

**To the Chair and Members of
CABINET**

OPTIONS FOR CONCLUDING THE MUSE PARTNERSHIP AGREEMENT

Relevant Cabinet Member(s)	Wards Affected	Key Decision
Mayor Ros Jones	All	Yes

EXECUTIVE SUMMARY

1. The Council currently has a ten year Development Agreement with Muse Developments Limited (“Muse”) which was entered into in 2009 and effectively runs until 2019. The agreement has been the foundation of the developments in the Civic and Cultural Quarter including the successful on time and within budget development of the Civic building, the Cast building, the Gables housing development and Sir Nigel Gresley Square and public realm. However, the agreement covers a range of other sites which in the original agreement would have seen many underway by now but for a variety of economic and other reasons are yet to be developed.
2. Following discussions between the Council and Muse, Muse have offered the Council an option to vary the agreement and therefore the parties obligations to each other will cease now rather than in over two years’ time. There are a number of benefits for the Council, mainly freeing up sites for the Council to pursue developments on early, maximising on the economic /cost benefits. This will allow the council to take advantage of opportunities to develop key sites in the town centre in the next two years rather than waiting and links with the recently published town centre master plan. Early exit also reduces future potential costs for the Council such as developer contributions and reduced receipt for land values on sites within the agreement.
3. The costs and benefits of agreeing this proposal are finely balanced and this report sets out the details of the potential termination agreements, the pros and cons and a methodology for financing the closure of the Development Agreement.

EXEMPT REPORT

4. There are a number of financial and commercial matters contained within Appendix 1 of this report which are commercially sensitive information.

Appendix 1 is **NOT** for publication because it contains exempt information within Paragraph 3 of Part 1 of Schedule 12 (a) of the Local Government Act 1972 (as amended) information relating to the financial or business affairs of any particular person (including the authority holding that information).

RECOMMENDATIONS

5. It is recommended that Cabinet:
 - a) Agree to vary the Development Agreement with Muse on the basis set out in the confidential annex
 - b) Delegate the finalisation of the exact arrangements and transfer of land residuals to the Director of Regeneration and Environment and the Director of Finance and Corporate Services in consultation with the Mayor, the details of a contract variation to be agreed with Muse.
 - c) Agree the funding package as set out in the finance/funding section of the confidential annex.
 - d) Agree the inclusion of the Multi Storey Car Park to the Council's capital programme.
 - e) Agree the addition of the Car Park fees at the existing level as detailed in paragraph 12.

WHAT DOES THIS MEAN FOR THE CITIZENS OF DONCASTER?

6. Muse will release their option to purchase various sites within the Borough, which will mean that the Council will be free to pursue development options on those sites now rather than at the scheduled ending of the Development Agreement with Muse in 2019. The Council views that in the current market conditions that it will be better placed to progress some of these sites. Muse has already progressed most of what it can over the last eight years. This enables the Council to bring forward inward investment to further the development of the Borough, stimulating economic growth and regeneration within the heart of Doncaster.

BACKGROUND

7. The Development Agreement was entered into by the Council with Muse in 2009 and runs until 2019. The original development agreement aimed to deliver:
 - £300m of investment into Doncaster.
 - 1,300 permanent jobs and 265 temporary jobs during construction.
 - £40 million gross value added to Doncaster's growing economy as a result of the new employment.
 - Re-vitalisation and vibrancy of a significant portion of the town centre, reversing the current serious decline
8. The master-plan themes were re-establishing a destination, outstanding public realm and pedestrian permeability were fundamental aspects of the scheme. The high quality civic square was to be a mix of hard and soft landscaping and be framed by the NPV, Library, civic accommodation and a new leisure hub. All the principal buildings to be active ground floors to ensure the CCQ became a destination in its own right through both the day and evening.

