

CABINET

Morecambe Central Promenade Development Agreement

15 March 2011

Report of Head of Property Services

PURPOSE OF REPORT			
To obtain the agreement of Cabinet to extend the development agreement between the Council and Urban Splash by up to two years to enable the outstanding planning application to be determined.			
Key Decision	X	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	02 February 2011		
This report is public			

RECOMMENDATIONS OF COUNCILLORS BRYNING AND LANGHORN:

- (1) That the Council negotiates an extension to the development agreement by twelve months to give time to determine the outstanding planning application.
- (2) In the event of unanticipated delays in being able to obtain a Planning decision that a further report be brought back to Cabinet to extend the agreement by a further twelve months.

1.0 Report

- 1.1 Cabinet resolved on 14 December 2010 to defer consideration of a formal decision on how to proceed with the Morecambe Central Promenade Development agreement until the outstanding planning application submitted by Urban Splash had been determined. Minute No 86:

“(1) That consideration of the Morecambe Central Promenade Development Agreement be deferred until the pending planning application by Urban Splash had been determined.”

One of the options in the report was to respond to a request from Urban Splash to extend the length of the current development agreement which expires in June 2011.

- 1.2 Since the December Cabinet meeting, consideration has been given to how much work still needs to be undertaken to get to a position where the current outline planning application can be presented to the Planning and Highways Regulatory Committee. As part of this process, meetings have been held with Urban Splash and two statutory consultees.
- 1.3 Development Management officers in Regeneration and Policy advise that there remain outstanding issues raised by the Highway Authority and English Heritage which need to be investigated further before they can reach a conclusion over recommendations to the Regulatory Committee. An undertaking has already been made by Urban Splash to carry out the work needed to address the outstanding issues and to attempt to reach an agreed position with English Heritage and the Highway Authority. Urban Splash would also want to undertake a further period of public consultation on their final revisions to the scheme.
- 1.4 It is anticipated that the earliest the outstanding planning applications could be in a position to be presented to the Planning and Highways Regulatory Committee would be July, but this would be after the “longstop” date in the current development agreement. With this in mind, it is now clear that an extension to the development agreement is essential for the Council to demonstrate it is acting reasonably under the principles which guided the drafting of the current agreement.
- 1.5 An extension of twelve months will be required to allow sufficient time to work through this process, and to allow for possible interventions by the Secretary of State and/or legal challenges, In the event that further unforeseen delays occur, it is also considered prudent to delegate authority to the Chief Executive to agree a further twelve month extension should this prove necessary.

2.0 Options and Options Analysis (including risk assessment)

	Option 1: Extend existing development agreement	Option 2: Do not extend existing development agreement
Advantages	Continuity of approach, no major conflicts with current development agreement.	No need to negotiate changes with Urban Splash.
Disadvantages		If Urban Splash wished to proceed and the development agreement was not extended, this would mean that the planning applications would have to be determined before June in the form they are now.
Risks		The possibility of a claim for breach of existing agreement.

3.0 Officer Preferred Option (and comments)

- 3.1 Officers recommend that the development agreement be extended to enable the applications to be determined after full consideration is given to the outstanding matters. This would enable the Planning and Highways Regulatory Committee to make a robust and comprehensive decision with no

technical matters outstanding.

RELATIONSHIP TO POLICY FRAMEWORK

The regeneration of Morecambe remains one of the Council's top priorities. The development of the land adjoining the Midland Hotel is identified in the Local Development Framework Core Strategy as one of the key regeneration projects.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

The development of this land has major impacts for the tourist economy in Morecambe. Its profile adjoining the Midland Hotel is one of the highest in the District. The continued regeneration of Morecambe's local economy will be highly influenced by changes to the land use and appearance of this site. Creating a stimulating economic use on the site has the potential to safeguard the significant investments which have already taken place.

LEGAL IMPLICATIONS

There is an existing development agreement between Urban Splash and the City Council which requires both parties to perform against specified requirements before the Agreement becomes unconditional. The only outstanding requirement is the obtaining of Planning Permission. The Development Agreement provides that the Council will cooperate with the Developer and use all reasonable endeavours to assist the Developer to obtain satisfactory Planning Permission in so far as it can provide such assistance acting solely in its capacity as landowner. The granting of an extension of time will be consistent with its obligations as landowner, although there is no specific requirement within the agreement to this effect and to implement such an arrangement would require a variation to the original terms.

If the Council chose not to grant such extension of time it is possible that the Council would be open to a claim of breach of contract if Urban Splash were to seek to argue that the Council had acted unreasonably given all the circumstances in not facilitating the extension of time.

FINANCIAL IMPLICATIONS

There are no new financial implications arising from the preferred officer option 1. With option 2, there is an increased risk that the council could incur additional costs arising from potential legal challenge by Urban Splash, which at this stage is neither quantified nor budgeted for.

Members are reminded that the council continues to hold a £250K deposit from Urban Splash, which can only be released to us in the form of payment for a licence to commence works on site if the pre-commencement conditions on any planning permission are discharged. If the existing development agreement is not extended or re-negotiated with Urban Splash, however, then this would have to be paid back to Urban Splash.

Regardless of which option is chosen, a more detailed report will need to be brought back to Cabinet prior to the council entering into any financial or contractual commitment for the development stage.

OTHER RESOURCE IMPLICATIONS

Human Resources: None

Information Services: No implications

Property: The land is currently in the Council's ownership and modifications to the Development agreement have been prepared by the Head of Property Services.

Open Spaces: The site currently provides open space on this portion of the central promenade. Proposals for redevelopment of the site would remove that facility.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Deputy Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Cabinet report and minutes 14 December 2010

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