

Brighton & Hove City Council

Policy & Resources Committee

Agenda Item 138

Subject: i360 Loan Restructure

Date of meeting: 12th May 2022

Report of: Executive Director Economy, Environment & Culture

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Ward(s) affected: All

For general release

Note: 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 the i360 continued beyond the report publication date.

1. Purpose of the report and policy context

- 1.1 This report seeks agreement to a proposed restructure of the loan made to the i360. 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. This report sets out a new proposed restructure, based on the latest forecast for the attraction. The proposed restructure would protect the public purse by prioritising getting the council's loan repaid as quickly as possible (including any interest incurred by the council).
- 1.2 The report also seeks agreement for how to treat the £4.060m loan made by the Coast to Capital LEP, which was novated to the city council (at no cost to the Council).

2. Recommendations

- 2.1 That the committee agrees to the loan restructure principles as set out at 3.10 and delegates authority to the Executive Director Economy, Environment & Culture and the Executive Director Governance, People and Resources; in consultation with the i360 Members' Working Group, to negotiate a revised loan agreement based on those restructure terms and enter into any legal agreements necessary to effect that restructure.
- 2.2 That the committee agrees to also restructure the novated LEP loan in line with the principles set out at 3.11 and delegates authority to the Executive Director Economy, Environment & Culture and the Executive Director Governance, People and Resources; in consultation with the i360 Members'

Working Group, to include the restructured LEP loan in the revised loan agreement documents agreed at recommendation 2.1, above.

3. Context and background information

- 3.1 Previous reports brought to this committee have highlighted the strong beneficial impact the i360 has had on the local economy, and the way in which the attraction has acted as a positive beacon for seafront regeneration. This is in keeping with why the city council sought to fund the i360.
- 3.2 Previous reports have also addressed the fact that lower than expected visitor numbers have resulted in deferral of elements of repayments of the loan the city council made to the i360. In particular, the covid pandemic has had a significant impact on income and cashflow into the i360.
- 3.3 The city council has established a cross-party Member Working Group (MWG) to closely monitor performance and to advise this committee on the best steps to take to protect the public purse and the city council's investment in the attraction. The board and management of the i360 have developed an effective working relationship with that MWG, and since January 2019 they have taken steps to turn around performance and manage costs. However, the impact of the pandemic is still being felt, and inflationary pressures linked to the cost-of-living crisis are also making themselves felt.
- 3.4 At the meeting of this committee in December 2019 the broad principles of a restructure were agreed, but the covid pandemic hit before the restructure could be implemented. The uncertainty that the pandemic brought meant it was not advisable to implement a restructure based on an uncertain business plan.
- 3.5 Recent reports have set out that the i360 is recovering well, albeit still in an uncertain environment for visitor attractions. Strong steps are being taken by the i360 and there are clear signs of recovery, with a credible 5 year business plan being developed.
- 3.6 Avison Young have been reappointed to advise on the restructure, LDP continue to give advice on market conditions for visitor attractions and legal advice on the detail of the new loan agreement has also been procured. Further work has been done by this team on the restructure, to test the new business plan within the new market conditions to ensure it is credible and that any restructure gives the best probability of the i360 succeeding and – most importantly – maximising the potential return of funds to the public purse as quickly as possible.
- 3.7 The i360 Member Working Group has met a number of times with the professional advisors, as well as with the i360 themselves, and have been kept apprised of the negotiations and the advice we are receiving. The working group has expressed a clear desire that first and foremost the city council protects the public purse and gets back the money it has borrowed

from the PWLB, plus the interest payable by the council on that loan, and that it does this as quickly as possible. Doing this quickly minimises exposure to risk, and so the desire to recover the council's position as quickly as possible is prioritised over and above the city council receiving the 'margin' it was expecting to receive on the loan.

