



# Committee report

Committee	<b>CABINET</b>
Date	<b>TUESDAY, 9 SEPTEMBER 2008</b>
Title	<b>RYDE GATEWAY – DECISION TO PROCEED</b>
Purpose	Report of the Cabinet Member for Environment and Transport
Outcomes	<ol style="list-style-type: none"><li>1. To determine the future of the Ryde Gateway Project.</li><li>2. Should the recommendations in the report be accepted, the Council will re-tender the major works contract for the Ryde Gateway Project. The Council will also be required, subject to re-tendering, to set aside an additional sum of £1,500,000 from its budgets in order to enable the project to proceed.</li><li>3. Information contained in appendix A and B of this report is excluded from publication on the grounds that there is likely to be disclosure of exempt information as defined in paragraphs 3 of Part 1 of Schedule 12A of the Local Government Act 1972. The disclosure of commercially sensitive information would prejudice the Councils financial interests and therefore in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</li><li>4. The Ryde Gateway project was initiated by the Council's 2002 Local Transport Plan. The development is centred on a new railway and bus station on the site of the current Ryde Esplanade Station.</li><li>5. The Ryde Gateway is designed to be a landmark building on Ryde seafront. It will serve as a gateway not only to Ryde, but to the Island as a whole. The building will be a transport hub for approximately two and a half million passengers annually, linking several modes of transport.</li><li>6. The design of the building was undertaken in consultation with the major transport operators, namely Island Line, Southern Vectis, Hovertravel, Wightlink and Network Rail. Planning permission and conservation consent for the building were granted in November 2005.</li><li>7. In July 2007, the Cabinet Member for Environment and Transport took a delegated decision to proceed with the construction of Ryde Gateway and to authorise Council</li></ol>
Confidential/Exempt Items	
Background	

officers to undertake all legal activities related to the construction of the building (negotiate lease, asset protection agreement, land swaps, etc) and to appoint the main contractor for the construction works.

During the detailed negotiations around the lease it became apparent that Network Rail (NR) required a six month rolling break clause to be included in the lease, the effect of which is that NR could reclaim the site for “operational” reasons, providing the Council with six months notice to vacate the site. This information had not been included in the abovementioned delegated decision report, nor had it been declared to the Department for Transport (DfT) which is contributing £6,200,000 to the construction costs of the Gateway in the form of a grant.

The six month rolling break clause is standard for NR buildings and the probability of it being invoked appears to be very low. NR can only recall having invoked it on one previous occasion.

The implications of the six month rolling break clause for the Council are:

- (i) Under standard DfT terms and conditions for grant monies, anything which is constructed should stand for ten years or there is the possibility that money will be clawed back.
- (ii) NR is not under any obligation to pay the Council any compensation or to hand the development back to the Council once the cause of the break clause being invoked has been removed.
- (iii) The Council would need to incorporate a similar break clause in leases to sub-tenants of the completed development. This could deter potential tenants from establishing businesses in the new building, thereby impacting on the ongoing commercial operation of the Ryde Gateway once constructed.

In order to address the above issues the Council sought to have the six month rolling break clause removed or amended. The Office of Rail Regulation (ORR) is responsible for all NR land transactions. Following a meeting between the ORR and NR on 31 January 2008, the ORR determined that the six month rolling break clause should remain in the lease and that there was no further scope for negotiation on this point.

The Council has approached the DfT to seek an undertaking that, if NR exercises the break clause at any time, the Council will not be required to refund the grant. The DfT has verbally indicated that, on the basis that the Council is not responsible for the reason for the break clause being invoked, the funds would not need to be

repaid. The DfT has stated that this information will be provided to the Council in writing on conclusion of negotiations on the terms of the lease with NR.

In a delegated decision taken in March 2008, the Council formally accepted the funding from the DfT to support the Ryde Gateway project and also accepted that the six month rolling break clause would remain in the lease agreement.

8. In addition to the above, NR informed the Council that it was required to make a formal submission to the ORR in order for the tripartite lease to be approved by the ORR under its "disposal" process. The Council was not required to be involved in this, however it was anticipated that it would take several months for the process to be completed and for the ORR to agree that the project could commence.

