



**REPORT TO CABINET  
TO BE HELD ON  
13 NOVEMBER 2018**

**This report contains exempt or confidential information in Appendix B which is excluded from publication**

**Key Decision**

**Yes**

**Forward Plan Ref**

**1**

**Corporate Priority:**

**People  
Place  
Prosperity  
Council**

**Cabinet Portfolio  
Holder**

**Cllr Derek Bastiman**

**REPORT OF: DIRECTOR (NE) – 18/306**

**WARDS AFFECTED: NORTH BAY**

**SUBJECT: THE SANDS - HOTEL PHASE**

**RECOMMENDATION (S):**

Cabinet is recommended to:

1. Note that on 22 February 2017 the Leader delegated authority to the Director (NE) to enter into a Supplemental Agreement with Benchmark Leisure Limited (BLL) and Benchmark Properties Limited (BPL) to facilitate the construction of a hotel next to the Water Park on terms principally contained in the Sands Development Agreement and subsequent Supplemental Agreements.
2. Confirm that authority is delegated to the Director (NE) (in consultation with the Leader) to enter into a Supplemental Agreement with BLL and BPL to facilitate this phase of the Sands Development on the terms principally contained in this report and the draft heads of terms in private and confidential Appendix B noting that:
  - i. the Supplemental Agreement for this phase will permit the grant of a long lease in advance of construction of the hotel phase to BLL with an immediate assignment of the lease being permitted to a newly established BLL associated company.
  - ii. Authority is delegated to the Director (NE) (in consultation with the Leader) to agree the development appraisal for this phase which will set out the projected level of profit for this phase as well as BLL's recoverable costs

and which are further detailed in private and confidential Appendix B .

- iii. On the subsequent sale of the hotel phase by the BLL associated company BLL will pay to the Council a pre agreed profit payment or in the absence of a sale the Council will be entitled to recover the surplus rent proceeds from the underlease to the hotel operator calculated on an open book basis.
3. Note that the luxury Spa at the Water Park is due to complete in December 2018 and that for a period of five years from the commencement of the Water Park lease 80% of the improvement sums paid/payable by BLL pursuant to the Water Park lease will be used to part fund the luxury Spa.

## **REASON FOR RECOMMENDATION (S):**

To enable BLL to enter into a funding contract and access funding for the hotel phase, satisfy the conditions contained in the agreement with the hotel operator and allow BLL to commence development of the hotel phase.

## **HIGHLIGHTED RISKS:**

A risk register is attached to this report.

The principal risks are:

- Failure by BLL to enter into the funding agreement for this phase.
- The hotel operator agreement terminates due to failure by BLL to satisfy the conditions contained in the agreement for lease or failure by BLL to construct/fit out the hotel to the agreed specification or by the agreed longstop date.
- BLL is unable to sell the hotel phase at market value.

## **1. INTRODUCTION AND BACKGROUND**

- 1.1 In December 2002 the Council entered into a Development Agreement with BLL for the development of circa 55 acres of land in Scarborough's North Bay as a major tourist destination providing a range of tourist attractions and accommodation.
- 1.2 The progress of the Sands Development has been reported to Members in previous reports and has included the Water Park development which opened in July 2016.
- 1.3 The Development Agreement between the Council as landowner and BLL as developer provides for the development of the Sands on a phase by phase basis.

- 1.4 On 22 February 2017 the Leader delegated authority to the Director (NE) to enter into a Supplemental Agreement with BLL and BPL to facilitate the construction of the hotel next to the Water Park.
- 1.5 Since that date discussions have been on-going between BLL and the hotel operator. Those discussions have resulted in variations to the final specification for the hotel which has delayed submission of a planning application and the progress of this phase of development.
- 1.6 Following agreement of the final specification for the hotel, a planning application for this phase was subsequently submitted by BLL in March 2018 and received full planning approval in July 2018. BLL now wishes to progress the development of this phase.

## **2. CORPORATE AIMS/PRIORITIES AND THE COMMUNITY PLAN**

- 2.1 This proposal and subsequent development will contribute towards all four of the Council's corporate aims.

## **3. BACKGROUND AND ISSUES**

- 3.1 The original Sands Development Agreement requires BLL to submit to the Council development proposals including a development appraisal prior to the drawdown of each development phase. The development appraisal outlines the financial details associated with each phase including costs of delivery as well as profit levels.
- 3.2 Once the Council has confirmed that BLL may drawdown a phase of development, a works licence is granted to allow BLL to construct and on satisfactory completion of the works as well as payment by BLL of relevant land value for the phase a long lease is granted. The original Sands Development Agreement sets out the basis for the calculation of land value.
- 3.3 The agreement between BLL and the Council facilitating the Water Park development also includes a requirement that until the Water Park loan has been repaid BLL is unable to take any profits out of the Sands Development.
- 3.4 To facilitate the hotel phase BLL have requested a variation to the terms of the original Sands Development Agreement to allow for the grant of the long lease in advance of construction. This is at the request of the funder who will not allow access to funding until a long lease has been granted.
- 3.5 The Water Park completed at the end of July 2016 and by the terms of the Water Park lease an improvement sum is payable by BLL. The improvement sums are held for the benefit of the Water Park to allow BLL to carry out works at the Water Park to improve the facilities and increase visitor numbers.

