



**Not for Publication:** Appendices A & B, and Plans 1 to 3 of this report are exempt/confidential under Access to Information Rule 10.4 (3)

## Report of the Acting Director of City Development

### Executive Board

Date: 9<sup>th</sup> March 2011

**Subject: Eastgate Quarter – Amendment to Legal Documentation and Commercial Deal**

#### Electoral Wards Affected:

City & Hunslet

Ward Members consulted  
(referred to in report)

#### Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

### Exemption

The Appendices A & B and Plans 1 to 3 of this report include exempt information relating to the financial or business affairs of a private developer and the Council; and the public interest in maintaining the exemption outweighs the public interest in disclosing the information because if disclosed it may prejudice the development of the project and may adversely affect the business of the Council and the interests of the private developer.

Under the City Council's Constitution, a decision may be declared as being exempt from Call In if it is considered that any delay would seriously prejudice the Council's or the public interest. A delay in completing the legal documentation as soon as practically possible could result in the Council losing the ability to use the existing Compulsory Purchase Order (CPO) within its current timeframe, which would result in the redevelopment not being able to proceed.

## 1.0 EXECUTIVE SUMMARY

1.1 This report sets out the current position regarding the Eastgate development and the legal documentation that exists between the Council and the developer. Hammerson, the developer, has requested that the existing documentation is amended to take account of market change that has delayed the start on site. The

proposed changes to the commercial arrangements, along with changes to the CPO methodology, are set out in the confidential appendices. All of these changes have implications for the Council and people with land interests within the current CPO boundary.

- 1.2 The Eastgate & Harewood Quarter is a £650m scheme which will have a significant impact on retail provision in Leeds and will create a large number of construction and permanent retail jobs for the City.
- 1.3 Members are asked to note the details of both the existing and proposed documents which highlight the main points and associated risks. Members are recommended to agree to the completion of revised legal documentation to both the existing CPO Indemnity Agreement and the Development Agreement.

## **2.0 Purpose of this Report**

- 2.1 The purpose of this report is to provide an update on the Eastgate scheme and also seek the necessary approvals to enter into deeds of variation in respect to the CPO Indemnity Agreement and the Development Agreement which currently are in place to facilitate the Eastgate redevelopment project.

## **3.0 Background Information**

- 3.1 The Eastgate & Harewood Quarter will be a flagship development which, with the Trinity development also taking place at present, will further cement Leeds as one of the top retail destinations in the UK. The development plans to attract John Lewis Partnership and M&S as anchor stores and it will provide over 4,000 permanent jobs.
- 3.2 Hammerson is a major retail developer in the UK and elsewhere. Its schemes in England include the Bullring in Birmingham, Highcross in Leicester, Cabots Circus in Bristol. The proposed development in Leeds takes in a large part of the area bounded by George St, Bridge St, the A64 and Vicar Lane, most of which is currently used as temporary surface car parking.
- 3.3 Prior to the current revised proposal, Hammerson Plc and Town Centre Securities Plc (TCS) formed the Leeds Partnership (LP) to facilitate the development of the Eastgate and Harewood Quarters, Leeds; 10 hectares of the city centre presently comprising open surface car parking areas, existing residential and commercial premises and underused and poor quality buildings.
- 3.4 In April 2006, Executive Board agreed that the Director of Legal & Democratic Services complete the legal documentation relating to the Eastgate & Harewood Quarters development, and that the Council makes a Compulsory Purchase Order to provide for the acquisition of land and new rights within the defined redevelopment area.
- 3.5 As a result of this approval, the Development Agreement and the CPO Indemnity Agreement were completed, between LCC, Hammerson UK Properties PLC. (HUK) and Town Centre Securities (TCS) on the 21<sup>st</sup> December 2006.
- 3.6 Outline planning consent for the scheme was granted in August 2007, which was subsequently granted a 3 year extension of time. This approval was for a retail led mixed use development of retail space, plus cafes, restaurants and bars, offices, 400 housing units, a cinema and gym, medical centre, church facility, crèche and a

hotel, with associated highway works, open space, 2,700 car parking spaces and re-alignment of a culverted watercourse.

