

ANGUS COUNCIL

20 JUNE 2019

REGENERATION CAPITAL GRANT FUND FOR MONTROSE PLAYHOUSE

REPORT BY STEWART BALL, DIRECTOR OF COMMUNITIES

ABSTRACT

This report seeks authorisation to accept and sign a grant offer from the Scottish Government to Angus Council through the Regeneration Capital Grant Fund towards the Montrose Playhouse Project. The Project will deliver substantial benefit to the local community but carries a number of risks for Angus Council which need to be considered and where possible mitigated. The project will result in the transformation of the former swimming pool in Montrose into a community hub for arts and education.

1. RECOMMENDATION(S)

It is recommended that the Council:

- (i) Authorise the Director of Finance following consultation with the Directors of Communities and Legal & Democratic Services to agree and accept the terms of the grant offer from the Scottish Government to Angus Council towards the Montrose Playhouse Project.
- (ii) Authorise the Director of Legal & Democratic Services in consultation with the Director of Communities and Director of Finance to agree the terms of a Minute of Agreement with the Montrose Playhouse Project Scottish Charitable Incorporated Organisation to bind them to the Scottish Government grant conditions including the grant of a standard security over the Montrose swimming pool building and the other risk mitigation measures set out in this report.
- (iii) Note that no payments of the Regeneration Capital Grant will be made to the Montrose Playhouse Project unless and until the Minute of Agreement has been signed by them
- (iv) Agree to the allocation of council staff resources required to prepare the Minute of Agreement, oversee the project and monitoring arrangements and provide input to the Steering Group.
- (v) Note that in the event that agreement on the terms of a Minute of Agreement with Montrose Playhouse Project cannot be reached a further report will be submitted to the Council for consideration of next steps

2. ALIGNMENT TO THE ANGUS LOCAL OUTCOMES IMPROVEMENT PLAN/CORPORATE PLAN

This report contributes to the following local outcome(s) contained within the Angus Local Outcomes Improvement Plan and Locality Plans:

ECONOMY

- An inclusive and sustainable economy
- Attractive employment opportunities

PEOPLE

- The best start in life for children

- More opportunities for people to achieve success
- Improved physical, mental and emotional health and well being

PLACE

- An enhanced, protected and enjoyed natural and built environment
- A reduced carbon footprint
- Safe, secure, vibrant and sustainable communities

3. BACKGROUND

- 3.1 Angus Council in partnership with the Montrose Playhouse Project Scottish Charitable Incorporated Organisation (MPP SCIO) submitted an application to the Regeneration Capital Grant Fund (RCGF) in early 2018 for funding towards the transformation of the former swimming pool in the town centre of Montrose into a community hub for arts and education. The Montrose Playhouse (The Playhouse) will include an adaptable three screen cinema, education and exhibition spaces, retail space and café bar.
- 3.2 The MPP SCIO purchased the former swimming pool from Angus Council on 1 September 2017. Completed works to date include relevant statutory approvals for planning permission, stage 1 building warrant and strip out of the building complete to around 95%. Significant in kind contributions to the project, in both skilled and unskilled volunteer time have been provided by the local community alongside donations of materials and hired equipment (equating to around £250k in value). The funding strategy for Stage 1 secured an additional £54.5k from various funding sources.
- 3.3 A detailed programme included as part of the application sees a 12 month programme for the capital works, broken down into 9 Stages/Milestones. This programme has slipped by 3 months as confirmation of the RCGF grant award and subsequent issues concerning the grant conditions have added to timescales.
- 3.4 The RCGF is delivered by Scottish Government and supports locally developed regeneration projects that involve local communities, helping to support and create jobs and build communities. Eligible organisations to apply for funding are currently restricted to local authorities or through exercising their functions through Urban Regeneration Companies or a Special Purpose Vehicle. Accordingly, the Council agreed to submit an application for the project.
- 3.5 The application was submitted in August 2018 and an invite to submit an application for Stage 2 was received in November 2018. Costings were reviewed as part of the Stage 2 application in line with current inflation and figures updated accordingly. A detailed Business Plan prepared by Cinema specialists has been prepared and was used to inform the RCGF Stage 2 application.
- 3.6 The project delivery team of MPP SCIO have significant experience in delivery of capital projects of this scale. The Chairperson is the Lead Architect and will oversee the design team and consultants. A further Trustee is an experienced project manager and will oversee the construction, contractors and act as liaison between all parties. The project has benefitted from strong community support and input to date. Since its inception it has obtained funding to undertake a feasibility study and business plan, obtained planning permission and stage 1 building warrants and recruited over 80 local volunteers as well as input from local businesses (of materials, labour and funds) to undertake a strip out of the building. This is a unique opportunity to secure a £3M investment in Montrose adding to the amenities of the town, complementing other substantial investments from businesses in the area.

