

## **Pleasurama Site Development Review Task & Finish Group - 29 August 2013**

At the first meeting of the Group on 18 July 2013 Member requested (amongst other things):-

- (i) a definition of due diligence
- (ii) Information about the due diligence actually carried out.

### **Definition of Due Diligence**

The definition of 'Due Diligence' is a term used to describe an act of prudent inquiry usually in connection with the proposed acquisition or takeover of a business or the acquisition and development of land or the giving of a loan to an individual or a company.

The term first came into common use in the United States in the 1930's to refer to a statutory defence available to stockbrokers accused by investors of making inadequate disclosure of material information that, had it been known to investors, would have resulted in them paying less for the share stock than they did. As long as a stockbroker could show that s/he had exercised "due diligence" in their investigation into the company whose shares they were selling, and then disclosed to investors what they found, they would not be held liable for non-disclosure of information that was not discovered in the process of that investigation. Similarly in Great Britain, a food proprietor accused of the offence of failing to provide food of the nature substance or quality demanded by the consumer contrary to section 14 of the Food Safety Act 1990 could plead the 'due diligence' defence in Section 21 of the Food Safety Act 1990, that is to say: -

*'it shall, subject to subsection (5) below, be a defence for the person charged to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by himself or by a person under his control.'*

Although the term 'due diligence' may also be used to describe the making of prudent inquiries into e.g. the suitability of land for particular types of development- environmental due diligence' or the quality of the ownership claimed by the seller - 'title due diligence', it will normally consist of the making of prudent and proper inquiries as to the financial strength, market position or business plans of another company i.e. financial due diligence.

Although the exercise of due diligence may on occasions be a legal requirement, (e.g. for an English food proprietor), it will normally be a voluntary act where the amount of diligent inquiry contemplated or undertaken will depend on what is at stake to the inquirer. In other words the higher the risk to the inquirer, the more intrusive and thorough the due diligence can be expected to be.

In this regard, the level of risk to the Council under the 2006 Development Agreement was very low indeed, e.g.: -

- The developer had to bear all the risks and costs of obtaining planning permission prior to entering into the Development Agreement;
- The developer was required to build the riskiest part of the project first - the hotel;
- The Council had an option to acquire the hotel;
- The developer was required to provide a £5 million Performance Bond;
- The developer couldn't assign (sell) the Development Agreement;
- If the approved funder had to exercise 'step in rights' it was required to secure the completion of the development even if it was more financially advantageous to sell the site;
- No residential or commercial unit could be sold (completed) until the relevant overage had been paid to the Council);
- The Council could terminate the Development Agreement immediately on the insolvency of the developer and with notice to the approved funder and developer on a number of performance failure grounds;
- If the Development Agreement was terminated the developer lost the right to develop any further and came under an obligations to re-instate the site to its undeveloped state; and
- The freehold would only be transferred on the completion of all elements of the development.

After the 2009 amendments the risk to the Council was still relatively low even though :'

- The Developer was able to provided a £1million cash deposit instead of the £5million Performance Bond;
- The Developer no longer had to build the hotel first;
- The Council extended the time for completion of the development to 28 February 2014 (with the discretion to extend time for completion for a further three years).

(On the compensating side, the developer appointed a reputable local contractor, Cardy's, as the main contractor for the residential and mixed use elements of the development.

### **Due Diligence Undertaken by the Council**

#### 2006 Development Agreement

SFP Ventures (UK) Limited is a single/special purpose venture company so unsurprisingly it had little or no cash or assets (other than the site leases when granted) or track record of development.

That being so, there is no evidence of any financial due diligence being undertaken prior to the Development Agreement being entered into in 2006 as it could fairly be said that

the onerous and one sided terms of the 2006 Development Agreement was, in effect, the Council's 'due diligence'.

2009 Amendments to the Development Agreement

So far as the 2009 amendments are concerned, the due diligence inquiries carried out by the officers were included in the exempt appendices to the exempt report to Cabinet and full Council\* and these are enclosed in full.

**\*Member are reminded that this is an exempt report and appendices where the Council has not taken a decision to review its status or publish any part of it.**

Consequently it can be seen that with the higher level of risks represented by the proposed amendments, the Council carried out a higher level of due diligence inquiries commensurate with that risk - and recommended to the Council not to agree the 2009 amendments

Harvey Patterson

**Corporate & Regulatory Services Manager**

28 August 2013

enc.



**NOT FOR PUBLICATION**

**By virtue of paragraph(s) 3, 5 of Part No. 1 of Schedule 12A  
of the Local Government Act 1972**

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**DEVELOPMENT AGREEMENT – PLEASURAMA SITE, RAMSGATE**

To: **Council - 23 July 2009**

Main Portfolio Area: **Economy & Culture**

By: **Sue McGonigal – Director of Finance and Corporate Services**

Classification: **Restricted**

Ward: **Ramsgate, Eastcliff and Central**

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**Summary:** This report brings forward a recommendation from Cabinet that the Council proceeds with the Development Agreement, with the £5.6m Bond replaced by a deposit in the sum of £1m.

**For Decision:**

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**1.0 Introduction and background**

1.1 Cabinet received a report regarding the Development Agreement on 7 May 2009. It further considered this project at its meeting on 16 June, agreeing to refer the matter for decision at Full Council. Cabinet agreed that it be recommended to Council that,

Proceeding with the Development Agreement, be supported.

1.2 The report considered on 16 June 2009 is appended at Annex 2.

**2.0 Current Position**

2.1 The background and current position regarding this development is set out in some depth in the report to Cabinet dated 7 May. It is attached at Annex 3.

2.2 It is suggested that Members read Annex 3, then Annex 2, to help them understand the chronology, and why this particular decision is a matter for Full Council.

2.3 It is the case that the Council's partner in development of the former 'Pleasurama' site is in breach of the Development Agreement. This enables the Council to determine the Development Agreement it has with SFP Ventures Limited.

2.4 However, Cabinet, at its May meeting, decided that, provided the developer could provide certain assurances, it could be appropriate for it to recommend to Council that the Development Agreement be continued. It being necessary for Council itself to sanction the substitution of the £5.6m bond required in the Agreement with a £1m deposit.

2.5 The information sought by Cabinet in May and received before Cabinet met in June is at Annex 1. The information was accepted by Cabinet, hence this report, with recommendations, is now placed in front of Council. Original copies of supporting documents had been provided to the author of this report. And Cabinet in June received a commentary from Officers on the content of information provided by the developer, a copy of which is attached at Annex 4.

