

CABINET

Morecambe Central Promenade Development Agreement

7th December 2010

Report of Head of Regeneration and Policy

PURPOSE OF REPORT			
To obtain the views of Cabinet on how they wish to proceed with the Development agreement with Urban Splash taking into account updates in circumstances since it was entered into.			
Key Decision	X	Non-Key Decision	Referral from Cabinet Member
Date Included in Forward Plan	October 2010		
This report is public			

RECOMMENDATIONS OF COUNCILLOR BRYNING

- (1) That Members consider the results of the investigations into the potential for a marina to be incorporated in the Central Promenade Development and instruct officers on how they wish to proceed with the current development agreement.

1.0 Introduction

- 1.1 In June 2006 the Council entered into a development agreement with Urban Splash to facilitate the development of an area of the council's land adjoining the Midland Hotel. The agreement covered the public realm area of the central promenade site, the harbour band arena, the area occupied by the Dome and an area of public car parking. The selection of Urban Splash as preferred developer had occurred as they had become the owners of the adjoining site occupied by the Midland Hotel. To secure public funding from the North West Development Agency to assist in the extensive costs of refurbishing the hotel the Council was expected to grant exclusivity rights to Urban Splash in relation to this adjoining land.
- 1.2 The development agreement among its numerous clauses required Urban Splash to hold a design competition for the site, which they subsequently did, and to submit a planning application to secure permission for the chosen scheme. Two planning applications (one outline and one detail relating to a

smaller part of the site) were submitted on 13th June 2008. Aspects of the scheme raised adverse comments not only from local objectors, but also statutory bodies including English Heritage. Although the Council's officers had negotiated amendments between the developer and English Heritage by Christmas 2009 these had not been submitted and the application was reported to Planning Committee in February 2010 with a recommendation for refusal. The Planning Committee deferred consideration of the application after reassurances from Urban Splash that the promised revisions would be submitted. Those revisions were subsequently received and are currently pending a decision.

- 1.3 The development agreement has a long stop date of June 2011 beyond which both parties could opt to allow it to lapse without claim against each other, provided they have both performed to the obligations within it. Since the original development agreement was entered into there have been a number of concerns raised by Members about the relationship between the design of the scheme in comparison to that which won the architectural competition. In addition to that the Council has adopted its Local Development Framework Core Strategy and resolved to prepare an Area Action Plan for central Morecambe. In an Area Acton Plan this site would be a prominent feature.
- 1.4 The popularity of the Beachcomber concept with local residents has given rise to a level of support within the town for a different approach to be taken in relation to this site. In addition scoping work for the Area Action Plan revealed requests by some commentators that the Council consider whether or not the land adjoining the Midland Hotel could be developed with a scheme which included a Marina. The challenges of trying to do this are considerable, not simply because of the high conservation value of the bay which could raise strong technical objections, but also because of the difficult tidal conditions arising from the shallowness of the bay which would affect access. It is also unclear whether or not with existing marinas at Barrow, Fleetwood and Glasson, there would be a commercial demand for such a feature.
- 1.5 Because of the development agreement it is important that consideration of a marina, which would involve a step change in policy from the current land allocation and development brief should be undertaken promptly and avoid hindering the development processes. In this regard the current economic down turn has affected perceived demand for the development envisaged so there remains a window of opportunity to consider the feasibility of a marina without prejudicing a confirmed development programme. This window is however not extensive and Urban Splash have confirmed that they would like their outstanding planning application considered by the new year. This report has been prepared in advance therefore to anticipate the receipt of consultancy advice on marina feasibility and obtain members' instructions on how they want to proceed in the alternative scenarios.

2.0 Proposal Details

- 2.1 Expressions of interest in a focussed piece of work to assess the feasibility of a marina were sought in late September 2010. Only experienced consultancies with a track record of experience in marina development were invited to submit quotations. A period for the work programme has been set and initial findings should be available for the Council to consider in late November 2010.

