
Ramsgate Royal Sands – Options

To: **Extraordinary Cabinet – 29th May 2013**

Main Portfolio Area: **Operational Services**

By: **Mark Seed – Director of Operational Services**

Classification: **Unrestricted**

Ward: **Eastcliff**

Summary: To consider options for future action following the end of the four month period agreed at the 22nd January Cabinet meeting for the developers of Royal Sands to have demonstrated the financing for the construction of the development.

For Decision

1.0 Current Situation

1.1 At the Cabinet meeting on 22nd January it was resolved that

“Cabinet set a review period of 4 months from 22nd January 2013 and request officers at the end of this period to prepare an options report to Cabinet if either the finance is not in place for the completion of the development or no agreement is in place for the construction and operation of a hotel.”

1.2 As the four month period has now passed without these criteria being met it is necessary that the options in relation to the future of the current development agreement and leases for this site are now considered.

1.3 In the meantime a petition was considered at the meeting of Council on 18th April as set out in Annex 1, and it was agreed that the petition be referred to the Overview & Scrutiny Panel. As a result of this the Panel agreed the following at its meeting on 23rd April:

1. To set up a Pleasurama Site Development Task & Finish Group as a priority scrutiny project for 2013/14;
2. Officers to draft the terms of reference

1.4 At the time of drafting the report the Scrutiny task and finish group has yet to meet and consider its terms of reference.

2.0 Discussion and Proposals

2.1 The issue of the development of the Pleasurama/ Royal Sands site has been a matter of contention since before the decision to take forward the current proposals at the end of 2002. This has surrounded all aspects of the development including its form agreed under planning, the choice of the developer, the nature of the developer, the conditions within the agreements and changes to these, and retention of the developer despite the site not being moved forward.

- 2.2 This process has taken place under three separate administrations, but needs a collective way forward for the council that represents a political accord. This should reflect the need for a development to be completed that complements the future regeneration of Ramsgate, and provides a financial return for the council on a key water front site.
- 2.3 In addition, the future of the agreement and leases with SFP needs to be assessed carefully, as unilateral decisions on these by the council are almost certain to be challenged legally by the developer. The bottom line is that such action is uncertain, potentially costly, and likely to take a long time to resolve.
- 2.4 It is important that consideration of this issue is primarily focussed on where we are going and how to achieve that aim, with the prime elements being:
- An agreed development for the site
 - A timescale to complete this development
 - A financial return to the council for the site
 - An understanding of the risks involved in any course of action
- 2.6 The report is specifically not proposing a legal way forward for the council as this requires to be considered in a way that does not prejudice any future court action and the position of the council within this. Such a way forward also needs to be supported by high level commercial and legal advice that dovetails with the direction of travel for the council.
- 2.7 In this context it would seem to be appropriate for Cabinet to support the setting up of the task and finish group by Overview and Scrutiny and ask them to consider and recommend a course of action. In doing this it would be appropriate to consider the following:
- Encouraging the task and finish group to focus primarily on the key issues to help guide the way forward for the council as a whole
 - Committing Cabinet in supporting the work, including the cost of seeking confidential legal and commercial property advice
 - Advising that consideration of action moving forward that may involve legal processes needs to be done in a way that does not prejudice the position of the council
 - Ensuring that the legal, financial and time risks associated with any proposed course of action are considered with care
 - Encouraging an expeditious result so that Cabinet can move forward on this
- 2.8 Due to the lack of progress by the developer it is no longer possible to consider the option of waiting for them to deliver, even though the final deadlines within the agreement have not been breach. In addition, the need for a cross party independent consensus on future action supports the role of the Scrutiny task and finish group, rather than alternative routes.
- 2.9 The council has been very supportive in relation to this development, mainly in recognition of the difficult financial market over the last 5 years. However, the repeated failure of the developer to make progress is no longer acceptable to the council. The lack of any substantial progress in resolving the issues that were discussed in the Cabinet report in January, and failure to reach a conclusion within the four month period agreed by Cabinet, gives the council no confidence for the future.

- 2.10 On this basis, the future of the development has entered a new phase in which the council is actively seeking an alternate way forward, with a key focus on the determination of the current development agreement and leases.
- 2.11 This has become too much of a key issue to wait until the current deadline in 2014 and the possible extension to 2017. The continued failure to deliver gives the council no confidence that progress will be made, and a rapid move to considering and deciding on alternatives is essential.

3.0 Corporate Implications

3.1 Financial and VAT

- 3.1.1 The primary long term impacts of choosing a specific course of action on the site and the costs of this need to be assessed as part of the risk analysis work as part of review by the Scrutiny task and finish group. In relation to this report the proposed support to seek initial high level commercial and legal advice can be met from existing budgets.
- 3.1.2 In addition to the legal risks involved with ceasing the current arrangements can be added the timescales involved in seeking an alternative proposal and the financial risks of this in comparison to the current arrangements and the potential return to the council.

3.2 Legal

- 3.2.1 It is not proposed to set out a full legal analysis of the situation at this stage as this will have to be considered in some detail through the Scrutiny process. However, a clear option as a course of action would be to seek to cancel the current development agreement and leases or not provide an extension to any timescales. As indicated above these courses of action are almost certain to be challenged legally, so any legal risk assessment through the Scrutiny process must assess the chances of being successful, the costs that may be involved, and the timescales to achieve the result in court.

3.3 Corporate

- 3.3.1 The future of the current development agreement and leases is seriously in doubt. There are risks associated with taking action about this, as set out in this report, but the repeated failure by the developer to move forward on site, despite the willingness of the council to assist, is no longer acceptable. As set out above, the failure to deliver has to change the council's approach to this site development and its consideration of options for the future. This represents Cabinet's entire dissatisfaction that the four month deadline it gave to the developer to resolve matters and make progress on site has not been met. Care needs to be taken in relation to considering options for the future as indicated above, but now is the time to take this step.

3.4 Equity and Equalities

- 3.4.1 The proposal in this report does not have any impacts on groups with protected characteristics.

4.0 Recommendations

4.1 That Cabinet supports the setting up of the Overview and Scrutiny Panel task and finish group, and advises that the following considerations should be taken into account in proposing a course of action for the council:

- A focus primarily on the key issues to help guide the way forward for the council as a whole
- Cabinet's support for the work, including the cost of seeking confidential appropriate legal and commercial property advice
- Consideration of action moving forward that may involve legal processes needs to be done in a way that does not prejudice the position of the council in a court action
- Legal, financial and time risks associated with any proposed course of action are considered with care, including those associated with alternative developments
- Seeking an expeditious result so that Cabinet can move forward on this site

4.2 That Cabinet expresses its strong dissatisfaction with the progress made by the developer in the last four months to move forward with this development, and signals a shift into a new phase of the development in which it wishes to see robust alternatives to the current arrangements being developed and acted upon by the council.

5.0 Decision Making Process

5.1 The proposed decision is within the council's budgetary and policy framework.

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Reporting to:	Sue McGonigal, Chief Executive

Annex List

Annex 1	Petition to Council 18 th April 2013
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Background Papers

Title	Details of where to access copy
None	N/A

Corporate Consultation Undertaken

Finance	Sarah Martin, Financial Services Manager
Legal	Harvey Patterson, Corporate & Regulatory Services Manager