent ancient monuments and quayside.

Condition 7

Before the commencement of any site works, including demolition work, a detailed method statement of the screening off and protection of the Tithe Barn shall be submitted to and approved in writing by the local planning authority and such works shall be undertaken before the commencement of demolition work on the former Tarpaulin Works.

Reason

To protect the listed Tithe Barn.

Condition 8

The building works hereby permitted shall not commence until drainage works for the disposal of both surface water and foul sewage have been submitted to and approved in writing by the Local Planning Authority and such works shall be undertaken in accordance with the approved details before the commencement of use of the building.

Reason

To ensure that the development is provided with a satisfactory means of drainage as well as to reduce the risk of creating or exacerbating a flooding problem and to minimise the risk of pollution.

Condition 9

No site works including demolition work shall commence until such time as a temporary car parking area for site operatives and construction traffic has been laid out and constructed within the site in accordance with details to be submitted to and agreed in writing with the Local Planning Authority and that area shall be retained available for that purpose for the duration of building operations.

Reason

To ensure that the access roads in the vicinity of the site are kept free from construction traffic in the interests of highway safety.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 10

Before the commencement of any demolition work or site construction works vehicle wheel cleaning facilities shall be provided on site in accordance with details to be submitted to and approved in writing with the Local Planning Authority and thereafter maintained for the duration of the site works.

Reason

To ensure that mud and earth deposits are not brought onto the public highway in the interests of highway safety.

Condition 11

Before the commencement of the occupation of the building by students details of a dedicated drop-off and pick-up facility for taxis and other cars within the curtilage of the site have been submitted to and approved in writing by the Local Planning Authority. This facility shall be completed in all respects in accordance with the approved details before the occupation of the building by students and shall be maintained as such thereafter.

Reason

To ensure that an adequate drop-off and pick-up facility is provided in line with the Government's declared aims towards sustainable development.

Condition 12

Before the commencement of the occupation of the building by students details of a dedicated cycle parking facility sufficient to store an additional 75 bicycles within the curtilage of the site have been submitted to and approved in writing by the Local Planning Authority. This facility shall be made available in accordance with the Travel Plan at any time whilst the use hereby authorised is retained on the site.

Reason

To ensure that adequate cycle parking facilities are provided in line with the Government's declared aims towards sustainable development.

Condition 13

Before the commencement of the occupation of the building by students full details of the location and design of the satellite dishes and satellite/terrestrial microwave antennae, hereby permitted, shall be submitted to and approved in writing by the Local Planning Authority and such facilities shall be installed in accordance with the plans so approved. (See Note 2).

Reason

In the interests of the visual amenity of the adjacent conservation area.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 14

No materials or substances shall be incinerated within or adjacent to the site during the demolition and construction works.

Reason

To safeguard the amenities of the occupiers of nearby properties.

Condition 15

Before the commencement of any works on site including demolition work, details of the dust suppression techniques to be employed and utilised on site during the demolition works and the construction works shall be submitted and approved in writing by the Local Planning Authority and such measures and techniques shall accord to those approved for the duration of these works.

Reason

In the interests of the amenities of the occupiers of nearby properties.

Condition 16

The hours of demolition work, construction work and delivery of materials shall be limited to between 7.30 a.m. and 7.00 p.m. Mondays to Saturdays and no construction work or deliveries shall take place on Sundays or Bank Holidays with the exception of emergency repair and connection works to public utilities.

Reason

To protect the residential amenities of the occupiers of neighbouring properties.

Condition 17

The development shall not take place until full details of the proposed means of ventilation and odour control equipment have been:

- (i) submitted to and approved in writing to the Local Planning Authority.
- (ii) installed to the written satisfaction of the Local Planning Authority. Thereafter the installation shall be satisfactorily maintained.

Reason

To safeguard the amenities of the occupiers of adjoining properties.



CITY OF GLOUCESTER PLANNING SERVICES

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Condition 18

No construction works, shall commence until details of the landscaping to the parking area, specifying the species, plant sizes and proposed numbers/densities shall be submitted for the approval of the Local Planning Authority. All landscaping works indicated on the approved plans shall be implemented before the end of the first available planting season following the commencement of occupation of the buildings by students. Any trees or plants which within a period of 5 years following completion of the development die, are removed or become seriously damaged or diseased shall be replaced with others of similar size and species as soon as is reasonably practicable, no later than the next available planting season, unless the Local Planning Authority gives written consent to any variation.

Reason

To protect and enhance the character and quality of the landscape and the general amenities of the area in the interests of the amenities of the neighbouring residential properties.