4. THE GRANT OFFER AND IMPLICATIONS

- 4.1 Formal notification of the grant offer to Angus Council was received on 25 April 2019 confirming an award to Angus Council for £2,260,000 towards the Montrose Playhouse Project (RCGF-18-06).
- 4.2 The grant offer carries a number of risks to Angus Council who are in effect acting as an intermediary for the distribution of funds to the MPP SCIO as the offer is in the name of Angus

Council only. The terms and conditions set out in the grant offer have been expressed in standard form terms and conditions which are not best suited to these particular circumstances where the project will be managed and delivered by a third party, however the requirements are binding on the 'Grantee', namely Angus Council.

- 4.3 The original deadline for acceptance of the grant was 8 May 2019 however an extension of time has been agreed in writing with the Scottish Government to the 30 June 2019 to allow the relevant governance arrangements to be put in place and officers to fully assess and negotiate the terms and conditions to seek to minimise and reduce risks to Angus Council.
- 4.4 A copy of the Offer of Grant is enclosed at Appendix 1. Details of the risks associated with the pertinent clauses and assessment of these are outlined below.

Timescales

- 4.5 The grant is payable over the financial year 2019/20 and in terms of paragraph 3.4 and SCHEDULE 1 PART 2 paragraph 3 Scottish Ministers are not bound to pay any instalment of grant which has not been claimed by the Council by 31 March 2020 unless otherwise agreed in writing by Scottish Ministers. The Stage 2 application set out commencement of procurement processes in April 2019 with a contract award around 6 May 2019 and project completion by end March 2020. Due to a delay in the announcement of the funding award and to allow terms of the offer to be assessed the project timescales have now slipped by around 3 months with the construction period extending into financial year 2020/21.
- 4.6 The Scottish Government confirmed it is only the grant that requires to be drawn down during 2019/20, rather than project completion, and following receipt by them of evidence of a formal contract award the full extent of the grant could be claimed in line with that contract value. The revised project milestones set out a contract award in August 2019 which should be sufficient to meet this timescale. A pre-requisite of the tender process is the requirement to ensure that funding from other sources is secured which may impact on this timescale however the Scottish Government have provided some comfort in that the grant scheme often has variations and provided there is ongoing dialogue there is scope to amend dates provided it does not impact on draw down by end March 2020.

Minute of Agreement

- 4.7 A Minute of Agreement (the Agreement) will be required between Angus Council and the MPP SCIO to bind the group to the terms and conditions of the grant offer and the other risk mitigation measures officers consider are required (see Appendix 2). This could not be progressed in advance of the grant as it could have resulted in abortive work.
- 4.8 The Agreement will reflect the terms and conditions of the grant offer to:
- Monitor the achievement of objectives and expected outcomes against the targets and milestones stated in the approved application;
 - Provide regular reports setting out full details of actual expenditure compared with profiled expenditure, revised to targets/milestones;
 - Provide a final report to Scottish Ministers on completion of the Project summarising the outcomes and performance and statistical and other information) and
 - Maintain adequate accounts for a period of 6 years recording all receipts and accounts.
- 4.9 Despite this Agreement being in place there still remains a significant risk in reliance on a third party and if necessary enforcing that compliance. Further measures for inclusion are therefore required as set out below.
- 4.10 Should the MPP SCIO fail to enter into a Minute of Agreement or grant the standard security or any other mitigation measures deemed necessary by officers then Angus Council as the Grantee would be required to decline the grant offer. If this situation seems likely to arise a further report will be brought before members.

