



FYLDE BOROUGH COUNCIL



Meeting Agenda

**Policy & Service Review Scrutiny
Committee
Town Hall, Lytham St. Annes
10 March 2006, 2:30pm**

POLICY & SERVICE REVIEW SCRUTINY COMMITTEE MEMBERSHIP

CHAIRMAN	TBA
VICE-CHAIRMAN	TBA

Councillors

TBA	TBA
TBA	TBA
TBA	TBA
TBA	

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CORPORATE OBJECTIVES

The Council's investment and activities are focused on achieving our five key objectives which aim to :

- Conserve, protect and enhance the quality of the Fylde natural and built environment
- Work with partners to help maintain safe communities in which individuals and businesses can thrive
- Stimulate strong economic prosperity and regeneration within a diverse and vibrant economic environment
- Improve access to good quality local housing and promote the health and wellbeing and equality of opportunity of all people in the Borough
- Ensure we are an efficient and effective council.

CORE VALUES

In striving to achieve these objectives we have adopted a number of key values which underpin everything we do :

- Provide equal access to services whether you live in town, village or countryside,
- Provide effective leadership for the community,
- Value our staff and create a 'can do' culture,
- Work effectively through partnerships,
- Strive to achieve 'more with less'.



AGENDA

ITEM	PAGE
1. DECLARATIONS OF INTEREST: <i>In accordance with the Council's Code of Conduct, members are reminded that any personal/prejudicial interests should be declared as required by the Council's Code of Conduct adopted in accordance with the Local Government Act 2000.</i>	4
2. CONFIRMATION OF MINUTES: <i>To confirm as a correct record the Minutes of the Policy & Service Review Forum held on 19 January 2006.</i>	4
3. SUBSTITUTE MEMBERS: <i>Details of any substitute members notified in accordance with council procedure rule 26.3</i>	4
4. CALL- IN - MILL STREET CAR PARK, KIRKHAM	5 - 15

REPORT



REPORT OF	MEETING	DATE	ITEM NO
DEMOCRATIC SERVICES AND PARTNERSHIPS BUSINESS UNIT MANAGER	POLICY AND SERVICE REVIEW SCRUTINY COMMITTEE	10 MARCH 2006	4

CALL- IN - MILL STREET CAR PARK, KIRKHAM

Public/Exempt item

This item is for consideration in the public part of the meeting.

Summary

This report details the call-in procedure for members following a call-in of a decision made by Cabinet on 15th February 2006. The agenda item and relating minute are attached as appendices to this report.

Recommendation

In line with the call in procedure members are invited to discuss whether this decision is in the interest of the residents of Fylde and to decide whether the decision should be reconsidered in light of this information.

Executive brief

The item falls within the following cabinet brief[s]: Development and Regeneration: Councillor Roger Small.

Report

Members are reminded of the call-in procedure detailed in Fylde Borough Councils' constitution. All decisions made by the Executive must be published within four working days of being made. The decision notice should bear the date on which it is published and will specify that the decision may then be implemented on the expiry of six working days

after the publication of the decision, unless a Scrutiny Committee objects to it and calls it in.

If any ten members of the Council request that a decision be called-in for scrutiny, the Overview and Scrutiny Manager shall recover the decision by the relevant Scrutiny Committee and shall then notify the decision-taker of the recovery of the decision. The Overview and Scrutiny Manager is required to arrange a meeting of the relevant Scrutiny committee to be held within ten days of receipt of the request to recover the decision.

If, following a request to recover a decision, the Scrutiny committee does not meet in the period set out above, or does meet but does not call-in the decision, the decision shall take effect on the date of the Scrutiny Committee meeting, or the expiry of that further ten working day period, whichever is the earlier.

