

Committee(s)	Dated:
Planning & Transportation Committee – For Decision Culture, Heritage & Libraries Committee – For Information	26 July 2018 22 October 2018
Subject: Illuminated River Foundation: Heads of Terms	Public
Report of: Director of the Built Environment	For Decision / For Information
Report Author: Ian Hughes, Assistant Director (Highways)	

Summary

At your last Planning & Transportation Committee, the Committee, exercising the City's functions as Local Planning Authority, approved the planning and listed building consent aspects for the Illuminated River project for those bridges for which the City is Planning Authority.

In order to implement the project, the promoter, the Illuminated River Foundation (IRF) requires a formal legal agreement between the IRF and the City Corporation in its capacity as trustee of Bridge House Estates (BHE) for those bridges that are owned and maintained by the City Corporation. This agreement will grant permission from the City as bridge owner (in its trustee capacity) for the works and define the on-going relationship between the two parties in terms of the project's installation, its future maintenance and legacy control.

That legal agreement will be based on a set of Heads of Terms, outlined in this report, intended to safeguard the City's position as trustee of BHE and bridge owner in respect of net increases in cost and future liabilities, legacy governance and ultimate control of the lighting.

This legal agreement will seek to ensure that appropriate controls and considerations are in place to balance the City's statutory function to maintain its bridges with the desire to maintain the artistic objective of the project.

Recommendation(s)

Members are recommended to:

- Authorise the Director of the Built Environment to sign the Heads of Terms on behalf of the City Corporation as trustee of Bridge House Estates;
- Authorise the Comptroller & City Solicitor, in consultation with the Director, (both acting for the City in its capacity as trustee of Bridge House Estates) to negotiate the detailed terms of the legal agreement based on the agreed Heads of Terms, and subsequently execute that legal agreement.

- Agree to commit £500k of Bridge House Estates' existing bridge maintenance budget, already deferred to align with the project, to support delivery of the lighting at London Bridge, with the governance of that commitment managed through the Heads of Terms.

Main Report

Background

1. In February 2017, the Planning & Transportation and Culture, Heritage & Libraries Committees received reports on the Illuminated River Project, a public art initiative that proposed a new integrated lighting masterplan for the various Thames bridges in Central London between Albert and Tower Bridges. Members of the Planning & Transportation Committee also received a verbal briefing last month to provide a further update on the scheme's progress.
2. Of the 15 bridges involved:
 - 5 are the responsibility of the City to maintain as bridge owner, including their respective lighting (Blackfriars, Millennium, Southwark, London and Tower);
 - 6 are partly or fully the responsibility of the City as Planning Authority (Blackfriars Road, Blackfriars Rail, Millennium, Southwark, Cannon Rail and London; Tower being with LB Tower Hamlets & LB Southwark).
3. Subsequent to those reports and briefings, at your last Planning & Transportation Committee Members approved the planning and listed building consent for the scheme as it relates to the six bridges for which the City is Planning Authority.
4. That report was considered by the Committee in its capacity as Local Planning Authority, and therefore focused on material planning considerations and the impact of the illumination. This subsequent report is instead for consideration by the Planning & Transportation Committee as bridge owner acting as trustee of Bridge House Estates (BHE).
5. The first consideration is the best interests of the BHE charity, and therefore this report focuses on the operational, logistical and legacy aspects of the scheme on the five City-owned bridges. This includes the mechanisms to agree the process of installation, handover and control between the City and the charity established to manage the project, the Illuminated River Foundation (IRF).

Current Position

6. In acting as trustee of BHE, the City must ensure it is acting in the best interests of the BHE charity, and that the charity is carrying out its purposes for public benefit. The main purpose of the charity is the maintenance of the City bridges, and the wider trustee role is further summarised in the Appendix to this report. The purposes of the BHE charity are therefore different to the objectives of the IRF (see below), but they overlap in that the BHE's bridge maintenance responsibilities also include lighting the bridges.

