POLICY RESOURCES & GROWTH COMMITTEE	Agenda Item 87 Brighton & Hove City Council

Subject:		**Waterfront – Conditional Land Acquisition Agreement**	
Date of Meeting:		**6 December 2018**	
Report of:		**Executive Director Economy Environment & Culture**	
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Ward(s) affected:		**Regency, Queens Park, East Brighton, Rottingdean Coastal**	

FOR GENERAL RELEASE

PURPOSE OF REPORT AND POLICY CONTEXT

1.1 This report seeks Members agreement to enter into a Conditional Land Acquisition Agreement (CLAA) between Brighton & Hove City Council and a trust owned by Aberdeen Standard Investment (ASI). Entering into the CLAA will mark the beginning of a long term project to develop a new conference centre and entertainment venue at the council owned Black Rock site, with a new retail and leisure destination through the expansion of Churchill Square, as well as securing the physical regeneration of two significant parts of the city's seafront.

1.2 A key aim of the Waterfront project is to secure the future of conferencing and entertainment in the city through the development of a new venue at Black Rock. The current Brighton Centre opened in 1977 and continues to perform well. However, without significant investment it is coming towards the end of its building life and as such an increase in operational costs. The search for a mechanism to replace the current Brighton Conference Centre began as long ago as 1998, when the new Brighton and Hove unitary council began to explore options for renewal or replacement. Securing a further 50 year life in the present building along with an income source to pay for it (assuming the present building could be upgraded) has proved un-fundable and undeliverable. Several attempts over the years to fund a new building on the existing site have proved to be unworkable. This project provides a viable solution to funding the development of a new Centre.

1.3 At the same time as requiring a replacement for the conference centre, a key objective of the City Plan Part One (DA1) has been to secure a new expanded retail and leisure destination at the Churchill Square site. As joint landowner ASI remain uniquely positioned to undertake such an expansion. The need to refresh and update the current shopping centre offering has always provided a major opportunity to link the current shopping centre to the seafront and, to reintroduce some of the previous pedestrian linkages that existed. In addition, with the changing nature of retail now a stark reality for the high street, ASI as owners of a

Shopping Centre Trust and of Churchill Square Shopping Centre remain well placed to plan resilience and sustainability into a new centre.

1.4 The Waterfront Project brings the above two objectives, for expanded retail & leisure and for new conferencing & entertainment, together. Each separate project supports the delivery of the other. A staged agreement provides formal Gateways that incentivise each party to work with the other. By delivering a new retail and leisure destination on the central site, the council ultimately achieves a brand new venue at Black Rock. For ASI, by leading the delivery (and funding the development, at risk) for the Venue project, they access the Brighton Central site for future expansion, but only once all 7 conditions have been achieved by both parties.

1.5 In light of the above, in December 2016, Policy and Resources Committee therefore authorised officers to enter into a conditional land acquisition agreement (CLAA) with Standard Life Investments in order to deliver the above Waterfront project. The final terms of this agreement have now been agreed with Aberdeen Standard Investments (as they are now called, following the merger of Standard Life Plc with Aberdeen Asset Management PLC) and this report recommends the council enter into the conditional land acquisition agreement to allow the two parties to commence the first stage of the project.

2. RECOMMENDATIONS

2.1 Authorise the Executive Director for Economy Environment & Culture, in consultation with the Executive Lead – Strategy, Governance & Law and the Director of Finance, to enter into the Conditional Land Acquisition Agreement with JTC Fund Solutions (Jersey) Ltd and SG Kleinwort Hambros Trust Company (CI) Ltd[1] as summarised in Appendix 1.

2.2 Authorise the Executive Director for Economy Environment and Culture and the Executive Lead Strategy, Governance & Law, following consultation with the Group Leaders, to make any final minor amendments to the CLAA.

2.3 As previously agreed by P&R committee in April 2016, to confirm ongoing authorisation for officers to retain the current conference subvention budget of £1m per annum in order to ensure necessary support for conferencing in the city during any future closure period *and* to attract conferences to the new venue once opened.

2.4 Agree that 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 the financial implications of this report.

[1] The Jersey based property unit trust owned by ASI – see paragraph 4.25

2.5 Agree that the successful Local Growth Fund bid (Round 3) of £12.1m be utilised to begin a package of Early Works to prepare the Black Rock site for development.

2.6 Agree that the Brighton Centre Redevelopment Reserve, currently at a value of £2.8m, will continue to be used to fund internal project development costs incurred by the council on the Central and Black Rock sites as set out in paragraph 4.13 for a period of up to 8 years.

2.7 Agree that the Venue Operator Procurement Strategy be considered by a future meeting of PR&G at the 3rd Condition date, with a view to selection of a Venue Operator by the 4th Condition date.

2.8 Note that PR&G Committee will be asked to confirm project proposals on both the Black Rock site and Brighton Central site at a future meeting (at the stage referred to as Condition 4).

2.9 Note that a future PR&G Committee will be asked to confirm arrangements to enter into the terms of the building contract (as per Condition 6) and also the Venue Operator Agreement (at the stage referred to as Condition 3).

2.10 Agree that a future PR&G committee will make any decisions in relation to land assembly on either of the two sites, in relation to Condition 6.

2.11 Agree to establish a cross-party Member Working Group, consisting of 1 Member from each Group, to oversee the next stages of the project and that the Executive Director of Economy, Environment & Culture and the Executive Lead – Strategy, Governance & Law be granted delegated authority to agree the terms of reference for the Working Group following consultation with Group Leaders.

3. BACKGROUND INFORMATION

3.1 The Waterfront project has the capability to be transformational for the city. Redevelopment of the two strategic seafront sites will deliver investment of over £540m and the combined sites will also bring wider regenerative benefits for the city centre and the eastern seafront. It will also require, and act as a catalyst to, improvements to transport links, both between the new venue at Black Rock and the city centre and potentially Brighton station, to support movement of delegates and concert attendees. It will also help underpin the business case for strengthened east/west links along the seafront. Driving new footfall day and night along the eastern seafront will also support redevelopment opportunities for Madeira Terrace and strengthen the business case for new uses there. This will help during the off peak and shoulder seasons, as it does with the city's hotel sector, supporting trade when the sun isn't shining.

