

Agenda Item No:

Report to: Charity Committee

Date of Meeting: 12th December 2011

Report Title: White Rock Baths

Report By: Simon Hubbard
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Purpose of Report

The report provides an update of the history and recent work to take forward proposals for White Rock Baths, and presents options to enable the Charity Committee to agree a way forward for the regeneration of the building.

Recommendation(s)

1. To note progress on regeneration proposals for White Rock Baths (WRB)
2. That subject to the resolution of issues of ownership to agree Option 1: To enter into an agreement with Lifecycle to commission an improvement scheme; and subsequently:
 - a) To allocate up to £170,000 to reimburse Lifecycle for some of the cost of renovations (final sum to be agreed with Lifecycle when final costings are agreed)
 - b) To employ a Clerk of Works to assure that quality and value for money is achieved
 - c) To enter into a lease agreement and building agreement with Lifecycle
3. In the event that Option 1 proves undeliverable, to progress Option 2, to invite fresh expressions of interest in the redevelopment of White Rock Baths.
4. In the event that the Lifecycle project fails after the signing of a lease, resulting in default and lapse of the lease, to progress to Option 2, to invite fresh expressions of interest in the redevelopment of White Rock Baths.
5. That the Corporate Director for Regeneration Homes and Communities be authorised , in consultation with the Chair, to agree the detail of any leases

and agreements and make such other arrangements necessary to progress the final option.

Reasons for Recommendations

To take forward proposals for the regeneration of White Rock Baths in order to meet the objectives of promoting the use of Trust assets and improving their physical condition.

Introduction / Background

1. White Rock Baths (WRB) is owned by the Foreshore Trust, and represents a significant opportunity for the Foreshore Trust to further its objectives, and to support the value, future use and regeneration of the foreshore and seafront in general.
2. The Charities objectives are laid out below:
 - 1) To hold and maintain the charity's land for the objects set out in the trusts of the charity, namely for the common use, benefit and enjoyment of all Her Majesty's subjects and of the public for the time being for ever; and
 - 2) Subject to sub-clause (1) above, such charitable purposes within the area of the Borough of Hastings as the trustee thinks fit.

Both are of relevance in the context of the White Rock Baths.

In addition, Section 12 of the Scheme for the Foreshore Trust states that the Trustee must firstly apply the charity's income to "meeting the proper costs of administering the charity and managing its assets (including the repair and insurance of its land and buildings)."

3. The current dereliction of the WRB building makes it a financial liability to the Trust. Far from being of public benefit, it detracts from the amenity value of the foreshore. Since responsibility for administering the Trust was re-assumed by the Borough Council, the true costs associated with improving WRB have become clearer and these are now reflected in its business plan.
4. Discussions have been held with Lifecycle, a new private company who wish to lease this part of the building to run this business. Lifecycle came forward through an invitation process begun by the previous Chair of the Trustees. Over the first four years of a proposed 10-year lease, Lifecycle would also develop proposals for bringing other parts of the building into use, especially the lounge area and large baths area. However, the Committee clearly has other options it should consider. These are described in Appendices 1-4.
5. Therefore this report brings forward four options for the future of the WRB, and recommends one of these. This is to enter into a Lease Agreement with Lifecycle to allow the use of part of the premises for a café, cycle hire and training business, and other complimentary uses, and to invest in improvements to the interior of the premises.

The Foreshore Trust's charitable objectives

6. The recommended option furthers the Trust's objectives in two ways: firstly, as a sustainable means of improving and managing land and property for which it is responsible; and secondly by promoting general charitable objectives.
7. The Trust's objectives with respect to its property are met through:

- improving the physical structure of WRB
- allowing public access and use of WRB
- generating rental revenues and income for the Trust
- pump-priming further investment in the redevelopment of WRB

8. The Trust's specific and general charitable objectives are met through:

- improving the environment and amenity-value of the seafront for the benefit of Hastings residents and other Subjects of Her Majesty
- improving health by enhancing the exercise provision on the seafront through bike hire, training, and safety education with children
- encouraging increased footfall and use of the Foreshore and seafront
- complementing the charitable aims of two charities operating on or over the Foreshore Trust land, namely the Hastings Pier and White Rock Trust (HPWRT) and the Sustrans Hastings-Bexhill cycle link; with benefits to Hastings residents and other Subjects of Her Majesty
- bringing economic activity and employment to this area of the seafront;
- acting as an attractor drawing footfall that will enable and facilitate other improvements for local benefit

Link to HBC Strategy

9. The recommended proposal coincides with Hastings Borough Council's aims within the Seafront Strategy, which also aims to increase economic activity on the seafront; and to support activity that promotes further investment and employment. In complementing the cycle link and the expected regeneration of the Pier, and generally, it will improve Hastings' leisure and tourism offer, with wider benefits for the local economy. If these objectives are met they would result in an increase of the public use of the foreshore.
10. For these reasons the Council has agreed to allocate up to £170,000 of Area Based Grant funding to support the cost of regenerating WRB. Attracting the Council's investment is clearly a potential benefit to the Trust.