- 3.8 Avison Young have modelled a number of scenarios, looking at different levels of profitability that the i360 might experience, the interest rate that the city council might opt to pass onto the i360 (all scenarios assuming the council's own PWLB finance costs are covered) and then seeing how long it takes for the principle and the full interest costs to be repaid. These models factor in the i360 holding a maintenance reserve account that the city council will need to agree expenditures from, and which cannot dip below a certain level without council agreement.
- 3.9 This work has shown that reducing the interest closer to (but certainly not below) the level of interest that council itself is paying on the PWLB loan means that the principal and interest get paid off sooner, and would not require a significant increase in the loan duration. These calculation have deliberately been made on an Earnings Before Interest, Taxes, Depreciation, and Amortisation ("EBITDA") level over 10% lower than the i360 forecast in their business plan.
- 3.10 Therefore, the advice from Avison Young is that the restructure takes the form of:
- A regular full cash sweep of all cash in the business. Enough money would obviously need to be left in the business to cover the cash flow for the next period so the i360 remains solvent.
 - This cash sweep would take place every six months. Which months of the year is to be agreed with the i360 to ensure we are not taking the sweep at a time of year when cashflow is lower.
 - The money would be used to first pay off the principal loan amount (including previously rolled-up interest and all previously deferred payments), and then pay off the interest that has built up.
 - A new interest rate of 3% (the council pays 2.78% on the PWLB loan).
 - To ensure the i360 is paying back at a rate that will see the loan repaid within a reasonable time, a minimum payment schedule is proposed. This is just a minimum and based on a lower EBITDA percentage than the five year business plan to ensure that the i360 does not immediately default again. Any profit made above that minimum will still be taken (subject to the points below), with a view to paying off the loan sooner if possible. But a minimum level needs to be in place to ensure that the council can trigger a default in the future if the income is not coming in quickly enough to pay the loan back in the term identified. This minimum payment schedule is set out at Appendix 1.
 - The new loan agreement would have a period of 25 years before all monies owing would be repaid assuming the i360 only ever hits the minimum repayment level. It would be quicker if the cash sweep brings in more funding.
 - As with the December 2019 proposal for a restructure, there are proposed incentives for the i360 management and board to overperform. This is

with a view to encouraging strong performance and continued interest in the attraction from the Board as many of the shareholders have loaned their own money to the attraction. If the i360 has met or exceeded the business plan they have put forward for the first 5 years then at year 5 there would be a split of the cash surpluses for every pound generated over and above the forecast business plan. In this circumstance it would certainly be the case that the i360 has started to perform consistently again and the risk of the Council not recovering its loan is much lower. At this 5 year point, given it requires the business plan to be met, the Council would have recovered a good element of the loan so substantially reducing the balance needing to be repaid. That split will only apply to revenue generated above the existing forecast so wouldn't extend the time horizon for the Council's loan to be repaid from the current proposals. The split would remain heavily in the council's favour and would be at a level that ensures the shareholder do not get their loans paid back before the city council. The exact level of the split will be agreed in consultation with the i360 Member Working Group.

- 3.11 The £4.060m *Growing Places Fund* loan made by Coast to Capital LEP to the i360 has now been transferred to the city council. This loan was passed to the council at no cost, so any repayments that are collected are additional receipts. The terms of the agreement with the LEP to pass the loan to the council are that we do not write the loan off, and that the city council pays the LEP 1% of any interest collected on the loan. The extra £4m on the loan does have the potential to slow repayment of the main principal loan from the council. For that reason it is proposed that the LEP loan is the next part of the loan to be repaid (after the principal loan from the council, and the interest on that principal loan), and that no interest is charged on it. Were interest to be charged then that £4m figure would balloon while the other elements are being paid off and would become impossible to pay off itself, creating a debt-trap.
- 3.12 If agreed, a full cash sweep would take place on 30th June 2022. This would take all spare cash from the business, as future sweeps will, but a minimum is not being set for this particular payment as some of the cash in the business will need to be used to establish the maintenance reserve account set out at 3.8 above.
- 3.13 If agreed, the loan agreement will set tight governance standards, giving the city council full open book accessibility to i360 accounts and the ability to check and audit all accounts. There will be continued representation from the city council on the i360 Board, and the i360 MWG will continue to meet to review performance, albeit more infrequently.
- 3.14 Once enacted, providing the i360 can perform to levels set out in their business plan then this restructure would ensure the following:
- All money lent to the i360 would be repaid in full, with no money written off. This includes previously deferred payments.
 - All council interest and finance costs would be more than covered in full.

