

# CABINET ADDENDUM ONE

**4.30PM, THURSDAY, 23 JANUARY 2025**

**COUNCIL CHAMBER, HOVE TOWN HALL**

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## **ADDENDUM**

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# Brighton & Hove City Council

## Cabinet

## Agenda Item 142

**Subject:** Brighton i360 Decision on Future

**Date of meeting:** 23<sup>rd</sup> January 2025

**Report of:** Cabinet Member for Finance and City Regeneration

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**Ward(s) affected:** All

**Key Decision:** Yes

**Subject to Call-in:** No

**Reason(s) Key:** Expenditure which is, or the making of savings which are, significant having regard to the expenditure of the City Council's budget, namely above £1,000,000.

### For general release

*Note: Reasons for urgency:*

Due to the special circumstances outlined below, and in accordance with Regulation 10 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, compliance with the requirement to provide 28 days' notice has not been possible. The urgency of the matter has been agreed upon by the Chair of the relevant Overview and Scrutiny and it is deemed necessary to consider this item without delay, as the closing date for bids was 13<sup>th</sup> January 2025 and discussions with Interpath and the Buyer continued beyond the statutory report publication date. Interpath need to complete any sale before January 31<sup>st</sup> and a sale cannot happen without the release of the council's security on the loan.

### 1. Purpose of the report and policy context

1.1 This report updates Cabinet on the decision of the board of Brighton i360 Limited ("Brighton i360") to file for administration and the work done by the administrators, following their appointment, to seek a sale of Brighton i360's business and assets to new owners. It is recommended the council agree to the release of its security on the debt owed to the council by Brighton i360.

### 2. Recommendations

2.1 Cabinet agrees to release the security on its £51m loan debt and rolled-up interest to the Buyer. In return, the city council will receive a future share of revenue, as set out in the Part 2 report.

- 2.2 Cabinet delegates authority to the Corporate Director for Operations, following consultation with the Cabinet Member for Finance and City Regeneration, to complete any legal documentation required to give effect to recommendation 2.1 above.
- 2.3 Cabinet agrees to commission an external independent investigation to understand the circumstances of and lessons from the council's original decision to loan public money to deliver the Brighton i360.

### **3. Context and background information**

- 3.1 The Brighton i360 was opened in August 2016. Plans for a major development on land next to Brighton's West Pier were first submitted to the council on 17 July 2006. Planning permission and Listed Building Consent were granted on 11 October 2006.
- 3.2 To support the building of the Brighton i360, the council agreed to take out a £36m government loan and pass it on to developers. The loan was from the Public Works Loans Board (PWLB) – a government funding agency who made loans available for major building projects including, at the time, for commercial projects.
- 3.3 The attraction has struggled to repay the council loan in full, with certain repayments being deferred and rolled back into the loan, but never written off. As of November 2024, the total amount outstanding from Brighton i360 under the financing agreement is circa £51million (consisting of the Brighton & Hove City Council loan, at a commercially agreed interest rate, and a circa £4million Coast to Capital Local Enterprise Partnership loan).
- 3.4 Loan restructures have been agreed twice (in 2019 and 2022), with a view to changing the repayments and making them more achievable for Brighton i360. However, before they could be implemented the trading situation worsened and added new uncertainty.
- 3.5 In February 2023, Brighton i360's board presented a new operating strategy with added revenue streams. Councillors agreed that giving the attraction more time to turn things around was the best (i.e. least-worst) option to attempt to maximise the council's return and protect public money. However, the attraction continued to have mixed performance. At the end of the 2024 summer season it was clear that there might not be enough cash in the business to trade through the winter season. This indicated that Brighton i360 could no longer make enough money to continue to trade as a going concern – irrespective of paying back the council debt.
- 3.6 Accordingly, the council instructed the board of Brighton i360 to obtain specialist insolvency advice. Interpath Advisory, insolvency advisers, were engaged by Brighton i360, with the agreement of the city council, to seek a buyer for the attraction. An initial confidential sales process resulted in some early enquiries, discussions and some indicative bids. However, it did not generate any final bids. As a result, the council received notice from the

board of Brighton i360 on 27 November 2024 of their intention to file for the appointment of administrators.

