

<b>Subject:</b>	<b>i360 Loan Restructuring Update</b>		
<b>Date of Meeting:</b>	<b>11<sup>th</sup> October 2018</b>		
<b>Report of:</b>	<b>Executive Director for Environment, Economy and Culture</b>		
<b>Contact Officer:</b>	<b>Name:</b>	<b>Max Woodford</b>	<b>Tel:</b> <b>01273 291666</b>
	<b>Email:</b>	<b><a href="mailto:max.woodford@brighton-hove.gov.uk">max.woodford@brighton-hove.gov.uk</a></b>	
<b>Ward(s) affected:</b>	<b>All</b>		

**FOR GENERAL RELEASE**

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

- 1.1 This report updates the committee about the progress made in appointing consultants to work with the city council and all the other stakeholders on the i360 loan restructure.
- 1.2 The report also sets out the provisional list of options open to the city council as part of any restructure to reduce the financial and reputational risk to the council. This is not intended to indicate which option is the best for the city council and/or other stakeholders and does not preclude the potential for other options being recommended to December Policy, Resources & Growth Committee (PR&G) should they emerge.

**2. RECOMMENDATIONS:**

- 2.1 That members note the progress made to date in appointing the team who are working on negotiating the restructure of the loan to the i360.
- 2.2 That members note the provisional list of potential options that the advisors have put forward.

**3. CONTEXT/ BACKGROUND INFORMATION**

- 3.1 A report sent to the 28<sup>th</sup> June 2018 Special PR&G meeting set out that the i360 opened to the public on 4 August 2016 and has since carried over 750,000 visitors. It has also generated approximately £2.4m net direct additional income for the council so far which has been or will be reinvested in the seafront; in particular in the landscaping of the council owned land around the i360, contributions towards the refurbishment of the Madeira Terraces and festoon lighting along the seafront.
- 3.2 However, that report also described that visitor numbers have been lower than anticipated and stood at the lower end of the long term financial viability modelled in the original business case. This meant that the i360 was not able to make the full anticipated 30 June 2018 payment to city council of both the loan repayment and the margin.

- 3.3 PR&G committee therefore agreed to defer £570k of the £1,492k due on 30 June 2018 until 31 December 2018. The basis for this is that the i360 paid the council £922k to enable the council to pay the PWLB the same amount in June. In doing so, the council also agreed not to take default action at that stage in relation to the failure to achieve the financial ratios set out in the loan agreement. This agreement was subject to a number of conditions, as set out in the full final decision text in **Appendix 1** (note: this is the text that takes account of all of the amendments agreed at the June meeting).
- 3.4 Resolution xi instructed officers to present a progress report to this Committee meeting, outlining a full range of restructuring options that seeks to reduce the financial and reputational risk to the Council.

#### **Loan Restructuring Advice**

- 3.5 Since June, officers have appointed GVA as specialist advisors as required by the committee decision. GVA have been commissioned to provide advice and options to the council for a long-term loan restructuring. They have a team of professionals including real estate bankers and accountants who specialise in sourcing equity and debt finance for large-scale real estate investments and developments. They also often act on behalf of companies and local and central government in assessing, structuring and implementing funding structures for investment. As such they have a broad mix of public and private sector experience and so are well placed to advise on whether the final restructuring meets the market economy operator principle.
- 3.6 The detail of the work now being pursued by GVA is as follows:

#### ***Work Stream 1 – Current Lending Structure, Stakeholder Objectives and i360 Business Plan Analysis:***

In order to identify suitable restructuring options they have analysed the current lending structure and i360 business plan. The outcome of this work is the suite of loan restructuring options at **Appendix 2**. During this process GVA have been meeting with Coast to Capital (the LEP) and shareholders to determine their position. This has fed into the options analysis to determine those scenarios which will meet with the objectives of all stakeholders and that are therefore likely to be implemented.

#### ***Work Stream 2 – Recommended Loan Restructure***

GVA will incorporate this committee's feedback into their reporting. They will then make a formal recommendation on the way forward. This will include their own opinion of the required returns for compliance with the State Aid Market Economy Operator Principle. As part of this they will conduct market testing of the lending structure (on an anonymous basis) with their funding partners to provide supporting evidence for the returns proposed.