Condition 19

All existing trees shall be retained unless shown on the approved drawings as being removed. Before any equipment, machinery or materials are brought onto the site for the purpose of development and until all equipment, machinery and surplus materials have been removed from the site, all trees on and immediately adjoining the site shall be securely protected. Each of the trees retained should be suitably fenced to protect the area within the crown spread or a radius equal to half of the height of the tree, whichever is the greater. Within these protected areas ground levels shall remain as existing unless otherwise agreed, and no materials, spoil or equipment shall be placed or stored thereon, no fires shall be lit and no excavations shall take place. (See attached guidance note - Protection of Trees on Development Sites and BSI 5837 "Trees in Relation to Construction").

Reason

To protect the trees and ensure the continuity of the amenity of the trees on the site.

Condition 20

Before the commencement of any works including demolition work, a survey shall be undertaken to establish whether or not bats inhabit the existing buildings and a bat survey report and any mitigation necessary shall be submitted to the Local Planning Authority.

Reason

In the interest of nature conservation



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 21

Before the commencement of any works on site, including demolition work a ecological action plan shall be submitted to and approved in writing by the Local Planning Authority, this action plan shall include:

- (i) details of the type, number and location of bird boxes;
- (ii) details of bat mitigation strategy including works to existing buildings and the type, number and location of bat boxes;
- (iii) a method statement detailing the means of preventing sediment from entering the canal during the construction phase; and
- (iv) details of the job description and reporting procedures for the Environmental Clerk of Works.

Reason

In the interest of Nature Conservation.

Condition 22

Before the occupation of the building by students precise details of recycling strategy shall be submitted to and approved in writing by the Local Planning Authority. The strategy shall include the provision of recycling facilities for glass, paper, tins/cans at identified locations and the provision for storage receptacles. All of the approved measures shall be implemented before the building is brought into use.

Reason

To accord with the Government's aims of sustainable development.

Condition 23

Before the commencement of any works on site including any demolition work a strategy for the treatment, recycling and reuse of demolition materials and soils shall be submitted to and approved by the Local Planning Authority and the recycled material shall thereafter be dealt with in accordance with the approved strategy unless the Local Planning Authority gives written approval to any variation.

Reason

To accord with the Government's aims of sustainable development.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 24

Before the commencement of any building works on site details of the rainwater harvesting schemes and the provision of any reuse/recycling of grey water shall be submitted to and approved by the Local Planning Authority and such measures shall be undertaken in accordance with the approved details.

Reason

To accord with the Government's aims of sustainable development.

Condition 25

Before the commencement of any building works on site details for renewable energy generation for the development, to include solar hot water systems, the use of the canal as heat/cooling store or any other appropriate technology shall be submitted to and approved by the Local Planning Authority and such measures shall be introduced in accordance with the approved details.

Reason

To accord with the Government's aims of sustainable development.

Condition 26

Before the commencement of any building works a seagull mitigation strategy, to include means to discourage birds from nesting on roofs and details of the accessibility of roofs to allow treatment of eggs and nests shall be submitted to and approved by the Local Planning Authority and such measures shall be introduced in accordance with the approved details.

Reason

To accord with the Government's aims of sustainable development.

Condition 27

The development shall not be brought into use until car parking has been provided in accordance with the submitted plan and thereafter that area shall not be used for any other purpose other than the parking of vehicles.

Reason

To ensure that adequate off-road parking is provided.

Condition 28

No part of the development shall be brought into use until space has been laid out within the site in accordance with details to be submitted to and approved in writing with the Local Planning Authority for 60 motorcycles to be parked.

Reason

In the interests of highway safety



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Condition 29

No part of the development shall be brought into use until secure space has been laid out within the site in accordance with details to be submitted to and approved in writing with the Local Planning Authority for 120 bicycles to be parked.

Reason

In the interests of highway safety.

Condition 30

Before the buildings hereby authorised is first brought into use the approved vehicular access from 125 Business Park shall be laid out and constructed in accordance with the submitted details and thereafter similarly maintained.

Reason

To ensure that a satisfactory means of access is provided and maintained in the interests of highway safety.

Condition 31

The buildings shall not be occupied by students until a pedestrian/cycle link has been provided between the site and Llanthony Road via the canal towpath in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority.

Reason

To ensure that adequate pedestrian and cycle facilities are provided in line with the Government's declared aims towards sustainable development.