Standard Security and Clawback

- 4.11 Reference is made in this Clause 6 of the offer to assistance to third party organisations. In this case Angus Council will be obliged to require the MPP SCIO to grant a standard security and clawback provision over the swimming pool.
- 4.12 A standard security operates to create a security interest which permits the creditor (in this case, Angus Council) to exercise certain rights in the event of default (e.g. right to enter into possession). A clawback provision is a specific contractual clause by which money already paid must be paid back under certain conditions.
- 4.13 Whilst the MPP SCIO are aware of and agreeable to the offer terms and conditions no formal discussions have been undertaken in relation to the standard security requirements (and any other proposed mitigation measures). Officers will therefore need to ascertain whether MPP SCIO have granted any other securities which may have implications in terms of the ranking of any security over the property.

Project Failure during Construction Phase

- 4.14 The most significant risks stem from a failure of MPP SCIO to deliver the project during construction or progress not being satisfactory to Scottish Ministers. In these circumstances Scottish Ministers could recover the grant or a portion of it.
- 4.15 Angus Council could exercise step in rights to complete any construction works and to deliver the project. At present the grant offer makes no reference to such rights however the Scottish Government have confirmed that it is a matter for the Council to consider whether this is appropriate and the circumstances in which it might apply.
- 4.16 Step in rights enable one party (the beneficiary) to 'step in' to the shoes of another party in relation to the rights and obligations of a contract, allowing a project to continue with one party being replaced by another.
- 4.17 If these rights are not exercised then Angus Council as the Grantee could be left in the position of being required to repay the grant in full or a proportion of this and (dependent on the project stage) if the security is called up left with either a completed or partially completed asset.
- 4.18 If the Scottish Government were to seek repayment of part or all of the grant, the Council faces two choices. A partially completed asset is unlikely to hold any value and will likely result in a liability. In this situation, the Council would require to either find alternative funds to complete the project or resolve to repay the amount demanded. In order to mitigate this risk the Agreement may also require security over any funds held by the MPP SCIO and loans. The control of the disbursement of the Scottish Government grant sits with the Council. Once the funding conditions of other parties are known these will be factored into a profile which will ensure a balance of use of funds from across providers to minimise risk in the result of use of any step in rights.
- 4.19 Collateral warranties would therefore also be required as part of the Agreement between MPP SCIO and their design team. A collateral warranty is an agreement which requires a duty of care to be extended by one of the contracting parties to a third party (in this case Angus Council) who is not party to the original contract.
- 4.20 The Council could also require that MPP SCIO obtains a performance bond from the appointed contractor. A performance bond is a financial guarantee from the bank or insurance provider which would guarantee performance of the building contract were the contractor to fail to complete the project.

Balance of Funding Package Not Achieved

- 4.21 The total capital project cost of the Playhouse is £3,017,542 inc VAT. The grant offer from the RCGF is £2,260,000 (equating to 75% of the total capital project cost).

- 4.22 The MPP SCIO have indicated the remaining funding would be secured through a range of other providers including The Robertson Trust, Garfield Weston Foundation, Creative Scotland, BIG Lottery and others as well as a reward based crowd funding scheme. Whilst funding from these providers has been discussed or agreed in principle, formal applications cannot be submitted until the acceptance of RCGF is confirmed.
- 4.23 There is a risk that funding from these additional sources may not be secured resulting in a shortfall and failure to deliver the project. Whilst there has been a significant level of local and in kind fund raising these amounts are minimal in relation to the overall project costs and much of these will be required for initial revenue costs. As set out in Appendix 2 it is recommended that this risk be mitigated by not allowing works to commence (contract to be awarded only after at least 90% of the funding package has been confirmed).

