

<b>Subject:</b>	<b>Brighton Waterfront Project (Brighton Centre and Black Rock sites)</b>		
<b>Date of Meeting:</b>	<b>28 April 2016</b>		
<b>Report of:</b>	<b>Acting Executive Director for Environment, Development and Housing</b>		
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<b>Ward(s) affected:</b>	<b>Regency/Queens Park/Rottingdean Coastal/East Brighton/ALL</b>		

**FOR GENERAL RELEASE****1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 This report seeks delegated authority for council officers, in consultation with the Waterfront Project Board, to agree terms for a conditional Development Agreement (cDA) with Standard Life Investments (SLI) to allow for a future integrated redevelopment of the council owned Brighton Centre site (currently occupied by the Brighton Conference Centre) and the Kings West site (owned by Standard Life Investments) (and referred to jointly as Waterfront Central).
- 1.2 The cDA will also govern the terms of an agreement which will support the redevelopment of the Black Rock site (referred to as Waterfront East) in order to deliver a major new multi-use 10,000 capacity venue to replace the current Brighton Conference Centre.
- 1.3 This report also seeks committee approval to begin the process of procuring a third party operator to run the new venue once constructed. In order to ensure the operator is able to participate in the Agreed Development Strategy for the Black Rock site (Waterfront East) and the design and functionality of the new venue, it is ideally the case that this process be started soon.

**2. RECOMMENDATIONS:**

- 2.1 It is recommended that the Committee:-

Agree the draft Heads of Terms as summarised in the Confidential Appendix 3 as the basis of ongoing negotiations with Standard Life Investments (SLI) on the understanding that the Head of Law is authorised to enter into the final conditional Development Agreement (cDA) and any linked documentation after the Acting Executive Director Environment Development & Housing and

the Head of Law have consulted with the Waterfront Project Board regarding any further changes to the draft Heads of Terms.

2.2 Note the terms of the draft Valuation Brief as referred to in the Confidential Appendix 4.

2.3 Note and agree:

- a) The revised financial information contained in the Confidential Appendix 5.
- b) The current conference subvention budget is retained by the council to support conferences during the closure period and attract conferences to the new venue once opened.
- c) Construction of the new venue will be funded by the capital receipt generated from the sale of the Brighton Centre site, rent from the appointed venue operator, net savings achieved on the current Brighton Centre operational budgets and up to 50% of the forecast additional future business rates income stream (set out in the funding table in paragraph 7.4 of the financial implications) along with any relevant successful Local Growth Fund bids.
- d) That any additional council tax revenue and any increase in New Homes Bonus will be used to support the City Council's medium term financial strategy
- e) The Brighton Centre Redevelopment Reserve can continue to be used to fund project development costs incurred by the council on the Central and Black Rock sites as set out in paragraph 7.14.

2.4 Note and agree the overall procurement approach as summarised in paragraphs 7.15 to 7.17 and the role of Standard Life Investments as lead Development Partner for both the central (Brighton Centre and Kingswest) and east (Black Rock) sites.

2.5 Agree that a competitive procurement process to appoint a third party operator can proceed in a manner agreed by officers with the Waterfront Project Board.

2.6 Agree that the appointment of a third party operator for the new venue, following completion of the procurement process, be agreed by Policy & Resources Committee.

### **3. BACKGROUND**

3.1 A previous report to Committee (December 2014) set out a series of recommendations regarding the proposal from Standard Life Investments (SLI) in relation to the Waterfront project and secured committee agreement to the following:

- I. The principle of a third party operator being procured for a new venue

- II. The ring-fencing of the council subvention budget for future conferencing within the city
  - III. The use of income from the sale of the Brighton Centre (BC) site, the rent (or equivalent) from a new venue operator, any net savings from the Brighton Centre closure and a proportion (25%) of newly generated business rates, to pay for the delivery of a new venue.
  - IV. The use of the Brighton Centre Redevelopment Reserve to fund council project development costs.
- 3.2 This previous report explained the SLI proposal in detail, and significantly the opportunity offered by the combined projects (Black Rock and Brighton Centre/Kingswest) to generate 2,000 FTE jobs for the City and surrounding areas, and an overall development value of approximately £0.5 billion. Net additional spending in the city in the region of circa £150m was also estimated with approximately £4.6m per annum of additional business rates, council tax and New Homes Bonus income to the City Council (a proportion of which was ring-fenced to help fund the project).
- 3.3 The previous report also explained how the Waterfront project has the capacity to transform two important, very visible parts of the city seafront. By linking the two sites and using the resources available from SLI to fund the development stages of the two sites, each party will be able to achieve its own important long term strategic objectives. For the city council this will include securing the future of conferencing in the city and assisting with the regeneration of Madeira Terraces by delivering a high quality anchor development at the far end of Madeira Drive. For SLI this will provide the opportunity to build upon the success of the Churchill Square shopping centre by extending and redeveloping the centre into a new leisure/retail destination with regional status and broader appeal.
- 3.4 The proposal also supports delivery of the City's Economic Strategy, the Coast to Capital LEP's Strategic Economic Plan and will enable further significant investment in the City's Seafront.
- 3.5 A Local Growth Fund pipeline proposal is being progressed to support an Enabling Works Package on the Black Rock site and further funding will be sought to invest in transport, seafront infrastructure, and public realm works to underpin the successful delivery of the overall Waterfront scheme.
- 3.6 Officers have continued to work with the team at SLI to gain a fuller understanding of how risks and funding will be jointly managed for the project, whilst also ensuring compliance with the public procurement (PCR 2015) and EU (Article 56) and State aid obligations. In order to ensure the council's interests are protected and to mitigate risks for both parties, the following key activities have taken place, key elements of which have been reported on an ongoing basis to the cross party Project Board:
- a. Due diligence on the initial proposition from SLI and headline appraisals by the council appointed property practice CBRE to ascertain strengths

and weaknesses in September 2015. The Confidential Appendix 8 sets out the key findings from the report.

- b. Appointment of Osborne Clark – a specialist legal firm, to support the council in-house legal team with progression of the cDA, advice on procurement and other commercial issues pertinent to the proposal.
- c. Following the outcome of the CBRE report (above) and further negotiation with SLI, an amended project structure which would place SLI in the lead Development Management role, with a separate exercise for the procurement of a more specialist venue advisor role as required by the project.
- d. Progressed soft market testing with potential venue operators demonstrating market interest.
- e. Ongoing regular meetings with the cross party project board for officer updates and/or briefings by the Standard Life professional team.
- f. Feasibility work by world renowned practice, Wilkinson Eyre architects regarding venue options for the Black Rock site in relation to heritage, townscape and environmental constraints.
- g. Dialogue with Historic England as part of a planning review to establish current parameters in relation to the impact of development on existing heritage assets such as the Grade I listed Lewes Crescent and consequential impact mitigation options.
- h. Title searches and reporting in relation to both Black Rock and Central sites, including adjacent ownerships.
- i. Appointment of Peter Brett Associates by SLI to undertake initial feasibility of transport options for the new venue and expanded retail scheme.
- j. Appointment of GVA (January 2016) to undertake the Council's Section 123 obligations to obtain "best consideration" and sign off on the draft Valuation Brief (attached as Confidential Appendix 4).
- k. Progression of various documents to support the structure of the wider proposal including agreements around cost recovery scenarios, qualifying expenditure for purposes of clawback, pre-emption options and procurement.
- l. Counsel opinion in connection with wider procurement implications of the land transaction and connected procurement appointments e.g. of SLI professional team (March/April 2016).
- m. Introductory sessions with the design team appointed for the central site and the cross party project board to discuss initial concepts and opportunities in relation to both transport and design.