Note 1

This permission relates to the submitted application forms and plans as amended by agent's letters dated 2.7.04, 16.7.04, 21.7.04, 29.7.04 and 6.8.04 and the accompanying drawing nos. 1735/ 100M; 102J; 103J, 104J; 117; 150 D; 151D; 155B; 156A; 157, 158, 159; 160A; 161 B; 162 and 510A.

Note 2

The applicant is required to obtain Schedule Ancient Monument Consent for the works impacting upon monument GC337, Llanthony Priory, in accordance with the 1979 Ancient Monuments and Archaeological Areas Act.

Note 3

The siting of satellite dishes and microwave antenna on buildings to be approved under Condition 15 will need to be sensitively located and any additional satellite dishes/antennae proposed after the first occupation of the buildings will require the submission of separate formal applications for consideration by this planning authority.



CITY OF GLOUCESTER PLANNING SERVICES

Cont'd/04/00607/FUL

Note 4

The Wildlife and Countryside Act 1981 gives special attention to the protection to bats because of their roosting requirements. Full details can be found in Sections 9-11, 16-27 and 69 of this Act.

Note 5

This planning permission is accompanied by a legal agreement dated

Reason for Approval

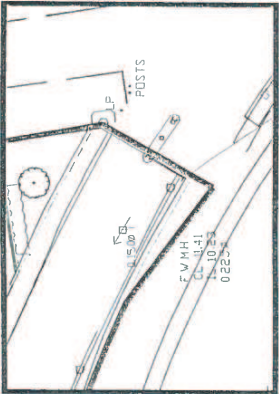
The proposal has been carefully assessed and it is considered that the development of this site would regenerate this part of the Western Waterfront, would provide an appropriate use for this brown field site, would not adversely affect the neighbouring and nearby settings of the listed buildings and would enhance the setting of the Conservation Area No. 8. The development therefore accords with Policies S.1 of the Gloucestershire Structure Plan and Policies MU1, BE.1; BR.2; BE.5; BE.23; BE.31 and the transport policies contained within the Second Deposit Gloucester Local Plan 2002.

Date:

Authorised Officer

PLEASE SEE NOTES SET OUT OVERLEAF

- Notes**
This drawing is not to be scaled. All dimensions to be checked on site. Discrepancies and/or ambiguities between this drawing and information given elsewhere may be resolved by reference to the office for clarification before any work is carried out in accordance with listed B-10th Standards / Codes of Practice unless specifically stated otherwise.
- Rev Date: []
- A 01-09-04 K/C Erection of site fence
 - B 05-09-04 K/C Erection of site access
 - C 05-09-04 K/C Site survey to correct site alignment to Green
 - D 09-09-04 K/C Erection of site fence by Direct Works
 - E 17-09-04 K/C Erection of site fence by Direct Works
 - F 21-09-04 K/C Check site to ensure boundaries related to street
 - G 27-09-04 K/C South Boundary the moved Northside Canal boundary line moved over 5m
 - H 01-10-04 K/C Reference points to be added
 - I 01-10-04 K/C Boundary line to West Boundary moved



