
Decision Maker:	EXECUTIVE
Date:	Wednesday 30th November 2022
Decision Type:	Non-Urgent Executive Key
Title:	Bromley Town Centre Health and Well Being Centre Development Proposal on behalf of the NHS Bromley ICB
Contact Officer:	Darren Essex, Senior Development and Programme Manager (Major Projects) E-mail: darren.essex@bromley.gov.uk
Chief Officer:	Director of Housing, Planning, Property and Regeneration
Ward:	Bromley Town

1. Reason for decision/report and options

1.1 Background

On 20th October 2021 the Executive considered a proposal to develop a new Health and Wellbeing Centre (HWBC) with the South East London Clinical Commissioning Group (CCG) on the site of the former Adventure Kingdom building and the Great Hall at the Civic Centre. A key requirement for the CCG was that the new facility be ready for use by Spring 2024 due to funding pressures from the Department of Health and HM Treasury.

Subsequent to this, additional work was carried out and it was identified that to achieve the CCG's requirements an accelerated programme was required which would incur additional cost at an earlier stage to that originally envisaged. These additional costs were set out in paragraph 3.13 of the 20th October 2021 report.

This expenditure enabled detailed feasibility, design, planning and construction delivery planning to be progressed at pace and without delay. As a result of this there was a need to formally request the cost of the scheme, including costs recoverable from the CCG, be formally included within the Capital Programme so that identified sums within the report could be drawn down to facilitate the appointment of the various consultants and work required.

Furthermore, this demonstrated the Council's commitment to both HM Treasury and NHS England that it intended to proceed and could deliver the proposed development in a timely manner.

The Executive, Resources and Contracts committee supported the proposals at its meeting on 9th February 2022 as did the Executive Committee, subject to requesting regular reports to the

PDS Committee on progress. The Leader added that regular reports would be needed for the Executive.

It should be noted that as of 1st July 2022, following legislative changes, the CCG is now the South East London Integrated Care Board (ICB),

This report provides the requested update to both ERCPDS and the Executive on the options available and seeks the relevant authorities to enable the Council to continue to work with the ICB and to support them in their proposals for the refurbishment of the Adventure Kingdom as set out in the Commentary below.

2. RECOMMENDATIONS

The Executive is recommended:

- 2.1 To note the updated proposals for the HWBC on the site of the Adventure Kingdom and that previous proposals as approved by the Executive, Resources and Contracts at its meeting on 9th February 2022 will not be proceeding.
- 2.2 To provide authority to agree the updated proposals with the ICB for delivery of the project on behalf of the ICB such as design, procurement, terms, management and funding, as set out in sections 3.2 to 3.18 of this report, as necessary to proceed and to approve the intention to continue to work in partnership with the ICB, noting that the ICB continues to provide a cost indemnity for the Council's costs in respect of the project.
- 2.3 To delegate authority to the Director of Housing, Planning, Property and Regeneration in consultation with the Director of Finance, the Director of Corporate Services and the Resources, Commissioning and Contract Management Portfolio Holder, to determine and finalise, as detailed in sections 3.2 to 3.18, all necessary commercial terms, financial arrangements and to deal with publicising, if appropriate, any Open Space Notices and considering representations received and reporting to Members as necessary, and prior to or in conjunction with the proposed report at 2.4 below.
- 2.4 To approve proceeding to procurement, via a compliant joint procurement arrangement with the ICB as set out in paragraph 3.12 to 3.16, for the main works contractor for the refurbishment of the HWBC site at an estimated cost of £6,500,000 (with cost indemnity for the works provided by the ICB). Noting that a formal decision on contract award (and associated contract novations) as set out in paragraphs 3.12 to 3.16 will be presented to Executive in due course prior to the commencement of contract.
- 2.5 To delegate authority to the Assistant Director of Legal Services to enter into all relevant legal agreements as detailed in paragraphs 3.12 to 3.16 and any other necessary ancillary legal documentation relating thereto, including (but not limited to):
 - The project agreement;
 - The Section 2 agreement;
 - Agreement for lease and lease; and
 - Option agreement.
- 2.6 To note that the ICB programme envisages construction commencement in June 2023 for completion in March 2024 in order to secure funding. Should there be significant delays to

the ICB programme then the Council will need to consider whether it should proceed at that time.

2.7 To note that officers will provide regular updates to Executive, Resources and Contracts PDS Committee on the ICB's progress with the project.

Impact on Vulnerable Adults and Children

1. Summary of Impact: Not Applicable
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Transformation Policy

1. Policy Status: Not Applicable
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Financial

1. Cost of proposal: No Cost to the Council:
 2. Ongoing costs: Not Applicable:
 3. Budget head/performance centre: Not Applicable
 4. Total current budget for this head: £ Not Applicable
 5. Source of funding: Funded by re-imburement from the ICB
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Personnel

1. Number of staff (current and additional): Not Applicable
 2. If from existing staff resources, number of staff hours: Not Applicable
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Legal

1. Legal Requirement: Non-Statutory - Government Guidance
 2. Call-in: Applicable:
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Procurement

1. Summary of Procurement Implications: See section 9. below
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Property

