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Ask For: **Charles Hungwe**
Direct Dial: **(01843) 577186**
Email: **charles.hungwe@thanet.gov.uk**

EXTRAORDINARY CABINET

16 OCTOBER 2014

An extraordinary meeting of the Cabinet will be held at **7.00 pm on Thursday, 16 October 2014** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Johnston (Chairman); Councillors: Nicholson, Everitt, D Green, E Green and Harrison

SUPPLEMENTARY AGENDA

Item
No

Subject

6. **ROYAL SANDS, RAMSGATE** (Pages 1 - 10)

This report replaces the report within the original agenda pack.

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ROYAL SANDS, RAMSGATE

To: **Extraordinary Cabinet Meeting – 16th October 2014**

Main Portfolio Area: **Finance & Estates**

By: **Cllr Rick Everitt, Cabinet Member for Finance & Estates**

Classification: **Unrestricted**

Ward: **Eastcliff**

Summary: Thanet District Council is the contractual partner of a development agreement dated 2006 and modified in 2009. For various reasons the development has stalled with both parties in dispute over a number of matters. The parties looked set to proceed to the courts where the outcome would be uncertain, so both parties agreed to participate in an arbitration process to aim to seek a practical resolution to getting the site built out. Cabinet are now being advised of the outcome of those discussions and asked to make a decision on the way forward

For Decision

1.0 Introduction and Background

- 1.1 Thanet District Council is the contractual partner of a development agreement dated 2006, modified in 2009, with SFP Ventures Ltd.
- 1.2 Following the successful grant of planning permission, the development agreement provides for commercial and residential property to be built on the site as follows:
- 107 residential units;
 - one 60 bedroom hotel including reception, conference room and function room facilities,
 - retail and food/drink units on the ground floor;
 - a children's play area
 - and a health/fitness centre.
- 1.3 The development has stalled and the development agreement provides for a mediation process in the event of a dispute so both parties agreed to take part in discussions with the aim of making progress.
- 1.4 The Cabinet paper of 11 September 2014 summarised the progress made since the Cabinet paper of 20th February and made recommendations on the way forward. The Cabinet meeting of the 11 September authorised officers to defer the recommendations made on the 20th February and also that a report be brought back to Cabinet in October documenting the outcome of the mediation negotiations.

2.0 The Current Situation

- 2.1 In response to public interest in this project the council have provided information through the web site including providing answers to some of the frequently asked questions, see annex 1.
- 2.2 The Overview & Scrutiny panel called-in the Cabinet decision and a meeting was held on the 25th September to consider the officer recommendations made at the Cabinet meeting on the 11th September. The recorded minutes of that meeting show the following recommendation
 - 2.2.1 “That Cabinet delays taking a decision on the Pleasurama negotiations until:
 - 2.2.2 a) Members of the Overview and Scrutiny Panel have been provided with copies of the relevant Pinsent Mason legal advice and given sufficient time to study this advice;
 - 2.2.3 b) Members of the Overview and Scrutiny Panel are given the opportunity to meet with the authors of the Pinsent Mason legal advice to ask any questions about the advice;
 - 2.2.4 c) Members of the Overview and Scrutiny Panel are provided with copies of the officers’ report and recommendations regarding the Pleasurama development before this report and recommendations are discussed and actioned by Cabinet;
 - 2.2.5 d) Overview and Scrutiny Panel holds an extraordinary meeting to consider the Pinsent Mason legal advice and the officer report and recommendations. The Overview and Scrutiny Panel then decides what recommendations it wishes to make to Cabinet.
 - 2.2.6 e) Overview and Scrutiny Panel has sight of the valuation papers and the opportunity to question the author
 - 2.2.7 An Extraordinary Overview & Scrutiny Panel meeting is to be held on 15th October 2014.
- 2.3 The council have engaged in the arbitration discussions with Cardy, (brought into the discussions by SFP Ventures Ltd). The offer Cardy are making is to purchase SFP Ventures Ltd, and by doing so take full control of the company. Cardy do not need the council’s permission to acquire SFP Ventures Ltd.
- 2.4 Following purchase of SFP Ventures Ltd, Cardy will take over the development agreement and this will put them in a position of direct contractual relationship with the council. This contractual relationship will enable them to re-negotiate terms with the council but the authority will need to continue to obtain advice from an appropriately experienced and qualified adviser that it is getting the best terms.
- 2.5 It is important to note here that when the council is contracted to a company by way of a lease or development agreement, it does not have vacant possession and therefore there is no opportunity for the council to market a site.
- 2.6 The council have procured the assistance of Strutt and Parker to advise on the terms, they have already been asked to confirm the viability of the development and provide advice on the market value of the land. This information will be made available to the Overview and Scrutiny Panel on the 15th October.