Tender Costs Exceed Estimate and Funding Package

- 4.24 A detailed programme of works has been pulled together by the MPP SCIO. The programme was extended from 9 to 11 months from the initial Stage 1 application to allow a safety net and for any procurement slippage. Costs were also revised to take into account inflation and rising costs of materials and labour. There is however a significant risk that costs may rise further due to delay in the project programme resulting in pressure to secure the remaining funding or failure to deliver the project. The Scottish Government grant is drawn down on the basis of tender acceptance so there will be an opportunity at that point for discussion around any variations in forecast project value prior to the commencement of any work on site which would reduce this risk. As above works would be unable to commence until at least 90% of the funding package has been confirmed.

Ongoing Financial Viability Issues Leading to Closure Once Operational

- 4.25 Clause 6 states that: *“the Grantee shall not, without prior written consent of the Scottish Ministers, dispose of any asset funded in part or in whole, with Grant funds within 15 years of the asset being acquired or developed. During the period the Scottish Ministers shall be entitled to the proceeds of the disposal - or the relevant proportion of the proceeds based on the percentage of grant funding used in connection with the acquisition or improvement of the asset against the whole proceeds”*.
- 4.26 This Clause provides that the Grantee shall not dispose of the asset or change its use for a period of 15 years. It primarily seeks to ensure that the building is not sold or used for an alternative use without prior agreement from Scottish Ministers. As part of the conditions of the Agreement Angus Council would therefore place a restriction on the property for use solely as a cinema/artistic hub.
- 4.27 Officers had sought to reduce this time period however the Scottish Government confirmed that this is a standard clause applicable to all RCGF projects given the level of investment and to ensure that the asset will continue to be used for the purposes as set out in the application, delivering the intended benefits to the local community over an extended period of time.
- 4.28 The implication of this clause is that if at any point the operation of the project fails and the group folds then ownership would pass back to Angus Council (by operation of the Standard Security). If this circumstance arose the Council would not be able to sell the building or use for an alternative use without prior notification to Scottish Ministers. They would be looking for re-assurance that any alternative use was one that was able to benefit the local community. If sold then it is likely in the first instance that any proceeds (or proportion of) would require to be used to benefit the community and as a last resort be returned to the Scottish Government.

Administering of Funds & Resources

- 4.29 No formal arrangements have been set out for the administering of funds to the MPP SCIO. These would be set out in the Minute of Agreement. It is likely that arrangements would include release of funds in accordance with agreed milestones and receipt of agreed invoices.
- 4.30 Although the Council is in effect acting as an intermediary there is a significant resource commitment in respect of concluding the agreement and other legal documentation, involvement as part of the project team, administration of funds, ongoing liaison with the SCIO, overseeing of monitoring, updating of grant conditions with the Scottish Government

and ensuring requirements as set out in the Minute of Agreement are met. Due to the nature of the project and specialist input required this is likely to require involvement from across different Council services (most notably Communities, Infrastructure, Finance and Legal & Democratic Services) impacting on workloads and commitments elsewhere.

- 4.31 All aspects of project delivery will be overseen by a steering group with representation from Angus Council officers and MPP SCIO. This will provide a vehicle to ensure the above requirements are being met.
- 4.32 Updates on project progress will be brought before Committee in an information report to Elected Members in accordance with the project milestones.

State Aid

- 4.33 Section 9 refers to a recovery of grant in respect of State Aid. Officers from Economic Development provided an assessment against the four tests as part of the application and advised that the operation of the completed project is sufficiently local that it does not distort or have the potential to distort competition.