If the matter was referred to full Council and the Council does not object to a decision which has been made, then no further action is necessary and the decision will be effective from the date of the council meeting. However, if the Council does object, it has no locus to make decisions in respect of an executive decision unless it is contrary to the policy framework or contrary to or not wholly consistent with the budget. Unless that is the case, the Council will refer any decision to which it objects back to the decision-making person or body, together with the Council's views on the decision. That decision-making body or person shall choose whether to amend the decision or not before reaching a final decision and implementing it.

Call-In

Councillor Elizabeth Oades has called-in the decision made by Cabinet on the 15th February 2006 with regard to Item 2, Mill Street Car Park, Kirkham. Councillors Maxine Chew, Stephen Wall, Karen Henshaw, Keith Wright, Louis Rigby, Heather Speak, Linda Nulty, Paul Hayhurst, Kiran Mulholland and Howard Henshaw supported the call-in request.

The terms of the call-in are shown below:

"At the meeting on the 15th February, the cabinet agreed that, in the event of restructuring of local government, consideration would be given to releasing assets to town and parish councils. The Councillors request that the item be reconsidered in light of information released in the Council Newsletter Grapevine on 15th February 2006. Grapevine stated that, if Government announces plans that will affect Fylde, it is likely that restrictions will be placed on the disposal of assets and this is likely to occur on summer of 2006".

In line with the call in procedure members are invited to discuss whether this decision is in the interest of the residents of Fylde and to decide whether the decision should be reconsidered in light of this information.

Councillor Elizabeth Oades, the member originating the call in will be invited to state her case by Councillor Ray Norsworthy, Chairman of the Committee and Councillor Roger Small, the Development and Regeneration Portfolio Holder will be asked to respond.

IMPLICATIONS	
Finance	

Legal	
Community Safety	
Human Rights and Equalities	
Sustainability	
Health & Safety and Risk Management	

REPORT AUTHOR	TEL	DATE	DOC ID
Tracy Scholes	(01253) 658521	1 March 2006	

LIST OF BACKGROUND PAPERS		
NAME OF DOCUMENT	DATE	WHERE AVAILABLE FOR INSPECTION
Document name		Council office or website address

Attached documents

Copy of the original report and corresponding minute relating to this matter – Cabinet – 15 February 2006

REPORT



REPORT OF	MEETING	DATE	ITEM NO
ECONOMIC WELLBEING & REGENERATION AND LEGAL & DEMOCRATIC SERVICES	CABINET	15 TH FEBRUARY 2006	2

MILL STREET CAR PARK, KIRKHAM

Public/Exempt item

This item is for consideration in the public part of the meeting.

Summary

The report advises members of progress with negotiations with Kirkham Town Council over the future of Mill Street car park.

Recommendation/s

That Members do not agree to the transfer of Mill Street car park to a Trust.

Executive brief

The item falls within the following cabinet briefs:

To be determined at the time of drafting the report.

Report

Previous decisions

- 1) At its meeting on the 20th July 2005 the Executive Committee considered a detailed report on a request from Kirkham Town Council to take over the management and control of Mill Street car park, Kirkham. The Committee resolved 'not to introduce charges on Mill Street car park and to authorise officers to negotiate with representatives of Kirkham Town Council about the future of Mill Street car park and that a report be brought to a future meeting of the Executive Committee'.

Outcome of negotiations

- 2) In August your officers attended a meeting with representatives from Kirkham Town Council to commence these negotiations. The meeting discussed the above resolution along with the following more detailed issues:
 - The establishment of a charitable trust to manage the car park (including the community centre).
 - Assessing the condition of the existing car park features
 - What third party access rights are there?
 - What potential outstanding issues are there?
 - Defining the extent of the disposal
 - What the various terms and conditions will be?
- 3) The above negotiations have been based on the car park remaining as a free public car park and therefore the trust has no opportunity to raise income and pay a proper consideration for the car park. Furthermore the Trust would be obliged to maintain the car park and all its boundaries and structures at its own expense. Officers have provisionally reached broad agreement on the draft terms of a disposal, which includes freehold sale for one pound and includes the site of the telecommunication mast from which the council currently receives income of £2,000 per year. It is clear that as the proposed disposal is to a charitable trust there would need to be further legal work on the precise terms of the transfer. The rest of the report outlines the other more fundamental issues that relate to this proposed disposal.