2.6 Cabinet has concluded that the economic regeneration benefits of proceeding with this prominent scheme in Ramsgate town centre/seafront, are such that determination of the scheme was not merited. During recession, if the site was closed it could remain vacant for years and have a negative effect on the town, plus marina. This was not acceptable to Cabinet. However, it did require certain assurances about both timing and funding of the scheme. Once these were in place and taking into account advice from Officers the clear recommendation is that the Development Agreement proceed.

### **3.0 Options**

3.1 Council may decide to agree the recommendation from Cabinet. With the scheme built-out in accordance with the Development Agreement, subject to the replacement of the £5.6m Bond with a £1m deposit.

3.2 Council may decide not to agree the recommendation from Cabinet, and agree to determine the Development Agreement.

### **4.0 Corporate Implications**

#### **4.1 Financial**

4.1.1 These are as stated in the report on 7 May 2009. Excepting that Eversheds costs have increased. Though if the recommendation is agreed those costs will be met by the developer.

4.1.2 The reasons why a deposit of £1m is considered acceptable, during the current recession, as opposed to the £5.6m Bond are set out in the May Cabinet report (Annex 3).

#### **4.2 Legal**

4.2.1 These are as stated in the report to Cabinet on 7 May 2009 and 16 June, with further advice taken from Eversheds.

#### **4.3 Corporate**

4.3.1 These are as stated in the report to Cabinet on 7 May 2009.

#### **4.4 Equality and Diversity**

4.4.1 These are stated in the report to Cabinet on 7 May 2009.

### **5.0 Recommendations**

5.1 Council agrees to proceed with the Development Agreement.

5.2 Council agrees that the £5.6m Bond be replaced by a deposit in the sum of £1m.

**6.0 Decision Making Programme**

6.1 This decision is a matter for Cabinet. And Council if recommendation 5.2 is agreed.

Contact Officer:	Sue McGonigal, Director of Finance and Corporate Services
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Others Consulted;	Brian White, Director of Regeneration Services
	Harvey Patterson, Chief Legal Officer

**Appendices**

- Annex 1 - Information received from SFP Ventures (UK) Ltd.
- Annex 2 - Cabinet Report 16 June, 2009
- Annex 3 - Cabinet Report 7 May, 2009
- Annex 4 - Commentary from Officers on content of Annex 1, originally presented to Cabinet on 16 June, 2009

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**ROYAL SANDS DEVELOPMENT  
RAMSGATE**

**FUNDING STATUS & APPRAISAL**

**PROJECT OVERVIEW**

## PROJECT OVERVIEW

### Developer

SFP Ventures (UK) Limited will undertake the Development as a Joint Venture (JV) with Cardy Construction Limited.

### Main Contractor

Cardy Construction Limited was established in 1946. Their head office and main company resources, together with our Joinery Workshops are based in Canterbury, Kent. They have three additional regional offices, based in Sandwich, Kent, London Gatwick Airport and Luton, Bedfordshire which were initially set up to provide specific construction services for two major clients - relationships established now for over 15 years.

Cardys turnover is approximately £40 million per annum and currently have a workforce approaching 200 employees.

Cardy Construction was selected for the project on the basis of their expertise, proven track record and detailed experience of projects of this nature together with their ability to provide employment to local Tradesman.

Specifically Cardy are successfully nearing completion on a similar sea front project at Bexhill-on-Sea for the construction of 66 Luxury Apartments together with a number of Retail Units the scheme included an underground car park. This project was also undertaken under a JV arrangement.

Rother District Council are the Local Authority for the Bexhill project there was no requirement for a project bond. A payment however in the order of £1 million was made to Rother District Council prior to commencement in order to meet the Planning Conditions.

### Funding

SFP have in place committed funding of approximately £10 million and a spend/investment profile has been provided which confirms the milestone/status of the spend. This document confirms that no additional funding is required until January 2013. For the purpose of this exercise the contractual dates from within the TDC/SFP Draft Agreement have been used.

It should be noted that it would be SFP intention to however accelerate the overall project delivery but this would be subject to relevant market conditions.

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- 2 -

Beyond January 2010 there are a number of options available to conclude the funding required for the "Fit Out" of the Residential Units. It is envisaged that many of these units will be purchased "Off Plan" and this was demonstrated following the initial marketing launch. The Fit Out can be phased Block by Block and the programme and spend will be linked to demand together with confirmed sales. There are a number of third party Funders however, who would be willing to provide any shortfall investment required. It is anticipated that in 2013 current uncertainty within the Financial Markets will have dramatically changed.

### **Benefits**

A Joint Venture between SFP Ventures (UK) Limited and Cardy Construction Limited has a mutual desire for the project to succeed and this should give TDC added confidence and comfort that the scheme will be successfully delivered.

A project of this size and magnitude will provide much needed employment for Construction Staff locally, with much needed business and revenue also provided to local Traders and Suppliers within the area. The current demise of construction activity in particular at Pfizer Sandwich has led to a dramatic reduction in workload and Royal Sands Development would go some way to replacing this.

Cardy Construction has committed to replace the hoardings on site within 10 days of notification. The relevant hoarding licenses etc have already been agreed with KCC and given the current condition of the site such action would help enhance the "street scene" prior to the Summer Season and busy Visitor period. It is acknowledged that all such visitors are potential buyers but the current condition of the site would not give any confidence of the project intention.

The 66 Apartments and Retail Units that Cardy are undertaking at Bexhill-on-Sea provides a benchmark of the very high quality specification that has been adopted for Royal Sands.

There have been various delays to the project that have been outside of SFP's control namely Council matters, Legals, Local Residents, Protesters, Objectors and indeed the Cliff Wall Repairs. An immediate and positive start would help to alleviate all such risks to the project. The current delay and deliberations do not help TDC or SFP and will only contribute to any current perceived lack of confidence.

SFP's ability to pre-sell the Hotel and Retail "off plan" in very difficult market conditions provides further confirmation of the company's strength and expertise. An overall £10 million pre-start cash investment on a project of this type is a considerable achievement.

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Current construction prices and market conditions will help with the sustainability of the development build cost and viability for the scheme.

Despite the current delays SFP have continued with detailed design development which does mean the project is at "construction status" and ready to build.

SFP will have concluded the 278 Highway Improvements and the majority of the Planning Conditions prior to commencement.

The milestone and investment profile should provide TDC with adequate reassurance and comfort of the relevant financial security they would hold in the event of default by SFP.

