

# Public Document Pack

## Southend-on-Sea City Council

### Strategy, Change & Governance

Executive Director: Stephen Meah-Sims (Interim)

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06 July 2022

Dear Councillor

### **POLICY AND RESOURCES SCRUTINY COMMITTEE - THURSDAY, 7TH JULY, 2022**

Please find enclosed, for consideration at the next meeting of the Policy and Resources Scrutiny Committee taking place on Thursday, 7th July, 2022, the following report(s) that were unavailable when the agenda was printed.

#### **Agenda No    Item**

6.        **Seaway Leisure (Pages 1 - 8)**

Referred direct by Cabinet

**Stephen Tautz**

Principal Democratic Services Officer

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# Southend-on-Sea Borough Council

Report of Deputy Chief Executive and  
Executive Director (Finance and Resources)

To

Cabinet

On

1 July 2022

Agenda  
Item No.

6

Report prepared by:  
Alan Richards - Director of Property & Commercial

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## Seaway Leisure

Relevant Scrutiny Committee: Policy and Resources Scrutiny Committee

Cabinet Members:

Councillor Ian Gilbert – Cabinet Member for Economic Recovery, Regeneration and  
Housing

Councillor Paul Collins – Cabinet Member for Asset Management and Inward  
Investment

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### Part 1 (Public Agenda Item)

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#### 1. Purpose of Report

This report confirms that the updated Seaway Leisure legal documentation is now ready to exchange, following all the required due diligence, and enables the opportunity to be presented in the best light to the funding market.

The report identifies that there are no changes to the scheme arrangements, as previously approved by Members in November 2021, but merely to ensure the Council has a final clean suite of legal documents to effectively and swiftly proceed with the scheme.

#### 2. Recommendation

**That Cabinet approve the preparation of a final clean suite of legal documents for the Seaway Leisure scheme.**

#### 3. Background

3.1 Cabinet agreed on 2 November 2021 ([minute 417](#) refers) to vary the transaction with Turnstone Estates to enable an annuity lease structure to be put in place so that the development could be funded differently and delivery unlocked.

3.2 The Council has appointed Pinsent Masons, the same lawyers who represented Colchester Borough Council on the very similar Northern Gateway transaction

(now on site), to act on its behalf to document the transaction for the Seaway development.

- 3.3 The Council has retained CBRE to advise on the property transaction and 31Ten to advise and review the proposition from a financial due diligence perspective.
- 3.4 Collectively, the professional team and officers, following all the required due diligence, are comfortable and are ready to proceed to exchange. This will then enable Turnstone to proceed to the next stage (requiring a further c.£500k investment by them) and for the funding market to be approached following exchange of contracts with a view to funding the development in the autumn of 2022 for a start on site targeted for spring 2023.
- 3.5 Given the increases in build costs arising principally from the increasing cost of inflation, it is estimated by Turnstone's quantity surveyors that the total development cost is now likely to be in the order of £70m. The final cost of the scheme will be determined during Turnstone's next stage which includes more detailed contractor engagement and procurement. It is important to note that the Council will only enter into a final agreement on the basis that the scheme is financially viable. Also that the increase in build costs being experienced has no impact on the level of the Council's agreed 'up to £10m' enabling funding (minute 417 refers).
- 3.6 The Cabinet decision in November 2021 provided for the existing transaction to be varied. The legal review and due diligence work which followed that decision has led to the conclusion that it would be significantly preferable for the Council to document the variation via a new document suite rather than a further variation of the existing suite however this was not provided for in the previous decision.
- 3.7 The benefits of the new document suite are principally to remove redundant legacy drafting which is no longer required to mitigate procurement risk as the landscape has changed since the transaction was originally documented in December 2014, and to ensure that a professionally presented, concise and current set of drafting is presented to the funding market now to reduce the likelihood and extent of the need for document changes to secure the funding. Having recently worked with Colchester to fund the Northern Gateway, Pinsent Masons are very well placed to advise on the positioning of this documentation.
- 3.8 Included at Appendices 1 and 2 are letters from Pinsent Masons and CBRE supporting the position laid out above.

#### **4. Other Options**

- 4.1 The updated transaction could be documented by way of the approved variations but this is not considered to be optimal either in terms of managing risk or presentation to the funding market.

#### **5. Reasons for Recommendations**

- 5.1 To enable the proposition to be presented clean, current documents for the funding market and to reduce procurement risk.

## **6. Corporate Implications**

### **6.1 Contribution to the Southend 2050 Road Map**

As set out in previous reports.

### **6.2 Financial Implications**

All financial considerations as set out in previous reports have been independently modelled and assessed.