1. In February 2020 the Executive resolved that consideration should be given as to the disposal of the former Adventure Kingdom building to the CCG at market value so that it could be redeveloped by the CCG for a new Bromley Town Centre Health and Well Being Centre.
 2. The future use of the Great Hall which has significant property maintenance requirements will be considered as part of the wider Civic Centre Property Review.
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Carbon Reduction and Social Value

1. Summary of Carbon Reduction/Sustainability Implications: Not Applicable.
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Customer Impact

1. Estimated number of users or customers (current and projected): Not Applicable
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? Yes

2. Summary of Ward Councillors comments: Any comments will be reported at the meeting

3. COMMENTARY

3.1 Update

On 10th March 2022, The Director of Housing, Planning and Regeneration approved the appointment of a consultancy team to provide professional services for the accelerated development of a new HWBC at the Civic Centre as part of a wider mixed-use development together with associated project costs. Noting that in the event that the scheme is no longer viable and whilst this work has been commissioned, the Council has the right to break the contracts to ensure abortive costs can be minimised.

On 17th March 2022, The Portfolio Holder for Resources, Commissioning and Contracts Management made the following Executive decision:

‘Health and Well Being Centre: Professional Services Contract Award. That the contract award for professional services under the Bloom framework be approved for immediate commencement at an estimated cost of up to £785,526 with details of the professional services to be sourced through the framework set out in Part Two of that report. It should be noted that the Council has the right to break this appointment at any time to ensure abortive costs can be minimised.’

Over the following 6-week period the professional team rapidly carried out a series of concept design studies to explore alternative ways of organising the site and meeting the briefs requirements.

Four options were shortlisted with each assessed against a set of key performance criteria:

- Financial viability.
- Provision of a HWBC for occupation by the ICB by 1st April 2024
- A community facility at ground floor level with double height Community Hall.
- Residential accommodation that is of high quality, policy compliant and of mixed tenure.

Only one option could deliver the HWBC for occupation in April 2024 and as this was also the best performing across all criteria it was provisionally selected as the Best Performing Option.

On conclusion of this work and whilst the Best Performing Option was financially viable, with the UK Economy finding itself in unprecedented times and to mitigate financial risk to the Council, the project team was instructed to pause work whilst further consideration was given to the financial viability in the light of prevailing and worsening market conditions, in particular the impact that building cost inflation would have on financial viability.

With the U.K. potentially emerging from a global pandemic, the impact of further lockdowns in China, a major conflict and refugee crisis on the European continent and a global escalation of fuel and commodity costs it became apparent that this was having an immediate impact on the property and construction supply chain in that key components for maintenance supply and infrastructure were beginning to have longer lead-in times (having already been extended due to Covid) and energy costs were rising exponentially.

The rate of headline inflation went up quickly in 2021 and it has continued to rise this year. As of November 2022 the Office of National Statistics reported inflation of 11.1% with the Bank of England (BoE) having raised interest rates to 3%. Whilst it is unlikely that the prices of energy and imported goods will continue (post 2022) to rise as rapidly as they have done recently, food prices and the cost of living continues to rise. This means that inflation will decline in due course

but not before the construction contract for the HWBC needs be procured and awarded to deliver it in time to satisfy HM Treasury funding requirements. It is predicted that the UK has already entered a prolonged economic recession.

Industry, the Mayor's Office and professional bodies are all highlighting excessive inflation due to war in Ukraine running at 6-8% ahead of base inflation with some construction project costs now rising in excess of 20%. Fuel costs, raw materials and shipping major components are key drivers for this increase – with a major skills shortage in the construction sector.

Wholesale electricity prices have continued to rise and there has been a reduction in available power supplies compared to last year which combined with higher gas prices. This has led to an increase in the wholesale price of electricity. An increase in network and policy costs is also pushing prices up.

The pandemic and other factors have also seen a reduction in supply chain skill sets with increased competition for those skills that remain within the marketplace. Building contractors are predominantly now only fixing tender pricing for 3 months whereas previously the industry norm was 6 months. It is inevitable that contract tender returns will increase so that contractors can adequately price in risk. The cost of collateral warranties is also rising.

Furthermore lenders have strengthened their loan criteria and with the BoE raising interest rates it is considered highly likely that residential prices will stabilise and may potentially fall further, impacting viability.

Whilst caution has been exercised in the financial appraisal including providing an enhanced allowance for inflation (15%) and very limited potential increase in sales value, the inherent volatility regarding future inflation levels (which contractors are already pricing in) together with the current widespread difficulties relating to supplies and contractors means that it is not possible at this stage to guarantee costs or time constraints.

In view of the level of uncertainties and risks set out above it is not possible, at this stage, to recommend that the Council progress this scheme immediately. The costs of undertaking this assessment have been shared with the ICB who will pay 50% of the professional fees incurred by the Council as set out below and a 50% contribution towards the Council's estimated internal costs. The ICB's 50% share of the total costs incurred by the Council is in the order of £175,000 which will be re-imbursed by the ICB to the Council. The costs include the approximately £55,000 to cover the cost of the Council's internal legal costs, officer time, overhead, planning and consultant fees.