Disposal at an undervalue

- 4) The sale of the car park on these terms would be a disposal of the land under the Local Government Act 1972. Under section 123 of that act, the council may not, without the consent of the secretary of state, dispose of land for a term of more than seven years for a consideration less than the best that can reasonably be obtained. Obviously, the nominal consideration proposed does not represent the best consideration that could be reasonably obtained. The consent of the secretary of state is therefore needed.
- 5) The secretary of state has given a general consent for the disposal of land at an undervalue by a council where:
 - a) The disposal is likely to contribute to the achievement of any one or more of the following objects in respect of the whole or any part of its area, or of all or any persons resident or present in its area;
 - i).the promotion or improvement of economic well-being;
 - ii) the promotion or improvement of social well-being;

iii) the promotion or improvement of environmental well-being; and

b) the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds).

- 6) Members must therefore satisfy themselves that disposing of the land at less than its unrestricted value will achieve one of the objectives in a) above, and that the difference between the unrestricted value of the land and the disposal value as proposed is less than £2,000,000.
- 7) The Technical Services Manager has previously estimated that if charging was introduced on Mill Street Car Park it could potentially raise a net income of as much as £48,000 per annum. Current revenue from the mobile phone mast takes this to just over £50,000 per annum.
- 8) The unrestricted sale value of the land (including interest in the mobile phone mast) has been valued at **£282,500** (two hundred and eighty two thousand and five hundred pounds) by the council's external valuers. (The unrestricted value means the best price reasonably obtainable for the property on terms that are intended to maximise the consideration, calculated in accordance with technical guidance contained in the Local Government Act 1972: General Disposal Consent (England) 2003).
- 9) The consideration for the proposed disposal sale is one pound. The difference between the unrestricted value and the consideration for the disposal is therefore £282,499 in capital terms. This comes within the parameter of £2,000,000.
- 10) The proposed disposal therefore comes within the financial parameters of the Local Government Act 1972 General Disposal Consent (England) 2003. However, for the disposal to qualify under the general consent, members need to be satisfied that the disposal would be likely to contribute to one or more of the objectives set out in paragraph 5 (a) above and consequently would not need specific consent from the Secretary of State. However Members also need to be satisfied that in forgoing such income the benefits outweigh the loss and can be justified to the residents of the borough.
- 11) The previous report to members set out in detail the economic benefits to Kirkham of not charging for car parking. In the light of this members have already agreed that for the time being at least, not to impose car parking charges on the Mill Street car park whether or not the land is transferred. The proposed Trust would be obliged to maintain the land as a car park and would not be permitted any other use than as a car park. It is therefore difficult to argue that the sale/transfer of the car park would result in any additional economic, environmental or social benefits that those that already exist. Officers cannot therefore recommend that the disposal proceed at this time.
- 12) If cabinet feels that a case could be made that the disposal of the car park would be likely to contribute to the achievement of any of the well-being objects set out in paragraph 5 (a), members are recommended to defer the decision until a future meeting. This would enable members and officers to work on a reasoned justification to satisfy auditors and other interested parties that the council had proper regard to its fiduciary duties.

European Union rules on state aid

- 13) The disposal also needs to comply with the European Commission's State aid rules. When disposing of land at less than best consideration authorities are providing a

subsidy. Where this occurs the council must be satisfied that the nature and amount of subsidy complies with the State aid rules, particularly if, as here, there is no element of competition in the sale process. Failure to comply with the rules means that the aid is unlawful, and may result in the benefit being recovered with interest from the recipient.

- 14) Article 93 of the EU Treaty deals with state aid. It refers to “any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods”. The subsidy that would be given to the Trust by disposing of the car park appears to fall outside the definition, so the rules would not appear to be infringed. In any event, there is a “de minimis level equivalent to aid to the value of £100,000 calculated over a three-year period.

