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**Report to:** Cabinet                      **Date of Meeting:** 19<sup>th</sup> July, 2012

**Subject:** Refurbishment of King's Gardens, Southport.  
Acceptance of Heritage Lottery Fund grant.

**Report of:** Strategic Director – Place

**Wards Affected:** Ainsdale, Birkdale, Cambridge, Dukes, Kew, Meols and Norwood

**Is this a Key Decision?** Yes      **Is it included in the Forward Plan?** Yes

**Exempt / Confidential** No

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### **Purpose/Summary**

To seek Cabinet approval to formally accept a grant of £4,079,000 offered by the Trustees of the National Heritage Memorial Fund (HLF) and the Big Lottery Fund (BIG) towards the refurbishment of King's Gardens, Southport and enter into a Contract with the funders governing how the Council will deliver and manage the project.

To seek specific legal and financial approvals as set out in the recommendations below to enable the project to proceed at minimum risk.

### **Recommendation(s)**

Cabinet is requested to:

1. Accept the terms and conditions of the funders' Contract relating to King's Gardens, Southport and authorise the Head of Corporate Legal Services to enter into Contracts accordingly.
2. Approve commencement of the procurement and tender process for the selection of a suitable Main Contractor to undertake the works. The outcome of the tender process will be reported at a future meeting of Cabinet.
3. Members note the existing Economic Regeneration and Tourism and Landscape Services' budgets for Management and Maintenance costs totalling £180,734. The funding Contract requires the ongoing provision of this funding to ensure the gardens are adequately maintained upon completion. Members agree to ring fence the existing Economic Regeneration and Tourism and Landscape Services Kings Gardens' budgets and that at the end of subsequent financial years, any underspend be carried forward into the following financial year to fund cyclical maintenance.
4. Approve a maximum contribution of £50,000 towards the refurbishment of the Marine Lake Café, to be provided from the Property Intervention Fund.
5. Delegate to Strategic Director – Place and Head of Corporate Legal Services, approval of a new 30-year Lease and Agreement for Development between the





maintenance of the site over a period of at least 25 years to ensure the capital investment is secure. The project includes the improvement of the Marine Lake Café under the terms of a new 30-year lease and financial agreement with the leaseholder which will allow for better management of this concession.

### **What consultations have taken place on the proposals and when?**

The Head of Corporate Finance (FD.1628/12) and Head of Corporate Legal Services (LD850) have been consulted and any comments have been incorporated into the report. Consultations have taken place with Planning Services, Economy and Tourism, Parks & Greenspaces and the project has been developed through extensive community engagement.

### **Are there any other options available for consideration?**

The only other option would be to not accept the HLF Grant and consequently not proceed with the project in its present form. This would result in King's Gardens – a key community and tourism asset - remaining in a dilapidated state with no prospect of improvement in the foreseeable future and consequential implications for Southport's tourist offer, future maintenance liabilities and realisation of the adjoining Marine Park Development.

### **Implementation Date for the Decision**

Following the expiry of the "call-in" period for the Minutes of the Cabinet Meeting.

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### **Background Papers:**

The following papers are available for inspection by contacting the above officer(s).

1. King's Gardens, Southport – Stage 1 and Stage 2 funding bids to Heritage Lottery Fund, dated 2008 and 2011.
2. King's Gardens, Southport – Project Masterplan and proposals drawings.
3. Cabinet 8<sup>th</sup> December, 2011: Capital Programme Review
4. Southport Area Committee 25<sup>th</sup> May, 2011: Refurbishment of King's Gardens, Southport Seafront
5. Cabinet 15<sup>th</sup> April, 2010: King's Gardens, Southport.

## 1. Background

1.1 King's Gardens are an integral part of Southport's historic seafront. The gardens were developed in distinct phases between the late-19<sup>th</sup> Century and mid-1930's as Southport's seafront expanded. Unfortunately today, most of the gardens and features within are run-down and are a detraction when viewed in the context of recent significant investment elsewhere in Southport's Seafront and town centre.