## **4. CONSULTATION**

- 4.1 The planning and licensing applications associated with the hotel phase have both been subject to statutory public consultation.

## **5. ASSESSMENT**

### **Hotel Phase**

- 5.1 The plan attached at Appendix A shows edged red the location of the hotel phase.
- 5.2 In March 2018 BLL entered into an agreement for lease with a hotel operator which is conditional upon the Council entering into a supplemental agreement allowing BLL to draw down this phase, BLL obtaining planning consent and the hotel operator obtaining a premises licence. Once these conditions have been satisfied, BLL is required to construct and fit out the hotel to the agreed specification by an agreed longstop date.
- 5.3 The Council's Planning Committee resolved to grant planning permission for the hotel in July 2018. The Council's Licensing Sub-Committee resolved to grant a premises licence in June 2018.
- 5.4 Draft private and confidential heads of terms are attached at Appendix B to this report and outline the basis of the proposed supplemental agreement between the Council and BLL facilitating this phase of the Sands development.
- 5.5 It is proposed that authority is delegated to the Director (NE) in consultation with the Leader to enter into a Supplemental Agreement with BLL on the terms principally contained in this report including the attached private and confidential heads of terms. This delegation will include agreement of the final development appraisal for this phase. The appraisal will set out BLL's costs/liabilities incurred to date as well as an estimated of costs to complete the phase.
- 5.6 Prior to agreeing the development appraisal, due diligence will be carried out to verify the recoverable costs as well as the expected level of return. Agreement of this appraisal will determine the level of profit payment which the Council can expect to receive on the sale of the hotel. Once the development appraisal has been agreed BLL's recoverable costs will be fixed and BLL will then take the risk of any cost overrun including construction costs.
- 5.7 To meet the funder's requirements the Supplemental Agreement will permit the grant of a lease in advance of construction subject to the satisfaction of various conditions which are outlined in the private and confidential heads of terms and include payment of land value (calculated in accordance with the original Sands

Development Agreement) and the completion of the luxury Spa at the Water Park. The luxury Spa is due to complete in December 2018.

- 5.8 The funder has also requested that a newly established BLL associated company as opposed to BLL has the benefit of the hotel phase lease. An immediate assignment of the lease will therefore be permitted to this company subject to a charge being registered in the Council's favour. This charge will be second only to the funder's charge and shall secure profits generated from this phase either by way of sale or through rents from the hotel operator underlease.
- 5.9 The lease of the hotel phase will be marketed for sale and before accepting an offer the Council must confirm that the proposed sale price represents market value and is acceptable.
- 5.10 If a sale of the hotel phase does not take place, then the Council will be entitled to recover the rent surplus (being the rent less deduction of costs) received from the hotel operator underlease. This payment shall be calculated on an open book basis.
- 5.11 The Council will be entitled to forfeit the lease if the either of these payments are not made. On receipt the profit payments the Council will hold these monies in the Sands balance sum account.
- 5.12 In accordance with the original Sands Development agreement the hotel phase will be constructed to an agreed specification with no material variations being permitted without the Council's consent. BLL will be required to carry out and complete the works in a good and workmanlike manner, in accordance with all necessary consents as well as good building practice and the Council will be granted inspection rights during the works. The Council will receive the benefit of warranties from the appointed contractor and consultants.
- 5.13 To meet the timescales contained in its agreement with the hotel operator BLL is proposing to commence construction of this phase in January 2019 with an estimated completion and handover date of November 2019.

### **The Spa**

- 5.14 Under the Water Park lease BLL is required to pay an improvement sum which is held for the benefit of the Water Park to allow works to be carried out to improve the facilities and increase visitor numbers. Works funded by the improvement sum should not constitute repair or maintenance works.
- 5.15 The improvement sum payment is based on a percentage of Water Park turnover and has been payable since the commencement of the Water Park lease in July 2016. BLL has requested to draw 80% of the improvement sums paid and payable from the commencement of the lease for a period of five years to part fund the luxury Spa. The funding of the luxury Spa meets the criteria for the improvement sum set out above.

5.16 The Council will continue to hold the remaining 20% of the improvement sum for future proposals by BLL to improve the Water Park facilities.

## **6. IMPLICATIONS**

### **5.1 Policy**

5.1.1 There are no policy implications arising from this report.

### **5.2 Legal**

5.2.1 The details of the proposed legal agreements between the Council and BLL facilitating this phase are set out in the body of this report.

5.2.2 The Council is required to obtain the best consideration it can reasonably obtain in the disposal of its land. Prior to any sale of the hotel phase taking place the Council must confirm that it represents market value and is acceptable.

