

Brighton & Hove City Council

Policy & Resources Committee

Agenda Item 136

Subject: Brighton i360 Loan Update

Date of meeting: 27th February 2023

Report of: Executive Director Economy Environment & Culture

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Ward(s) affected: All

Note: Urgency

By reason of the special circumstances below, and in accordance with section 100B(4)(b) of the 1972 Act, the Chair of the meeting has been consulted and is of the opinion that this item should be considered at the meeting as a matter of urgency.

Note: Reasons for urgency

The special circumstances for non-compliance with Council Procedure Rule 3, Access to Information Procedure Rule 5 and Section 100B(4) of the Local Government Act 1972 (as amended), (items not considered unless the agenda is open to inspection at least five days in advance of the meeting) were that discussions with Brighton i360 have been ongoing, and information to inform this report was not submitted in time to finish the report and release it in time.

1. Purpose of the report and policy context

- 1.1 This report responds to the notification from Brighton i360 that they would default on the loan repayment required at the end of December 2022. It updates members on the latest position with the i360 loan, and considers proposals from Brighton i360 about a radically new operating model that has the potential to increase income and be more closely aligned with what visitors coming to the city want in terms of experiential attractions.
- 1.2 The report is clear that the i360 is in breach of the terms of the loan, and that the council views this with the upmost seriousness. It remains the case with the i360 that the guiding principle is to ensure the repayment of as much of the public money that is owed, as quickly as possible.
- 1.3 The report proposes that the city council reserves its right to take steps to enforce its rights under the loan and security documentation and holds off from exercising step-in rights. The proposal is to closely monitor, with the assistance of experts, the progress of the i360 in implementing its new business model over the summer season and into 2024.

2. Recommendations

- 2.1 That Committee notes the proposed new strategy for the attraction as set out at Appendix 1, along with the potential improved financial outcomes set out in the Part 2 report.
- 2.2 That Committee reaffirms that the council's key focus is to ensure the repayment of as much of the public money that is owed by the i360, as quickly as possible.
- 2.3 That Committee reserves the council's right to step in and enforce its rights under the loan agreement and security documentation.
- 2.4 That Committee agree to the commissioning of restructuring experts to advise the city council with the aim of ensuring that, among other things, regular and frequent finance updates and cash flow forecasts are provided by the i360 to the council for monitoring purposes.
- 2.5 That Committee agrees that the i360 Member Working Group should closely monitor implementation of the first phase of the new strategy over the summer 2023 season, receiving advice from the experts appointed under 2.4, above.
- 2.6 That Committee agrees that officers should return to this committee in summer 2023 updating on development and implementation of the summer 2023 business plan, and again in by the end of October 2023 to report on performance over the summer 2023 season and consider next steps.

3. Context and background information

Background

- 3.1 Previous reports have set out the positive impact the i360 has had on the city's visitor economy and for raising the profile of the city, and have highlighted the findings of the [Brighton i360 Economic and Social Impact Report](#). However, the attraction has struggled to repay the council loan in full, with parts of many payments being deferred and rolled back into the loan, but never written off. This problem has been especially acute due to the Covid-19 pandemic limiting visitor numbers to the city and forcing closure of the attraction. More recently the cost of living crisis and inflation have affected both income and costs for the i360, as experienced by all parts of the visitor economy.
- 3.2 The principles of a loan restructure were agreed by Members in December 2019, but the Covid-19 pandemic struck before the restructure could be enacted.
- 3.3 A report to this committee on 07/07/22 set out a proposed new restructure which members agreed. The main principle of the restructure is a cash sweep. This means that every six months the council would take nearly all cash within the business, leaving only an operational cash float. There was also to be a minimum payment, meaning a minimum the cash sweep has to

achieve or the i360 would be in default. This was to ensure that the loan was repaid within a reasonable timescale. As with all previous decisions on the i360 it did not write off any of the principal loan amount, but it did seek to reduce the interest rate to make the monthly payments more manageable.