Proposals to refurbish King's Gardens have been in development since 2007 and are set out in detail in the background papers. In summary, the aims of the project are to:

- Enhance the quality and appearance of the public spaces, gardens, Listed historic buildings, features, concessions and landscape in King's Gardens.
- Improve access to, from and within the gardens to enable as wide an audience as possible to visit.
- Develop a new children's play arena as a focus for wider activity and participation.
- Tackle crime and anti-social behaviour through improvements to lighting, security and reintroducing original low-level landscape design to improve views to and from the gardens.
- Redevelop the Marine Lake Café including new kitchens, new toilets with facilities for baby-changing and full access for disabled people. This will be supported by new Lease and Development Agreement between the Council and Leaseholder to secure long-term management objectives and overall quality.
- Promote King's Gardens as a community resource with new activities and events within the gardens to increase participation by the wider community. Encourage the wider community to become directly involved in the organisation, management and maintenance of King's Gardens through active participation, for example, through volunteering and promotion as a learning resource in partnership with Sefton schools.
- Safeguard the economic significance of Southport's seafront tourism and leisure offer.
- Develop a detailed management and maintenance plan to ensure any forthcoming investment made in the Gardens is secure and is affordable.

1.2 Members will recall the project was developed in two stages since 2007. A Stage 1 bid to the Heritage Lottery Fund, containing outline proposals developed with the community, was approved in 2010. The Lottery awarded £240,000 (matched by Sefton Council) to develop these into detailed project proposals during Stage 2 and this commenced in January 2011 and was submitted to the Lottery in December 2011. On 2<sup>nd</sup> April 2012, the Council was informed that the Stage 2 application had been approved together with a grant of £4,079,000.

## **2. Heritage Lottery Fund Contract**

- 2.1 The Council is required to enter into a Contract with the Trustees of the National Heritage Memorial Fund (HLF) and the Big Lottery Fund (BIG), which governs how the Council will deliver and manage the project. This contains 44 clauses together with 3 'Special Conditions' relating to this project and will be enforced for 25 years from date of signing. This Contract is not negotiable. The full Contract is reproduced in Appendix 1.
- 2.2 The Contract is primarily concerned with safeguarding the Lottery's investment – particularly ensuring the project is adequately maintained upon completion of the works and that the Lottery investment is acknowledged and publicised. Members' attention is drawn to Clause 29 (d), which states "You must repay to us any Grant that we have paid you (or any smaller amounts we ask you to repay) if we tell you that you must repay it for any of the following reasons .... (d) You fail to keep to any of the terms of this Contract. This means potentially the Lottery could seek repayment if the Council fails to manage the gardens in accordance with the agreed Management and Maintenance Plan, which includes all the gardens, spaces and facilities including concessions.
- 2.3 This, however, is considered to be a reasonable Clause and the project's budget includes for annual maintenance expenditure – set out in more detail in Section 3 of this Report (below). It is therefore recommended Cabinet accept the terms and conditions of the funders' Contract.

## **3. Management and maintenance following completion**

- 3.1 A fully itemised and costed Management and Maintenance Plan formed part of the Stage 2 Lottery bid. This includes all the activities that are necessary to secure the effective management of the site following completion – from daily sweeping and litter picking, through to annual inspections and planned-for repairs and wholesale re-painting works every 5-7 years. This is a 10-year cyclical maintenance plan, which means that at year 11 (2025) following completion it reverts back to 'year 1' and the 10-year cycle repeats. The life of this Plan effectively co-ordinates with the 25-year Grant Contract and provided the measures are adhered to, will adequately safeguard the HLF's and Council's investment.
- 3.2 Members are reminded that the grant award is based upon a 25-year contract term and it will be necessary for the Council to ensure that the funding necessary to maintain the agreed standard of maintenance and management is provided throughout that period.
- 3.3 Currently, the Council spends annually in the region £180,000 on management and maintenance of King's Gardens. This comprises:

### **Landscape Services budget**

Landscape Maintenance Costs

### **Economic Regeneration & Tourism Budgets**

Maintenance Costs

Staff Costs ( 2 x Seafront Officers – 60% pro rata)

- 3.4 The annual cost upon completion has been established at £180,734 per annum. This includes savings made on electricity usage due to the replacement of all lighting with low energy fittings and the replacement of end-of-life infrastructure that accounts for a significant proportion of the current maintenance budget.
- 3.5 Cabinet is requested to re-affirm the ongoing provision of funding through the Economic Regeneration and Tourism and Landscape Services budgets necessary to meet the £180,734 Management and Maintenance costs.
- 3.6 Although some costs will generally remain constant, subject only to inflationary increases, a portion of the maintenance costs will fluctuate. It will therefore be necessary to retain any underspend year on year within a 'King's Gardens Account' to meet the increased cyclic costs - particularly in years 5, 7 and 10, when significant re-painting will need to be undertaken.
- 3.7 Members are asked also to note that the annual cost for maintenance and management has been based upon the current level of cost. It will therefore be necessary to periodically review the amount of provision in order to ensure its sufficiency to meet the agreed maintenance and management standards.
- 3.8 Members are also reminded that the HLF grant award is based upon a 25-year contract term. The Council will be contractually obliged to ensure that King's Gardens are maintained to the agreed standard and that the necessary funding is provided throughout that period to meet the agreed standards for maintenance and management. This will mean that future maintenance budgets for King's Gardens cannot be cut. This in turn means that should the Council agree to make any parks budget reductions in the future, these savings will need to be focussed elsewhere.
- 3.9 In 'Special Condition 1' of the Contract, the HLF require that prior to starting work, the Council must send for approval by HLF, further developed proposals for ongoing management, including clear management structures for delivery of the Project and after completion and which should set out responsibilities for all areas of activity, management controls and director level lead.
- 3.10 A new programme Management Structure led by the Strategic Director of Place has been agreed between the services currently responsible for the management of King's Gardens (Parks and Greenspaces / Economy and Tourism). This does not present any new financial implications for the Council and endorsement of this new structure by Cabinet would reaffirm that the Council takes seriously its responsibility for the management and maintenance of the gardens, facilities, concessions and events therein upon completion.

#### **4. Marine Lake Cafe**

- 4.1 Refurbishment of the Marine Lake Café is a key element of the project and raising the standard of this facility was crucial to achieving HLF support. The Café is to be let on a new 30-year lease incorporating strict management conditions and the leaseholder will be responsible for all management and maintenance associated with this building during the lease term, with the Management Obligations written

into the lease. The Council will monitor the operation of the Café, to ensure it is being managed and maintained in accordance with the Lease.

- 4.2 The Cafe leaseholder will contribute £70,000 towards the external refurbishment works and will fund 100% of the Café's internal modernisations and fit-out including new fully-equipped kitchens. This contribution, together with a staged payment mechanism, will be governed by a Development Agreement between the Council and Café Leaseholder. This contribution is secure as the Council already has a Contract with the Leaseholder to pay the contribution, should Members approve the HLF Contract.
- 4.3 The HLF previously indicated that they would expect a contribution of £120,000 towards the cost of the external refurbishment of the Marine Lake Café. As a contribution of only £70,000 has been secured from the Café Leaseholder it will be necessary for the Council to underwrite the balance of up to £50,000. Every effort will however be made to contain the cost of the works to the café and to minimise the Council's contribution, in the worst case scenario this will be a one-off contribution funded from the provisions of the Property Intervention Fund.
- 4.4 The Lease and Development Agreement been signed by the Leaseholder but require delegated approval to Strategic Director – Places Directorate and Head of Corporate Legal Services to take effect.