History of recent proposals

11. White Rock Baths was closed for public use in 1997. From that date to the establishment of the Foreshore Trust, HBC made efforts to market the building for commercial redevelopment. There was very little commercial interest, primarily due to its very poor condition. What interest there was, was judged to be unviable. The lesson drawn from this period is that it is most unlikely that any practical proposal will come forward that can utilise the whole of the building, and that further efforts should look at piecemeal initiatives.
12. In 2003 a study was commissioned from Campbell Rich Hill to examine the potential of turning the Baths into an underground car park. Three options were identified

80 spaces scheme	£35k - £40k per place	Total £2.8m- £3.6m (2003 prices)
392 space scheme	£25k - £30k per place	Total £9.8m-£11.76m (2003 prices)
Infill and 259 spaces	£25k - £30k per place	Total £6.5m-£7-8m (2003 prices)_

13. This was considered unviable, and costs will have risen considerably since 2003.
14. Studies of the building's structural condition were undertaken in 1999, 2005 and 2009. Despite the dereliction there is no evidence of serious structural faults, although a yearly inspection is now recommended.
15. The condition of the site prompted concerns from local businesses, and local business expressed initial interest in the creation of an amenity area. A meeting was held at the White Rock Hotel in August 2009. It was agreed at this meeting that the business interests would investigate if there was wider interest in such a scheme; and HBC would cost potential improvements. This showed the total costs of a limited refurbishment of the central core and the completion of 2 well decks would cost nearly £600k.
16. The Chair of the Foreshore Trustees convened a meeting of potentially interested partners in March 2010 at the White Rock Hotel. Following the meeting ideas were invited. At this point the Chair of the Trustees had indicated that the Trust might invest a similar sum to the Council in a viable scheme. However, before any scheme requiring financial support was considered a straightforwardly commercial offer was considered on the Trustees' behalf by the Council's Estates Manager. It was judged this proposal could not be accepted.
17. Two other proposals came forward, one being for the Lifecycle Project, and second for a more general and less specific scheme to be delivered through a potential Community Interest Company which might later restore the ice rink and open a restaurant, mall and community facilities. Meetings were organised with both sets of proposers. The second proposer eventually withdrew without submitting more detailed business plans, which had been requested by the end of August 2010.
18. Work has proceeded since the summer of 2010 to see if the Lifecycle proposal presents a viable option to re-open this Trust facility. This has been much delayed particularly by two factors:-
 - The failure of the electricity supply in the building, and the flooding that resulted, made detailed work impossible for some months.
 - The emerging issues of the preparations that were needed to re-open the building at all, including drainage, asbestos removal, water ingress and rubble. These issues had to be assessed and the costs of addressing them included in the Foreshore Trust business plan.

Previous Decisions

19. The Charity Committee has agreed to support the development of the Lifecycle proposal, to bring forward proposals before the Committee.

20. At its meeting of 7th June the Committee agreed to make a total of £185,000 available for essential repairs and renewals of WRB in 2011-12; and a further £62,000 in 2012-13/14 (total £247,000). This comprises:
- £60k for restoring a working sewage system to the building,
 - £10k for asbestos survey and removal,
 - £65k for other waste/rubble clearance,
 - £50k for concrete repairs and waterproofing (2011-12); and another £50k in 2012-13).
 - £12k for external redecorations (2013-14).
21. The above figures are indicative, with variations to be agreed as prices are firmed up through commercial quotations.
22. An additional £167,000 is in the Foreshore Trust business plan for 2011-12, for further expenditure on WRB. It is proposed that this figure is increased to £170,000.
23. Hastings Borough Council has set aside £170k from its Area Based Grant budget towards developing a new life for WRB (Cabinet 11th July 20110).
24. The Charity Committee has agreed in principle to grant the Hastings Pier Charity a 15 year lease at a peppercorn rent on the western lightwell, the Pier Charity plans to create a new deck at promenade level, as a location for a Community Showroom. The Showroom is a key part of HPWRT's requirement to provide educational and community activities as part of the Heritage Lottery Fund approval. Money raised for this will also form part of the match-funding for the HLF grant. They have secured a 3-year temporary planning permission for this. A tenant's break clause at 3 years was recommended to reflect this, and a landlord's break clause at 5 and 10 years was recommended, to allow for potential redevelopment of WRB.