SEAL NO 1506 Z

Atkins Walters Webster

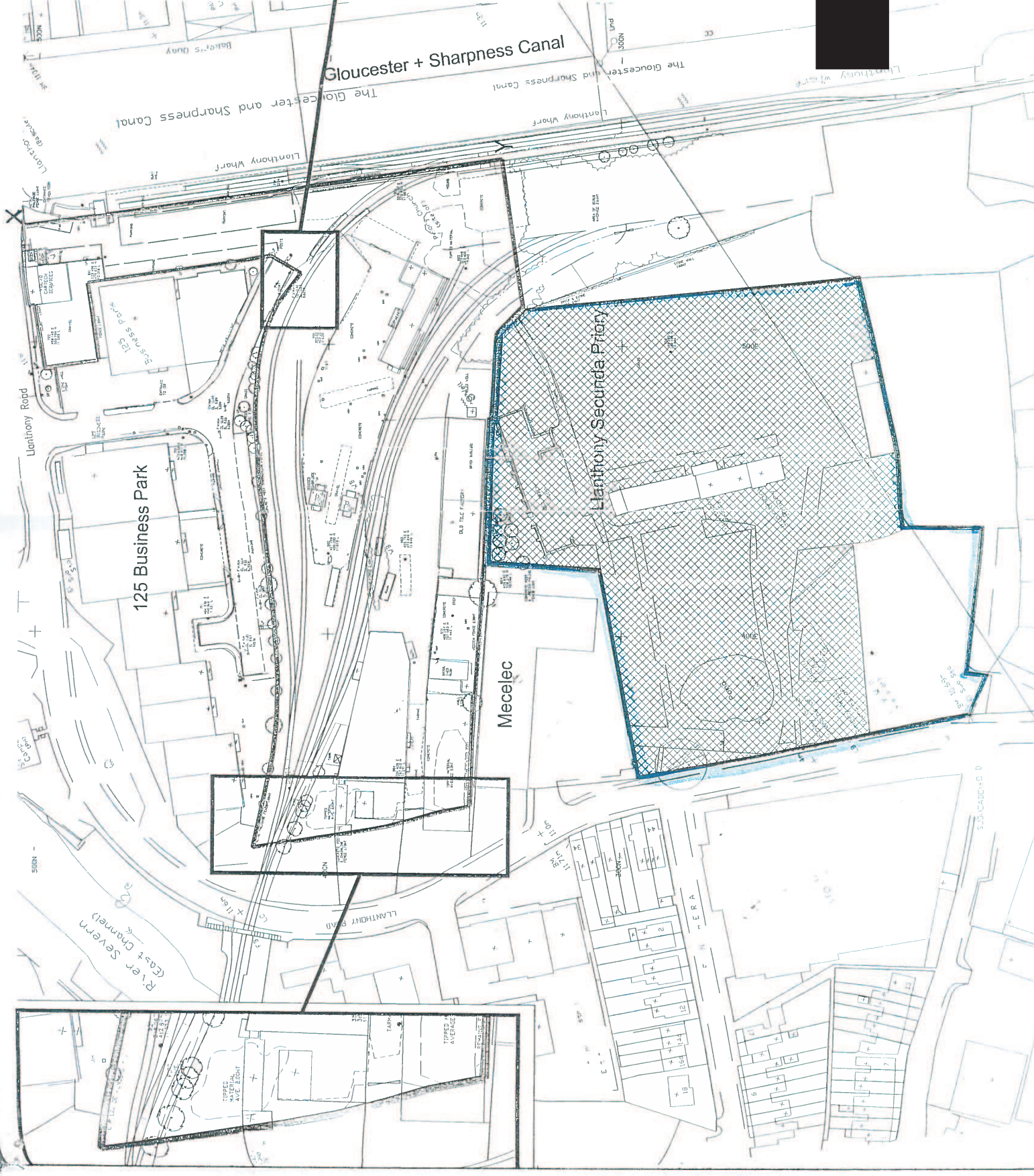
chartered architects
master planners
interior designers
space planners
lead consultants
planning supervisors

Beireley House, 25 King Square, Bristol, BS2 8JN
Tel: 0117 923 2635 Fax: 0117 942 6669
E-mail: aww@aww-uk.com Web: www.aww-uk.com

Project Title: **GLouCAT Gloucester**

Scale	Sheet Size	Drawn	KJC
1:1250	A3		
Date	03/09/04	Checked	CM
Status	DRAFT		

Project No	1735	Drawing No	112	Revision	H
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ise Drawing.

RS if the portfolio contains only whole registered titles.

Stamp Duty

Place "X" in the appropriate box or boxes and complete the appropriate certificate.

- It is certified that this instrument falls within category in the Schedule to the Stamp Duty (Exempt Instruments) Regulations 1987
- It is certified that the transaction effected does not form part of a larger transaction or of a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds the sum of £
- It is certified that this is an instrument on which stamp duty is not chargeable by virtue of the provisions of section 92 of the Finance Act 2001

2. Title numbers and Property transferred

For transfers of unregistered titles:

include a full description of the Property, by reference to the last preceding document of title or to a plan defining the Property.

For transfers of part of registered titles:

give the title numbers out of which the Property is transferred;

include a description of the transferred Property;

attach a plan defining the Property.

For transfers of whole registered titles:

give the title numbers and a brief description of the Property.

In all cases:

give any other title numbers against which matters in this transfer are to be registered;

any attached plan must be signed by the Transferor;

you may include information which cannot conveniently be included in another panel, e.g. as to whether the Property is freehold or leasehold, any apportioned consideration and title guarantees where the same title guarantee does not apply to all the titles.

GR143668 and GR49417 being land and buildings on the west side of Llanthony Road, Gloucester and shown edged red on the attached plan

3. Date 8 November 2007

4. Transferor Give full name(s) and company's registered number, if any.
The Council of the City of Gloucester

5. Transferee for entry on the register Give full name(s) and company's registered number, if any. For Scottish companies use an SC prefix and for limited liability partnerships use an OC prefix before the registered number, if any. For foreign companies give territory in which incorporated.