## **5. Procurement and delivery**

- 5.1 After the HLF Contract has been signed, the project team need to commence the procurement of a suitable main contractor to allow for their formal appointment at a future Cabinet meeting. The immediate project timescale is flexible to accommodate contractor procurement, tendering and appointment in accordance with the OJEU framework and all detailed design work has been completed to enable procurement to commence as soon as the Contract has been signed
- 5.2 As part of the exclusivity agreement with Capita Symonds they have been retained as lead consultant and will be appointed as Contract Administrator to oversee construction works. Capita will be supported by the Council's in-house landscape architectural capability within the Parks & Greenspaces Service. A specialist historic buildings architect has overseen the development of architectural proposals for buildings and structures within the Gardens following an appointment process overseen by the HLF in January 2011. The Council will tender the appointment of a specialist historic buildings architect to progress this work to completion as a key part of the Contract Administration Team led by Capita.
- 5.3 Community involvement is an integral part of the project and the proposals have been developed with extensive participation by many community networks, organisations, schools and community groups, etc.
- 5.4 This close community involvement will continue to be key to the project's success and future sustainability. The community will be instrumental in helping to manage and maintain the gardens in the future, particularly through the newly-formed 'Friends of King's Gardens' group. The community outputs will be facilitated by the HLF-funded Community Development Officer post and Sefton's



Park Rangers. The Management and Maintenance Plan identified maintenance activities will be undertaken with support from the Friends of King's Gardens, HMP Kennet and the Community Payback Team.

## **6. S106 Match funding**

- 6.1 The Council is required to contribute £1,360,000 from Southport s106 funds as match-funding. At present, there is £561,713 of cleared s106 funds, however £182,000 of this is required to match-fund the Stage 2 project development works, giving a net balance of **£379,713**. Currently, a further £2,167,902 of future S106 agreement funding has been identified related to approved planning consents awaiting commencement on site. Whilst there is no guarantee any of these approvals will be implemented, even if only 50% of this amount is received, this would release £1,083,951, which together with the cleared funds, would be more than sufficient. However, should there still be a shortfall, Cabinet, on 15<sup>th</sup> April 2010, resolved to underwrite any shortfall in s106 contributions until sufficient resources are generated and the HLF are fully aware of this.
- 6.2 Members will be aware of legislative changes to s106 under the new Community Infrastructure Levy. From April 2014 onwards, only five individual S106 contributions may be used towards any one project. This is not considered to be a major risk. It is anticipated that the majority of the £1,360,000 from Southport s106 funds will have been identified, committed and preferably spent by April 2014. The Project Team is confident that underwriting would be needed only as a last resort should there still be a s106 shortfall up to 30<sup>th</sup> June, 2015, when the project has to be fully paid for under the terms of the HLF Contract.

## **7. Risks**

- 7.1 Developing the project over two distinct stages has allowed key risks to be identified from the outset and apportion time and resources to addressing these risks. Perhaps the most serious risk to the project was the consequence of not agreeing a new lease with the Marine Lake Café Leaseholder; however this has been mitigated as set out in Paragraph 4.2 of this Report.
- 7.2 The HLF Grant of £4,079,000 is capped and the Lottery have stated that any cost over-runs during the construction phase and thereafter must be funded by the Council – there is absolutely no prospect of applying for an increased grant to cover any cost over-runs.
- 7.3 To respond to this, the Project Team has made considerable effort to minimise, as far as possible, the potential for future cost over-runs during construction, particularly the potential for cost over-runs caused by uncovering uncharted utilities and hidden defects that become apparent only after opening up buildings. Problems of this nature have caused some previous Council-led projects to cost more than was originally planned. To minimise this risk as far as possible, the £480,000 pre-development budget funded by the Lottery and Council has been utilised to procure extensive and detailed site investigations and surveys over a 12-month period, as set out below:

- Appointment to the Project Team of a quantity surveyor who specialises in pricing the repair and restoration of historic buildings to prepare the cost estimates.
- Underwater survey of Venetian Bridge foundations by divers to inform repair specification.
- Trial boreholes and pits throughout the site to check ground conditions and foundations under lakeside walls and revetment edge.
- Co-operation with utilities companies from the outset to identify potential for uncharted services and integrate final designs accordingly.
- Full invasive surveys of all buildings to identify presence of asbestos, dry rot, wood boring insects and any other defects not immediately apparent.
- Removal of asbestos to enable further invasive surveys.
- Commissioning of specialist consultants to survey all concrete structures.
- Working with two lighting manufacturers to develop and price new lighting specification.
- Completion of trial cleaning of lakeside balustrade walls to agree final method.
- Wildlife surveys including nesting birds, bats and other protected species to enable the works to be programmed to accommodate this from the outset.
- The Project Team and Community Steering Group decided not to proceed with the refurbishment of the disused Pumping Station. This will now be marketed and expressions of interest are being sought for an appropriate new concession.
- In September 2011, the restoration of all nine Grade 2-listed cast iron shelters was tendered over four weeks to 5 specialist contractors to obtain cost certainty on what was a high-risk cost item. The three lowest tenders were received well within budget. The Council was under no obligation to accept any of these tenders.
- Developing proposals to improve disabled access with considerable input from Sefton Access Forum (SAF) and Southport Access for Everyone (SAFE).
- Full topographical survey, irrigation survey, groundwater survey and utilities surveys.
- Utilising existing resources – staffing and maintenance budget – to undertake preliminary groundworks that would normally be funded from the capital budget, thus freeing up resources. These works include site clearance, making compost, topsoil and growing thousands of new plants, rather than buying them in.

7.4 It is usual to develop design proposals for a project of this nature to 'RIBA Stage E', termed 'detailed design'. However, the Project Team has gone two stages further to RIBA Stage G, resulting in full constructional drawings that could be costed prior to tender more accurately than RIBA Stage E drawings. Stage 'G' would normally be done as part of procurement and be funded from the capital works budget, but the Project Team chose to utilise the pre-development budget to procure more detailed drawings and benefit from greater cost certainty.

7.5 The project budget includes a contingency on all construction works and the contingency would be utilised only with approval of the HLF.

## **8. Timescale**

- 8.1 The HLF wrote to the Council on 2<sup>nd</sup> April 2012 to confirm the project had been approved and this included the formal Grant Offer Letter and Contract. It was intended to submit a Report to the 24<sup>th</sup> May Cabinet meeting to seek authorisation to sign the HLF Contract and begin procurement, however, it was decided to delay submitting the report following a meeting with the HLF on 8<sup>th</sup> May. At this meeting, the HLF asked the project team for a further review of the proposals to restore the Marine Lake Café – they wanted consideration given to developing a contemporary design, when previously they had indicated support for a traditional ‘Victorian style’ design, which had been duly submitted and costed in the Stage 2 bid. Given that the contemporary design had not been costed in detail, there was a serious risk that this could increase the Council’s expenditure liability. It would have been unwise to ask Cabinet to consider signing any Contract until the full financial implications of a potentially significant alteration to the Café design had been assessed.
- 8.2 On 21<sup>st</sup> May the HLF finally confirmed they would not be asking for a re-design of the Café extension as they did not wish to risk jeopardising the commencement of the project and that they understood the financial constraints the Council is working under – copy of full letter in Appendix 2. It was intended to re-submit the report to the 21<sup>st</sup> June Cabinet meeting agenda, but this was deferred until the July meeting to allow Members to be fully briefed on the implications of this project, given the current financial situation.
- 8.3 Should Cabinet approve this report, the HLF Contract would be signed following call-in period to enable procurement of the main contractor to be completed by September. Commencement on site would be programmed for early November 2012 and it is anticipated works should take 52 weeks to complete, programmed in phases to minimise any disruption and maintain acceptable public access.
- 8.4 The project timescale has been agreed with the HLF and is reasonably generous. It allows for the final grant installment to be claimed up to 30<sup>th</sup> June, 2015. This is more than adequate to allow for establishment and a defects rectification timescale, should this be needed.

Appendix 1 – HLF Contract.

Appendix 2 – HLF Letter dated 21<sup>st</sup> May.