- 2.8 The current situation therefore is that there have been further discussions with Cardy about taking this forward and some of the safeguards being considered are below:-

3.0 Performance Management

- 3.1 There will continue to be detailed performance measures in any contract including:-
- 3.2 The contract will provide that Cardy carry out the development in compliance with the planning permission.
- 3.3 The agreement will ensure that Cardy may not vary the planning permission, the specification, or the programme of works without the prior written consent of the council.
- 3.4 All works to be carried out in good and workmanlike manner and the council to receive collateral warranties following completion of the scheme.
- 3.5 Furthermore the council is permitted to monitor the development and pre-lets to ensure compliance with the planning permission and quality assurance standards.
- 3.6 Cardy will update the council as to the progress including regular meetings attended by representatives of the council, including the Cabinet Member for Finance and Estates.
- 3.7 The contract will contain a restriction in favour of the council not to use the hotel site part of the property other than for a hotel.

4.0 Call in options

- 4.1 The contract will be changed to give the council greater control including providing for a date by which works would recommence on site, adequate monitoring measures to ensure the development gets built out in a reasonable time frame and also include a long stop date.
- 4.2 Also the council will be able to exercise a call in option to get the site back for non-performance. This arrangement will be considerably simpler than the current provisions in the development agreement.

5.0 Due Diligence process

The council is now aware that funding is available to Cardy to deliver the scheme. However, before making any significant variations to the development agreement Cardy would need to satisfy the following due diligence process:-

- 5.1 Evidence of meeting funders requirements for the scheme and funding in place
- 5.2 Development viability appraisal
- 5.3 Compliance with TDC Money Laundering regulations
- 5.4 Credit Checks - 3 year audited accounts – including asset and liabilities statements
- 5.5 Evidence that Cardy have purchased 100% share capital of SFP Ventures Ltd and incorporated into Cardy Construction Ltd.
- 5.6 Full breakdown of Company structure and CVs on key individuals

Satisfactory achievement of the above would require approval by the Director of Corporate & Regulatory Services & 151 Officer.

6.0 Money owed to Thanet Council

- 6.1 By entering into the development agreement in 2006 council has substantially disposed of its legal interest in this site; the outstanding contractual interest is the money owed to the council which was to be paid upon the sale of the completed flats and commercial units.
- 6.2 Under the existing contracts once the scheme is substantially completed the freehold would transfer to the developer but the overage money owed to the council would only be paid as the units sell.
- 6.3 Cardy offer includes the opportunity for the council to have the money before the freehold transfers and before the units are sold. The sum would be subject to a current market valuation to ensure the council gets the best consideration for the site. This offer is to be the subject of further negotiations.

7.0 Cliff Wall and Flood Risk Concerns

- 7.1 The area of cliff wall adjacent to the site is approximately 4 meters from the developed out property boundary. The cliff wall forms part of common land and the council recognises its duty to ensure that all reasonably foreseeable steps are taken to ensure it is adequately maintained.
- 7.2 The council undertakes regular inspections of the cliff wall to monitor the cliff face for movement and repairs. The council will ensure that new detailed surveys are undertaken in the area of cliff wall and all the reasonable concerns that have been raised will be investigated with the outcome published.
- 7.3 Part of any contractual modifications will require careful consideration in respect of any works required to the cliff wall. Cardy have agreed to make a capital contribution and are also mindful that in order to sell the units they will need to provide evidence to any buyer and their insurers that the cliff wall is safe and there are mechanisms for adequate ongoing repairs.
- 7.3 Cardy and the council project team, plus external technical civil engineering experts will carefully consider the outcomes of the surveys and work towards a solution that means that the repairing obligations to the council for ongoing maintenance will be kept to a level no higher than that which they would have been should the development not have proceeded.

8.0 Conclusion

- 8.1 The strategic decision to proceed with a joint venture to develop a scheme as permitted through the planning process was taken many years ago and now the council are bound by a legal contract to take all reasonable steps to get the scheme built out.
- 8.2 SFP Ventures Ltd has spent considerable money to date on the development and for this reason will seek to recover their costs. SFP Ventures Ltd have confirmed that should the parties not be able to reach agreement in mediation, they will take the matter through the courts and there is no guarantee that after a lengthy legal battle, that the council would get the site back, nor get its legal fees paid.