- 3.7 In addition, a bid for Local Growth Funding of £3m is being submitted to Coast to Capital Local Enterprise Partnership (C2CLEP) with the support of the Greater Brighton Economic Board to secure funds to resolve "below ground" barriers to development at the Black Rock site. Previous sea wall defences, complex utilities and services infrastructure and other obstructions that dissect the site need to be addressed in order to de-risk the construction process. The LGF Round 3 proposal will enable work to start as soon as funding can be secured for 2017/18.

## Next steps

3.8 If Committee approve the recommendations within this report, the project will proceed to the next stage and the following tasks will be undertaken by the officer team in conjunction with SLI:

- Signing of conditional Development Agreement – June 2016
- Production of outline business case for the venue
- Procurement process instigated to appoint third party operator for new venue
- Consultation strategy finalised and dialogue started with a range of key stakeholders including the local city wide amenity societies and local communities of interest, Appendix 2
- Confirm budget for Waterfront East to deliver next stage (to ADS)
- Competitive process to select full professional design team for Black Rock site
- Early meeting with newly established Design Review Panel in relation to both key seafront sites
- Concept design progression of two sites to RIBA Stage 2/Agreed Development Strategy in preparation for Council sign off in its capacity as Landlord – Appendix 1.
- Production of business case for combined project including dialogue with C2C
- Ongoing dialogue with BHCC Transport teams to identify urgent project interfaces with current transport led projects e.g. former West Street Shelter Hall highway structure (including West St/A259 junction); ‘Gateway to the Sea’ (improvements to the Queen’s Road/West Street route from the station via the Clock Tower to the seafront); other seafront highway structures adjacent to the Waterfront sites; and the Valley Gardens corridor (particularly Phase 3, which will include the Sea Life Centre/Palace Pier (A23/A259) junction).

3.9 Once these activities are underway the two sites will be progressed to a point of completion referred to within the cDA as the “Agreed Development Strategy” (ADS). The purpose of the ADS is to ensure that at this point, all the parties have a full appreciation and understanding of the two projects sufficient to make a full commitment to the next planning submission stage.

3.10 Several other tasks will also be needed at this point and will form part of a further report to P&R Committee as follows:

At the next (1<sup>st</sup>) condition date (Q2 2017)

- An Agreed Development Strategy for Eastern and Central sites *including cost envelope* (Appendix 1)
- Public consultation strategy for next stage agreed
- Base land valuation undertaken – GVA
- Venue Operator selected and either an Agreement for Lease exchanged or HOT’s agreed (as a minimum)

- Construction Strategy agreed for both sites
- Commitment to agreed professional team fees and budget to proceed to final pre-planning stage.

The terms of the cDA provides for the council to agree to a number of areas which include those above, before proceeding to the next stage. Further conditions and timeline are included in Confidential Appendix 6.

### **Coast to Capital Local Enterprise Partnership Strategic Economic Plan**

- 3.11 Securing ongoing investment in internationally, competitive conferencing facilities is identified as a priority of the City's Economic Strategy 2013-18. Enabling the regeneration of both the Brighton Centre and Black Rock sites is also identified as a priority in C2CLEP's Strategic Economic Plan [SEP] and Growth Deal Investment Plan. Both sites are identified within the Seafront Priority Development Location area for Brighton & Hove within the SEP.
- 3.12 The SEP provided the LEP (and therefore the local authorities within it) with the opportunity to bid for and secure additional funding from the Local Growth Fund to invest in a number of projects that would unlock jobs and homes in the Coast to Capital area. A series of further Local Growth Fund [LGF] bids are currently being developed in discussion with the Coast to Capital LEP to support the overall Waterfront proposal, based on existing and future LGF allocations. The developer team has continued to work closely with the council to formulate the first bid around a series of themes to support infrastructure works and pre-construction de-risking activity at Black Rock.
- 3.13 Future bids may include:
- LGF 2 (Sustainable Transport and Resilience funding allocations)
- 'Gateway to the Sea' – in line with the priorities agreed by the council's Environment Transport & Sustainability Committee in November 2015.
  - Seafront highway structures ('arches') adjacent to the Waterfront Central site - in line with the priorities agreed by the council's Environment, Transport & Sustainability Committee in November 2015.
  - 'Intelligent Transport Systems' [ITS] – further extension of investment in technology e.g Variable Message Signing for drivers and upgraded traffic signals, to manage traffic and pedestrian movement more efficiently, based on successful package bid in 2015.
- LGF 3
- Supporting improvements to Madeira Drive and Dukes Mound
  - Supporting seafront connectivity along the A259 e.g. via seafront bus route
- 3.14 Future bids will be subject to further discussion and refinement before submission to the LEP's Local Growth Fund bidding rounds for both existing and future LGF budgets.