Summary of current situation

25. Recent work continues the process started under the previous Chair of the Trust.
26. Following the Charity Committee meeting in July 2011, officers have worked with Lifecycle to bring this forward. There has been agreement on Heads of Terms for a lease, and a building programme whereby Lifecycle will undertake improvements and refurbishment of the area to be let. Officers have also undertaken due diligence process on Lifecycle's business plan and business/financial history.
27. Hastings Pier and White Rock Trust still wishes to progress the deck/showroom proposal.
28. Costs to date:
- Drawings of the entire building for use by all contractors £5,450
 - Asbestos survey type 3 required before any construction works £2,100
 - Drainage survey £11,769

Essential preliminary works

29. Level 3 asbestos survey and removal: A quote has been obtained of £8,200 for this work. An extra £1,800 should be budgeted as contingency against unknown factors. The survey has been commissioned but removal not yet commenced.
30. Waste clearance: There are large amounts of heavy waste (rubble and steel) in various parts of the building. Quotes are being sought for removal within an estimated budget of £65,000.
31. Drains and sewerage connections: following surveys, a price of £45,000 has been agreed with a specialist contractor to provide new drains and sewerage connections. This work can only commence once the waste has been removed. It is intended that this will start in January 2012, unless the “do nothing” option is chosen by the Charity Committee. £60,000 is allocated for this.
32. Concrete repairs and waterproofing: A survey was carried out on 29th October 2011. A specification for works will be prepared from this report, and commissioned to start from January 2012 if possible, unless the “do nothing” option is chosen by the Charity Committee. £50,000 is allocated to this in the FT Repairs and Renewals budget for 2011-12, and a further £50,000 in 2012-13.
33. If the Committee wished to pursue option (ii) or (iv) below it is believed it would not be sensible to undertake works other than rubble clearance, asbestos clearance and urgent concrete repair. For option (ii) all other items would sensibly be left to agreement with a future tenant which might have a radically different purpose for the premises.

Options

34. The Lifecycle proposal is one of four options put forward for consideration by the Charity Committee, to follow the essential works. The options are:
 - (i) To enter into an agreement with Lifecycle to commission an improvement scheme
 - (ii) To delay any decision while further expressions of interest are sought for alternative investment and uses
 - (iii) Above-ground improvements only: HPWRT deck/showroom over western lightwell, and similar investment on deck over eastern lightwell
 - (iv) “Do-nothing” option, other than essential maintenance, asbestos survey and removal, and waste clearance
35. Details of each are given in Appendices 1-4, including an assessment of the major costs, benefits and risks for each, and approximate timescales.

Coastal User Group

36. CUG received a presentation outlining the four options in this report at its well attended meeting on 29th November. There was a considered and constructive debate with considerable feedback.

37. The feeling of the meeting was summed up by the Chair:

- That doing nothing was not an option.
- Support for the investment of considerable resources to achieve the reopening of the White Rock Baths.
- That they felt that the opportunity should be given to others to put forward proposals in the context of the levels of Trust and Council spending proposed.
- It was suggested by one member that improvement works could be undertaken by the Trust or Council during a readvertising period.
- They understood the conundrum faced by the Trust - that doing so might not yield anything better and cause delay - but felt this was the right thing to do to show a fair process.

The Chair of the meeting and minute taker have been contacted to ensure this is a fair representation of the discussion.

Ownership

38. The Protector has been contacted by a local resident who has expressed a view that Hastings Council, rather than the Trust, might be the owner of the White Rock Baths.

39. The opinion of the Council's Legal Service is that this is unlikely to be the case. Given the potential conflict of interest independent legal advice has been sought from Herrington's to investigate the position on behalf of the Charity. At the point of writing this report this advice is not available. It may be possible for the Committee and the Protector to receive this before the meeting on the 12th December

40. An initial discussion has taken place with the Protector and he clearly wishes and needs to be assured of the situation. It is therefore quite possible that any decision to spend money or take action (Options 1, 2 and 3) will have to be delayed until definitive advice is available. The recommendations are therefore caveated to allow this matter to be considered.

41. It may be considered that a delay would allow Option 2 to be pursued. However, unless the Charity Committee is able to commit the funding needed for renovation, it is difficult to see how this could be done before the ownership issues are clarified.