7. By way of background, the objective of the Illuminated River project remains to transform and enliven Central London's riverside & crossings by using the bridges as canvases for light. Taken together, the intention is that the illuminated structures will create a unified and inspirational ribbon of light, transforming the Thames into a visual and vibrant visitor attraction after dark which celebrates one of London's most recognisable features.
8. In 2015, the City Corporation received a request from the then Deputy Mayor for London to the then Chairman of the Policy & Resources Committee soliciting support for the Illuminated River project. The City's participation was supported by the City Arts Initiative, subject to the necessary consents and agreements being sought from the appropriate planning, highway and river authorities.
9. The IRF estimated that a sum in the region of £20m would be needed (mainly from private and philanthropic sources) to realise the project, and a contribution of £500k from Bridge House Estates' existing bridge maintenance budget was identified that could support delivery of the first phase of the project, specifically linked to London Bridge. This amount had already been identified in the 50-year plan as necessary for the City to begin replacing the existing lighting on London Bridge, and as noted last December in the annual Revenue & Capital Budget report covering this expenditure, this was deferred to align with the Illuminated River project.
10. In the period between 2015 & 2017, the IRF focused on initial fundraising, gaining political support for the project, and selecting an artist to realise their vision, eventually appointing an innovative design team including American light artist Leo Villareal and renowned British architects & urban planners, Liftschultz Davidson Sandilands. The City's contributed to this process by having a representative of the City Arts Initiative on the artist selection panel, and lighting & structural engineers involved in the technical feasibility assessments.
11. Since 2017, the City have been working with the IRF and the other bridge owners (TfL, Westminster City Council, LB Hammersmith & Fulham and Network Rail) to agree a common approach to govern the project. In terms of the City's approach, officers have sought to ensure compliance with the City's trustee duties in terms of a number of key aspects:
 - To safeguard against net increases and legacy liabilities in energy and / or maintenance costs to the City (funded from Bridge House Estate);
 - To ensure the equipment design & installation process is fit for purpose, durable and physically maintainable;
 - To ensure replacement parts and spares are readily available from the equipment supplier;
 - To define how the eventual handover of responsibility from the IRF to the City would be governed;
 - To defend the City's ultimate control of the lighting on its bridges (albeit recognising the desire to maintain the artistic objective of the project);
 - To agree the terms of reference for a subsequent legacy group to ensure a common approach and governance between the bridge owners, the IRF and key stakeholders such as the GLA and the PLA.

12. It is intended to record the discussions to date between the City and the IRF in a Heads of Terms document that will set out how the two parties will work together, and there is now broad agreement between the two parties on the key elements contained within this document.

13. On the assumption that all necessary consents & approvals have been secured by the IRF, the Heads of Terms will include the following provisions:

- The installation work will be tendered, managed and delivered by the IRF, but with the City able to inspect the work during installation;
- The City will have technical design control of the lighting installation work, the equipment and the control system;
- Commencement of each phase of the project must be subject to the IRF being able to demonstrate they have secured sufficient funding to complete the installation & any subsequent additional maintenance costs;
- The City as bridge owner will contribute £500k to the cost of the project on London Bridge, with the IRF responsible for procuring all other funding necessary to complete the installation;
- The installation works will be subject to a 12-month defects correction period and ten-year equipment warranties;
- The equipment will be maintained by the City (as trustee of BHE) on behalf of the IRF, and will become the property of the City (as trustee of BHE) after ten years;
- The IRF will fund any net additional maintenance & energy costs of the bridges as a result of the installation (if any);
- The City will collaborate with the IRF, other bridge owners and the artist to co-ordinate management & oversight of the project through a 'Legacy Body';
- Collateral warranties, indemnities & a royalty free licence for the artwork will be provided by the IRF, their contractor & the artist to the City;
- The Heads of Terms does not fetter the discretion of the City in the exercise of its highway, planning or local authority functions, and is entered into by the City in its capacity as trustee of BHE.

14. In terms of the key aspect of additional legacy costs for maintenance & energy, the artist and the design team have worked with the City's lighting and structures teams to undertake detailed design work, as well as various lighting trials, to understand the individual constraints of each bridge and for the artist to establish the extent to which he can realise his vision.

15. This process has allowed the IRF to establish in some detail the extent of the fixtures & fittings required, their energy usage and maintenance requirements. In turn, the City have shared their current energy and maintenance costs, allowing an assessment of the net impact of the scheme on the BHE budgets.

16. Given the project will involve the removal of some of the City's existing (high energy, high maintenance) lighting units, and will be exclusively using low energy, low maintenance LED lighting, the design & evaluation process suggests that the net effect on City energy & maintenance costs across the five bridges will

be broadly neutral. However, the Heads of Terms will still require the IRF to contribute to these costs should that not be the case.

Options

17. The Heads of Terms document will set out the principle points to be covered in the legal agreement. It will seek to safeguard the position of BHE in terms of its control, on-going liabilities and trustee duties. At the same time, the IRF will wish to satisfy itself that the Heads of Terms facilitate the artistic effect for the wider benefit of enhancing the riverside, the bridges and the night-time draw of Central London.
18. If the Heads of Terms are not agreed, the project will not be able to proceed on the City's bridges, and the opportunity to secure upgraded lighting through the project will be lost. There is also potential reputational risk which would not be in the BHE's charity's best interests if the bridges for which it is responsible were excluded from the wider project, or if the BHE's non-participation prejudiced the success of the project which is considered to provide public benefits through its enhancement of the riverside.
19. If the City did not participate, it would continue to light the bridges in the meantime without the benefit of the IRF investment, with rising lighting energy & maintenance costs putting budgets under pressure, and with future lighting upgrades having to be fully funded by the Bridge House Estates. This would include London Bridge, where the IRF's investment is likely to be considerably more than the £500k contribution currently set aside by the City.