## **MANAGING RISK TO THE COUNCIL**

- 3.15 The cDA will address and seek to mitigate the key risks for the Council in the linked proposal. Specialist advice has been sought in relation to cost risk, valuation risk and legal challenge. These key risks and their mitigation are highlighted in Confidential Appendix 7.

### **Risk and Opportunity Register**

- 3.16 Council officers will develop a detailed Risk and Opportunity register for the project going forward which will apply the council's approved Risk Management Strategy methodology and be used for reporting purposes.
- 3.17 It should also be noted that maintaining the seafront as an asset to the city is identified as a priority in the council's Strategic Risk Register.

### **Land Valuation**

- 3.18 A valuation based on SLI's proposed scheme for the Central Site will be completed at the 1<sup>st</sup> Condition Stage of the cDA. In order to facilitate this the principles for the valuation are to be agreed between the parties and documented in a Valuation Brief which will be attached to the cDA (the current draft of which is at Confidential Appendix 4). GVA are advising the council on the Valuation Brief and subsequent valuation. The Valuation Brief defines the extent of the site on which the valuation will be based and will include both the council's interest (Brighton Centre) and SLI's interest (including the sites of Odeon and Debenhams). It will also define the basis of the valuation and how the site value is to be apportioned between the two parties.
- 3.19 The valuation will be based on SLI's Base Scheme and will provide both parties with certainty to allow each to progress the developments. In addition to the valuation an overage structure will be agreed between the parties to capture any additional value created in the central site following completion of the valuation and up to cDA achieving unconditional status. SLI have proposed an additional overage payment based on any changes to the base scheme, for instance if the size of the development is increased. In addition SLI have proposed a second overage based on an increase in value gained through market improvement.

### **Transport**

- 3.20 The previous report considered by this committee (December 2014) about the Waterfront project highlighted the need to learn from the experiences of managing travel and transport during the first 4 years of the 30,000 capacity AmEx Community Stadium. It also identified a number of opportunities and challenges that would need to be seized and overcome respectively in order to ensure that the redevelopment of both Waterfront sites was achieved using the most sustainable and efficient options for transport and travel. Some

initial progress has been made in further exploring what these may be for the individual sites, as well as identifying possible linkages between them. This work has been led by SLI's transport consultant, and informed by the council's Transport teams. The scale of this task is not underestimated, but options have been considered before by officers as part of previous proposals that were not progressed on either site. Achieving the right balance of transport and travel services, infrastructure and information for a number of different scenarios, by working with a number of key city stakeholders, will be important for achieving a viable and successful transport strategy.