3.2 The twin main objectives of the Waterfront project therefore remain as follows:

- To protect and grow the local economy by supporting the conference industry, and growing the entertainment industry via provision of a new financially and environmentally sustainable and high quality venue at the Black Rock site, on the eastern seafront.

- To transform a prime seafront city centre site with a new, 21st century shopping and leisure destination, reconnecting to the seafront, creating new interior urban public realm with sea views, and bringing in new uses including leisure opportunities, to the city. To revitalise this part of the city and deliver a shopping and retail experience for residents and visitors in tune with future consumer needs.

3.3 The Waterfront project achieves this dual purpose by combining the core objectives of each party into the one agreement. Each party is therefore incentivised to assist the other in achieving their objectives. This is a partnership project where both parties have the capacity to achieve far more by working together, than apart.

3.4 The Waterfront project still remains at a formative stage – with the Conditional Land Acquisition Agreement marking the formal start of the project.

3.5 The legal agreement has been drafted to ensure that there will be further opportunities for the city council to oversee and input to key stages. In particular the following decisions will be brought to a future Policy Resources and Growth Committee:

- Approval to commence the procurement of the venue operator and award the contract to the successful bidder – Condition 3
- Approval of the Development Strategies (including transport strategy) for both sites - Condition 4
- Approval to commence the procurement of the building contract and award the contract to the successful bidder – Condition 6

3.6 A cross party Waterfront Project Board will also oversee the arrangements as the project progresses and the project will have internal governance from procurement teams and Major Projects and City Regeneration team throughout.

Context

Retail Environment

3.7 Whilst the national picture for retail remains one of overall decline, there is also a growing awareness of the changes taking place which signal growth. Analysts are keen to point out that for those with new business models and where locations remain attractive the picture is very different from the national one. Brighton is fortunately regarded by retailers as one such place and the evidence bears this out, as vacancy rates remain at 5% in Brighton and Hove, compared to a national rate of 12%.

3.8 In terms of UK venue retail rankings, Brighton ranks 9th as a major city location with a VENUESCORE of 460. In terms of the United Kingdom as a whole, Brighton is beaten only by Manchester, Glasgow, Birmingham, Leeds, Liverpool, Cardiff, Nottingham and Edinburgh.

3.9 Retailers in Brighton also trade well and typically +7% above the chain average. Overseas retailers in particular remain focussed on finding space in Brighton and many of those already trading here do far better than their stores trading elsewhere in the UK.

3.10 Brighton and Hove also has three distinct core shopping offers that are shopped together as the retail experience. Churchill Square, Western Road and North Street; The Lanes, known historically as the jewellery quarter and the North Laine, now an extremely popular area famous for its Independent shops.

3.11 In terms of external competition. Regional competition is over an hour away from the city and local competition from out of town retail parks remains undeveloped in comparison to other cities, due to shortage of land.

Timing and adaptation

3.12 Given the strong performance of Brighton for retailers, the main challenge perceived by ASI in terms of demand, is in developing a new shopping destination that will work for the new business models of retailers and ensure that the new centre meets their changing requirements.

3.13 Programming these aspects in, as the market is newly evolving, is arguably the right time to plan. As consumers are refining what they think is a good shopping experience, the stores and business models for retail are adapting. Timing is right to begin learning from successful models elsewhere and developing a retail environment more attuned to the needs of the evolving shopping and leisure needs of new consumers. As retailers with old business models become more vulnerable to declining shoppers, those with new business models, in the right locations continue to succeed.

Independent retail sector

3.14 Recent stakeholder consultation, including a Visioning Panel of retailers and stakeholders in September 2018, highlighted the views of the independent sector, who remain generally supportive of the need to work with other sectors. Attracting visitors to the city and encouraging more residents to shop is seen as the main aim by all retailers. Competition between different sectors would appear to be less of a concern to those trading in the independent sector. Whilst this will need to be kept under close review as the project moves ahead, it is certainly a key part of the ASI approach to their development at Churchill Square. Acknowledging the important role the independent sector plays in the success of mainstream retail, and vice versa, is seen as the key to overall success going forward.

Conferencing and Entertainment

3.15 Nationally, confidence remains high in the MICE (Meetings, Incentive, Conference and Exhibition) sector with the latest research (UKCAMS, 2018) revealing that in 2017 the sector was worth an estimated £18.1 billion in venue and destination direct spend in the UK. Recognising that MICE activity takes place mid-week out of season, this remains an invaluable sector for Brighton and Hove to target, and this work is being led currently by VisitBrighton and the Conference Centre with their partners in the city. A focus on future conferencing to drive new business remains a key part of the VB strategy and this has a particular emphasis on:

- Association conferences which offers a clear strength for Brighton, bringing staying visitors outside summer months and during weekdays
- Academic, medical, scientific, public sector conferences which offer a market for potential growth, allied with conferences in specialist fields identified by the city's Ambassadors programme
- London-based corporates, positioning Brighton as a place for product launches, sales conferences, team building etc.
- International Conferences where there is a relatively low awareness of Brighton and Hove among international buyers and a potential growth opportunity.

3.16 Whilst the conference market earns relatively low levels of direct income for the conference centre (£1.4m in 2017) the benefit to the local economy remains undisputed, and this has been variously estimated at between £40 to £50m per annum, based on numbers of estimated delegate nights derived from conferences hosted at the Brighton Centre. The presence of a healthy future conferencing market is regarded as fundamental to the city's visitor economy and is identified as a critical component in the Visitor Economy Strategy approved at Tourism Development and Culture Committee in September 2018. Exactly how this translates into a final business plan for a new venue remains part of the next stages of the Waterfront project, however, feasibility work to date suggests that a venue offering flexibility to support a range of conferences sizes will be the working model, much as the Brighton Centre has been able to do since it opened in 1977.

3.17 Live shows play a complementary role to the conference programme at the Brighton Centre. The 2017 UK Music – Wish You Were Here 2017 research reveals more people than ever enjoying live events. In 2016, music tourism in the South East generated £496m of revenues, attracting 899,000 music tourists and supported 6,024 jobs.

