

# West Somerset Council 20<sup>th</sup> February 2019

## East Quay Development

### Report of Localities Manager – Chris Hall

(This matter is the responsibility of Lead Member for Resources Councillor Martin Dewdney)

#### 1. Executive Summary

This report updates Members on the recent progress made with The Onion Collective, seeks approval of the lease on part of the land at Easy Quay, Watchet, and approval of a loan to bridge their reducing funding gap.

Each of these aspects support The Onion Collective in their bid to the Coastal Communities Fund (CCF) for up to £5m of the overall development cost of £7m.

This report follows on from an all Member update briefing on the proposed development and bid for grant funding that took place on 12<sup>th</sup> December 2018.

#### 2. Recommendations

This committee is recommended to support to West Somerset Full Council:

- i) The award of the lease under the terms set out in the report upon resolution of the conditions in the confidential appendixes, with delegated authority to Head of Localities in consultation with the Leader of the Council to negotiate the final terms.
- ii) The principle of capital financing loan to The Onion Collective for the sum of up to £1.5m with delegated authority to the Head of Localities & S151 officer in consultation with the Leader of the Council to negotiate the final terms. Provision for such a loan to be included in the Capital Programme for 2019/20.

#### 3. Risk Assessment

##### Risk Matrix

Description	Likelihood	Impact	Overall
Risk: Onion Collective are unable to meet the criteria for the bid and it is not awarded	Possible (3)	Catastrophic (5)	Medium (15)
<i>Mitigation: The council have been working with OC to resolve a number of issues and give in principle support to the bid within the timeline necessary</i>	Unlikely (2)	Catastrophic (5)	Medium (10)
Risk: The bid fails to meet the criteria set by CCF or is otherwise unsuccessful under competition	Possible (3)	Moderate (3)	Medium (9)

<i>Mitigation: In this event the OC will not have a funded bid but do still have time within the option agreement to look for alternative funding streams</i>	Possible (3)	Moderate (3)	Medium (9)
Risk: Onion Collective do not secure sufficient funds to build out the development during construction	Possible (3)	Catastrophic (5)	High (15)
<i>Mitigation -WSC can take possession of the site under the terms of the building lease</i>	Possible (3)	Moderate (3)	Medium (9)
Risk: The cost of repairing the Impounding Wall is unknown at the present time so it could be that only a section of the repair works can be carried out.	Possible (3)	Catastrophic (5)	High (15)
<i>Mitigation- The council will prioritise its resources and maximise the positive impact of these for the safety of the public and to fulfil its responsibilities under the lease to the marina.</i>	Possible (3)	Major (4)	Medium (12)

#### 4. Background

4.1 In February 2015 West Somerset Council approved the following recommendations, which have set the parameters for this report:

- i) *To appoint the Onion Collective as the Council's preferred bidder for asset transfer of the land at East Quay, Watchet.*
- ii) *To approve the principle of entering into a three year option agreement with The Onion Collective to allow them to develop a detailed scheme design and funded business case that complies with the Council's conditions, prior to full asset transfer taking place.*
- iii) *To delegate authority to the Director of Housing and Communities to work with the Lead Member for Asset Management to negotiate and agree full terms of the agreement.*

4.2 The 2015 report also set out that the final decision to complete the transfer of the asset will be presented to Council for approval, this forms one of the recommendations of this report, but is now proposed as a lease, with the council retaining freehold ownership.

4.3 The approval delegated authority to a senior officer in conjunction with the Lead Member to negotiate the full detail of the agreement. Roles within the organisation have changed since this report was approved, and the role now responsible for this is the Head of Localities.

4.4 West Somerset Council granted planning consent in June 2018 for the development.

4.5 There is no other detailed scheme or opportunity for comparison of the Onion Collective's outcomes. Back in 2015 the partnership with Urban Splash was

terminated as, despite best efforts, no commercial development of the land could be established. This means that there is no alternative so readily on offer to the council or the community.

