

<b>Subject:</b>	<b>Royal Pavilion Estate Capital Project Phase 1</b>		
<b>Date of Meeting:</b>	<b>10 October 2019</b>		
<b>Report of:</b>	<b>Executive Director for Finance &amp; Resources, Executive Director, Economy, Environment &amp; Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Richard Davies</b>	<b>Tel: 01273 296825</b>
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<b>Ward(s) affected:</b>	<b>(All Wards);</b>		

**FOR GENERAL RELEASE**

**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 The Royal Pavilion Estate was bought by Brighton Corporation in 1850 and today is Brighton & Hove's cultural heart, uniquely combining a historic Royal Palace and Regency Garden, a museum, art gallery and three performing arts spaces at Brighton Dome. Long-standing arts charity Brighton Dome & Festival Ltd (BDBF) has a lease from the council on the Brighton Dome, Corn Exchange and Studio Theatre. The grade I listed Corn Exchange and grade II Studio Theatre form an important part of the Royal Pavilion Estate and are key to BDBF's on-going activities while making a significant contribution to the city's cultural and economic life.
- 1.2 The council and BDBF signed a Memorandum of Understanding on 18 August 2014, to formalise the joint working with the Royal Pavilion & Museums (RPM) and underpin the delivery of the phased capital works to the Royal Pavilion Estate that aim to secure its long term future and financial viability. The fundraising campaign has so far included successful bids to Arts Council England (ACE), the Heritage Lottery Fund (HLF), Coast to Capital Local Enterprise Partnership and private trusts.
- 1.3 Phase 1 works started on site in February 2017. As Members will be aware, the main contractor ceased trading and left site on 01 July 2019 and subsequently secured agreement of its creditors to enter into a Company Voluntary Arrangement (CVA) on 26 July 2019. The council then terminated the JCT building contract for the works. This report up-dates Committee on actions to recover the project and the financial implications.

**2. RECOMMENDATIONS:**

- 2.1 That the Committee notes that the decision to appoint a contractor to complete the stage 1 emergency and remedial works required to the buildings has been taken by the Executive Director for Economy, Environment & Culture.
- 2.2 That the Committee notes the recommendation of the Procurement Advisory Board set out in paragraph 3.7.

- 2.3 That the Committee grants delegated authority to the Executive Director for Economy, Environment & Culture to procure and award a contract for the stage 2 works required to complete the project as set out in paragraph 3.6.
- 2.4 That the Committee notes that Policy & Resources Committee approval to vary the capital budget, via the Targeted Budget Management (TBM) reporting process, will be required as set out in paragraph 7.1.

### **3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 The council was informed on 1 July 2019 that its main contractor for works at Brighton Dome's Corn Exchange and Studio Theatre, R. Durnell & Sons (RDS), had ceased works and left the site. With its financial advisors Begbies Traynor, RDS subsequently secured the agreement of its creditors to enter into a Company Voluntary Arrangement (CVA). This gave the council grounds to terminate the JCT building contract with RDS, which was done with effect from 02 August 2019.
- 3.2 The council immediately took back and secured the site, and has carried out a number of actions to ensure the site is as safe as possible and to start to recover the project from this situation.
- 3.3 The project works for Phase 1 can now be seen as divided into two stages; stage 1 includes emergency and remedial works to weatherproof and secure the buildings; stage 2 will include the main works to complete the project.
- 3.4 Due to the urgent need to carry out the stage 1 emergency works the decision to proceed with the procurement of a Management Contractor was taken by the Executive Director using Urgency Powers. Following the tender process and subject to contract, the preferred contractor is mobilising to take over the site and re-engage with sub-contractors to complete the roof, rainwater goods and below ground drainage as well as other discrete work packages. These works will achieve a weathertight building and will provide a clean separation between works stages 1 and 2.
- 3.5 The project design team has carried out a full condition survey to establish what works are remaining to be completed and a full log of defects and mitigation works required. This will be used to prepare the works specification when procuring a principal contractor to complete the stage 2 main works.
- 3.6 The options to appoint a principal contractor to carry out the stage 2 works are being evaluated; these include the assessment of any suitable frameworks, a full open OJEU procurement process and other options which may be available to the council under the Public Contract Regulations 2015. It is proposed to use the most beneficial approach in order to move at speed and mitigate the associated financial impact on both the council and BDBF of any extended delay to completing the works and bringing the buildings back into use.
- 3.7 The Procurement Advisory Board received a report on the associated procurement issues on 9 September 2019 and recommended that the report should progress to Policy & Resources Committee.

