



## Officer Decision Record – Key Decision

Key decisions taken by an officer are subject to the 5 day call in period from circulation to Members, and therefore the decision will be released for implementation following the call-in period and no call in being received

### 1. Cabinet date and copy resolution this key decision relates to

The decision is in accordance with the delegations (see below) established in relation to the Cultural Development Fund (CDF) programme through the Cabinet approval of 5 June 2019 (Cabinet Decision Notice DN7). This programme is now called Grimsby Creates.

That the Director of Health and Wellbeing, in consultation with the Portfolio Holder for Tourism, Heritage and Culture be authorised to:

- a. negotiate and finalise appropriate agreements between the Council and Arts Council England (ACE) and partnership/service level agreements with delivery partners in relation to the CDF programme.
- b. commence procurement exercises for capital and revenue projects to be delivered through the CDF programme and make appropriate awards.
- c. ensure that all ancillary actions are completed.

That the Chief Legal and Monitoring Officer be authorised to execute all documents in connection with the above.

As a result of changes to the scheme of delegation, the responsibility of decision making for the CDF with effect from 1 January 2021 is the Executive Director - Environment, Economy and Resources and Portfolio Holder Economic Growth, Housing and Tourism and as constitutionally permitted.

**2. Subject and details of the matter** (to include reasons for the decision)

A £3.2m CDF grant was secured by the Council in December 2018 to deliver cultural led regeneration within Grimsby. There are 4 elements of the Grimsby Creates programme: creative workspace, events infrastructure and public art in St James Square, business development and a creative programme.

**This officer decision record focusses on the creative workspace strand, a significant capital scheme to develop a creative and digital production hub in the Kasbah area on the Port of Grimsby.**

Background

The CDF bid identified the Kasbah area on the Port of Grimsby as a suitable location to develop a creative workspace. The buildings are in the freehold ownership of Associated British Ports (ABP) and require legal agreements to be entered into to satisfy the funding requirements for the Council as accountable body of the CDF grant. ACE and Historic England (HE) support the regeneration of historic buildings in the designated conservation area and part of Greater Grimsby's Heritage Action Zone.

Donald Insall Associates delivered up to RIBA stage 3 (detailed design including planning submission) with Engie Technical Design Team (Engie TDT) appointed, through the change request process, to deliver enabling and investigative works ahead of RIBA stages 4 to 7 (technical design through to construction and project handover) subject to planning permission. The enabling and investigative works for phase 1 of the project will enable greater cost certainty for the construction phase as well as remove contaminants, and to allow the buildings to dry out from water ingress. To undertake the enabling and investigative works requires a legal agreement between the Council and ABP. Engie Project Management Office (PMO) and specifically the Grimsby Heritage Action Zone Manager will project manage the project from the enabling works through to RIBA 4-7.

**3. Decision being taken**

The decisions required for the creative workspace project are:

**A. Approval to finalise the legal agreements as described below for the Creative Workspace within the project team and signing as per delegated authority above**

The Council's funding agreement with ACE requires that the Council, as accountable body, has a number of legal agreements to secure the use of the buildings in phase 1 as follows:

1. Tripartite Agreement: this secures the buildings for the intended use as a creative workspace for an agreed period of time and is between the Council, ABP and ACE. This agreement will be in place for 5 years after the funding period has ended. Appropriate background checks through a Certificate of Title are also being undertaken to ensure that the Council is assured of the ownership status of the buildings.

2. Partnership Agreement: The Council and ABP will enter into an agreement to detail the collaboration arrangements between the two parties on the creative workspace project.

3. Head lease and agreement for lease: The Council will take on the head lease for the buildings in phase 1 and occupy the premises as head lessee for a period of up to 99 years and not less than 50 years on a peppercorn rent basis. An agreement for lease will be entered into ahead of the head lease and will be conditional upon achieving certain milestones in the project including planning permission.

4. Sub lease and concession contract including agreement for sub-lease: The Council will enter into simultaneous arrangements with a provider secured through an open tender process to manage and operate the creative workspace on the Council's behalf. The initial term for the sub lease and concession contract will be for 10 years with a potential extension/s of up to 10 (5+5) years. The procurement exercise will determine if the Council may generate income from the arrangement although the profit is not expected to be significant as wider non-financial benefits will be realised for the Council and wider borough. The Council will need to be assured that the rent charged within the sublease is the best rent reasonably obtainable for properties of that type taking into account the full circumstances of the transaction and a valuation will take place to ascertain whether a less than best Cabinet decision may be required.

5. Tenancy at Will agreement: The Council will enter into a tenancy at will agreement to provide the necessary access to the buildings that the Council and Engie TDT require to undertake the enabling and investigative works. The Council will become responsible for the buildings for the period of time of the enabling works taking place prior to entering into the agreement for lease.

All legal documents have been considered by the project team including legal, finance, procurement and estates representatives as well as with ABP's estates and legal teams.

**B. Approval to commence a procurement exercise for the creative workspace provider through an open tender on YORtender.**

Commencing the procurement will lead to an open tender process in early autumn 2021 to secure a provider to manage and operate the creative workspace through a sub-lease and concession contract. Procurement, legal, finance and estates colleagues have been involved in the discussions in relation to the tender documentation.

Following an open tender process and full evaluation of the tenders, the agreement for sub lease will be signed by the Council and the provider which will result in the sub lease and concession contract being entered into once the buildings are ready for occupancy in January 2023.