Recommendation and justification

42. Option (i), the Lifecycle proposal, is recommended for approval by the Charity Committee.

§ The proposal best meets the responsibilities and objectives of the Trust with respect to its ownership of WRB

§ It achieves this both in the near future, by opening part of the premises for public use in 2012; and potentially in the longer term, with further options developed if the first phase is successful

§ It draws in funding from HBC; and private investment

- § It is a well-developed and apparently sustainable proposal, generating a rental return to the Trust
- § Risks to the Trust are minimised, and improvements which will be made to the premises are generic and will be marketable to any future user should the Lifecycle project fail.
- § It is the preferred option of the independent valuer.

MONITORING OFFICER COMMENTS

43. There is strict regulation of the disposal of land and land interests of charities under Section 36 Charities Act 1993. The general provision is that there is to be no disposition of land held in trust without an order of the Charity Commission or the Court unless the provisions set out in the section are satisfied. For a commercial lease of more than 7 years the trustee
- § Must obtain and consider on the proposed disposition views from a qualified surveyor instructed by the trustee and acting exclusively on behalf of the charity;
 - § Advertise the proposed disposition for such period and in such manner as the surveyor recommends in the report, unless the surveyor has advised that it is not in the best interests of the charity to advertise it; and
 - § Decide that it is satisfied, having considered the report, that the terms of the proposed disposition are the best that can reasonably be obtained for the charity.
44. The Act goes on to make special provision for what is described as "specie land", ie land held in trust for the charity where the objects provide that the land is to be used for the purposes or particular purposes of the charity as opposed to investment land. The White Rock Baths area of the Trust land is such land ie it is held on the trust to hold for the common use, benefit or enjoyment of Her Majesty's subjects and the public generally. By virtue of the Hastings Borough Council Act 1988 the permitted uses under the Trust for this specified area are extended to include "religious and cultural activities, entertainments, amusements, sports, leisure activities, illuminations, information, and the sale of refreshments and beach requisites".
45. The requirement in respect of any proposed disposition of specie land is that the proposal must first be advertised inviting representations to be made no less than one month from the date of the notice and the Trustee must take into consideration any representations made within that time.
46. The Act does, however, provide that these restrictions do not apply to any disposition for which general or special authority is expressly given by any statutory provision contained in or having effect under an Act of Parliament. The Hastings Borough Council Act 1988 provides that where land is specified by the Act as land that can be used for permitted purposes, the Council may use the land for such purpose and may allow any other person to do so and for those purposes may let or otherwise make available any part of the land on such terms and conditions as they think fit. The Borough Council and any person allowed to use the specified

land may charge for the use of any facilities provided by them such sums as they think fit. Charity Counsel has confirmed that this interpretation of the effect of the 1988 Act is correct and that the Council does not have to comply with Section 36 in respect of land covered by the 1988 Act.

47. There is one restriction on these powers under the 1988 Act and that is contained in Section 123(2) Local Government Act 1972 which provides that the Council may not dispose of land, other than on a short tenancy (not exceeding 7 years) for a consideration less than the best that can reasonably be obtained. General Disposal Consent (England) 2003 removes the requirement for authorities to seek specific consent from the Deputy Prime Minister and First Secretary of State ("the Secretary of State") for any disposal of land where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted ("the undervalue") is £2,000,000 (two million pounds) or less. The terms of the Consent mean that specific consent is not required for the disposal of any interest in land which the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Where applicable, authorities should also have regard to their community strategy. However, the Government Circular 06/03 goes on to advise that a professional valuation should always be obtained to satisfy the requirement that the authority is acting realistically and in accordance with its fiduciary duty. This valuation has been commissioned and is summarised in Appendix 1.
 48. The Trustee has an overriding duty to act in the best interests of the Charity and, notwithstanding the provisions of the 1988 Act, this would include obtaining the best terms that can reasonably be obtained for the Charity. That is why the Estates Manager requested an update on the Humberts report commissioned by the former Trustees under Section 36 Charities Act 1993 so that Committee is advised on whether the proposed terms satisfy that requirement.
 49. It is also necessary to have a report from an independent surveyor as there is a potential conflict of interest between the Council's aspirations regarding regeneration of the area and what is in the best interests of the Charity. The Committee has to put aside considerations of regeneration except insofar as they coincide with the interests of the Charity, and consider whether what is offered is in the best interests of the Charity.
 50. Under the Scheme the Council must consult with the Coastal Users Group on
 - § The charity's policy relating to the exercise of any power under the Hastings Borough Council Act 1988 or otherwise to manage, let sell or otherwise dispose of the charity's property.
 - § The exercise, other than in accordance with established policies, of any power under the Hastings Borough Council Act 1988 or otherwise to manage, let see or otherwise dispose of the charity's property.
- The Trustee must have regard to the recommendations of the Coastal Users Group.
51. The Coastal Users Group has made a recommendation regarding advertising of the current availability of funding so that other potential tenants could come forward.

