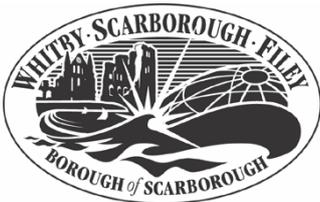


|   |  |
|---|--|
|  | <b>REPORT TO<br/>CABINET<br/>TO BE HELD ON<br/>16 OCTOBER 2007</b>   |
|   | <b>Key Decision</b> <b>YES</b><br><br><b>Forward Plan Ref No</b>     |
| <b>Corporate Priority<br/>Council Vision and<br/>Key Aims 2 and 3</b>             | <b>Cabinet Portfolio<br/>Holder</b> <b>Cllr Mrs J E<br/>Mortimer</b> |

**REPORT OF: Strategic Director of Corporate Services – SDCS/07/79  
and Head of Property Services – HPrp/07/54**

**WARDS AFFECTED: ALL**

|  |
|--|
| <b>SUBJECT:                      SANDS DEVELOPMENT FUTURE PHASES</b> |
|--|

**RECOMMENDATIONS:**

That Cabinet recommends to Council:

- (i) the grant of a lease to Benchmark Leisure Ltd for the Kinderland (Forest View) phase of The Sands development in accordance with the terms of the Development Agreement executed in December 2002 but to commence from the date of possession;
  
- (ii) to approve the allocation of up to £3m from the Balance Sum Account established by the Supplementary Agreement executed in February 2007 subject to satisfactory terms being agreed in respect of the operational, financial and legal provisions through a further Supplementary Agreement. The sum to be used towards the Northstead Valley Gardens development, with this to be on the basis of the development containing the following:
  - A new open air theatre
  - Provision of comprehensive play facilities for children, comprising a mix of free and paid for facilities
  - High quality environmental improvements and water features
  - Management of the site to be under one overall management arrangement;

- (iii) to receive further reports as full details are agreed for the further Supplementary Agreement.

### **REASON FOR RECOMMENDATIONS:**

- (a) to enable Phase 2 of the Sands development to proceed in a way that reduces costs of the development, provides an earlier than expected capital receipt and enables the developer to secure occupiers for the phase;
- (b) to enable Phase 3 of the development to be undertaken at an early stage in a way that will provide additional benefits to the community and the local tourist economy;

### **HIGHLIGHTED RISKS:**

Delays in progress with the scheme.

Missed opportunity to advance the provision of community facilities.

## **1. INTRODUCTION**

- 1.1 In December 2002 a Development Agreement was entered into by the Council with Benchmark Leisure Limited which set out the responsibilities of both parties for bringing forward detailed proposals for a development at Scarborough North Bay and delivering a scheme which meets the requirements and aspirations of the community and the Council. The agreement was based upon an ambitious concept reflecting the vision of the Council for this area. This has evolved in a number of ways over the intervening years; as detailed proposals have been prepared; as an outline planning consent has been given; as detailed planning consents for the first phases have been granted; and as the leisure market has changed. What has not changed is that this scheme is the Council's vision for that area, and is a key component of the Council's regeneration programme for the Borough.
- 1.2 The Development Agreement envisages that the development of each phase is undertaken in a particular sequence. Upon agreement of the detail of the phase including its viability appraisal and the receipt of full planning consent the developer is granted a building licence giving access to the site and a right to undertake the required works to construct the buildings and other associated works (such as landscaping). Upon practical completion of those works a 150 year leasehold agreement is executed. The principle purpose for this somewhat unusual sequence (most developments only proceed after legal title has transferred to the developer) is to give an added guarantee that the phase proceeds to full completion. In the event that the phase does not proceed to completion within the expected timeframe the Council could regain possession after giving the development funder the opportunity to step in and complete the works.

- 1.3 February 2007 saw the completion of a Supplementary Agreement covering the construction of Phase 1A (Seaview apartments) and Phase 1B (Beach Management Centre). A Supplementary Agreement completed in February 2007 enabled Phase 1 to progress from the overall Development Agreement, looking at the big picture of Sands Development, to the detailed and specific requirements of that particular phase. The Supplementary Agreement for Phase 1 also put in place details of ongoing financial arrangements between the Council and Benchmark relating to profit share from the development including establishment of a 'balance sum account' controlled by the Council to hold the profits from realised value of each phase. Profits from commercially viable phases are required to support phases that are, on their own, not financially viable (e.g. the Principal Visitor Attraction).
- 1.4 In recent months we have seen Benchmark put forward an updated version of the approved masterplan. This update will require to be approved by the Planning and Development Committee at the point planning consent is sought for the Bay View area of the site. In the lead up to the Planning and Development Committee meeting the masterplan will be open to public consultation in line with the planning requirements. Benchmark has already made the masterplan a public document through press coverage and a number of presentations.
- 1.5 This report considers the arrangements needed to enable Phases 2 and 3 to commence on site.

