

Executive

7 December 2016

Report of the Deputy Chief Executive/Director of Customer and Corporate Services

Portfolio of the Executive Member for Culture, Leisure and Tourism

Community Stadium & Leisure Facilities Report

Report Summary

1. The purpose of this report is to update the Executive on the progress of the Community Stadium and Leisure Facilities Project (“Project”) since the last report brought to Executive in March 2016.
2. In doing so this progress report sets out an up to date position on the following:
 - The latest position with regards the Judicial Review Claim (“JR Claim”) into the Project’s planning permission.
 - Updates on the latest position with all Community Partners and Sport Clubs. Including a recommendation to provide further financial support to York City Knights RLFC (“YCK”) first team arrangements for the coming Rugby League seasons.
 - A progress update on the position with our preferred bidder from the Procurement exercise, Greenwich Leisure Ltd (“GLL”). This prior to entering into the Design, Build, Operate and Maintain Contract (“DBOM Contract”).
 - An update on the key Project risks where changes have occurred to those highlighted in the March 2016 Executive Report.
 - The latest anticipated Project timetable.

Project Background

3. The March 2016 Executive and subsequent Council approval represented a significant milestone for the Project with approval given to proceed in entering into the DBOM Contract with GLL for the delivery of the New Stadium Leisure Complex (“NSLC”) scheme and long term operation of both the NSLC and the City’s existing leisure facilities.

4. As the last key Council decision point on the Project, the March 2016 Executive Report should be referred to where applicable alongside this update progress report presented at December 2016.

Report Recommendations

Executive is asked to:

- I. Approve the proposed YCK financial support towards first team playing arrangements at Bootham Crescent, as set out at table one of this report. This being Council financial support payable per YCK game played at Bootham Crescent up to a net cost of £45,000 per Rugby League season, paid from the existing Project budget.
- II. Note the financial position of the Project and the associated financial risks present until Financial Close can be met, as set out at paragraphs 57 to 60 of this report.
- III. Note the latest position of the Project's Community Partners and Sport Clubs, as set out in this report.
- IV. Note the current anticipated Project timetable for delivery of the NSLC, as set out at table two of this report.
- V. Note the position of the ongoing Yearsley Swimming Pool Review and that a further recommendation report on this matter will be brought to Executive early in 2017.
- VI. Note the highlighted Project risks that have changed since the March 2016 Executive Report, as summarised at table three of this report.

Reason for recommendations:

To ensure continued progress of the Project.

Planning - Judicial Review Claim

Background

5. Detailed planning permission for the NSLC was granted in March 2015 and the Judicial Review ("JR") period for this permission expired without challenge in July 2015.
6. Through finalising the NSLC scheme to reach Financial Close it became necessary to seek changes to the original March 2015 planning permission. The Council as the Local Planning Authority ("LPA") dealt with this through s73 planning amendment. This was approved on 8th June 2016.
7. The Secretary of State ("SoS") confirmed on the 21st June 2016 that the decision would not be called in and the permission was therefore issued.

8. The s73 planning amendment approval then entered a statutory JR period of six weeks, which was due to expire on the 2nd August. This six week JR period allows for parties to challenge the lawfulness of the Council's decision in the High Court.
9. On the 1st August 2016 the LPA received notification that a claimant was planning to lodge a JR Claim to the High Court.
10. This claimant is Vue Cinemas and their claim is that the LPA did not have the power to grant the s73 permission for the NSLC scheme because the amended scheme is fundamentally different to the scheme authorised by the March 2015 planning permission, meaning that it is out with the scope of a s73 planning amendment.
11. A first 'permission review stage' by the High Court has now taken place with the Judge confirming that the claimants (VUE Cinemas) JR Claim can go forward to a Court Hearing.

JR Claim timescales and remaining process

12. A Court Hearing date is now set for 18th January 2016 in London.
13. A decision may be given on the day or may be handed down later.
14. The LPA has submitted all required defendant information to the High Court ahead of the Court Hearing. The claimant now has a short period of time to submit their final information to the High Court.