The Committee has to have regard to recommendation of the Group. This is one of the options presented in the report for consideration by members.

Conclusion

52. After weighing up the risks involved and taking into account the views of the Coastal Users Group it is recommended that option (i) is pursued for the reasons outlined elsewhere in this report.

Background Information

Appendix 1, 1a, 1b: Lifecycle option

Appendix 2: Option 2 Decks option

Appendix 3: Option 3: Further Expressions of Interest

Appendix 4: "Do Nothing" option

Appendix 5 – Valuation Report by GVA (ex Humberts) – November 2011

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Appendix 5 could not be published on the Council's website because of the complex images that it contains. A copy can be obtained from Elaine Wood, Principle Committee Administrator, email ewood@hastings.gov.uk or tel. 01424 451717

APPENDIX 1 – Option 1: Lifecycle Proposal

Lifecycle is a new business which wishes to operate a café and bike-hire business from WRB, with ancillary activities including tours, workshops, cycle training for children, and a children's bike/play area in the eastern court. Lifecycle wish to also develop plans to bring the lounge area and large pool (western end). This might include youth activities, climbing wall, or under-18 club/disco; options would be explored once the café/bike hire business is operational.

Refurbishment

Once the essential preliminary works to be undertaken are completed, Lifecycle would assume a lease on the central core of the building, and commission and project-manage its refurbishment. Up to £340,000 of the costs will be reimbursed by the FT and HBC.

It is judged that this arrangement would allow the works to be completed both more quickly and cheaply than could be achieved through public sector procurement. A Clerk of Works is proposed, to check completion and quality of the works on behalf of the Foreshore Trust, before any reimbursement is paid.

In summary, the works would include:

- Re-roofing the entrance/café block
- Installation of heat exchange ventilation system
- Insulation to Building Regulations standards
- Installation of new wiring and lighting
- New flooring
- Repairs and redecorations
- Installation of toilets in the original bathrooms, retaining terrazzo walls
- Platform lift to provide disabled access to lower floor
- Rubberized flooring in eastern court, for children's play
- Repair of windows and doors
- Partitioning and installation of new kitchen
- External repairs and decorations
- Security
- Ramps and changes of level to ensure disabled accessibility

All these works are considered essential to the eventual use of the building, or as adding value, and will be permanent improvements to the building regardless of the success or otherwise of Lifecycle as a business.

The estimated cost of this is £401,000. This would be funded by reimbursements from the Foreshore Trust (subject to approval) and HBC, totalling up to £340,000. Lifecycle has budgeted £61,000 for the balance.

Lifecycle would also invest £70,000 to equip the café and kitchen, buy a range of cycles for the bike hire side of the business; plus an estimated £69,000 to cover cashflow as the business builds. This totals £200,000 of private investment.

Planning

Lifecycle and HBC officers have had discussion with Planning Officers. Lifecycle will need to obtain a change of use permission from leisure to retail and café, and will need permission for external changes such as waste bins, ventilation outlets etc. HBC Planning Officers have not raised any significant obstacles to getting this permission.

Lease Proposal (Heads of Terms) and Building Agreement

Officers and Lifecycle have discussed Heads of Terms for a 10-year lease, together with a Building Agreement

The Heads of Terms includes rent payments at 25% of profits. The rationale for a profit-related rent is that sharing Lifecycle's business risk makes the enterprise more likely to be sustainable. The primary objective is to bring the building back into active use, not to maximize short-term revenues.

The Heads of Terms also covers the following:

- The demised area to be the structure on the upper promenade (entrance/café block), and the floor below, plus the eastern court area, with access and occasional use permitted of other areas
- Rent: 25% of profits. Lifecycle has confirmed that Lifecycle accounts can be presented to an agreed schedule, and be available for review/audit at any time. This will keep the accounts transparent, for the purposes of fair assessment of profit-related rent.
- Rent review: 5 years
- Break clause: none
- 1954 Landlord & Tenant Act: excluded
- Tenant responsibility for repairs and decorations (Landlord approval for external colours to ensure match with rest of building)
- Alterations and subletting permitted with Landlord consent
- Permitted uses: cycle hire, repair, training, retail and café and other leisure uses with Landlord's consent
- Insurances, rates and utilities to be Tenant responsibility
- Hours of Operation: 7 days/week from Easter to 30th Sept, plus every weekend and school holidays October to Easter, except Christmas Day, or as varied with Landlord agreement. (So that if Lifecycle ceases to operate, WRB is not blocked for alternative uses)
- Further phases: by the end of the 4th year the Tenant is to provide a plan and proposals to develop the remainder of the building. If the plans are not implemented by the end of the 5th year the Landlord reserves the right to seek alternative proposals for using the remainder of the building. (To prevent blockage of further regeneration)
- If however new opportunities of benefit to the Trust and Lifecycle emerge before the four years are up, this condition could be set aside if the Committee wish it. The current proposed lease only affects the area in Phase 1 and the Trust is able to explore other options.

