

10.00am, Thursday, 30 June 2016

West Princes Street Gardens and the Ross Bandstand: update

Item number	8.8
Report number	
Executive	
Wards	All

Executive summary

As reported to the Corporate Policy and Strategy Committee on 12 April 2016, the Ross Bandstand situated in West Princes Street Gardens is no longer fit for purpose and requires to be replaced. In addition, the Ross Fountain requires refurbishment and other elements of the Gardens would also benefit from investment, including better pedestrian and vehicular access, landscaping, signage and visitor facilities.

A potential benefactor has formed a steering group (“Steering Group”) and offered to support the Council to undertake a substantial programme of work in relation to these significant assets, taking into account the requirements of relevant legislation and risks inherent in the location, and has offered to raise the necessary funds in order that the work can be carried out.

Due diligence work has been undertaken, and the optimum way forward for this project is now presented for Council’s approval.

Links

Coalition pledges	P24
Council outcomes	CO20
Single Outcome Agreement	SO1

West Princes Street Gardens and the Ross Bandstand: update

Recommendations

The Council:

- 1.1 welcomes the ongoing cooperation with the Council, on a voluntary basis, by a potential benefactor and an independent Steering Group to develop an outline proposal to refurbish elements of West Princes Street Gardens, including the redevelopment of the Ross Bandstand and the building of an associated visitor centre;
- 1.2 notes that the independent Steering Group will set up a Scottish Charitable Incorporated Organisation (SCIO) to implement the various elements of the project;
- 1.3 notes that the SCIO will be responsible for carrying out:
 - 1.3.1 the design competition for the Bandstand and associated visitor centre, and that the Council will have representation on the selection panel and will have final approval on the design;
 - 1.3.2 the tender process for the capital works, and oversight of their delivery; and
 - 1.3.3 in the Council's name, the tender for the concession contract to manage the Bandstand and visitor centre post-construction.
- 1.4 authorises the Executive Director of Place to enter into a contract with the SCIO in order to enable the project to progress, provided that the SCIO is granted charitable status by the Scottish Charity Regulator (OSCR);
- 1.5 authorises the Executive Director of Place to take the action necessary to allow a private bill to be brought before the Scottish Parliament to amend the City of Edinburgh District Council Order Confirmation Act 1991 to permit the construction of a visitor centre as per the design competition, on the understanding that this will be subject to Parliamentary approval;
- 1.6 authorises the Executive Director of Place to take any action necessary to ensure that the change in use in the Council's common good land is permitted through procedures under the Land Reform (Scotland) Act 2016, the relevant provision of which is anticipated to come into effect in late June 2016, on the

understanding that this will be subject to Parliamentary and/or Court approval;
and

- 1.7 notes that the overall project timescale is difficult to predict, but that the process relating to the private bill could itself take between 18 months and two years, and it is likely to take a minimum of three years from now to the point when one or more operators takes over the management of the new Bandstand and associated visitor centre.

Background

- 2.1 The Ross Bandstand, built in 1935, is a key asset in West Princes Street Gardens, in a high-profile and sensitive location below Edinburgh Castle. The most high-profile core annual uses are the Edinburgh International Festival's Fireworks Concert produced by the Scottish Chamber Orchestra and Edinburgh's Hogmanay. However, the Bandstand's condition has deteriorated over time and it is no longer fit for purpose, although some interim maintenance works for health and safety purposes have recently been undertaken.
- 2.2 With input from the potential benefactor, Mr Norman Springford (founder of Apex Hotels Ltd), and an independent Steering Group formed by Mr Springford, Council officers have developed a proposal for improvements to the landscaping of and access to the Gardens, the replacement of the Ross Bandstand and construction of a visitor centre. This work is taking place on the basis that the funds for the project would be generated by donations to the SCIO. In this regard, Mr Springford has indicated that he will donate up to £5m towards this project, and anticipates generating further donations of up to £20m.
- 2.3 Funding sources are currently being explored by the Council to contribute towards the proposed restoration of the Ross Fountain.