Whilst somewhat hypothetical the spend profile document clearly also demonstrates the potential increased asset value of the site. Therefore in a default situation notwithstanding the value of the land TDC would have security over the deposit, the cash bond and any construction activities undertaken. For example, as of January 2013 SFP would have committed approximately £9 million into the scheme and TDC would have full security and covenant of the asset.



**SPEND / INVESTMENT PROFILE**



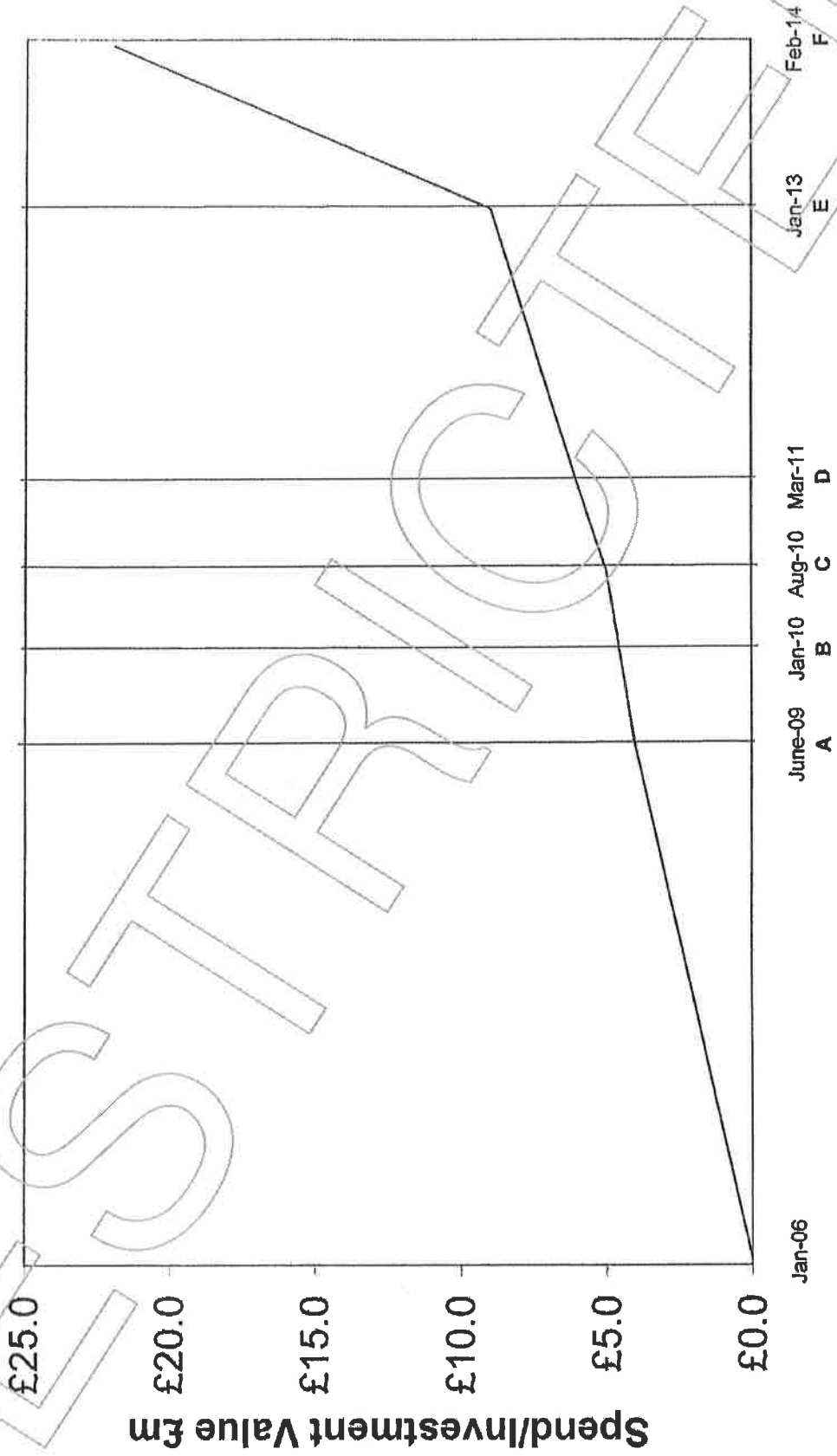


## ROYAL SANDS DEVELOPMENT, RAMSGATE

REFERENCE	MILESTONE	TIMELINE STATUS	FUNDING REQUIREMENT
A.	June 2009	<ul style="list-style-type: none"> <li>• Signed Agreements between all parties (TDC, SFP, Cardy Construction Ltd). SFP transfer final monies to include a £1 million Cash Bond.</li> <li>• At this point SFP's financial commitment to the project is in the order of £3.5 million. It should be noted that these monies have been funded without borrowings. This investment has provided the Detailed Design, Planning Permissions together with significant Highway Improvements and a Contribution to Cliff Face Repairs etc.</li> <li>• Following the above SFP sign agreement with purchaser for the Hotel and Retail element of the scheme which has been pre-sold off plan for £5million. Stage payments have been agreed and these have been linked to the build programme.</li> <li>• Project commencement - within 10 days of signed agreement Cardys mobilise the site. The existing hoarding to the perimeter of the site will be replaced. The Site Compound, Contractors Offices, Security etc. will be established together with enabling works for Piling and Drainage.</li> <li>• Cardy Construction Ltd commit to £1.5million of additional funding.</li> <li>• Committed funding for the scheme at this point therefore totals £10 million.</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	<b>£4 million</b>
B.	January 2010	<ul style="list-style-type: none"> <li>• Commencement of the Groundworks, Piling and Services including Surface Water Drain.</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	<b>£4.5 million</b>

C.	August 2010	<ul style="list-style-type: none"> <li>• Completion of the Groundworks, Piling and Services including Surface Water Drain.</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	£5 million
D.	March 2011	<ul style="list-style-type: none"> <li>• Commencement of the Structural Frame/Transfer Slab of Hotel and Residential Block A</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	£6 million
E.	January 2013	<ul style="list-style-type: none"> <li>• Target completion of the Shell &amp; Core to the Hotel, Retail and Residential Units.</li> <li>• Commencement of the Fit Out to Block A and sequential Fit Out Blocks B, C, D and E.</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	£10 million
F.	February 2014	<ul style="list-style-type: none"> <li>• Practical Completion of the whole Development (at TDC's discretion this date could be subject to a 2017 Practical Completion).</li> <li>• <b>Total funding Requirement at this stage</b></li> </ul>	£22 million