3.18 To maintain and grow revenues the future venue will rely heavily on a robust strategy encompassing both shows and conferencing. By capitalising the rental income driven by this revenue, the future operator's rental payments will help fund a brand new venue for the city, whilst growing the live event calendar and supporting the conference events. The future business plan to be produced for the new venue, will outline how the balance between the two sectors will be achieved in the one venue, and also how the remuneration agreed will be structured to ensure there is support for a strong conferencing sector going forward. The Brighton Centre team and VisitBrighton will be central to this.

Business continuity during closure

3.19 A business continuity plan has been produced to highlight how the conferencing sector will be protected during the period of closedown, and this will be revised and updated for further review by PR&G as part of the procurement of a venue operator at Condition 3. It is intended that the new venue operator, once appointed, will work with a small team of staff from the current Brighton Centre, to protect existing business and build new business for the completed venue.

The Conditional Land Acquisition Agreement (CLAA)

3.20 The Conditional Land Acquisition Agreement sets out the logical steps that need to be taken that will lead through the assessment of viability and deliverability for both the Central and Eastern sites, and the eventual sale of the Brighton Centre site to ASI. The CLAA remains the framework to support the staged delivery of these two linked projects, which must remain linked in order for the project to be deliverable.

3.21 The fundamentals of the conditional acquisition agreement therefore remain as previously reported to PR&G in April 2016. Broadly speaking, the agreement is structured around a staged process in which a number of conditions need to be met or agreed before moving on to the next stage. The council and ASI have a role to play in achieving resolution of each condition and allowing movement to the next stage and there are options for the council *not* to proceed if the proposals under review e.g. at Condition stage 4, do not meet its objectives.

3.22 The series of conditions, as set out in Appendix 2 begin with a Project Set up stage (1&2), move towards a project approval and further viability stage (4) progress to planning submission for the two sites (5) and conclude with the Council and ASI establishing final project viability and the project becoming unconditional. This will take an estimated 7 to 8 years. Each stage has a long stop date which can be varied only with agreement of both parties. At the point the council has a building contract it is ready to enter into, the project will achieve final unconditionality and ASI effectively conclude their involvement in the eastern site.

3.23 At this unconditional stage, the council will then sell the Brighton Centre (Central site) at market value to ASI in accordance with the (previously agreed) Valuation Brief. At this stage, importantly, the council will also become liable for the development expenditure incurred by Aberdeen Standard Investments on its behalf in the previous years. The amount which can be recovered from the council is capped at £8m and is *only* payable once the project is unconditional and the venue judged to be affordable and deliverable.

3.24 If the building contract is *not* affordable, or the project is not viable for some other reason, or planning permission is not attained at Condition 5, the CLAA will not go unconditional and *the project costs will remain the liability of ASI*. If this happens, the council will be liable for the “clawback” costs only, i.e. those costs incurred by ASI which have increased the value of the Black Rock site and hence are “of value” to the Council. These are currently capped at £600k.

3.25 The final condition 7 leads to the disposal of the central (Brighton Centre) site. There is no legal obligation following the sale, for ASI to carry out the development of the central site however. Once the CLAA becomes unconditional (only if the project is also viable) but for some unforeseen reason ASI are not building out the central site straight away, ASI are instead required to meet the shortfall in Business Rates. By filling the financial gap in this way the council will still be assured that any borrowing to support delivery of the estimated £142m venue will be supported.

3.26 The agreement also provides for ASI to lead on aspects of the development which in normal circumstances would probably be led by the city council, such as procurement of a venue operator and building contractor. As the party with most financial exposure, ASI are reluctant to hand over complete control on these aspects to the council, therefore the agreement seeks to find a way to ensure both parties can manage their risk to an acceptable level by providing for a procurement route that involves ASI leading, and BHCC inputting and overseeing. ASI ultimately may fail to secure a project that can be delivered, but if this turns out to be the case, the majority of the cost risk at this point, remains with ASI. The agreement overall therefore has to strike a balance between the two parties in terms of risk and opportunity. For this reason, the drafting of the legal agreement has taken some further time to work through to an acceptable position by both parties.

3.27 Long Stop Date: The final set of conditions are parcelled into seven separate groups, see Appendix 2, and the final long stop date is 7 years and 4 months after the signature of the CLAA. (The "Ultimate" long stop date is 12 months later *if* the only condition outstanding at Unconditional stage is the viability of the Eastern site.)

3.28 Attached to the CLAA is a "Gateway table" (see Appendix 4) which itemises the stages of the project and who is leading or where activities are joint. This is a guide to the project at the time of signing the CLAA and will be subject to changes as the project develops.

<u>Commercial and financial considerations</u>

3.29 The council has employed GVA to advise and help negotiate the commercial elements of the agreement and provide advice on compliance with S.123 of the Local Government Act 1972 (which requires the council to achieve best consideration when disposing of land). GVA are accustomed to advising on large mixed-use retail-led developments and have been able to advise the council on the basis of what might be expected on similar types of local authority proposals in the marketplace. The challenge with the Waterfront project has been that as this is not a normal commercial land disposal, and ASI is taking considerable front end cost risk, further negotiation has taken place in some areas. GVA have been party to these negotiations, and they remain confident the final approach is one that would be commercially acceptable in the marketplace and meets the best consideration S123 test.

The issues now agreed between the parties include:

- Agreeing what constitutes the Qualifying Expenditure that ASI can spend at risk up to the Unconditional Date. Qualifying Expenditure encompasses all the expenditure spent by ASI in relation to the Eastern Site up to the point of the legal agreement entering the final stage, at which point, the council will be required to pay these funds back.
- Agreeing what amount of the Qualifying Expenditure ASI can clawback from the council, up to the Unconditional Date, if the project does not go ahead.