- 4.6 As part of the negotiations all parties supported a long term lease rather than a land disposal. Therefore keeping the land in public ownership whilst drawing a lease income.
- 4.7 There have been a number of complicating factors that have delayed the completion of the Option Agreement, each of these have been worked through and a practical solution found that ensures the development stands the best chance of receiving the funding (CCF) and therefore supports this community.
- 4.8 The Option Agreement was not entered into immediately following the 2015 report and the Option Agreement was instead exchanged on 18<sup>th</sup> January 2019. The agreement allows the Onion Collective to exercise the option at any time, subject to the satisfaction of the conditions precedents which are detailed in Appendix C which summarises the terms of the Option Agreement. The Onion Collective can serve the Option Notice up to 36 months after exchange of the Option Agreement.
- 4.9 Whilst Watchet is the one of the most deprived wards in the district it also has some key strengths. In CLG/DEFRA's benchmarking report on coastal towns Watchet appeared in the bottom ten in all economic domains, being among those with the 'greatest economic problems'. The more positive angle to Watchet is that it has relatively young population by comparison to local towns and villages, and has an industrial legacy, and coastal location. Most importantly, Watchet has an incredible community with abundant social capital, meaning people in Watchet work together to solve their problems despite the town suffering terrible deprivation. Throughout The Onion Collective's consultation there has been strong public support culminating in the successful achievement of planning consent.
- 4.10 The East Quay development provides many opportunities, not least of which being the chance to change the narrative of Watchet, transforming it into a destination that supports tourism, employment, skills development, and growth.
- 4.11 The Member briefing on 12<sup>th</sup> December '18 set out in detail the proposals of how the Onion Collective will develop and operate the site, including a question and answer session for Members to understand all aspects of the development and its mix of uses. Whilst this report is focused on the lease a number of the key benefits have been set out below as a reminder:
- 37 new direct jobs on the developed site
  - 166 new indirect jobs due to the increased tourism spend to the West Somerset area (valued at £6.7m per annum)
  - 17 safeguarded jobs
  - 76 construction jobs, for the duration of the build
  - Develop and fund the access road to the development and for the remainder of the site. (£300k - £400k)
  - Additional business rates for the council that could reach up to £960k over a decade, however this is subject to the occupants of the units.

- Approximately £230,000 in additional parking revenue over a decade.
- Bringing in £5m-£7m in external regeneration funding to the district.
- Delivering multi-layered social benefits to the tune of £3m per annum (wellbeing, culture, aspiration, mental health).
- Creating an arts/cultural and social enterprise development with a national profile, closely aligned with the interests of government.

4.12 The 2015 report identified a number of next steps which have had significant progress made or have been concluded. Updates against these actions are identified in bold text:

*i) Officers will work with the bidder and legal advisors to develop, agree and sign off an option agreement. – **Action Completed in January 2019***

*ii) The preferred bidder status and subsequent option agreement will allow the successful applicant to develop full details of a scheme, supported by the necessary approvals and a fully funded business case, with the Council's authority and sanction. The successful applicant will also have to satisfy the Council's two key conditions as set out at the outset of the process, namely: **Outline details have been provided and planning consent achieved. The final specification is being prepared. Approval of the lease is sought through this report.***

*- Scheme plans will be required to include the delivery of a substantial capital receipt or revenue stream for the Council. - **A revenue stream for the council is provided.***

*- Agreement must be reached with Watchet Harbour Marina in relation to all aspects of interaction between the marina operations and the development proposed, to incorporate issues such as on shore facilities, boat storage, car parking, access routes etc. This will ensure all outstanding matters and lease issues can be resolved between Watchet Harbour Marina and the Council prior to any asset transfer taking place.*

**– Progress has been made see confidential Appendix**

4.13 Onion Collective had a very tight timeline in which to submit the bid for CCF funding, (21<sup>st</sup> January 2019) the council have submitted a letter of support to the CCF assessors, Appendix 2. This letter sets out our intention to support their bid and its community outcomes subject to formal council approval. The letter includes the in principle support of a loan from the council.