Main report

- 3.1 Since external funding is required for this proposed project to proceed, its success depends on the willingness and capacity of one or more external parties to manage the project on the Council's behalf. That management role must include fundraising, protecting the Council against risk, and the Council must act in compliance with all relevant legislation when passing this management role to one or more third parties.
- 3.2 Discussions have taken place since April 2016 with Mr Springford and his legal advisors, and with the Council's legal advisors, and a way forward has now been

identified which would meet the above requirements. Mr Springford's Steering Group is setting up a SCIO. In brief, it is proposed that:

- 3.2.1 the Council enters into a contractual agreement with the SCIO relating to the three main elements of the renewal project, and containing relevant protection for the Council from risk;
 - 3.2.2 the first element of the renewal project – an open competition to secure an appropriate design for the replacement Ross Bandstand and associated visitor centre, and landscaping - be carried out by the SCIO;
 - 3.2.3 the second element – contracting and overseeing the necessary capital works – be carried out by the SCIO;
 - 3.2.4 the third element – the procurement of one or more operators to manage the new Bandstand and associated visitor centre – be done in the Council's name by the SCIO.
- 3.3 The SCIO's existence depends on its charitable status. In order to demonstrate to OSCR that it would be appropriate to grant charitable status, the SCIO must demonstrate that it meets OSCR's public benefit test during the fundraising process and ongoing works. Mr Springford also requires the SCIO to have a continuing involvement in the project after the work is completed. Therefore, it is proposed that contract between the Council and the SCIO would reflect that:
- 3.3.1 the SCIO would have a right (i) to be consulted on all matters relating to the ongoing management of the Bandstand and visitor centre; and (ii) can make proposals in this regard; and
 - 3.3.2 there would be quarterly meetings between the Council and the SCIO in relation to the management of the Bandstand and visitor centre.
- 3.4 Work to apply for SCIO status and develop an appropriate contract between the Council and the SCIO is under way.
- 3.5 Once charitable status has been granted to the SCIO, and the Council and SCIO have entered into a contractual arrangement, the SCIO would run or commission an open design competition. In order to protect the Council's interests, it is proposed that the Council would be represented on the selection panel, and will have final approval of the design. The project would also be subject to planning approval.
- 3.6 Princes Street Gardens is part of the Council's inalienable common good land. The building of an associated visitor centre could be considered a change in use of the common good land, which presently is not permitted in law. Therefore, in order to ensure that the change in use is permitted, the Council will be required to seek alienation of the function of the relevant land under the Land Reform (Scotland) Act 2016, the relevant provision of which is anticipated to come into effect in late June 2016. It should be noted that this process will be subject to Court approval.

- 3.7 The City of Edinburgh District Council Order Confirmation Act 1991 sets certain restrictions on building in some of the city's parks. In Princes Street Gardens, only the following permanent buildings are permitted: *"lodges for gardeners and keepers, hothouses and conservatories, monuments, bandstands, public conveniences, police boxes and buildings for housing apparatus for the supply of electricity and gas"*. Any additional visitor centre, for example, would require an amendment to the 1991 Act. Therefore, in order to ensure that the project can be completed, the Council will be required to bring a private bill before the Scottish Parliament to make the appropriate amendments to the 1991 Act. It should be noted that this process will be subject to Parliamentary approval.
- 3.8 The process of consultation in relation to the proposals, drafting and lodging the relevant bill and associated documentation, and the various stages of parliamentary discussion could take between 18 months and two years. Although the Council has amended the 1991 Act on a number of occasions in the past, there is no certainty that the private bill would be passed to become law.
- 3.9 The replacement of two bridges which span the railway line between Waverley and Haymarket stations - a main arterial route - would also require extensive planning and permissions. Their replacement is necessary to improve vehicular access for the capital works, and in the longer term, for event organisers, emergency vehicles and park maintenance. This aspect of the project will require the agreement of, and a close working relationship with, Network Rail.
- 3.10 The elements of an approved design, resolutions to the issues of Common Good and amendments to the 1991 Act, and agreement with Network Rail will all need to be completed before the SCIO could carry out the tender, and enter into contract, for the capital works. The Ross Bandstand and the red blaes area are both essential to the delivery of the annual Edinburgh International Festival's Fireworks Concert and Edinburgh's Hogmanay. It would be a condition of any future development that those uses be accommodated in the new facilities. The new Bandstand would be expected to provide superior contemporary facilities that would accommodate a wide range of events. It is difficult to predict the duration of the capital works, which will depend to a great extent on the final selected design.
- 3.11 It is proposed that the various elements of the capital work be carried out in stages, with the works to the Bandstand and visitor centre being completed last. Each element of the works will only be undertaken once the SCIO is reasonably satisfied that there are sufficient funds available to complete that element. This will minimise the risk that there is insufficient funding for the separate elements of the works.
- 3.12 Once the capital works have been completed, the SCIO will carry out, in the Council's name, the tender process to award the concession contract for management of the Bandstand and visitor centre.