- Agreeing what will be in the Valuation Brief associated with sale of the Brighton Centre, to make sure the council receives a market value.
- Agreeing a mechanism for profit share if the proposals that are built on the central site turn out to be more profitable than forecast.
- Agreeing how to protect the council's position in relation to any enhanced planning permission which is achieved on the central site.
- Agreeing circumstances in which ASI can have an option to buy the Brighton Centre site if the Waterfront project does not go ahead due to a genuine termination. (i.e. an event that is not the fault of either party)
- What costs should be included, and what other factors allowed for, when making an assessment of viability of the Eastern and the Central site projects (as these tests remain material to the agreement i.e. if the project is not viable the legal agreement will terminate).
- Agreeing how the mechanism for "topping up business rates" (also known as TIF top up) will work within the agreement to ensure there remains no risk of the council being exposed to significant borrowing on a venue that cannot be paid for because the central site is not being built (otherwise known as" Business rate guarantee")
- Confirming how a change of control from ASI will be managed and what guarantees are required to ensure this does not change the terms of the current agreement to create greater risk for the council
- Agreeing a cap on ASI's liability for pre-construction services and whether ASI are liable for procurement services

Main commercial issues

3.30 These issues have been previously discussed with the Strategic Delivery Board and also reported to PR&G. GVA have formally set out their views in a letter to the council on the commercial issues within the CLAA and the approach taken to valuation of the council's property interest. They have recently re-confirmed in a letter, compliance with the council's statutory obligations under S.123 of the Local Government Act 1972, based upon the most updated version of the CLAA.

Land Assembly and Title issues

3.31 It is anticipated that for both the Black Rock site and for the Brighton Centre site third party land rights may need to be acquired to ensure there is a uniform land area for development or to satisfy the venue operator. By Condition 6 the CLAA provides that all land assembly issues will need to be satisfied. Where any third party land acquisition is required on the Eastern Site, this will also need to have been satisfied. On the Central Site the council will need to ensure that ASI are able to deliver its development proposals in accordance with the planning application.

Procurement

3.32 In addition to the early works contracts, the council will enter into two contracts itself: the building contract for the construction of the new venue at Black Rock, and the venue operator agreement. ASI will procure these contracts on the council's behalf and their consultants will owe a duty of care to the Council as part of this. The council will also provide a procurement officer who will give the council oversight of these procurements, part funded by ASI. The final roles and responsibilities of the parties in these procurements will be negotiated after the CLAA has been signed as part of Condition 1.

Pre-Construction Services by Aberdeen Standard Investment

3.33 ASI will employ and instruct a number of professional consultants, including the architect, who will carry out the pre-construction services on their behalf. The council will appoint a Project Monitor to sit alongside ASI during the pre-construction period, representing the council's interests in all aspects of the pre-construction phase, reporting regularly to the council and highlighting any issues or decisions that the Council may need to be aware of. This will assist ASI by ensuring the council is able to make decisions quickly to avoid delay. It will also allow ASI to lead the process whilst ensuring the council can monitor the delivery, and have input to, the pre-construction services.

Early Works and C2C Local Growth funding

3.34 The Council and ASI worked together in 2017 to secure funding from the C2C Local Growth Fund and a bid for £20m was submitted resulting in a final award of £12.1m.

3.35 The Council has since undertaken, via the outline business case submitted to the C2C LEP in March 2018, to use a proportion of the £12.1m funds allocated to the Waterfront project to de-risk and prepare the Eastern site for development. These works will involve the diversion of utilities, potential seawall extension, installation of necessary infrastructure and 'decontamination' (e.g. removal of previous sea wall and lido structures). A package of works has been developed in order to begin this work in advance of the wider project to ensure the area is "site ready" as soon as possible. Some transport infrastructure works may also be possible as part of these works, subject to reaching agreement on these and a successful planning outcome.

3.36 At the time of writing the C2C funds of £12.1m show a profile of spend of 500k in the current financial year (18/19). The project needs to be operational in order to allow work to begin on committing a proportion of this funding. C2C are required to account for expenditure and outputs on the project to Government. Officers and the council will therefore be prioritising this expenditure post signature of the CLAA and are already working with colleagues in transport and other teams to finalise the nature of these works. Licences for temporary arrangements at the Eastern site have been structured to allow for early feasibility works to take place, if required.

Project Director - Waterfront

3.37 Both ASI and the Council are required under the terms of the CLAA to appoint a project director for the Waterfront project. The council's project director will be responsible for the management of the council's rights and obligations under the CLAA and also for acting as an important ambassador for the project with external stakeholders and internally. This post will be recruited to shortly in order to meet CLAA timescales in the new year and to coincide with final agreement of the CLAA. Costs will be met from the Brighton Centre Reserve.

4 FINANCE AND COMMERCIAL ISSUES

4.1 Since April 2016 financial models have been developed to assess the viability of the Eastern site. The first model developed by Five Lines Consulting assessed the overall affordability for the council and the monthly cash flows during the construction period and annually thereafter. The second model has been developed internally to determine the maximum amounts the council can legally borrow against the estimated income streams generated by the project.

4.2 The Eastern Funding Condition relates to the Eastern site and is part of condition 7 of the CLAA. It is only satisfied when the funds available to the council are equal to the cost of building the arena. A funding statement is issued after satisfaction of every Eastern Funding Condition at the conclusion of the 5th Condition to monitor Eastern site viability and to allow any corrective actions to be taken. Condition 7 is only achieved when the project is:

- Affordable to the council
- Cash flows are positive throughout the project
- The guaranteed income stream is equal to or exceeds the amount needed to fund the remaining capital costs, after other funding sources are deducted
- All financial risks have been identified with appropriate contingencies included within the financial model and risk mitigation strategies developed

4.3 In the event that the required funding is not available, the CLAA allows ASI to meet any shortfall if they choose to do so. If ASI decides to make a payment, it will be recoverable as a first call on any later overage (profit share) payments. This is a step ASI can voluntarily take (the council cannot force ASI to do so) and can be by payment of a lump sum, instalments or serving a notice stating the retail/commercial elements of the Brighton Centre site will be developed in 5 years. This covers rates exposure. If there is also a gap in revenue and development costs for the venue, then ASI would also at the same time need to fill this gap.

