

	URGENT REPORT Leader of the Council Councillor T Fox 11 SEPTEMBER 2009	
	Key Decision	YES
Corporate Priority Top priority of Aim Two 'Encouraging Economic Growth and Job Creation	Forward Plan Ref No Cabinet Portfolio Holder Date of decision Deadline for call-in 5.00pm Implementation date	Councillor D. J Bastiman 11 September 2009 Not applicable 11 September 2009

REPORT OF: Head of Legal and Support Service – 09/542

WARDS AFFECTED: North Bay and Northstead

SUBJECT: OPEN AIR THEATRE

RECOMMENDATION:

To approve:

- (i) the payment of up to £120,000 from the Balance Sum held by the Council under the terms of the Sands Development Agreement to Benchmark Leisure Limited (“Benchmark”) as and when such sums are accrued to recompense Benchmark for expenditure of £120,000 on preliminary works comprising terrace removal and contractors design which is required to prepare the Open Air Theatre site in sufficient time to allow main construction work to commence in October 2009

1. REASON FOR DECISION:

- 1.1 The Council are due to consider whether to authorise construction of an Open Air Theatre in the North Bay at a meeting in October 2009.

- 1.2 The Open Air Theatre is ultimately to be funded from monies received into the balance sum account established for receipt of profits from the Sands development. At present insufficient monies from the Development have been realised and Council is to be invited to borrow monies to enable the construction of the Open Air Theatre to take place. The proposed expenditure upon the preliminary works will be a commitment against the balance sum account.
- 1.3 Under the terms of the Supplemental Agreement, Benchmark had agreed to fund the first £200,000 of expenditure on the development of the project at their risk.
- 1.4 Benchmark have advised the Council that the amount now due for payment by them for these preliminary works is £245,000. To maintain the momentum of the project, under cover of his letter dated 21 August 2009, the Strategic Director authorised expenditure by Benchmark of a further £50,000 which if the project did not come to fruition, Benchmark would be allowed to reclaim from the Balance Sum.
- 1.5 To enable the development of the Theatre to be completed in time for use in Summer 2010 preliminary works now need to be undertaken to demolish the existing seating (£40,000) and initiate the preparation of the design (£30,000), requiring the expenditure of a further £70,000. It is proposed to authorise this further expenditure of a further £70,000 (total £120,000 over and above the initial £200,000 which is at Benchmark's risk) which if the project does not come to fruition, Benchmark will be allowed to reclaim from the Balance Sum.
- 1.6 Were Council to determine not to proceed with the Open Air Theatre in October monies spent on commissioning works at this stage may prove to have limited merit, however, if preliminary works are not commissioned at this stage completion of the works in time to allow for the opening of the Theatre in Summer 2010 (as required by the proposed operator) would be placed in severe jeopardy. Albeit that there exists a risk of wasted expenditure upon the preliminary works, a greater risk would arise that the Council would not be able to proceed with the main construction contract in a timely fashion should full Council decide to proceed with the project in October.

2. IMPLICATIONS

2.1 Policy Implications

An urgent decision within the council's budgetary and policy framework can only be taken if delay would seriously prejudice the interests of the Council.

The Chair of Overview and Scrutiny Committee has been consulted and accepts that if authority to enter this agreement is delayed this would seriously prejudice the interests of the Council in that officers would be unable to deliver the project within the requisite timescales.

2.2 Legal Implications

In February 2009, the Council entered into an agreement with Benchmark Leisure supplemental to the main Sands Development Agreement which provided for expenditure and costs incurred by the Council in pursuing the Open Air Theatre to be met from the Balance Sum account in due course as profits from the development are realised up to the sum of £3.5m. . It is intended that the sums expended by Benchmark on the project development works will be met from within this allocation provided that the project proceeds to completion.

2.3 Financial Implications

There is currently £9,800 held within the balance sum account. However, a further payment of £81,612 is due from Benchmark Leisure by 30 September 2009. Against this sum a commitment of £12,000 has already been made for works to the former Marvels site, providing a balance of £78,412 available to cover the cost of the preliminary works.

As the cost of the works (£120,000) will be more than the balance held in the balance sum (£78,412) at the end of September, the additional cost will be met by Benchmark and repayable from either from the future contributions to the balance sum (Chalet rental income etc. / profit from Phase 1) or from the budget to construct the Open Air Theatre, pending a decision by Council in October

3. HIGHLIGHTED RISKS:

- 3.1 Were Council to determine not to proceed with the Open Air Theatre in October monies spent on commissioning works at this stage may prove to have limited merit, however, if preliminary works are not commissioned at this stage completion of the works for Summer 2010 a stated requirement of the operator currently in negotiations with the Council would be placed in severe jeopardy.



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Background Papers: Previous reports