

Item: 19

Policy and Resources Committee: 20 September 2022.

Kirkwall Business Improvement District – Renewal Ballot and Delegation to Vote.

Joint Report by Chief Executive and Corporate Director for Enterprise and Sustainable Regeneration.

1. Purpose of Report

To consider procedural arrangements in respect of the Kirkwall Business Improvement District (BID) renewal ballot scheduled for March 2023.

2. Recommendations

The Committee is invited to note:

2.1.

That, as the end of the second five-year term of the Kirkwall Business Improvement District (BID) is approaching in March 2023, a successful renewal ballot is required to enable Kirkwall BID Limited to continue delivering the BID for Kirkwall businesses for another five-year term.

2.2.

That a renewal ballot date of 2 March 2023 is expected to be requested by Kirkwall BID Limited, with details due to be discussed with Council Officers during September 2022.

2.3.

That Kirkwall BID Limited must develop and produce a new BID proposal, which includes a revised Business Plan for 2023 to 2028, to inform the renewal ballot vote.

2.4.

That Kirkwall BID Limited has confirmed its intention to submit a BID Proposal and Business Plan to the Council and the Scottish Government, on or before 23 November 2022.

2.5.

That the Council has received a Notice of Intention to Ballot from Kirkwall BID Limited.

2.6.

The Renewal Ballot process as detailed in section 4 of this report.

It is recommended:

2.7.

That powers be delegated to the Chief Executive, in consultation with the Leader, the Depute Leader and the Chair and Vice Chair of the Development and Infrastructure Committee, to consider Kirkwall BID Limited's proposal and decide whether to exercise the Council's power to veto the BID proposal in terms of the matters prescribed in section 4.10 of this report.

2.8.

That, subject to receipt of a satisfactory Kirkwall BID Limited proposal, powers be delegated to the Chief Executive, in consultation with the Leader, the Depute Leader and the Chair and Vice Chair of the Development and Infrastructure Committee, to decide the vote at the BID renewal ballot on behalf of each of the Council owned properties within the BID area.

2.9.

That powers be delegated to the Chief Executive, in consultation with the Leader, the Depute Leader and the Chair and Vice Chair of the Development and Infrastructure Committee, to postpone the day of the ballot by up to 15 working days in the event of unforeseen circumstances.

3. Background

3.1.

A Business Improvement District (BID) is a partnership between a local authority and the local business community to develop projects and services that will benefit the trading environment within the boundary of a clearly defined commercial area. At the centre of any BID proposal is a BID Business Plan. The Business Plan is developed following a pre-ballot consultation and sets out the projects and services which the BID levy would deliver over a 5-year period.

3.2.

A BID business plan will outline the funding model that will deliver the various activities described and will be based on a proposed level of non-domestic rates levy charged to relevant organisations in the district. This was previously set at 1% of non-domestic rates. A BID Business plan forms the basis of the ballot which, as a statutory process, is required to be run by the Council. Following a successful ballot, the BID levy is collected by the Council and transferred to Kirkwall BID Limited under an operating agreement.

3.3.

Kirkwall BID Limited was incorporated on 19 March 2013 to deliver the Kirkwall BID which is approaching the end of its second five-year term in March 2023. A successful renewal ballot is required to enable Kirkwall BID Limited to continue delivering the BID for Kirkwall businesses for another five-year term.

4. Renewal Ballot Process

4.1.

Kirkwall BID Limited has not yet submitted its draft Business Plan 2022 to 2023 to Council nor as yet requested any additional funding, as has been the case in previous years.

4.2.

Kirkwall BID Limited will continue to develop its draft BID Proposal and Business Plan to meet timescales prescribed within the renewal ballot process.

4.3.

Kirkwall BID Limited has confirmed its intention to formally request a renewal ballot with the expectation that this will be 2 March 2023. On the run up to this renewal ballot date, there are a number of key deadlines which require to be met, as detailed in Appendix 1 to this report.

4.4.

There are also a number of procedural arrangements as part of the renewal ballot process which the Council will require to put in place before the final Kirkwall BID Limited proposals are submitted in November 2022.

4.5.

A Notice of Intention to Ballot (154 day notification) must be received by the Council from Kirkwall BID Limited before 28 September 2022. This has now been received.

4.6.

A review of the draft BID proposals must be carried out by BID Scotland. This review must take place at least 120 days before the ballot date. The BID review will seek to reach agreement as to whether a positive vote is achievable or not. The Council will also have the opportunity to review the draft BID Proposal and Business Plan to ensure these documents are in order.

4.7.

The last day for the submission of the final Kirkwall BID Limited proposal to the Council and Scottish Ministers is at least 98 days before the day of the ballot. Therefore, it is expected that the final BID proposal will be received from Kirkwall BID Limited before 24 November 2022.

4.8.