Llanthony Secunda Priory Trust

Company Registration Number: 06113608

Unless otherwise arranged with Land Registry headquarters, a certified copy of the Transferee's constitution (in English or Welsh) will be required if it is a body corporate but is not a company registered in England and Wales or Scotland under the Companies Acts.

6. Transferee's intended address(es) for service (including postcode) for entry on the register You may give up to three addresses for service one of which must be a postal address but does not have to be within the UK. The other addresses can be any combination of a postal address, a box number at a UK document exchange or an electronic address.

Gloscat, Princess Elizabeth Way, Cheltenham, Gloucestershire, GL51 7SJ

7. The Transferor transfers the Property to the Transferee

8. Consideration Place "X" in the appropriate box. State clearly the currency unit if other than sterling. If none of the boxes insert an appropriate memorandum in the additional provisions panel.

The Transferor has received from the Transferee for the Property the sum of *In words and figures.*

Insert other receipt as appropriate.

The transfer is not for money or anything which has a monetary value

9. The Transferor transfers with Place "X" in the appropriate box and add any modifications.

full title guarantee limited title guarantee

10. Declaration of trust *Where there is more than one Transferee, place "X" in the appropriate box.*

The Transferees are to hold the Property on trust for themselves as joint tenants

The Transferees are to hold the Property on trust for themselves as tenants in common in equal shares

The Transferees are to hold the Property *Complete as necessary.*

11. Additional provisions

Use this panel for:

- *definitions of terms not defined above*
- *rights granted or reserved*
- *restrictive covenants*
- *other covenants*
- *agreements and declarations*
- *other agreed provisions.*

The prescribed subheadings may be added to, amended, repositioned or omitted.


Please see continuation sheet attached

12. Execution *The Transferor must execute this transfer as a deed using the space below. If there is more than one Transferor, all must execute. Forms of execution are given in Schedule 9 to the Land Registration Rules 2003. If the transfer contains Transferee's covenants or declarations or contains an application by the Transferee (e.g. for a restriction), it must also be executed by the Transferee (all of them, if there is more than one).*

The COMMON SEAL of
THE COUNCIL OF THE CITY OF GLOUCESTER
affixed hereto is authenticated by
the undersigned person authorised by
the said Council to act for that purpose

.....
Head of Legal Services

EXECUTED as a DEED by
LLANTHONY SECUNDA PRIORY TRUST
acting by its:

Sign here	
	X Director
	X Secretary



Scale 1:1250



**Llanthony Priory
Gloucester**



BC/IM

1. Continued from Form TP3

Title number(s) GR143668 and GR49417

2. Before each continuation, state panel to be continued, e.g. "Panel 12 continued".

- 11.1 The land transferred will as a result of this transfer be held by a non-exempt charity and the restrictions on disposition imposed by section 36 of the Charities Act 1993 will apply to the land (subject to section 36(9) of that Act)
- 11.2 The Transferee hereby covenants with the Transferor as follows:
- 11.2.1 that the Transferee will allow the Transferor to use the Property (or any part thereof) provided that:
- (a) the Property (or the relevant part) is used by the Transferor solely for Events (as defined and set out in the agreement between Gloucester College of Arts and Technology (1), British Waterways Board (2) and Gloucester City Council (3) and dated 13th October 2004)
 - (b) the Transferor gives reasonable prior notice to the Transferee
 - (c) the Transferor will indemnify the Transferee from and against all costs claims proceedings and demands in respect of any injury to persons and loss or damage to the Property arising directly or indirectly from the Events
 - (d) the Transferor will have third party insurance in force during the Events for the purpose of providing the indemnity referred to above
 - (e) the Transferor will carry out appropriate risk assessments prior to and appropriate health and safety measures during the Events
 - (f) the Transferor will leave the Property in a clean and orderly state free of litter and free of all equipment brought in by the Transferor however the Transferor does not have to leave the Property in any better state than the Property's condition prior to the relevant Event
- 11.2.2 that the Transferee will ensure that the Transferor is permitted to use the Property (or any part thereof) for a minimum of 12 days per annum subject to the provisions of this transfer
- 11.2.3 that the Transferor shall be entitled to use the Property (or any part thereof) for a maximum of 20 days per annum subject to the provisions of this transfer. The Transferor may use the Property on additional days over and above the stated maximum of 20 days subject to agreement with the Transferee
- 11.2.4 that the Transferee shall be entitled to restrict or otherwise prohibit the Transferor and any other users from using the Property at any time should it become necessary to do so in the reasonable opinion of the Transferee in order to carry out works of repair maintenance or reinstatement or because the Property or the buildings situated upon it have become a danger to members of the public or for the Events and their preparation provided that in exercising its rights under this provision the Transferee shall give reasonable notice to the Transferor except in cases of emergency
- 11.3 If there is any disagreement between the parties relating to the Transferor's use of the Property pursuant to this transfer each party must make their case in writing to the other party within 5 working days of the disagreement and thereafter attend a meeting to be held within a reasonable period of time following the submission of one or both parties' written cases where the parties are to use all reasonable endeavours to resolve the disagreement
- 11.4 The Transferee will not use the Property for any purpose other than the preservation of an historical building and site including cultural education and recreational access for the public