# Royal Sands Development



**PROJECT DIRECTORY**

**PROJECT DIRECTORY - ROYAL SANDS, RAMSGATE**

	<b>NAME AND ADDRESS</b>	<b>TEL NO</b>	<b>FAX NO</b>
<b>Client</b>	<b>SFP Ventures (UK) Ltd</b> Brooke Park Heath Road Lowestoft Suffolk NR33 9LZ	01502 517151	01473 327 340
<b>Contact</b>	<b>Shaun Keegan</b>	E-mail Mobile	<a href="mailto:nwood471@hotmail.com">nwood471@hotmail.com</a> 07921 621 548
<b>Main Contractor</b>	<b>Cardy Construction Limited</b> Maynard Road The Wincheap Estate Canterbury Kent CT1 3RH		
<b>Contact</b>	<b>Michael Stannard</b>	E-mail Mobile	<a href="mailto:michael.stannard@cardy-canterbury.co.uk">michael.stannard@cardy-canterbury.co.uk</a> 07929 200425
<b>Bank</b>	<b>National Westminster Bank Plc</b> National Westminster House 37 Old Dover Road Canterbury Kent CT1 3JB	01227 783917	
<b>Contact</b>	<b>Andy Davies</b>		
<b>Agent</b>	<b>Terence Painter Properties</b> 44 High Street Broadstairs Kent CT10 1JT	01843 866 866	01843 600 077
<b>Contact</b>	<b>Terry Painter</b>	E-mail Mobile	<a href="mailto:terry@terencepainter.co.uk">terry@terencepainter.co.uk</a> 07974 724 410
<b>Solicitors</b>	<b>Greenwood Solicitors LLP</b> Monkstone House City Road Peterborough PE1 1JE	01733 887700	<a href="mailto:dcclark@greenwoods.co.uk">dcclark@greenwoods.co.uk</a>
<b>Contact</b>	<b>David Clark</b>		

## Summary GC

**SFP Ventures (UK) Ltd - Summary**

	Appartments	Construction Cost
Preliminaries		£1,402,040
Enabling Works		£2,237,022
Main Transfer Slab		£2,725,000
Retail		£435,000
Hotel		£2,980,000
Pod I - Block A	32	£3,311,880
Pod II - Block B	8	£2,794,399
		£2,173,421
Pod IV - Block D	16	£1,655,940
		£1,138,459
Contractors Overhead		£855,000
<b>Total</b>	<b>107</b>	<b>£21,708,161</b>



Mr. Brian WHITE  
Head of Development Services  
Thanet District Council  
P.O. Box 9  
Cecil Street  
MARGATE, KENT CT8 1XZ

Geneva, 16<sup>th</sup> September 2008  
CPE/ccu


Dear Sirs,


On request of one of our clients as well as at the request of Mr. Shaun Keegan, we are pleased to confirm to you that SFP Ventures Partners Ltd is owned 100 % by SFP Services Limited and this company has currently deposits in excess of GBP 1'000'000,- (one million pounds sterling).

We understand it is set aside for the purposes of the bond in relation to the ongoing development of Royal Sands, Marina Esplanade, Ramsgate.

We hope this clarifies the position, assuring you of our best attention at all times,

Yours sincerely,  
SOCIETE BANCAIRE PRIVEE SA

  
Christophe PELE  
Senior Vice President

  
Arturo BARONE  
Assistant Vice President

SOCIÉTÉ BANCAIRE PRIVÉE SA

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**East Anglia and Northern Home Counties Commercial Banking**  
**Property Finance Team**  
**22-28 Essex Road**  
**ROMFORD**  
**Essex**  
**RM1 3PL**

**(Credit-backed "Heads of Terms")**

- Borrower:** SRP Ventures (UK) Limited
- Date of Offer:** 1 August 2007
- Facilities:** 1. Development loan of £18,254M ( £8,224M for Commercial, £13,348M for residential and £1,492M in relation to the anticipated roll up of interest and arrangements / related fees )
- Purpose:** 1. To finance completion of 107 residential units, 60 bedroom hotel, car park and various other commercial units.
- Term:** 2 years.
- Interest Rate:** 1.50% above National Westminster Bank base rate.
- Fees:** 1. £162,500 arrangement fee ( 0.9% ) payable on initial draw down of the facility.  
2. 0.375% PA of the nominal value of the Bond, payable quarterly in advance.

**All Legal and Professional Fees to be covered by the borrower.**

**Capital & Interest Repayment:** The offer represents an initial 2-year commitment ( from initial drawdown ) covering build period as no capital repayments are scheduled for this period.

**During the term of the loan the interest and fees will be added to the loan.**

National Westminster Bank Plc (the Bank) is a member of the National Westminster Banking Group. The only regulated products, (the products, services and other activities) provided by the Bank are those regulated by the Bank of England as the Bank is a member of the Banking Group, which regulatory are regulated by the Financial Services Authority. National Westminster Bank is also a member of the London Stock Exchange.

National Westminster Bank Plc. Registered in England No. 202627, Registered Office: 125 Old Broad Street, London EC2N 1AR



## **S F P VENTURES (UK) LTD**

Brook Business & Industrial Park · Heath Road · Lowestoft · Suffolk NR33 9LZ  
Telephone 01502 517151 · Facsimile 01502 514663

Mr Brian White  
Head of Development Services  
Thanet District Council  
P O Box 9  
Cecil Street  
Margate, Kent  
CT9 1XZ

2 June 2009

As TDC's preferred Developer for the Royal Sands project we confirm that we have already invested over £2 million of personal funds in preparation works on this site in order for construction works to commence.

We are entering into a Joint Venture Partnership with Cardy Construction who are committed to invest £1.5 million pounds of their own funds into this project.

In addition we have secured Wetraorn Investments who are funding £5 million for the construction of the Hotel and Commercial, which are their own funds and not subject to any bank borrowing.

Please find attached letters confirming these arrangements.


This will mean that with the £650,000 already paid and held on account with TDC's Solicitors together with the £1 million bond held by our solicitors, awaiting transfer to TDC's solicitors, a total of £1.65 million will be committed and invested in order for this project to proceed immediately.

Sales of the residential properties will be moving forward and then the remainder of the development becomes self-funding.

Within the Development Agreement the Council has step in rights and should they need to exercise these rights the Council would still own the land, which would have a valuable development of some £13,600,000.

We trust this clarifies the situation.