HWBC - Professional Fees	
Architect	£70,736
Project Management	£63,000
Quantity Surveyors	£37,000
Surveyors	£15,612
Planning	£18,814
Civil & Structural Engineers	£9,748
Mechanical & Electrical Engineers	£14,950
Heritage	£8,566
Fire Engineers	£2,000
Total	£240,426
Council 50% Share	£120,213

The Council continued to work closely with the ICB, meeting at least weekly to ensure that the ICB are fully apprised of project progress. As soon as it was apparent that the Council would be unlikely to deliver the scheme, as previously proposed, it was agreed in principle with the ICB that as an alternative the Council and ICB would revert to the refurbishment model. This would seek to secure the HWBC within the financial envelope available through health funding with the Council administering the delivery of the new HWBC but with the Council's costs and risks indemnified by the ICB. It should be noted that whilst the ICB is providing a cost indemnity to the Council, once the Council has formally approved the project, if the Council later determines that it will not progress, the cost indemnity will be limited to cover external costs only and not include the re-imburement of the Council's internal costs at £15,000 per month.

3.2 ICB proposals

Since May 2022 the ICB has been working up its proposals for the site and it had been proposed that a report would be available for consideration at the Executive meeting in September 2022 and subsequently in October 2022. Now that the ICB has provided the Council with its draft proposals on how it wishes to progress the delivery of the HWBC within the refurbished Adventure Kingdom this report seeks authority from Members in support of the ICB's business cases and programme to proceed as set out in paragraphs 3.2 to 3.18 below. The ICB have provided a letter of comfort a copy of which is included within **Appendix 1**.

In order to receive the capital allocation, a tight project programme is in place. The details set out within this paper require endorsement from the Council now so as to ensure the procurement and planning workstreams can commence and the full business case can be completed on time. The design, procurement and tender workstreams need to be complete by May 2023 to enable approval of the full business case and the appointment of the contractor.

3.3 ICB design proposals

As part of the initial design development which has taken place to date, the ICB's project team have been assessing the scale of development works required to refurbish the existing Adventure Kingdom site to be repurposed as a HWBC. The existing Adventure Kingdom building will be refurbished to include a new mezzanine floor to provide a two-storey design solution.

The intention is that the proposed scheme will retain the existing structure to maintain the character of the original building by exposing ceilings and beams where appropriate, refurbishing with carefully chosen materials which complement the existing structure. While the main structure (steels and external walls) are planned to be retained, the proposal includes replacing the roof, windows and infilling between the steels. Where adaption of the building is proposed, it has been assumed that all non-load bearing walls are to be demolished up to structural elements.

The removal of any structural walls will be avoided unless absolutely necessary to support planning requirements. Currently the scope includes retaining external walls and the double height internal wall to support the mezzanine. The adaption of existing facilities is currently being developed with the structural engineer. New cladding and insulation will be specified to the façade. The reuse of the building will support a carbon neutral/ low environmental impact assessment with the provision of new thermal insulation for the walls and roof including the replacement of modern window units.

The design will ensure structural, utilities and service separation from the Council's holding so as to be completely independent except to enable fire escape or the Council require access.

3.4 Disposal of Adventure Kingdom premises to the ICB

The Council and the ICB are well advanced in agreeing heads of terms for the necessary legal agreements to govern the project, a summary of the draft commercial terms are as follows:

1. The HWBC be located within the refurbished building of the former Adventure Kingdom with the benefit of the adjoining car parking.
2. Price: At market value, plus VAT, subject to receipt of detailed planning consent and confirmation of NHSE funding via approval of a full business case by the ICB.
3. Section 2 period: 60 years from practical completion of the refurbishment.
4. Option to purchase: The ICB will have an option to purchase the freehold at a peppercorn.
5. Restrictions: The use of the premises will be restricted to a Health Centre and associated car parking secured both as a user restriction within the lease and by way of a covenant over the freehold title in the event the option to purchase is exercised.
6. Term of lease: The premises will be let directly to the Dysart Surgery by the Council but with a guarantee from the ICB. The term of the lease will be 25 years from practical completion and the rent payable by the Dysart Surgery will be a peppercorn. The tenant will be responsible for the internal and external maintenance of the building.
7. The lease will be drafted to ensure that there are minimal risks to the Council as landlord and any residual liabilities within it will be covered by the ICB's indemnity (see 9. below).
8. The ICB will pay all the Council's costs associated with the transactions.
9. The relationship between the ICB and the Council regarding the project, and the rights and obligations of each, will be set out in a project agreement. In particular, the project agreement will be drafted to ensure that any residual liabilities on the Council as landlord under the lease and/or as freeholder (unless and until the option to purchase is exercised) are covered by the ICB's indemnity.

Officers have and will continue to carry out valuations of the premises to ensure compliance with the requirements of s.123 of the Local Government Act 1972.

3.5 ICB deal structure

The ICB propose that the refurbishment of the Adventure Kingdom will utilise the following structure:

An extensive programme of refurbishment works will be required, with a value of approximately £9.4m. Funding is available to deliver the Works via NHSE's section capital funding route (Section 2). Under the NHS regime, NHS Integrated Care Bodies do not have the ability to enter into freehold or leasehold property commitments for operational real estate and instead must work with partner organisations such as Local Authorities, Health Providers or NHS Property Services. Due to these legal constraints funding under Section 2 must be paid to the Council rather than to the ICB. To facilitate this the Council needs to agree to enable the delivery of the HWBC by acting as the employer to deliver the project on the condition that:

- the Council is not responsible for the day-to-day contract management to deliver the project
- the ICB will indemnify the Council against all costs and risks arising out of the project
- the completed HWBC will be managed by (or on behalf of) the ICB, albeit the Council will still be the landowner until the ICB exercises its option to purchase

As this project will be led by the ICB, who will have the lead role in design, delivery and operation of the new facility, a project agreement between the ICB and the Council will sit alongside the Section 2 agreement (see 3.4 below). This project agreement will outline the

local role of the ICB in delivery of the scheme, including the provision of development management services.