Continuation sheet 1 of 2

Insert sheet number and total number of
continuation sheets e.g. "sheet 1 of 3"

1. Continued from Form TP3

Title number(s) GR143668 and GR49417

2. Before each continuation, state panel to be continued, e.g. "Panel 12 continued".

- 11.5 The Transferee will not transfer or otherwise dispose of the Property without procuring that the successor in title enters into a direct covenant with the Transferor to observe and perform the covenants set out in the transfer
- 11.6 The Transferor and the Transferee agree to apply to the Land Registry for a restriction on title to the Property in the following terms:
"no disposition of the registered estate by the proprietor of the registered estate or by the proprietor of any registered charge is to be registered without a written cosent signed by the Council of the City of Gloucester or by its conveyancer that the provisions of clause 11.5 of this transfer have been complied with"
- 11.7 The Property is transferred subject to and with the benefit of an agreement made the 13th October 2004 between Gloucester College of Arts and Technology (1) British Waterways Board (2) and Gloucester City Council (3) made pursuant to section 111 of the Local Government Act 172 and section 106 of the Town and Country Planning Act 1990 and the Transferee hereby covenants with the Transferor to observe and perform the obligations contained in the section 106 agreement insofar as they relate to the Property and to indemnify and keep indemnified the Transferor against any actions claims costs or damages resulting from any breach thereof

Continuation sheet 2 of 2

Insert sheet number and total number of
continuation sheets e.g. "sheet 1 of 3"

THIS AGREEMENT is made the 8 day of November 2007
BETWEEN:

- 1) LLANTHONY SECUNDA PRIORY TRUST (company number 06113608) of Gloscat, Princess Elizabeth Way, Cheltenham, Gloucestershire, GL51 7SJ (hereinafter together called "the intending Seller") and
- 2) THE COUNCIL OF THE CITY OF GLOUCESTER of North Warehouse, The Docks, Gloucester (hereinafter called "the intending Buyer")

IT IS AGREED as follows:

1 **Definitions and interpretation**

1.1 In this Agreement the following expressions shall have the following meanings:

1.1.1 "Insolvent" means

- 1.1.1.1 the intending Seller is deemed unable to pay its debts as defined in section 123 of the Insolvency Act 1986 (referred to as "the Act" in the remainder of this clause); or
- 1.1.1.2 a proposal is made for a voluntary arrangement under Part 1 of the Act; or
- 1.1.1.3 a petition is presented for an administration order under Part II of the Act; or
- 1.1.1.4 a receiver or manager is appointed whether under Part III of the Act (including an administrative receiver) or otherwise; or
- 1.1.1.5 the intending Seller goes into liquidation as defined in section 247 (2) of the Act (other than a voluntary winding up solely for the purpose of amalgamation or reconstruction while solvent); or
- 1.1.1.6 a provisional liquidator is appointed under section 135 of the Act; or
- 1.1.1.7 a proposal is made for a scheme of arrangement under section 425 of the Companies Act 1985; and

1.1.2 "the Option" means an option for the intending Buyer to buy the Property at the Price with vacant possession for an estate registered at H M Land Registry with title absolute subject to (so far as the same are still subsisting and affect the Property) and (where appropriate) together with the benefit of the Relevant Matters but otherwise free from incumbrances

1.1.3 “the Option Period” means a period of one year from a Trigger Event in respect of each Trigger Event (subject to the perpetuity period of 21 years)

1.1.4 “the Plan” means the plan annexed to this Agreement

1.1.5 “the Price” means £1.00

1.1.6 “the Property” means ALL THAT freehold land being land and buildings on the east side of Llanthony Road, Gloucester shown edged red on the Plan and registered at H M Land Registry with title absolute under title numbers GR49417 and GR143668

1.1.7 “the Relevant Matters” means the rights exceptions reservations covenants and other matters contained or referred to in title numbers GR49417 and GR143668