Proposals

20. It is proposed to agree a Heads of Terms document based on the above criteria. These principles have been provisionally settled between the two parties, and it is now proposed that Members agree to authorise the Director of the Built Environment and the Comptroller & City Solicitor to conclude these agreements on that basis.
21. Having raised more than £16m of the required budget, the IRF have sufficient funds to deliver the first phase of the project, covering Millennium, Southwark and London Bridge, as well as Cannon Rail Bridge with Network Rail. On the assumption that both planning approval is granted and these Heads of Terms agreed, the IRF have set themselves a challenging programme to deliver all four bridges before the clocks go forward in the Spring of 2019.
22. Delivering change over four adjacent bridges will provide the IRF with an opportunity to make a statement change in public realm amenity and provide momentum for the remaining phases. Those future phases currently suggest Blackfriars Bridge would be planned for Spring 2020 (Phase 2) and Tower Bridge for Spring 2023 (Phase 5).

Implications

23. The sum of £500k from the City's Bridge House Estates designated maintenance budget was already assigned to upgrading lighting on London Bridge. However, it was considered in the best interests of the BHE to defer implementing it when the IRF project emerged. This created the opportunity to secure a full lighting upgrade of London Bridge through a part contribution to the IRF project and ensure the additional benefits set out above are realised.

Conclusion

24. These Heads of Terms, and the subsequent formal legal agreement which will be based upon them, will define the on-going relationship between the City Corporation as trustee of Bridge House Estates and the Illuminated River Foundation. They are intended to safeguard the position of the City as trustee in terms of downstream additional costs, liabilities and ultimate control, and are considered to be in the best interests of the Bridge House Estates charity. In parallel, the IRF is satisfied it also allows its artistic purposes to be met.

Appendices

Appendix 1 - Summary of Bridge House Estates Charity Trustees' role

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Appendix 1 - Summary of Bridge House Estates Charity Trustees' role

The City Corporation is the sole trustee of the Bridge House Estates charity. It acts by the Court of Common Council and its committees to which functions of the charity have been delegated. All Members of the Court collectively exercise the City's duties as trustee; and each Member by virtue of their membership of the Court, its relevant committees and sub-committees, has a duty to support the City Corporation in the exercise of its duties as trustee by faithfully acting in accordance with the terms of reference of the relevant committee or sub-committee, and the City Corporation's agreed corporate governance framework. (Officers may also act under delegated authority). All Charity trustees must always act in the best interests of the Charity and manage any conflicts of interest or loyalty accordingly. When Members of the Court (at the Court itself or across committees) are dealing with business associated with the Charity, they must ensure that the best interests of the Charity are paramount.

The City Corporation, as trustee of Bridge House Estates has the following main duties:-

1. To ensure the charity is carrying out its purposes for the public benefit.
2. To comply with the charity's governing documents and the law.
3. To act in the charity's best interests.
4. To manage the charity's resources responsibly.
5. To act with reasonable care and skill.
6. To ensure the charity is accountable.

The courts have developed principles of trustee decision-making which trustees should be able to show that they have followed. These are that in making decisions about the charity, trustees must:

1. act within their powers (i.e. consistent with the charity's objects and powers.)
2. act in good faith, and only in the interests of the charity.
3. make sure they are sufficiently informed, taking any advice they need.
4. take account of all relevant factors.
5. ignore any irrelevant ones.
6. manage conflicts of interest.
7. make decisions that are within the range of decisions that a reasonable trustee body could make in the circumstances.

While the City Corporation is acting in its general corporate capacity as trustee of Bridge House Estates, the Charity Commission's guidance for Local authorities acting as a charitable Trustee is helpful in providing clarification where an organisation must balance its competing duties and interests (available on their website at : <https://www.gov.uk/government/publications/local-authorities-as-charity-trustees>); as is the Charity Commission's Conflicts of Interest Guidance, CC29 (also available on their website at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343408/CC29- PDF.pdf)

The report presented to Court of Common Council on 16 January 2014 entitled "The role of the City of London Corporation as Trustee of the Bridge House Estates"

clarifies the distinct functions and responsibilities of Committees that conduct business relating to the Charity as they existed at the time.