

Cabinet

6 November 2012

Report of Cabinet Member for Leisure, Culture & Tourism

Community Stadium Update

Summary

1. The purpose of this paper is to:
 - Outline the procurement timetable and the stages at which key decisions will need to be made.
 - Set out the need for new Project Management / Governance arrangements.
 - Provide an update on the Business Plan.
 - Consider the updated risk register and the financial impact of potential abortive costs.
 - Consider new interim arrangements for the current Waterworld contract.

2. Decisions are required from Cabinet:
 - 1) To note progress on the project to date and the timetable for the procurement and associated decisions, in particular the key issues set out in para 9 relating to the financial challenges facing the future provision of the existing leisure facilities in the City.
 - 2) Agree the key amendments to the business case and note the financial implications.
 - 3) Note the updated risk register, the potential financial impact of any abortive costs.
 - 4) Agree the proposed Governance arrangements for the project.
 - 5) Note the roles, responsibilities and delegated powers of the key individuals and bodies within the governance structure (set out in detail in Annex 1) and in particular the role of the Project Board set out in para 14.
 - 6) Agree Option C set out in para 35 as the new interim contract arrangements for the Huntington Stadium Leisure Complex (Waterworld).

- 7) Note the financial implications of the interim arrangements for the Huntington Stadium Leisure Complex (Waterworld) contract.

Background

3. The Business Case and budget for the project were noted at Cabinet on 6th March 2012 and approved at Full Council on 30th March 2012. Outline planning permission was granted on the 5th July, following confirmation from the Secretary of State that the decision should be dealt with locally. The 3 month Judicial Review period ended without challenge on the 6th October 2012.
4. At the January meeting of the Cabinet Member for Leisure, Culture & Tourism the outline procurement strategy was agreed for the project. The procurement process has started to Design, Build Operate and Maintain (DBOM) the stadium and operate and maintain the Council's leisure facilities as one single package. An OJEU notice starting the formal procurement activity for the project was posted on the 14th September 2012.
5. A bidder day was held on Friday 28th September which was very successful and attended by representatives from all sections of the construction, design and leisure operations industry.
6. The indicative timeline below outlines the key points in the procurement process:

Indicative Timetable – Events and Milestones

OJEU Notice	September 2012
PQQ return	October 2012
Invitation to submit Outline Proposals	November 2012
Construction of Retail development begins	October 2012
Evaluation of ISOP bids	January 2013
Commence Dialogue phases	January 2013
Final bids	September 2013
Contract Award	November 2013
Leisure Centre Contract operational	January 2014
Planning Submission	January 2014
Archaeological digs begin on stadium site	February 2014
Construction begins	June 2014
Completion	July 2015

7. The evaluation of the pre-qualification questionnaires commenced at the start of November. The procurement process is an iterative process and dates will move as the project advances.

8. This procurement is being conducted by Competitive Dialogue (CD). It includes the design, build and operation of the stadium as well as the long term operation of the Council's leisure facilities. This will be for a 13 year period with the option for an additional 5 years (total 18 years). Bidders will come forward as consortia made up principally of three main commercial disciplines; Operators, developers and design teams.
9. Bids will be developed by each consortia to build the stadium, invest into the leisure estate and operate them on a financial sustainable basis over the life of the contract. Affordability targets are to be set for a maximum capital value of c.£15M and to be operated at a reduced revenue cost in line with the Council's budget strategy. To achieve this goal and maximise value from this process it is likely that critical decisions may be required regarding the delivery of the project, exploiting commercial opportunity and the future provision of leisure across the City. Members should be aware of the current losses being experienced by GLL the incumbent operator of the Huntington Stadium Complex (set out in para 29 below). Without significant investment this position is likely to worsen and result in the severe pressure on the council's budget. Bidders are asked to come forward with innovative solutions to address these financial pressures within the affordability targets.
10. The CD process is governed by strict EU regulations and is a commercially sensitive and confidential process. Updates can only be provided at key stages within the process and will be bound by confidentiality restrictions. Updates will be provided at stages and direction sought at the following key stages:
 - Prior to the commencement of the dialogue stage (late Jan / early Feb 2013) and possibly during the dialogue stage (March – August 2013).
 - Prior to the final bid stage (September 2013).
 - Prior to the contract award (November 2013).