1.1.8 “Standard Conditions” means the Standard Commercial Property Conditions (second edition) and “Standard Condition” shall be construed accordingly

1.1.9 “Trigger Event” means any one or more of the following events:

1.1.9.1 the intending Seller becomes Insolvent

1.1.9.2 the intending Seller fails to keep the Property in a clean and tidy condition

1.1.9.3 there has been a significant deterioration in the condition of the Property since the 2004 Fielden, Clegg and Bradley survey (recorded vandalism since the survey is excluded)

1.1.9.4 the dismissal of one of the intending Buyer’s member or officer as a director of the intending Seller without a subsequent appointment of another member or officer of the intending Buyer as a director of the intending Seller or the dismissal of both of the intending Buyer’s member(s) and or officer(s) as directors of the intending Seller without the subsequent appointment of another member(s) and or officer(s) as directors of the intending Seller

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 references to “the intending Seller” include (unless the context otherwise requires) references to the intending Seller’s successors in title and owners for the time being of the Property

1.2.2 references to a specific statute include any statutory extension modification amendment or re-enactment of that statute and any regulations or orders made under it and any general references to "statute" include any statute enacted after today's date and any derivative regulations or orders

1.2.3 words importing the singular number also import the plural number

1.2.4 words importing a particular gender import all genders

1.2.5 any obligation undertaken by two or more persons jointly is a joint and several obligation

1.1.6 references to a clause schedule part or paragraph are references to a clause in or schedule to this Agreement or a part of or paragraph in a schedule to this Agreement

1.1.7 the clause schedule part and paragraph headings in this Agreement are for ease of reference only and shall not be taken into account in the construction or interpretation of the clause schedule part or paragraph to which they refer

2 Option

2.1 In consideration of the transfer of the Property from the intending Buyer to the intending Seller on the date hereof and of the obligations contained in this Agreement the intending Seller grants the Option to the intending Buyer

2.2 The Option shall be exercisable by the intending Buyer by giving written notice to such effect within an Option Period

2.3 The Option shall lapse if not exercised in accordance with clause 2.2

3 Intending Seller's pre-exercise obligations

The intending Seller shall not transfer agree to transfer lease agree to lease charge mortgage or grant any easement or otherwise deal with or dispose of the Property during the Option Period

4 Title

4.1 The title to the Property is registered at H M Land Registry with title absolute under title numbers GR49417 and GR143668

4.2 The intending Seller sells with full title guarantee

5 **Completion**

5.1 Completion of the sale and purchase of the Property shall take place by the date which is 30 days after the date on which the intending Buyer shall have exercised the Option **PROVIDED THAT** if such day is not a working day then completion shall take place on the next following working day

5.2 The transfer deed shall include any statement that is required by the Charities Act 1993

6. **Intending Buyer's additional obligations**

If the Option expires the intending Buyer shall forthwith cancel any registrations made by him in any registers to protect this Agreement and by way of security appoints the intending Seller his attorney for the purpose of effecting such cancellations if the intending Buyer shall have defaulted in doing so within 5 working days of written notice from the intending Seller requiring it to do so.

7. **No Partnership**

It is hereby agreed and declared that this Agreement does not create any partnership between the intending Seller and the intending Buyer or any other person

8. **Power of Attorney**

The intending Seller hereby irrevocably appoints by way of security the intending Buyer to be his attorney to sign any notice or other document insofar as the exercise of the Option would or may be unenforceable by reason of want of a signature by the intending Seller to any notice or other document by virtue of Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 or otherwise and to do all other things necessary to rectify such defect but not further or otherwise

9. **Standard Conditions**

9.1 In so far as the same are not varied by or inconsistent with these conditions the Standard Conditions are incorporated in this Agreement

9.2 The provisions of this agreement shall not merge on completion but shall continue in full force and effect until performed

IN WITNESS this Agreement has been duly executed as a deed by the parties on today's date

SIGNED as a deed and DELIVERED by)
LLANTHONY SECUNDA PRIORY TRUST)
acting by:)

 X
Director

.....  X
Director/Company Secretary

The COMMON SEAL of)
COUNCIL OF THE CITY OF GLOUCESTER)
affixed hereto is authenticated)
by the undersigned person)
authorised by the said Council to at for that purpose)

.....
Head of Legal Services



Scale 1:1250



Llanthony Priory
Gloucester



BC/IM

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Llanthony Secunda Priory – position statement

Cabinet resolved

1. That the restrictive covenants be removed in accordance with the request from the Trust
2. That planning committee be requested to vary the S106 relating to the property
3. That the resolutions in 1 and 2 above be subject to agreeing a provision for continuing public access to the property and that the City Council shall have the continued right to nominate a Trustee

Following the 'call-in' it would appear that various other demands have been made, through the scrutiny process, by councillors outside of Cabinet. Critically an ability for the property to revert to the City Council should the Trust fail.