The tripartite lease is between NR, the Council and Stagecoach South West Trains (SSWT).

During May 2008 and at a subsequent meeting in early June 2008, NR confirmed that their solicitors had agreed that the project could commence without a formal submission to the ORR being required.

#### **Current Status – Operational**

9. There is no formal contract in place with the preferred contractor for the building works. The Council has sought external legal advice on this issue. The advice received is that to proceed with the project without re-tendering the works would place the Council in breach of European Union procedure and that we would be open to challenge from various organisations including the European Commission.
10. The Planning permission for the Ryde Gateway building expires on 1 December 2008. In order to avoid having to resubmit planning application, all pre-commencement conditions will need to be fully discharged and commencement of works will need to take place prior to this date.
11. There are no formal contracts in place with any of the professional consultants (Civil, Structural and Building Services Engineer, Architect, Cost Consultant, etc). This will need to be addressed.
12. A company specialising in project management has been appointed to undertake the ongoing project management role on this project and their initial tasks will be to address the issues raised under 9, 10 and 11 above.

13. Detailed negotiations between all parties are currently underway with regards to the tripartite lease, the asset protection agreement and the requisite land swaps.

### **Current Status – Financial**

14. The delegated decision entitled “Ryde Interchange – Approval to Construct” taken during July 2007 approved total expenditure of £7,740,000 on the Ryde Gateway project. In November 2007, the Cost Consultant and Construction Design Management (CDM) Coordinator projected the total cost of the project to be £7,979,000. Following receipt of the revised cost calculations, a further £500,000 was allocated to the project in February 2008, therefore the total authorised spend on the Ryde Gateway project is currently £8,240,000.
15. In order to enable cabinet to make an informed decision as to the projected total cost of the project, a review of both the operational and financial status of the project has been commissioned. The requirement of the financial review was to provide an assessment of the updated project cost taking into account inflation, market conditions and assuming a contract commencement date during late 2008. The costs are currently indicative and subject to verification on commencement of contracts with the various organisations in the supply chain. It is likely that re-tendering for the works will impact on the costings below, however the extent of this will not be known until the tendering exercise has been undertaken.
16. The current projected cost of completing construction of Ryde Gateway (based on a start date of late 2008 and subject to re-tendering) is calculated as follows:
- |                          |                                    |
|--------------------------|------------------------------------|
| Contract Costs           | £ 6,866,734 (increase of £844,734) |
| Fees 2005 / 2006         | £ 407,000 (unchanged)              |
| Fees 2006 / 2007         | £ 520,000 (unchanged)              |
| Network Rail Fees        | £ 294,000 (increase of £54,000)    |
| Fees and Ancillary Costs | £ 951,676 (increase of £161,676)   |
| Project Management       | £ 240,000 (this is a maximum cost) |
| 5% Contingency           | £ 451,971 (new cost)               |

**Total** **£ 9,731,381**

The total additional cost of the project from that agreed in July 2007 is therefore forecast to be **£1,491,381** (£9,731,381 - £8,240,000). This sum will need to be found from the Council’s own resources.

### **Management of Ryde Gateway**

17. It is recommended that the management of the building post construction is undertaken by the Council's Property Services team. There are two options for the on going management and operation of the Ryde Gateway building: the Council employs a suitably qualified and experienced surveyor to manage in-house, or for the Council to appoint property consultants to manage on its behalf.

There is a budget of £25,000 included in the running costs for the building. This would not enable a full time specialist surveyor to be employed, and it is unlikely that such a specialist surveyor would take a part time position therefore this option is unlikely to be achievable.

The Council has investigated the potential and cost of employing a consultant to undertake the management, to be overseen by Property Services. Four suitably experienced agents were contacted and all confirmed they would like to undertake the work, and all budgets fell within the £25,000 allowance. It is recommended therefore that Property Services work with an external managing agent to manage the completed development.

Strategic Context

18. Ryde Gateway is an important regeneration project for Ryde and the Isle of Wight, and is identified as a transport hub in the South East Plan. It is also part of the 2002 and 2006 Local Transport Plans

19. Construction of Ryde Gateway will enhance the tourism offer, thereby having a direct impact on the Island's economy. The delivery of this project will benefit businesses, residents and visitors to the Island.

