



Purpose: For Decision

Committee report

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| Committee | CABINET |
| Date | 28 JULY 2009 |
| Title | AGREEMENT FOR THE USE OF SEACLOSE PARK AS PART OF THE ISLE OF WIGHT MUSIC FESTIVAL SITE. |
| Report of | THE CABINET MEMBER FOR ECONOMY, TOURISM, LEISURE AND PLANNING. |

PURPOSE

1. To consider entering into a new long term agreement for the use of Seaclose Park as part of the site occupied by the Isle of Wight Music Festival.

OUTCOMES

2. A new agreement that is appropriate to the scale, economic impact and general importance to the Isle of Wight of the Music Festival.

BACKGROUND

3. The Council has been approached by the Promoter of the Music Festival to revise the terms of its agreement for the use of Seaclose Park as part of the overall festival site.
4. The approach has been made on the basis that the development of the event has exceeded the expectations of the Promoter making the existing agreement no longer relevant to the scale and form of the event.
5. The current ten year agreement for the use of the site was agreed by the Council's Executive (now Cabinet) in May 2003. It was essentially focused on the Council being able to recover its investment of £380,000 in the 2002 events (for which the Council was the main organiser and promoter) whilst at the same time sustaining the long term delivery of the event for the wider tourism and economic benefits that it was felt it would bring to the Island.
6. Central to the assumptions made in reaching the current agreement was that the event, and the number of attendees would grow incrementally over the ten year period to an expected 33,500 spectators (from 9,000 in 2002) and that the Council would receive in the order of £570,000 over the lifetime of the agreement. These assumptions were based on Seaclose Park containing all of the activities associated with the Festival. There was a further assumption the Music Festival

would be the central feature of a two week all Island Music Celebration that would be organised by the Council and consequently provision was made in the agreement for a number of cross marketing initiatives between the Council and the Promoter. The two week Music Celebration ceased after 2003 as the Council reprioritised its support for events leaving the Music Festival as a stand alone activity.

7. The performance of the Music Festival has dramatically exceeded all of the assumptions made in 2003 when agreeing the terms for the use of Seaclose Park and has brought significant measurable economic and promotional benefits to the Isle of Wight. Seaclose Park is now only a very small part of the Festival site which takes in virtually all of the land from the Park (including Medina High School) to Whippingham Road. The whole site is currently licensed for 70,000 people which is sufficient to provide for spectators and people working at the event.
8. An economic impact assessment completed for the 2008 event identified that visitors to the Island for the event contributed £5.03m of spending into the Island's economy. This represents money spent away from the festival site with Island businesses and does not take into account the sums spent by Island residents visiting the event. It is worth noting that some 22.6% of the spectators at the 2008 event were from the Isle of Wight.
9. Overall, taking all spending into account the event is estimated to be worth in the order of £10M-£15M to the Island's economy (that is to say spending that would not happen on the Island without the Festival). At a time of global economic downturn and national recession this is considered to be important in helping sustain and grow local businesses.
10. The Island has also gained significantly in terms of its wider promotion through the exposure that the Music Festival has created for it in national and international media outlets, including television and radio. This benefit can not be measured as easily as the economic benefit. Its impact however can be found in such things as the lifestyle magazine Harpers Bazaar identifying the Island as one of the 'hippest' places to visit on earth alongside destinations such as Sicily, Buenos Aires and Tangiers.
11. This economic and promotional impact/benefit to the Island has been as a direct result of the actions taken by the Promoter of the Isle of Wight Music Festival. It has taken all of the financial and organisational risk in growing and developing the event to its current scale and form. It will no doubt have received financial benefit from its actions but the Island as a whole has significantly benefited from the event.
12. One of the major impacts that arises from a rapid increase in attendees at an event is in the provision for the reinstatement of the event site to its pre event condition. Although the Promoter has a good track record in making good Seaclose Park following the event, the currently agreed provisions for ensuring this are insufficient for the numbers now attending the event.
13. It would be reasonable to argue that the Council has achieved its two principle objectives in entering into the current agreement with the Promoter. It has received cash and services in kind to the value of almost £520,000. Thereby clearing the

'debt' of its investment in the 2002 event. It has also secured for the long term a high profile event with significant economic benefit to the Island.

