

DECISION-MAKER:	CABINET
SUBJECT:	Toys R Us Development Agreement
DATE OF DECISION:	16 April 2024
REPORT OF:	COUNCILLOR BOGLE, CABINET MEMBER FOR ECONOMIC DEVELOPMENT

<u>CONTACT DETAILS</u>		
	Title	Chief Executive
	Name:	Andrew Travers
	E-mail:	Andrew.travers@southampton.gov.uk
Author:	Title	Head of Economic Development and Regeneration
	Name:	Nawaz Khan
	E-mail:	Nawaz.khan@southampton.gov.uk

STATEMENT OF CONFIDENTIALITY

Appendix 1 of this report contains information deemed to be exempt from general publication based on Category 3 of Paragraph 10.4 of the Council's Access to Information Procedure Rules. This includes details of commercial terms which have not yet been agreed between parties and which if disclosed, could put the Council or other parties at a commercial disadvantage.

BRIEF SUMMARY

The report advises Cabinet of the proposals to make variations to the Development Agreement held by the leaseholder of the former Toys R Us site. The proposed changes aim to support the delivery of this key regeneration site which has planning permission for new homes, public realm, leisure, and commercial uses within this key city centre location.

RECOMMENDATIONS:

	(i)	To approve the proposed changes to the Development Agreement and recommendations set out in Confidential Appendix 1.
	(ii)	To delegate authority to the Chief Executive following consultation with the Leader, Executive Director Corporate Services and Director of Legal & Governance to finalise the detailed terms of the amendments required to the Development Agreement Lease and all other ancillary legal documentation to support the delivery of the scheme.

REASONS FOR REPORT RECOMMENDATIONS

1.	As freehold landowner, the council wishes to support the delivery of the former Toys R Us site (Plan attached at Appendix 2) for a mix of uses consistent with its ambitions for the good growth of the City.
2.	Allowing changes to the Development Agreement as recommended in Appendix 1 acknowledges the impacts of macroeconomic challenges faced by

	<p>construction projects over the past year, gives the developer certainty that the Development Agreement can be extended up to a certain duration, but also allows the council to continue to actively monitor and support progress towards delivery of the scheme.</p>
<p>ALTERNATIVE OPTIONS CONSIDERED AND REJECTED</p>	
3.	<p>Do nothing. The Development agreement would expire in June 2024. If no changes are made to the existing agreement, it is unlikely the development would be able to progress at all. The construction industry has faced difficulties over the past year which delayed progress towards appointing a contractor. As the current developer is the leaseholder of the site, a new development agreement would need to be negotiated, at significant time and cost, if the current agreement was allowed to expire. The development of the site is subject to the current ownership arrangements and would require the support of all parties having a legal interest in the property.</p>
4.	<p>An unconditional extension of 3 years to the Development Agreement. This would be relatively inflexible and would require any further changes to be brought back to Cabinet for approval, which may add further delay to the delivery of the site. 3 years is longer than the original duration of the Development Agreement and there is a risk the site will remain vacant for this additional duration, which is not in the interests of City regeneration. The only option to end the agreement within the extended 3 years, would be to formally terminate the agreement, which would incur additional costs, time and delay to the Council.</p>
<p>DETAIL (Including consultation carried out)</p>	
5.	<p>The Council is the freeholder of the former Toys R Us site (see Appendix 2 – Site Plan), which currently comprises a large vacant superstore structure with open surface car parking, located to the south of Southampton Central train station. Following the collapse of Toys R Us in 2018, Packaged Living acquired the leasehold interest of the site in May 2021. There are circa 87 years remaining on the existing lease.</p>
6.	<p>On November 15, 2021, Cabinet approved the key commercial terms of a Development Agreement and new lease to Packaged Living (the Developer). A Development Agreement was signed on the December 23, 2021 between the Council and the Developer. The Development Agreement set out a number of conditions (the ‘Conditions Precedent’) that need to be met before the expiry of the agreement on the 23rd June 2024 (the ‘Long Stop’ date). This Conditions Precedent currently needs to be completed by the Long Stop Date before the new (extended) lease is agreed.</p>
7.	<p>In accordance with the conditions of the Development Agreement, the developer submitted an application for development (ref. 21/01837/FUL) and a decision notice was issued on December 8, 2022 granting permission.</p> <p>The application was for:</p> <p>Hybrid planning permission for a major mixed-use development comprising:</p> <ul style="list-style-type: none"> • Full planning permission for:

	<ul style="list-style-type: none"> • Demolition of existing buildings and structures. • Construction of 4 buildings (Blocks A, B, C, and D) • Block A: Comprising 6,816 sqm of commercial floorspace (Class E). • Blocks B, C, and D: Comprising 603 residential units (Class C3). Ground floor commercial floorspace (Class E). • Outline planning permission for: <ul style="list-style-type: none"> • Construction of 1 building (Block E). • Up to 8 storeys. Flexible commercial/residential/overnight accommodation (C1/C3/Class E Uses). Co-living (Sui-Generis). <p>The permission includes associated access, parking and public realm, including the Maritime Promenade, a new pedestrian link between the station and Harbour Parade.</p> <p>Unless implemented, this permission expires on the December 8, 2025.</p>
8.	Through early 2023 the developer demonstrated commitment to completing the conditions of the Development Agreement. However, in 2023 macroeconomic issues impacted the construction sector nationally and locally, with increased interest rates, inflation on the cost of materials and also the capacity of the local sub-contracting supply chain for projects of this scale in Southampton. This made it increasingly difficult for the developer to meet the conditions of the Development Agreement within the set timescales. The Developer has now advised that due to the limited time remaining on the agreement, they are not in a position to be able to complete the conditions within the Development Agreement by the June 2024 expiry date. The Developer has therefore requested changes to the Development Agreement to provide more flexibility to meet the Conditions required to deliver the development.
9.	Despite the challenges faced to date the Developer maintains that they are committed to the delivery of the project. They have advised that positive trends are emerging through 2024 which will support them in delivering the scheme, such as lower predicted interest rates, reduced inflation, and stabilisation of construction costs.
10.	If no changes are made to the commercial terms, then the Development Agreement will expire in June 2024 and the developer would no longer be able to progress the delivery of the scheme. The council would need to negotiate a new agreement with the same developer, as they are also the leaseholder of the site. This would add more time and cost to the delivery of the scheme if a new agreement has to be prepared and agreed.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
11.	The details of the changes to the commercial terms are set out at Appendix 1.
12.	It would be expected that Packaged Living pay SCC legal/ surveyor fees in relation to facilitating changes to the Commercial terms.
<u>Property/Other</u>	

13.	The Council will need to closely monitor the project and commercial arrangements related thereto, so a continued 'development management' resource will be needed on this project.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
14.	The Council powers to promote this development are Section 123 Local Government Act 1972 and Section 1 Localism Act 2011.
15.	
<u>Other Legal Implications:</u>	
16.	Not applicable.
RISK MANAGEMENT IMPLICATIONS	
17.	The Council is not taking any active participation in the re-development and (apart from timing of the projected revenue & capital receipts) no financial risks are involved. Whilst there is no guarantee that the site will be fully developed out as outlined there are some mitigations included in proposals which are outlined in Appendix 1.
18.	This scheme is subject to uncontrollable economic events which is normal for schemes with a long delivery timetable.
POLICY FRAMEWORK IMPLICATIONS	
19.	The scheme has planning permission ref: 21/01837/FUL demonstrating its compliance with planning policy.
20.	This scheme supports many of the Council's strategic objectives around housing, environment, sustainability, Green City and economic development. The emerging Southampton Renaissance master planning work also recognises this site's potential to contribute to a vision for the City's future prosperity. The development proposals are consistent with the key growth and regeneration ambitions for the City.

KEY DECISION?	Yes
WARDS/COMMUNITIES AFFECTED:	All
<u>SUPPORTING DOCUMENTATION</u>	
Appendices	
1.	Report on Commercial Terms Amendments (confidential)
2.	Site Plan

Documents In Members' Rooms

	None
Equality Impact Assessment	
Do the implications/subject of the report require an Equality and	No

Safety Impact Assessment (ESIA) to be carried out.		
Data Protection Impact Assessment		
Do the implications/subject of the report require a Data Protection Im		No
Assessment (DPIA) to be carried out.		
Other Background Documents		
Other Background documents available for inspection at:		
Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)	
1.	<u>Decision - Toys R Us Site Commercial Terms* Southampton City Council</u>	