Consultation

20. Extensive consultation has taken place over a two and a half year period, including two public exhibitions in Ryde. Transport operators have been consulted individually and at the Quality Transport Partnership meetings. Network Rail as the landowners, Wightlink, Island Line and Hovertravel are regularly consulted.

Financial / Budget Implications

21. The decision to proceed will require the Council to set aside a further sum of £1,500,000 from its capital budgets. This sum may need to be revised following the tendering process.
22. Income has been estimated at realistic market levels for the office and retail accommodation. Income in years 1 to 3 may be reduced during the marketing phase and as a result of rent free periods which are often required to compensate a tenant for the cost of fitting out of shell finish space. Accordingly the Council will be required to provide funding to cover any periods of negative income, ie until the building is fully let and / or as rent free periods

expire. It should also be noted that at other times during the remainder of the lease, when new tenants move into the units or when major maintenance work is required, Council funding may again be required to address any shortfall in income to cover operating costs. A projection of income and operating costs for the first 25 years of the lease is attached as confidential Appendix A.

23. It is anticipated that a service charge will be paid by all occupiers, including those occupiers not paying rents such as Island Line and the Police Service.
24. The bus operator will contribute £36,000 per annum to the service charge. This sum is currently subject to contract.
25. It is currently anticipated that service charges will be based on 25% of the rent which we understand is reasonable in the market place. This does, however, leave an amount remaining which the Council would need to fund from rental income.
26. A breakdown of the estimated running costs is provided in Appendix B. These costs include cleaning, utility charges to communal areas, business rates of communal areas, telephone, refuse costs and insurance. Maintenance costs have been calculated to include all repair, maintenance and redecoration of the main structure and common areas, to include a sinking fund.
27. Each tenant will fund their own utilities, including the consumption of power and water. Individual sub-meters have been allowed for within the build cost.
28. The cost of cleaning and day to day maintenance of the public conveniences in the Ryde Gateway building will be funded from the Council's existing public convenience budget, as these will be replacing the current Esplanade block.
29. NR has stated that it is standard for a profit sharing agreement to be entered into between Network Rail and their tenants, in this case the Council. The terms of the profit sharing agreement are still being negotiated with Network Rail and will need to be agreed by their finance board. In principle, NR will share in profits over and above an agreed threshold on a 50 / 50 basis. The Council's position is that the threshold figure should take into account not only the ongoing costs for running and maintaining the building, but also the Council's capital contribution to building the gateway building. As stated above, this element of the lease is still under negotiation with NR.
30. The Council has sought legal advice regarding the

contractual position following the original tendering exercise for the major works on the Ryde Gateway project. The advice received is that a fresh procurement process is appropriate, having regard to the length of time that has elapsed since the original tender was received and the changes that need to be made to the tender documents to reflect, in particular the requirements of the Asset Protection Agreement which the contractor was not aware at the time of tender. No contract award notice was issued following the original tendering process and there is no contract in place with Dyer and Butler.

The contract was advertised under the restricted procedure and the effect of continuing with the current contractor would be to move to the negotiated procedure both in relation to price and the terms and conditions. It appears that there is no provision or precedent for this in the Public Contracts Regulations. The clear advice received is that a fresh procurement process is appropriate in all the circumstances. Failure to proceed on this basis would place the Council in breach of European Union procedure and open to challenge. Potential challenge could come from an unsuccessful bidder in the original tendering process. This could result in the Council being held liable for the costs incurred by the bidder in preparing their bid, as well as damages in terms of income that the bidder could have received were they successful. A challenge could also come from the European Commission, which if successful could result in the Council being sued for up to 10% of all income it receives including grant income.