Implications if the JR Claim goes against the Council

15. Should the decision be in favour of the claimant, VUE Cinemas, this would leave the Project unable to implement the 2016 planning permission which includes the s73 planning amendments.
16. The options for the Project at that point, in terms of planning, would be to;
 - Revert back to the original March 2015 planning permission. i.e without the 2016 s73 planning amendments.
 - Look at resubmitting a new full planning application, this in effect would be exactly the same 2015 planning application along with the 2016 s73 planning amendment combined, both of which separately have already been approved by the LPA.
17. Project timetable implications should the decision be against the Council are summarised under the Project timetable section of this report, paragraphs 61 to 67.

Dbom Contract With Gll

18. Before the JR Claim arose Project work was progressing towards concluding all legal agreements in connection with the DBOM Contract.
19. However, in the current circumstances no parties are able to conclude and enter into any of the legal agreements until the JR Claim is resolved.
20. The JR Claim has also resulted in not being able to provide a definite construction start date to the Building Contractor and its design team.
21. Assuming the JR Claim outcome falls in favour of the Council, it is still anticipated that the DBOM Contract and all associated legal agreements will be entered in to Spring 2017, for NSLC construction to commence thereafter.
22. A further Project report will be brought back to Executive in the New Year once an outcome to the JR Claim has been received and a definitive position for the Project moving forward can be set out for entering into the DBOM Contract and all associated legal agreements.

Nslc Commercial Development

23. The commitment of the Investment Fund purchasing the NSLC Commercial Development remains strong. The freehold land transfer from the Council to the Investment Fund of the Southern Block is now all agreed in principle, along with the terms of Agreement for Lease of the East Stand Retail Units. These final legal agreements are due to be executed at the same time as the Council enters into the DBOM Contract with GLL.
24. The Commercial Development proposed at the NSLC site remains in principle the same as the detailed descriptions set out in the March 2016 Executive Report, with good progress having been made by the Developer to secure legal agreements with end tenant users.
25. Until legal agreements can be concluded, a risk remains that the Investment Fund could look to alter the terms of the proposed deal. This could include a re-appraisal and increase or reduction in the Capital Land Receipt to the Council. Should the Capital Land Receipt reduce from that set out in the March 2016 this would have significant effects to the overall financial position of the Project.

Yearsley Swimming Pool Review

26. In February 2015 Members approved the use of up to £0.3m New Homes Bonus per annum funding to maintain the operation of Yearsley Swimming Pool for up to five years at its 2015/16 budget. This will allow Yearsley Swimming Pool to remain funded through to 2022/23, subject to the outcome of the Yearsley Swimming Pool Review explained below.

27. The Yearlsey Swimming Pool Review has been ongoing by Officers over the last year and is now reaching its conclusion. The Review has looked at examining different potential operating models for the future management of the pool. This comprehensive assessment has sought to ensure a cost effective solution is identified with minimal disruption to service delivery.
28. The ongoing Review has included a number of key stakeholders:
 - GLL (the preferred bidder from the Project Procurement exercise)
 - Nestle – who own all the surrounding property interests including the car parks.
 - Yearsley Action Group – who represent the interests of many of the user groups at Yearsley Swimming Pool and are committed to campaigning for the pool to remain open.
 - Other user groups and interested parties.
29. Concluding meetings between Officers, Nestle and separately with Yearsley Action Group are scheduled for early December 2016.
30. Following these meetings it is anticipated that the Review will be complete and a recommendation for the future operation of Yearsley Swimming Pool will be brought to Executive early in 2017.

Sport Clubs

York City Knights RLFC (“YCK”)

31. Officers have recently met with the proposed new owner of YCK to provide support and to answer a number of questions regarding the Project and interim first team playing arrangements for YCK.
32. Officers have been informed that this proposed owner will complete the purchase of YCK and take ownership of the club on the 1st December 2016. At this point the current owner of YCK would have no involvement with YCK going forward.
33. A 1st December 2016 sale transfer deadline has been set to ensure the Rugby Football League (“RFL”) can confirm their 2017 season fixtures with YCK included.
34. As this report has been published prior to the Council receiving legal confirmation of this sale transfer , this report assumes the sale transfer has been completed to the proposed new YCK owner as proposed. It should be noted, the YCK recommendation in this report is only applicable should the sale transfer takes place and first team games are played at Bootham Crescent for the coming Rugby League seasons.