3.6 ICB funding route

Section 2 is an established capital funding process used by NHSE to fund the development of new health care facilities, where projects are being led by local authorities on local authority owned land. NHSE remains responsible for capital funding in primary care (even though day-to-day decisions regarding provision of services and revenue funding are taken by the ICB).

Section 2 involves a contractual payment (or payments) from NHSE to the Council under an NHSE standard form of contract. Section 2 has been used to fund and complete a number of projects across the country including the Southborough Community Hub in Kent, the Britwell Community Hub in Slough, Greenwood GP surgery in Staffordshire and many others. A business case is currently being considered for the delivery of a Section 2 funded scheme in Greenwich and so the ICB team are familiar with this type of project.

Given that this project will be led by the ICB, who will have the lead role in design, delivery and operation of the new facility, a project agreement between the ICB and the Council will sit alongside the Section 2 agreement. The project agreement will outline the local role of the ICB in delivery of the scheme, including the provision of development management services and payment to the Council for its role as development partner in order to ensure that there is no cost and minimal risk to the Council associated with the delivery of this project.

3.7 ICB project finance

The majority of the funding for this scheme will be provided by NHSE under its National Capital Funding Programme. The ICB will be responsible for delivery of the project and the NHSE funding will cover all further costs related to the project, including those incurred by the Council. This principle will be set out in the project agreement between the ICB and the Council which will include indemnities against risks and liabilities, such as cost overruns and claims, some of which are set out below.

3.8 Capital funding

The ICB has been awarded capital funding for the development of the HWBC totalling approximately £9.4m. This is subject to final full business case approval and with a condition that the centre is open in Spring 2024.

The capital costs for the scheme were updated in October 2022 and are set out in the table below.

	Net	VAT	Total
	£'000	£'000	£'000
Construction	3,957	791	4,748
Planning contingency	396	79	475
Other contingency / fees	112	23	135
Subtotal	4,465	893	5,358
Optimism bias	741	148	889
Inflation adjustment	1,459	292	1,751
Total Construction inc. contingencies	6,665	1,333	7,998
Land value			Market value
Total capital costs	8,065	1,333	9,398

These updated costs reflect recent increases in cost inflation using an estimated inflation indices provided by the Royal Institute of Chartered Surveyors Building Cost Information Services with an assumed start on site date of April 2023. This capital costing will continue to be updated and monitored through the project up to the tender stage. It is expected that the market has stabilised and increases will not be as significant as over the past year, but the project team recognises this is still a risk and will monitor closely. As mitigation against the risk, there are further contingencies included within the capital costs above. A planning contingency of 10% (£475,000) has been included and a further 17% (£889,000) optimism bias adjustment has also been included as additional contingency.

On full business case approval, the Section 2 will become subject to a legal agreement, with £9.4m payment transferring in the year 2023/24. Under the Section 2 agreement, the Council will continue to hold the land freehold, but will allow the ICB to use the site for NHS medical services for 60 years. The capital funding includes payment for the freehold land value interest of the site. The ICB will have an option to purchase (as governed by an option agreement) the site in the event it receives the powers to hold property.

In the event of any cost overruns above the capital funding and that the contingencies that have been fully utilised, this will be the responsibility of the ICB under the project agreement. The project agreement, prior to execution, will be require close consideration to ensure the ICB's indemnities cover all these eventualities and the practicalities of any reimbursements being made.

In the event, that the full business case is not approved, for example, if tender prices are significantly over budget or planning permission is not granted in time, then project will not proceed and funding will not be drawn down. Any costs incurred to date by the Council will be covered by the ICB as set out in the project agreement.

VAT advice is currently being sought from HMRC and any implications on the project will be accounted for from the NHS funding.

3.9 Other costs

In addition to the capital costs set out above, there are additional development costs, including the appointment of the lead consultant, multi-disciplinary team, contract administrator and project management costs. Under the project agreement, all these costs will be met by the ICB throughout the project.

Under the project agreement, costs borne by the Council in relation to the project will be met through the funding provided by NHSE. This is estimated to be £545k, which includes forecast external consultants, legal costs and internal costs plus overheads identified required to support the project but excludes any additional project monitoring the Council may require.

NHS funding has been identified to meet these costs through ICB revenue costs and the health estates development fund, held with the Council.

3.10 Section 2 and lease period

Under the Section 2 agreement, the ICB will be responsible for the commissioning of medical services for the site for the 60 years. Any risks of voids and vacancies will sit with the ICB.

On completion of the build, the Dysart practice will enter into a lease with the Council, as freeholder for 25 years at a peppercorn rent. In the event that the lease is terminated, the responsibility will be for the ICB to commission a new provider / leaseholder for the premises.

For the period of the Section 2 agreement, the responsibility for maintaining and servicing the site will be with the leaseholder / ICB and financial liability with no risk or obligations to the Council.