4.4 The cost of the new conference centre and arena is forecast to be £132.7m. This represents an increase of £2.7m since the April 2016 report to Policy & Resources. Rolled up interest until income streams begin could add a further cost estimated to be £10.9m bringing the total cost requiring funding to £143.6m. The amount of rolled up interest could be significantly less at £6m if the council draws down borrowing as expenditure is incurred rather than upfront. This approach would mean the council takes interest rate risk for the construction period. The build costs have been provided by Gardiner and Theobald and will be updated as the project goes through further feasibility processes. The main funding sources for the project have not changed and are set out in the table below.

Latest Funding Forecasts		
	£ million	**£ million**
Income from the sale of the Brighton Centre site (assessed by the Valuation brief and subject to a minimum payment of £10m)		15.0
Local Growth Fund grant of £12.1m. There		12.1

Latest Funding Forecasts		
	£ million	**£ million**
will be further opportunities to bid for further grant funding as the project progresses.		
Contribution from the operator towards fit out costs		2.0
Council maximum borrowing levels :-		
Business Rates Based on 50% of the income generated by additional business rates over a 20 year period. The methodology for future retention of business rates by local authorities is currently under consultation and it remains unclear when the system resets, resulting in the potential loss of part or all of the additional income generated), Officers are therefore also exploring whether a separate deal could be struck with the Government for this project. Similar deals have been struck by other councils.	77.7	
Net Arena income Based on £1.5m per annum which is estimated to be the net rent payable over the life of the asset (40 years). This has been partly offset by a provision of £0.2m per annum to provide for a fund to meet any major capital works during the life of the asset.	38.9	
Brighton Centre operational savings Based on estimated net savings of £0.25m per annum after allowing for the retention of a £1m per annum subvention budget to provide continued support for conferences.	5.7	
Forecast maximum council borrowing		122.3
Total potential funding currently identified		**151.4**
Less: Funding requirement currently identified including rolled up interest based on upfront borrowing to fix interest rate		143.6
Current resource contingency		7.8

4.5 From a cash flow perspective potential shortfalls in cash occur during the construction phase but these have been taken into account in the affordability model. The model also takes into account estimated losses of business rates when buildings on the Central Site are demolished and possible reductions in the business rates paid by surrounding business due to the disruption caused during the construction phase.

4.6 Assuming that an agreement is reached with Government to ring-fence the 50% business rates, the key uncertainty will then relate to the point at which the new shopping centre is completed. The additional business rates are generated at this point, and borrowing will have been undertaken. The CLAA deals with this by ensuring that to protect the council's financial position ASI can elect, prior to unconditionality, to meet the financing costs incurred by the council in relation to any shortfall in the additional business rates income stream from 1 year after the practical completion date for the Central Site or pay the council a sum equivalent to the borrowing funded by business rates. If ASI do not elect, then the project will not go unconditional. This provides the council with certainty over this income stream before any borrowing is undertaken.

Pre-construction Costs

4.7 There are 4 categories of costs that may fall to the council:

- Clawback
- Qualifying Expenditure (QE)
- Council funded resources
- C2C Local Growth Fund – reimbursement of early works funds

4.8 The council is liable to reimburse clawback expenditure if ASI spends money on the site, in most circumstances once planning permission has been achieved for the Eastern site. A list of eligible clawback headings have been agreed as part of the CLAA. Clawback is expenditure which increases the value of the Eastern site such as site clearance, establishing ground conditions, or expenditure that would need to be incurred prior to any kind of development on the site.

4.9 Qualifying Expenditure covers relevant expenditure incurred by ASI in developing the eastern site including obtaining planning permission for the Eastern Site and conducting procurement processes for the operator and construction contracts. A list of eligible qualifying expenditure headings has also been agreed as part of the CLAA. ASI will be able to recover up to £8m (including £0.6m clawback) of these costs if the project goes unconditional. The costs will be deducted from the sale price of the Brighton Centre which has a minimum acquisition price of £10m. Therefore a minimum net payment of £2m is due to the council unless the council agrees to increase the expenditure cap. This cost has been built into the construction cost estimates in the financial model.

4.10 ASI will also meet all their costs of developing the central site potentially adding a further £10m to their development costs at risk.

4.11 A proportion, yet to be finally determined, of the £12.1m of Coast to Capital Local Growth Funds has been allocated for early works at the Eastern site. These will start to be committed once the CLAA is signed and it is intended that works on site will start at the latter end of 2019. Examples include: upgrading of the access routes into the site at Dukes Mound, relocation of utilities on the site or extension of the seawall. A planning application will be required for these works. Officers are in discussion with the LEP to ensure that any funds expended will not be recoverable by the LEP in the event of the project not proceeding, on the basis that the funds have de-risked a development site. To de-risk the exposure for the council, a formal agreement to this will be in place before the council finally commits to this expenditure.

4.12 The pre-construction service which ASI is providing will not form part of the Qualifying Expenditure and will not be a cost recovered by ASI. They are therefore adding a further cost (previously estimated by ASI to be worth £2-3m) to their development risk. The potential overall development management risk for ASI is therefore in excess of £20m for the two sites, should the project reach the later condition stages. A detailed budget for both clawback and qualifying expenditure will be agreed with ASI for each condition stage prior to the previous condition being satisfied. The budget for the first condition will be agreed prior to the final signing of the CLAA. The budget up to satisfaction of the 6th Condition is capped.

4.13 As agreed at Policy & Resources on 14 April 2016, council-funded project expenditure can be funded from the Brighton Centre Redevelopment Reserve which currently stands at £2.8m. An outline budget for the development and construction phases of the project is set out in the table below.