YCK First-Team Interim Playing and Training Arrangements

35. A varied license has been signed between the Council and YCFC to enable the continued use of Bootham Crescent for hosting YCK first team games. This is subject to approval by the Council and YCFC to the YCK ownership position before the start of the 2017 season.
36. The user agreement with York St John's University remains in place to be used by YCK for training and reserve team games moving forward, as does the Match Day Agreement for the Stadium.

Financial Support

37. The original Project business case, approved in March 2012, set out a budget allocation to ensure adequate interim playing arrangements were in place for YCK whilst Huntington Stadium was redeveloped as part of the NSLC scheme. This budget allocation was to include training, reserve and first team playing arrangements as well as providing financial support to YCK to mitigate losses that would be incurred from not having a permanent playing venue in this interim period.
38. Based on the original 2012 Project business case principles, a two year financial support package was agreed at the point YCK vacated Huntington Stadium in October 2014 for the 2015 and 2016 Rugby League seasons. This financial support was capped at £100,000 per season based on demonstrated losses from YCK that would be incurred from not having a permanent playing venue. Through this period YCK continued to pay the Council £15,000 annual rent.
39. This previous financial support agreement has now ended following the conclusion of the 2016 Rugby League season. In recent discussions the issue of further financial support through until the opening of the new Stadium has been a significant matter for the proposed new YCK owner to understand.
40. In considering any potential further financial support agreement with YCK a number of options have been considered. The outcome of this review being a Officer recommendation that any future financial support be based solely on the Council meeting a percentage of the direct costs associated with YCK first team games that are played at Bootham Crescent, the home of YCFC. These costs being ones that YCK would not incur, or would be able to offset with advertising and match day hospitality income, if they were still playing first team games at Huntington Stadium.
41. This proposal would therefore mean no financial support is paid directly to YCK, but simply that YCK will not incur or be liable for operating costs associated with the use of Bootham Crescent. This will provide YCK with financial stability until the new Stadium is operational, whilst being a significant reduction in cost to the Council on the previous financial support package.

42. Table one below outlines the principles of this recommended proposal.

Table 1 – YCK further financial support recommendation

YCK financial support proposal		
Costs met by the Council, directly with YCFC, for the hosting of YCK first team games at Bootham Crescent. Items covered by the Council to include: - Match fee (direct costs incurred for setting up the venue as a Rugby facility). - Match day stewarding and ground safety costs. - Electronic scoreboard maintenance. - Any floodlights or additional ground charges, such as music licenses.	+	Council cost = C.£3,000 per first team game played at Bootham Crescent. (Capped at £60,000 per Rugby League season)
YCK pays 25% of this cost through their continued annual rent payments to the Council	-	Council income = £15,000 per Rugby League season
Net Council Budget allocated	=	£45,000 per annum
Notes and assumptions		
<ul style="list-style-type: none"> ➤ Before any financial support is valid, the Council would need to receive clear sight and confirmation of YCK ownership following the sale transfer to the new YCK owner. Any proposed financial support would be dependent on completing satisfactory due diligence in this area. ➤ This financial support arrangement is only valid for YCK first team games played at Bootham Crescent. ➤ Financial support arrangement to last for two Rugby League seasons. ➤ YCK will continue to pay their annual rent of up to £15,000, in monthly instalments, to ensure they meet 25% of the associated playing costs at Bootham Crescent. Should YCK not pay their monthly rent instalments the Council reserves its right to cease all ongoing financial support. At this point all Bootham Crescent match-day costs would become the direct responsibility of YCK. ➤ YCK must uphold a positive behaviour in relation to all matters of the use of Bootham Crescent and the Project in general. Council financial support would cease should this be breached. ➤ YCK must offer incentives / free entrance for children at promotional periods within each Rugby League season that Council financial support is provided. ➤ The Council financial support would only be valid whilst the YCK foundation is in operation and continues to work in partnership with the Council to improve local health and wellbeing in the City. ➤ The Council capped cost (£60,000) is based on the assumption of 20 YCK home games played at Bootham Crescent in each Rugby League season. Allowing for league games, cup run, friendlies and super eights play-offs. ➤ The Council financial support does not include YCK match day catering which would be for YCK to arrange and pay for directly with third parties. ➤ Should the Project not proceed to Financial Close then the Council reserves its right to cancel any ongoing YCK financial support. 		