The last three points are designed to allow further regeneration of WRB, in the event that Lifecycle fails to come up with Phase 2 plans for activities in the rest of the building, or reduces its operations or ceases to trade altogether, or if new opportunities emerge.

The Building Agreement Heads of Terms includes the following:

- Agreed Schedule of Works, delivery plan, project control, and scheme for staged payments of reimbursements
- Certifications to assure compliance with relevant regulations
- Copies of drawings and relevant consents e.g. Building Regulations, CDM, Energy Performance Certification.
- Landlord approval of completed works (through Clerk of Works sign-off)
- Agreed timescale/programme
- Landlord to have benefit of any guarantees

Lifecycle Business Plan

Summary of which is attached as a separate confidential Part 2 item.

Lifecycle due diligence

HBC Finance Officers have investigated the financial status of the proposed Director of Lifecycle, a summary of which is attached as a separate confidential Part 2 item.

The conclusion of this is that there are no significant reasons not to consider Lifecycle as an appropriate body to do business with, whose financial status is much as would be expected of a company of this size.

Valuation

An initial report and valuation of White Rock Baths was commissioned from Humberts Leisure in April 2011, which was reviewed in November 2011. (Members will note that this subsequent revision is by GVA, this is simply a result of a merger.) This provides a valuation of the market rent of the portion of WRB proposed to be let to Lifecycle. This estimated the market rent to be £18,000/year.

The valuation report concluded:

In our opinion it is in the Charity's interest to enter into a disposition by the granting of a lease for the part of the property as detailed in this report and on the assumption that the final terms of the lease agreed are on generally commercial terms, being not unduly onerous or restrictive on either party.

And

The proposed form of renovation to White Rock Baths and the provision of retail and a leisure offering, would in our opinion be to the benefit of this section of the town foreshore...

The report also recommended that that the arrangement for calculating profit be made explicit, and recommended using the EBITDA basis, or a suitable transparent alternative. However the report also acknowledged that "rent concessions may be appropriate to entice and assist the tenant whilst the business becomes established during the initial stages of the lease term."

GVA also offered an opinion on the advisability of putting WRB back onto the market (Option 2), and stated:

We do not believe that it would be necessarily in the best interest of the Charity to advertise the proposed disposition at this time... The current proposal potentially secures the short to medium term future of part of the building, and in

the long term potentially the whole, with the development of possibly a future mix of uses that complement the location.

Whilst the lease and rental proposal may not provide a commercial return on investment due to the state of the building currently and cost to bring it into a state of fit occupation, it does bring it back (in part initially) into commercial use, with a tenant obligated to ensure it is maintained and kept in a suitable standard of repair and decoration. Given the historical importance of this building and that it has been vacant for a considerable time, we see this to be beneficial.

Rental Income to the Trust

Lifecycle's figures project a rental income to the Trust of £6,000 rising to £13,000pa from 2014. An alternative model is recommended by GVA. This is based on an "earnings before interest taxation depreciation and amortization" (EBITDA) definition of profit, which would lead to a rent payable of £18,000 once the business is fully up to capacity.

Officers should be given discretion in negotiating the rent payable, in consultation with the Chair of the Charity Committee. This will allow flexibility in the precise formula for calculating profits, for example, and/or could set minimum and maximum levels at different years.

HPWRT deck

The Trust has granted in-principle approval to letting the western lightwell to the HPWRT on a 15-year lease. They propose to build a deck at promenade level over the lightwell, and house a "community showroom" on this.

This proposal fits with the early phase of Lifecycle's proposal, and even enhances it, as it provides more open-air space for customers.

However, in the longer term the deck would seriously affect the Lounge area below, and the side rooms, by reducing daylight to negligible levels. The spaces are currently lit by large skylights and clerestory windows, which are fundamental to the character and quality of these spaces. For this reason HPWRT would be required to ensure that the deck can be easily removed. The deck's structural elements should not prevent access to the skylights; and the loadbearing connections to the building must be approved by HBC officers and consultant engineers.

Risks and uncertainties

A risk register has been compiled, which forms Appendix 1b.