- 3.7 The filing of the notice of intention to appoint administrators with the Court did not mean that Brighton i360 was in administration at that point. Instead, the filing of the notice of intention at court automatically brought into effect a statutory interim moratorium which prohibits creditors from taking action to enforce their debts against the company and its assets for a period of ten business days. During that period, Brighton i360's business and assets were again advertised and marketed for sale by Interpath to prospective purchasers. It was anticipated that the publicity generated by the filing of the notice of intention to appoint administrators at court would generate a number of enquiries. The intention was to find a buyer, for the prospective administrators and the buyer to agree the terms of the sale of Brighton i360's business and assets, and then put Brighton i360 into administration, at which point the sale would immediately complete and the business and assets would transfer to the buyer minus many of the debts (referred to as a 'pre-pack' administration sale).
- 3.8 Following the expiry of the first notice of intention referred to above, the directors of Brighton i360 filed a second notice of intention to appoint administrators on 10 December 2024. This continued the moratorium preventing any creditor action against the company and its assets for a further ten business days.
- 3.9 The marketing process has involved the creation by Interpath Advisory of a data room for potential purchasers to undertake their due diligence (subject to entering into a non-disclosure agreement), plus meetings with the Brighton i360 board and the city council as the secured creditor.
- 3.10 The process during the two periods of notice of intention generated three bids at the final offer stage, with one of those bidders dropping away after further due diligence. Work was done with the two bidders, with a view to bringing a preferred bid to a special meeting of Cabinet in the week before Christmas. However, both bidders eventually were unable to transact in the required timeframe and Brighton i360 was left without a buyer.
- 3.11 Without a buyer, the second period of notice of intention expired and upon the filing of a notice of appointment by the directors of Brighton i360, Brighton i360 was placed into administration on 20 December 2024, and staff were made redundant. The appointed administrators (being, Stephen Absolom and William Wright, both of Interpath) took control of the site and closed it up.
- 3.12 Interpath informed the council they would undertake a further marketing process early in the new year. The move into administration can make an asset easier to market as it removes further liabilities. That latest marketing period closed on Monday 13 January 2025, and resulted in two bids.

- 3.13 The bid from the preferred bidder is set out in the Part 2 report. The city council has requested and will receive a share of the income from the tower element of the attraction.
- 3.14 The Buyer has been able to offer more assurance than the second bidder about their plans for the attraction, their experience of running large scale leisure attractions, and have more financial backing. This all assures the council that they are more likely to keep the attraction running, which is important given its prominent location on Brighton seafront, the employment involved and the impact on surrounding businesses.
- 3.15 It is a condition of the preferred bidder's offer that the assets they acquire are unencumbered. The city council retains the ability to decline releasing security on its loan if it does not feel this is the best offer available. This, however, would have the effect of making the asset unsellable and would result in blight on the seafront. In addition, the administrators also have a duty to confirm it is selling the asset for a market value (in the same way the council must achieve best consideration). In this case, however, it is considered that the Buyer is making the best offer – especially in light of the previous rounds that have not produced a viable buyer – and is best placed to run the attraction into the future. It should be stressed that the directors of Brighton i360 will not receive any funds from the bidder and do not benefit from this transaction. Shareholders have sunk equity and loans into the attraction that they will not recover.
- 3.16 The city council will not be repaid its loan. The Financial Implications at section 6 set out the impacts this will have on the council's future budgets.
- 3.17 This is the only stage in the process to result in viable offers. Restarting operation of the attraction is important, and not just for the visitor economy. Any option that sees the attraction abandoned would result in a significant and extremely visible blight – not just to the beach but in key views across the whole city. The practical reality is that demolition of the attraction could, potentially, end up falling to the council and could also come at considerable cost.

#### **4. Analysis and consideration of alternative options**

- 4.1 Despite a number of marketing processes over a period of weeks, very few viable offers have come forward for the i360. This fact constrains the possible options.
- 4.2 An options analysis was prepared as part of the preparation for Brighton i360 potentially going into administration, to better understand the options that might arise at that stage. It included a basic financial impact of the only options then still in play. However, the council did and does not have complete control of the situation: The options are dictated by the market of potential buyers that exist and what they are willing to offer.
- 4.3 These options have further diminished since Brighton i360 entered into administration. There is no option that keeps the council's loan value as no

new buyer would take an assignment of that debt for full value, and Brighton i360 would merely remain without a new buyer.

- 4.4 Options assessments considered the city council stepping in and taking control of the asset (either directly or through an operator). However, both would mean significant further investment in the i360 to keep it running both in the short term and in the longer term. It is not considered that there is any real public appetite for more public money to be invested into the i360, nor is it considered financially viable, given the council's overall financial position and the need to find savings in-year and for next year.

## **5. Community engagement and consultation**

- 5.1 The sale of the attraction is a decision for the administrators, Interpath Advisory, acting in the best interests of creditors (with particular regard to the interests of city council as secured creditor). It is not a decision that the administrators are obliged to consult on more widely. Due to the commercially sensitive nature of the offers, it has not been possible for the council to consult on them with the public.