- The repayment of the LEP loan would offer an additional financial receipt to the city council.
- The i360 will remain a solvent and viable business, contributing to the city's economy.

4. Analysis and consideration of alternative options

- 4.1 When considering options for the future of the i360 loan, the first and foremost consideration is protecting the public purse. In this case that means reclaiming all money lent to the attraction, plus interest costs incurred by the city council, as quickly as possible. Doing it quickly minimises exposure to risk.
- 4.2 The work done by Avison Young has tested a number of options for the restructure, including differing interest rates and differing assumptions about the profitability of the i360. This is the restructure proposal that is considered to offer the best outcome.
- 4.3 Another option is that the city council chooses not to restructure the loan and instead enforces by taking over the asset. However, as previous reports have set out, this would immediately write off considerable portions of the loan and incur new costs. The city council has confidence that the existing board and management team is best placed to maximise the profit from the attraction. Under this arrangement the council then takes that profit to repay the loan. This is considered the best option for maximising the transfer of money from the i360 back to the council.

5. Community engagement and consultation

- 5.1 The council is due to receive 1% of ticket sales in perpetuity to spend on local initiatives with about 25% of this sum allocated to fund part of the landscaping works and discussions continue with local organisations about how to spend the remainder.
- 5.2 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 Restructuring the principal loan as set out at 3.10, and the novated LEP loan as set out at 3.11, is considered to represent the best way to protect the public purse. It helps to keep the i360 operating as a viable concern that continues to contribute to the local visitor economy, which also enabling the city council to withdraw all spare cash to repay the council's loan and cover finance costs incurred by the council as quickly as possible. It then enables recovery of the LEP loan to offer a future receipt to the council to partially cover the addition income from the 'margin' that is being foregone.

7. Financial implications

- 7.1 The proposed loan restructure is set out in the body of the report and in the appendices and aims to recover all outstanding debt as quickly as possible. In summary the outstanding balance of the i360 loan with the council including accrued interest up to 31/12/2021 is £42.871m; the interest rate on the original loan to the i360 was 6.53% made up of 2.78% direct interest charged to the council by the PWLB and a margin of 3.75%. In addition to the council loan, a loan from Coast to Capital Local Enterprise Partnership (C2CLEP) of £4.060m has been novated to the council at no cost to the council.
- 7.2 The proposed restructure provides a minimum cash sweep every 6 months over a revised loan period of 25 years and will prioritise the outstanding debt first, then the interest accrued on the reducing balance of debt at a rate of 3% (with effect from 1/1/2022). Once the Council Debt and interest is paid then the cash sweeps will clear the novated loan from C2CLEP.
- 7.3 The repayment schedule assumes a minimum cash sweep that reflects seasonal variations of the attraction and is set at a level that is lower than the expected cash surpluses set out in the business plan projections. If the i360 exceeds the minimum cash sweeps then outstanding debts will be repaid earlier than the revised loan term.

Name of finance officer consulted: James Hengeveld Date consulted: 29/04/2022

8. Legal implications

- 8.1 The Council's proposed restructure of the loans is permitted under the current UK Subsidy Control regime as it will comply with the market economy operator principle. This means that it is not considered a subsidy because the Council is acting as a commercial investor would in the same situation. This position will be supported by the Council's external advisors, Avison Young. The market economy operator principle will continue to be available once the Subsidy Control Act comes into force (expected to be in Autumn this year). The Council continues to take external legal advice in relation to the legal documents required to restructure the loans.

Name of lawyer consulted: Alice Rowland Date consulted: 28/4/22

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 has introduced a range of concessions for local residents and free tickets for local schools. The i360 is a living wage employer and does not offer zero-hour contracts. There is an apprenticeship scheme in place and training opportunities for staff at all levels of the organisation.

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. Proposed Minimum Repayment Schedule

2. Background documents

- 1. [Brighton i360 Economic and Social Impact Report.](#)

