



DERBY CITY COUNCIL

**COUNCIL LEADER**  
**24 OCTOBER 2006**

**ITEM 6**

Report of the Corporate Director –  
Corporate and Adult Social Services

## **Riverlights: Amendment to the Development Agreement**

### **SUMMARY**

1. The developer wishes to carry out some small scale drainage works on the Riverlights site prior to the Development Agreement going unconditional in order to keep the planning permission for the scheme live.

### **RECOMMENDATION**

- 2.1 To allow the minor drainage works to be carried out on the development site in advance of the Development Agreement going unconditional.
- 2.2 To authorise the Director of Corporate and Adult Social Services to conclude the necessary variation to the Development Agreement.

### **REASON FOR RECOMMENDATION**

3. It is not considered that the Council's position is compromised by allowing these minor works to take place at this time and not to allow them would cause significant delay to the project as the Developer would have to secure fresh planning permission for it.



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<b>SUPPORTING INFORMATION</b>
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**Background**

- 4.1 The Council entered into the current Development Agreement for the Riverlights scheme with Metroholst Riverlights Limited (the Developer) on 2 June 2004 after Cabinet approval was given on 6 April 2004. This Agreement superseded the original one which was made on 18 May 2001.

**Summary of Agreement**

- 4.2 In brief the Development Agreement provides that:
- ❖ The Council will grant the Developer a 150 year lease of the site at a peppercorn rent (this was done on 24 March 2005 after Cabinet approval given on 8 February 2005).
  - ❖ If sixteen pre-conditions (see Appendix 2) are fulfilled the Developer must, at its own cost and within a set timescale, construct the development including a new bus station and an improved road system.
  - ❖ When the development is completed the Council will be granted a peppercorn lease of the new bus station for approximately 150 years.
  - ❖ After the Developer has recovered its costs incurred in the development and taken a priority return of 15% of development costs any further proceeds will be shared equally between the Developer and the Council.

**Pre-conditions**

- 4.3 The current Development Agreement does not allow the Developer to commence work on the scheme, other than the demolition of the bus station, until all sixteen pre-conditions, summarised in the Appendix, have been fulfilled or, where capable, waived.
- 4.4 At present conditions 1 to 4 (inclusive), 6, 7, 10 and 16 have been satisfied and we believe some others may or are near being satisfied. The position is currently being verified with the Developer. However, if unconditionality is not achieved by the Long Stop Date of 30 June 2007 then either party may terminate the Development Agreement and the Council can bring the lease to the Developer to an immediate end.

- 4.5 Of the sixteen pre-conditions the Developer could, under the present Agreement, waive all but five of them. The non-waivable conditions are shown marked with an \* in Appendix 2.
- 4.6 Following the recent (11 September 2006) acquisition of the “Westfield” land by the Council (Condition 16) only one of the five unwaivable conditions remains outstanding; the requirement for a bond (Condition 14).

### **Bond**

- 4.7 The bond pre-condition requires that a bond will be provided by a bank or other financial institution to secure the performance of the Developer in constructing the new bus station and carrying out the associated infrastructure road works.
- 4.8 The amount of the bond is currently being discussed with the Developer and it is anticipated that a report will be taken to Cabinet on the matter in the near future. In the meantime the £2M the Developer has placed in an escrow account as security remains in place and the Council could call on this if the new bus station does not come into fruition.

### **Works to Keep Planning Permission Alive**

- 4.9 Planning permission for the Scheme was granted in October 1997 and in order to keep this permission live some “material operations” must be carried out by 2 November 2006.
- 4.10 To this end the Developer is proposing to install four permanent foul drainage drain pipes, each approximately 150mm in diameter and totalling 30 metres in length, together with a manhole 2.5 metres in depth.
- 4.11 This will require a further minor variation to the Development Agreement to allow these works in advance of the agreement going unconditional.

<b>For more information contact:</b>	Stuart Leslie 01332 255450 e-mail <a href="mailto:stuart.leslie@derby.gov.uk">stuart.leslie@derby.gov.uk</a>
<b>Background papers:</b>	Plan (Drawing No B 06093C/1000 showing the proposed drainage works
<b>List of appendices:</b>	Appendix 1 – Implications Appendix 2 – Summary of pre-conditions

<b>IMPLICATIONS</b>
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**Financial**

1. There are no direct financial implications for the Council arising from this report.

**Legal**

2. The Development Agreement will need to be amended if Cabinet approves the changes.

**Personnel**

3. There are no personnel implications arising from this report.

**Equalities impact**

4. There are no equalities implications from this report.

**Corporate objectives and priorities for change**

- 5.1 Riverlights will provide job opportunities during the construction process and in offices, the bus station and leisure units.
- 5.2 It also promotes the priority of providing shops, commercial and leisure activities, all of which will be incorporated in Riverlights.

<b>SUMMARY OF PRE-CONDITIONS</b>
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1. Developer applied for:
  - (a) highway consents for new road system
  - (b) outline planning position for residential, leisure and office use
  - (c) reserved matters approval for the bus station and residential and leisure elements.
2. Developer applied for all detailed planning permission for the building construction works, road works and use of the completed development.
3. Highway consents have been granted.
4. Planning permission for the development granted.
5. Developer issued satisfactory ground condition certificate to the Council.
6. New bus station specification agreed with Council\*.
7. Temporary bus station location, specification and programme agreed and any necessary planning application submitted\*.
8. Pre-Letting Requirements have been satisfied (ie Letting agreements securing 75% of the anticipated rental income entered into).
9. Building consents (eg for use of cranes) have been obtained
10. Council obtained vacant possession of the site and obtained necessary statutory approval to dispose of relevant part of the Riverside Gardens\*.
11. Funding requirements and/or Forward Sale Requirement and/or Forward Funding Requirement satisfied.

12. Developer obtained satisfactory licences (eg liquor)
13. Developer been granted Title Policy (Covenant indemnity policy).
14. Developer procured the Bond\*
15. Developer:
  - (a) prepared detailed specifications and drawings required to implement the Road Works
  - (b) obtained approval of highway authority to the Road Works specification and drawings.
  - (c) obtained approval in writing of Westfield to Road Works, required under lease of Cockpit car park
  - (d) entered into a deed of covenant with Westfield relating to, the Road Works to be carried out within their land.
  - (e) Entered into all statutory agreements relating to the Road Works
  - (f) Obtained any necessary traffic order.
16. The Council or the Developer has acquired the Westfield land necessary for the scheme\*.

\* These pre-conditions cannot be waived by the Developer.