

Coast to Capital

Meeting: Coast to Capital Investment Committee
Date: 13 September 2019
Report Title: Brighton Valley Gardens Phase 3
Report by: Investments Team
Item **6**

Recommendations:

The Investment Committee is asked to:

1. Consider the information and latest updates to the Brighton Valley Gardens Phase 3 project as set out in this report.
2. Confirm whether the conditions precedent (para 2 below) have been met by the delivery body and recommend to the Board that they approve such conditions precedent and confirm that they also agree that they are met.
3. Subject to recommendation 4 recommend to the Board whether or not to approve the award of £6million of LGF funding to the project.
4. Note that paragraph 7.0 of Annex O of the Assurance Framework provides that only schemes that offer High or Very High value for money in accordance with DfT assessment criteria should be recommended for funding support and this Project is assessed as low value for money. If the Committee are minded to recommend approval of funding to the Board, to also recommend to the Board a departure from the value for money requirement within the Assurance Framework in line with the Independent Transport Assessors recommendations.
5. If a funding recommendation is agreed to be made; to recommend to the Board delegation to the Chief Executive the drawing up and execution of a standard project funding agreement, with the Chief Executive having authority to amend/include any necessary terms he considers reasonable, subject to the approval of the final form of agreement by the Accountable Body.

1. Background

The Brighton Valley Gardens phase 3 project has a Local Growth Funding allocation of £6million earmarked since the original Growth Deal. Coast to Capital have already awarded £8million of LGF towards the Valley Gardens Phase 1&2 project which is currently delivering on site.

As outlined in the scheme's Business Case, Valley Gardens Phase 3 will cover the southern section of Valley Gardens, to incorporate the Old Steine and the A23/259 junction/Brighton Palace Pier roundabout ("pier roundabout"). Also outlined in the business case, this scheme will adjoin some of the city's key historic landmarks including the Royal Pavilion and Brighton Palace Pier. The scheme is described as helping to create a central hub of city-life in Brighton through the creation of new public and event spaces, and also providing efficient, connectivity for vehicles, pedestrians and cyclists to move around the city more effectively. This will be through a new 350 metre two way segregated cycle track, improved crossing alignment for pedestrians, and a simpler road layout.

BHCC believe that LGF funding is crucial for this scheme to ensure Brighton & Hove is not left with ongoing congestion and poor public realm in a key location on its world-famous seafront, and to make sure the benefits of phases 1 & 2 are not undermined.

The Board scrutinised the Phase 3 project at its meeting on 22nd January 2019. The business case was discussed and the project supported in principle, together with the Local Growth Funding award of £6million, subject to requirement of suitable pre-conditions, with delegation being given to the Investment Committee to formulate these. The Investment Committee is referred to the papers previously provided to that Board meeting and these can be found in [Annex 4](#).

The Investment Committee formulated the pre-conditions, following a conference call meeting on 31st January 2019. The pre-conditions are set out at 2.0 below (see also [Annex 1](#)).

2. Brighton Valley Gardens Phase 3 funding conditions

1. **Prior to issue of funding agreement:** Confirmation is received in writing from the Monitoring officer at Brighton and Hove City Council (BHCC) that all statutory requirements in relation to consultation have been met, in relation to all project aspects, to include but not be limited to, transport and public realm improvements.
2. **Prior to issue of funding agreement:** Confirmation in writing from the Monitoring officer that public comments, including those of the Valley Gardens Forum have been appropriately considered, responded to and addressed in accordance with the Council's statutory duties.
3. **Prior to issue of, and within funding agreement:** Confirmation in writing from the Monitoring officer that the scheme design meets the requirements of all relevant statutory legislation, including but not limited to air quality standards, traffic management, environmental and safety. To also seek confirmation that the Council considers that the appropriate balance has been achieved between impact upon traffic

congestion, air quality and sustainable transport and public realm benefits.

4. **Prior to issue of and within the funding agreement:** Confirmation in writing from the monitoring officer that an appropriate level of engagement will continue with the Valley Gardens Forum and members of the public, as the scheme evolves, including confirmation that the concerns of the Valley Gardens Forum will be put to the relevant Council Committee before the scheme is approved.
5. **Prior to issue of funding agreement:** Confirmation that the relevant Council Committee has approved the scheme, to allow the project to be delivered.

The response letter to these conditions, from the Monitoring Officer at BHCC, can be found at [Annex 1](#), which confirms the fulfilment of the above conditions.