- Options
- 31. It is proposed that Network Rail, in conjunction with Island Line, will grant the Isle of Wight Council a 99 year lease at a peppercorn rent.
  - 32. The building will be owned by Network Rail as it sits upon land owned entirely by them albeit franchised to Island Line.
  - 33. The bus departure area is on Council owned land and will be occupied under agreement by Southern Vectis and other transport operators.
  - 34. Option 1  
Do not continue with the Ryde Gateway Project.
  - 35. Option 2  
The Council allocates an additional sum of £1,500,000 to the Ryde Gateway project and undertakes a tendering exercise in order to ensure compliance with European procedure. The Council ensures substantial commencement on site prior to the expiration of the planning permission on 1 December 2008 through the

procurement, on a one off basis, of works to comply with the planning conditions.

## Risk Management

### **Construction Phase**

36. The key risks to the construction phase of the project are:
- The risk that the Council is unable to appoint a main contractor and professional consultants through the tendering process at an overall cost within the revised authorised spend. The current review of the project has included a reassessment of projected costs in the light of current market conditions.
  - The risk that the current planning permission expires resulting in a need to resubmit a planning application creating further delay to the project. The current permission expires on 1 December 2008 but Option 2 proposes procurement, on a one off basis, of works to comply with the planning conditions by the end of November 2008.
  - The risk that planning permission for change of use to the first floor (to create the income stream shown in Appendix 2) cannot be achieved. Informal discussions with the Planning department indicate that a higher value commercial use is acceptable for the first floor.

### **Management of the Completed Building**

37. The key risks to the successful ongoing management of the completed building are:
- The risk that additional rent frees / rental voids once the market is tested will reduce the rental income. We have made reasonable assumptions based on current market evidence for the purposes of this report, but we cannot predict what the market will be in 2009.
  - The risk that rental figures stated in this report are not achieved. These are unlikely to be known until the development is nearing completion.
  - The risk that the rental stream increase is not achieved. This is assumed at 5% every 5 years. This is reasonable at present but cannot be guaranteed.
  - The risk that service charge levels are not achieved. These units are not yet let and the service charges stated above have not been tested in the market place.

- The risk that running and maintenance costs prove higher than estimated. The Council has employed independent consultants to provide the most reliable information available.

Evaluation

Option 1 – Do not commence with the Ryde Gateway Project

38. Failure to undertake the project will have a direct impact on Ryde Esplanade and the town. The existing building and surrounding areas need to be upgraded and neither Network Rail nor South West Trains have plans to do so.
39. The Council has achieved external funding for the project from the DfT following the submission of a detailed business case. Failure to deliver this project will mean not only the loss of funding, but could affect other projects which the Council is currently undertaking and will undertake in the future with the DfT.
40. Halting the project at this stage will mean that the sum of money that the Council has already spent on the project would be lost. This sum is currently in excess of £1,200,000 and may increase should there be any successful abortive cost claims.

Option 2 – The Council allocates an additional sum of £1,500,000 to the Ryde Gateway project and undertakes a tendering exercise in order to ensure compliance with European procedure. The Council ensures substantial commencement on site prior to the expiration of the planning permission on 1 December 2008 through the procurement, on a one off basis, of works to comply with the planning conditions.

41. This will place an additional burden on the Council's capital programme, however it will ensure the delivery of project which will not only provide a new and iconic gateway to the Island, it will also be the catalyst for further regeneration of Ryde Esplanade and the town itself. Undertaking a tendering exercise on the major works will ensure that that Council is no longer in breach of European Union regulations, however there may be abortive cost claims. It is not possible to quantify what these might be at this stage.

Recommendations

42. It is recommended that Option 2 is implemented: The Council allocates an additional sum of £1,500,000 to the Ryde Gateway project and undertakes a tendering

exercise in order to ensure compliance with European procedure. The Council ensures substantial commencement on site prior to the expiration of the planning permission on 1 December 2008 through the procurement, on a one off basis, of works to comply with the planning conditions.

Background Papers

Delegated Decision 26/07 “Ryde Interchange – Approval to Construct” .

Delegated Decision 18/08 “Ryde Gateway – Approval to Accept Government Funding to Support the Development of the Scheme”

The Interchange website [www.rydeinterchange.com](http://www.rydeinterchange.com) gives a comprehensive account of the work completed to date and details illustrations of how the complex will look.

Appendices  
Attached

**CONFIDENTIAL**

Appendix A – 25 Year Cash Flow Projections

Appendix B – 25 Year Lifecycle Costs

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