

**Schedule 1 to Report by the Executive Director of Housing, Environmental
and Economic Development**

**Special Housing, Environment and Economic Development Committee:
29 June 2010**

Subject: The Sale of the Play Drome Site

1. Purpose

- 1.1** The purpose of this report is to advise the Committee of the progress which has been made regarding the negotiations for the sale of the Play Drome site to the preferred bidder, Tesco Stores Limited (“Tesco”) and to request approval from the Committee to conclude the final negotiations and enter into a binding legal agreement (missives) with Tesco in order for the Council to transfer ownership of the Play Drome site to Tesco, subject to a number of conditions being satisfied, which conditions will be outlined further in this report.
- 1.2** The report also brings to the attention of the Committee, an unsolicited proposal which has been made by HP Properties Limited (“HP”), an existing joint venture company holding which is owned by Hellical Bar Plc and Prime Commercial Properties Management Limited (“PCP”). HP are the new owners of the long lease interest in the Clyde Shopping Centre. Their proposal is subject to a number of conditions and is not a legal offer. The content of their offer will be highlighted later in this report. A copy of the proposal is attached as Appendix A.

2. Background

- 2.1** Since February 2005, West Dunbartonshire Council has intended to sell the site on which the Play Drome Leisure Centre in Clydebank is located and replace the centre with a new Leisure Centre on land at Queens’ Quay, also in Clydebank.
- 2.2** On 29 April 2009, the Housing, Environment and Economic Development Committee agreed to the immediate release of a development brief for the existing Play Drome site to the market to test the level of interest and the value that the market may put on this site.
- 2.3** Following the marketing of the development brief and subsequent evaluation of proposals, the Housing, Environment and Economic Development Committee, on 2 September 2009, delegated the authority to the Executive Director of Housing, Environmental and Economic Development and the Head of Legal and Administrative Regulatory Services to enter into discussions with the preferred bidder, Tesco, and if practicable, prepare a legal agreement which could conclude the sale of the Play Drome site for Council’s approval at a future meeting.

- 2.4** Since early September 2009, Council officers have worked closely with the development staff of Tesco and their legal and technical representatives and have negotiated a position whereby both parties have agreed the main commercial terms of a disposal and both parties are close to being in a position to sign up to final missives for the sale of the Play Drome site, subject to Committee approval.
- 2.5** A members briefing was held on the 19 April 2010 to inform members of the progress being made in securing an agreement by both parties to the sale of the Play Drome site. Members were also informed of the progress being made in relation to the land swap arrangement with Clydebank Rebuilt to enable the new leisure centre to be sited on the riverfront at Queens Quay.
- 2.6** In 2003 a retail strategy was commissioned by Clydebank Rebuilt which recommended the promotion of a second superstore within Clydebank Town Centre in order to broaden the range and quality of convenience provision. A planning application was submitted in November 2003, on a site including the Play Drome Leisure Centre for a foodstore of 84,000 sq ft and new comparison units of 2,500 sq ft. This application was approved on 8 June 2004 and the permission was recently renewed on 1 June 2010.

3. Main Issues

3.1 Summary of Tesco's proposal for the Play Drome site:

- 3.1.1** Tesco are offering to enter into a conditional contract with the Council to purchase ownership from the Council of the Play Drome site for £15million. On satisfaction of the conditions more fully set out in Paragraphs 3.2 to 3.4 below, Tesco will be obliged to pay the Council £15million (less any planning gain exceeding £300,000 the "Price"). Tesco are entitled to nominate a Tesco store development fund to take title to the site, but this is without prejudice to Tesco's obligation to develop the site.
- 3.1.2** With effect from the date of receipt of the Price and transfer of the Play Drome site to Tesco, the Council will enter into a leaseback, as tenant of the Play Drome site, with Tesco as landlord, for a nominal rental of £1. The Council would continue to meet all other overheads and expenses during this period. The period of this leaseback is for a maximum of 2 years 6 months (plus an additional 6 months in event of a serious event occurring outwith the control of either party) and is intended to allow the Council to take the Price, utilise the Price in the development of a new Leisure Centre, and continue to occupy the Play Drome Site, as tenant during such development.

3.2 The conditions that require to be dealt with by Tesco prior to payment of the Price are summarised as follows:-

- (i) satisfying themselves as to the results of site investigations;
- (ii) being satisfied as to the position regarding 3rd party access rights;
- (iii) planning approval on acceptable terms being granted for an 87,000 sq ft retail store; and
- (iv) road issues (roads construction consent, stopping up and traffic regulation orders) being granted on acceptable terms.

3.3 The draft contract currently provides the following timelines for dealing with these conditions:-

Condition	Longstop	Cumulative longstop period from conclusion of missives
Site investigations (stage 1)	4 months	4 months
3 party rights (stage 1)	4 months	4 months
Planning (stage 2)	4 years 3 Months	4 years 7 months
Roads issues (stage 3)	2 years	6 years , 7 months

3.4 If the appropriate consents, reports, results or approvals are not available by the individual longstop dates, or Tesco, acting reasonably is not satisfied with the terms of them, or of any third party rights in and to the land, then Tesco will be entitled to withdraw from the contract without liability or compensation.

3.5 It should be noted that the contract is also conditional on the Council obtaining planning consent for a new Leisure Centre, to be dealt with in tandem and in the same time period as the planning consent for the Play Drome site. If satisfactory planning for a new Leisure Centre is not obtained, or it is not obtained within the relevant long stop period, the Council is entitled to resile from the contract with Tesco without liability, or compensation.