4.14 Members can be assured that the council are not bound by this letter either for the provision of the loan or their continued support should the offer from OC change. It should also be noted that the lease and loan, if approved, are dependent on OC achieving the grant funding from the CCF.

4.15 Officers agree that approval of a loan would give the OC the best chance of success in securing their bid funding. It should be noted that this is a competitive process and if awarded this would be the largest single award by the CCF. This is one of the reasons to fully explore the role of the Council in enabling this development whilst also securing a reasonable rate of return for the authority.

- 4.16 A continued partnership approach between the Council and The Onion Collective will be required with responsibility for convening input from the various internal specialisms to deliver this project resting with the council's Localities team.

## **5. East Quay Wall**

- 5.1 As stated earlier the council owns the East Quay, which forms a perimeter wall of the marina. This is not only a built structure that allows for the existence of the East Quay but also acts as a coastal defence protecting Watchet. The wall is made up of a number of sections that have been replaced or refurbished over the years. The stability of the structure was in question and the council have undertaken survey works to establish what may be required. This report is not intended to be the feedback of these results but draws Members attention to the potential for further consideration. One important aspect is any additional loading that the development may place on the wall.
- 5.2 With questions on stability still under review the option agreement that has been negotiated allows the Council time to consider the impacts of the wall structure before entering into a lease, thus protecting the council from otherwise unknown liabilities. In practice WSC will not enter into the lease until the questions have been fully considered.
- 5.3 The Onion Collective have provided an engineer's assessment that the built development will not increase the wall loading, due to the proposed construction type. More detailed information has been requested from The Onion Collective and it is their responsibility to ensure that the information is accurate and capable of being relied upon. The repair scheme will then be designed in accordance with that information.
- 5.4 The marina have permission within their lease to load and unload vessels from the East Quay wall, this requires heavy traffic in the form road transport and a loading crane. This information will form part of the council's consideration of any work necessary to maintain the wall, which is our responsibility.

## **6. Grant Funding / construction timeline**

- 6.1 As identified earlier in the report the development, if funded, would be managed by the Onion Collective or their agents, as such this is not a project under the direct control of the council, we instead are undertaking an enabling role. WSC Have the right in the building lease to appoint a surveyor to monitor and sign off on behalf of WSC. Under the building lease WSC have the ability as a last resort to veto the certification of OC of the marina facilities and service road only.
- 6.2 Up until this point the Onion Collective have secured £150,000 from Esmee Fairbairn Foundation, £120,000 SIB/CRF and £91,000 from the Arts Council. They are also in the final round of a Magnox bid for £250,000 hopefully to be confirmed mid-February. OC also anticipate a £500,000 bid to ACE Small Capital in April. There is the potential therefore that the funding gap could be as low as £889,000 to borrow in a couple of tranches from the council.

- 6.3 Final Submission, including amongst other things RIBA stage 4 drawings and council support in principle, was submitted on 21<sup>st</sup> January 2019.
- 6.4 Decision on funding will be communicated during spring 2019.
- 6.5 Our understanding of the funding criteria is that it requires construction to start no later than autumn 2019, there is an estimated construction time of 15 months. At this stage there is no evaluation of what “starting” means. Consideration does need to be given to the work that may be required on the East Quay wall and how both aspects can be programmed on this site. The first aspect is for The Onion Collective to secure the CCF funding.
- 6.6 The development is due to be completed and opened in spring 2021. Subject to the above there may be a reasonable extension granted due to the nature of the site which may need to be considered.

## **7. Financial resource implications**

- 7.1 Financial implications of the councils proposed support and involvement have been considered by the finance team, with details provided in this and the confidential appendix A. Based on a review of The Onion Collective business case the advice given strikes a balance between a number of key factors, including securing a reasonable financial return for the authority, maximising the prospect of securing major external funding (£5m), ensuring the long economic viability of the community led project and enabling transformational economic and community benefits in an area of significant deprivation.
- 7.2 The loan is being offered as a minority, but none the less important element of the financing package. The Onion Collective have stated that they will only draw down on this loan as a last resort, should they not be able to source grant funding for the total cost of the East Quay re-development project.

