

ABERDEEN CITY COUNCIL

COMMITTEE	Council
DATE	25 January 2012
DIRECTOR	Gordon McIntosh
TITLE OF REPORT	City Garden Project
REPORT NUMBER:	EPI/12/032

1 PURPOSE OF REPORT

To inform Council of the current position with regard to the City Garden Project (CGP) and seek approval to progress certain specific actions aimed at moving the project forward into the formal planning application process.

2 RECOMMENDATION(S)

That Council:

- (i) Engage in future activities required to progress the CGP, subject to obtaining public endorsement of the proposed CGP design (see Appendix 1) in the proposed public referendum on 1 March 2012; and ensuring that Council engagement in such activities cannot, in any respect, be construed as prejudicial to any future planning process.
- (ii) Instructs officers to enter into negotiations with a view to putting in place a development agreement with Aberdeen City Garden Trust (ACGT) and/or their representatives, which sets out the terms upon which Aberdeen City Council (ACC) would be prepared to make necessary Council owned land available, to realise the proposed development described in Appendix 1 of this report after 1st March subject to;
 - a. Council owned land, made available for the project, remaining in Council ownership, in perpetuity. .
 - b. Any assets built upon the land in question becoming the property of the City Council.
 - c. ACGT producing a viable business plan for the construction and future operation of the CGP (“the CGP Business plan”). This will be produced by ACGT and will

be used to underpin the development agreement. In addition to the normal information contained within a commercial business plan, it will also need to confirm;

- That sufficient provision has been made to enable future management and maintenance of the development, to a high standard, without the need for any direct revenue support from the Council and/or the Common Good Fund.
 - That the minimum amount of space possible i.e. only as much as is needed to secure the development's long-term financial sustainability, will be used for wholly commercial or semi-commercial purposes, and that the remaining space will be used for civic, cultural, communal and non-commercial leisure purposes
 - The expected use of the internal and external space by including a full description of the proposed civic, cultural and acceptable commercial and semi commercial uses.
- (iii) Requires that Finance and Resources Committee will scrutinise and approve the final terms of the development agreement before it is signed by all relevant parties.
- (iv) Instructs officers to submit a detailed business case (based on the document attached as Appendix 2 to this report), as the basis for negotiating a final Tax Increment Financing (TIF) agreement with Scottish Futures Trust (SFT), which will enable ACC to fund enabling infrastructure related to the proposed City Centre Regeneration Programme, and which specifically;
- a. Secures a maximum funding contribution of £70 million towards the City Garden Project, in recognition of this project's significance to the delivery the City Centre Regeneration Programme.
 - b. Secures a further £22 million towards the other projects identified within the City Centre Regeneration Programme
 - c. Mitigates the risks to ACC and ensures that ACC is not placed in a position whereby it is exposed to any additional risks, other than the risks highlighted in the attached business case.
- (v) Requires Finance and Resources Committee to scrutinise the terms of and approve the final TIF Agreement before it is signed by all relevant parties.
- (vi) Agrees to fund all Council costs (external and internal) associated with drafting and negotiation necessary future legal

agreements associated with the project (e.g. development agreement, TIF agreement, future operating agreement, lease agreements etc) - subject to a maximum cost of £300,000, to be met from the Council contingency budget.

- (vii) Agrees that no direct funding will be provided towards the cost of designing, planning or constructing the CGP, other than that;
 - a. generated through the proposed TIF Agreement,
 - b. already committed to the public referendum being held to gauge support for the CGP,
 - c. required to cover external fees associated with the negotiation and production of necessary legal documentation between ACC and ACGT and/ or other project stakeholders, or
 - d. required to cover the cost of officer time committed to supporting future activities needed to realise the CGP, subject (see recommendation (i))
- (viii) Encourage negotiations to take place between various Council Services and ACGT relating to the possible exploitation of space within the development for art, cultural, leisure and heritage purposes, on a financial basis that is commensurate with the requirement to minimise the CGP's future ongoing management and maintenance costs (see 1(c) above)
- (ix) Request ACGT to appoint the design team associated with the preferred design scheme (see Appendix 1) and move forward with the detailed design process in parallel with negotiations relating to the Development Agreement and the TIF Agreement - as soon as possible after the result of the public referendum is known and assuming this confirms public support for the CGP.
- (x) Requires ACGT to confirm, in a legally binding form, that they have access to at least £70 million of private sector funds to invest in the CGP, prior to the signing of;
 - a. An appropriate Development Agreement, and
 - b. A TIF agreement confirming ACC's ability to invest at least £70 million in enabling infrastructure related to the CGP.
- (xi) Agrees that notwithstanding the approval of the foregoing recommendations the Council is forming no view of any proposed development in its capacity as Planning Authority.