3.11 Financial monitoring

The ICB will work closely with the Council to ensure that there is close monitoring of project costs through the programme and have met to agree financial monitoring and control processes. The principle of transparent information exchange will be included in the project agreement between the Council and the ICB.

3.12 ICB procurement approach

The ICB will lead on the procurement of the refurbishment work, with the Council's agreement on the processes undertaken. This will include the appointment of multi-disciplinary consultants at an estimated cost of £900,000 and a main works contractor at an estimated cost of £6,500,000 through compliant procurement routes.

The ICB intends to appoint the Lead Consultant by way of a direct award under the NHS SBS Construction Consultancy Services 2 Framework (Lot 12 Multidisciplinary team and ancillary services). The main works contractor will be appointed using a further competition process through the SBS Public Sector Construction Works framework.

The ICB has agreed the roles and service scope for the Lead Consultant and their sub consultants which will need to be reviewed and agreed by the Council.

Prior to award of the proposed building contract for the main works a report will be provided to Executive to enable approval by the Council in its role as employer. As the multi-disciplinary design team under the Lead Consultant will already be employed by the ICB, on appointment of the contractor they will also be novated to the Council where appropriate.

3.13 Project-specific procurement and use of a framework

The Public Contract Regulations 2015 (PCR) provides contracting authorities with four key procurement procedures: Open, Restricted, Competitive Procedure with Negotiation and Competitive Dialogue.

Alternatively, the PCR allows public bodies to use existing framework agreements, using a pre-determined shortlist of providers to provide prices against the public body's specific requirements. As the qualification stage has already been completed and some or all of the documents for the individual call-off have been set, using a framework can reduce costs and timescales for appointing a provider.

There are a number of frameworks available to public sector entities for construction related services and construction works. However, not all of these will be suitable for the ICB to appoint the Lead Consultant or for the Council to appoint the Contractor.

Following an analysis of the available frameworks, the SBS Construction Consultancy Framework 2, has been identified for appointment of the Lead Consultant. The SBS Public Sector Construction Works framework has been identified as suitable for the appointment of the Contractor.

Some frameworks provide for appointment of providers through direct award, others require a further competition. In this case, the ICB intends to appoint the Lead Consultant by way of a direct award under the NHS SBS Construction Consultancy Services 2 Framework (Lot 12 Multidisciplinary team and ancillary services). The Contractor will be appointed using a further competition process.

The appointment and scope of the Lead Consultant and their sub consultants have been finalised by the ICB, all professional consultants with design responsibility will be required to provide a warranty in favour of the Council.

Prior to award of the proposed building contract a report will be provided to Executive to enable approval by the Council in its role as employer. At this time the multi-disciplinary design team will also be novated to the Council.

3.14 ICB contracting approach - Appointment of the design team

The design team, including the Lead Consultant, are currently engaged by the ICB and have been for some time. The ICB are now formalising the appointment.

As the ICB are proposing a “traditional” procurement approach, where the Contractor is only responsible for carrying out the construction, not for the design, it is the client’s responsibility to appoint and manage the design team, including any interfaces between different design disciplines. In order to reduce the administrative burden on the ICB (and, post novation, the Council) the proposed approach is for the ICB to appoint the professional team through a single Lead Consultant, who will then appoint sub-consultants to deliver the relevant consultant disciplines required.

The Lead Consultant is then responsible for the appointment of any further sub-consultants required in order to be able to deliver the professional services, and for managing any interfaces between the disciplines. This also simplifies issues around any claims that may need to be made, as the client can simply claim against the Lead Consultant in relation to any design-related issues, rather than needing to identify at the outset whether the problem has arisen out of the architecture, mechanical and electrical or other services. To ensure that the Council is comfortable with the appointment of the Lead Consultant, the ICB will agree the scope of the Lead Consultant and its sub-consultants’ services with the Council.

The Lead Consultant and the other members of the professional team with design responsibility must each provide a collateral warranty to the ICB and the Council to cover all their work. The collateral warranty provides the beneficiary with a contractual right to claim against the relevant designer, despite the fact that the beneficiary has not appointed the consultant.

In order to allow design work to begin as soon as possible the ICB proposes to formally appoint the Lead Consultant itself, based on the Public Sector Consultancy Appointment, 2016 edition. This also allows the Lead Consultant and sub-consultants to take advantage of the ICB’s health sector-specific expertise as client during the design phase. The Lead Consultant will also be appointed to act as CDM Co-ordinator for the project and so ensure that the ICB and the Council effectively discharge their health and safety obligations arising from the scheme. The Council is exploring the role of a monitoring surveyor to act on behalf of the Council to independently review the construction and design appointments on behalf of the Council but at the cost of the ICB.

As the Council will be appointing the Contractor to carry out the Works (see below), the Council should also be the client under the appointment of the Lead Consultant during the works phase. This will ensure that the Council can deal with issues arising, whether they are design or workmanship related. To achieve this, the Lead Consultant will be novated to the Council, with

the Council taking over all the rights and obligations of the client under the appointment. The novation will be drafted so that the Council is deemed to be the employer from the outset, allowing the Council to claim against the Lead Consultant for breaches, regardless of whether they occurred before or after the novation. An advantage of the ICB appointing a single Lead Consultant is that only one appointment needs to be novated, reducing the administrative burden on the parties.