Financial situation

- 15) Members will be well aware that the council's current financial situation means that every opportunity must be properly considered for raising income by charging market rates. Currently the Council pays £12,500 in business rates and maintenance and receives £2,000 income from the siting of the radio mast. There is therefore a current net cost of £10,500, which will be saved by disposing of the car park. However in doing so the council gives up an asset to the value of £282,500 and loses the opportunity to generate an extra £48,000 from introducing charging. £48,000 is the equivalent of a 1.1 % increase in council tax.

Asset Management Group

- 16) The Asset Management Group (AMG) has now considered the request and feels that given the current financial position of the council that the recommendation should be ‘not to dispose of the asset at the current time’.

IMPLICATIONS	
Finance	As a car park the asset has the potential to generate annual revenue income of £50,000 or a single capital receipt of £282,500.
Legal	<p>The proposal raises serious concerns on two counts. First, the “trust” to whom the car park is proposed to be disposed of has not been identified. Second, no community benefit from the proposed disposal at an undervalue has been identified.</p> <p>The terms of the proposed disposal appear to require the trust to maintain and operate the car park, but prohibit it from realising any income. It is difficult to see how trustees could fulfil their duties under such a trust without guaranteed funding from elsewhere. In such circumstances, suitable trustees would be unlikely to come forward and the Charity Commission would be unlikely to accept the trust as charitable.</p>
Community Safety	No implications anticipated
Human Rights and Equalities	No implications anticipated

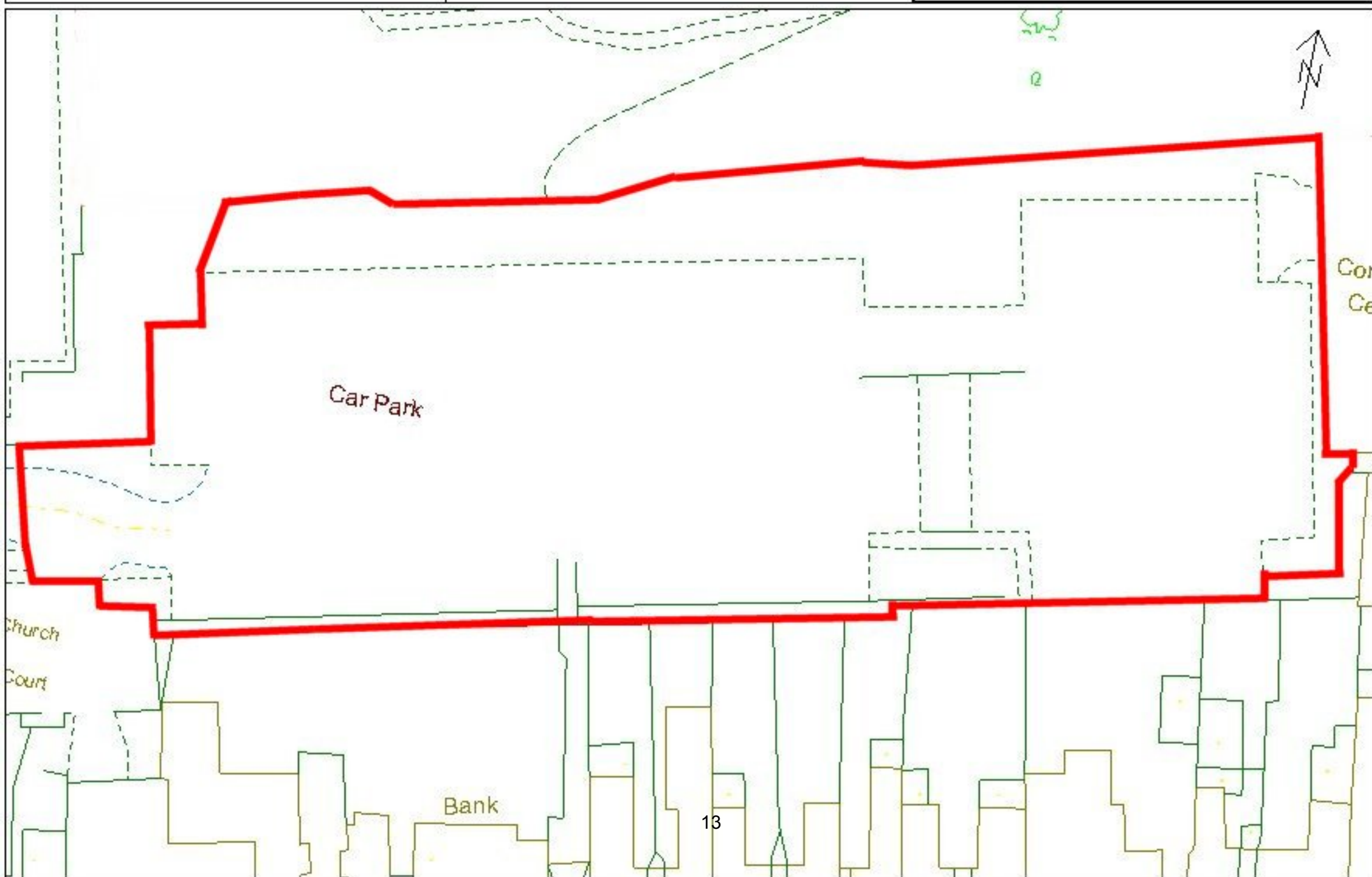
Equalities	
Sustainability	No implications anticipated
Health & Safety and Risk Management	No implications anticipated

