

Report of Director of Communities and Neighbourhoods

Community Stadium & Leisure Facilities Procurement Update

Summary

1. The purpose of this paper is to update Executive on the progress of the procurement process for the Community Stadium and City Leisure facilities project, including Yearsley Pool.
2. The paper reflects the firm commitment given by the new Joint Administration for the long-term future of Yearsley Pool as part of its 12 point plan.
3. The project is now in its final stage of procurement and full commitment is given to its expedient delivery so that construction is completed during the football season 2016/17.
4. A programme of works is proposed to be brought forward from the construction schedule. The costs of these works will be funded from the approved budget. This programme will mitigate risks in the delivery timetable, providing additional contingency. It will also reduce ongoing revenue costs relating to the security and maintenance of the existing buildings.

Recommendations

5. The Executive is asked to:
 - a) Note the commitment to the long-term future of Yearsley Pool and to commence the formal review process acknowledged by the procurement documentation in October 2015 so that this long term commitment to Yearsley Pool is delivered.
 - b) Receive a report by March 2016 setting out the findings of the review process set out in a) above and agree the long-term

management arrangements for the pool after the New Stadium Leisure Centre is operational.

- c) Proceed with a package of early works as set out in paras 23 to 30 of this report in order to de-risk the delivery timetable and mitigate ongoing revenue pressures. The package of early works includes:
 - 1. Demolition of the existing Huntington Stadium and Waterworld
 - 2. The extension of the existing Park & Ride site and associated reconfiguration works to the car parking areas.
 - 3. Progress detailed design aspects of the construction phase.
- d) Agree to cost of these works, valued at c.£2m, being brought forward from the construction schedule (set out in recommendation c) to be funded from the existing approved stadium and leisure budget.
- e) Receive a contract award report for the Stadium Scheme by January 2016.
- f) Authorise the appropriation of land at Huntington Stadium for planning purposes in accordance with the provisions of Section 122 of the Local Government Act 1972 included in title numbers NYK195711, NYK317805, NYK158359, NYK80821 and NYK80822 as set out in Annex 1 and as outlined in red on the plan appended at Appendix 2 of Annex 1.
- g) Take all reasonable steps to secure the removal by agreement if possible of any existing property rights which could prevent the development from going ahead.

Reason: To enable the delivery of this important council project .

Background

- 6. Detailed planning permission was granted in March 2015 and the Judicial Review period ended without challenge in July 2015.
- 7. York City Football Club signed an Agreement to Lease for the new Community Stadium on 22 December 2014, securing the £2m investment from Football Stadia Improvement Fund (FSIF).
- 8. The new regional standard athletics track at York University's Heslington West Campus was completed in June 2015. York City

Athletic Club is now using the facility under the terms of their user agreement following the move from Huntington Stadium.

9. A community archaeological dig, held in partnership with the York Archaeological Trust, began at the end of May, investigating the Roman camp on the site. The dig ran for four weeks with participation from a wide range of volunteers. Archaeologists are currently carrying out post-excavation work.
10. In July York City Knights signed formal legal agreements with the Council securing their occupation of the new community stadium. This also secures access to Bootham Crescent for first team games and the use of York St John University's 3G pitches and sports village at Haxby Road for training and reserve games. This use is governed by the terms of third party agreements between the Council and the respective landowners (York City FC and York St John University). York City Knights have begun to use the facilities at York St John. Work is programmed at Bootham Crescent for early September to enable Rugby League matches to be played there and once the clubs have secured the necessary safety certificate York City Knights will be able to use the ground for matches.

Yearsley Pool

11. The new council administration has set out its commitment to provide a sustainable long-term operational solution for Yearsley Pool. This forms part of the joint administration's 12 point plan.
12. The operation of Yearsley is already included in the Design, Build, Operate, Maintain (DBOM) contract for the first two years up until the point that the New Stadium Leisure Facility is operational (scheduled as part of the currently programme between April and August 2017).
13. As part of the procurement and draft contract, provision has been made for a review process relating to the future of Yearsley. Now the Council has made a clear long-term commitment to the pool, beyond the initial 2 year period included in the leisure contract, it is proposed to use the review process to consider the most appropriate future means of operation. As part of this appraisal all options can be comprehensively examined, ensuring a cost effective solution is identified, without disruption to service delivery.

14. It is proposed that this appraisal begins in October 2015 and a report of the findings be brought back to the Executive by March 2016. This is in line with the existing procurement timetable and will not therefore have any negative impact.
15. There are a number of key stakeholders that would need to be involved in the review process. These include:
 - Nestlé – own all the surrounding property interests including the car parks. Nestlé recently made a commitment to working collaboratively with the council.
 - Yearsley Action Group - YAG represent the interests of many of the user groups at Yearsley Pool and are committed to the continued operation of the pool.
 - Other user groups and interested parties.
 - Greenwich Leisure Limited (GLL) - the preferred bidder in the procurement process. GLL will be operating the pool initially as part of the wider DBOM.