- 3.21 One of the key focuses of this work will be to ensure that the Waterfront development project is integrated with other projects and programmes of transport investment that the council has prioritised, and which have been, or will be, subject to successful bids for additional funding to deliver them. Three examples are Phase 3 of the Valley Gardens project; seafront highway structures; and the route between the station and the seafront (Gateway to the Sea), as mentioned earlier in this report, and which are explained more fully below.
- 3.22 The final section of the Valley Gardens project (between Pavilion Parade and the Brighton Pier and referred to as Phase 3) was included in the Coast to Capital LEP's SEP and therefore considered by the Government for funding as part of the LEP's LGF bid in 2014. In July 2014, the Government announced that Phase 3 had been approved as a named scheme to receive funding of up to £6m to deliver regenerative improvements to the southern section of the A23 corridor by improving access to jobs and homes and enabling safer and more efficient and sustainable movement for people and vehicles, as well as enhancing the public realm. That funding would become available from 2016/17 onwards, subject to the development of a robust Business Case by the council which would need to be submitted to the Coast to Capital Local Transport Body [LTB] for consideration and approval. If the Business Case is approved, the council will need to secure and spend 20% of the project's total estimated cost of £7.25 million. This funding is expected to be secured from developer contributions and the council's Local Transport Plan capital programme. The project's construction would follow on from Phases 1 and 2, and could start before 2020.
- 3.23 The former West Street Shelter Hall structure is directly adjacent to the Waterfront Central site, and the A259/West Street junction, which is a key part of the pedestrian and cyclist route to/from and along the seafront (especially from Brighton Station) and provides direct access to a number of city centre parking spaces, including Churchill Square. The structure was built in the 1880s and supports the upper promenade at the junction of the A259 (King's Road) and West Street. Its potentially dangerous structural condition has secured £9 million worth of government funding through a successful bid to the Highway Maintenance Challenge Fund. Demolition and reconstruction is now underway and will take approximately 2-3 years. The pressing need to rebuild this particular structure has presented an opportunity to fully assess this section of the seafront and the associated highway structures, and the operation of the junction. It is therefore essential that the primary principles for

access and movement within the designs for the Waterfront project proposals are known as soon as possible in order to incorporate them in to the design options for the West Street junction.

- 3.24 The 'Gateway to the Sea' project was originally identified by the council as a potential scheme for inclusion in the LEP's 2014 SEP to help unlock or improve access to jobs and homes. It is specifically linked to the New England Quarter and Seafront Priority Development Locations, and focuses on the role and importance of the Queen's Road/West Street route from the station via the Clock Tower junction to the seafront, especially for visitors. It also links to the newly enhanced southern entrance to the Brighton Station Gateway and connects with the North Laine, The Lanes and the Churchill Square/Western Road shopping areas.

### **Planning**

- 3.25 The key planning issues for the schemes have been assessed by SLI on behalf of the city council and by GL Hearne, their appointed planning consultants.

The redevelopment schemes for the two sites will be assessed against policies in the City Plan Part One, now formally agreed at Full Council on March 24<sup>th</sup> 2016. In particular policies DA1 (Brighton Centre and Churchill Square) and DA2 (Brighton Marina, Gas Works and Black Rock Area) which include strategic land-use allocations for the two sites, will be relevant to this assessment.

Concurrent planning applications will be made to ensure the two proposals are considered as linked projects. This is considered particularly important as it relates to the transport proposals.

Early dialogue with Historic England to inform initial feasibility has demonstrated that opportunities for residential development on the Black Rock site are likely to be very restricted due to the impact upon heritage assets at Lewes Crescent and Arundel Terrace.

- 3.26 A Planning Performance Agreement will be drafted, in common with other large developments (such as the King Alfred project) to guide the planning process.

### **Monitoring and reporting**

- 3.27 Policy and Resources Committee will be provided with general progress reports as the project progresses particularly at key milestones. The Cross Party Project Board and shortly to be established, Strategic Delivery Board, will also receive regular project updates. Project reporting will also be provided to the Economic Development and Culture Committee.

## **Due Diligence**

- 3.28 Given the extent of borrowing required for this project, the Audit and Standards Committee will expect to have oversight of the complete proposal. This would set out the approach being taken to risk management and due diligence and also the assurance role for Internal Audit over the project as a whole.