3 FINANCIAL IMPLICATIONS

- 3.1 The Council will be a party to various legal documents associated with the project; including the development agreement, future operating agreement and possible future lease agreements (should the Council wish to lease any of the internal space for future civic, cultural or leisure activities). The Council is therefore asked to approve a maximum budget of up to £300,000, from its contingency budget¹, to cover its own external legal costs associated with the production and negotiation of such legal agreements.
- 3.2 The major financial implication associated with this project, from ACC's perspective, relates to the borrowing it will be required to take on as part of the proposed TIF agreement. The risks associated with this are fully examined in the TIF Business Case Document attached as Appendix 2.
- 3.3 It should be noted that the Council is not being asked to undertake, or support the cost of, any of the assessments or any other work required to submit a planning application. This will be the responsibility of ACGT. However, Council Officers time will need to be allocated to engage in some of the activities outlined in this paper (see para. 5.7) and although this will have a financial cost to the Council, which is currently unquantifiable, this should not be overly excessive in comparison to the time input made by officers to progress other major development projects.

4 OTHER IMPLICATIONS

- 4.1 Should the recommendations in this paper be approved, the project will move forward into the formal planning process. This will undoubtedly have further implications for ACC. However, such implications should be no different from those associated with any other major development project in the City.
- 4.2 It is anticipated that some of the space within the CGP facilities may possibly be used to accommodate Civic, Cultural and Leisure activities wholly or partially funded by ACC. The availability of a new purpose-built space for civic, cultural and leisure purposes in the City Centre may have an impact upon the ACC's future strategy for the delivery of cultural, leisure and heritage activities. This is something that ACC's Education, Culture and Sport Directorate will factor into their future delivery strategy – possibly as part of any strategy linked to the potential of Aberdeen becoming a future UK City of Culture.

¹ The Council budgets annually for a level of contingency to meet one off or exceptional items of expenditure that arise within a financial year. This cost would fall within this category and could be met from this corporate provision.

- 4.3 The TIF Business Case in Appendix 2, highlights the potential economic impact the CGP will have on the city. Based on the research carried out by PwC, it is expected that the CGP will have a major catalytic role in delivering City Centre regeneration and, should this be realised, a consequent significant impact on new job creation and gross value added within the City (up to 6,500 full time equivalent new jobs and an average additional GVA of £122.6 million per year to 2039).
- 4.4 Providing a high quality City Centre environment, which can be favourably compared with other global energy cities that are competing for the same mobile investment, will confirm Aberdeen is serious about being a global energy city. This will have positive benefits in terms of attracting future mobile investment to the City. Conversely, should Aberdeen fail to support the CGP, future investors are likely to view this as sign of Aberdeen's unwillingness to support any significant public investment in the City Centre and a resulting indifference to the impact this may have on the attraction and/or retention of future commercial investment. The City's support, or otherwise, for the CGP (and associated City Centre Regeneration Scheme) will therefore have undoubted implications for Aberdeen's potential to attract future mobile investment to the City. This position has been confirmed through feedback obtained from developers and investors, as part of the TIF Business Case in Appendix 2

5 BACKGROUND/MAIN ISSUES

- 5.1 The CGP is a major infrastructure project that has the capacity to act as a catalyst for transformational change within Aberdeen City Centre. (See TIF Business case in Appendix 2).
- 5.2 Transformational change is needed to project Aberdeen as a dynamic, forward looking, global energy city. Without major investment in the City Centre, investors may come to regard Aberdeen as a complacent and backward looking City that is, consequently, unworthy of further investment. There are many other cities competing for investment and current major employers in the City may regard these locations as offering more attractive long-term investment opportunities. Were existing employers to divert investment into other locations, this would make it extremely difficult to attract new investment to the City – new investment that will be essential if Aberdeen is to deliver the growth related development outlined in it's emerging Local Development Plan.
- 5.3 The CGP is now in a position where;

- A major international design competition has just been completed and a preferred design scheme has been selected by the Design Competition Jury (see Appendix 1)
- A public referendum is to be held on 1 March to gauge support for the CGP, based on the preferred design scheme selected by the Design Competition Jury (see Appendix 1)
- An initial, detailed business case has been prepared as the basis for negotiating a TIF agreement with the Scottish Government that will also help fund a number of other projects within a wider City Centre Regeneration Scheme (see Appendix 2),
- The draft TIF Business Case in Appendix 2 has already been submitted to SFT, for initial comment and a meeting with SFT has been scheduled for 17th January to obtain initial feedback. Should Council approve recommendation iv) of this paper, this document will be used as the basis for further meetings and discussions with SFT, aimed at negotiating a final TIF agreement that can subsequently be submitted to the Council's Finance and Resources Committee for approval.
- ACGT has obtained legal advice confirming that it should be possible to negotiate a development agreement that will enable the project to be realised, without having to dispose of any public assets or create any future financial, operational or management liabilities for ACC. Such advice still requires to be scrutinised by the Council's Legal Services Team.
- ACGT has produced initial draft proposals in respect of the likely uses of any internal and external space to be created by the proposed development and are currently redrafting these proposals to reflect the space provision within the design recently selected by the Design Competition Jury.