Yours sincerely,

  
Shaun Keegan  
SFP Ventures (UK) Limited



**CARDY**

**BUILDERS & CONTRACTORS**

Our Ref: MS/lap  
Date: 2<sup>nd</sup> June 2009

Shaun Keegan Esq  
SFP Ventures (UK) Limited  
Brooke Park  
Heath Road  
Lowestoft  
Suffolk  
NR33 9LZ

CARDY CONSTRUCTION LIMITED  
MAYNARD ROAD  
THE WINCHEAP ESTATE  
CANTERBURY  
KENT CT1 3RH  
TELEPHONE: (01227) 763444  
FAX: (01227) 470224  
email@cardy-canterbury.co.uk  
www.cardyconstruction.co.uk

Dear Shaun

**Royal Sands Development – Ramsgate**

Further to our letter of the 6<sup>th</sup> May 2009 we confirm our investment towards the Royal Sands Development, totalling £1,500,000, will be available from our current resources and investment portfolio.

As soon as Thanet District Council gives clearance for the project to proceed, we confirm that we do have resources available to commence work on site given 10 days notice.

Kent County Council have already agreed to grant the licence enabling us to erect site security and safety hoardings, which will ensure we are able to secure the site and commence ground works in preparation for the piling sub-contract.

We trust this provides the confirmation you require at this stage and look forward to hearing further from you.

Yours sincerely

Stuart Gremo  
Managing Director

Directors: S.N. Gremo, FFB., A.C.I.O.B.  
M. Stannard, A.C.I.O.B.  
G.J. Cryer, F.C.A.  
Registered Office:  
27, New Dover Road, Canterbury, Kent CT1 3DN.  
Company Registration No: 2780134  
Vat No: 572 1981 26





**PRIVATE & CONFIDENTIAL**

To Whom It May Concern:

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Canterbury  
Kent CT1 3JB  
Direct: 01227 783917  
Fax: 01227 783946  
Mobile: 07770 990226  
Email: andrew.davies@rbs.co.uk

**Cardy Construction Limited**

The Bank understands our client – Cardy Construction Limited – is under consideration for and likely to be awarded a Building Contract in the order of several million pounds and we have been asked to provide a reference accordingly.

It gives me pleasure to be able to confirm, that Cardy Construction Limited has been a customer of the Bank since 1993 and although I personally have only been involved as their Commercial Manager for the past few years, I am aware they have always operated their account in an exemplary manner. They also have an excellent reputation locally for the way they do business and from my experience of the business and knowledge of their trading position, order book, cashflow and quality of the client base, I can see no reason at this present time, why they would not be able to satisfactorily fulfil their obligations to you under such a contract.

If you require any further information, please do not hesitate to contact me.

Yours faithfully

Andrew Davies  
Relationship Director

National Westminster Bank Plc  
Registered in England No 929027  
Registered Office: 135 Bishopsgate  
London EC2M 3UR

Authorised and regulated by the  
Financial Services Authority

**DRAFT LETTER FROM SBP BANQUE TO TDC**

**Mr. Brian White  
Head of Development Services  
Thanet District Council  
P.O. Box 9  
Cecil Street  
Margate, Kent  
CT9 1XZ**

**Date\***

**Dear Sirs,**

**This letter is to confirm that our Client Wetmore Investments has funds deposited with the bank to facilitate immediate funding of £5 million for the Hotel and Commercial elements of the Royal Sands Development at Ramsgate, Kent.**

**Stage payments will be made as requested by our Client and the funds will be transferred through HSBC Lowestoft Branch.**

**We also advise you that SBP Banque hold a Triple Star Rating.**

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**DEVELOPMENT AGREEMENT – PLEASURAMA SITE, RAMSGATE**

To: **Cabinet - 16 June 2009**

Main Portfolio Area: **Economy & Culture**

By: **Sue McGonigal – Director of Finance and Corporate Services**

Classification: **Restricted**

Ward: **Ramsgate, Eastcliff and Central**

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**Summary:** **Following the decision of Cabinet on 7 May 2009, this report sets out information provided by the developer setting out the basis on which this project is to be funded.**

**For Decision:**

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**1.0 Introduction and background**

- 1.1 Cabinet received a report regarding the Development Agreement on 7 May 2009.
- 1.2 In discussion, concern was expressed about the developers ability to fund and complete this project within the required timescales. Consequently it was agreed that further information be sought providing the reassurance required. Minute No. 78 refers.

Cabinet agreed that:

“the Director of Finance and Corporate Services seeks assurance from SFP Ventures that adequate funding is available to the developer to construct the scheme in accordance with Council’s decisions

And

The Director of Finance and Corporate Services reports fully on any financial risks to the next meeting of the Cabinet”.

- 1.3 The report considered on 7 May 2009 is appended at Annex 1.

**2.0 Current Position**

- 2.1 The decision of Cabinet was drawn to the attention of the developer and the attached documentation has been received. It is appended at Annex 2.
- 2.2 There are two main elements to the information. First, the overall cost of the project; £22 million, with a breakdown of the phasing of works, showing source of funding to each phase. It being noteworthy that the developer intends to provide a total of £10 million initial investment. With the remaining

cost of the project funded from sales. Members will recall that the structure of the Development Agreement requires that the first part of the scheme to be included must be the Hotel. It being self evident that the developer proposes to recycle the receipt for the hotel back into the development. With subsequent receipts from sale of flats being used to fund completion of the project.

- 2.3 Correspondence is appended in Annex 2 stating that £1.5 million is being made available to the development by the appointed contractor; Cardys. And that the banker of Wetmore Investments has deposited funds in the sum of £5 million allocated to this project.
- 2.4 Insofar as Minute No. 78 of Cabinet (7 May 2009) is concerned then the developer has responded to the request from the Council.
- 2.5 It is now for Cabinet to decide whether or not it finds the information satisfactory.
- 2.6 The issues for Members may be summarized as follows from the content of Annex 2;
- (i) SFP states that it is largely funding the scheme from its own resources and then sales. Therefore absolutely proof of funds is not possible.
  - (ii) On the other hand, SFP points out it has already spent considerable funds, and the £1 million deposit has been made available in accordance with the Development Agreement, and will flow to the Council if it exercises its step in right.
  - (iii) Whilst papers are attached from both Cardys and Wetmore Investments, neither of these organisations has contractual obligations to the Council. The attached papers show how the project is being funded, but they do not prove funding.
  - (iv) The question for Members remains the decision of whether to proceed with the Development Agreement on the basis that there is evidence to support, though not absolute proof, funding is in place. Thereby achieving this regeneration project now. Or, taking the alternate view, that the Development Agreement be determined with a larger receipt being available to the Council perhaps some eight years into the future.