**C. Approval to commence procurement for a conservation accredited professional advisor through an open tender.**

If planning permission is granted, the Council will progress with RIBA stage 4 (technical design) between September 2021 and January 2022 with Engie TDT appointed as principal designer. An architect external to the project will be required to advise on the technical design and this will be undertaken through an open tender process by Engie TDT. The contract value for the architectural practice will be capped at £20k for the project duration.

The architectural practice contract award will be undertaken by Engie TDT following an open tender process and evaluation of the tenders. The project manager and Grimsby Creates programme team will be involved in the evaluation process.

**D. Approval to commence procurement for a construction contractor via the Council's Heritage Framework.**

If planning permission is granted, the Council will progress with RIBA stages 5-7 (construction, handover through to use) between March and December 2022 with Engie TDT appointed as principal designer. The procurement of a construction contractor will be undertaken by Engie TDT through the Council's Heritage Framework agreement. The contract value for the construction contractor will be capped at £1.61m.

The construction provider contract award will be undertaken by Engie TDT following an evaluation of the tenders. The project manager and Grimsby Creates programme team will be involved in the evaluation process.

**4. Is it an Urgent Decision? If yes, specify the reasons for urgency. Urgent decisions will require sign off by the relevant scrutiny chair(s) as not subject to call in.**

No

**5. Anticipated outcome(s)/benefits**

The creative workspace will enable the delivery of a new hub for creative practitioners to occupy studio space, collaborate and network leading to social and economic growth & prosperity for the creative and digital industries.

**6. Details of any alternative options considered and rejected by the officer when making the decision (this should be similar to original cabinet decision)**

The Council manages the workspace itself rather than subleasing to an operator. This would have significant revenue and capacity implications for the Council and would not be in the spirit of the original bid submission. On this basis, this option is not recommended.

**7. Background documents considered (web links to be included and copies of documents provided for publishing)**

The Cultural Development Fund (CDF) programme was approved by Cabinet on 5 June 2019.

<https://www.nelincs.gov.uk/wp-content/uploads/2018/05/Cabinet-Minutes-5th-June-2019-1.pdf>

The revised CDF programme was approved by an Officer Decision Notice on 12 June 2020 under delegated authority by the Director of Economy and Growth and Portfolio Holder for Tourism, Heritage and Culture.

<http://www.nelincs.co.uk/wp-content/uploads/2020/07/Officer-Decision-Records-2020-Part-1-Reduced.pdf> (Page 32).

**8. Does the taking of the decision include consideration of Exempt information? If yes, specify the relevant paragraph of Schedule 12A and the reasons**

No.

**9. Details of any conflict of interest declared by any Cabinet Member who was consulted by the officer which relates to the decision (in respect of any declared conflict of interest, please provide a note of dispensation granted by the Council's Chief Executive)**

N/A.

**10. Monitoring Officer Comments (Monitoring Officer or nominee)**

The CDF programme has been, and will continue to be, supported by Legal Services colleagues ensuring that the Council's position is considered and protected. The activities listed in this decision record allow for the continuation of the scheme and are consistent with the Cabinet decision of 5<sup>th</sup> June 2019 and approved delegations.

**11. Section 151 Officer Comments (Deputy S151 Officer or nominee)**

Expenditure related to the agreements, procurement and construction costs will be met from the CDF capital grant funding with a contribution from the PSiCA grant scheme. The procurement exercises aim to ensure that the Council achieves best value for works undertaken and for the concession contract.

**12. Human Resource Comments (Head of People and Culture or nominee)**

There are no direct HR implications.

**13. Risk Assessment (in accordance with the Report Writing Guide)**

This a major project for NELC and partners to deliver which has the opportunity to show that North East Lincolnshire is developing a thriving cultural hub for creative and digital industry practitioners in the Kasbah Conservation Area, Port of Grimsby by regenerating heritage buildings for a new purpose.

This is a complex project and as such there are many risks which need to be managed. A detailed project plan is in place to ensure key milestones are met and the programme team are working closely with Arts Council England to ensure successful delivery of this grant funded programme.

The risks for the creative workspace are monitored within the workspace project team. There are 26 identified risks associated with the creative workspace of which none are red, with appropriate mitigations in place for those rated as amber or green. Separate regular discussions take place with ABP representatives to progress the agreements and procurements.

#### 14. Has the Cabinet Tracker been updated with details of this decision?

Yes

#### 15. Decision Maker(s):

Name: Sharon Wroot

Title: Executive Director for  
Environment, Economy and  
Resources

Signed: REDACTED

Dated: 18/08/21

#### 16. Consultation carried out with Portfolio Holder(s):

Name: Cllr. Callum Procter

Title: Portfolio Holder Economic  
Growth, Housing and Tourism

Signed: REDACTED

Dated: 19/08/2021

#### 17. If the decision is urgent then consultation should be carried out with the relevant Scrutiny Chair/Mayor/Deputy Mayor

Name: N/A

Title: N/A

Signed: N/A

Dated: N/A

Key Decisions are defined in the Constitution as:

A decision (whether taken collectively or individually by members) which is likely:

- (i) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
- (ii) to be significant in terms of its effects on communities living or working in an area comprising two or more wards.

A decision will be considered financially significant if:

- (i) in the case of revenue expenditure, it results in the incurring of expenditure or making savings of £350,000 or greater;
- (ii) in the case of capital expenditure, the capital expenditure/savings are in excess of £350,000 or 20% of the total project cost, whichever is the greater

In determining whether a decision is significant in terms of its effect on an area comprising two or more wards, consideration shall be given to:

- (i) the number of residents/service users that will be affected in the wards concerned;
- (ii) the likely views of those affected (i.e. is the decision likely to result in substantial public interest)
- (iii) whether the decision may incur a significant social, economic or environmental risk.