REPORT AUTHOR	TEL	DATE	DOC ID
Paul Walker/Simon Kularatne/Ian Curtis	(01253) 658431/ 658506	23 Jan 2006	

LIST OF BACKGROUND PAPERS		
NAME OF DOCUMENT	DATE	WHERE AVAILABLE FOR INSPECTION
Executive Committee agenda	26 th January 2005	Fylde Direct Centres or www.fylde.gov.uk
Executive Committee agenda	15 th June 2005	Fylde Direct Centres or www.fylde.gov.uk
Car Park Strategy	June 2005	Streetscene Offices, Snowden Road, St Annes
Kirkham and rural Fylde Partnership Action Plan	January 2005	Town Hall St Annes or www.fylde.gov.uk
Executive Committee agenda		
ODPM circular 6/03: Disposal of land for less than the best consideration	20 th July 2005 2003	Fylde Direct Centres or www.fylde.gov.uk http://www.odpm.gov.uk/index.asp?id=1144327 T

Attached documents

Appendix 1 plan of Mill Street car park



2. Mill Street Car Park, Kirkham

Paul Walker (Economic & Regeneration Manager) presented the report, which advised the Cabinet of progress with negotiations with Kirkham Town Council over the future of Mill Street car park.

At its meeting on the 20th July 2005 the Executive Committee considered a detailed report on a request from Kirkham Town Council to take over the management and control of Mill Street car park, Kirkham. The Committee resolved 'not to introduce charges on Mill Street car park and to authorise officers to negotiate with representatives of Kirkham Town Council about the future of Mill Street car park and that a report be brought to a future meeting of the Executive Committee'.

The Cabinet considered the details set out in the report and RESOLVED not to agree to the transfer of Mill Street car park at present.

Structural arrangements for local government

On a related issue, the Government is again considering the structural arrangements for local government in England.

Minister for Communities David Milliband has announced plans for a number of consultation events to take place across the country over the next month or so. It is anticipated that a White Paper on the future of local government will be issued during the middle of 2006.

If the Government announces plans which affect Fylde then it is likely that restrictions will be placed on the disposal of assets and on incurring large capital projects. As more information emerges, staff will be kept updated.

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