### 3.0 Options

- 3.1 Cabinet may decide to determine the Development Agreement, or recommend to Council that the Agreement be not determined. With the scheme built-out in accordance with the Development Agreement.

**4.0 Corporate Implications**

**4.1 Financial**

4.1.1 These are as stated in the report on 7 May 2009.

**4.2 Legal**

4.2.1 These are as stated in the report to Cabinet on 7 May 2009.

**4.3 Corporate**

4.3.1 These are as stated in the report to Cabinet on 7 May 2009.

**4.4 Equality and Diversity**

4.4.1 These are stated in the report to Cabinet on 7 May 2009.

**5.0 Recommendations**

5.1 Cabinet decide to determine with the Development Agreement. Or;

5.2 Cabinet agree to support proceeding with the Development Agreement, this recommendation to be referred to Full Council for decision.

**6.0 Decision Making Programme**

6.1 This decision is a matter for Cabinet. And Council if recommendation 5.2 is agreed.

Contact Officer:	Sue McGonigal, Director of Finance and Corporate Services
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Others Consulted;	Brian White, Director of Regeneration Services
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Appendices

- Annex 1 - Information received from SFP Ventures (UK) Ltd.
- Annex 2 - Report to Cabinet considered on 7<sup>th</sup> May 2009
- Annex 3 - Commentary from Eversheds/TDC Officers

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**DEVELOPMENT AGREEMENT – PLEASURAMA SITE, RAMSGATE**

To: **Cabinet – 7 May 2009**

Main Portfolio Area: **Economy and Culture**

By: **Director of Regeneration**

Classification: **Restricted**

Ward: **Ramsgate, Eastcliff and Central**

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**Summary:** **To inform Cabinet of the current position regarding the Development Agreement, and recommend that the Development Agreement be determined for reasons of the developer's breach.**

**For Decision**

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**1.0 Introduction and Background**

- 1.1 This property was once the site of the Ramsgate seafront railway station. Then as rail travel declined during the twentieth century it became used as an amusement park; hence the name; Pleasurama. During this period, the amusement park was associated with one of the busiest periods for Ramsgate Sands. Each summer the beach attracting large numbers of visitors.
- 1.2 However, the rapid decline of the British seaside holiday industry led to the site becoming empty, and in part derelict. After fire damage the site became the subject of unsuccessful development proposals during the 1990's. Following action by the Council to recover vacant possession of the site the Council tendered the site, its intention being to ensure that appropriate redevelopment in the best interests of the local economy, and residents, was brought forward.
- 1.3 This was not an easy task. The challenge being to deliver a scheme of quality, such that it acted as a catalyst in bringing people and spend back to Ramsgate, yet was also attractive to potential developers.
- 1.4 Criteria were established by the Council against which prospective development proposals were to be assessed. These included a hotel, seafront commercial units (cafes, bars etc) and play facilities. With a substantial number of seafront flats. Ultimately only two proposals emerged with SFP Ventures (UK) Limited becoming the appointed developer.
- 1.5 Recognised as, at that time (2003) the Council's major regeneration project, the scheme moved towards implementation, with the submission of a planning application. Simultaneously there were questions about the proposed disposal of the site to SFP. In particular the scale of the financial return that the Council would receive from disposal of the site.

- 1.6 The principle of disposal was discussed by, and agreed, in Cabinet in November 2004 (minute CR 82 refers). The decision was revisited in October 2005 when detailed figures were presented on the monies the Council would receive from each element of the scheme. The Council accepted at the time that the regeneration benefits to Ramsgate justified a sale at less than full market value. The District Auditor reviewed the files at the time and endorsed this approach. A decision was taken to proceed with disposal.
- 1.7 Planning consent was granted on 28<sup>th</sup> January 2004 (application F/TH/03/1200). There have been subsequent amendments to the scheme, chiefly regarding a reduction in height, in response to public concern and interest about changes in the view from the cliff top.
- 1.8 Because the developer has now substantially completed highway works associated with the development, and that work is part of the planning consent, the planning consent is considered to be under implementation. The s.278 Highways Works endorsed and supervised by Kent County Council effectively link the main development site to the public highway.
- 1.9 The condition of the cliff wall behind the Pleasurama site had not been a consideration in early discussions about the scheme. It had not been considered appropriate by the Council to seek to transfer the cliff wall to the developer. Perhaps the Council's shoreline management obligations required it to take a holistic approach to the maintenance of seafront structures along the entire Thanet coastline. But once planning permission for the new scheme was granted it was self evident that survey and repair of the cliff wall was needed. Repair costs, post construction of the new development, would inevitably be higher. Consequently a substantial part of the 2007/08 Capital Programme was spent on the cliff wall repairs before the development was built. The completed cliff wall scheme has left the cliff in a sound condition with no further expenditure needed for several decades.
- 1.10 The Council entered into a Development Agreement with SFP on 20 October 2006. The Development Agreement provided for SFP to be granted site leases prior to commencement of development and for the freehold interest in the site only to be transferred following completion of the development. The Development Agreement provides for SFP to provide on completion of the site leases a performance bond of £5.6 million in favour of the Council by way of security for its obligations under the Development Agreement.
- 1.11 SFP paid a deposit of £55,000 upon signing of the Development Agreement and the Agreement provided for SFP to make the following payments to the Council:-
- The sum of £550,000 on completion of the site leases
  - An overage payment of £15,585 on the sale by the developer of each residential unit (there are 105 in the approved scheme)
  - An overage payment in respect of each of the commercial units (other than the hotel) disposed of by way of long lease at a premium equivalent to 50% of the net sale proceeds.
- 1.12 In addition the Developer is liable to pay £100,000 to the Council under the terms of the Section 106 Agreement relating to the planning permission for the development. This payment relates to works to the cliff wall carried out by the Council.

- 1.13 Because the objective of the Council is to regenerate Ramsgate, the Development Agreement requires the scheme to be completed as a single entity. Detailed planning consent to be obtained by SFP, but to reflect the 'concept' design as accepted by the Council in 2003 – this featuring an hotel at the Marina end of the development site.
- 1.14 In recent years persons opposed to the principle, process and detailed content of the scheme have raised various complaints with the Local Government Ombudsman, District Auditor and there has been one application for a Judicial Review. All have generated response confirming that the Council has acted correctly.