Following receipt of the letter from the Monitoring Officer at BHCC, advice from external solicitors, Browne Jacobson was sought. Browne Jacobson considered that subject to a small number of clarificatory points the BHCC letter satisfactorily confirmed the conditions precedent had been met. The further clarification points were raised with BHCC and have now also been responded to (see [Annex 2](#)).

3. Scheme Appraisal

The Valley Gardens Phase 3 scheme has been appraised by external transportation consultants TisL under a standard evaluation methodology including the following areas (see [Annex 3](#)):

1. Strategic fit with Coast to Capital Strategic Economic Plan.
2. Requirement for public funding.
3. Good value for money.
4. Benefits being delivered to Brighton.

In addition, BHCC commissioned Mott McDonald to undertake an economic impact appraisal of the scheme and this is detailed within [Annex 4](#).

In September 2017 Coast to Capital also commissioned Local Partnerships to undertake a review on numerous transport projects, Brighton Valley Garden Phase 3 being one of them. At the time, they rated the project amber and believed it would be delivered by March 2021.

[Annex 4](#) lists all of the key documents including the Business Case, relating to the scheme, for Committee members to review once again. [Annex 4](#) also includes representations made by the Valley Gardens Forum which were also previously considered.

Since then, a representation asserting that the conditions precedent have not been met has been made by the Valley Gardens Forum, see [Annex 5](#).

The decision for approving the Project ultimately rests with the Board and the decision making and evaluation processes have been carried out in accordance with the general governance framework set out in part 3 of the Coast to Capital Assurance Framework.

The process for reviewing the scheme has been undertaken in accordance with Annexes' O and P of Coast to Capital's Assurance Framework.

In accordance with Annex O of the Coast to Capital Assurance Framework in relation to the Transport Assessment it should be noted that:

- The Business case has been prepared and has previously been publicised for comment. Comments have been received and are annexed to this report. The business case was reviewed against the requirements of the DfT Business Case guidance and assessed in accordance with standard methodology by independent consultants TISL. TisL have confirmed that the business case is fit for purpose.
- Highways England have been made aware of the scheme.
- As previously reported and set out in the business case, 23.5% of the funding of the scheme is being met by the applicant.
- A Value for Money assessment has been provided and reviewed by TisL. This assessment provides that the chosen option is the best value of the given options, it represents *Low Value for Money* in the DfT's value for money category. Committee Members attention is drawn to the final paragraph of section 7.0 which provides that:

"Only schemes that offer 'high' or 'very high' value for money as assessed using DfT guidance will be recommended for funding support."

Both BHCC advisers and the TisL report however, note that the scheme is likely to deliver wider benefits which have not been monetised for the business case. The TisL report finds that the project will provide economic benefits with relatively low risks. It also states that the scheme should be viewed as a whole and that the Phase 3 element is critical to allow the benefits of Phases 1 & 2 to be realised and thus recommends that the requested LEP funding is approved for the Phase 3 project. Committee members must be content that the

recommendations made by the experts justify awarding funding for this scheme notwithstanding this paragraph in the Assurance Framework. Thus if the Investment Committee were minded to recommend the project for approval they would be doing so on the basis of the expert advice within the transport assessment in relation to value for money aspects and the other evidence presented to them. Only the Board are able to approve a deviation from the existing Assurance Framework as Governance Changes are reserved to the Board under the Scheme of Delegation in part 3 of the Assurance Framework accordingly, the committee will also need to recommend to the Board that they approve this deviation.

- An appropriate funding agreement will be drawn up to meet the funding drawdown and monitoring requirements if the project is approved for funding.

4. Legal representations from Valley Gardens Forum

The Valley Gardens Forum instructed DMH Stallard and latterly asb Law to write to Coast to Capital regarding the Brighton Valley Gardens Phase 3 project funding conditions. All letters are included at **Annex 6**, together with Coast to Capital's replies and asb Law's further response.

Browne Jacobson solicitors have been commissioned by Coast to Capital to provide an opinion on the BHCC monitoring officer's letter, in relation to whether it adequately addresses the conditions precedent as detailed under 2.0 above. Their view is that, subject to some points of clarification (which have now been obtained) the response from the BHCC's Monitoring Officer adequately confirms that the conditions set have been met. The letter from Browne Jacobson is provided as 'confidential and legally privileged' to Investment Committee members (**Annex 2a**). Each condition related to the giving of an undertaking by the BHCC monitoring officer, who is the Council's statutory legal advisor.

5. Conclusion

This report contains further information for the Committee to consider, including further independent analysis with further representations by the Valley Gardens Forum.