### **5.3 Financial**

5.3.1 The financial implications arising from the recommendations are contained within the body of this report.

### **5.4 Equalities and Diversity**

5.4.1 There are no equalities and diversity implications as a result of this report.

### **5.5 Staffing**

5.5.1 There are no direct staffing implications arising from this report.

### **5.6 Planning**

5.6.1 There are no direct planning implications arising from this report.

### **5.7 Crime and Disorder**

5.7.1 There are no direct planning implications arising from this report.

5.7.2 Crime and disorder has been considered through the planning and licensing process.

### **5.8 Health and Safety**

5.8.1 There are no direct health and safety implications as a result of this report.

5.8.2 All of the health and safety implications of construction of this phase will be managed by the developer through its appointed consultants and contractor.

## **5.9 Environmental**

5.9.1 There are no direct environmental implications as a result of this report.

5.9.2 Environmental implications have been taken into account through the planning process.

*Nicholas Edwards*

**Nick Edwards**  
**Director**

IF YOU HAVE ANY QUERIES ABOUT THIS REPORT OR WISH TO INSPECT ANY OF THE BACKGROUND PAPERS, PLEASE CONTACT NICK EDWARDS ON 01723 232410 e-mail: [nick.edwards@scarborough.gov.uk](mailto:nick.edwards@scarborough.gov.uk).

## Risk Matrix

Risk Ref	Date	Risk	Consequences	Mitigation	Current Risk Score	Target Score	Service Unit Manager/ Responsible Officer	Action Plan
1	November 2018	Report not approved	<ul style="list-style-type: none"> <li>Hotel development does not proceed</li> </ul>		B3	A1	NE	<ul style="list-style-type: none"> <li>Report approved</li> </ul>
2	November 2018	Legal challenge	<ul style="list-style-type: none"> <li>Delays/development does not proceed</li> <li>Loss of operator</li> <li>Adverse publicity</li> <li>Costs in dealing with legal challenge</li> </ul>	<ul style="list-style-type: none"> <li>Development agreement in place</li> <li>No material variations permitted</li> </ul>	B2	B2	LD	
3	November 2018	BLL do not secure funding for the scheme	<ul style="list-style-type: none"> <li>Hotel development delayed/does not proceed</li> <li>Loss of operator</li> <li>BLL required to find alternative funder</li> </ul>	<ul style="list-style-type: none"> <li>Funder requirements included in the heads of terms</li> </ul>	B4	B2	BLL	
4	November 2018	BLL do not carry out hotel works to agreed specification	<ul style="list-style-type: none"> <li>Loss of operator</li> <li>Increase costs</li> <li>BLL required to find alternative tenant/operator</li> </ul>	<ul style="list-style-type: none"> <li>Agreed specification form part of supplemental agreement</li> <li>Warranties from contractor/consultant</li> <li>Council has inspection rights during the works</li> <li>No material variation to works permitted without Council consent</li> <li>BLL take risk of cost overrun</li> </ul>	B4	A2	NE	

<b>Risk Ref</b>	<b>Date</b>	<b>Risk</b>	<b>Consequences</b>	<b>Mitigation</b>	<b>Current Risk Score</b>	<b>Target Score</b>	<b>Service Unit Manager/ Responsible Officer</b>	<b>Action Plan</b>
5	November 2018	Works not completed by agreed longstop date with hotel operator/funder	<ul style="list-style-type: none"> <li>• Loss of operator</li> <li>• BLL required to find alternative tenant/operator</li> </ul>	<ul style="list-style-type: none"> <li>• Float in construction programme</li> <li>• Agreement of generous longstop date</li> </ul>	B3	B2	NE	
6	November 2018	BLL do not satisfy conditions in agreement with hotel operator	<ul style="list-style-type: none"> <li>• Loss of operator</li> <li>• Development delayed/does not proceed</li> <li>• BLL required to find alternative tenant/operator</li> </ul>	<ul style="list-style-type: none"> <li>• Planning and licensing already granted</li> <li>• Entry into supplemental agreement with the Council will satisfy the remaining condition</li> </ul>	A2	A2	NE	
7	November 2018	BLL unable to sell hotel lease at market value	<ul style="list-style-type: none"> <li>• BLL associated company retains hotel lease</li> <li>• Profit payment not achieved and Council does not receive payment from sale to hold in balance sum</li> <li>• Council entitled to recover rent surplus under operator underlease on an open book basis</li> </ul>	<ul style="list-style-type: none"> <li>• Market the lease</li> <li>• Council prior approval of sale price</li> </ul>	B3	B2	NE	
8	November 2018	BLL fail to pay to the Council the agreed profit payment	<ul style="list-style-type: none"> <li>• No monies for balance sum account</li> <li>• Council entitled to forfeit lease</li> <li>• Breakdown in relationship with BLL</li> </ul>	<ul style="list-style-type: none"> <li>• Charge registered against hotel phase</li> </ul>	B2	B2	NE	

