1. Purpose of Report

To seek approval to bring to an end the development agreement with Henry Boot Developments Limited ('Henry Boot') and explore alternative options.

2. Advice

<table>
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<th>That it be RESOLVED:</th>
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<tr>
<td>1. The development agreement be brought to an end as described in the report.</td>
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<tr>
<td>2. The Council explores alternative options to secure the appropriate development of Daventry Town Centre Vision Site 5.</td>
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3. Introduction

At a meeting with senior Officers on Friday 15th February, Henry Boot outlined the current position of the Daventry Town Centre Vision (TCV) Site 5 development. Given the importance of the outcomes of that discussion it is considered that this represents a matter on which full Council should be invited to take decisions. Therefore this report is presented as urgent business.

4. Information

4.1 Background

Henry Boot was appointed as the Council’s partner for delivering major development on TCV Sites 1 (now known as Mulberry Place) and 5 in 2004. Following lengthy negotiation of terms, a development agreement was completed in July 2007. Various changes were made to the development agreement over time, as Henry Boot sought to address rapidly-changing retail, leisure and construction markets. In May 2018 Council agreed to remove Mulberry Place from the scope of the development agreement and progress development of that site itself; a report on that matter appears elsewhere on tonight's agenda.

Two factors have led to the conclusion that Henry Boot is not able to deliver the Site 5 scheme. The first is the general weakness in retail markets, driven by a combination of factors including technological and social change. Whilst this has
not prevented Henry Boot having available a credible range of tenants not adversely affected by these changes, it has affected the view of markets on the value of retail investments in general. This results in lower capital values for the completed scheme. The second issue is construction costs. To progress the scheme as quickly as possible Henry Boot sought a price to construct the Site 5 scheme from a reputable contractor. They came back well over the budget Henry Boot had allowed. Henry Boot has considered the issue and concluded that it is unlikely to secure a better price.

The combination of these two factors has resulted in Henry Boot concluding it cannot deliver the current scheme. As requested by the Council, it has also looked at other options and concluded it is unlikely to be able to deliver any of those in current market conditions. This is not a conclusion it has reached easily, given it has spent over £5 million on the scheme to date.

4.2 Proposals

It is therefore proposed to bring the development agreement to an end and explore alternative means of delivering the appropriate development of Site 5. The end of the development agreement would preferably be achieved by a deed of termination, which would accelerate the three month period which would otherwise apply to formal notice under the agreement. Henry Boot is in agreement with this approach, and has undertaken to assist where it can in enabling the Council to secure development by other means. The deed of termination is therefore likely to contain provisions to that effect.

Should it transpire for any reason that a deed of termination cannot be agreed in a suitable timeframe, the Council would instead (assuming it remained appropriate to do so) serve notice to terminate under the terms of the development agreement.

Compared to the situation prior to the agreement with Henry Boot, the Council is in a better position in relation to the land in Site 5. It has acquired all of the land within the site, largely funded by grants from the (then) West Northamptonshire Development Corporation. Even so, careful consideration will need to be given to the alternative approaches best placed to deliver the Council’s objectives. This would result in a further report to Members in due course.

5. Implications

5.1 Financial – In the short term, the Council would incur £0.996 million to retain land acquired at Henry Boot’s cost. This has been anticipated since that last major revision to the development agreement and is provided for in the capital programme. This payment would have arisen irrespective of this matter, to enable the Council to take the Mulberry Place development forward, but the proposed decision would slightly accelerate the payment. The figure is well below the costs Henry Boot incurred in paying for these sites originally.

The Council will also need to charge to revenue costs it has incurred, previously recorded as capital, on the Sites 1 and 5 schemes. The amount concerned is being reviewed and an update will be reported at the meeting.
this relates to Mulberry Place and thus would have arisen in any event, but the remaining part would be a change.