14. On this basis Members may feel it is appropriate to consider the request from the Promoter and to determine the Council's possible objectives in any new agreement to be reached. It is suggested that these should be:-
 - The Council agrees a fee for the use of Seaclose Park that is sufficient to cover the legitimate costs that are incurred by the Council because of the event and which can not be recovered through either licensing legislation or the Isle of Wight Act.
 - The Promoter assumes total responsibility for the reinstatement of Seaclose Park to its pre-event condition within a set timescale and/or to an agreed works programme (depending on the severity of the damage).
15. A third objective has been considered of seeking funding from the event Promoter towards the costs of making physical improvements to the park area. It has however been suggested that this could either be achieved through an apportionment of the site fee or by separate negotiation to this agreement. This would be especially relevant if the Promoter was to also receive some benefit from the improvements.
16. Based on these two objectives terms have been discussed with the Promoter for a new ten year agreement for the use of Seaclose Park as part of the Isle of Wight Festival site. These terms are outlined in Appendix 1 to this report.
17. These terms were used successfully as a basis for a variation to the existing agreement for the 2009 event. This having been agreed in a delegated decision by the Cabinet Member for Economy, Leisure, Planning and Property.

STRATEGIC CONTEXT

18. The Isle of Wight Music Festival makes an important contribution to the Island's economy. It therefore supports the priority of the Island Strategic Partnership and the Council to have a thriving Island. Specifically it contributes to the shared objective to, "support economic development and regeneration, enabling everyone to share in the Island's economic success, by increasing the skills of the whole community".

CONSULTATION

19. The views of the Newport members and also the Newport Parish Council were sought to inform the delegated decision taken in respect of the 2009 event. The responses received (including the Parish Council) indicated that there was a recognition of the economic benefit of the event especially in the local area. There was however a concern that the event had outgrown its Newport location and that the number of spectators should be reduced or the event relocated, although it was recognised that this was a licensing matter rather than being something that this agreement should be concerned with.
20. In terms of the land use agreement the consultees were keen to see:-

- Short timescales for the completion of the reinstatement of the grounds (six weeks being one suggestion).
 - As short a time period for hire as possible (7-10 days either side of the event being suggested).
 - The development of a public transport plan to reduce car use by spectators.
 - Better protection of the environmental assets at Seaclose Park (eg mature trees).
 - The Promoter to make a substantial contribution to improving the recreational facilities in the area.
21. The views of the Newport Members and the Newport Parish Council were again requested in the preparation of this paper and after the 2009 event. In addition to the comments set out in paragraph 20 the Parish Council has asked that consideration be given to:-
- The period of agreement to be 10 years with a midterm review after 5 years.
 - The fee for the use of the site to be £50,000 per annum with an increase after 5 years to £75,000 (index linked to the consumer price index). This fee to be used initially for improving the recreational facilities in Seaclose Park and following the midterm review, for improvements in the Newport area.
22. Representatives of the main users of Seaclose Park were also consulted in the respect of the delegated decision and identified the following issues of importance to them:-
- All of the sports facilities properly re-instated as soon as possible and by the beginning of the next season at the absolute latest.
 - Overall improvements in the standard of the sports facilities provided.
 - Some wider benefit to the community to compensate for the disruption caused by the Festival.
 - Some liaison between the Promoter and the user group to share plans and ideas for the future.
23. A further meeting with representatives of the users was held on 16 July when they confirmed these issues as still being important to them. The meeting also supported the proposition of the Parish Council as set out in paragraph 21.

FINANCIAL / BUDGET IMPLICATIONS

24. The existing agreement expires after the 2012 event has been held. Over the remaining lifetime of the agreement the Council might therefore expect a total payment of £180,000 plus 1.75% of all ticket sales (net of VAT and performing rights society fees). Based on past performance of ticket sales it would not be unreasonable to assume an income of £330,000 over the remaining three years of the agreement.
25. This however assumes that the Promoter of the event is prepared to continue to use Seaclose Park under the existing terms. It also assumes that the Council does not have to make any significant contributions to the costs of reinstating the Park following the event in any one or a number of years.

26. The proposed new agreement would see the Promoter paying the Council a fixed fee of £50,000 (index linked to the Consumer Price Index at 1 April each year) for each year of the ten year term. The Promoter would also be accepting all of the liabilities for reinstating the site to its pre event condition irrespective of the weather, degree of damage etc. It would also be accepting conditions to either repair the damage within a fixed time period or to an agreed programme of works depending on the extent of the damage caused.
27. It is difficult to estimate the likely costs of reinstating the site under a worst case scenario. As a guide however the improvement works to the sports pitches (excluding the cricket square) undertaken in 2002 and funded by a Sports Lottery Grant cost £300,000. The cost of reinstatement under the worst case scenario could therefore be in the order of £400,000 in any one year.