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

- 4.1 Officers and Members, together with expert financial advisers, have previously considered over a number of years a range of options that might enable the funding of a suitable replacement for the Brighton Centre. The scale of the problem presented by such re-provision (estimated as costing in excess of £120m) was not able to be met before the period of austerity, and with fewer government and local funding sources available, is now even less within reach. Without very significant private sector funding and an expanded business case to support a more commercial approach, the capacity of the city to re-provide a new centre on the existing site is not considered financially achievable. With its loss, the city would therefore lose a market that has successfully been built up since the centre opened in 1977.
- 4.2 The opportunity being presented with this proposal, on the contrary (as set out in the Financial paragraphs) is one which creates significant additional revenue for the city (from a range of sources) and at the same time, reduces the reliance on the public purse in the longer term. It will protect the conferencing industry on which so many businesses in the city rely, but also grow the sector, by attracting in more frequent and larger entertainment events. As the evidence shows, these events will directly impact upon the local economy retaining and improving job prospects, as well as providing a platform for the city on the UK and World stage.
- 5.0 If the Committee decides not to proceed with negotiations, the following outcomes are anticipated:
- The Brighton Centre will continue to require annual subsidy but without any additional income to fund this. Delay will not resolve the ongoing problem of how to provide a sustainable economic future for conferencing or of how to invest in the Brighton Centre building.
  - Future business rates income of between £7m and £8.7m will not be realised.
  - New investment to protect the seafront and grow business and investment income for future years will be significantly held back.
  - Projects, prioritised by council Committees, to improve the 'gateway to the Sea' corridor and strengthen seafront structures will continue and may not be integrated with the development of both sites.
  - Public realm improvements to the seafront/A259, Russell Road, Cannon Place will not be achieved in the medium term.
  - Black Rock, as a derelict site, will continue to deter investment in the Area.

- Existing scarce resources will have to be re-prioritised from current and future revenue and capital service budgets to continue to resource the Brighton Centre maintenance and operational budgets.
- The regeneration of Madeira Terraces will be far more challenging to address without a new anchor development to pull in more visitors and support new infrastructure.
- Construction inflation will add to project costs.

## **6. COMMUNITY ENGAGEMENT & CONSULTATION**

- 6.1 A process of consultation with the business and wider community is planned to take place as the proposal develops to ensure key stakeholders remain fully engaged going forward. See Appendix 2.

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

### **Financial Implications**

#### **Forecast Financial Benefits to the council**

- 7.1 The forecast economic benefits and new jobs created by the proposals are set out in the body of the report, but in addition the council will receive direct financial benefits as forecast in the table below. The additional business rate income stream is potentially double the amount forecast in the December 2014 report due to the decision by the government to allow councils to retain 100% of business rates from 2020. However, it is not known exactly how the changes to business rate retention will be implemented so there remains an element of uncertainty. Churchill Square currently represents 7% of the total rateable value of the city and the extended shopping complex could add between £7m and £8.7m to the annual income retained by the council once the developments on both sites are completed.
- 7.2 The December 2014 report recommended that 25% of the total income stream covering business rates, council tax and New Homes Bonus was used to support the construction of the arena. The CBRE report identified potential under estimates of cost and over estimates of income in the December 2014 Eastern site appraisal so in order to maintain viability it is recommended that 50% of the additional business rates is used to support the construction of the arena. The balance would be retained within the revenue budget and could for example help protect services to the elderly and most vulnerable in the city.
- 7.3 There will be a temporary reduction in business rates income during the construction phase and this will be built into the funding strategy. There is also potential for hotel development within the site which would generate additional business rates which has not been factored into the estimates.
- 7.4 Whilst the proposed development would be retail led the council also needs to be mindful of the additional services it needs to provide to the residents of any

new housing. It is recommended that additional council tax revenues will be retained in the revenue budget for the provision of these services. Allowance will also be made within the costings of the proposals to cover S.106 contributions towards the provision of new school places and other relevant services. The payment of New Homes Bonus (NHB) is currently under review and future payments are likely to be reduced compared to the current position. Any amounts payable will be for a limited period and therefore should not be relied on to fund the financing costs of long term investment decisions. It is therefore recommended that any net increase in NHB is used to help fund affordable housing within the city.