Conclusion

The total investment is considerable: £185,000 of essential preliminary works is budgeted (on top of expenditure to date), plus another £340,000 proposed as Foreshore Trust and HBC contributions for refurbishments. Expenditure of this magnitude would be required to make the building lettable for most conceivable alternative uses. The Trust will be represented on the design and project team, and will be able to ensure that the improvements are generic and will be fit-for-purpose for an alternative café operator should the Lifecycle business fail.

Therefore, while there are inevitable risks to any major investment proposal, there is low risk to the FT and HBC of spending the money and not achieving the strategic outcome of commencing significant regeneration of WRB, enabling it to be accessible to the public. Reimbursements will be paid in arrears, with quality assurance by appointing a Clerk of Works.

APPENDIX 1a

Lifecycle due diligence – summary attached separately as a Part II report on this agenda.

APPENDIX 1b – Risk assessment (Option 1: Lifecycle proposal)

Risk (to FT)	Likelihood H/M/L	Impact H/M/L	Impact	Control / Mitigation
Financial				
Costs of essential works over budget	L	M	Increase expenditure by FT	Potential underspend for drains can be used as contingency
Cost of Lifecycle works over budget	H	L	Cost overrun leads Lifecycle to reduce quality/scope to save money	Lifecycle agree to fund contingency; Clerk of Works to assure quality, reimbursement payable in arrears
State Aid – HBC contribution not compliant with State Aid rules	L	L	As beneficiary, FT would have to repay HBC grant over €200k (c £175k) de minimus level	Ensure HBC grant within de minimus level (at exchange rate when reimbursement is made)
Timescale				
Essential works overlap with Lifecycle programme	H	L	May be delays or costs to Lifecycle (e.g. if drains not installed)	Liaison and joint programming with Lifecycle architect
Delays due to weather, suppliers, labour etc	M	L	Would delay opening and receipt of rental income	Officer liaison with or membership of design/project team
Operational				
Lifecycle business underperforms compared to business plan	M	M	Reduced rental income	Liaison with Lifecycle; support through business advice, marketing etc
Lifecycle winds up	L	M	Zero rental income until new tenant found.	Seek new tenant, exploiting recent refurbishment
Lifecycle fails to draw up proposals for use of rest of building	L	L	Delay to further use of Trust facilities	Will breach lease agreement, giving option to find new tenant
Lifecycle does not open to agreed periods	M	L	Reduced access to Trust beneficiaries	Will breach lease agreement, giving option to find new tenant

Other				
Planning permission not given	L	H	Would prohibit this proposal	Encourage liaison with planning officers
Deck over lightwell limits potential uses of Lounge and other areas	H	M	Reduced daylight affects usability and value of spaces below	Require temporary / removable deck

APPENDIX 2 – Option 2: Invite fresh expressions of interest in the redevelopment of White Rock Baths

Description

This option envisages inviting fresh expressions of interest (EOI) from businesses and community groups.

A clear set of objectives and criteria by which to judge EOI's would be drawn up. This would require interested parties to show, among other things:

- Financial sustainability and viability
- Level of support expected from FT and HBC, compared with private investment
- Local benefit in line with FT charitable objectives
- Regeneration, employment and tourism/leisure potential, and fit with Seafront Strategy (to meet HBC objectives in relation to proposed ABG contribution)
- Fit with context (seafront, promenade, cycle route, pier, theatre etc)
- Timescale

For the time being only asbestos and waste removal, and urgent concrete repairs, would be undertaken (cost approx £125,000). The remainder of the “preliminary works” budget would be kept in reserve for sewer/drainage reinstatement, further concrete repairs and exterior decorations (£122,000 total). £170,000 towards internal improvements would still be budgeted.

It is envisaged that HBC's £170k contribution would be available for this option, although this would be subject to HBC confirmation.

Advantages

- This option might identify better options meeting Trust objectives.

Limitations, risks and uncertainties

- It is unlikely that the EOI process could be completed before summer/ autumn 2012, and it is likely that there would be at least a 12-month development process for the winning proposal. Thus it is improbable that any scheme would be in place before 2014.
- While it is envisaged that the proposed HBC reimbursements would remain on the table, there is some risk that pressures on public spending might lead to it being reallocated in the meantime
- In any case, there will be inflation losses of real value for both Trust and HBC contribution.
- Possibility that Lifecycle would withdraw its interest

- Significant risk that the outcome would not be better, lower cost, lower risk, or higher reward to the Trust.
- Reputational risk to the Trust (and HBC), if future investors or partners perceive a lack of consistency, following previous decisions and the history of work with Lifecycle

APPENDIX 3 – Option 3: Decks option

Description

Option 3 involves inviting expressions of interest to create decks over the western lightwell and the eastern court.

