

**SPECIAL URGENT DECISION BY THE LEADER  
22 JULY 2008**

**REVISION OF DEVELOPMENT AGREEMENT WITH BENCHMARK LEISURE  
LIMITED FOR THE SANDS DEVELOPMENT IN SCARBOROUGH**

**DECISION**

Approval of the terms of a Supplemental Agreement relating to Phase 3a of the Sands negotiated with Benchmark Leisure Limited and authority to enter into the Agreement. The negotiated terms of the Supplemental Agreement are:

1. Agreement to an amendment to the final form of lease of the Phase 3a Land to be granted pursuant to the Development Agreement dated 6 December 2002 in that Benchmark agree to pay a proportionate sum towards street lighting in Northstead Manor Gardens.
2. Agreement that if practical completion of the new Tea Rooms is not achieved by 31 December 2008, the Council may enter the property and complete the necessary works at Benchmark's expense.
3. Agreement to the final extent of the property comprising Phase 3a in accordance with the terms of the original Development Agreement.
4. Agreement that Benchmark receive a 10% return on the capital that it used to fund the Phase 3a development itself (excluding money provided by any third party funder or bank) to be taken from the rent payable in respect of any contractual arrangements with occupiers of properties within the Phase 3a area. The return will be payable on all such sums due from 4 April 2008, when Practical Completion of the new Railway Station was achieved.
5. Formal approval by the Council of the Specification and proposals for Phase 3a in accordance with the terms of the Development Agreement.
6. Agreement that the Council and Benchmark enter into a management agreement in respect of the North Bay Miniature Railway to avoid duplication of the landlord's estate management role of the North Bay Miniature Railway.

**REASONS FOR DECISION**

The Supplemental Agreement is required to put in place a number of additions and variations to the Development Agreement completed on 6 December 2002 in respect of the Third Phase of the Sands Development.

**Highlighted Risks**

Without the further Supplemental Agreement for Phase 3a the overall objectives of the Sands project may not be achieved. In terms of the wider development there are

clearly some risks associated with the delivery of such a large project. There are some financial risks, but these relate primarily to the non receipt of capital receipts/share of development profit. Unlike most other capital projects however, the financial risk of additional costs is entirely borne by the Developer, though these could affect the Council's share of development profit. In addition to the risks highlighted in this report which are specific to the signing of the Supplemental Agreement reference should also be made to the risks to the whole development highlighted in the report from the Head of property Services HPrp/06/63 to the Audit Committee on 25 September 2006.

### **Reasons for Urgent Decision**

Until the Supplement Agreement is completed the Council and Benchmark are not in a position to formalise the operational arrangements relating to Phase 3a. The income from the new facilities created by Benchmark is being held pending completion of the Supplemental Agreement for Phase 3a and subsequent lease. Benchmark have invested in the construction of Phase 3a and are seeking the return on their investment to enable progress of the rest of the Third Phase of the Development further.

### **Reasons for Acceptance of Urgency:**

The Chair of Projects and Partnerships Overview and Scrutiny Committee accepts that if authority to enter these agreements is delayed this would seriously prejudice the interests of the Council and it would not be practical to convene a quorate meeting of full Council in that:

- (a) the developer, Benchmark, is not in a position to commit further funds to the development prior to receiving the return on investment to which the company is entitled under the original Supplemental agreement;
- (b) this does not include the developer's profit, which will remain protected pending release related to completion of the Principal Visitor Attraction;
- (c) the proposed Supplemental agreement introduces minor changes to the existing agreements, however, amendment to the terms of the original agreement is treated as a policy issue, therefore, save where urgency applies under the Constitution any such decision is referred to full Council;
- (d) awaiting a decision of full Council will mean that Phase 3 will be delayed until this agreement is complete, will undermine the relationship with the developer; and
- (e) the Council is in recess in the month of August.

### **ANY RELEVANT INTERESTS DECLARED BY CABINET MEMBER AND ANY DISPENSATIONS GRANTED**

None.

**DATE OF DECISION:** 22 July 2008

**AGREEMENT OF CHAIRMAN OF PROJECTS AND PARTNERSHIPS OVERVIEW AND SCRUTINY COMMITTEE:** 21 July 2008

**IMPLEMENTATION DATE** 22 July 2008

**Signed**



**Councillor Tom Fox  
Leader of the Council**

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**Date of signature  
22 July 2008**

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**Signed**



**Councillor Godfrey Allanson  
Chairman of Projects and Partnerships  
Overview and Scrutiny Committee**

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**Date of signature  
21 July 2008**

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