Assurance has been provided by 31Ten to the Council's s.151 officer in relation to the value for money, sustainability and accounting treatment considerations associated with the transaction.

### **6.3 Legal Implications**

This report deals primarily with the mechanics for documenting the transaction.

Pinsent Masons have advised the Council on the legal side of the transaction.

### **6.4 People Implications**

No staffing implications arise from this report.

### **6.5 Property Implications**

As set out in this report.

### **6.6 Consultation**

Not applicable to the distinct point covered by this report.

### **6.7 Equalities and Diversity Implications**

Not applicable.

### **6.8 Risk Assessment**

The recommendation in this report is made to ensure that the transaction can be documented to reduce risk and present the opportunity cleanly and optimally to the funding market.

### **6.9 Value for Money**

31Ten have independently assessed and considered all the financial considerations and provided assurance to the Council's s.151 officer.

6.10 Community Safety Implications

Not applicable

6.11 Environmental Impact

Not applicable

**7. Background Papers**

Previous Cabinet reports.

**8. Appendices**

**Appendix 1 – Letter from CBRE**

**Appendix 2 – Letter from Pinsent Masons**

Alan Richards  
Southend-on-Sea City Council  
Civic Centre  
Victoria Avenue  
Southend-on-Sea  
Essex  
SS2 6ER

23<sup>rd</sup> May 2022

Dear Alan

### **SEAWAYS LEISURE DEVELOPMENT, SOUTHEND-ON-SEA**

I write to confirm that CBRE have continued to advise from a property and commercial perspective on the proposed Seaways Leisure Development transaction since the Cabinet approval on 2<sup>nd</sup> November 2021.

Our continued due diligence and engagement with Turnstone Estates on behalf of the Council has allowed us to continue to support an annuity lease structure to unlock the delivery and funding of the development.

However, we are of the view that the Council would benefit significantly for the transaction to be varied (as approved in November 2021) by way of a new suite of documents rather than simply varying existing documents (as the approval catered for in November 2021).

This will ensure that prospective funders (of whom CBRE will be engaging with on behalf of the Council, jointly with Waring & Partners) are presented with a relevant and clean set of drafted documentation when considering the transaction. In our view, this will be advantageous to the Council's commercial position and maximise the opportunity for competitive bidding as well as removing execution risk to the transaction i.e. by reducing the prospect of significant changes from funders.

In addition, we also understand the Council has received procurement and legal advice that the new suite of documents would remove redundant legacy drafting to mitigate procurement risk (since the documents were originally drawn up in 2014) which we appreciate is also an important consideration for the Council. We understand that advice has been sought from both Counsel & Pinsent Masons.

More widely, it is also encouraging to note that generally, and despite the cost of living pressures facing the country, that the leisure and restaurant sectors continue to recover well from the impacts of the pandemic. This has been demonstrated at Seaways itself with a further large leisure letting expected to go under offer shortly which will take the overall pre-let of the development to over 75% (by forecast income) – even before construction has commenced.

Kind regards,



**LUKE WILSON**  
**DIRECTOR - NATIONAL INVESTMENT PROPERTIES**



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# Pinsent Masons

## BY EMAIL

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E [anne.bowden@pinsentmasons.com](mailto:anne.bowden@pinsentmasons.com)

24 May 2022

Dear Alan

### **SEAWAYS LEISURE DEVELOPMENT, SOUTHEND-ON-SEA (THE "PROJECT")**

I am writing in connection with your proposed Cabinet report in relation to the Project, intended to be discussed as soon as a Cabinet date can be agreed.

Pinsent Masons LLP has been engaged by the Council to advise on the suite of legal documentation which documents the Project, and also in relation to procurement risks arising from the changes to the legal structure that are required in order to make it viable and fundable (which were previously discussed and approved by Cabinet on 2 November 2021).

In our discussions with specialist procurement Counsel, and also in our review of the document package with you and your team, we have opined that it would be preferable for the changes to the Project to be documented by way of a fresh, clean suite of legal documents. The benefits are two-fold:-

1. From a procurement law perspective, both we and Counsel have advised that the changes will in substance create a new transaction, and so for transparency it is preferable to document the changes in a fresh suite of documents. A new suite will remove redundant drafting and give clarity as to the legal structure; and
2. Whilst not a legal point, we can see that from a market perspective it would be desirable to present a clean suite of documents to the funding market when Turnstone approaches funders in relation to the Project, rather than documentation being varied again: presentationally we anticipate that the clean suite will be more attractive to the market.

We trust this is helpful but, as always, would be happy to discuss further.

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Yours faithfully

Pinsent Masons LLP

**Pinsent Masons LLP**