In the longer term, the Council may choose to take on development of Site 5 itself. If so, that would clearly have financial consequences. However, no substantial investment in Site 5 is proposed at this time.

5.2 Personnel – Ending the development agreement with Henry Boot would involve some unplanned work, but this would be fairly modest. Exploring alternative approaches would doubtless require more staff resource than overseeing Henry Boot’s scheme would have done, but is unavoidable in the current situation.

5.3 Legal/Constitutional – The Council has powers to enter into, and end, contracts, develop or secure the development of land and to dispose of land (by freehold or leasehold) under a range of powers including Section 1 of the Localism Act 2011 (general power of competence), Section 1 of the Local Government (Contracts) Act 1997, Section 2 of the Local Authorities (Land) Act 1963, Section 123 of the Local Government Act 1972 and Section 233 of the Town and Country Planning Act 1990. In doing so it must comply with rules currently set out in Articles 107 to 109 of the Treaty on the Functioning of the European Union (to be transposed into UK law by the European Union (Withdrawal) Act 2018) on state aid, the EU public procurement directive (on which similar comments apply) and UK rules on disposal of local authority land given in Section 123 of the Local Government Act 1972 and/or Section 233 of the Town and Country Planning Act 1990 (in each with the benefit of any specific or general consent given by the Secretary of State).

5.4 Environmental – The environmental impacts of the proposed course of action would flow from the nature of what was ultimately developed. This would be considered in proposed decisions on any future development proposals, and through the planning process.

5.5 Policy – The proposed approach would support, to the maximum degree currently possible, Corporate Strategic Plan Objective 1 (Improve our Business Economy, Learning and Skills), Priority B1 (Develop Daventry Town), Measure B1.1 (Increase in commercial floor space with planning permission excluding town centre retail and leisure), Measure B1.2 (Increase in town centre retail and leisure floor space with planning permission due to Council action), Priority B4 (The District is recognised as being open for business), Measure B4.1 (Raise the profile of Daventry District (number of items of positive national media coverage)), Objective 4 (To Be an Efficient and Effective Council), Priority C2 (Effective resource and risk management). Of course, Henry Boot’s inability to proceed with the current development would also impede achievement of some of those objectives; hence the proposal to explore other ways of achieving them.

5.6 ICT – No implications. No new or modified Council ICT would be required to carry out the proposed actions.

5.7 Crime and Disorder – There is unlikely to be any material impact on crime or disorder from following the proposed course of action. The removal of the subways around the Hollow/Eastern Way/Ashby Road/ Braunston Road
roundabout would be deferred or potentially not take place, but as these are not significant locations of criminal behaviour the impact of this should be very limited.

5.8 Human Rights – The proposed course of action would not adversely affect any of the Convention rights. The First protocol Article 1 provisions on the protection of property do not prevent the Council either exercising its rights under the development agreement, or from entering into a deed of termination with Henry Boot.

5.9 Equalities – The proposed course of action would not directly discriminate on the grounds of any of the protected characteristics. Nor, given the lack of other credible options, can any indirect discrimination be detected.

6. Conclusions

Despite the sustained efforts and flexibility on both sides, there is now no credible way for Henry Boot to achieve the Council’s development aspirations for Site 5. It is therefore proposed to end the development agreement with Henry Boot and explore other means of achieving the Council’s aspirations for this area.

S P Bowers
Executive Director (Business)

Background papers:
- Daventry Town Centre Vision Sites 1 & 5 – Delivery Arrangements. Report to Council, May 2018
- Report to Strategy Group, 14th July 2016. Review of Asset Holdings and Development Proposals

Previous minutes:
- & SG.50/16/02, C.60/16 Review of Asset Holdings and Development Proposals
- C.46/16 Daventry Town Centre Vision Sites 1 & 5 – Delivery Arrangements
- SG.69/15/01, C.110/15 Daventry Town Centre Vision Sites 1 & 5 – Proposed Variation to Development Agreement with Henry Boot

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