#### **4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS**

- 4.1 When RDS left site it was in a poor condition without being properly protected or weathertight and water ingress has occurred. This has resulted in damage to internal fittings and the wooden structure. The council put in place a small site team to manage and maintain the site temporarily until a management contractor is appointed.
- 4.2 The option of doing nothing would jeopardise the future of the grade I listed Corn Exchange and grade II Studio Theatre, including their structural integrity, their place in Brighton's renowned Royal Pavilion Estate and their cultural and economic contribution to the city. Should the Phase 1 capital works to the council's freehold property not be completed to the original scope there is the risk of claw back of the secured grant funding. To date this includes £5.603m Arts Council England (ACE), £4.823m National Lottery Heritage Fund, £3.000m Coast to Capital Local Growth Fund (LGF), £2.380m private trust and individual commitments and BDBF borrowing of £2.704m, resulting in total match funding of £18.510m. In order to continue drawing against this grant funding and avoid any risk of ACE, Lottery Heritage, LGF or private trust and individual clawback the project outcomes including completing the works should be achieved.
- 4.3 While the project will require additional council funding this can be seen against the significant external funding attracted to restore and upgrade this council freehold property and internationally important city asset. Officers will also discuss additional funding opportunities with major project supporters ACE and National Lottery Heritage Fund.
- 4.4 The restoration of the 200 year old Corn Exchange was expected to reveal decay in its wooden frame and an allowance for this was included in the costs of the works as well as having project contingency in place. However, the extensive deterioration and resulting structural weakness encountered has been far greater than suggested by the surveys carried out prior to the start of works. This has required significant remedial works to ensure the building's structural integrity that caused delays to the programme and resulted in increased costs over and above the scheme's contingency provisions.
- 4.5 The council's original commitment of £1.320m was increased by agreement of Policy, Resources & Growth Committee in December 2018 by £3.000m. If the financial strategy set out in this report is agreed it will result in an estimated total council contribution to the total capital project funding of up to £9.320m (32.8%), against other match funding of £19.130m (67.2%). This should still be considered good value for money to restore this unique heritage asset that makes a significant contribution to the city's visitor economy and cultural life. Without the grant funding and private trust and individual contributions secured for the project the council would be obliged at some point in the future to address the building's deteriorating condition at greater cost to itself if it is to be kept in operation. This would have the potential to become a considerably greater liability for the council and adversely impact the operations of BDBF.
- 4.6 For the project to proceed and the anticipated benefits to be achieved the council may consider providing the additional funding required to save greater future

costs. The council has the opportunity to use its borrowing facility to provide the required project funding within a managed and achievable funding model to ensure that Phase 1 proceeds and that subsequent phases can follow.

## **5. COMMUNITY ENGAGEMENT & CONSULTATION**

- 5.1 The initial National Lottery Heritage Fund (formerly Heritage Lottery Fund) submission was informed by a series of consultation and engagement sessions, which included workshops, presentations and surveys undertaken with a variety of stakeholders. The planning application and listed building consent application for Phase 1 works included statutory public consultation.
- 5.2 User-feedback collected by BDBF suggested that the Phase 1 changes and improvements throughout the building are definitely required to enhance the audience experience and to encourage further visits and spend in the venues. The Phase 1 works contribute to creating a world-class cultural destination in the heart of Brighton & Hove and deliver a strong model for long term financial resilience of the charity itself (through significant increases in self-generated income), the wider Royal Pavilion Estate and, through significant job creation and impact on the visitor economy, to the City as a whole.

## **6. CONCLUSION**

- 6.1 The loss of the main contractor has resulted in the need to seek a replacement to complete the works. This will be a two stage process with an interim management contractor carrying out emergency and remedial works to secure the building followed by the appointment of a management contractor or principal contractor to complete the main works.
- 6.2 The grade I listed Corn Exchange and grade II Studio Theatre form an important part of the Royal Pavilion Estate and are key to BDBF's on-going activities while making a significant contribution to the city's cultural and economic life. Doing nothing and not completing the works would both seriously affect BDBF's future financial position and risk the council's financial liability for the buildings growing over time. As well as the condition of the buildings themselves, this liability includes the potential claw back of the grant funding already received from Arts Council England, National Lottery Heritage Fund, Coast to Capital Local Growth Fund and private trusts and individuals.
- 6.3 The approval of the funding strategy presented in this report will enable the project to continue the delivery of Phase 1 works to a successful completion.

## **7. FINANCIAL & OTHER IMPLICATIONS:**

### Financial Implications:

- 7.1 The approved capital budget Phase 1 of the Royal Pavilion Estate Phase 1 project is £22.945m following a capital variation approved by Policy, Resources & Growth Committee of its meeting on 6 December 2018. In addition to the capital funding, £0.505 of National Lottery Heritage Fund grant has been secured towards related activity expenditure. This report recognises an estimated additional funding requirement of up to £5.000m. More certainty of the additional

funding requirement will be available following the proposed procurement process for the stage 2 works. Formal approval to vary the capital budget will therefore be sought as part of the Targeted Budget Management (TBM) reporting process in accordance with Financial Regulations once a more detailed estimate can be made.