As part of the novation, the Lead Consultant will provide the ICB with a post-novation collateral warranty, given that the ICB will no longer have a contractual relationship with the Lead Consultant to rely on. The warranties already provided by the sub-consultants to the ICB and the Council are unaffected by the novation and will remain in place. This is in addition to the cost and risk indemnity that will be provided directly by the ICB to the Council.

Should independent advice be required the Council retains the professional consultancy team as approved on 10th March 2022 by The Director of Housing, Planning and Regeneration and on 17th March 2022 by The Portfolio Holder for Resources, Commissioning and Contracts Management, Councillor Michael Rutherford.

3.15 Contract Administrator

Under the JCT Standard Building Contract 2016 without quantities (proposed for use as the building contract), contract management is carried out by the Architect/ Contract Administrator, supplemented by the Quantity Surveyor in relation to cost matters. The Contract Administrator's role is to administer the contract, supervise the works and provide sufficient information to allow the Contractor to carry out and complete the Works. They will issue any instructions required to the Contractor, for example for any changes.

This Contract Administration role will form part of the Lead Consultant appointment. Given that the parties anticipate that the Council will be the employer under the building contract (see below), the appointment will be novated at the point that the building contract is put in place. The ICB's role in issuing instructions to and engaging with the Architect / Contract Administrator will be set out in the project agreement (see below). The Council will require that there are sufficient safeguards in place to ensure that the Council is protected against project cost overrun or financial claims against the Council as a result of the project.

As the Council will still be the named employer and so will be the client for the purposes of the residual obligations under the CDM Regulations, the ICB will be under an obligation to retain an audit trail for the Council showing that it has discharged its duties as the client for CDM purposes.

3.16 Appointment of the Contractor

It is proposed that the ICB and the Council will jointly procure the Contractor with the ICB leading on the procurement process and the Council entering into the building contract with the Contractor. This arrangement will be clearly set out in the procurement documents and contractual arrangements between the Council and the ICB. The appointment will be on the terms of a JCT contract (as above) as approved by the Council.

The Contractor will be appointed following a further competition under the SBS Framework. The evaluation team should be made up of ICB and Council representatives who will score the mini tenders submitted. The evaluation team carry out their review and a joint report is prepared setting out the recommendations of the evaluation team. The ICB and the Council will then consider the report separately and a report submitted to Executive for consideration by Members.

Although the ICB will be responsible for leading the procurement process and designing the evaluation criteria, specification and contract documents, the Council will still be the employer. Given the value of the construction contract, the Council will need to be fully satisfied with the development of the evaluation criteria and proposed appointment particularly as regards liability, timescales and requirements to provide information and will formally sign off any tender documentation before procurement commences.

Only if the construction contract award is approved by Members will the project proceed.

3.17 Project agreement and the role of the parties

The ICB proposes to enter into a project agreement with the Council which will set out the detail of the governance and decision-making processes, as well as dispute resolution protocols.

This project agreement will define the roles of the parties in the carrying out and completion of the project and will also ensure that the ICB provide full comfort to the Council in relation to any risks that might be inherent in the delivery process. This project agreement will operate alongside the current indemnity deed from the ICB to the Council.

The heads of terms for the project agreement are in the process of being agreed and will cover the following:

- The appointment of the ICB by the Council to provide development management services in relation to this project.
- The granting of authority from the Council to the ICB to allow the ICB to issue instructions to the Lead Consultant after novation, run the main contractor procurement process and, during the construction phase, to instruct the Contractor, subject to agreement of satisfactory safeguards to protect the risk and/or cost to the Council.
- Detailed payment arrangements, providing for the Council to pay fees raised by the Lead Consultant and Contractor from the NHSE funding.
- Agreement that the ICB will meet cost overrun and indemnify the Council against all risks in relation to the project.
- A further indemnity from the ICB in relation to additional design fees (or any other costs that sit outside the existing ICB or NHSE funding) and in relation to claims brought by the Contractor or third parties against the Council.
- The ICB paying the Council's internal costs agreed at £15,000 per month plus legal, consultants and other project costs properly incurred by the Council.
- Dispute resolution and governance provisions.
- An agreed list of the services that the ICB will provide, during the pre-construction and construction phases.
- An indemnity in relation to the proposed Section 2 agreement.
- An indemnity in relation to any costs/risks to the Council under the Agreement for Lease/Lease
- Termination provisions

3.18 Supplemental agreements

In addition to the project agreement the Council the ICB have agreed and executed a cost indemnity agreement which ensures that all costs incurred by the Council are re-imbursed by the ICB to the Council.

Additionally heads of terms are in the process of being agreed for the following proposed agreements:

- The Section 2 agreement between the Council, NHSE and the ICB.
- An agreement for lease and lease of the completed development by the Council to the Dysart Surgery which will be underwritten by the ICB, through its indemnity, to ensure no ongoing risk/liability to the Council.
- An option agreement with the ICB to purchase the freehold of the Adventure Kingdom and adjoining car park.

4. IMPACT ON VULNERABLE ADULTS AND CHILDREN

Not Applicable

5. TRANSFORMATION/POLICY IMPLICATIONS

Not Applicable

6. FINANCIAL IMPLICATIONS

6.1 The original plans to joint-develop a health and well-being centre (HWBC) on the former Adventure Kingdom site with the PCT (now ICB), as per the paper to Exec of 9 February 2022, will now no longer proceed; instead, the revised proposal is for the ICB to deliver the project on the same site. However, to attract the necessary funding from Government, the Council must formally deliver the project.

