

Subject:	Waterfront project – Conditional Land Acquisition Agreement		
Date of Meeting:	5 December 2019		
Report of:	Executive Director, Economy, Environment & Culture		
Contact Officer:	Name:	Katharine Pearce	Tel: 01273 292553
	Email:	Katharine.Pearce@brighton-hove.gov.uk	
Ward(s) affected:	Regency, East Brighton, Queens Park, Rottingdean Coastal		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT

- 1.1 This report seeks Members agreement to enter into a standstill agreement in relation to the Conditional Land Acquisition Agreement signed in April 2019 with Aberdeen Standard Investments (ASI). The purpose of the standstill agreement is to allow ASI time to further explore, and return with detailed proposals (including revised commercial and legal terms) regarding the potential for a new replacement for the Brighton Centre on the centrally located “central” site.
- 1.2 This follows recent feasibility work by the professional architectural team appointed by ASI, who are investigating the potential to locate the new c.10,000 seater conference and entertainment venue, on the centrally located site.
- 1.3 If a workable proposal could be found, it would replace the proposition to use the Black Rock site for the new venue location.
- 1.4 The above proposition will not delay Enabling works to the Black Rock site, the subject of a report on the same agenda for this committee.

2. RECOMMENDATIONS:

- 2.1 That the Committee authorises the Executive Director for Economy, Environment and Culture to agree the terms of and enter into a standstill agreement in relation to the Conditional Land Acquisition Agreement (CLAA) with Aberdeen Standard Investments
- 2.2 Agree that a commercial advisor is procured in order to support any future negotiations, to be funded from the Brighton Centre Reserve

3. CONTEXT/ BACKGROUND INFORMATION

- 3.1 The city has long sought a replacement for the Brighton Conference Centre and an agreement was reached in December 2018 which following a series of conditions being met, would ultimately allow for the purchase by ASI of the current Brighton Conference Centre site. As joint landowner of Churchill Square Shopping Centre and other surrounding landholdings, ASI remain uniquely well positioned to undertake a central site redevelopment. In addition, the aspiration of ASI to purchase the seafront site allowed the council to negotiate a number of key agreements within the CLAA which de-risked the city council from the costs of delivering the new venue, but allowed the council to build and own the new venue.

Local Enterprise Funding

- 3.2 Details of the CLAA are set out in the report to PRG on General Release dated 6 December 2018 and the subsequent Appendices 1 to 4.
- 3.3 The funding agreement included a sum of £12.1m of grant funding from the Coast to Capital Local Enterprise Partnership to be spent on a package of Enabling Works and on capital funding for the new venue, intended to be located at Black Rock.
- 3.4 At the time of the legal agreement (December 2018) it was still the intention of the city council and ASI to achieve the targets required to allow for both projects to share the C2C funding.
- 3.5 The city council officer team prepared to utilise the funds for the Enabling Package once the CLAA was signed in April 2019. However, due to revised timelines by ASI for the central site proposals, the team instead expanded the Enabling package of proposals to include a Marina access link and further pedestrian and cycle improvements. This proposed approach is set out in another report on this agenda, and would ensure the funds would remain with the project. It also supports the spirit of the C2C funds, which was to de-risk the Black Rock site and support its future regeneration. The approach ensures that the C2C LEP business case could be fulfilled and the timescales could be met.
- 3.6 On 14th October the C2C LEP confirmed this approach was acceptable during an on site visit and audit of the project.

Progress with the Conditional Land Acquisition Agreement (CLAA)

- 3.7 Since the signing of the CLAA in April 2019 Aberdeen Standard Investments (ASI) have been dedicating resource to revisiting the opportunities available on the Central site. This includes the Brighton Centre site, Kingswest site and NCP site to the rear of the Grand Hotel. With the acknowledged structural changes in the retail market, as intended by the CLAA, their first task has been to fully interrogate and understand what will support a commercial proposition for the long term on the Central site.

- 3.8 In July an approach was made to officers to see if exploring an option of a venue on the central site could be made to work and to check whether this would be received favourably by the city council if time and resource were invested.
- 3.9 The proposal presented as a concept at this stage demonstrated that with the new land holdings now acquired by ASI, there would be an opportunity to revisit a venue on a centrally located site, rather than at Black Rock. It was understood by all parties that if this opportunity were to be fully explored, and the council were to support it, an agreement to “pause” the existing legal agreement would be required.
- 3.10 A 12 month timescale was agreed as reasonable in order to allow both a practical exploration of the logistics and capabilities of the site and interface with other uses, and also to agree broad commercial terms that would be acceptable to both parties. ASI undertook to begin drafting an agreement to share with officers.

