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Report of the Cabinet Member for Enterprise, Development & Regeneration

Cabinet - 20 October, 2016

**FPR7 – UPDATE - CITY CENTRE REGENERATION LAND ASSEMBLY-
DEMOLITION OF OCEANA BUILDING**

Purpose:	To update Cabinet on the current situation regarding the demolition of the former Oceana building and to outline the need to commit further funding to complete its demolition.
Policy Framework:	City Centre Strategic Framework.
Reason for Decision:	To comply with Financial Procedure Rule No.7 (Capital Programming and Appraisals) - to commit and authorise schemes on to the Capital Programme or to include new schemes in the Capital Programme.
Consultation:	Legal, Finance, Access to Services
Recommendation(s):	It is recommended that Cabinet: 1. Amend the budget provision to reflect the negotiated final account value of £3.7 Million together with amended terms to bi-monthly valuation payments and capped retentions to 3% of the original contract value
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1.0 Background

- 1.1 The Swansea City Centre Strategic Framework Review sets the strategic direction for regeneration & development in the city centre and was, following extensive public consultation, adopted by Cabinet as informal planning guidance in February 2016. The framework focuses on two key regeneration hubs, one being the Oystermouth Road corridor, the other the creation of a Central Business District/Employment Hub within The Kingsway.

- 1.2 In January 2015 Cabinet approved the principle of a programme of strategic property acquisitions at The Kingsway being developed to support the delivery of an employment hub one of which was the acquisition of the former Oceana building.
- 1.3 On 30th April 2015 Cabinet approved the purchase of the freehold interest of 71-77 The Kingsway (former Oceana Nightclub)
- 1.5 The demolition works for the Oceana building was tendered and the contract was awarded to the successful contractor in October 2015. The tender value was £978,326.
- 1.6 It is worth considering that the Oceana building through its life has had several changes of use and several refurbishment schemes over the years. Although due diligence was followed during the commercial conveyancing process in requesting all relevant documents in relation to asbestos such as an Asbestos Management Plan (AMP) such documents proved to be limited.

2.0 Demolition/Asbestos Surveys

- 2.1 Contracts were exchanged for the acquisition of the Oceana building in September 2015 and officers commissioned a demolition asbestos survey prior to the final tender stage of the main demolition contract. This survey identified asbestos residue in large areas of the structure and the removal of this was allowed for in the demolition works tender brief. The appointed contractor subsequently allowed for these works within the accepted tender price.
- 2.2 Work began on site in November 2015. At the beginning of March 2016, the contractor suspended soft stripping within the Oceana building due to the significant amount of un-identified asbestos present throughout the structure.
- 2.3 Since March 2016 and up to the present day, there have been continual un- identified asbestos finds within the Oceana building fabric. The use of asbestos board materials in the construction of concrete floor slabs and beams in the form of concrete spacer (spacers used to hold steel reinforcement away from timber shuttering whilst forming concrete frame) was not uncommon in the past. However, the extent and number of packers found within the building has surprised our specialist consultants and indeed the HSE.
- 2.4 The consultant which carried out the original asbestos survey have been placed on warning that officers will review whether the original asbestos report was fit for purpose and seek to recover damages if appropriate.
- 2.5 Given the scope cost of the survey (circa £50,000) it will be argued that the original asbestos demolition survey should have been more stringent in its identification of asbestos containing materials (ACM's) within every

part of the building. However, it is questionable whether any such survey could have identified all ACM's when taking into consideration the nature, location and amount of ACM's hidden within the concrete structure itself and behind inaccessible areas of the building. The first real opportunity to capture the full extent of the asbestos contained within the building was once demolition began in earnest, but it is clear that the original demolition survey could have and should have identified the much wider issues of asbestos use within the building. It is also worth noting that the survey report did not contain any caveats to its findings, which would have caused the Council to conduct further investigations or risk assessments.

3.0 Cost and Programme Analysis

3.1 Since March 2016, officers, asbestos removal and cost consultants have been working with the demolition contractor to agree the most cost effective and safe method of completing the demolition in order that the final impact on cost and programme may be reasonably estimated.

3.2 The cost and programme analysis work has been extremely difficult given the unique nature of asbestos use within the building. Cost analysis has been continually hampered by additional ACM's being found in each new part of the building the contractor enters to progress the soft strip works resulting in several significant compensation events and programme delays. This has made it very difficult if not impossible to arrive at an estimated cost of asbestos removal given the unique nature of its use within the building.

3.3 There are still several areas of the building where demolition work is yet to start and therefore the risk of finding more asbestos within the building generally and in particular within the concrete structure is still very high (Note- only 60% of known packers have been removed to date). These areas are:-

- Underside of ground floor 1,200 m2,
- Upper mezzanine ceilings 1,800m2,
- Areas likely to have AIB packers 900m2, 10,000m2 (areas where packers likely to be within concrete)

4.0 Internal Audit Summary

4.1 A review of the scheme to purchase and demolish Oceana has been completed by the Internal Audit Section at the request of the Corporate Director (Resources).