6.2 The plan is therefore for the Council to take formal ownership of the scheme, including the market value of the site, at a total estimated capital cost of £9.4m including VAT. This budget includes an acceptable level of contingency to protect the Council and ensure the viability of the project in a volatile inflationary environment.

6.3 The ICB undertake to fund 50% of costs incurred in the original project for officer time and professional fees. The total of this reimbursement is of the order of £175k. Further, for the duration of the revised project, the ICB will fund project management costs incurred by the Council in full, plus £15k pcm to cover officer time, unless the Council decides not to proceed with the project. The total cost envelope for these costs is estimated at £545k. This amount is in addition to the £9.4m for project delivery.

6.4 In practice, the day-to-day management of project delivery will be the responsibility of the ICB. Loss risk and void risk will also sit entirely with the ICB. Financial monitoring for the project will be the joint responsibility of LBB and ICB.

6.5 Both the rent for the completed premises, and the option to purchase the freehold by the ICB, will be set at a peppercorn.

6.6 The council's capital budgets are tightly constrained and the long-term strategy is currently under review to ensure the programme is affordable. It is therefore essential that the project is delivered as outlined and does not incur any overspends or liabilities for which the Council might be deemed liable.

6.7 The scheme has no impact on the Council's planned capital expenditure as it is funded by the NHS via the ICB, through a reimbursement of costs. The Council's cashflow and any related revenue impacts will need to be considered in any detailed business case since there may be timing differences between expenditure being incurred and it being reimbursed by the ICB.

6.8 The funding route of £9.4M includes a capital receipt in relation to disposal of a lease interest in the site.

7. PERSONNEL IMPLICATIONS

Not Applicable

8. LEGAL IMPLICATIONS

8.1 Property Aspects

- (i) As this will be a Section 2 funded project, although the completed HWBC will be managed by (or on behalf of) the ICB and the ICB will be entitled to use the site for the commissioning of NHS medical services for 60 years, unless and until the ICB has the necessary powers to hold property in its own right, the Council will remain as the freeholder and the site will not transfer to the ICB.
- (ii) The proposed property structure also provides for the Council to grant a lease of the completed HWBC to the Dysart GP Practice for 25 years.
- (iii) Although the Council will therefore be both the freeholder of the site and the landlord under the lease to the GP Practice, for the period of the Section 2 agreement, all responsibility for maintaining and insuring the site will either be the responsibility of the leaseholder under the lease or the ICB under its general indemnity to the Council so there will be no legal property risks or obligations for the site remaining with the Council.
- (iv) If and when the ICB has the necessary powers to hold property it will be required to exercise the option to purchase the freehold from the Council in any event.
- (v) In the interim, the ICB's indemnity to the Council will be drafted to ensure the ICB is responsible for the site in the event of any voids or vacancies in the tenancy arrangements.
- (vi) Under the proposed property structure there are 2 potential disposals of the site for the purposes of section 123 Local Government Act 1972 – the grant of the 25 year lease to the Dysart GP Practice and the transfer of the Council's freehold interest if and when the ICB can exercise their option to purchase. The section 123 compliance certification can only be finally signed off at the point these disposals actually take place even though the Section 2 capital funding will include payment for the value of the Council's freehold interest in the site and will be received by the Council prior to any actual transfer of its interest.

8.2. s.111 Local Government Act 1972

The Council has power to do anything calculated to facilitate, or is conducive or incidental to, the discharge of any of its functions

8.2.1 The intended proposals do dispose in this report would be affected pursuant to that statutory power and

8.2.2 The General Power of Competence pursuant to the Localism Act 2011.

8.3 Disposal of land

8.3.1 If the intended proposal to dispose of Council land as referred to in 8.1 where to proceed Local authorities have power under s.123 of the Local Government Act 1972 to dispose of land for best consideration that can reasonably be obtained (usually based on open market value).

8.3.2 s.123 of the Local Government Act 1972 confers power to the Secretary of State to give general consent for the purposes of land disposals by local authorities carried out under their powers in Part 7 of the 1972 Act.

8.4 The Local Government Act 1972: General Disposal Consent 2003 removes the requirement for authorities to seek specific consent from the Secretary of State for any disposal of land where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or more of the well-being criteria in the Local Government Act 2000:

- (i) the promotion or improvement of economic well-being;
- (ii) the promotion or improvement of social well-being;
- (iii) the promotion or improvement of environmental well-being; and the “undervalue” (i.e. the difference between the unrestricted value of the interest to be disposed of and the consideration accepted) is £2,000,000 or less

Applications for specific consent should be sent to the DCLG and include the following information:

Written description of the land and buildings, the location

Written description of how the land is currently held by the Council

Details of any leases, encumbrances such as easements

Summary of the proposed disposal/transaction

8.5 Disposal of Land considered as Open Space

If there is any open space within the demise of any proposed disposal Section 123 (2A) will come into play and this states that any disposal of land considered as open space (any land, enclosed or not, on which there are no buildings, and the whole of the remainder of which is laid out as a garden or is used for recreation purposes or lies waste and unoccupied) requires the local authority to give notice of its intention to dispose of the land for two consecutive weeks in a newspaper circulating in the area in which the land is situated, and they must consider any objections to the proposed disposal which may be made to them

8.6 Procurement Aspects

8.6.1 This report comes before the Executive to recommend that Members agree to the revised proposals for the HWBC to proceed on a refurbishment basis rather than as previously agreed by the Executive, Resources and Contracts Policy Development and Scrutiny Committee in February 2022. It also requests authority to proceed to procurement with the ICB for a main works contractor provided there is a costs indemnity in favour of the Council for all costs incurred.