Current Position

- 3.4 Following the July 2022 decision, work progressed on revising the loan agreement to accord with the decision made by members. Good progress was made on the detail of the drafting, but before it could be signed the Chair of the i360 Board wrote to the council in October 2022. This letter stated that the impact the cost of living crisis was having on the economy, combined with rising costs in a number of key areas, was having a negative impact on cash flow. This meant that the business plan and cash flow forecast the restructure had been based on was no longer appropriate.
- 3.5 This inability to make the payment is clearly extremely disappointing, and following receipt of that letter officers and the i360 Member Working Group (MWG) have met with the i360 board on a number of occasions and have reminded them in the strongest possible terms of the severity of the situation. Additional legal advice has been sought by the council, and the council has advised the i360 they should be seeking restructuring advice too. If the i360 cannot afford to pay its main creditor, then the responsibility of the directors of the attraction is to act primarily in the best interests of its creditors, rather than its shareholders, and this has also been made clear to the board.
- 3.6 The i360 MWG also asked officers to instruct the i360 to look at other strategic options for the future of the attraction as a matter of urgency because the attraction can clearly not service the debt to the council in its present form.
- 3.7 In February the i360 made a payment of £50,000 in lieu of the December 2022 payment. The restructure envisaged a payment of £900,000 in December, and the original loan agreement (which remains in place as the revised one wasn't signed) requires a payment of £1.492m. Clearly a step-change is needed in the attraction's performance to be able to repay the council loan.

Council's Approach and Reservation of Rights

- 3.8 As with all previous discussions around the i360's performance, the primary consideration is protecting the public purse and securing repayment of as much of the loan as quickly as possible. This should be the overriding consideration when deciding next steps. Stepping in and taking control of the asset, as is the council's right under the loan agreement and security documentation, has been dismissed to date due to the fact this would not actually see the loan repaid any quicker. However, time and options are running out and the situation cannot continue in its current form without an enforcement of the council's rights becoming the only remaining option. Any non-enforcement at this stage is not a reflection on the city council stepping back from the problem, but is about exploring best route to achieving payment and the best outcome for the council's stakeholders. The i360

MWG agreed to sending a 'Reservation of Rights' letter in January 2023 which reserved the council's right to step in and/or enforce its rights under the loan agreement and security documentation at any time, and makes clear that not doing so immediately does not infer the council is writing off the debt or waiving any of its rights.

Revised Strategic Vision

- 3.9 In response to the instruction from the i360 MWG to look at other strategic options for the future of the attraction, the i360 has undertaken a complete and thorough profitability audit of every part of the premises, and held a strategy workshop to look at options.
- 3.10 The proposed vision from the i360 at Appendix 1 is to bring a wider range of attractive and more experiential spaces into the building. The i360 is a large area of prime seafront building, and at the moment the viewing tower is the only major draw, with other spaces being ancillary to it. This proposal does not seek to replace the viewing tower experience, but rather put the tower at the centre of a much more significant visitor attraction offering.
- 3.11 This new approach is about driving additional income, but it also accords with the council's [Visitor Economy Strategy](#). The VES states that the city *"needs to use its assets to create experiences that bring to life 'free-thinking city' and make it mean something to visitors."* And that *"Brighton & Hove already has a rich choice of experiences, but they need to be much better packaged, presented and promoted to visitors. There is also potential to develop more engaging experiences that help to roll out the brand values and provide reasons for visitors to stay longer."*
- 3.12 3.12 This new strategy is still emerging, and the business plan is being developed. In reality, there will be some easier and quicker measures that can take place very soon, ready for this summer season, and then more work taking place over the quieter winter 23/24 season. The summer 2023 proposals involves agreements being entered with a number of external operators who could take space in the building and is subject of live commercial negotiations. The Part 2 report includes more detail on the type and nature of possible operators, and estimates (across a range) for what income the new uses might drive. These figures are in part 2 due to the commercial nature of the negotiations that are ongoing. Those figures in Part 2 are also too early to constitute a formal business plan – but it was considered necessary to share the approach and vision with Members before they went further.

Strengthened Governance

- 3.13 It is proposed that if members feel the vision is supportable, then the i360 should have time to develop the idea and return to this Committee in the summer with more detail and a full Summer 2023 business plan. If that is successful then the by the autumn a longer term business plan should have been developed for the whole space – also to be considered by Policy & Resources Committee.

- 3.14 Between these milestone decision making stages, it is proposed that the i360 Member Working Group (which will have new members post-election) takes on the close oversight of the development and implementation of the plans. This would involve monthly meetings with the board. The timetable for this governance would be as follows:
- 27/02/23 P&R Committee Considers Revised Strategic Vision
 - Mar/April 23 Existing MWG Meets with Board monthly
 - 04/05/23 Local Election
 - 25/05/23 Annual Council selects new members for i360 MWG
 - June/July/Sept 23 New i360 MWG Meets Board Monthly
 - Summer 23 P&R Considers detail of the Summer 23 business plan
 - 05/10/23 P&R Considers the five year business plan & next steps
- 3.15 As well as the strategic loan restructuring advice from the Avison Young and the council's enhanced legal advice from Osborne Clarke, we have been advised to seek support from corporate and operational restructuring experts. This adviser would closely watch the steps the i360 are taking, including monitoring revised cash flows on a regular basis to help ensure the direction of travel remains positive. This expert would advise the i360 MWG and flag early if promised steps are not progressing positively. The cost of this is being determined, but would most likely need to be procured under a waiver of contract standing orders for reasons of timing.

