

Ref:

Called in

Yes/No

THE THANET DISTRICT COUNCIL

DECISION OF INDIVIDUAL CABINET MEMBER

Name of Cabinet Member:

Councillor Rick Everitt

Relevant Portfolio:

Cabinet Member for Financial Services and Estates

Date of Decision:

Tuesday, 20 May 2014

Subject:

Procurement of Dreamland

Key Decision

No

In Forward Plan

No

Brief summary of matter:

The council holds the freehold interest of the Dreamland Site, part of which will be operated as an amusement park. Council acquired the site after a public inquiry and lengthy court proceedings, which followed the making of the compulsory purchase order. One of the purposes of the CPO is to enable the delivery of an amusement park of a heritage nature and the Council is not able to operate the park itself. It is now in a position to tender this part of the estate and the Cabinet paper sought approval to procure a suitable third party to operate the amusement park.

On 1 May 2014 Cabinet approved the procurement of a suitable third party to operate the amusement park in line with the process detailed in the Cabinet report.

The Cabinet paper stated "The advertisement for the procurement will state that the Council is seeking a not-for profit organisation to deliver a heritage amusement park on the site so it needs to be an organisation which understands partnership; the uniqueness of a heritage site..."

Since the decision was taken our legal advisers assisting with the procurement of the service concession have alerted the Council to the outcome of a case law determined very recently "ASL No 5 "Spezzino" which indicates that a provision which stipulates the award of a contract to a voluntary organisation is not compatible with EU law."

The Council therefore cannot stipulate in the advertisement that they are looking to award a contract to a not for profit organisation but can in the pre-qualifying process still weight the tenders according to outcomes it believes are important for Dreamland (such as an understanding of the uniqueness of the heritage assets and a commitment to contribute to Margate's regeneration) and then test those through the evaluation criteria which is what we are proposing to do as part of the tender process.

As this is a technical process change for procurement rules but does not alter the decision to tender the site. We are now seeking authority to alter the process to comply with the EU legal decision.

Decision made:

To allow the procurement process to continue in line with the Cabinet decision of 1 May 2014 but adapting the process to ensure that there is no discrimination as per EU law "Spezzio" Case

Reasons for decision:

The decision is required to mitigate the risk of the appointed operator being challenged by an unsuccessful tender, which would give rise to a protracted legal case which the Council is unlikely to win, although unlike procurement, under State Aid law it is the recipient and beneficiaries of State Aid who bear the financial risk. If the Council's arrangements were found to give rise to State Aid the 'not for profit' organisation would be required to repay that aid with interest, even if this led to its insolvency.

Alternatives considered and why rejected:

To continue to base advert around not for profit organisation, rejected due to the risk this would pose to the Council.

Details of any conflict of interest declared by any executive Member who has been consulted and of any dispensation granted by the Standards Committee:

None

Author of Officer report:

Edwina Crowley, Head of Economic Development and Asset Management

Background papers

Cabinet Paper – Dreamland – 1 May 2014

Statement if decision is an urgent one and therefore not subject to call-in:

None

Last date for call-in:

11 June 2014