The Board has previously decided to support the Valley Gardens Phase 3 project subject to agreeing pre-conditions and those being met. The legal advice received is that, those pre-conditions that have been currently set by the Investment Committee can reasonably be accepted as met. The clarification suggested by the legal advisor has also been obtained satisfactorily.

It is not Coast to Capital's role to interfere with, or challenge the conduct and / or process compliance of BHCC. Nor is it the LEP's role to take sides in any dispute through withholding funding. However, it is the LEP's role to make its decisions properly and as part of that recognise any concerns expressed by any party and to ask appropriate questions of the applicant (BHCC), seeking necessary assurances from the appropriate person with a statutory duty. The LEP has indeed sought these assurances and in this regard it must rely upon these from the legally accountable officer at BHCC, who is a practising solicitor.

However, substantial concerns continue to be raised by the Valley Gardens Forum, with newspaper reports of concerns being also expressed by the local MP (Lloyd Russell-Moyle) and also newspaper reports of concerns being expressed by several Councillors from cross parties. In addition it is reported by the Valley Gardens Forum and press that a local Councillor has referred the decision by BHCC to agree the current scheme to the Council's Audit Committee for examination.

However, a recent letter of commitment has been received from Cllr Anne Pissaridou – Chair of Environment, Transport and Sustainability Committee (BHCC), that the scheme is still fully supported by the Council. This letter can be found at [Annex 7](#).

The Valley Gardens Forum has recently sent two emails to the LEP, setting out their current position, calling for withdrawal of LEP funding, pending re-design of the project. These are attached at [Annex 7](#). In light of the concerns from the Valley Gardens Forum relating to the scheme, the Investment Committee is invited to consider the project business case in context to these and also the newspaper reports referred to in the Valley Gardens Forum correspondence.

The LEP respects the absolute right of any member of the public or body, to challenge such scheme design issues. However, the appropriate route to address many of the concerns relating to the various statutory planning, consultation and procedural handling issues relating to scheme design is to the controlling authority i.e. BHCC, through their statutory decision and planning processes. Further, if having followed these processes the complainant is still not satisfied with the outcome, they may seek leave for a judicial review of process compliance and / or complain to the local Government Ombudsman. In this regard it should be noted that the Valley Gardens Forum have issued a letter before action to BHCC, serving notice of a potential judicial review claim (See [Annex 6](#)). Following this letter we understand that BHCC took part in an alternative dispute resolution (ADR) process with the Valley Gardens Forum under mediation. Coast to Capital has now received notification from BHCC that the ADR process has concluded. Simultaneously the Valley Gardens Forum has informed the LEP that they still have outstanding concerns. Both items of correspondence are

included in **Annex 8**. The Committee should note that there remains considerable disagreement between the Valley Gardens Forum and BHCC.

The Investment Committee is invited to again consider its support for the scheme and recommendations made in paragraph 1 above.

6. Diversity Statement

There are no diversity implications for consideration.

7. Legal Statement

Approval of the funding for this Project must be carried out in accordance with the general decision making processes of the Assurance Framework and in particular Annexes O and P. The report confirms that those processes have been followed. The committee should note however that a recommendation to fund the scheme would be contrary to paragraph 7.0 of Annex O and both this committee and ultimately the Board will need to be content that it is appropriate and reasonable to deviate from this position based on the evidence presented to it. As noted in the report governance changes are reserved to the Board and so it will be for the Board to specifically approve this deviation alongside approval of the overall funding following recommendations from this Committee.

Annexes:

- Annex 1 – Letters from C2C and Monitoring Officer at BHCC.
- Annex 2 – Clarification email from the LEP dated 18th April and response from the City Council dated 1st May 2019.
- Annex 2a – Legally privileged advice from Browne Jacobson.
- Annex 3 – TisL appraisal of the scheme and letter.
- Annex 4 - scheme business case, Mott McDonald report, BHCC Board presentation, LEP original public representations incl. from Valley Garden's Forum.
- Annex 5 – Representation from Valley Gardens Forum to Coast to Capital Board. BHCC response to letter from VGF to Coast to Capital.
- Annex 6 – Letter from DMH Stallard, Letter from asb Law and responses from Coast to Capital, including further response from asb Law, letter sent to BHCC from DMH Stallard regarding the Judicial Review.
- Annex 7 – latest communications from Valley Gardens Forum and letter of support from BHCC.
- Annex 8 – ADR correspondence from BHCC and Valley Gardens Forum.

Additional information folder included as part of pack.