4. Analysis and consideration of alternative options

- 4.1 This report recommends the principle that the city council should prioritise ensuring the repayment of as much of the public money that is owed, as quickly as possible. Options around enforcement and stepping-in would crystallise the debt on the council's balance sheet, requiring it to be written off at a point when the financial impact on the council would be the highest. It is therefore recommended that the board and management be given time to implement their new strategy for a successful attraction at the i360. This will likely be the best option to maximise the council's return and protect the public purse. However, the council does retain its right to enforce its rights, including the right to step in, if the new strategy appears to be failing.

5. Community engagement and consultation

- 5.1 The i360 Member Working Group has been kept apprised of progress with both the measures to improve performance and the work around the restructure and have been consulted on taking this approach.

6. Conclusion

- 6.1 The report does not seek to amend or change the terms of the loan or security and does not absolve the i360 of the need to repay its loan to the city council. However, it proposes giving the board and management of the attraction time to develop and implement the first stage of their proposals for a new operating model. If the measures are judged to be working positively by the end of the summer then the city council will consider next steps in October. These may either be to continue to not enforce our rights while

i360 continues to make improvements with more significant interventions, or to possibly negotiate a new loan restructure. If the measures are judged not to be working as planned then it is raises the prospect of the council having to step in and take control of the asset or exercise other enforcement rights.

7. Financial implications

- 7.1 Policy and Resources Committee agreed a revised loan agreement with the i360 Ltd at its meeting on 7 July 2022. The revised loan agreement was not enacted and therefore the original loan agreement is still in place.
- 7.2 The original loan was for £36.222m but due to deferred payments this debt has now risen to £44.111m which takes into account payments of £0.700m in June 2022 and £0.050m in January 2023. In addition to this debt a loan from Coast to Capital Local Enterprise Partnership (C2CLEP) to i360 Ltd of £4.060m was novated to the council at no cost to the council.
- 7.3 The outstanding debt comprises the original principal plus the agreed interest accumulated on the loan at the agreed rate of 6.53% (which is a margin of 3.75% above the average rate charged for loans undertaken by the council from the Public Works Loan Board of 2.78%) less actual payments received from the i360 ltd.
- 7.4 The marginal interest charged has been held in a reserve but not utilised as it has not been backed by actual cash received. This reserve stands at £10.440m.
- 7.5 Given the uncertainty of future receipts from the i360 the council has changed its approach to accounting for the outstanding debt which is reflected in the budget set by Budget Council for 2023/24. This revised approach ensures the council plans to repay all debts relating to the loan to the i360 Ltd, within its accounts. The approach assumes the continued operation of the facility until the end of the existing loan term (2041) and a minimum contribution from the i360 attraction is received each year.

Name of finance officer consulted: *James Hengeveld* Date consulted: *23/02/23*

8. Legal implications

- 8.1 The Council continues to take external legal advice in relation to the loan restructuring and insolvency matters and the external advisors will continue to attend and closely advise the Members Working Group. The legal implications of enforcing the Council's security were set out in full in the previous reports to Committee, including the report which went to Policy, Resources & Growth Committee in June 2018.

Name of lawyer consulted: *Elizabeth Culbert* Date consulted *24/02/22*

9. Equalities implications

- 9.1 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 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.

10. Sustainability implications

- 10.1 The i360 is a low energy user, with energy recovery when the pod is descending. The installation of heat pumps provides air heating and cooling in the pod and main building and provides an estimated 30% of the total thermal heating energy use. All electricity is purchased from renewable energy sources. Grey water and rainwater recycling has been included. Purchasing policies are based on sourcing environmentally friendly local products particularly the Sky Bar, café and restaurant.
- 10.2 At the end of the life of the attraction, decommissioning the i360 in a way that fits with circular economy goals will remain the responsibility of the owners.

Supporting Documentation

1. Appendices

1. Brighton i360 Hub Proposal (Revised Strategic Vision)

2. Background documents

1. [Brighton i360 Economic and Social Impact Report](#).
2. [Brighton & Hove Visitor Economy Strategy 2018-2023](#)