5.4 All of the above activities, apart from a 20% contribution towards the referendum costs, have been undertaken without any funding support from ACC, apart from the time input of officers and members. This demonstrates the significant commitment in both time and money made by the project's other major stakeholders (private sector plus Scottish Enterprise) and the substantial leverage obtained on ACC's contribution in the form of officer time.

5.5 Council are therefore being asked to engage in a number of future activities needed to move the project forward into the formal planning process, whilst bearing in mind that any such engagement will lead to the provision of a major new civic asset, owned by the council on council land (something which differentiates this development from most other "normal" developments).

5.6 These activities include;

- The holding of a public referendum on 1 March 2012 to gauge public support, or otherwise, for the realisation of the CGP based on the Design Competition Jury's preferred design (already agreed by Council).
- The negotiation of a development agreement, between ACC and ACGT confirming the terms on which Council owned Land will be made available to realise the CGP.
- The production of a viable business plan for the construction and future operation of the CGP. This will be produced by ACGT and will be used to underpin the development agreement (i.e. it will be a key annex of any development agreement)
- The negotiation of a final TIF agreement between ACC and Scottish Futures Trust, and its subsequent approval by Scottish Government.
- Further development of the preferred design scheme, to produce a detailed, fully costed design scheme capable of being submitted as part of a proposed future planning application.
- Discussions with ACC officials concerning a) future use of the CGP facilities, b) any design changes needed to comply with planning requirements (including, but not necessarily limited to, a full assessment of design quality, access, safety, transport, historic and environmental issues and compliance with the development plan), and c) asset management implications related to the future ownership and operation of the scheme.
- Discussions with neighbours to obtain whatever agreements are necessary to facilitate realisation of the preferred design scheme.

5.7 This paper seeks the Council's support for the realisation of the CGP, subject to public endorsement of the project in the referendum on 1 March and the various conditions included in this paper.

5.8 The paper is also seeking Council approval to engage in the appropriate activities outlined in 5.7 above, through the input of necessary officer time and the allocation of sufficient funds to cover legal costs associated with negotiating and drafting necessary legal agreements between ACC and other relevant parties.

5.9 Architects from the company responsible for the winning design proposals will be available to make a presentation to Councillors in relation to Appendix 1.

5.10 One of the consultants who worked on the TIF Business Case will be available at the Council meeting, to answer questions relating to the financial elements of the document in Appendix 2.

6. IMPACT

Corporate

- 5.11 This project is seen as a critical project with regard to the future attractiveness, vitality and connectivity of the City Centre and links to both the Single **Outcome Agreement and Community Plan 2008**, which outlines a vision for Aberdeen City which is wealthier, greener and safer. In particular this project links to the following National Outcomes

National Outcome	Description
1	We live in a Scotland that is the most attractive place for doing business in Europe
2	We realise our full economic potential with more and better employment opportunities for our people
10	We live in well-designed, sustainable places where we are able to access the amenities and services we need
12	We value and enjoy our built and natural environment and enhance it for future generations

- 5.12 The project also contributes to the City's **Vibrant, Dynamic & Forward Looking policy document**, since a fully functioning and well utilised City Gardens represents a vital piece of social, cultural and leisure infrastructure that can contribute to the delivery of the **Aberdeen City and Shire Economic Future's 'Building on Energy - An Economic Manifesto for Aberdeen City and Shire'**. This in turn supports the strategic vision of Aberdeen City and Shire, which is to be recognised as one of the most robust and resilient economies in Europe with a reputation for opportunity, enterprise and inventiveness that will attract and retain world-class talent of all ages.

Public

- 5.13 An Equalities and Human Rights (E&HR) Impact Assessment will be undertaken once use of the space created by the project is more clearly defined. Nevertheless, at this point in time, the project is expected to have a positive impact in terms of E&HR, as a direct result of linkages to the Economic Development theme of Vibrant Dynamic and Forward Looking, it's expected impact on the future sustainable development of the Aberdeen City and Shire economy, the major contribution it will make to Aberdeen's business and social infrastructure and the fact that it provides a venue for major social, leisure and cultural events for all Aberdeen citizens.

7. BACKGROUND PAPERS

Council Paper OCE/10/010 (19 May 2010, Full Council)
Council paper EPI/10/239 (28 Sept 2011, F&R Committee)
Council Paper EPI/11/335 (14 November 2011, EP&I Committee,
Council Paper EPI/11/342 (14 December 2011, Full Council)
Council Information Bulletins (Feb, June, October 2011)
Appendix 1 – Preferred City Garden Project design
Appendix 2 – TIF Business Case Document (Initial Draft submission to
SFT)

9. REPORT AUTHOR DETAILS

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Appendix 1

CGP Preferred Design Scheme

To Follow on 18th January

(After initial feedback meeting with SFT on 17th January)

Appendix 2

TIF Business Case (initial draft submission to SFT)

To Follow during week commencing 16 January

(After Design Competition Jury determines their preferred design)