Procurement Process

16. The procurement process for the DBOM and ongoing Maintenance of the New Stadium Leisure Complex and City Leisure Facilities contract began in September 2012. The Competitive Dialogue process resulted in a final bid proposal being accepted at the September 2014 Cabinet. It was agreed that GLL's consortium be appointed as preferred bidder and their proposals be further developed to the point that a contract be awarded within the financial parameters of the scheme (£19m capital and £323k per annum revenue). The cost of the scheme identified in the capital programme is £37m. In October 2014, Full Council approved the additional £4m contribution towards the new leisure facilities at the New Stadium Leisure Complex (included in the £19m above).
17. The scheme is currently progressing through the pre-contract award stage. There are a number of complex workstreams underway that are resource and time intensive which include the finalisation of:
 - All procurement contract / legal documentation.
 - Commercial contracts for the tenants for the retail & leisure proposals.
 - Commercial contracts with the community hub partners.

- Due diligence of draft construction costs and initial value engineering options.
 - Detailed design issues.
18. A number of the work streams such as the commercial negotiations with potential tenants retail, leisure and community tenants require formal contracts being agreed with third parties. Although this work is progressing positively detailed legal and commercial matters still require clarification between the parties.
 19. Due to the commercially sensitive nature of much of this work, it is not prudent to provide further details, to ensure that the council protects its financial and legal interests. Also, non-disclosure and other confidentiality provisions are in place between a number of parties and would impact on the procurement process. The Community Stadium Lead Members Group will, however, receive appropriate briefings.
 20. A detailed financial review of the final scheme will be provided prior to contract award. This will be provided as a detailed Executive Paper by January 2016 at the latest.

Procurement Timetable

21. The programme for the delivery of the project has been adjusted. It was reported in public in July that the stadium would not be completed for the beginning of the football season 2016/17 as previously estimated.
22. It remains difficult to provide a precise programme for the final stage of the project, as a number of the outstanding workstreams rely on agreements and terms being reached with third parties. Some of these terms may have design implications (however minor), which in turn have an impact on the construction costs, operational model and funding formula.
23. The amended timetable is therefore provided with a range of dates during the football season 2016/17.

Outline timetable

- Finalisation of DBOM contract – Jan / Feb 2016
- Construction begins: Feb / March 2016
- Construction phase of sports stadium element completed :
March / April 2017

- Sports stadium element operational: April / May 2017
- Wider facilities construction completed: May / June 2017

Early works Proposal

24. The dates set out above provide a realistic range for the project delivery. As this is a priority project it is proposed that a package of works be arranged that will streamline the delivery programme, save time and potentially bring the construction programme forward as well as reducing ongoing financial revenue pressure. These works are as follows:

Demolition of facilities

25. The demolition works package will be brought forward from the construction schedule for the existing buildings on the site. The value of the work is c. £400k and includes the diversion of services that are connected to surrounding facilities.

Extension to Park and Ride

26. The proposed extension to the Park & Ride car park and associated access / transport arrangements will be brought forward. These works were included and specified in the original S106 from the Vanguard retail park and funding is in place for these works to be progressed. These works would build contingency into the construction programme and increase capacity of the existing Park & Ride operation. The value of the work is c. £1.2m and would be funded from an existing approved budget.

Progression of detailed design work

27. Consideration would also be given to bringing forward a number of detailed construction design activities that allow the construction process to start earlier. For example, detailed design / specification work on the steel work and piling could begin now so that orders can be placed as soon as the contracts are signed. The value would be c.£400K and be taken directly out of the contract price. The council would control intellectual property rights for the designs.

Risks / Benefits of Early works proposals

28. There are considerable benefits to the overall project in progressing with these works. All the works proposed relate to costs identified in the construction programme (subject to

contract). The works proposed would be brought forward from the main construction schedule. This will build in additional contingency into the timescale, smoothing the programme and de-risking delivery – particularly if unforeseen issues emerge (severe weather etc).

29. The cost of the works will be funded from the approved budget for the stadium and leisure facilities. The majority of this budget is made up of S106 funds provided specifically for delivery of a community stadium. All the works proposed are preparing the site for the delivery of the stadium. If this specific scheme was not to progress the capital works (demolition and construction work) set out would not be abortive costs, as there would still be a requirement on the council to deliver a stadium. The design work would however, have a potentially abortive cost associated with it, as it is possible that if the scheme did not progress, aspects of these designs would change. It would enable the construction programme to be brought forward by approximately 4 weeks and significantly de-risk the pre-construction programme.
30. Bringing this work forward will increase the cost of the work (approximately £50k); however, the Council is currently spending c. £25k per month on National Non Domestic Rates (NNDR), site security and reactive maintenance costs (ensuring the site remains safe) and these costs are likely to increase month by month. Bringing the works forward will remove these additional costs and therefore save the Council money. The additional costs will remain within already approved budgets. They relate to preliminary works on the site (services, security and the fact that the construction would be active for a longer period). Full planning permission has been obtained and includes the demolition of the buildings. No works will commence until the relevant conditions have been met for the recent full planning consent granted.