## **8. Prudential Borrowing**

- 8.1 The Onion Collective have asked the council for a loan agreement for up to £1.5m to close the gap between grant funding and development costs. It is their intention, subject to their fundraising efforts, not to draw down the loan but for the purposes of the CCF bid they consider their best opportunity for success is to evidence a fully funded scheme. OC have confirmed that should they be unable to raise the gap funding from another source then the loan would be drawn down last in the sequence of financing.
- 8.2 Due diligence has been undertaken by the Council’s qualified finance professional with a review of the business plan for The Onion Collective, together with the creditworthiness and financial status of The Onion Collective as a prospective borrower/debtor of the Council. No loan investment is risk free, however based on the current proposal, there will be sufficient value in the asset to provide the necessary security required for the full value of the loan.
- 8.3 It is recommended that a Prudential Borrowing facility of up to £1.5m be made available to the Onion Collective with terms and interest rate under delegated

authority to the Leader of the Council and the S151 Officer, and that loan principal repayments received are set aside to reduce the related impact on the Council's capital financing requirement. The borrowing facility represents capital expenditure and if approved will be incorporated within the Capital Programme.

- 8.4 The loan facility is up to £1.5m for up to 30 years. The facility can provide for tiered drawdowns to enable flexibility in loan amounts and periods. It is recommended final terms are to be agreed by the S151 Officer and the Council Leader.
- 8.5 The interest rate chargeable on the loan is a concessionary rate based on PWLB plus a 1% premium to cover the costs and risk to the Council.
- 8.6 The loan conditions will contain provisions to ensure that in the event that The Onion Collective repay the loan early then any premium subsequently payable to the PWLB by the Council will be reimbursed by The Onion Collective.
- 8.7 Loans of this type are regarded as investments under the new MHCLG guidance on investments and details of which will be included in the new requirement for the Council to produce a Capital Strategy. The limits included in the proposed capital strategy include an allowance for this loan facility if approved by Council.
- 8.8 The Council will account for the loan as capital expenditure within its own accounts, and would be financed by borrowing thus adding to the Council's "capital financing requirement" (CFR). It is proposed the principal repayments received from The Onion Collective when the loan is repaid will be treated as capital receipts, which will be utilised to repay the Council's related borrowing, thus mitigating the requirement for a Minimum Revenue Provision cost to the General Fund.

## **9. Legal Implications**

- 9.1 External legal support was commissioned and has been involved throughout these discussions and negotiations.
- 9.2 The authority to complete the Option Agreement was delegated to the Head of Localities under the Resolution contained in the WSC Council Meeting minutes dated 18th February 2015.
- 9.3 Subject to both parties satisfying various Condition Precedent Clauses, the Option Agreement secured the right for the Onion Collective to take a new lease, expiring 26<sup>th</sup> July 2126, of an area of East Wharf.
- 9.4 There is a Condition Precedent clause in the Option Agreement which requires Full Council approval to key clauses contained in the Building Lease before the Option may be exercised and the Building Lease granted. It is the recommendation of this report that council approve the lease with delegation to the Head of Localities in consultation with the Leader of the Council to finalise the outstanding clauses.
- 9.5 The council have considered the implications of state aid against the details of the proposals. We do not consider that this constitutes state aid on the basis of the return being made to the council and community, the regeneration of a deprived area following years of inactivity, and that our involvement has the potential to

unlock the CCF bid. The loan, if approved, creates a return to the council on top of the regeneration benefits.