## **2.0 The Current Situation**

- 2.1 The Development Agreement was signed on 20 October 2006 and completion of the site leases was due to take place on 13 November 2007. Completion did not take place because SFP was unable to provide the £5.6 million performance bond in favour of the Council. SFP was therefore in fundamental breach of its obligations under the Development Agreement by reason of its failure to provide the bond. The Development Agreement remains in existence and completion of the site leases remains outstanding. The Development Agreement is determinable by the Council by reason of SFP's ongoing failure to provide the performance bond.
- 2.2 The economic downturn, now recession, has led SFP to seek variations to the Development Agreement but these should be considered within the scope of the decision originally taken by the Cabinet in 2004. These have included re-phasing of the work to an extended timetable due to lack of demand in the current housing market along with proposed replacement of the £5.6m performance bond with a deposit of £1m to be placed with the Council to be utilised in the event that the Council exercises its step-in rights under the agreement. Officers have, on a subject to contract and without prejudice basis, negotiated these variations with SFP.
- 2.3 It is understood by officers that it has not been possible for SFP to obtain a £5.6m bond in the current economic climate, nor is it likely to be in the foreseeable future. The alternative of a £1m deposit, in UK bank and accessible to the Council in the event of step-in is considered acceptable by the author of this report on the basis that the recession has seen much development in Thanet come to a halt. And the only developer we have cannot provide a bond of the magnitude of £5.6m. Therefore if the scheme is to proceed it would have to be with a deposit of £1m.
- 2.4 At 30 March 2009, Solicitors for both sides were able to confirm that the £1m deposit is available, and therefore, subject to the extended timetable, the development could proceed. It is acknowledged that there have been delays. Chiefly due to the current market and the inability of the developer to justify the bond value having regard to the value of the scheme.
- 2.5 The difference between the bond and deposit can be explained as follows. The £5.6m bond is designed to ensure that in the event of the developers default the Council can recover possession of the site and call on the bond to have adequate resources to secure the completion of the scheme, this being the goal of the project. In contrast, a £1m deposit forfeitable on any substantial default in the revised programme will represent a significant incentive to the Developer to complete the development, but should default occur, it will not be sufficient to achieve the project goal of securing the completion of the entire scheme.

- 2.6 The Council's Director of Finance and Corporate Services as S151 officer is of the opinion that completion of the site leases should not take place unless SFP deposits the full bond with the Council as security for SFP's obligations. SFP is a company without significant assets and the Council would have very limited recourse to any monetary or other assets in the event that SFP was in breach of its obligations under the Development Agreement. Consequently, from a risk management viewpoint, the S.151 Officer supports the recommendation at 6.1.
- 2.7 If completion of the site leases does not take place this will have an adverse impact on the Council's capital programme because the £650,000 comprising the premium of £550,000 the £100,000 Section 106 contribution will not be received this financial year.
- 2.8 The extended timescale sought by SFP will take practical completion to within five years of lease completion. Given that all significant new build of private housing construction in Thanet has stopped, the time extension is reasonable, if Cabinet is minded to proceed with the Development Agreement.
- 2.9 Eversheds acting for the Council have on instruction taken preliminary steps to determine the Development Agreement with SFP. However on the basis that Cabinet originally agreed the disposal of the Pleasurama site to SFP it is appropriate for Cabinet to now consider and decide upon final determination of the Development Agreement.
- 2.10 Once agreed by Cabinet, Eversheds will be instructed to serve notice determining the Development Agreement.

### **3.0 Key Issues**

- 3.1 There are essentially three issues for Members to consider, and the issues are inter-related. They being financial, legal and the overarching objective of regeneration.
- 3.2 The financial position is that if Members decide to proceed with the Development Agreement and completion of the site leases takes place, the cash receipt to the Council will be as agreed, and effectively set, in 2004, at a time when it was acknowledged that for economic development purposes the site should justifiably be undersold.

It is then still possible to receive the total of £650,000 into the Capital Programme for 2009/2010.

- 3.3 Should the recommendation be agreed and the Development Agreement is determined, the Council will retain the £55k deposit and the interest earned on the deposit of approximately £4.2k. This could offset the outstanding legal costs of £14.5k payable to Eversheds for its work thus far on behalf of the Council.

If the Development Agreement proceeds, however, the Council will be entitled to receive default interest for late completion on the balance of purchase monies (i.e. £495k being £550k less the deposit of £55k) with effect from 13 November 2007 (the figure being approximately £56k) though this is only payable to the Council if completion of the site leases takes place.

- 3.4 The position on legal fees is that if the Development Agreement proceeds the Developer has stated a willingness to meet the Council's outstanding account with Eversheds. If the Development Agreement is terminated the Council will be responsible for payment of the Eversheds' outstanding fees.
- 3.5 If the Development Agreement is determined, it is possible that the Developer could bring a claim against the Council to seek to recover some or all of the expenditure which the

Developer has incurred in carrying out the highway works. Eversheds view (on the basis that the Council made it clear to the Developer that if it did carry out the highway works prior to completion of the site leases it would do so at its own risk) is that such a claim would be unlikely to succeed. However legal costs would be incurred in defending such a claim if it were to be brought, although the Council would be entitled to recover these from the Developer if the claim failed.

- 3.6 The position is therefore that the Council is entitled to determine the Development Agreement but in doing so it may need to defend a claim by SFP. In doing so inevitably costs would be incurred, though at this stage they are difficult to quantify.
- 3.7 The third key issue is regeneration. In essence Members need to balance the opportunity of taking this site back into the Council's property portfolio for later redevelopment, against the opportunity of seeing the development undertaken over the next 4 years. Obviously the return at some time in the medium term future will be substantially greater. But this may be weighed against the benefit of a major redevelopment proceeding in Thanet against a background of recession, and rising unemployment. There are ramifications also for the Capital Programme and the contribution it makes to Corporate objectives, including regeneration. The developer states that with the appointment of a local contractor, Cardys, the timescale for completion of the works will be accelerated.
- 3.8 On balance, it is recommended that the Development Agreement be determined. But there are reasons why Members may be justified in proceeding with the Agreement. The recent information received by Eversheds from the Developer's solicitors sets the position out from the developers perspective.
- 3.9 Should Cabinet be so minded to agree to proceed with the Development Agreement, it would be appropriate to set a deadline for completion, which, if not met, would lead to determination of the Agreement. The period of 10 working days from the date of this meeting is recommended.

#### **4.0 Options**

- 4.1 Determination of the Development Agreement
- 4.2 Proceed with the Development Agreement, on the basis of a deposit of £1m deposit, replacing the £5.6m bond, and the developers revised timetable of practical completion within five years of completion of site leases. This option would require a decision by Council because it agreed the basis of the Development Agreement.