3.6 In addition, the Council has the option at any time prior to the grant of the planning for the new Leisure Facility at its discretion to abandon or withdraw planning and terminate the contract with Tesco. On the basis this is an additional right to resile, giving the Council sole discretion to resile from the contract, to exercise the right the Council require to pay the approved costs of Tesco. The amount payable by the Council depends on when in the process the Council elects to resile. For example if the Council exercises this right at the end of the process the costs will be at or near the overall cap, or if within stage 1 (the stages are identified in column 1 in the table at paragraph 3.3), the costs will be within the stage 1 cap. The costs are subject to an overall cap of £254,000, broken down between stage 1 (£41,000), stage 2 (£168,000) and stage 3 (£22,000), plus in each case a 10% contingency.

3.7 Whilst it has been essential to allow for generous timescales at this stage it would be hoped that the Council and Tesco could work together before and after conclusion of the missives to ensure that timescales are reduced whilst still leaving time for the Council to be able to meet design and procurement timescales.

3.8 Summary of HP Properties Limited's proposal

HP, have made a non binding informal proposal to pay (a) £13,530,000 , conditional on HP securing an agreement from a food store operator to lease the site plus (b) £1,002,000, conditional on securing an agreement from a second anchor store to take a lease within HP's current ownership. The HP proposal is conditional on planning (for 100,000 sq ft), due diligence, environmental survey, board approval and unspecified contract conditions. It is also noted that such second anchor store would produce additional rental. However this is not in fact a product of the offer on the table, but would be as a result of the uplift in rental which would not appear to be dependent on the sale of the Play Drome site.

4. People Implications

4.1 Ultimately, assuming a successful conclusion of all the transactions and the build of the new facility, it is anticipated that as far as practicable staff employed at the Play Drome will transfer to the new facility at Queens Quay. All appropriate Council policies in relation to employees will be followed throughout the process.

5. Financial Implications

5.1 On satisfaction of the conditions more fully set out in paragraphs 3.2 to 3.4 the sale price is £15million plus vat (less any planning gain exceeding £300k).

6. Risk Analysis

6.1 While it is expected that the various conditions noted above should be dealt with within the relevant long stop dates, if the conditions have not been dealt with by such date, either party is entitled to resile from the contract, with no further liability. The contract as currently drafted provides for a cumulative long stop period of 7 years from the date of conclusion of the missives and members should note that if each longstop period runs to its maximum (which is considered unlikely) and is then purified just before the end of the corresponding longstop period, it may be around 7 years from the date of conclusion of the missives before the Council receives the Price and is able to commence construction of the replacement leisure centre.

- 6.2** The leaseback period will run from the Council's receipt of the Price and is fixed at 2 years 6 months (plus an additional period of 6 months in the event of a force majeure act). The termination of the Council's right to occupy the Play Drome during the anticipated period of development of the new leisure facility is not linked to the actual delivery of the new leisure facility, accordingly if the new leisure facility is not open to the public on the date of expiry of the Play Drome leaseback, the Council will still require to vacate the Play Drome site.
- 6.3** The level of planning gain, to the extent exceeding £300,000, imposed in the planning process on Tesco, will be deducted from the Council's receipt of £15million.
- 6.4** The likelihood of challenge to the planning process and other statutory processes from interested parties is considered significant. Such activities may delay the grant or implementation of the necessary consents beyond what would be reasonable timescales for developments of this type.
- 6.5** The Play Drome site is a town centre site and represents a more challenging development prospect than a less centrally situated site. Professional advice is that the various 3rd party rights (particularly those over the Abbotsford Road service access) affecting the Play Drome site should not prevent development of the Play Drome Site, but these rights will need to be sensitively and sympathetically dealt with to ensure the necessary rights are respected during the development and following the completion of the development. A period of 4 months from conclusion of the missives has been identified to deal with discussions with the 3rd parties on these matters but there is always the possibility of delay to the process or a requirement by relevant third parties for conditions to be imposed beyond those considered acceptable to the Council or Tesco. While there is no obligation to do so, the Council would require to consider how best to resolve matters with a corresponding impact on timings.

7. Equalities Impact

- 7.1** No significant issues were identified in a screening for potential equality impact of this matter.

8. Conclusions and Recommendations

- 8.1** It is believed that the proposed disposal to Tesco represents the best value achievable for the site in the current market and best meets the needs of the proposals for the new leisure centre development.

8.2 It is considered that the alternative informal proposal by HP Properties Limited does not meet the Council's requirements in terms of capital, nor does it provide any certainty as to programme of future revenue benefits. If the Council's decision was to engage in negotiations with HP and abandon the Tesco offer which has been secured through an open market bidding process, it would present a significant risk of judicial review, and damage to the Council's reputation.

8.3 It is therefore recommended that the Committee:

- (i) delegate authority to the Head of Legal, Administrative and Regulatory Services, in consultation with the Executive Director of Housing, Environmental and Economic Development to conclude missives with Tesco Stores Limited on terms acceptable to them for the disposal of the current Play Drome site; and
- (ii) agree that the Executive Director of Housing, Environmental and Economic Development writes to HP Properties Limited and to PCP Limited advising of the Committee's decision but reinforcing the Council's commitment to ensuring the Clyde Shopping Centre's future as a vibrant retail hub and to offer to meet in early course to discuss how best to take that forward along with the proposed store development.

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Date: 15 June 2010

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Appendices: PCP Proposal Letter

Background Papers: None

Wards Affected: Ward 6