## **6. Financial implications**

- 6.1 The original loan to Brighton i360 from the council was £36.222 million. In addition, a loan to Brighton i360 from Coast to Capital Local Enterprise Partnership of £4.060 million was novated to the Council. The impact of unpaid interest and principal loan repayments mean the debt relating to these loans now stands at £51.040 million.
- 6.2 The attraction has been struggling financially for some time. As a result, the council has made a financial provision for part of this debt to be unpaid (Bad Debt Provision) of £18.900 million, leaving a net balance of £32.140 million.
- 6.3 The proposed disposal of the asset to the preferred bidder will mean the net debt will be unrecoverable. The council is currently writing down this debt over the original loan period ending in 2041 and anticipates to continue to do so to ensure the financial stability of the council. This assumption will have oversight from external auditors.
- 6.4 The cost of interest and repayments are estimated at £2.200m per annum until 2041. Since 2023/24 the council had assumed a £1.000m per annum contribution from the i360 Ltd as a minimum, however, with the sale of the attraction the council will need to fund the whole £2.200 million per annum until 2041.
- 6.5 This cost could be offset in part by future income share arrangements but no payments are being relied upon in financial planning.
- 6.6 The original loans to Brighton i360 from the council were funded from borrowing from the PWLB. The loans from PWLB are with the council and will continue to be repaid over their original term which is included in the £2.200 million identified above.

Finance officer consulted: James Hengeveld      Date consulted: 15/01/2025

## **7. Legal implications**

- 7.1 The council has taken advice from external solicitors, Osborne Clarke LLP, in this matter.
- 7.2 The council has the powers to take the actions recommended by this report pursuant to section 1 of the Localism Act 2011.
- 7.3 The Best Value Duty relates to the statutory requirement for the council to "*make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness*" (section 3(1) of the Local Government Act 1999 ("LGA 1999")). The council is also required, pursuant to section 3 of the LGA 1999, to consult on the purpose of deciding how to fulfil the Best Value Duty. In particular, the Best Value Duty requires the council to use its resources effectively, and to ensure that it has clear and effective processes in place to secure value for money. It is also important that the risks associated with any investment decisions are fully understood with appropriate risk management strategies in place to deal with any losses.
- 7.4 Relevant to the council's consideration of the Best Value Duty and its duty to act in the best interests of its stakeholders, is what the alternative would be if the actions set out in this report are not implemented. As noted in this report, the alternative would almost certainly be an immediate shut-down of the business with Brighton i360 being placed into insolvent liquidation. In that scenario, it is expected that the appointed liquidator would look to immediately disclaim the lease, which would adversely impact the financial position of West Pier Trust, as the landlord. As a result, it is likely that the landlord would also enter an insolvency process and that the i360 would most likely revert to the crown *bona vacantia* (as ownerless property). If the i360 were not adequately maintained this could lead to regulatory health and safety concerns and have significant consequences for businesses operating in its immediate vicinity.
- 7.5 The council is satisfied that the actions recommended by this report are in line with the Best Value Duty and are in the best interests of the council and its stakeholders.

Lawyer consulted: Elizabeth Culbert      Date consulted: 15/01/2025

## **8. Equalities implications**

- 8.1 The i360 is a fully accessible visitor attraction, and its continued operation should preserve this.

## **9. Sustainability implications**

- 9.1 The i360 is a low energy user, with energy recovery when the pod is descending. The installation of heat pumps provides air heating and cooling



in the pod and main building and provides an estimated 30% of the total thermal heating energy use. All electricity is purchased from renewable energy sources. Grey water and rainwater recycling has been included.

## **10. Health and Wellbeing Implications:**

10.1 None identified.

## **11. Conclusion**

11.1 Brighton & Hove City Council's investment in Brighton i360 has clearly failed. It is recommended that an investigation takes place into the risk assessment and decision-making process at the time of agreeing the loan, and what learning there is for the future – both for this city council and for other local authorities.

11.2 The i360 has been a catalyst for regeneration benefits in that part of the seafront, and it has positively contributed to the city's tourism economy since 2016. However, these benefits have come at considerable cost to the public purse, and the money could have been used to deliver other public benefit. The new owners come with a clean slate and are not linked to the previous ownership and are not in any way responsible for the previous harm to the public purse. As such they and the i360 should be supported to be a success so has the potential to generate revenue that the city council will share into the future.

## **Supporting Documentation**

None



Document is Restricted