43. It has become clear in discussions with the proposed new YCK owner that if there was no Council financial support moving forward until the new Stadium is operational, then this would make the financial sustainability of YCK very

difficult through this interim period. Whilst in a normal situation this is not something for the Council to consider, given the previous commitments made to support YCK over the period from the demolition of Huntington Stadium until the new Stadium is built, there is clearly a need for the Council to consider this position.

44. In considering making this financial support available, as with the original support, the Council has had to satisfy itself that it does not amount to unlawful State aid. Appropriate internal and external legal advice has therefore been sought on this matter that provides Officers with assurance that the financial support proposed at table one above would be lawful. The full details and considerations of this legal advice are set out at confidential Annex A to this report.

York City Football Club (“YCFC”)

45. There are no further updates on YCFC at this time.

Community Partner

York Teaching Hospital NHS Foundation Trust (“NHS”)

46. As outlined in detail within the March 2016 Executive Report, York Teaching Hospital NHS Foundation Trust (“NHS”) will have a presence within the Community Hub where it will deliver a range of specialist outpatient services in high quality modern accessible premises. The NHS will also have use of the Stadium hospitality areas for staff training and development activities.
47. Since March 2016 the finalisation of lease and hire agreements for these areas have progressed well. On the design, floor layouts for these areas are now complete, with the detailed room layouts currently being finalised to enable the Building Contractor to produce a final Construction Cost for these NHS outpatient service areas.
48. The NHS will through the lease agreement for their outpatient services areas make a capital contribution to the construction fit out of this space. However, as the overall NSLC Construction Cost has yet to be finalised this capital contribution figure from the NHS is still awaiting confirmation.
49. It is anticipated all lease and hire agreements with the NHS will be formally executed following the outcome of the JR Claim and ahead of the Council’s Financial Close for the DBOM Contract.

York Against Cancer

50. The lease agreement for York Against Cancer’s presence within the Community Hub through a retail unit, office and meeting space has now been agreed in principle.

51. It is anticipated these lease agreements will be formally executed following the outcome of the JR Claim and ahead of the Council's Financial Close for the DBOM Contract.

York Gateway Explore Libraries

52. A formal lease agreement for York Gateway Explore Libraries ("Explore Libraries") to take up their presence within the Community Hub, as outlined in the March 2016 Executive Report, is progressing well.
53. Final detailed design requirements of the Explore Libraries are currently with GLL for confirmation these can all be met. Once this matter is confirmed the lease agreement will be progressed to a conclusion, noting Explore Libraries will require their board's trustee approval before the lease agreement is signed.

Stadium Naming Rights Sponsorship

54. The March 2016 Executive Report outlined draft terms had been agreed with a potential Stadium Naming Rights Sponsor, with approval received at this point to proceed with these negotiations through to a final agreement.
55. This work is largely complete with the finalisation of the agreement pending the outcome of the JR Claim and confirmation of a Project timetable for the delivery of the Stadium.
56. An agreement will only be entered once the Council's Financial Close has been reached on the Project.

Project Financials Update

57. The detailed financial position of the Project currently remains as outlined in the March 2016 Executive Report.
58. However, a consequence of the ongoing JR Claim is that it is not currently possible to provide a definite construction start date to GLL and their Building Contractor.
59. Without this definitive position of a construction start date there is a risk that it could become increasingly difficult for the Building Contractor to maintain costs and arrangements with their sub-contractors, from those agreed in the summer.
60. A further report will be brought to Executive detailing the final financial position of the Project prior to Financial Close in the New Year.

Project Timetable For Nslc Delivery

61. Until the JR Claim on the Project s73 planning permission is resolved the next phase of the Project is unable to commence or be confirmed. This next Project phase being the execution of the DBOM Contract and construction of the NSLC starting.