- 7.2 The use of Urgency Powers to carry out the stage 1 emergency works has been conducted to protect and secure the site of important historic assets and to limit as much as possible the adverse financial implications for the council by limiting likely cost increases.
- 7.3 The proposed procurement for the stage 2 works is subject to compliance with the council's Contract Standing Orders and Financial Regulations. The council's Contract Standing Orders state that contracts above the value of £0.500m require approval from the relevant Committee or executive decision-making body. The procurement process will be prepared on a basis to maximise economy and effectiveness, and to mitigate the associated financial impact on both the council and BDBF.
- 7.4 The council had originally identified a financial risk associated with fundraising towards the project, and as accountable body, is required to underwrite a possible shortfall. Following a review of the current fundraising position, the level of risk has been updated and the additional funding requirement incorporates additional contingency for any fundraising shortfall.
- 7.5 The estimated £5.000m additional funding is therefore required due to a combination of project cost increases as explained in the report, and to provide additional contingency for any fundraising shortfall. The additional capital budget will be funded from borrowing under the Prudential Code with a repayment of 50 years in line with other approved borrowing for this scheme. It is anticipated that the estimated annual repayment costs of approximately £0.195m would be met from revenue budgets within the Economy, Environment and Culture Department.

*Finance Officer Consulted: Steven Bedford*

*Date: 25/09/19*

Legal Implications:

- 7.6 Legal advice has been given and is ongoing in relation to the following: (i) the Council's contract with Durtnell; (ii) the appointment of the consultant Artelia; (iii) the CVA arrangements, which Durtnell has entered into with its creditors (iv) the council's contract with Brighton Dome & Brighton Festival; (iv) the procurement and contract for the Stage 1 emergency works and; (v) the procurement and contract for the Stage 2 works to complete the works.
- 7.7 The Council has terminated the contract with Durtnell and a claim for the Council's losses has been issued to the insolvency practitioners overseeing the CVA arrangements for Durtnell (Beggies Traynor). A performance bond had been entered into with a third party bond provider and so a claim has been submitted to that bond provider for the Council's approximate losses and this claim will be updated regularly until the works are completed. In addition, officers have notified the Council's insurers who will be assessing the position with respect to losses which are recoverable under

the Council's insurance policies. The outcome of what, if any, losses will be recoverable through each of these routes by the Council will not be known until the works which were due to be completed under the original contract with Durnell are completed.

- 7.8 The value of the stage 1 emergency works is under threshold which means that The Public Contracts Regulations 2015 (the 'Regulations') will not apply but the Council's CSOs have been followed in order to procure and award the contract for these works. The Executive Director was entitled to use his urgency powers in accordance with the Scheme of Officer Delegations set out under the Constitution to proceed with the procurement and award of this contract in the circumstances.
- 7.9 If the value of the stage 2 works contract is estimated to be over threshold, the Council must procure that contract in compliance with the Regulations as well as the Council's CSOs.

*Lawyer Consulted: Simon Court & Isabella Sidoli*

*Date: 30/09/19*

Equalities Implications:

- 7.10 In preparing the capital works proposals, an extensive range of stakeholders were consulted to identify issues of access to facilities and activities in order that these may be addressed through the project works. Improved educational space will be provided within the overall project that will further increase access for schools and others to the Royal Pavilion Estate activities.
- 7.11 An Equality Impact Assessment has not been carried out as the project was developed by BDBF prior to the Memorandum of Understanding and the council procuring the works.

Sustainability Implications:

- 7.12 The project's Phase 1 sustainability consultants, as part of the integrated design team, undertook a detailed evaluation and consideration of the use of sustainable technologies and where possible these have been incorporated into the developed design. The project is using a specialised matrix approach to target areas of design that can offer the best opportunities for improving environmental performance of the listed buildings. At present, the project is anticipated to achieve the equivalent of a BREEAM rating assessment of Good.
- 7.13 The proposed capital works will result in the historic buildings being more energy and water efficient, both of which will contribute to reduced operating costs.

Any Other Significant Implications:

Risk and Opportunity Management Implications:

- 7.14 There are a number of risks associated with the current situation that are presented in the main body of this report.
- 7.15 A risk register for the project is maintained by the project manager and is a requirement of both ACE and National Lottery Heritage Fund. The risks and

mitigating actions are considered by the project officers and escalated to the Royal Pavilion Estate Project Team where necessary.

- 7.16 Currently the risk register identifies both sufficient project funding as set out in this report and fundraising as key risks. A detailed Fundraising Strategy has been developed and well researched, and an experienced fundraising team are in place to implement the strategy.

Corporate / Citywide Implications:

- 7.17 The project is included in the Greater Brighton Investment Programme.
- 7.18 The project is investing in premises to promote economic activity and support growth of the local cultural and tourist economy. The flagship Brighton Festival attracts over 220,000 visitors during May each year with year round visitors to the Brighton Dome of 600,000.

**SUPPORTING DOCUMENTATION**

1. Policy & Resources Committee Report, 28 April 2016
2. Policy, Resources & Growth Committee Report, 13 October 2016