- 3.13 It is likely to take a minimum of three years from now to the point when an operator takes over the management of the new Bandstand and associated visitor centre.

Measures of success

- 4.1 The completion of the refurbishment and development of West Princes Street Gardens in general, and the redevelopment of the Ross Bandstand and the construction of the associated visitor centre in particular, is to the benefit of residents, visitors, event organisers and Festivals, and Edinburgh's reputation.

Financial impact

- 5.1 With the possible exception of the restoration of the Ross Fountain, for which the Culture Service is seeking funds, the Council does not have any funding for this project and discussions with the independent Steering Group have been held on that basis.
- 5.2 The Council will own the replacement Ross Bandstand and associated visitor centre from the outset, and Land Buildings Transaction Tax will not be applicable.
- 5.3 The assets will be the subject of ongoing revenue and life cycle maintenance costs which will require budgetary provision going forward. It is anticipated that the concession element of the project will cover such costs, and, in the event of shortfall, the SCIO will contribute to the balance. Estimation of these ongoing costs will be possible once an appropriate design has been agreed and an update will be provided in a future report on the scheme.

Risk, policy, compliance and governance impact

- 6.1 Potential risks have been identified, including the following:
- 6.1.1 the Court may not approve the alienation of the common good land;
 - 6.1.2 the Scottish Parliament may not approve relevant amendments to the 1991 Act;
 - 6.1.3 planning approval may not be granted;
 - 6.1.4 changes to railway bridges may not be agreed;
 - 6.1.5 necessary funds may not be raised to complete each element of the project;
 - 6.1.6 the proposals may attract negative responses; and

- 6.1.7 the level of interest in the tender process for the capital works may be limited, given the challenges inherent in the nature of the site.
- 6.2 Refurbishing and replacing assets in West Princes Street Gardens would fit well with the aims of relevant local and national policies and strategies.

Equalities impact

- 7.1 This proposal would improve access to West Princes Street Gardens for all visitors.

Sustainability impact

- 8.1 This proposal could enhance the West Princes Street Gardens environment; access to the Gardens, the Festivals and events programme in Edinburgh, and opportunities for smaller scale events and activities.

Consultation and engagement

- 9.1 The Steering Group set up by Mr Springford has already consulted a range of potential users and stakeholders including Edinburgh World Heritage Trust, the Cockburn Association, Network Rail, Edinburgh International Festival, the Scottish Chamber Orchestra and Unique Events.
- 9.2 Further public notification and consultation would be required in order to progress any amendment to the 1991 Act and the Court process under the Land Reform (Scotland) Act 2016.

Background reading / external references

West Princes Street Gardens and the Ross Bandstand: an opportunity for renewal report to Corporate Policy and Strategy Committee on [12 April 2016](#)

Ross Fountain report to Culture and Sport Committee on [21 October 2014](#)

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City of Edinburgh Council – 30 June 2016

Links

Coalition pledges	P24 - Maintain and embrace support for our world-famous festivals and events
Council outcomes	CO20 - Culture, sport and major events – Edinburgh continues to be a leading cultural city where culture and sport play a central part in the lives and futures of citizens
Single Outcome Agreement	SO1 – Edinburgh’s economy delivers increased investment, jobs and opportunities for all.
Appendices	