Western lightwell – HPWRT proposal

The FT has agreed in principle to permit the Hastings Pier and White Rock Trust (HPWRT) a 15-year lease permitting them to construct a deck at promenade level, over the west lightwell of WRB. HPWRT has also secured planning permission for this. This can proceed alongside the Lifecycle proposal.

The HPWRT propose to place a temporary building on this deck, as a “Community Showroom” for their activities. It would be a location for community and educational activities about the pier and its reconstruction. This meets one of the key early conditions for the Heritage Lottery funding. The costs for this would be met by the HPWRT, and this would form part of the match-funding for the HLF grant.

It would not be a permanent installation. HPWRT will wish to relocate their activities to the pier in due course, at which point the value of the deck can be reviewed. Officers are discussing with HPWRT technical matters that arise, although its feasibility is not in question.

There is no certainty that HPWRT will deliver this project, as full funding is not in place; and HPWRT is considering alternatives.

Eastern court

This might be of interest to entrepreneurs selling refreshments, crafts or similar, or for other uses. It would be feasible to undertake this alongside the Lifecycle proposal (as with the western deck), but this would constrain Lifecycle’s proposal to put safe flooring on the floor of the court for children’s play and teaching.

The decks proposal came forward before Lifecycle developed their plans, and was seen as a stop-gap intervention in the absence of more ambitious plans for the building as a whole.

Costs

This option envisages £185,000 of expenditure by the Trust for preliminary works, including sewer/drainage reinstatement.

Estimated further costs for the decks are £185,000 for the eastern deck, and £181,000 for the western deck. There would be a small saving from doing both together, but this is not feasible if HPWRT retain their interest in the western deck.

There are two potential approaches to delivering this Option: (a) for the FT to construct the deck (and possibly the accommodation), and let them out at a commercial rent; or (b) to invite expressions of interest from investors who will build the deck for their own use, with a much lower ground rent to the FT.

Advantages

- Taken together, the twin decks have the advantage of bringing activity to the building and this area of the foreshore and promenade, and improving local amenity.
- If the option of inviting investment is chosen, there is negligible extra cost to FT above the £185k of essential preliminary work already committed.
- The £340k of reimbursement needed to refurbish the interior for use would not be required.
- Option 2 – to invite new expressions of interest for the building as a whole – could follow in due course.

Limitations, risks and uncertainties

- The scheme would be unlikely to be in place before 2013.
- The full benefit of the £185k of initial works would not be realised until an undefined future stage.
- This option may put back the fuller regeneration of WRB indefinitely.
- Both decks have a significant impact on the spaces beneath. The western deck almost completely cuts daylight into the lounge area and ancillary rooms, and thus prevents realizing the full potential of the space for its lifetime. The effect of any eastern deck is less significant: it replaces an open air space below promenade level with access from inside WRB, with an open air space at promenade level with access from the promenade.
- Uncertainty about what design and activity would be able to gain planning permission.
- Uncertainty about whether an investor in the eastern deck would get a return from the business activity, sufficient to cover the construction cost; or risk to the FT if it constructs the deck, and cannot command high enough rent for a reasonable return
- Uncertainty about whether the HPWRT can raise funds for its proposal for the western deck
- Uncertainty whether HBC allocation of £170k to regenerating WRB would be confirmed for this option

APPENDIX 4 – Option 4: “Do nothing” option

Description

This option envisages the waste clearance, asbestos survey and removal, and ongoing routine and essential maintenance; but not the proposed renewed drainage and concrete repairs.

Advantages

- This option saves £125k of initial expenditure, as well as the proposed £170k reimbursement by the FT.
- It may be that a better permanent outcome can be found by postponing regeneration initiatives for an indeterminate period, possibly when there is significant economic growth, and building on the hoped-for Jerwood effect from 2012, and the potential of a reopened pier.
- FT will have time to build up reserves for investment if the Committee so chooses.
- It does not preclude the HPWRT deck proposal.

Limitations, risks and uncertainties

- This option may be judged as not fully complying with the first object of the FT, i.e. to maintain the charity’s land for the common use, benefit and enjoyment of Her Majesty’s subjects and the public
- It also does not comply with the second object, of supporting charitable aims: HPWRT would have to find an alternative solution to its drainage requirements
- WRB would remain a black spot on the seafront
- This option fails to build on the momentum established to date, with reputational risk to the FT (and its trustee Hastings HBC), if future investors or partners perceive a reversal of previous decisions and work with Lifecycle
- The £170,000 of HBC funds are likely be reassigned in the absence of clear proposals for WRB.