Reputational Risk

- 4.34 A significant level of resource from the community as well as Council officers has been put into submission of the bid and supporting information required as part of this. Work has also been progressing to secure the additional funding dependent on this grant, prepare for project start and a launch of the next stage in their Crowdfunder campaign is scheduled for 23rd June 2019. There are limited funding streams available to community groups of this scale and this is a great opportunity to support significant change in Montrose in line with recent investment decisions in the area. Failure to accept the grant could therefore result in a significant reputational risk for Angus Council.

5. FINANCIAL IMPLICATIONS

- 5.1 In principle accepting the grant offer has no direct or immediate financial implications for the Council beyond the commitment of officer time to support and monitor the project to ensure the grant conditions can be met. Whilst this officer input will be sizeable especially over the next 12 months or so that input is an essential part of accepting the grant offer because without that the Council would be exposed to significant financial risks and have no means to manage those exposures.
- 5.2 As has been set out in the report and in Appendix 2 there are a number of potential risks which if they arose could have significant financial implications for the Council. Officers believe most of those risks can be mitigated and managed but they cannot be eliminated entirely. Members will wish to weigh the residual risk (post mitigation measures) the Council will carry with the substantial benefits this community led project can deliver.

6. CONCLUSION

- 6.1 Whilst there are inherent risks in the grant offer for distribution to a third party these have been assessed and mitigated as far as possible. Given the significance of the grant offer and the positive outcomes that could arise through project delivery we recommend it be accepted subject to the Minute of Agreement and other legal documentation with MPP SCIO being satisfactorily concluded.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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List of Appendices: Appendix 1 - Grant Offer and Cover Letter
Appendix 2 – Key Risks and Proposed Mitigation Measures

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Much of the risk the Council could be exposed to on this project should be capable of being mitigated via a legal agreement with MPP SCIO and strong governance / input from Council officers working in partnership with MPP. If that partnership working is sound then any issues can be identified early and steps taken to remedy these.

Below is a summary of key risks and the intended mitigation measures which officers believe will keep those risks at an acceptable level. The mitigation measures will need to be discussed and agreed with MPP SCIO prior to work commencing or any of the RCFG being passed from the Council to MPP SCIO.

Key Risk	Mitigation Measure
1. Balance of funding package not achieved	No project start/tender acceptance until full funding package is confirmed. This could impact on start dates but it would be high risk for MPP SCIO and the Council to commit to the full spend without knowing how it will be paid for
2. Tendered costs exceed funding package	Project won't start and no grant funding will be provided until tender prices are known and funding package is secured. The draw down of the grant can only be undertaken on receipt of tender prices.
3. Costs exceed tender estimate due to unforeseen issues	Confirm that project contingency budget is suitable for project of this nature. Clarify at the outset that Angus Council will not be responsible for any cost escalation and that additional fundraising would be required.
4. Timescales: Full spend won't be achieved in financial year 2019/20 requiring flexibility on grant payment from Scottish Government	Scottish Government have agreed revised project phasing and confirmed the Council can draw down the full grant even if not fully spent by 31 March 2020.
5. Project failure during construction phase	Difficult risk to manage. Council will only pay grant for completed work and when satisfied as to progress but may need to step in to ensure completion and allow finished building to be sold to minimise financial impact. Performance bond to be considered.
6. Ongoing financial viability issues leading to closure once operational	Business Plan prepared by Cinema specialists and plan has flexibility to absorb some losses if projected income is lower and costs are higher. If this risk arises it may require the Council to exercise its standard security over the building and possibly sell it. In this scenario some or all of the sale proceeds may be repayable to Scottish Government or required to be utilised for another purpose which demonstrated a benefit to the local community.
7. Lack of oversight/control of project delivery	MPP leads are experienced professionals and Council officers will work alongside these volunteers to ensure grant conditions can be met. Council will only pay over grant upon production of full documentation. Project Steering Group will include MPP and Council officers who will jointly monitor the project.