62. At this time, the Project is still working towards having the Stadium and new leisure facilities complete and operational in 2018.
63. However, until the DBOM Contract and associated legal agreements relating to the Commercial Development are completed, an exact start on site date for construction works to commence cannot be finalised. Until this point there is therefore a risk further delays could be incurred on the dates outlined in table two below.
64. Table two below sets out an indicative Project timetable that is based on the following key assumptions, each of which currently remain risks to the Project:
- The JR Claim outcome is in favour of the Council. This decision also being received by the end of January 2017.
 - The BDOM Contract and associated legal agreements are all agreed and the Construction Cost remains within the March 2016 approved Council budget.
 - The Investment Fund Commercial Development deal is concluded on the same financial terms as set out in the March 2016 Executive Report.

Table 2 - Current anticipated Project timetable

Date	Milestone
18 th Jan 2017	Planning ~ JR Claim Court Hearing
By the end of Jan 2017	Planning ~ JR Claim decision received
By the end of Feb 2017	Final Construction Cost agreed - Building Contractor final fixed price set and agreed by all parties reflective of a Spring 2017 construction start
16 th March 2017	March Executive - Project report presented ahead of Financial Close
By the end of March 2017	Financial Close - DBOM Contract + Commercial Development Agreements signed
April 2017	DBOM Contract live - GLL operation of Energise and Yearsley
April 2017	Construction site mobilisation - 4 weeks required, falls over Easter period
From May 2017	NSLC construction starts
Summer 2018	NSLC construction complete - practical completion of NSLC facilities. At this point they will not be operational and will require further GLL and Stadium Operator fit out before use by public and the Sport Clubs
Late Summer 2018	NSLC facilities operational - Stadium, Community Hub & new leisure faculties open to public

Should the JR Claim go against the Council

65. If the ongoing JR Claim decision is not in favour of the Council this will have significant consequences on the Project timetable above.
66. Should the JR Claim decision go against the Council, the planning applicant (GLL/Developer) would be faced with having to re-submit a new full planning application that contained all the information of the March 2015 planning application and the 2016 s73 planning amendments application together. This being in order to seek a combined approved permission that can be implemented and that meets all the requirements of the proposed end tenants and users.
67. Any new planning application would require certain aspects updating, including an updated Environmental Impact Assessment ("EIA"). Therefore such a process to prepare the application, allowing for statutory consultation and determination periods followed by Judicial Review Periods would add a minimum of six further months to the Project timetable set out at table two.

Human Resources (Hr)

68. There is no new information or changes to the Human Resources relating to the Project from that set out in the March 2016 Executive Report.
69. Council staff employed at Energise and Yearsley will transfer to GLL who will manage the Existing Leisure Facilities once the DBOM Contract is signed and operational. The TUPE transfer will be implemented in accordance with current legislation and in line with the Council's Supporting Transformation (Managing Change) policies and guidelines.
70. Individual and collective consultation with staff and trade union representatives will remain on going throughout the process up to the actual transfer date.

Equalities

71. There are no equalities issues relating directly to this report.
72. A full Equality Impact Assessment has been completed for the Project and reported previously in the March 2016 Executive Report.

Council Plan Priorities

73. This report is linked to the Focus on Frontline Services, A Council That Listens to Residents and a Prosperous City For All elements of the Council Plan 2015-19.
74. In particular the proposed NSLC scheme delivers significantly enhanced leisure facilities for residents, including securing the continued operation of Yearsley Swimming Pool (subject to the ongoing Review). The major investment in

facilities also creates jobs, significant community use, creates wider economic benefits for the city, and sees a significant uplift in business rates income.

Risk Assessment

75. A detailed risk assessment for the Project was set out in the March 2016 Executive Report. This update report at December 2016 has provided updates on these risks throughout the report as appropriate and outlined a new key Project risk in the ongoing JR Claim.
76. For completeness the risks identified throughout this report are summarised collectively in table three below.

