



DERBY CITY COUNCIL

**COUNCIL LEADER**  
**2 FEBRUARY 2007**

**ITEM 5**

Report of the Corporate Director –  
Corporate and Adult Social Services

## **Riverlights: HIGHWAY WORKS**

### **SUMMARY**

1. To consider whether to allow the developer of the Riverlights scheme to commence the associated highway works in advance of the Development Agreement going unconditional.
2. In the spirit of earlier decisions to accept a rolling “bond” of £2M, allow early demolition of the bus station and approve early commencement of works necessary to keep planning permission for the scheme alive, I consider that I can make the following recommendation.

### **RECOMMENDATION**

- 2.1 To allow the highway works to be carried out 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. The early commencement of the highway works is critical to ensuring that there is sufficient time available to complete the ring road element of the Riverlights scheme in advance of Westfield opening the extended Eagle Centre.



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### **SUPPORTING INFORMATION**

#### **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 This Agreement superseded the original one which was made on 18 May 2001.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 and minor drainage works to keep the planning permission alive, until all sixteen pre-conditions, summarised in the Appendix 2 have been fulfilled or, where capable, have been waived by the Developer.
- 4.4 At present conditions 1 to 4 (inclusive), 6, 7, 10 and 16 have been satisfied and we believe most of the others have or are near to being fulfilled. 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 acquisition of the “Westfield” land by the Council in September 2000 (Condition 16) the only one of the five unwaivable conditions which remained outstanding was the requirement for a bond (Condition 14).

### **Bond**

- 4.7 The original bond pre-condition required that a bond should 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. The size of the bond was not specified in the Development Agreement as at that time (June 2004) it was impossible to make an informed assessment of what the cost of either element would be.
- 4.8 When the Development Agreement was varied in May 2006 to allow the Developer to demolish the old bus station it was a condition that it deposited as security £2m in an escrow account. In the event that the Development Agreement does not go unconditional the Council can call on and use this sum towards the funding of the new bus station.
- 4.9 Subsequently at its meeting on 19 December 2006 the Cabinet accepted the Developers proposal for a “rolling bond” of £2m as sufficient to discharge the bond requirement. In effect this means that once the Development Agreement goes unconditional the £2m already deposited in the escrow account by the Developer will remain in place to be called on by the Council should the Developer commence the scheme but not complete it and its funder not step in to complete.
- 4.10 The Cabinet approval for £2M “bond” was given subject to work on the scheme not commencing until the Developer’s funding agreement with a suitable lending institution was in place. This funding is not yet in place but the Developer’s solicitors have assured us that negotiations with one of the “top four lending banks” are progressing. If you agree the recommendation the Developer will be able to start the highway works prior to the funding agreement being finalised but this will remain a pre-condition to starting the building works.
- 4.11 The risk is allowing the highway works to commence now is that in advance of the Development Agreement going unconditional the current escrow account money of £2M can only be used for the provision of a new bus station, there will be no bond under the S.278 highway agreement (see Legal Implications) and there is no funder to step in and complete the highway works if the Developer fails to do so and the agreement does not go unconditional.
- 4.12 Against this must be balanced the potentially harmful delay to the Riverlights project of not allowing the highway work to commence now and the serious disruption to the City Centre if most of the works are now carried out before the Eagle Centre extension is opened (see Paragraph 4.14 below). In addition the willingness of the Developer to undertake such extensive and costly works is yet another indication of its commitment to this scheme.

## HIGHWAY WORKS

- 4.13 The highway works, which will be subject of an agreement under Section 278 of the Highways Act 1980, will comprise the replacement of the existing gyratory Cock Pitt island with a new signalised traffic junction linking Traffic Street, Station Approach and St Alkmunds Way. New access arrangements will be formed to the existing Cock Pitt car park and to the new bus station and other parts of the proposed development. Changes will also be made to Morledge to provide suitable facilities for pedestrians, buses, taxis and servicing vehicles. On completion of the works the current temporary bus station arrangements will be largely removed.
- 4.14 Completion of the ring road element of the Riverlights highway works is vital to ensuring that there is sufficient highway capacity to meet the demands on the city centre roads when the extended Eagle Centre development opens. This is scheduled for late September 07.
- 4.15 The current highway programme drawn up by the Riverlights Developer and their highway engineers is based on work commencing next week and shows the key elements of scheme, those directly affecting the ring road, being completed only three weeks prior to the opening of the new Eagle Centre. Any slippage will have serious implications. Conversely not to allow the highway works to commence until after the Eagle Centre opening is likely to cause significant disruption to City Centre traffic.
- 4.16 There have been extensive discussions between the Council's Highways Officers, the Riverlights Developer and the Eagle Centre Developers, Westfield on the roadworks to agree a programme.

**For more information  
contact:**

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**Background papers:**

Plan (Drawing No B 06093C/1000 showing the proposed drainage works

**List of appendices:**

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**

- 2.1 The Development Agreement will need to be amended if Cabinet approves the changes.
- 2.2 The Developer will also have to enter into a S.278 highways agreement with the Council under which the Developer will be obliged to carry out the specified highway works to a set standard and within a fixed timescale and on completion to the agreed standard the Council will be obliged to adopt the works as public highway.

**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.