Llanthony Trustees have considered these issues in detail and would comment as follows

- A. The Trust accepts the continued right to nominate a Trustee by the City Council. Although in the light of limited numbers of Trustees, and the need for the trust to secure appropriate skill sets, the Trust wishes to stick with the cabinet decision i.e. one nominee. It is important to note that as the Trust moves forward, hopefully with HLF support, it will require all of its Trustees to undertake work and responsibilities in addition to attending board meetings. For these reasons the right to nominate a Trustee must be mutually agreed and based on skill sets and roles. This would be formally dealt with by amending the Trust Memorandum and Articles.
- B. The trust is absolutely wedded, through its articles, to public access through both our objectives and demonstrably by our actions over the last 6 years. The site has never been closed to the public and whilst access is sometimes restricted (canal side gate closed at night) this has been the result of police advice. EH and HLF grant support additionally requires public access to the site. Following discussion, one way of providing even greater comfort would be to note the need for reasonable public access on the title deeds.
- C. Without removal of the covenants there is effectively no HLF bid and Councillors must understand the implications. The HLF bid is predicated upon a business plan that would allow the Trust to let part of the site and thereby secure a long term income to maintain and manage the other heritage assets on the site. The most effective way to do this is to remove the option agreement which explicitly precludes such action. As this option agreement also contains the reversion clause i.e. the ability of the City Council to re-acquire the site for a £1, then an alternative approach might be required. Further legal advice has identified that should the Trust, as a registered charity, fail there is every likelihood that the option would be set aside as it is limited to £1 and not the full market value i.e. the Council would not be able to buy the site back. Upon insolvency it is likely that the site would be sold to pay creditors and any residual monies applied to a similar charity. So, in essence the comfort value of the reversion clause is clearly very limited.

One approach would be for the Trust to offer the City Council the option, for what it is worth, until the point in time when financial security is attained. Such a condition precedent would be at the point of a successful Round 2 HLF pass. After that point the option simply falls away. In reality, if the Trust secures a round two HLF pass then it will be investing well over £3 million into the site, and therefore the City would have to pay a similar sum to re-acquire it.

If the Trust HLF bid has been damaged by the negative press coverage then the Trustees may elect to voluntarily wind-up the Trust and allow the City to re-acquire for £1; this would be tenable as it would be voluntary and not as a result of insolvency.

- D. The S106 – again it would be prudent to lose the whole document as it too is noted on the title deeds and yet all actions pertaining to the construction of the College were discharged a long time ago. This may need the involvement of Gloucestershire County as there are clauses relating to highways works associated with the College – all completed many years ago.

These actions i.e. loss of both the option agreement and S106 would allow the Trust the ability to act independently as I believe was the original intention in 2007. Equally with the proposed caveats it would enshrine the public access and the representation from the City Council, whilst also offering the City the ability to regain the site if the HLF bid is not successful.

Clearly these proposals will need to be considered by Full Council but should the will of the Council be to retain the current agreements then the stark reality is that the Trust will not be able to deliver its ambitions as the current documentation, probably inadvertently rather than deliberately, precludes the delivery of an effective business proposal. In which case the purpose of the Trust is negated and the best solution will be to return the site to the protection of the City Council and wind-up the Trust.

The LSPT wishes to record that it does not regard the recent events as helpful or positive to the prospects of the HLF bid or to the Trust itself. The Trust has achieved an enormous amount, secured considerable investment and progressed a very high quality HLF grant submission. All of this has been done entirely through the volunteer time of a small number of dedicated trustees. Whilst the Trust respects the Council's decision making processes, an unintended consequence of the public exposure to the 'call in' is that the Trust's credibility has been undermined. In particular, councillors have made references to liquidators and official receivers (including on BBC Radio). The message received by many is that 'the Trust is not to be trusted'. We do hope that the Trust's credibility can be restored through reaching a swift agreement with the Council on the above matters, and through a successful HLF bid outcome.

In the circumstances LSPT requests that, should the City Council agree to these proposals, that it also gives consideration to paying the Trust's reasonable legal fees to enact these changes to the title documents and Memorandum and Articles.

Jem Williamson, On behalf of Trustees