- 8.6.2 As is stated in the Procurement comments below, the Council's Contract Procedure Rules require this report to come before the Executive to proceed to procurement.
- 8.6.3 The Council has instructed external legal advisors to provide legal advice and assistance on the property, procurement, financial and construction issues in this project. These solicitors will work together with the Council's in-house legal services to provide comprehensive legal advice as the project proceeds.
- 8.6.4 There is no specific legal requirement for the Council to work with the ICB to provide the HWBC. The National Health Service Act 2006, the Care Act 2014 and the Health and Care Act 2022, however, place public health duties on local authorities to improve the health of their populations. The Council is also in a section 75 arrangement with the ICB by which the provision of health and social care is integrated and jointly commissioned.
- 8.6.5 As the works and services contracts will be in excess of the financial thresholds of the Public Contracts Regulations 2015 then they must be procured in a fully regulated way. Regulation 33 enables local authorities to use compliant framework agreements, to procure works and services, as is proposed in this report.

9. PROCUREMENT IMPLICATIONS

- 9.1 This report seeks the following actions to support the refurbishment of the Health and Wellbeing Centre site;
- To note the appointment of a lead consultant (estimated £900k) by ICB via a direct award under the NHS SBS Construction Consultancy Services 2 Framework (Lot 12 Multidisciplinary team and ancillary services), and
 - To approve proceeding to procurement undertaking a further competition process through the SBS Public Sector Construction Works framework for the provision of a main works contractor (estimated £6.5m).
- 9.2 The procurement process for the main works contractor will be a joint procurement led by the ICB, with the Council's agreement on the Procurement Documents issued (including specification, timetable and award criteria).
- 9.3 The Council's specific requirements for authorising proceeding to procurement are covered in 1.3 of the Contract Procedure Rules with the need to obtain the formal Approval of the Executive following the Agreement of the Portfolio Holder, Assistant Director Governance & Contracts, the Director of Corporate Services and the Director of Finance for a procurement of this value. In accordance with CPR 2.1.2, Officers must take all necessary professional advice.
- 9.4 The actions identified in this report are provided for within the Council's Contract Procedure Rules, and the proposed actions can be completed in compliance with their content.

10. PROPERTY IMPLICATIONS

1. A summary of the draft Commercial Terms are as follows:

The Bromley Health and Wellbeing Centre be located within the refurbished building of the former Adventure Kingdom with the benefit of the adjoining car park.

Price: At market value, plus VAT subject to receipt of detailed planning consent and confirmation of NHSE funding via approval of a Full Business Case by the ICB.

Section 2 Period: 60 years from the Practical Completion of the refurbishment.

Option to Purchase: The ICB will have an Option to purchase the Freehold at a peppercorn.

Restrictions: The use of the premises will be restricted to a Health Centre and associated Car Parking secured both as a user restriction within the lease and by way of a covenant on the freehold title in the event the option to purchase is exercised.

Term of Lease: The premises will be let directly to the Dysart Surgery by the Council with a guarantee from the ICB. The term of the lease will be 25 years from practical completion and the rent payable by the Dysart Surgery shall be a peppercorn. The tenant will be responsible for all internal and external maintenance of the building.

The lease will be drafted to ensure that there are minimal risks to the Council as landlord and any residual liabilities within it will be covered by the ICB's indemnity (see below).

The ICB will pay all LBB's costs associated with the transactions.

The relationship between the ICB and the Council regarding the project and the rights and obligations of each will be set out in a project agreement. In particular, the project agreement will be drafted to ensure that any residual liabilities on the Council as landlord under the Lease and/or as freeholder (unless and until the option to purchase is exercised) are covered by the ICB's indemnity.

Officers have and will continue to carry out valuations of the premises to ensure compliance with the requirements of S123 of The Local Government Act 1972 and the necessary certification to ensure compliance with section 123 of the Local Government Act which can only be provided at the time that disposal of an interest in the land is undertaken.

2. The future use of the Great Hall which has significant property maintenance requirements will be considered as part of the wider Civic Centre Property Review.

11. CARBON REDUCTION/SOCIAL VALUE IMPLICATIONS

Not Applicable

12. CUSTOMER IMPACT

Not Applicable

13. WARD COUNCILLOR VIEWS

Ward Councillors have been consulted and comments will be reported at the meeting.

Non-Applicable Headings:	4, 5, 7, 11, 12
Background Documents: (Access via Contact Officer)	Executive Report dated 12 th February 2020 Executive Report dated 20 th October 2021 Executive Report dated 9 th February 2022 Report to Portfolio Holder for Resources Commissioning & Contract Management dated 9 th March 2022 Officer Contract Award Report dated 10 th March 2022