## **2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN**

- 2.1 The Sands scheme has an important role in helping to achieve the renaissance of the North Yorkshire Coast by 2020 and Key Aims 2 (Building Prosperous Communities) and 3 (Creating Healthy and Vibrant Communities).

## **3. BACKGROUND AND ISSUES**

- 3.1 The issues for this report relate to Phase 2 (which is to be undertaken on the former Kinderland site and has been given the name Forest View as part of the Sands) and Phase 3 which relates to Northstead Manor Gardens and to be named Northstead Valley Gardens.

### **3.2 Forest View**

- 3.2.1 The phase is to be developed with 40 holiday homes and a 31 bedroom Miners Respite Hotel. The Planning and Development Committee is scheduled to consider Benchmark's revised planning application on 18 October. The expected programme is to commence construction in January 2008 with a 12 months build timetable. In order to prepare the site for construction and minimise disturbance to wildlife a licence has been granted to Benchmark to enter the site for these purposes.

3.2.2 Benchmark has asked that the leasehold arrangement be executed before construction commences so that development costs can be reduced and a sub lease for the Miner's Respite Hotel executed which secures that part of the phase. It is consequently necessary to consider alternative mechanisms that would be appropriate to provide a similar level of assurance that the development will proceed to completion. After careful consideration and legal advice it is proposed that a forfeiture clause in the lease be included to provide the required certainty.

3.2.3 As the only change to arrangements for this phase relates to the early date when the leasehold interest will be executed a supplementary agreement is not required. All other matters are covered by the Development Agreement and first Supplementary Agreement which the Council has previously approved.

### **3.3 Northstead Valley Gardens**

3.3.1 In partnership with Benchmark, we have concluded that the Valley Gardens area offers a significant opportunity to provide a development that brings back into use the Open Air Theatre, and provides for high quality gardens, with a range of features, play facilities and other attractions.

3.3.2 The comparison that has been made is with Tivoli Gardens in Denmark, which is a famous tourist attraction, attracting millions of visitors each year. There is the opportunity to do similar within the Sands, to provide within this garden area something which in its own right is a tourist attraction, and which also will complement the whole area, and provide a high quality environment for many years to come. Unlike Tivoli Gardens which has an entry charge, the proposed gardens within the Sands would be free to enter, and a significant amount of facilities would be free to use.

3.3.3 At the heart of the development will be the overall aspiration to recreate an open air theatre, improve the environment and provide quality play facilities, thereby providing a comprehensive attraction that will appeal to all ages during the whole year. This development is at the heart of the Sands vision, in creating quality environments and attractions. Now is the time for the Council to determine its overall vision for this specific area, and the extent to which it wishes to utilise profits from other elements of the overall Sands project.

3.3.4 The garden is a key leisure area in the Sands, and is currently attracting significant interest from a number of operators covering a range of possible activities. The predominant theme for the area is a family orientated space with a string of activities drawing the public through the gardens from either end.

3.3.5 This development offers a rare opportunity to deliver a new, state of the art park/gardens area for Scarborough including:

- A state of the art open air theatre, to include a roof and provision of at least 3,000 seats.
- High quality environmental improvements.
- Making best use of water features in the park.
- Children's play.

3.3.6 We have already seen the tea rooms and station receive planning approval ready for construction to commence through the Winter season. It is expected that further plans for the area will be submitted as planning applications before the end of the calendar year.

3.3.7 Following a successful application, construction on the free children's play will start immediately with the aim of its provision for the 2008 season.

### 3.4 **Achieving the Development – Options and Financial Issues**

3.4.1 In order to achieve the restoration of the open air theatre, and other quality attractions in this area, it is clear that this phase of development cannot be done commercially. In simple terms the costs exceed the financial return, and therefore to achieve the desired outputs there will need to be an allocation of funding from other parts of the Sands development toward this development.