- 8.3 The scheme has been granted planning permission and it is this planning consent that give the site its highest market value. This value is significant and the council cannot afford to buy the site back from its contractual partner.
- 8.4 The current shareholders of SFP Ventures Ltd have confirmed they are willing to sell 100% share capital in the company to Cardy and upon completion of the sale would have no further interest in the development.
- 8.5 Cardy has the potential to deliver the scheme built out in a reasonable time frame, and that scheme has the potential to contribute significant regeneration of Ramsgate.

9.0 Corporate Implications

9.1 Financial and VAT

- 9.1.1 The Royal Sands development is currently accounted for within the Council's asset register and subsequently within the Balance Sheet. The financial implications of the aforementioned have been detailed below:-
- 9.1.2 To receive the overage monies owed to the Council would result in a substantial capital receipt that would be used to fund council's capital expenditure programme.
- 9.1.3 It is noted that preliminary investigations were held by the project team to get an indicative present value for the site and that this amount is a considerable sum. There is no allowance in the budgets to buy the developers interest back, it would constitute as capital expenditure for acquisition of the rights bought back that had previously been sold. There has been a decline in capital receipts over the past few years due to the economic downturn and the need to achieve best value. Currently the council does not hold sufficient funds in the unallocated capital receipt reserve to fund such expenditure as it has been fully committed to fund the existing capital programme. It is likely the Council would need to borrow to facilitate the purchase of the leases, which would result in increased revenue costs for the Interest on borrowing and the minimum revenue provision for principal repayment.
- 9.1.4 Once agreement has been sought on which option would be the most appropriate then specialist VAT advice will need to be sought.

9.2 Legal

- 9.2.1 The legal issues are broadly as outlined within this report.
- 9.2.2 There are processes to be followed to seek to terminate the existing agreements as outlined. There is likely to be a challenge to this process which will be costly and time consuming.
- 9.2.3 For clarity, if this does not proceed for any reason the Council's position reverts to the existing and it would need to continue with the process to terminate the existing leases by action through the courts.
- 9.2.4 Careful attention needs to be made to any action taken either to terminate the existing agreement, purchase the leases or seeking to sign a new agreement to ensure the Council's legal position is secured.
- 9.2.5 Appropriate advice has been sought at all stages so far to ensure that the Council's position is sustainable.

9.3 Corporate

- 9.3.1 As outlined within this report the position has changed materially since the Cabinet Decision was taken in February.
- 9.3.2 Given that there is now an alternative which may bring about a solution to the problem avoiding the legal challenges it is appropriate that members are given the opportunity to consider this and to take a decision based upon all of the options.

9.4 Equity and Equalities

- 9.4.1 If Cabinet agree to taking this forward, all discussions and agreements are subject to a Council equity and equalities assessment.

10.0 Recommendation

- 10.1 It is recommended that Cabinet authorise the project team (in consultation with the S151 Monitoring Officer, Head of Paid Service and Cabinet Member for Finance and Estates) to progress with negotiations involving variations to the existing agreement (or a new agreement as provided for within the existing contract) in respect of Royal Sands. These negotiations will be undertaken in accordance with existing delegations and within the parameters detailed in paragraphs 3 through to 7 provided best consideration is achieved.
- 10.2 It is recommended that if further information becomes available during these negotiations that would result in there being a significant negative effect on the consideration owed, particularly as a result of the cliff wall surveys, then the matter should be brought back to Cabinet for further strategic review.

11.0 Decision Making Process

- 11.1 This is a key decision subject to call in.

Contact Officer:	Edwina Crowley, Head of Economic Development and Asset Management
Reporting to:	Madeline Homer, Acting Chief Executive

Annex List

Annex 1	Royal Sands Questions and Answers
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Corporate Consultation Undertaken

Finance	Nicola Walker, Finance Manager - HRA, Capital & External Funding
Legal	Steven Boyle – Interim Legal Services Manager & Monitoring Officer

Annex 1 to Cabinet Paper, 16th October 2014

1. Why is the council talking to Cardy Construction Ltd about the Royal Sands Development site?

A default notice was served on the developer, SFP Ventures Ltd. The development agreement provides for a mediation process to be entered into following the service of a default notice. Each party to the mediation process is entitled to bring their team to the discussions. SFP Ventures brought Cardy Construction Ltd to the mediation process and introduced this new offer arising from a company buy out by Cardy Construction.

2. What is Cardy Construction Ltd's offer?

Cardy Construction Ltd is offering to buy the share capital of SFP Ventures Ltd. Upon completion of their purchase of the company, the firm would be renamed and incorporated into the Cardy group of companies.

The offer includes the opportunity for Thanet District Council to enter into a new contract which enables the outstanding money owed to the council to be paid ahead of completing the development. This is subject to a current market valuation to ensure the council gets the best consideration.