#### ***Work Stream 3 – Implementation of Preferred Restructuring Option***

It is intended that the preferred restructuring option is identified and agreed at the December PR&G Committee. That being the case, GVA will then work with our appointed legal advisors to assist with the implementation of the new lending structure. Osborne Clarke previously advised the council in relation to the i360

and will work with GVA and the council to ensure that the loan restructuring proposal complies with the Market Economy Operator Principle.

3.7 In summary GVA have set out the following options from the first work stream:

- Do Nothing
- Equity promoters (i360 consortium) invest additional equity into i360
- Restructure interest payments
- Upside Agreement
- Debt for equity swap
- Equity promoters (i360 Consortium) arrange refinance of Council loan
- Council sell their loan
- Buy out Junior Loan
- Council to restructure PWLB loans
- Consensual 'enforcement'
- Enforce Security

Their paper considers the wide range of options available but does not seek at this stage to make any recommendations and further work will be carried out in the coming weeks to narrow down the options before concluding on the optimum routes forward, including assessing any state aid implications of the options. The options outlined in Appendix 2 should not be seen as standalone options and GVA are of the view that the likely preferred solution will be a combination of options.

### **Commercial Advice**

3.8 Leisure Development Partners (LDP) has been appointed to take on the specialist commercial advisor role. They have been appointed to act for the council to advise it on whether the i360 is taking all available steps to maximise income and enable it to meet its obligations to the council under the loan agreement. They have directly relevant knowledge and experience in the advising similar attractions globally, such as the Eiffel Tower and viewing wheels across Europe, but are also experienced in the Brighton & Hove market, having advised on Palace Pier. The work they are appointed to undertake includes:

- Review of performance to date, the development of detailed KPIs and comparison with other viewing attractions, regional attractions and relevant speciality attractions.
- Review of pricing and marketing strategies, and recommendations for future pricing.
- Review of existing spend opportunities and identification of any additions or strategies to enhance the performance.
- Review of the naming rights deal.
- Review of the catering offer and outsourced strategy, and recommendation of a future strategy.
- Review of the business case underpinning the construction of the attraction.
- In depth discussion with management and review of operations and consequent further recommendations.
- Careful testing of potential future attendance numbers including sensitivity analysis.
- Review of potential additional services or activities which could be added outside of the main viewing attraction, but on site, to supplement the business case.

- Development of a new 10 year business case integrating their recommendations with forecasts of profit and loss and cash flow and consideration of the obligations to its funders and equity partners as well as reinvestment; they propose to deliver two cases, one a continuation of the business 'as is', the second based around the implementation of the identified strategies.

3.9 The next step is for a further report to be brought to the December 2018 PR&G committee, making a recommendation on the preferred option for the restructure. This will also address the requirement specified in June that , as part of any restructuring deal, the council seeks receipt of 25% of ticket sales over an agreed level of visitor numbers.

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

4.1 This report sets out the potential options open to the council and at this point does not recommendation a preferred option. The report to December 2018 PR&G committee will recommend which option is best to pursue.

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

5.1 The i360 has received a wide range of supportive statements from local businesses, charities and other organisations. Businesses have focussed on the beneficial impact on tourism to the city and the improvements made to a previously run down part of the seafront.

5.2 The council is due to receive 1% of ticket sales in perpetuity to spend on local initiatives with about 25% of this sum allocated to fund part of the landscaping works and discussions continue with local organisations about how to spend the remainder.

#### **6. CONCLUSION**

6.1 For the reasons set out above and in Appendix 2, it is proposed that members note the restructuring options available ahead of the final decision being taken in December.

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

##### Financial Implications:

7.1 The i360 is due to make payments of £1.492m every 6 months until June 2041. The council pays borrowing costs of £0.922m relating to the loans to the i360 to the Public Works Loan Board on the same day as the payments are due from The Brighton i360 Ltd . At a special Policy Resources and Growth Committee on the 28<sup>th</sup> June 2018, £0.570m of the payment due from the i360 company was deferred until 31 December 2018.

7.2 The council has commissioned specialist advisors to support options for loan restructuring; commercial advisors to support the attraction in maximising income; and legal advisors to support state aid issues relating to the Market Economy Operator Principle. The estimated costs of these advisors is £0.050m

and is funded in the short term from the councils Strategic Investment Fund and is expected to be reimbursed by the Brighton i360 Ltd.

- 7.3 Appendix 2 sets out the loan restructuring options being considered with GVA and the report to this committee in December will recommend an option along with the financial implications for the council of that option.