3.4.2 Members will be aware that the basis principles of using profits from commercial elements of the Sands scheme to support non-commercial elements is a fundamental principle of the development agreement with Benchmark. In particular, Members will be aware of this concept in relation to the provision of the Principal Visitor Attraction which has always been assumed to require significant cross subsidy.

3.4.3 Within the most recent Supplementary Agreement for the Sands development, there is provision for the Council to consider any potential use of the development profits for any other part of the overall development. This in many ways provides the Council with a flexibility to determine the extent to which it uses profits, when it uses them, and how. In essence, Members have a fortunate position of having significant funding available to provide facilities within the overall development.

3.4.4 The primary issues of concern at present then is to what extent Members wish to allocate funds towards the Valley Gardens.

3.4.5 Current indications/appraisals indicate a £3m shortfall in funding the developments, on the basis of this including the open air theatre, children's play and environmental improvements. Current appraisals indicate that the sale of seafront apartments will immediately contribute £7.9m to the balance account. Appraisals also indicate that there will be continuing contributions to the balance account from the committed phases such as the Forest Apartments and Bay View. The level and timing of these contributions are not

considered to put at risk the amount the balance sum will be able to contribute to the main PVA.

- 3.5 The Development Agreement envisages that there will be an overall management and maintenance regime for The Sands. It is important that this finalised and put in place in time for the Northstead Valley improvements.
- 3.6 Members will note that the North Bay Railway partly falls within this phase of The Sands. It will consequently be necessary to apportion the rents and obligations for the part that will be included in the lease granted to Benchmark.
- 3.7 It will be necessary for a Supplementary Agreement to be prepared for this phase to reflect its particular requirements. The Leader will be asked to approve the details of the agreement shortly in consultation with the Chairman of Projects and Partnerships Overview and Scrutiny Committee.

#### **4. CONSULTATION**

- 4.1 The proposals which form phases 2 and 3 of the development are included in a revised masterplan which has been the subject of consultation with interest groups and media interest.

#### **5. ASSESSMENT**

- 5.1 It is inevitable that the general principles set out in the Development Agreement completed in 2002 will require amplification and amendment to reflect the details of each phase. The changes set out in this report all conform to the general principles established for the scheme.
- 5.2 **Kinderland Lease**
  - 5.2.1 The request to move immediately to the lease stage on the Kinderland site and therefore accelerate the process, indicates Benchmark Leisure Ltd's commitment to The Sands project and making due progress with the parts which will help to provide a cross subsidy funding to the non commercial parts which generally meet community aspirations for new attractions.
  - 5.2.2 This opportunity provides the Council with an immediate receipt from the land value.
  - 5.2.3 Expansion of the construction area to the Kinderland site will demonstrate the Sands is continuing past phase one therefore instilling confidence in the project.
  - 5.2.4 There is a small risk relating to the loss of security of completion of the build if we move directly to lease. However, advice on this point has been sought from Counsel and it can be dealt with through the lease agreement with no detrimental effect to the Council.

### **5.3 Use of Balance Sum**

- 5.3.1 The balance sum is a mechanism where profits from phases of the development are held. These profits are able to be accessed, with the approval of Full Council, to support the non-commercial aspects of the development i.e. the Principal Visitor Attraction. The Supplementary Agreement enables Benchmark Leisure Ltd the opportunity to approach the Council to propose the use of the balance sum to support any non-commercial aspects of the development. Detailed appraisals accompany any application and the final decision is with Full Council. The use of the balance sum during the development will obviously have an effect on the time taken to reach the trigger point to implement work on the PVA, however, this needs to be balanced against the benefits of supporting emerging opportunities. On completion of the full development any profits remaining are then split 50/50 with Benchmark Leisure Ltd.
- 5.3.2 The use of the balance sum to support the non-commercial improvements to Northstead Valley Gardens has a wide range of benefits to both residents and visitors. Improvements to the area support the Council's commitment to regeneration and is a positive move towards improving access for the community to high quality entertainment and leisure facilities.
- 5.3.3 The refurbishment of the open-air theatre and creation of a vibrant and interesting family area establishes the Northstead Valley Gardens as a key attraction in the North Bay.
- 5.3.4 Improvements to this area contribute to the wider social impact of the Sands project in providing additional visitor attractions and associated job opportunities in the borough.
- 5.3.5 Improved children's play facilities will encourage children to be more active by offering traditional play equipment, larger adventure play and state of the art electronic interactive play. Active play has a wide range of health benefits to all ages.