Standstill Agreement

- 3.11 The 12 month timescale for the agreement will allow both parties to agree a proposed revised set of terms amending the original legal agreement, but most importantly, not a revoking of the current agreement.
- 3.12 The outcome of the commercial and legal negotiations will be reported back to this committee in 12 months time.
- 3.13 To support this process, a revised procurement process to appoint legal and commercial advisers is underway.
- 3.14 Aberdeen Standard Investments have written to the council with the following statement to support their decision:

“In order that ASI can investigate the viability of a venue being contained within the Central Site without it having a detrimental effect on ASI's rights under the CLAA, we think a standstill agreement is an effective way of allowing ASI the time to investigate such viability while continuing to retain ASI's contractual right to acquire the Central Site (and ASI having the right to progress the Black Rock development to obtain the Central Site if a venue at the Central Site is not viable).

We believe there are merits for both parties - as ultimately if the Central site solution does not work (for viability, procurement or other commercial, reasons) we would want to revert to 'Plan A'. At that point we could then be certain that no central site solution could be made to work. We are not requesting to Standstill to give time to explore Plan A but rather because there has been a material change to the potential location for the venue (which has significant economic and political benefits for the City) and so we require time to explore how to put together a viable revised commercial and legal structure.

The standstill agreement would effectively put a pause on all the parties' rights and obligations under the CLAA meaning that the parties' obligations to seek to satisfy the conditions and ASI's obligations to provide (or procure) the Waterfront East Pre-Construction Services (and deliver a venue at Black Rock) would be paused as would the parties' rights to review the satisfaction of the conditions

and bring about the termination of the CLAA (if such conditions have not been satisfied and there is no reasonable prospect that they will be).

The standstill agreement would have the effect that each of the condition dates would be extended commensurate to the length of the standstill meaning that at the end of the standstill period the CLAA would re-commence as if the standstill had not happened (save for the extension to the condition dates previously mentioned).

As we have discussed with council officers, we would expect a standstill period that is sufficient to allow the parties to determine the viability of developing a venue on the Central Site (including allowing the parties to reach a direction on the commercial structure of any revised commercial arrangement).

We would be happy to support and recommend a period of 12 months to our Board.

In addition, from the expiry of the 12 month period, we would need to agree a revised timetable to discharge the first conditions from the moment the Standstill expires. We suggest 3mths - but are open to discuss.

We have this week (w/c 21.10.19) received Board Approval to the principle of entering a Standstill - subject to agreement of dates.

We do acknowledge there are other ways to extend the agreement (exchange of letters for instance) but we believe this is the most sensible course to take - bearing in mind the fact we want to explore the central site solution which we feel on face value is a credible, deliverable, exciting and a less expensive solution for all parties”.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 The legal agreement with ASI allows for certain conditions to be met within certain timescales. The city council would need to agree to extend the timescales for the First Condition, expiring in December 2019, if the standstill agreement is not approved.
- 4.2 ASI believes a central site solution can potentially be delivered. It is considered that the standstill approach rather than extension of the current legal agreement (which relates to the two site solution) is therefore considered a positive opportunity for both parties.
- 4.3 The two site solution, as encapsulated within the CLAA contains a range of commercial and legal safeguards for both parties which the standstill agreement does not provide for. This will be an area of negotiation during the 12 month period.
- 4.4 A process for amending the CLAA and revisiting the above arrangements and the many others agreed within the CLAA, will be required in advance of the next meeting of this committee in 12 months.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 ASI has begun a soft engagement with a number of key stakeholders in the immediate area to appraise them of their revised plans. ASI inform us these have been received largely positively, subject to further information being forthcoming with regard to more detailed plans. Ongoing engagement on the project will be led by ASI.