This submission at 98 days fixes the ballot date; once this submission has been made, the ballot date can only be moved by a maximum of 15 working days. However, in the event of unforeseen circumstances, the Council may require to move the day of the ballot, the last day for moving the day of the ballot is 42 days before the ballot date, which in this case would be 19 January 2023.

4.9.

The Council and Scottish Government have the power to veto the BID proposals. Upon receipt of the final Kirkwall BID Limited proposals both organisations are given 28 days to exercise their powers of veto, however a veto must take place 70 days before the date of ballot, which in this case would be 22 December 2022.

4.10.

The Council has the opportunity to veto the BID ballot where it believes and can demonstrate the BID proposal is likely to:

- Conflict with the provisions of the Development Plan.
- Conflict to a material extent with any policy formally adopted by and contained in a document published by the Council.
- Lead to a significantly disproportionate financial burden on persons who would be required to pay the levy.

4.11.

If the Council does not veto the re-ballot detailed above or move the ballot date as noted in section 4.8 above, Kirkwall BID Limited will seek to call a ballot on 2 March 2023.

4.12.

As a member of Kirkwall BID, the Council is eligible to vote in the renewal ballot on behalf of each of the Council owned properties within the BID area.

4.13.

In order to achieve the above timescales and to respond to the renewal ballot arrangements, it is proposed that powers be delegated to undertake the following, if required.

- Consider Kirkwall BID Limited's proposal and decide whether to exercise the Council's power to veto the BID proposal in terms of the matters prescribed in section 4.10 above.
- Subject to receipt of a satisfactory Kirkwall BID Limited proposal, decide the vote at the BID renewal ballot on behalf of each of the Council owned properties within the BID area.
- Postpone the day of the ballot by up to 15 working days in the event of unforeseen circumstances.

5. Financial Implications

5.1.

The BID ballot process will be administered by the Council and will involve some staff time in running the ballot. Outlays on postage and stationery will be recharged to the BID.

5.2.

A successful ballot will have some financial consequences for the Council, including the undernoted:

- The Council's annual levy over the five-year BID period to March 2023 was previously provided from the Economic Development Grants budget and amounted to approximately £57,000 in total.
- The proposed BID levy has not yet been confirmed in the Kirkwall BID draft Business Plan but there is an expectation for a similar budgetary requirement on the Council.
- The administration of collecting the BID levy will be provided by the Council Finance Service at an estimated annual cost of approximately £10,000.

6. Legal Aspects

6.1.

Section 33 of the Planning etc (Scotland) Act 2006 makes provision for local authorities to make arrangements to establish BIDs within their area. The purpose of BID arrangements is to enable the projects specified in the arrangements to be carried out for the benefit of the business improvement district of those who live, work or carry on any activity in the district.

6.2.

Where BID arrangements are in force, the Council has a statutory obligation to comply with these.

6.3.

The Council, as landlord of a number of town centre properties, would be obliged to pay the agreed BID levy in respect of those properties in the event of a successful ballot. Any other financial contribution is at the sole discretion of the Council.

7. Contact Officers

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8. Appendix

Appendix 1: Key Deadlines.

Key Deadlines

Days prior to proposed ballot date.	Procedure.	Information.	Date.
At least 154 days.	Notification to the local authority and the Scottish Ministers of the “ Intention to go to Ballot ”. This is the last day for notice of intention to put BID proposals to ballot.	This notification only requires the Bid proposer to go to ballot within the next year.	Before: 28 September 2022.
At least 120 days.	BID review. This is carried out by BID’s Scotland.	BID project should be reviewed and agreement reached as to whether a positive vote is achievable or not. If a positive vote is not achievable then the BID should not go to ballot.	Before: 2 November 2022.
At least 98 days.	Notification to the local authority and the Scottish Ministers – this is the last day for the submission of the BID proposal . The local authority has 28 days to confirm that it is or is not vetoing the BID proposals (70 days prior to the day of ballot).	This fixes the ballot date, once this notification has been made, the ballot date can only be postponed by a maximum of 15 working days.	Before: 24 November 2022.
At least 70 days.	Local authority to confirm that it is or is not vetoing the BID proposals.	70 days prior to the day of the ballot.	Before: 22 December 2022.
At least 56 days.	Request to the local authority to instruct ballot holder to hold ballot. (This is 98 days after (154 days notification)).	To allow time to put in place ballot arrangements, before issuing ballot papers it is recommended that the request to hold a ballot should be made at least 56 days before the ballot date.	Before: 5 January 2023.
At least 56 days.	The local authority instructs the ballot holder to hold BID ballot.		Before: 5 January 2023.
At least 42 days.	Issue ballot papers (42 days before the ballot date).		Before: 19 January 2023.

At least 42 days.	Last day for postponing the day of the ballot by up to 15 days.	No later than 42 days before the day of the ballot, the ballot holder may postpone the day of the ballot by up to 15 working days.	Before: 19 January 2023.
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