- 2.2 If the findings of this investigative work suggest that a marina is not commercially or environmentally viable in this location then the Council should continue as originally intended and aim to determine Urban Splash's pending development proposals. There remain outstanding issues with the current revised planning application so it might not be practical to expect determination by early in the new year. To give extended time to resolve the issues with that application therefore, the Council could grant an extension to the development agreement.
- 2.3 If the findings suggest that a marina might be feasible further more detailed work would be necessary. Urban Splash's current development proposals could not be implemented and the Council could seek to renegotiate with Urban Splash to establish whether or not an alternative set of proposals can be produced for the site. Urban Splash have indicated in writing that they would wish to continue as a development partner with the Council to attempt to deliver a marina and mixed use development including extended accommodation for the Midland Hotel, should such a scenario be considered viable.
- 2.4 If a marina proposal were feasible but would have to monopolise the whole area of land adjoining the Midland, then this would effectively rule out any other form of development on the site and materially alter the circumstances surrounding this development brief. In these circumstances the Council will have to consider whether not to open new negotiations with Urban Splash relating to this and other sites in the area, or whether to withdraw from the current Development scheme and re market the site as part of new proposals arising from the Area Action Plan.
- 2.5 Clearly at the time of writing the commercial and environmental feasibility of a marina in this location is not yet known, but Urban Splash's attitude to two of the three scenarios has been made clear.

3.0 Details of Consultation

- 3.1 Extensive consultation has been carried out by Urban Splash and the Council in relation to the current planning application. The Council has also carried out consultations with the public on the scoping section of the Morecambe Area Action Plan. Consultation on the consideration of these options has been limited to appraising Urban Splash of the alternative. Urban Splash's initial response is appended to this report.

4.0 Options and Options Analysis (including risk assessment)

	Option 1: Marina not feasible, extend existing development agreement	Option 2: Marina feasible. Renegotiate development agreement with Urban Splash.	Option 3: Marina feasible. Re market site with view to negotiating a fresh development agreement.
Advantages	Continuity of approach, no major conflicts with current development agreement.	Addresses some community aspirations for site and decreases density on site.	Fresh approach to review use of site with wider considerations in Area Action plan.

Disadvantages	Council still has to deal with local concerns about scale of development on this side of Promenade.	May not be fundable without significant public sector subsidy and reduces values from development to Council receipts.	Means abandoning potential higher value scheme on site including scope for Midland Hotel to expand.
Risks	No new risks so long as Urban Splash do not dispute delays to consider this issue.	Potential challenge for breach of existing agreement if Urban Splash do not agree to variation.	Potential challenge for breach of existing agreement with Urban Splash.

5.0 Officer Preferred Option (and comments)

- 5.1 At the time of writing no conclusion has been reached on the commercial or environmental feasibility of a marina on the site therefore officers cannot support any other option than Option 1. The Council's current policy position in relation to the development of the site is that expressed in the development brief and until that is changed Option 1 is the only one which could be recommended. If the feasibility of a marina on the site is shown to potentially change from previous assessment of marina potential at Morecambe the preferred option will be reviewed in the light of that new information. Members will be given a written update for the meeting.

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

The development agreement between Urban Splash and the City Council is still conditional upon determination of the planning application and matters arising from such determination. If the City Council decides to change its view about the form of development it requires to take place on the site without agreement with Urban Splash, there is the potential for the Council to be in breach of the terms of the agreement. In the event of such a situation arising the Council would need to consider its contractual position and if deemed appropriate seek specialist legal advice to mitigate any potential claim. If there is a material change in planning circumstances such as a shift in the policy position then the developer and the Council in its land owning role have to take this into account even if this means that earlier aspirations for the site have to be revised. Should the potential for such a position occur,

specialist legal advice would be taken to ensure that the Councils position is protected if a policy change occurs.

FINANCIAL IMPLICATIONS

There are no new financial implications arising from the preferred officer option 1. With options 2 and 3 there is an increased risk that the council could incur additional costs arising from potential legal challenge by Urban Splash, however, which at this stage is neither quantified or 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 would require a significant input from the Councils property professionals.

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 s151 Officer has been consulted and has no further comments at this stage, pending a recommendation regarding which option to pursue.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments at this stage.

BACKGROUND PAPERS

Local Impact Reports : Advice note by the Infrastructure Planning Commission

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