Table 3 – Project risks contained in this report summary

Summary of risks highlighted in this report	Details shown at paragraphs
JR Claim decision - delayed or not in favour of the Council	paragraphs 15 – 17 & 65 - 67
Commercial Development – risk of change whilst legal agreements can not be signed.	Paragraph 25
YCK financial support proposal – risks if approved and if not approved.	paragraphs 43 - 44
Construction Cost – risk of increase before Financial Close	paragraphs 58 - 59
Project timetable risks	paragraphs 63 - 67

Financial Implications Of This Report

77. The financial implications of this report relate to recommendation I, the YCK further financial support for first team games played at Bootham Crescent. If approved this recommendation will bring a net cost of up to £45,000 per Rugby League season to the Council. This cost will be met from the existing Project budget.

Legal Implications Of This Report

78. The legal implications of this report relate to the State aid considerations contained within recommendation I, the YCK further financial support for first team games played at Bootham Crescent. The internal and external legal advice relating to this matter is set out in detail at confidential Annex A to this report.

Report Annexes & Information

Annexes -Annex A – *CONFIDENTIAL* - YCK state aid legal advice

Defined Glossary of Terms

Definition	Meaning
Building Contractor	ISG, the building contractor for GLL
Capital Land Receipt	£11.25m in respect of the land transactions for the Commercial Development. As set out in paragraph 37 (I) and (II) of the March 2016 Executive Report
Commercial Development	the commercial development comprising a state of the art Multiplex Cinema and a number of restaurants and retail units. Set out in full detail within the March 2016 Executive Report at paragraph 11 of the report summary and paragraph 14 of the main report
Community Hub	the community hub to be present within the NSLC, as set out in the March 2016 Executive Report at detail at paragraphs 8-10 of the summary and paragraph 13(III) of the main report
Community Partners	NHS, York Against Cancer and York Gateway Explore Library
Construction Cost	the construction costs for the NSLC under the DBOM Contract
Court Hearing	Court hearing for the JR Claim to be held in London on 18 th January 2017
DBOM	Design, Build, Operate and Maintain
DBOM Contract	the Design, Build, Operate and Maintain contract
Developer	Wrenbridge Sport
East Stand Restaurant Units	3 Restaurant Units in the Stadium East Stand, of which will form part of the Commercial Development
EIA	Environmental Impact Assessment
Existing Leisure Facilities	Both Energise and Yearsley Swimming Pool
Financial Close	the date of signature of the DBOM Contract
GLL	Greenwich Leisure Limited
High Court	The court in London that is reviewing the JR Claim
HR	Human Resources
Investment Fund	Entity purchasing the rights of the Commercial Development
ISG	GLL's building contractor
JR Claim	The JR claim made by VUE Cinemas on the Project s73 planning amendment permission
Judge	The judge reviewing the JR Claim
LPA	Local Planning Authority
March 2016 Executive Report	The Project report presented at the Executive meeting on the 17 th March 2016

Members	City of York Council elected members
New Year	The year of 2017
NHS	York Teaching hospital NHS Foundation Trust
NSLC	New Stadium Leisure Complex
Officers	City of York Council employed staff
Procurement	OJEU Competitive Dialogue Procurement undertaken from September 2012
Project	The Community Stadium & Leisure Facilities Project
Review	the review of different potential operating models for the future management of Yearsley Swimming Pool
SoS	Secretary of State
Southern Block	the land adjacent to the proposed South Stand of the NSLC forming part of the Commercial Development and identified on Plan B of Annex A
Sport Clubs	York City Football Club and York City Knights RLFC
Stadium	an 8,000 all seat community sports stadium to host professional football and rugby league games
Stadium Naming Rights Sponsorship	the sale of the naming rights for the Stadium, as set out in paragraphs 78 to 90 of the March 2016 Executive Report
TUPE	Transfer of Undertakings (Protection of Employment)
YCFC	York City Football Club
YCK	York City Knights RLFC
York Gateway Explore Libraries	Explore Libraries

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	<p>Report Approved</p>	<p>√</p>	<p>Date</p>	<p>29.11.16</p>
<p>Specialist Implications Officer(s) <i>List information for all</i></p>				
<p>Wards Affected:</p>			<p>All</p>	<p>✓</p>
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