## **10. Environmental Impact**

- 10.1 There are no adverse impacts, the scheme will be undertaken in accordance with all relevant regulatory requirements. The scheme that has been granted planning permission will enhance the physical environment around the harbour.
- 10.2 There are no plans to carry out sea defence works along the outer sea wall of East Wharf. However it is not believed that either the Marina nor the Onion Collective's use of the East Wharf will impact on the integrity of the sea wall and vice versa at this point in time.

## **11. Safeguarding and/or Community Safety Implications**

- 11.1 There are no implications resulting from the recommendations of this report.

## **12. Asset Management Implications**

- 12.1 The Asset Management Team has been involved for a considerable time on the options and possibilities for the Harbour and the surrounding area. The Asset Management Group have also been involved in much of the historical debate relating to this area.
- 12.2 The team have ensured the documentation places requirements on The Onion Collective to comply with all statutory obligations.
- 12.3 The Council will retain freehold ownership of the land at East Quay. The lease clauses have safe guarded the council's position in terms of repair and maintenance of the service road as they have to contribute towards its upkeep. The Onion Collective have agreed to fully repair and maintain the land demised to them, they are further obliged to a contribution of a fair proportion of the costs of maintaining the service road and estate as defined by the lease.
- 12.4 The Option Agreement is attached under Appendix B and contains Condition Precedents which both parties to the agreement have to satisfy before the Option Notice can be issued by Onion Collective which will trigger completion of the Building Lease.
- 12.5 The Condition Precedents in the Option Agreement are contained in Confidential Appendix C.
- 12.6 The draft Building Lease is attached under Appendix B. The key clauses in the Building Lease which are recommended to be delegated to the Head of Localities are captured in confidential Appendix D.

## **13. Data Protection Implications**

- 13.1 There are no identified implications of the recommendations set out in this report.

## **14. Consultation Implications**



14.1 There are no identified implications of the recommendations set out in this report.

## 15. Equalities Impact

15.1 The project delivers an improved use of the land with all new building needing to conform to Building Regulations on accessibility.

## 16. Partnership Implications

16.1 The Onion Collective is the Council's preferred development partner for the East Quay and strong partnership has been instrumental in bringing the project to this stage. Maintaining and developing the partnership will remain vital as the project moves further into delivery.

### Appendices:

Appendix A	Further confidential narrative
Appendix B	Confidential - Option Agreement, Draft Building Lease, and Plans
Appendix C	Confidential - Summary of Conditions Precedent in Option Agreement
Appendix D	Confidential - Summary of key terms in Building Lease
Appendix E	WSC Council Minutes 18 <sup>th</sup> February 2015
Appendix F	Letter of Support from TDBC and WSC Leaders

### Democratic Path:

- **Shadow Executive – 11 February 2019**
- **WSC Full Council – 20 February 2019**

### Background reports:

WSC 23/15 – Regeneration of East Quay Watchet 4<sup>th</sup> February 2015

**Reporting Frequency: One off**

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### Risk Scoring Matrix

<b>Likelihood</b>	5	Almost Certain	Low (5)	Medium (10)	High (15)	Very High (20)	Very High (25)
	4	Likely	Low (4)	Medium (8)	Medium (12)	High (16)	Very High (20)
	3	Possible	Low (3)	Low (6)	Medium (9)	Medium (12)	High (15)
	2	Unlikely	Low (2)	Low (4)	Low (6)	Medium (8)	Medium (10)
	1	Rare	Low (1)	Low (2)	Low (3)	Low (4)	Low (5)
			1	2	3	4	5
			Negligible	Minor	Moderate	Major	Catastrophic
<b>Impact</b>							

<b>Likelihood of risk occurring</b>	<b>Indicator</b>	<b>Description (chance of occurrence)</b>
1. Very Unlikely	May occur in exceptional circumstances	< 10%
2. Slight	Is unlikely to, but could occur at some time	10 – 25%
3. Feasible	Fairly likely to occur at same time	25 – 50%
4. Likely	Likely to occur within the next 1-2 years, or occurs occasionally	50 – 75%
5. Very Likely	Regular occurrence (daily / weekly / monthly)	> 75%