Table 1: Annual forecast direct financial benefits for the council

	Forecast range of income per annum £ million
<b>Central &amp; Eastern sites:</b>	
Net Additional Business rates – 100% council share based on additional commercial space of between 40,000 sqm and 50,000 sqm	£7m to £8.7m
Additional council tax based on up to 200 new units	Up to 0.2
New Homes Bonus (assuming payable for 4 years but currently under government review)	Up to 0.25
Total forecast of additional annual revenue	Up to £9.15m

7.5 The forecasts shown above are just estimates at this stage based on the latest development proposals on each site at a point in time.

### **Best Consideration**

7.6 The council must ensure that the amount received for the Brighton Centre site achieves the “best consideration” that can reasonably be obtained and has employed GVA to review and advise on the central site appraisals.

7.7 A valuation brief is in the process of being agreed between the parties and the current draft is included in the Confidential Appendix 4. The valuation brief will be used to calculate the initial valuation once the development brief has been agreed. The council will need to consider what it is prepared to accept for the sale of the Central site bearing in mind the overall package of benefits and risks offered by the overall deal. The cDA may make provision for 2 potential overages, one based on what is achieved at planning and the other based on the values achieved once the Central site development is completed.

### **Cost estimates and proposed funding arrangements for the arena**

7.8 Confidential Appendix 5 shows both the latest cost estimates for the venue and the potential external and council funding sources for the project. At this

stage they are still ballpark figures which will be refined as design works progress. A combination of inflation and previously understated costs (as indicated in the CBRE report) has resulted in a significant increase in construction cost estimates. Further work has also meant that the opportunities for residential development on the Black Rock site are restricted because of the impact on the significance of heritage assets at Lewes Crescent and Arundel Terrace. However the retention locally of 100% of business rates from 2020 has provided a substantial boost to funding which means that overall the project is likely to be financially viable.

- 7.9 The cDA will also allow for SLI to choose to meet a funding shortfall entirely at it's own cost to ensure that the council viability condition is met. This could address the position where a relatively small shortfall in the arena viability would halt both schemes from proceeding.
- 7.10 The cDA will also address a scenario where SLI decide to delay the development of the Central site for example for economic reasons, and therefore the additional business rates income is not generated as anticipated. SLI have offered to meet the financing costs planned to be funded by business rates for the period of any delay. The details of this proposal are subject to negotiation.

### **Operation of the new Conference Centre and Arena**

- 7.11 An indicative rent will be determined through a competitive procurement process for an arena operator based on an outline business case developed by the operator for the operation of the venue. Soft market testing has already provided the council with information which suggests there is a strong appetite for this opportunity amongst the limited number of potential operators.
- 7.12 There will be significant operational and maintenance savings to the council compared to the existing Brighton Centre budget which will be used to fund borrowing costs as set out in Confidential Appendix 5. Further work needs to be done to identify precisely what these savings will be and any additional costs arising from the maintenance and upkeep of the new public realm areas around the conference centre and arena. This will form part of the wider business case and financial appraisal.

### **Project Development Costs**

- 7.13 The project development costs for both sites are primarily at SLI's risk until the cDA becomes unconditional when most of the Eastern site costs are recoverable from the council funded from the sale of the Brighton Centre site. The summary HoT in Confidential Appendix 3 outline the different cost recovery scenarios. The council will be obliged to pay for cost items, such as basic site infrastructure works, which enhance the value of the Eastern site should the project not progress. The costs likely to be incurred to get to the unconditional stage have been estimated by SLI to be £10m for the Eastern site and £7m for the Central site. As part of the package SLI have also offered

to provide Development Management Services free of charge. The estimated cost of these services is between £2m and £3m.

- 7.14 However, certain limited costs will be met directly by the council. The development of the project will need dedicated internal resources and appropriate specialist external advisers for example to provide legal advice, review financial appraisals and evaluate and test proposed transport solutions. This expenditure can be met from allocations from the Strategic Investment Fund (SIF) using the Brighton Centre Redevelopment Reserve. It is currently estimated to be £3.366m at the 31 March 2016. In addition to the subvention budget any unused balance on the Redevelopment Reserve could also be available to help fund conferences and events during any closure period before the new venue is completed.