9. The development agreement covers a range of sites, mainly around the Civic Quarter, plus some waterfront and Lakeside plots. The sites that have been developed, (mainly the CCQ Civic building, the Cast building, Lakeside Site 5 and the Gables housing development), have been delivered to a high quality, on time and within budget. Those schemes have successfully contributed to the regeneration of the southern part of Doncaster Town Centre.
10. The original phased timescales suggest that almost all of the remaining sites should now be underway, however due to the economic downturn and other factors some sites and later phases have not been developed. These include the former Council House site, the former Girls School, Scarborough House, the Council staff car park, Copley House, the west side of the Civic Square, sites at Lakeside (though Sites 13/14 has now been purchased by Muse for residential development) and the Waterfront. With Muse's options on the remaining sites this has recently constrained the ability of the Council to bring forward other development opportunities that were not envisaged or viable under the original development agreement.
11. Muse's offer to the Council, which has been subject to extensive negotiation, effectively frees up the Council to progress the development of these sites (which will remain in Council ownership) without Muse. Muse will make both a contribution towards the Waterdale Development Account (which the Council considers is in deficit by c. £3.6m) plus a further payment as part of an overall exit from the Development Agreement. In exchange the Council will buy the Multi Storey Car Park from Muse and relinquishing contractual, (but not planning) controls over the Lakeside 13/14 Site, which Muse currently owns. By controlling the future development of all other sites associated with the Development Agreement, the Council will likely have the ability to generate greater returns and to deal with the land in pursuit of its own strategic interest.
12. This offer will result in the Council acquiring the MSCP which will be included in the Capital Programme with the existing fees and charges as follows:

PRICES	
Season tickets are £60 per month or £700 per annum	
Mon-Fri 5:00am - 12:00am	1 Hour £1.10
	2 Hours £1.90
	3 Hours £2.50
	4 Hours £4.50
	Early Bird £3.00 Early Bird: in between 6:00am and 8:30am
	Over 4 hours £6.00
	Overnight £2.00 Overnight: In after 6:00pm Out by 6:00am
Sat 5:00am - 12:00am	24 Hours £2.50
Sun 9:00am - 12:00am	Overnight £2.00 (Overnight: In after 6:00pm Out by 6:00am)

13. Muse will also agree not to draw down Scarborough House for residential development, which (based on current market values) would most likely result in a shortfall that Muse is entitled to claim from the Waterdale Development Account.
14. In addition, Muse has carried out detailed design work for a proposed scheme to the western side of Sir Nigel Gresley Square (including a forward funding agreement). Part of the offer also envisages that the Council will reimburse Muse for the work in

progress that it has incurred in relation to the scheme provided the Council receives the rights to progress that scheme (including design and site due diligence work undertaken by Muse).

OPTIONS CONSIDERED

15. The options considered are as follows:

The Option 1 – Do nothing

This will leave the existing Development Agreement in place until it expires in 2019. This restricts the Council's ability to deal with the land currently in the development agreement and any development is subject to negotiation with Muse creating uncertainty and will attract payment of developer contributions. By leaving the agreement to expire in two years' time there are additional complexities including there will need to be further legal negotiations over the Council's share of the Waterdale Development account £3.6m deficit (which is disputed by Muse). If the Council win this case it could cost less to wait until expiry, however it would take more time, incur costs, and may not result in any more contribution than that included in the negotiated deal under this proposal and may in fact be worse.

Option 2 – Agree to end the Muse agreement early

Negotiate a deal with Muse to end the development agreement early in 2017. This will provide the Council with the best opportunity to drive forward investment and development opportunities on the undeveloped sites, some of which are key strategic sites within the town centre master plan. Early development of key sites will bring in investment, create jobs and regenerate and improve connectivity within the town centre. Exiting the agreement early is also beneficial in avoiding potential future costs such as developer contributions and costs associated with significantly reduced land valuations of sites remaining in the agreement. This negotiated deal includes a contribution to the Waterdale Development Account deficit which will avoid further legal proceedings that can be costly, time consuming and uncertain. Overall ending the agreement early is the best financial and economic option.

REASONS FOR RECOMMENDED OPTION

16. Option 2 is the recommended option. The early termination of the agreement is recommended as it enables the Council the freedom to deal with its landholdings as it wishes. This freedom will give the Council the ability to develop its landholdings strategically in line with the Town Centre Master Plan and potentially achieve increased receipts. It is also more likely that the Council can press ahead with developments on some of the sites covered by the existing agreement. Whilst there is a financial cost of exiting the agreement and in particular for buying the multi storey car park, which is not a priority requirement for the Council's capital budget, the negotiated deal does avoid other legal costs and allows the Council to gain economic benefits. This results in an overall beneficial situation when compared to the option and risks of not agreeing an early mutual termination of the Development Agreement.

IMPACT ON THE COUNCIL'S KEY OUTCOMES

17.