3. If SFP Ltd sells their company to Cardy Construction Ltd, will SFP Ltd continue to be involved in the development?

No. Upon completion of the sale of the company, SFP Ventures Ltd will have no further interest in the site as we understand the company will be taken over and renamed. The council's due diligence process will confirm the validity of the legal entity of the company to ensure that Cardy Construction Ltd through its new company is the owner.

4. Could the Council advertise for a new Joint Venture partner to develop the site?

No. The council has no legal rights to do this. The joint party in the development agreement is SFP Ventures Ltd, they can choose whether or not to sell their company and if they sell, who they sell it to.

5. When would the building work begin?

Cardy Construction Ltd would commence works on site immediately upon conclusion of the signed contract and complete the project within two years (with a long stop date of three years).

6. Who will own the freehold once the site is developed?

The current contractual arrangements with SFP entered into in 2006 mean that the Council has substantially disposed of its freehold interest in the land (with freehold transfer provisions documented in the development agreement); the Council's only continuing legal interest is the right to receive overage payments in respect of the completed units.

There is no change in this situation, the reason it is necessary for the transfer of the freehold is because the arrangement will enable the developer to grant for sale long leaseholds in the finished property.

7. What due diligence will be undertaken to ensure Cardy Construction Ltd is competent and capable of building out the site in a timely manner?

The due diligence process for a contract of this type is rigorous and includes obtaining evidence of a viable development appraisal, proof of the company entity and confirmation that funding is available to deliver the scheme.

One of the considerations to take into account is the company track record for delivering projects of this nature. Cardy Construction Ltd has been associated with the successful delivery and restoration of some of the most iconic and important buildings in Kent over the last 70 years including Discovery Park, QEQM Cancer Care, Rocksalt, Kent Cricket Ground, The Sands Hotel, Chilham Castle, Canterbury Cathedral, Kent and Christchurch Universities, Chatham Dockyard, East Kent Hospitals. They have a consistent reputation of delivering quality projects.

8. Will this support the economic regeneration of Ramsgate?

Yes. There would be direct employment opportunities during the construction project, Cardy Construction Ltd has demonstrated a desire to employ local tradesmen and apprentices to the project. Cardy Construction Ltd has confirmed it would also initiate a project specific apprenticeship training scheme through the Construction Industry Training Board and the local college.

Once constructed, the hotel, leisure and residential units would support on-going employment opportunities in the service and hospitality sectors.

9. Is the cliff wall sufficiently monitored to ensure structural stability?

The wall is regularly surveyed by TDC engineers and East Kent Engineering Partnership structure engineers. It was last surveyed in July 2012 and is due again in 2015. However, TDC has decided to bring this survey forward as part of this process and have now instructed a full structural survey to be completed on Thursday 16 and Friday 17 October.

10. Who will retain control for the maintenance of the cliff wall?

The cliff wall adjacent to the building site remains in the ownership of the council. The cliff wall supports the land above the cliff including the promenade. The council will retain responsibility for inspections and maintenance of the cliff wall.

11. Are there any other monitoring authorities that TDC is consulting with to ensure the project is built in a safe manner and that the property once built will be adequately protected from flood risks?

There are specific construction laws that the council complies with to ensure suitable and sufficient safety systems are in place. A project of this size is notifiable to the Health and Safety Executive (HSE) so that they can monitor progress. The council has contacted the HSE and invited them to review all safety files and they will be invited to project meetings if the project re-commences.

12. What are the risks of flooding to the units once built?

The likelihood of flood to this area is a 1 in 200 year risk. It is worth noting that the design of the buildings has taken this into account by putting the car parking on the ground floor, there is no residential accommodation at ground level.

Cardy Construction Ltd would ensure that it worked with the Environment Agency and Thanet District Council to have suitable and sufficient measures documented in a flood risk management plan to safeguard future occupants.

13. The existing construction work has been lying in the ground for some time – is TDC taking steps to ensure the existing construction is adequate?

The foundations have been designed by a professional practice of Chartered Civil and Structural Engineers with many years of experience of engineering design and coastal defence works around the Kent coast, including Thanet. They have been designed in conjunction with specialist Geotechnical Engineers with very detailed reference and due regard to the extensive site investigation documents, including trial holes, trial pits and integrity testing, all of which have proved and verified the final choice that has been taken.

The design of the foundation complies with Building Regulation Requirements and very detailed and extensive calculations have been undertaken to verify this. The foundations have been inspected and approved and signed off at various stages of the works by Building Control and by the surveyor on behalf of the warranty provider.

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