



RIVERLIGHTS: REVISIONS TO THE DEVELOPMENT AGREEMENT

RECOMMENDATION

- 1.1 To approve the granting of an early lease of the Development Site to the Developer on the basis and with the safeguards set out in the report.
- 1.2 To authorise the Director of Corporate Services to agree and conclude the necessary variations to the Development Agreement.
- 1.3 To approve the other proposed amendments to the Development Agreement in Appendix 3 of the report and authorise the Director of Corporate Services to make these and other minor amendments to the Development Agreement.

REASONS FOR RECOMMENDATION

2. The earlier grant of a lease of the Development Site to the Developer will help it to raise the additional funding necessary to pay for the significant costs it will have to incur in the next 6 months and help bring the scheme to fruition.

SUPPORTING INFORMATION

- 3.1 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 This agreement superseded the original one which was made on 18 May 2001.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

- 3.2 In brief the current agreement provides that:
 - ❖ If sixteen preconditions (see Appendix 2) are fulfilled the Council will grant the Developer a 150 year lease of the site at a peppercorn rent.
 - ❖ After the grant of the lease the Developer must, at its own cost, 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.

Scheme Progress

3.3 The scheme is now progressing well:

- ❖ Tenant interest is strong
- ❖ All necessary planning permissions have been granted.
- ❖ The disposal of the small area of the public open space in the Riverside Gardens, needed for the development, has been approved by the Council (Cabinet: Dec 04)
- ❖ Agreement has been reached with Westfield for the acquisition of necessary “highway” land and shared use of the Cockpit car park.
- ❖ A positive meeting has been held with the bank funding the development.

Next Stage

3.4 The Developer is therefore keen to progress to the next stage but this will require considerable expenditure; the temporary bus station arrangements, which are now approved, will cost approx £600,000 in construction costs and nearly a further £100,000 in professional fees. In addition over the next 6 months the Developer will need to spend a further £1.5 million on progressing design details and £10 million on ordering materials for the main construction.

Bank Funding

3.5 The Developer is willing to make this commitment but given the level of expenditure it’s looking to get funding from a major bank; Deutsche Possbank Bank. This has been agreed in principle but the bank requires security by way of a charge over the Development lease which is to be granted to the Developer by the Council.

Pre-conditions to Lease

3.6 However under the current Development Agreement the lease would not be granted until the 16 pre-conditions have been fulfilled. A summary of these is given in Appendix 2. The present position is that some have been met and others are very close to being. However others, such as the pre-letting requirements, granting of satisfactory licences and obtaining formal approval to the highway works, are some months off being achieved.

- 3.7 Of the 16 pre-conditions the Developer could, under the present agreement, waive all but five of them. (The non-waiveable conditions are shown marked with an * in Appendix 2). However even if they were waived their non-fulfilment could still in practical terms frustrate the scheme.
- 3.8 The alternative to “waiver” would be to wait until all the pre-conditions are met. However during the time taken to achieve this the current strong tenant interest could wane. To retain interest the Developer needs to demonstrate that the scheme is progressing and give a firm indication of when work will start. Most importantly it needs to give a date when occupation is likely to be given. If this date is too far off potential tenants will not commit until later making pre-letting/funding very difficult.

Early Lease Proposal

- 3.9 In order to secure bank funding and be able to move to the next stage relatively quickly the Developer’s proposal is that the Council grants the lease of the Development Site early, that is before all the pre-conditions have been met or waived.
- 3.10 In order to safeguard the Council however the revised agreement will provide that if the pre-conditions are not met by a set date (Long Stop Date) the Council could, at its absolute discretion, demand a surrender back of the lease. This set Long Stop Date will be 30 June 2007.
- 3.11 As an additional safeguard the demolition of the current bus station would not be allowed until the agreement goes unconditional (ie all the pre-conditions are met or waived) and the Council would be given a licence to use the bus station between the lease being granted and unconditionality being achieved.

Bond

- 3.12 One of the 16 pre-conditions to the Council granting the lease is 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.
- 3.13 The difficulty with providing such a bond when an early lease is granted is that these construction costs will not have been fully calculated and it will therefore be difficult to fix the size of the bond.
- 3.14 It is therefore proposed that the Development Agreement be amended to allow the Bond to be provided after the lease is granted **but** before work on the bus station and highway works starts. However the component costs that will be taken into account when calculating the size of the bond will be identified and agreed prior to the lease being granted

Other Amendments

- 3.15 Inevitably as a major scheme progresses changes occur. This scheme is no exception and in order for the Development Agreement to accurately reflect the present position and to meet requirements from the funders the Developer’s Solicitors have suggested a number of amendments which are set out in Appendix 3. None of these proposed charges are regarded as particularly significant.

OTHER OPTIONS CONSIDERED

4. To continue with the existing agreement. However for the reasons given in the “Supporting Information” of the report this would mean the Developer would have difficulty funding the necessary works, this could lead to delays and the associated problems that could bring.

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Background papers: None
List of appendices: Appendix 1 – Implications
Appendix 2 – Summary of pre-conditions
Appendix 3 – Further proposed amendments to the Development Agreement

IMPLICATIONS

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 to allow the Developer to take an earlier lease

Personnel

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

Equalities impact

4. No equalities implications arising from this report.

Corporate objectives and priorities for change

- 5.1 Riverlights will provide **job opportunities** during the construction process and in offices, 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

SUMMARY OF PRE CONDITIONS

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.

FURTHER PROPOSED AMENDMENTS TO THE DEVELOPMENT AGREEMENT

- ❖ The time period for the Developer to carry out the development to be extended from 24 to 36 months (Clause 12.4).
- ❖ The time period within which the funder has to decide whether to “Step in” following a default by the Developer to be extended from three to two months (Clause 24).
- ❖ The “Step in” rights be enlarged so that the funder has the right on the Developer’s default not only to step in itself but alternatively to introduce a new developer to conclude the project (Clause 24)
- ❖ That in the event of a default by the Developer notice is served by the Council not only the Developer but also the funder (Clause 3.7).
- ❖ That the Insurance Clause is amended so that if the development is damaged or destroyed and cannot be reinstated within 36 months the bank would have first call on these funds (Clause 16).