*Finance Officer Consulted: James Hengeveld*

*Date: 01/10/18*

Legal Implications:

- 7.4 Loan arrangements such as this comply with state aid law if they meet the market economy operator principle (MEOP). This means that the council is required to act in a similar manner to a commercial investor in the same circumstances. The council's legal advisors will work with GVA to ensure that the option which is ultimately recommended to this committee complies with this test.
- 7.5 The council's external legal advisors, Osborne Clarke, have drafted a reservation of rights letter for the council to send to the i360. This is not strictly necessary as the loan agreement is clear that the council does not waive its rights under the agreement by failing to take enforcement action if there is a default but the letter will ensure that this position is formally on record.
- 7.6 The report considered by this committee on 28 June 2018 set out the options available under the loan arrangements including enforcing the council's security over the shares or assets or appointing a receiver.

*Lawyer Consulted: Alice Rowland*

*Date: 01/10/18*

Equalities Implications:

- 7.7 The i360 is accessible throughout to people with disabilities and has improved access to the seafront lower promenade by the building of a new lift to the east. Unisex toilets are open to members of the public who are not using the centre or visiting the attraction. The i360 has introduced a range of concessions for local residents and free tickets for local schools. The i360 is a living wage employer and does not offer zero hour contracts. There is an apprenticeship scheme in place and training opportunities for staff at all levels of the organisation.

Sustainability Implications:

- 7.8 The i360 is low energy use 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 will provide 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. Purchasing policies are based on sourcing environmentally friendly local products particularly the Sky Bar, café and restaurant.

Any Other Significant Implications:

- 7.9 All significant implications are dealt with in the body of the report.

## **SUPPORTING DOCUMENTATION**

### **Appendices:**

1. The final decision text from the PR&G Item on the i360 on 28<sup>th</sup> June 2018
2. Report from GVA: Brighton i360 Loan Restructuring Options

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

None

### **Background Documents**

None

## **Appendix 1: The final decision text from the PR&G Item on the i360 on 28<sup>th</sup> June 2018**

Decision:

RESOLVED: That the Committee:

- (i) Noted the financial and commercial performance of the i360 to date.
- (ii) Noted the action so far taken by the i360 to reduce costs, increase visitor numbers and increase revenue generating capacity.
- (iii) Agreed to defer £570,007.73 of the £1,492,304.25 due on 30 June 2018 until 31 December 2018 on the basis that the i360 will pay the council £922,296.52 to enable the council to pay the PWLB the same amount on the same day.
- (iv) Agreed not to take default action at this stage in relation to the failure to hit the financial ratios set out in the loan agreement.
- (v) Noted that representatives of the council, LEP and i360 Board will meet regularly to discuss a long term restructuring of the loans and that a further report will be brought to PRG Committee on 6 December 2018, if it is anticipated that the debtor will default in making December's payment, that the Committee be fully apprised of the options as set out in Section 4 of this report, including that BHCC enforces its security.
- (vi) Authorised the Executive Director Economy, Environment & Culture, in consultation with the Executive Director Finance & Resources, to commission a specialist commercial adviser to provide advice and options to the council for a long-term loan restructuring and advise on whether those proposals meet the market economy operator principle.
- (vii) Authorised the Executive Director Economy, Environment & Culture, in consultation with the Executive Director Finance & Resources, after discussion with the i360 Board, to procure additional support (such as a commercial advisor with specialist experience of visitor attractions) for the i360 management and Board to help them improve the financial performance of the i360.
- (viii) Allocated a sum of £50,000 from the Strategic Investment Fund to meet the costs of the recommendations at 2.1.6 and 2.1.7, and that these costs are recovered with interest from the Brighton i360 Ltd by adding this sum to their loan repayments.
- (ix) Instructed Officers to seek to recover the full costs, detailed in 2.1.8, from the Brighton i360 Ltd and ensure that those costs are added to the debt.
- (x) Requested that Officers seek to negotiate, as part of any restructuring deal, agreement that BHCC will receive 25% of ticket sales, over an agreed level of visitor numbers.
- (xi) Instructed Officers to present a progress report to the October meeting of this Committee, which outlines a full range of restructuring options that seeks to reduce the financial and reputational risk to the Council.

- (xii) Requested that should there be a material change of circumstances resulting in a significant departure from the assumptions contained in this report that an urgency PRG committee be convened.