Outline Budget for estimated expenditure over the next 7 years funded by the Brighton Centre Redevelopment Reserve	**Initial Budget**
	£ million
Allowance for council project team including Project Director, Project management, procurement and financial advice	1.580
Allowance for specialist support including legal, project monitoring and ad hoc advice	0.840
Estimated costs to Condition 7 (shown on appendix 2)	**2.420**
Construction phase project team and monitoring	0.250
One-off costs associated with the closure of the existing Brighton Centre	0.250
Additional budget (to the £1m per annum subvention budget) to attract events and conferences to the city during the period between the closure of the existing Brighton Centre and the opening of the new conference centre and arena	0.500
Contingency	0.250
Total estimated costs for 7 year period	**3.420**
Resources in Brighton Centre Redevelopment Reserve	2.800
Resources to be identified as project progresses	**0.620**

Valuation of the Brighton Centre

4.14 A Valuation for viability purposes will be undertaken at Condition 4 and will be based upon the requirements agreed in the Valuation Brief (negotiated between GVA on behalf of the council and Cushman Wakefield on behalf of ASI). Key elements of the brief are:

- An independent expert valuer will be appointed to undertake the valuation. This will take place at the fourth condition. Minimum payment of £10m to the council for the Brighton Centre site.
- Residual land valuation split originally based on land area of ownership now 62.5% / 37.5% in favour of the council.
- Marriage value of adjoining sites taken into account.
- Overage provisions (as described below).

The valuation is not indexed as the overage provisions covers off any increased value as a result of higher actual income streams from the new development as determined one year after practical completion.

Profit Share via overage Provisions

4.15 The CLAA sets out overage provisions via two main mechanisms which ensure the Council will share in future profit increases not foreseen when the initial land valuation occurs.

4.16 The first is a scheme overage which is derived from the Waterfront Central scheme performing commercially better than planned at the time the valuation of the Council's consideration was undertaken. They provide for an agreed split of the project surplus once ASI has taken its agreed priority profit share – see Table below.

4.17 The second profit share relates to Planning Overage. GVA have specifically negotiated this aspect to protect the Council's position in relation to any enhanced planning permission which is achieved on the Waterfront Central site. Increases in net floor area, change to more valuable uses or the addition of more value creating space are captured via a revaluation, which allows for valuation governed by the terms of the valuation brief, with the Council being paid 50% of any additional amount calculated. This provision will remain for a period of 15 years from the unconditional date of the CLAA.

	Council share	ASI share
Previous assumption		
Based on land ownership - currently	53%	47%
Valuation		
Agreed split set out in CLAA less ASI buyers election costs	62.5%	37.5%
Profit Share Scheme Overage		
Agreed split set out in CLAA		
• On first £10m	40%	60%
• On second £10m	30%	70%
• On amounts over £20m	5%	95%
Profit Share Planning Overage		
Agreed split less ASI buyers election costs	50%	50%

Brighton Centre Site Option and Pre-Emption Rights

4.18 These rights outline the circumstances where ASI would have the right to have first refusal on the sale of the Brighton Centre site, if the Waterfront project should terminate. This may or may not be the fault of ASI.

4.19 If the project is terminated after planning permission has been achieved on the Eastern site, (and in return for the council not paying any interest on the upfront costs incurred by ASI in the form of Qualifying Expenditure) the council will grant ASI an option and a pre-emption right for a period of 5 years.

4.20 The Option Agreement and the Pre-emption Agreement give the opportunity to ASI to acquire the Brighton Centre site only if the council decides to sell it or in the case of the option, where the council decides to implement the planning consent for the Eastern site.

4.21 If the council decides to sell the Brighton Centre site for whatever reason then ASI will have first right of refusal to purchase the site at market value. If they decide not to purchase then both the option and pre-emption rights fall away.

4.22 If the council decides to build a new conference centre and arena either on the Eastern site by implementing the planning permission obtained with ASI or a similar facility elsewhere in the city then in this instance, ASI could acquire the Brighton Centre site at market value. If the existing planning permission for the Eastern site is used then 100% of qualifying expenditure would be netted off against the receipt for the Brighton Centre and 60% offset if a similar venue is built elsewhere in the city within 5 years.

What happens if there is a change of control of the Churchill Square Shopping Centre?

4.23 The CLAA covers the eventuality of a change of control occurring of the Churchill Square Shopping Centre to ensure that this would not be detrimental to the council. The CLAA therefore places certain requirements on ASI only to transfer control if these conditions are met. These are set out below.

4.24 The council gains financial comfort both from SCUT* being managed by ASI and owning the Churchill Square Shopping Centre receiving annual rent of £16.5 million. A change of control occurs when ASI ceases to manage and control SCUT. An assignment of the CLAA is with the council’s consent but cannot be withheld unless the party taking the benefit of the CLAA is not a qualifying transferee and then certain conditions can be imposed. ASI can assign without council approval to a group company of ASI so long as it owns Churchill Square Shopping Centre.

4.25 A “qualifying transferee” taking over control must:

- Not be a prohibited entity as defined within the CLAA;
- Must meet the minimum net asset value threshold (of not less than £50m) following the date of completion of a transfer or if earlier the date ASI elects to make up any funding gap or shortfall in expenditure in respect of the Eastern site. Prior to such date the net asset value must be not less than £25m which

is satisfied by it continuing to own and hold the Churchill Square Shopping Centre: or

- Be the owner of Churchill Square Shopping Complex and receive the rents from it free of any mortgage, security, lien, charge or other financial encumbrance to secure any third party debt; and
- In the opinion of the council have a proven track record and experience in the development, management and promotion of mixed use retail led schemes of a similar size and complexity as the Waterfront Central Development.

*The CLAA is actually between the council and JTC Fund Solutions (Jersey) Ltd and SG Kleinwort Hambros Trust Company (CI) Ltd. The Jersey based property unit trust is controlled and managed by an entity within the ASI plc Group. The Trust itself is known as Standard Life Investments UK Shopping Centre Trust (SCUT) and the value of the Trust is currently in excess of £1.5 billion.

5 ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

5.1 As described in the introduction, the current Waterfront project is the culmination of a process of option analysis and business case exploration which began two decades ago. The current proposal is considered, by both parties, to be the optimal way of achieving both the council's objectives and those of Aberdeen Standard Investments (ASI) and also provides for a reasonable balance of risk on both parties, with the main financial risk, residing with the private sector in the form of ASI.

6 COMMUNITY ENGAGEMENT & CONSULTATION

6.1 Members are directed towards the previous Policy and Resources Committee reports including in April 2016 and the report in December 2014. These previous reports have explained the rationale for the two site solution and why there remains no financial business case or strategic rationale for a replacement solution on the current site. At the time of writing, these parameters remain unchanged.