LEGAL IMPLICATIONS

28. It is the view of the Promoter of the Music Festival that the current agreement for the use of Seaclose Park is no longer valid on the grounds that the event is significantly different from that which was envisaged when the agreement was drafted. Furthermore the Promoter also takes the view that the Council having varied the agreement for 2007 and 2008 and provided commitments to entering into a new agreement as part of these variations, has accepted that a new agreement is necessary.
29. The Council's legal advice is contrary to the view of the Promoter and is that in the absence of any other agreement the Promoter (and the Council) must continue to honour the terms of the existing agreement if an event is to proceed in each of the four remaining years of the agreement.
30. Its advice is also that the variations in 2007 and 2008 clearly set out that they were only for the year in question and should not be taken as an indicator of the Council wishing to replace the current agreement in its entirety.
31. The apparently significant difference in the legal views of the two parties would make the potential for a reference to the courts more likely if the Council and the Promoter are unable to agree an appropriate way forward.
32. The Promoter did accept a variation to the existing agreement for 2009 on condition that the Council agreed to formally consider entering into a new ten year agreement by the end of August 2009 and if it failed to do so then it will refund to the Promoter the site fee paid to the Council for 2009. This variation was confirmed in the delegated decision taken by the Cabinet Member as referred to earlier. This paper is submitted for the Cabinet's consideration in satisfaction of the condition agreed for the 2009 variation.
33. The provisions of the Local Government Act 2000 (Section 2) permit the Council to do anything (unless expressly forbidden by statute) which it considers likely to promote or improve the overall economic, social or environmental well being of the Isle of Wight.

OPTIONS

34. (a) To continue with the existing agreement and seek to enforce the terms and conditions of it.
- (b) To enter into a new ten year agreement on the terms set out in Appendix 1 to this report.
- (c) To vary the existing agreement for the remainder of its term such that it encompasses the terms as set out in Appendix 1.

RISK MANAGEMENT

35. There is a very high risk (very likely with high impact) in choosing option (a) that the Council would be subject to a challenge by the Promoter through the courts. Such a challenge would take a significant amount of time and effort to defend and would undoubtedly attract significant media interest. Even if the Council were to successfully defend such a challenge there is no guarantee that the Promoter would continue to organise a Music Festival under such terms. There is nothing in the existing agreement compelling the Promoter to organise the event.
36. It is felt there is a very high risk (very likely with high impact) that if the Council is unable to conclude the terms of a new agreement with the Promoter then the Isle of Wight Music Festival event would be lost to the Island altogether. Were this to be the case then a significant economic benefit would be lost to Island businesses.
37. If option (a) is adopted there is a high risk (likely with high impact) that the Council may have to make a contribution to the reinstatement of Seaclose Park in the event of exceptional weather conditions. This is a risk because the existing agreement is based on an assumption that the maximum number of people that would be attracted to the event would be 33,500. The current number of attendees being nearly double this figure. Mitigation of the risk could come from limiting the numbers allowed on the Seaclose Park area or by transferring all of the risk for reinstatements to the Promoter. Neither would be possible without the agreement of the Promoter to vary the existing terms and conditions or to enter into a new agreement.
38. Under option (b) there is a low risk (remote with high impact) of the Music Festival and its economic and promotional benefits being 'lost' to the Island. The terms proposed in Appendix 1 have been discussed with and accepted by the Promoter. There is also a medium risk (unlikely with high impact) of the Council having to fund and carry out reinstatements to the Park area following the event. Were this to happen the agreement would be automatically terminated and the Council would be able to seek to recover all of its costs through the courts.
39. The Promoter is seeking a new ten year agreement to commence with effect from the 2010 event. If Option (c) is adopted and it is therefore not able to achieve this objective there is a high risk (likely with high impact) that the option would not be acceptable to the Promoter and it would seek a redress through the Courts.