#### **5.0 Corporate Implications**

##### **5.1 Financial**

5.1.1 On determination of the Development Agreement;

- (a) the Council retains the £55k deposit
- (b) the Council receives interest on the deposit in the sum of approximately £4.2k.
- (c) the Council meets Eversheds outstanding account of £14.5k, excluding costs of completion of the determination process, and costs of any litigation

- (d) the Council is in a position to receive a larger receipt for the site in 8 – 10 years time
- (e) there is a £595k gap in the 2009/10 Capital Programme

5.1.2 Should Members decide to proceed with the Development Agreement,

- (a) the Council retains the £55k deposit plus interest of £4.2K
- (b) the Council is entitled to receive default interest for late completion in the sum of approximately £56k.
- (c) the Council receives £595k into the 2009/10 Capital Programme
- (d) the £1million moves into the UK account opened by TDC to receive the deposit (this sum with accrued interest will be repayable to the developer if it complies with its obligations under the Development Agreement).
- (e) the Council's outstanding legal costs met by the Developer
- (f) the Council receives a total receipt for the site as that reported in 2004. The figures in the Development Agreement are fixed

## 5.2 Legal

- 5.2.1 The Council has appointed Eversheds and consistently followed its advice. The Cabinet meeting will be attended by Mr. S. Petley of Eversheds.
- 5.2.2 There is the possibility of litigation regarding determination of the Development Agreement, possibly on the basis that the Developer will seek to recover legal costs incurred completing the S.278 highway works.

## 5.3 Corporate

- 5.3.1 Should the Development Agreement be determined the future of the site will be reviewed within the Asset Management Strategy.
- 5.3.2 Should the decision be to proceed with the Development Agreement there is a risk that the £1m deposit would be insufficient to meet any outstanding liabilities associated with the re-engaging a developer, as was intended in the original agreement, where £5.6m was set as the limit for the development bond.
- 5.3.3 Should Cabinet not agree the recommendation this matter will be referred to Council because option 4.2 requires a change to the Development Agreement.

## 5.4 Equity and Equalities

- 5.4.1 In the opinion of the author, there are no equalities and equity implications of this Report

## 6.0 Recommendations

- 6.1 That the Development Agreement between the Council and SFP Ventures Ltd. be determined

**7.0 Decision Making Process**

7.1 This is not a key decision.

Contact Officer: Brian White – Director of Regeneration – Extension 7007

**Others Consulted:**

<b>Finance</b>	<b>Sue McGonigal</b>
<b>Legal</b>	<b>Harvey Patterson</b>

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**COMMENTARY FROM TDC OFFICERS ON THE CONTENT OF ANNEX 1**

1. The Cabinet minute required SFP Ventures (UK) Limited ("SFP") to provide assurance to the Council that adequate funding is available to complete the project on schedule with the Director of Finance and Corporate Services to report on financial risk.
2. SFP has provided a breakdown of the projected total construction cost for the development at today's prices (see Annex 1) which is estimated to be £21,708,161.00. It would appear that this figure does not include the £1m deposit or the premium, overage and other monies payable to the Council, SFP's figures have not been independently verified on behalf of the Council but in the opinion of Officers the figures do not seem unreasonable.
3. SFP states that £10m of committed funding is already in place. This sum is made up of £3.5m from SFP, £1.5m from Cardy Construction Limited and £5m from Wetmore Investments. The £3.5m from SFP includes the money spent to date on planning costs, highway works and other preliminaries and also includes £1m deposit, the £550k premium to be paid to the Council for the site leases and the £100k Section 106 contribution. This appears to leave a funding shortfall of at least £12m which SFP states is to be met from flat sales or by unspecified third party funders at some stage in the future.
4. The development agreement will provide for SFP to comply with the following development milestones:
  - (a) the groundworks (including the piling and foundations) are to be commenced by 31st January 2010 and completed by 31st August 2010
  - (b) the structural frame for the first phase of the development (which includes the hotel and some of the flats) is to be commenced by 1st March 2011 and completed by 28th February 2012
  - (c) practical completion of the entire development is to take place by 28th February 2014.

SFP has provided a table (see Annex 1) setting out the funding requirements for each of these milestones and this indicates that no additional funding will be required until January 2013.

5. Annex 1 contains a bank reference and other information relating to Cardys and some limited information about the agreements which SFP is proposing to enter into with both Cardys and Wetmore. It is proposed that Cardys will enter into a joint venture agreement with SFP and that Wetmore will purchase the hotel element of the scheme. However, the Council will not have a direct contractual relationship with either of them and will not be able to enforce the terms of their agreements with SFP. The Council's solicitors have requested copies of the proposed agreements but SFP has not agreed to supply these on the basis that the terms are confidential. [If the Council does decide to proceed with the Development Agreement, it should be a condition that SFP enters into the agreements with Cardys and Wetmore not later than the grant of the site leases to SFP.]
6. SFP points out, in Annex 1, that the deposit of £1m will be available to the Council should it exercise its step-in rights. The replacement of the £5.6 m bond by this deposit was discussed in the Cabinet report of 7<sup>th</sup> May 2009. Should Cabinet wish to proceed with the Development Agreement it will be

necessary for the decision to be taken in Council, because it set out the original content of the Development Agreement.

7. The Council will have the right to terminate the site leases for breach of the Development Agreement which SFP fails to remedy but this should be regarded as a measure of last resort and could be a fairly lengthy process involving court proceedings if SFP challenge the termination. If termination does take place the Council will be entitled to utilise the £1m deposit to remedy any breach of the Development Agreement and to exercise step in rights.
8. Should Cabinet decide to proceed with the Development Agreement, as amended, SFP will pay the sum of £550k to the Council, in accordance with Development Agreement and the further £100k under the terms of the section 106 Agreement. In addition SFP will pay an additional £56k interest, and the Council's legal costs relating to the variation to the Development Agreement. On the other hand should the Development Agreement be ended the Council will at some time in the future have the opportunity of a greater return.

### **Conclusion**

The Council cannot be certain on the basis of Annex 1 that the SFP will have sufficient funding to carry out and complete the development.

This is because much of the initial funding is being provided by two organisations not party to the Development Agreement and more than 50% of the overall project cost is to be funded from either flat sales or third party funding which has yet to be arranged.

However, SFP has stated a commitment to complete the scheme. By way of supporting evidence SFP points to the £2m it has already spent, and the £1m deposit the Council will receive if, having agreed to proceed with the Development Agreement, it later has need to use its step in rights.

B J White  
Director of Regeneration Services

H Patterson  
Chief Legal Officer