6.2 Further Member briefings have taken place prior to the final report to PR&G and after the finally agreed CLAA has been taken to the ASI Trust Board Meeting. This is to ensure that Members can be assured of ASI sign-off prior to final reporting.

a. Engagement with stakeholders in relation to the project itself will begin during Condition One as part of the Visioning stage for the wider Waterfront project. This will set out the main objectives for the project and identify key requirements from stakeholders. Appendix 2 provides for approximate dates relating to certain engagement activities and specifically the lead in to the planning application for the two sites.

b. To ensure that the neighbourhoods directly adjacent to the Black Rock site have an opportunity to comment before the pre-application stage of the project, ASI intend to begin engagement with amenity societies in the area as part of the work to develop the strategic brief for the new venue. This will follow on from the Council led Visioning work in the spring of 2019.

c. ASI will be producing a full engagement strategy in the lead up to Condition 2.

d. A programme of Brighton Centre staff and trade union engagement will take place throughout the various stages of the project and, in the event of any TUPE process, engagement will take place as required by the TUPE regulations.

7 FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

7.1 The key financial and commercial issues are set out in section 4 of this report. In summary the proposal is to provide a new conference facility on the Waterfront East site which will cost an estimated £143.6m and be mostly funded from a combination of the capital receipt from the existing site, LEP funding and debt finance with the financing costs being met from the increase in Business Rates revenue derived from the expanded Churchill Square, and potential lease arrangements for the new conference centre.

7.2 Once the CLAA is agreed the council will have a limited financial liability in relation to the development of the scheme; this financial risk will sit with ASI up to the point the agreement goes unconditional. The council retains the ability to stop the agreement going unconditional in certain circumstances and appendix 2 sets out the council's liabilities at the various stages/conditions for the project.

7.3 The council's initial liabilities include the clawback expenditure for works and services that will enhance the Eastern site; this is capped at £0.600m. In addition the council will incur costs relating to the officer team and specialist advice and the table at paragraph 4.13 in the report sets out the estimated costs in supporting this project that will be met from the Brighton Centre Redevelopment reserve. This table shows there is expected to be sufficient funding within the reserve to cover council costs up to condition 7 (unconditional). Resources required following unconditionality are not fully quantified at this stage but an estimated £1m has been identified meaning there is a potential need to identify resources of £0.62m once this milestone is reached. Any additional resources required will need to be factored into the Medium Term Financial Strategy and have committee approval for allocation. Once the CLAA is signed the funding from the LEP will be applied to early works to the Eastern site subject to an agreement with the LEP that any money expended will not be recoverable in the event the project does not proceed.

7.4 The business case and financial assumptions will be monitored and updated as the project progresses. A core element of the financial assumptions is the continued provision of subvention to support attracting events to the city. This funding is assumed to continue both through the closure period and once the new facility is delivered. Outside of the key financial risks from development costs and valuation, the assumptions around income streams to finance the borrowing are subject to significant changes. There are fundamental changes to local government finance planned to be implemented from 2020/21 including the fair funding review and the government's approach to locally retained business rates. This project assumes the council will be able to keep a 50% share of the uplift in business rates from this development but at present proposals from government for future retained rates would not allow this and it is therefore likely to require a separate arrangement with government.

Legal Implications:

7.5 The following legal implications are not intended to be exhaustive but cover the most significant implications for the council of signing the CLAA. They do not cover the commercial and financial implications which are dealt with elsewhere in this report.

Construction of Arena / Conference Centre

7.6 The CLAA is an unusual legal agreement as ASI are providing services to the council but are not being remunerated directly and contemporaneously for those services. As a result of this and the fact that the project is at the embryonic stage at the point of signing the legal agreement, there are only limited obligations on ASI as to the services they should provide. Instead the deal is premised on ASI having a commercial interest to progress the pre-construction services.

7.7 The interests of the two parties are largely but not completely aligned. The most obvious reason for this is that ASI's interests in the Eastern site ceases when they purchase the Brighton Centre site so they do not have a commercial interest in the success of the construction stage or the long term prospects of the arena/conference centre on the Eastern site. This is particularly relevant in relation to the procurement issues set out below and is a factor which the council will need to consider when analysing and mitigating risks as the project progresses.

7.8 The normal contractual approach is that the provider of services accepts liability if they do not perform those services adequately. In this case, ASI has capped its liability at £2.5m for the pre-construction services (other than the procurement services which are discussed below) which is low for services of this nature. This liability only applies from when the CLAA goes unconditional. The liability period is then 12 months from that date.

7.9 The risk this causes is mitigated to some extent by the collateral warranties which ASI's consultants will provide the council. The consultants, including the design team (e.g. architects, quantity surveyors etc), will all provide the council with a collateral warranty. This means that the council has the right to take action against that consultant if they do not comply with the terms of their contract with ASI, and the council suffers a loss as a consequence. The risk which remains is that they comply with the terms of their appointment but there is a problem with the instructions which are coming from ASI.

7.10 This risk is also mitigated to some extent by the involvement of the project monitor who will be invited to meetings and will have a degree of oversight of the instructions between ASI and its consultants. Nevertheless there is a risk that the council is not aware of performance issues and/or is unable to take steps to rectify such issues where it does not have any direct contractual control over the consultants.

7.11 It is proposed that the council will seek to mitigate the risk that there are issues with the pre-construction stage of the project by entering into a design and build contract with the building contractor. Under a design and build contract, the design risk is passed to the building contractor who has a single point of responsibility for all aspects of the construction phase. If the bidders have any concerns about the pre-construction stage, this will be reflected in the prices which they bid. This need to pass the risk to the building contractor limits the council's options as to its procurement strategy for the building contract. In a different type of deal, the council would weigh up whether a design and build contract was the right approach by considering whether the key priority was time, cost or quality. Design and build is usually used when value for money and cost certainty are more important priorities than time and quality.

7.12 The parties will consider whether there are sufficient funds available to build the arena/conference centre at the Eastern Funding Condition (i.e. Condition 7). The cost of the building contract will be known at this stage as it will have been part of the winning contractor's bid. Provided the specification is not altered and the building contract has a limited number of provisional sums (i.e. a limited number of best guesses as to cost), then the council will have a large degree of certainty as to cost. However this fixed price contract will be subject to the contractor's usual entitlement to additional cost and time for matters such as inclement weather, force majeure and breaches by the council. A relatively small cost overrun could have significant financial implications for the council.