EVALUATION

40. The development of the Isle of Wight Music Festival has been dramatic since the start of the current agreement for the use of Seaclose Park by the Promoter in 2003. In the seven years the Promoter has organised the event it has surpassed all of the expectations and assumptions used in drafting the original agreement. The event is a hugely significant economic driver, and has also achieved significant promotional value for the Island. All of this has been achieved at the financial and reputational risk of the Promoter.
41. Seaclose Park is a small but significant part of the Festival site. It is unlikely however that the event could proceed without it. If the terms for its continued use are not able to be agreed then the event and its economic and promotional benefits could be lost to the Island. It would be extremely difficult to find another Promoter prepared to pick up and develop the event to its present format especially if it was lost from the UK's Festival calendar for a few years whilst a search for a promoter was undertaken.
42. In seeking to secure the future of the Festival the Council will need to be mindful of the needs of the Island as a whole, the needs of the local residents in the Fairlee Ward, the overall benefits that the Festival brings for the Island and the extent to which it wishes to enforce the terms and conditions of the existing agreement or accept that it is now no longer appropriate to the current scale and format of the Festival.
43. This paper has set out a rationale for why the existing agreement may be no longer appropriate to the event in its current form and has identified the risks associated with seeking to enforce its terms and conditions. It has also identified the overall benefits of the event to the Island and the two key issues that appear to need addressing in any new agreement; funding the Council's costs incurred as a result of the event and the transference of the risk for having Seaclose Park reinstated as quickly as possible following the event to the Promoter. Both are covered in the proposed terms for a new agreement set out in Appendix 1.
44. The issue of securing the effective reinstatement of the Park to its pre-event state is perhaps of the most concern in considering the future of the event. Under the existing agreement there is a lack of clarity about who would fund the repairs to the Park under exceptional circumstances. The Promoter is responsible for all repairs allowing "for fair wear and tear" (a legal term that would need clear interpretation perhaps via the Courts). Under the proposed terms it is clear and unequivocal that the Promoter will carry all of the risk associated with reinstating the grounds which may cost as much as £400,000 under a worst case scenario. If the Park is not reinstated then the agreement would fall and the Council could recover its costs for undertaking the works itself from the Promoter. Additionally provision has been made to have some of the sports pitches reinstated ahead of other elements of the Park under a worse case scenario.
45. It should be accepted that when considering reinstatement of grounds it may be appropriate to phase certain elements of the required works to suit growing and planting seasons.

46. On balance the proposed ten year agreement secures the long term benefits of the event, clarifies the responsibilities for reinstating the site and secures sufficient funds for the Council to cover its additional costs arising from the event.

RECOMMENDATION

47. It is recommended that option (b) be adopted:-
- (b) To enter into a new ten year agreement on the terms set out in Appendix 1 to this report.

APPENDICES ATTACHED

Appendix 1: Proposed terms of a new agreement for the use of Seaclose Park as part of the Isle of Wight Music Festival site.

BACKGROUND PAPERS

“The Isle of Wight Music Festival”, Report to the Executive, 21 May 2003.

“Isle of Wight Music Festival- Economic Impact Assessment”, Sheffield Hallam University, November 2008.

“Agreement for the Use of Seaclose Park as part of the Isle of Wight Music Festival Site”, Delegated Decision of the Cabinet Member for Economy, Leisure, Planning and Property, May 2009.

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APPENDIX 1

PROPOSED TERMS OF A NEW AGREEMENT FOR THE USE OF SEACLOSE PARK AS PART OF THE ISLE OF WIGHT MUSIC FESTIVAL SITE

1. Period of agreement to be ten (10) years. The Council to have no ability to terminate other than for a breach of the agreement.
2. The fee for the use of the site shall be £50,000 per annum (index linked to the consumer price index).
3. Period of hire shall be from the Monday in the week prior to the week of the Festival and continue until the Sunday after the Festival (effectively 3 weeks in total).
4. The Promoter to be responsible for reinstating the site to its pre-event condition:-
 - In a normal year within six weeks following the event.
 - Under exceptional conditions; to a programme of works agreed with the Council ensuring that two senior football pitches are available for use by the Council with effect from 1 October following the event. Such programme of works shall be sufficient to have the site significantly reinstated by the end of December following the event.
5. The Promoter shall pay an annual bond of £26,000 (index linked to the consumer price index at 1 April each year) as a surety towards its obligations to reinstate the site (Bond to be fixed at an amount of £100,000 in year ten).
6. If the event does not take place for two consecutive years then the agreement will be terminated (except in cases of Force Majeure).
7. If the Promoter is in breach of the agreement it may be terminated.
8. Public access to the Seaclose Offices shall be maintained until 1600 hours of the Wednesday immediately before the event and will reconvene at 1200 hours on the Monday following the event.
9. The Promoter to be responsible for obtaining all statutory licences and consents for the Festival and all matters of health and Safety on the site.