## **6. IMPLICATIONS**

### **6.1 Policy**

The move to offer Benchmark Leisure Ltd a lease upon possession rather than upon practical completion is a change from the original Development Agreement.

### **6.2 Financial Implications**

Lease of the land to Benchmark Leisure Ltd will result in a capital receipt to the Council. If the lease was granted on completion of the construction, with the construction taking place under licence, the land value would not increase but payment to the Council would be delayed.

Use of the balance sum, to an agreed maximum, will have an effect on the rate which the balance sum accumulates to the required trigger point to enable works on the Principal Visitor Attraction to commence. However, the benefit of immediate work in the Valley Gardens and the synergy between the commercial and non commercial parts of this phase justify this action.

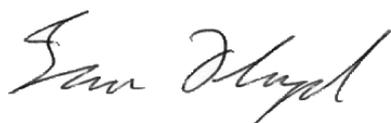
### 6.3 Legal Implications

This decision provides two areas of authority:

- (a) for grant of a lease of the land for the Kinderland (Forest View) phase of The Sands development to Benchmark in accordance with the terms already agreed within the Development Agreement executed in December 2002.
- (b) for Cabinet to consider the level of support that can be provided from earlier phases for Northstead Valley Gardens.

### 6.4 Equality and Diversity Implications

There are no equality and diversity issues in this report.



**Ian Floyd – Strategic Director of Corporate Services**



**Graham Price – Head of Property Services**

**Author:** Colin Eastwood  
**Telephone No:** 01723 383508  
**Fax No:** 01723 503826  
**E-mail address:** colin.eastwood@scarborough.gov.uk

#### **Background Papers:**

Please give details of all publicly accessible (non private) background papers applicable to the report.

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT COLIN EASTWOOD ON THE DETAILS ABOVE.

## RISK MATRIX

| <b>Issue/Risk</b>   | <b>Consequences if allowed to happen</b>  | <b>Likelihood</b> | <b>Impact</b> | <b>Mitigation</b>  | <b>Mitigated Likelihood</b> | <b>Mitigated Impact</b> |
|---|---|-------------------|---------------|--|-----------------------------|-------------------------|
| Delays caused by lease not granted until practical completion.                      | <p>No activity on site</p> <p>Wildlife returns to site causing further delay.</p> <p>Loss of cost savings to overall development</p> <p>Loss of early land payment to Council therefore loss in resultant interest.</p> | Not Likely        | High          | Carefully monitor progress   | Very low                    | Low                     |
| Damage to reputation caused by public concern at delays.                            | Adverse public comment.   | Not Likely        | High          | Provide clarity of rationale and benefits.   | Very low                    | Low                     |
| Non completion of phase caused by delayed lease execution                           | Need to procure alternative developer.  | Very low          | High          | Legal agreements contain specific clauses in relation to completion of development       | Very Low                    | Low                     |
| Damage to reputation caused by public concern that project intentions have changed. | Public perception of constant change to the Development Agreement   | Very Likely       | Minor         | Ensure public is well informed of the benefit to the scheme of going to immediate lease. | Likely                      | Minor                   |

| Issue/Risk  | Consequences if allowed to happen  | Likelihood | Impact | Mitigation                    | Mitigated Likelihood | Mitigated Impact |
|---|--|------------|--------|-------------------------------|----------------------|------------------|
| Development of phase delayed due to lack of support for the proposals.                        | <p>Improvements not delivering Council aspirations</p> <p>Open Air Theatre remains closed / derelict</p> <p>Reputation of development damaged</p> <p>Loss of current commercial interest in site</p> | Not Likely | High   | Work up alternative proposal. | Very low             | Low              |
| Development of phase delayed due to decision not prevent balance sum to be used as a subsidy. | <p>Improvements not delivering Council aspirations</p> <p>Open Air Theatre remains closed / derelict</p> <p>Reputation of development damaged</p> <p>Loss of current commercial interest in site</p> | Not Likely | High   | None possible.                | Very low             | Low              |

| Issue/Risk  | Consequences if allowed to happen | Likelihood  | Impact | Mitigation   | Mitigated Likelihood | Mitigated Impact |
|---|-----------------------------------|-------------|--------|--|----------------------|------------------|
| Balance account sum no sufficient to provide required subsidy for PVA | Delay of PVA                      | Very Likely | Low    | <p>Immediate benefits are recognised</p> <p>Financial appraisals are monitored</p> <p>Risk to benefits analysis is carried out</p> | Not Likely           | Low              |