4.2 The review has found that the asbestos survey undertaken by an externally appointed contractor failed to identify the full extent of asbestos present in the building and therefore the removal of all asbestos was not priced in the demolition tender leading to significant

increased costs falling on the Council and a significant increase in the contract period.

- 4.3 The review also identified that the Council officers involved in the demolition of Oceana have at all times acted in good faith based on the best information available and acted with the best interests of the Council in mind.

5.0 Negotiated Final Cost and Programme

- 5.1 Given the level of uncertainty still surrounding the amount of asbestos remaining in the building, officers and the demolition contractor have been working on a negotiated final cost and programme duration.
- 5.2 Several meetings have taken place in the last few weeks to arrive at a negotiated final cost which both council officers and the contractor could agree as fair and reasonable. As of the 31st August 2016, the contractor's position on a final cost to complete all works whilst taking the risk of further asbestos finds was £3.88 Million.
- 5.3 Officers, having interrogated the contractor's offer in detail were of the view that a final cost of £3.7 Million is more fair and reasonable given the circumstances.
- 5.4 The contractor has now accepted a final cost of £3.7 Million with a number of requests such as:-
- Bi-monthly interim valuation payments through to completion.
 - Retention held at 3% of the original contract sum (£978K)
- 5.5 An Agreement has now been reached in principle between officers and the contractor which gives a completion date of end of March 2017.

6.0 Advantages of Settling on a Negotiated Final Cost and Programme

- 6.1 The advantages of settling on a final cost at this stage of the contract are as follows:-
- Certainty of final cost as opposed to continual compensation events every time additional asbestos is found impacting cost and programme.
 - Financial risk surrounding the removal of yet unidentified asbestos transferred to the contractor,
 - Contractor responsible for all future asbestos surveys and analysis. Note - CCoS still have overall control through independent certification.
 - Secures a definitive programme/completion date assisting forward planning for the development of the Kingsway Business Hub strategy.

- Highways works for the Kingsway can be properly planned
- The contractor takes on the responsibility for the removal and disposal of contaminated waste (not planned for in original contract) from site to a controlled tip. Note – Conditions still apply for contractor to notify CCoS as to location and final use (if used)
- Contractor will deal directly with HSE on all matters surrounding the removal and safe disposal of contaminated waste.
- More onerous dust suppression requirements during demolition (now HSE requirement) inclusive in final cost.

7.0 Options for Consideration

7.1 There are two options for cabinet to consider at this stage, these are:-

- To maintain progress the contractor is progressing with the asbestos removal and demolition and as such cabinet are asked to approve the increased expenditure to the negotiated final cost of £3.7 Million giving certainty of cost and programme.
- If cabinet are not able to make these additional funds available then the only other option would be to dis-engage the current contractor and defer any further works. There is no advantage in doing this as the same asbestos issues will be faced by any new contractor who will have no knowledge of the site which is likely to generate additional costs and significant delays to the future development opportunities. If Oceana is not demolished there will be continuing revenue financial implications for the security of the site.

8.0 Financial Implications

8.1 The demolition works for the Oceana building was tendered and the contract was awarded to the successful contractor in October 2015. The tender value was £978,326.00. The total value of the project at this stage inclusive of fees and contingencies was £1,180,000

8.2 Work began on site in November 2015. Since the start of works contractors have found significant amounts of additional unidentified asbestos which, as noted, will increase the demolition costs considerably

8.3 The contractor's offer to complete the works and accept the risk of any additional asbestos being found is £3,700,000. If this offer is accepted, the total cost of the project inclusive of fees and contingency will be £4,112,000.

- 8.4 When the original contract value of £1,180,000 is set against the revised total cost of £4,112,000 to complete the works there is now a budget shortfall of £2,932,000
- 8.5 Cabinet are asked to approve the additional capital cost of £2,932,000 required to complete the removal of asbestos and the demolition of the Oceana building. Given the funding shortfall in the capital programme this will have to be funded by additional unsupported borrowing.

9.0 Grant Funding

- 9.1 The project was originally funded by both the Council (£50,000) and Welsh Government V&VP Funding (£1,130 Million) making a financing total of £1,180 Million.
- 9.2 Officers have explored the opportunities for additional funding from Welsh Government (VVP) Unfortunately there is no further funding available to complete this project.

11.0 Legal Implications

The additional work awarded to the contractor is via a series of compensation events which have in essence varied the quantities of the existing contract. The NEC construction contract has been designed to facilitate the inclusion of additional works which arise as a result of unforeseen circumstances and these contract modifications therefore comply with relevant procurement law.

The Council together with the assistance of the contractor will need to evidence the costs associated with the removal of additional asbestos not specified within the demolition asbestos report as an element of this may be recoverable from the asbestos consultant.
The Council will need to ensure that it complies with the terms and conditions attached to any grant funding offer.

11.0 Equality and Engagement Implications.

- 11.1 An EIA screening was carried out at the start of the project and is still considered valid and correct. Any demolition and future development of the site will require the submission of a planning application that will be subject to public consultation and will have to comply with all Equality legislation.

Background Papers: None.

Appendices: Appendix 1 – Financial Implications