- 3.7 However, following the completion of the legal documentation and the confirmation of the CPO, a start on site was delayed by the need to resolve Judicial Reviews to the CPO and the planning application. The recession then struck and the unprecedented conditions in financial markets with their resultant impact on the real estate markets meant that in order to maintain the commercial viability of the scheme, a start on site had to be deferred.
- 3.8 In May 2010, after a request was made by TCS to withdraw from the project, and following a period of negotiation, the Director of City Development exercised her delegated authority, and, in consultation with the Executive Member approved the request to novate and vary all the existing legal documentation that had been entered into, in relation to the development; from the 'Original Developer' (TCS & HUK) to the 'New Developer' Hammerson Leeds Investments with Hammerson UK Properties Plc. acting as guarantor.
- 3.9 Given the changed circumstances Hammerson has reviewed the scheme as detailed in 4.1 below and the timescales for delivering the scheme. This necessitates changes to the Development Agreement and CPO Indemnity Agreement with the Council.
- 3.10 ***The CPO and associated Indemnity Agreement .***
- 3.11 On entering into the formal legal CPO documentation (referred to at Appendix A); but which basically governs the making and implementation of the CPO and ensures that the Council is fully indemnified for all costs associated with the making and implementation of the CPO. Leeds City Council, as acquiring authority, made the Leeds City Council (Eastgate and Harewood Quarter, Leeds) Compulsory Purchase Order 2007 on 18 April 2007.
- 3.12 A formal public inquiry took place between November 2007 and February 2008; following which the Secretary of State confirmed the CPO by letter, dated 19 June 2008. Leeds City Council, as the acquiring authority, subsequently published notice of the confirmation of the CPO on 8<sup>th</sup> July 2008.
- 3.13 Section 4 of the Compulsory Purchase Act 1965 states that a compulsory purchase order must be implemented within 3 years of the date notice is served of the confirmation of the CPO. As a consequence the CPO must be implemented by no later than 8<sup>th</sup> July 2011.
- 3.14 **The Development Agreement**
- 3.15 The specific details of the legal documentation entered into are contained at Appendix B. This documentation has remained in place with the only substantive variation being that as detailed at 3.6 namely that the developer of the scheme is now Hammerson Leeds Investments, with Hammerson UK Properties Plc acting as guarantor.

#### **4.0 Main Issues - The current situation**

- 4.1 In February 2010, a series of workshop sessions took place involving Council officers and Hammerson to re-appraise the scheme with the intention to develop a commercially viable scheme which would still deliver the benefits originally intended. A number of work streams were established which resulted in the developer

entering into detailed pre-application discussions with planning officers to deliver a revised scheme which (if approved) would consist of:-

- alterations to the range of proposed uses;
- alterations to the layout and position of buildings, reassessment of the locations of the two anchor department stores, the breaking through and removal of a section of the Blomfield buildings to the north of Eastgate;
- proposed demolition and replacement of the south side of Eastgate;
- the building over of parts of Lady Lane, a bridge link across Eastgate, amendments to the hard and soft landscaping scheme, a new public space; Blomfield Square and pedestrianised covered, part covered and open streets;
- the possibility of siting an ESCo energy centre somewhere close to the site;
- Reduction in scale of the overall development with revised highways circulation.

4.2 The developers have made two pre-application presentations to Plans Panel (City Centre) (July & September 2010) with a view to a new scheme planning application being submitted in the near future. The revised scheme will incorporate a flagship John Lewis and Marks and Spencer store, located at opposite corners of the development. Templar Arcade, a new arcade for the 21st century will be created, adding a new chapter to the history of striking arcades in Leeds, which will contain a selection of major shop units, improving the quality and range of the retail offer in Leeds, and boosting the City Centre in the retail rankings. The scheme will also provide the potential of over 4,000 permanent retail and leisure jobs with the offer of pre-employment skills and training.

4.3 In order to proceed with the revised scheme within the ambit of the existing CPO the developers have requested the following:-

- **revisions to the mechanism for implementing the CPO;**
- **a revised commercial deal regarding the Council's land holdings.**

4.4 If the above are agreed it will be necessary to further amend the existing legal documentation, namely the CPO Indemnity Agreement and the Development Agreement. It should be noted that other legal documentation regarding the project (notably a Section 106 planning agreement and a Section 278 highway agreement) are associated with the planning process and will require revision should the planning application for the new scheme be approved. This will be a matter for the Plans Panel and accordingly do not form part of this report.

4.5 **Revised CPO strategy** – to date the CPO strategy, as set out in the current CPO Indemnity agreement between HUK and LCC, assumes the bulk of the land assembly for those parts of the site still to be acquired, would be assembled using the 'General Vesting Declaration' (GVD) process. This GVD process is intended to make acquisition of land following confirmation of a CPO more straightforward with the land vesting on a specified date when HUK would be required to commit to all the land acquisition costs.

4.6 In pursuing this method of land assembly it is necessary that the acquiring authority (LCC) must be satisfied that there are funds to meet all compensation claims arising on the vesting date. The impact of this is that by pursuing the GVD route HUK would have to commit to the full land acquisition costs before it and LCC could be assured there is a deliverable scheme.