Risk

31. A detailed risk and issue register is managed by the project team and reported on a monthly basis to the Council's internal Project Board. Many of these risks contain commercially sensitive information and therefore the risk / issue register is not published as part of this report. A comprehensive risk analysis will be provided prior to contract award.

32. The main financial and timescale pressures relate to the finalisation of the commercial contract negotiations, their impact on the design, construction costs, the funding formula and ongoing operations.
33. The risks relating to the early works proposed in paras 23 to 30 are covered in that specific section of the report. There is a risk to the council in progressing with these works, however these are relatively low as the works are being brought forward from the construction schedule and funded from a S106 budget specifically for the delivery of a stadium and associated facilities. The abortive costs would be minimal. All works would need to be controlled by a separate early works contract which would need to be subject to appropriate legal advice.

Financial Issues

34. This project is in an advanced phase of the pre-contract award stage of the procurement. This is a complex commercially structured project. There are a number of detailed commercial negotiations currently being finalised.
35. The proposed early works programme will assist in building contingency into the project timetable and mitigate pressure on other budgets. The capital works would not have the risk of abortive costs if the scheme was not to progress. The risk of abortive design costs are minimal and can be justified considering the programme benefits these provide. All these costs would be met from the approved stadium and leisure budget.
36. The project budget is in the Council's capital programme and remains within the financial parameters set – as reported in the Cabinet Report September 2014. Financial contingencies are in place within this budget to cover variations / pressures on the key risk areas identified. A detailed financial appraisal will be undertaken prior to contract award and this will be reported to the Executive by January 2016.
37. The operation of Yearsley Pool is included within the proposed DBOM contract up to the opening of the New Stadium Leisure Complex (May / June 17 as schedule in outline timetable). A further budget provision has been made at the Council Meeting February 2015, providing up to £300K per annum for the operation of the pool for the proceeding 5 year period (approximately April 2022). The ongoing budgetary provision for Yearsley pool will

need to be considered in a future report to the Executive and full Council to bring this in line with the proposed contract term.

Legal

Appropriation

38. Information relating to the appropriation of the site is provided in Annex 1 of this report.
39. Section 122 of the Local Government Act 1972 enables the Council to 'appropriate' to another purpose/use any land owned by the Council which the Council no longer needs for the purpose for which the land was originally acquired by the Council. Where land has been appropriated for planning purposes Section 237 of the Town and Country Planning Act 1990 enables the carrying out of any development/building works authorised by planning permission where those works interfere with any easement or covenant benefiting a third party subject to payment of compensation to such third party/parties.
40. Section 122(2A) requires that before appropriating any land consisting of or forming part of 'open space' the Council must advertise the proposed appropriation in two consecutive editions of a local newspaper and consider any objections received in response. In order to be 'open space' land must:
 - i. either have no buildings on it at all or at least 95% of the land should have no buildings on it
 - and
 - ii. either be laid out as a 'garden', be used for recreation or lie as waste and unoccupied/vacant land (S.20 of the Open Spaces Act 1906).
41. It is not considered that the land edged red on the plan attached at Appendix 2 (in Annex 1) is 'open space' because it does not fall within the above criteria. Accordingly S.122(2)(A) would not apply so it is not considered necessary to advertise the proposed appropriation.
42. It is reasonable for the Council to use its powers in this case to appropriate the land for planning purposes as the appropriation will facilitate the carrying out of development, re-development or improvement works on the land and this which will contribute to the

promotion of the economic, environmental or social well-being of the City.

Property issues

43. The land comprising the proposed stadium complex/leisure facilities site was originally acquired by Ryedale District Council for leisure purposes.
44. It is considered that appropriation of the land to planning purposes will facilitate the carrying out of development, re-development or improvement works on the land which will contribute to the promotion or improvement of the economic, environmental or social well-being of its area.

Contact details

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Wards Affected:			All ✓
For further information please contact the author of the report			

Annex 1: Appropriation of Land at Kathryn Avenue, Huntington Stadium, for Planning Purposes

Glossary of Terms

GLL	Greenwich Leisure Limited
NSLC	New Stadium Leisure Complex
CYC	City of York Council
OJEU	Ordinary Journal of the European Union
DBOM	Design, Build, Operate, Maintain
CD	Competitive Dialogue
UoY	University of York
YSJ	York St John
RFL	Rugby Football League
YCFC	York City Football Club
MDA	Match Day Agreement
S106	Section 106
FSIF	Football Stadia Improvement Fund
YCK	York City Knights
EU	European Union
NNDR	National Non Domestic Rates
3G	Third Generation Astroturf pitch
P & R	Park and Ride