*Finance Officer Consulted: Mark Ireland / James Hengeveld Date:19 .04.16*

### **Legal Implications:**

#### **Procurement**

- 7.15 Leading Counsel has advised on the procurement implications of the proposed transaction with SLI. The overall project is a complex transaction and entails a number of interlinked contracts being entered into. In essence, the council will enter into a land transaction with SLI in respect of the Centre, and specified services will be provided by SLI as part of that land deal. Further counsel advice will be sought after exchange of the cDA to ensure full compliance with procurement requirements.
- 7.16 It is proposed that a competitive procurement process to appoint a third party operator will proceed in a manner to be agreed by officers with the Waterfront Project Board with a view to that appointment being agreed by Policy & Resources Committee.
- 7.17 There will also be an OJEU procurement of the building contract relating to the Black Rock site and a competitive process for final appointment of an architect team for the Black Rock site.

#### **Development Agreement**

- 7.18 A full summary of the current draft Heads of Terms for the cDA is in Confidential Appendix 3. For the purposes of this open report the key aspects of the cDA include:
- (a) A number of conditions need to be satisfied in respect of both sites, including agreeing the development strategy, satisfactory planning permission, site assembly, funding and viability. Re viability, (i) SLI will need to achieve a threshold figure linked to return on expenditure and the internal rate of return for the Central Site and also achieve a percentage of pre-lets in the shopping centre and (ii) the Council will need to have procured an operator and an affordable building contract.

- (b) Detailed Clawback and Qualifying Expenditure provisions will regulate potential payments by the council to SLI.
- (c) Agreement as to how the Land Price is calculated (see 7.22 below).

7.19 It is proposed that officers continue to work with the Project Board and that the final Heads of Terms for all of the required documentation are agreed by the Project Board, so that the appropriate documentation can then be entered into in June.

### **TUPE**

- 7.20 Whether or not there is a transfer subject to the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014 (TUPE) involved in this transaction is a matter of law. Further consideration to this key aspect will be needed once timescales are known, as part of the procurement of the Operator for the new Centre
- 7.21 Staff at the Brighton Centre who may be affected by the proposals will continue to be kept informed as the project progresses.

### **Best Consideration**

- 7.22 As referred to elsewhere in this report, the council is under a duty to achieve the best consideration reasonably obtainable for the disposal of the Brighton Centre. The Valuation Brief sets out the market valuation approach against which the agreed price will need to be assessed to ensure that either this duty is complied with or if necessary consent to dispose at less than best consideration is obtained.

*Lawyer Consulted: Bob Bruce*

*Date: 19.04.16*

### **Equalities Implications**

- 7.23 A full equality impact assessment will be undertaken as part of the next stage of the project. A future report will address specific equalities issues arising from the proposal that the venue be operated by a commercial operator.

### **Sustainability Implications**

- 7.24 Building standards will need to comply with the minimum standards set out in the City Plan in terms of BREEAM. The opportunity to ensure both developments are District Heat Network ready will also be explored. Commitments to the promotion and provision of sustainable transport options that minimise carbon emissions and mitigate any effects on air quality levels and congestion will also be critical to ensuring that the project is successful.

### **Any Other Significant Implications**

7.25 All significant implications are dealt with in the main body of the report.

## **SUPPORTING DOCUMENTATION**

### **Appendices**

#### **Part One**

1. Requirements of Agreed Development Strategy (ADS)
2. Consultation strategy - GL Hearn

#### **Part Two**

3. Heads of Terms
4. Draft Valuation Brief
5. Cost and Funding Sources (Table)
6. Milestones and Key Conditions
7. Risk Table
8. Conclusions of CBRE Viability Assessment Report Sept. 2015

### **Documents in Members' Rooms**

None

### **Background Documents**

Report (Waterfront Project) to P&R Committee - December 2014  
Report (Local Transport Plan Future Priorities) to ET&S Committee – November 2015