- 4.7 The developer has presented to the council a draft revised CPO Strategy Document, which sets out options to secure the land. A copy of this appears as confidential background information in Appendix A. Officers agree with the general principles that are outlined in this document.
- 4.8 Highlighted in the document is the fact that an alternative methodology exists within the Council's CPO powers which is Notice to Treat followed by Notice of Entry, this allows the acquiring authority to preserve CPO powers without committing to a fixed date for the acquisition of the land. Furthermore, a Notice to Treat in certain circumstances may be withdrawn if a decision is taken not to proceed with the acquisition of certain plots or the scheme as a whole. This does not prejudice owners as a Notice to Treat expires in 3 years in the event that a Notice of Entry is not served. An inevitable and unavoidable consequence if this is that it leaves a 3 year period of uncertainty for those people with land interests served with a notice.
- 4.9 The developer has also given consideration to the possibility of allowing the existing CPO to expire without being implemented with a view to seeking new CPO powers under a new order at a later date. This poses considerable risks, not least the fact that it will be necessary to make a new case for the exercise of powers of compulsory acquisition against the backdrop of a CPO which has been allowed to lapse because of difficulties with scheme viability. It should be noted that as key elements of the new scheme proposals reflect those of the current scheme, implementing the CPO to deliver the new scheme (if approved) would be lawful.
- 4.10 Officers of the Council recognise the difficulties faced by the developer and agree that the revised approach to implementing the CPO requested by the developer is appropriate, and will ensure that the chances of the scheme being realised are maximised.
- 4.11 **Proposed changes to CPO Indemnity agreement** – the developer has requested that a further Deed of Variation to the current legal documentation is entered into which allows for the use of Notice to Treat, Notice of Entry methodology; the details of which are contained at Appendix A.
- 4.12 **Proposed changes to the Development Agreement** - the developer has requested revisions to the existing Development Agreement. This document sets out a number of conditions which the developer has to satisfy, within a specified time period and details the financial contribution to the Council for defined land contained within the CPO boundary. The revisions proposed are to reflect the impact that the downturn in the economy has had on both the financial and property markets. The details of these amendments are set out in the confidential appendix B, but in essence provide the developer with an extended period of time in which to deliver the comprehensive development on revised commercial terms.

## **5.0 Legal Observations**

- 5.1 As indicated above, the CPO Indemnity Agreement (CPOIA) governs the making and implementation of the CPO and provides an indemnity for the Council in respect of the costs arising from the CPO process. It has been in place since the 21<sup>st</sup> December 2006 and has provided an effective mechanism governing the relationship between the developer and the Council in terms of the CPO process.
- 5.2 The CPOIA has envisaged that the primary mechanism for implementing the CPO will be by the GVD process with Notice to Treat /Notice of Entry only being resorted to in the case of 'minor' interests which, by law, cannot be acquired by GVD. The

substantive amendments to the CPOIA ensure that the Notice To Treat /Notice of Entry process can be utilised as the primary mechanism for vesting the site whilst also extending the time period for the Developer to request that the Council should implement the CPO. The latter amendment allows the Developer an appropriate time to assess the prospects of the scheme proceeding whilst at the same time allowing the Council a sufficient lead in time to prepare for and execute the documentation required to implement the CPO.

- 5.3 The Development Agreement now proposed sets out specific dates within which the developer has to commence a comprehensive development and also to serve Notices to Treat and Notices of Entry. The original conditions in the Development Agreement remain largely the same with the revised commercial terms set out in the confidential appendix.

## **6.0 Financial Considerations**

- 6.1 There are no financial implications for the Council in accepting a change in the methodology to the implementation of the CPO, as through its very nature the legal agreement requires the developer to indemnify the Council for all costs. The details are contained in Appendix A.

- 6.2 Under the terms of the development agreement, the Council will retain all car parking income until commencement of the development when capital payments will be made. The developer will also meet Council officers' costs associated with progressing the development.

- 6.3 The Head of Property Service confirms that in his opinion, the terms currently offered to the Council, based on the advice received from King Sturge, represents the best consideration that can reasonably be obtained under Section 123 of the Local Government Act 1972.

## **7.0 Risk to the Council**

- 7.1 There are two options for the Council regarding varying of the legal documentation relating to the CPO and the Development agreement:-

To refuse the proposal - the effect would be that the CPO would be 'timed out' in July 2011 with no possibility of land being assembled to allow the scheme to proceed. In respect of the Development Agreement, if this is not amended to allow for a revised land deal the Developer will be unable to bring forward a commercially viable scheme with the result that the scheme can not be delivered.

To agree to the proposal - this is reasonable and consistent with the corporate priorities set out in the report to the Executive Board in April 2006.

- 7.2 Further risks are identified in the confidential appendix attached to this report which relate to the financial or business affairs of the Council. It is therefore considered that this element of the report should be treated as exempt under Rule 10.4.3 of the Access to Information Procedure Rules.

## **8.0 Recommendations**

- 8.1 That the Executive Board notes the report and the current position of the project.
- 8.2 That the Executive Board approves the proposed changes to the existing CPO Indemnity Agreement and that the Acting Director of City Development requests the Assistant Chief Executive (Corporate Governance) to complete all necessary legal documentation to vary the existing CPO Indemnity Agreement as per the information provided at Appendix A.
- 8.3 That the Executive Board approves the Heads of Terms for the changes to the existing Development Agreement containing the commercial deal and that the Acting Director of City Development requests the Assistant Chief Executive (Corporate Governance) to complete all necessary legal documentation to vary the existing Development Agreement as per the information provided at Appendix B.
- 8.4 That the Executive Board agrees that if any further alterations, within the broad terms of the documentation as set out in the confidential appendix A & B, are necessary to enable the completion of the legal documentation, that these be dealt with under the appropriate scheme of delegation, with the concurrence of the Executive Member for Development and Regeneration.

## **Background Papers**

**None**