	Outcomes	Implications
	<p>All people in Doncaster benefit from a thriving and resilient economy.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Be a strong voice for our veterans</i> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	<p>By taking back early control over a number of sites this allows the Council to drive forward on new opportunities which will help create new jobs in the Town Centre and the attraction of new business.</p>
	<p>People live safe, healthy, active and independent lives.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>Through regeneration of the town centre and encouraging new business this brings in additional business rates and sustainable income leadings to reduced pressure on Council budgets. This reduces pressure on increases to other areas such as Council Tax and transport.</p>
	<p>People in Doncaster benefit from a high quality built and natural environment.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Creating Jobs and Housing</i> • <i>Mayoral Priority: Safeguarding our Communities</i> • <i>Mayoral Priority: Bringing down the cost of living</i> 	<p>Reduce the pressure on budgets by attracting income to Doncaster. New development creating jobs</p>
	<p>All families thrive.</p> <ul style="list-style-type: none"> • <i>Mayoral Priority: Protecting Doncaster's vital services</i> 	
	<p>Council services are modern and value for money.</p>	<p>Development of site will be to a good standard and value for money for the council</p>
	<p>Working with our partners we will provide strong leadership and governance.</p>	

RISKS AND ASSUMPTIONS

18. The main risks associated with the recommended option are around the Multi Storey Car Park.

- The car park may not generate sufficient surpluses to cover its operating and financing costs and/or

- That despite having carried out a structural survey and not finding any major concerns, due to the construction of the car park, there may be future structural/major repairs based issues that affect the car park and cost more than the sums allowed in the provisional budget.
19. There could be additional costs to the Council, should section 106 costs associated with Lakeside plots 13/14 redesigned development exceed the current estimates.
 20. The risks of not proceeding are that key development opportunities may be delayed or missed whilst the end of existing agreement is awaited and that the Waterdale Development account deficit could be disputed.

LEGAL IMPLICATIONS

21. Section 1 of the Localism Act 2011 provides the Council with the so-called general power of competence which allows the Council to do anything which a person may generally do.
22. S.111 of the Local Government Act 1972 states that a local authority shall have the power to do anything (where or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.
23. Further specific legal advice will be required upon this proposal as it develops in order to ensure that the legal documents entered into between the parties provide sufficient protection for the Council's interests and accurately reflect the intentions of the parties.
24. Confidential information in relation to the wider report is included in the annex

FINANCIAL IMPLICATIONS

25. In relation to the MSCP charges the Councils Financial Procedure Rules require that any new fees and charges proposed within the financial year will be approved by Cabinet.
26. The body of the report shows the addition of MSCP fees and charges (see paragraph 12).
27. The funding of this agreement is from a combination of the use of prudential borrowing funded by additional car park income and earmarking a number of capital receipts. Prudential borrowing is through the Investment and Modernisation Fund which already has Council approval and is included in the Capital Programme. The detail of which is included in the confidential annex.

HUMAN RESOURCES IMPLICATIONS

28. None as preliminary costing indicates that continuing with the existing management contract for the car park rather than in house management will be more financially viable.

TECHNOLOGY IMPLICATIONS

29. None

EQUALITY IMPLICATIONS

30. Decision makers must consider the Council's duties under the Public Sector Equality Duty at s149 of the Equality Act 2010. The duty requires the Council, when exercising its functions, to have "due regard" to the need to eliminate discrimination, harassment and victimisation and other conduct prohibited under the act, and to advance equality of opportunity and foster relations between those who share a "protected characteristic" and those who do not share that protected characteristic. The Council must consider and have due regard to the three aims of the general equality duty when developing and implementing decisions. The Council will ensure it makes fair and informed financial decisions, demonstrating its commitment to improving outcomes for the most groups of people living in Doncaster.

CONSULTATION

31. Updates of the progress on the partnership with Muse and the Development agreement have been reported on a regular basis through quarterly finance and performance reporting over the last eight years.

32. Consultation on the options and negotiation for a conclusion to the existing agreement has and continues to be undertaken with the Mayor, Portfolio Holders, Chief Executive, Director of Regeneration and Environment, Director of Finance and Corporate Services and Executive Board. These have taken place in the period of January to March 2017.

BACKGROUND PAPERS

Cabinet Report – 20th February 2008

Cabinet Report – 9th March 2007

Cabinet Report – 25th January 2006

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