6. CONCLUSION

- 6.1 The city worked for over 10 years to explore how to re-provide a venue on the current central site and also ensure a business case to support its re-provision. Aberdeen Standard Investments are in a position to assist the council in progressing this aspiration again. This remains due to the fact their own interests, and that of the city, remain largely aligned. They are seeking a long term performing asset to support the growth of their pension fund. The city council is seeking a long term performing venue to support its local economy. This would suggest there is everything to be gained by both parties further exploring this opportunity.
- 6.2 Lower build and infrastructure costs are also extremely attractive while funding is extremely tight. Local authorities face difficult choices about spending options and the reduced risk profile this proposal appears to offer coupled with lower potential cost has to be something that the council explores if this can limit the call on future public funds.
- 6.3 If a central site solution can be delivered on commercial and legal terms that are acceptable to the council, this will also release the opportunity to revisit what might be delivered at the Black Rock site. At this point, the enabling project will be complete and the site will have been improved, allowing a commercial proposition to be explored that also meets the aspirations of the city plan and seafront strategies for a signature high quality development that will help regenerate the eastern seafront for the long term.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 The Brighton Waterfront scheme includes the re-provision of a conference centre for the city at an estimated cost of £143.6m. The existing financial plans for this include funding the new conference centre through a combination of capital receipts from the site; Local Enterprise Partnership funding; and borrowing with the financing costs funded from improved financial performance of a new centre, and increased business rates retained in the city.
- 7.2 The proposals to standstill on the existing scheme and pursue a single site option has the potential to drive down infrastructure costs and provide economies of scale and therefore potentially improving the robustness of the business case. Nearly £78m of the capital cost is funded through increases in business rates over a 20 year period. The methodology for future retention of business rates by local authorities is currently under review with the government plans for implementing an amended scheme now deferred until at least 2021/22. The proposed new scheme includes resets which could result in the potential loss of

part or all of the additional income generated and therefore represents a significant risk to the funding of the project. Officers are therefore exploring whether a separate deal could be struck with the Government for this project. Similar deals have been struck by other councils. If an alternative scheme reduces the capital costs of the project, this will help mitigate the risks to the current funding model.

- 7.3 The Waterfront report to Policy Resources and Growth Committee in December 2018 outlined the council funded project development costs and confirmed these would be met from the Brighton Centre Redevelopment reserve. Any council costs incurred during the standstill period and in connection to the evaluation of a revised single site proposal will be met from this reserve which currently stands at £2.8 million.
- 7.4 A report on the enabling works at Black Rock is included on this committee agenda highlighting the planned works at the site funded from Local Enterprise Partnership (LEP) Grant. The standstill agreement outlined in this report is not expected to impact on those works or the LEP funding.

Finance Officer Consulted: James Hengeveld

Date: 21/10/19

Legal Implications:

- 7.5 The legal implications of the current CLAA are set out in full in the report to Policy & Resources on 6 December 2018.
- 7.6 The CLAA was executed on the 16 April 2019. The First Condition should be completed by the 17 December 2019. The failure of the parties to meet the First Condition enables either party to terminate the agreement by serving notice on the other party.
- 7.7 At this stage there are insufficient details relating to the new proposal to consider the legal and procurement issues but these will be reported to this committee if appropriate in due course.
- 7.8 ASI have provided a draft standstill agreement which Officers are reviewing with the Council's external legal advisors.

Lawyer Consulted:

Alice Rowland

Date: 29/10/19

Equalities Implications:

- 7.9 Equalities implications of this project will be dealt with as part of any future scheme proposals. These will most likely relate to the funding and ownership model for the future venue, design of the spaces and the mix of uses that is proposed for the central site.

Sustainability Implications

- 7.10 The Climate Emergency now declared by this council will have considerable impacts for the Waterfront project and officers have begun to engage upon a mechanism to support circular economy principles being adopted as part of the

project. The setting up of an advisory circular economy panel to inform the central site project during early conceptual stages has been proposed. This is an example of where the council may wish to influence how the work on the central site is progressed, bearing in mind that the development timescale will result in delivery of a new set of proposals and final build at some point in the next 5-8 years. It is therefore recommended that zero carbon aspirations be built in from the outset and to this end a panel set up during the next 12 month period to advise and support the Project Board and Aberdeen Standard Investments as the project is explored further.

Any Other Significant Implications

7.11 Corporate and Citywide

Previous economic appraisals based upon a new venue of 10,000 seats and the regeneration of two significant seafront sites anticipated the combined developments would be worth an estimated £540 million to the city and create an additional 2,000 jobs. Boosting spending by £150 million annually within the city, they would earn an extra £4.6million a year for the public purse – seen as crucial in an era of reductions to council funding. A revised and updated socio-economic report applicable to the one site solution will be available for the committee meeting.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents in Members' Rooms

1. Policy and Resources Committee December 6 2018

Background Documents