<u>Procurement – whether the CLAA should be the subject of a procurement</u>

7.13 The council has taken external legal advice as to the status of the CLAA as a matter of procurement law and has been advised that the CLAA does not amount to a public contract or commit the council to future entry into any public contract; entry into the CLAA is therefore consistent with its procurement law obligations. The detailed legal advice is subject to legal professional privilege but can be provided to Members on a confidential basis. The council will publish a voluntary ex ante transparency notice (VEAT notice) which gives public notice that the council is intending to enter into the CLAA.

<u>Procurement of the Venue Operator and Building Contractor</u>

7.14 The procurement of both the venue operator and the building contractor will be carried out by ASI on the council's behalf. The procurement for the venue operator is likely to be a competitive dialogue which is a complex and lengthy process. If there is a legal challenge relating to the procurement, the cost of this will be borne by the council. The council may find it difficult to recover any losses from ASI in relation to the procurement even if it can demonstrate that the fault lies with ASI. This is because ASI has not accepted a relevant standard against which their actions can be assessed; namely that of an experienced public procurement professional.

7.15 However the risk that there will be a legal challenge is mitigated to some extent by the council having its own procurement officer involved in the procurement of the venue operator. ASI will use the council's procurement portal to communicate with bidders so the council will be able to check that these communications comply with the requirements of the relevant regulations. The council also needs to mitigate the risk that it does not achieve the best commercial outcome during the procurement. As discussed above, ASI does not have a long term interest in the venue but does have an interest in quickly securing a venue operator. There is potential for this to cause conflicts. The roles and responsibilities of ASI and the council during the procurement of the venue operator will be negotiated after the CLAA has been signed. The council will need to ensure that it has sufficient control over the negotiations during the competitive dialogue process and over the drafting of the contract with the venue operator to ensure it does achieve the best commercial outcome for the council.

7.16 ASI will carry out pre-procurement market engagement with possible venue operators on the council's behalf. This will confirm the type of contract which will be attractive to the market. Armed with this information, the council can take a decision on how that contract should be procured. If the venue operator agreement, when analysed for purposes of public procurement law, falls outside the scope of the Public Contracts Regulations 2015 or the Concession Regulations 2016 (e.g. its main purpose is the lease of land) then the council will not need to run a procurement with either of these sets of regulations.

7.17 One issue to be discussed with venue operators will be how to manage the intervening gap between the point that they are appointed (Fourth Condition) and the point that the Council enters into the final lease for the venue.

<u>TUPE</u>

7.18 Following the sale of the central site the council will need to decide, in consultation with staff and trade unions, which conferencing functions it will need to retain during the construction of the new arena/ conference centre. Those employees engaged in conferencing related activities immediately before the venue operator takes over the running of the new arena/ conference centre are likely to transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 to the venue operator. Full legal implications relating to the employment issues will be reported to the cross party project board and to Committee nearer to the unconditional date.

<u>S123 Local Government Act 1972</u>

7.19 Under s123 of the Local Government Act 1972, the council is under an obligation to obtain the best consideration reasonably obtainable when it disposes of land. The Valuation Brief which is attached as a schedule to the CLAA sets out the market valuation approach against which the price will be assessed. GVA have confirmed that this methodology ensures that the council will comply with S123.

<u>Extent of the Council's commitment post signature</u>

7.20 Whilst the project is at an early stage when the CLAA is signed, the council is limited in its ability to extract itself from it in the future. Policy, Resources & Growth Committee will therefore be taking a decision which will bind future administrations. The CLAA can be terminated by either party if the conditions are not met and in some instances the council has a degree of discretion as to whether the conditions are met. By way of example, the council must approve the development strategy at the Fourth Condition.

Funding Agreement

7.21 The council has received £12.1m of grant funding from the Coast 2 Capital Local Enterprise Partnership. This funding has been provided to the council and will be spent partly on the early works at the Eastern Site and partly on construction of the new venue. There is a risk that the council will be required to repay that funding if the project does not ultimately proceed if the LEP require it under the terms of the Funding Agreement. The council will engage with them throughout to manage this risk as far as possible.

7.22 There was a concern that the LEP funding might be viewed as state aid. The LEP therefore notified the aid under Article 55 of the General Block Exemption Regulation (aid for sport and multifunctional recreational infrastructures). This removes the risk that the aid could be 'clawed back' and provides comfort to the council, the LEP and all future investors and operators involved in the venue.

Equalities Implications:

7.23 There are no direct equalities considerations at this stage. The Project Base Documentation produced by the Buyer (ASI) at the stage of agreement of the project by the Council (Condition 4) will require both a full Equality Impact Assessment and Social Value report to be completed. The opportunity for Social Value to be derived from the Waterfront project is very considerable and the council will want to see this fully captured and promoted as the project develops.

Sustainability Implications:

7.24 There are no direct sustainability implications at this early stage. The Brief agreed for the new venue will be developed as part of the second Condition in the CLAA, and will meet the Council's own sustainability requirements and aim for the highest BREEAM rating achievable, as well as delivering a venue that will be largely car free.

Any Other Significant Implications:

7.25 None

Risk

7.26 A risk and opportunity matrix reflects the present status of the project as reflected within the CLAA. The matrix will be updated for final CLAA sign off and remains a live document which will be revisited at key stages by the project team. The risks include those relating to business rates, and also make reference to future risks for the project, such as the changing nature of retailing and construction cost over-run risk. All risks in the project will be managed at the appropriate stage. The current main risks have been attached as Appendix 3 and have been drawn from the full risk matrix developed for the project.

SUPPORTING DOCUMENTATION

Appendices:

1. Conditional Land Acquisition Agreement - Summary table
2. Table of Conditions within Conditional Land Acquisition Agreement
3. Top Ten Risks
4. Gateway Table

Documents in Members' Rooms

Policy and Resources Committee report April 28 2016

Background Documents

None