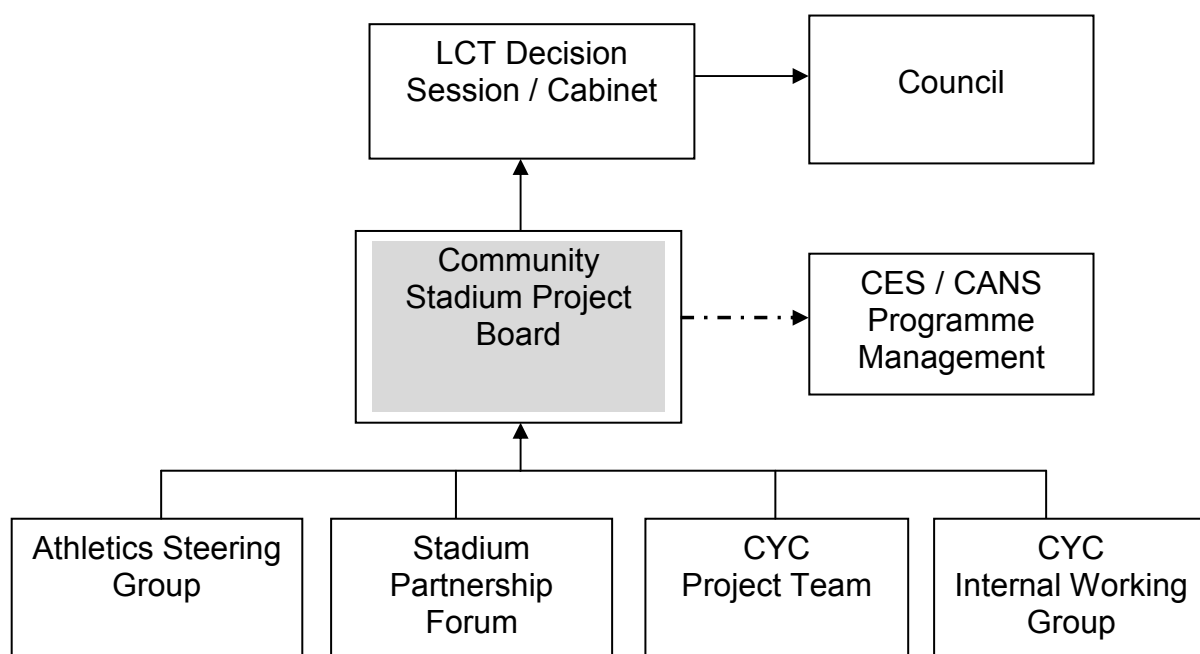
Proposal for new governance arrangements

11. The project now moves into a new delivery phase and should be treated like any other major capital project. The Stadium Advisory Group was originally established to provide cross party representation in overseeing the development of the business case and proposals. Now the business case has been approved by Council and Outline Planning Permission granted and the Judicial Review period passed, the need for an extensive Advisory Group to oversee the management of the project is no longer necessary.

12. The flowchart and table below set out the proposed reporting lines and responsibilities for the project's management.
13. It is proposed to create a new Project Board that will deal with all the business of the project. This board will meet monthly and deal with exception reports, updates on the project plan, business case and risk register. Where necessary it will escalate issues to either the Cabinet Member for Leisure, Culture, Tourism's (LCT's) decision making session or Cabinet for decisions.
14. It is essential that this Board has the necessary powers vested in it and its Chair (Project Director) to effectively deliver the project. It is recommended that decisions can be made by that Board (through the authority of the Project Director) providing it is acting within the overall budget headings set by Council, and the parameters set out in the business case. Where key risks are escalated and cannot be mitigated they will be reported back to the appropriate decision making body. Resources can be managed in line with the Director's normal authorities and delegations where needed to support the project.
15. The proposed roles, responsibilities and delegations are set out in the table in Annex 1 with the detailed terms of reference. In particular members attention are drawn the key roles of:
 - Project Sponsor (Cabinet Member for LCT): to be the champion / figurehead for the project, providing leadership on ethics, values, and equalities, clarifies priorities and strategy and engages with stakeholders.
 - Project Director (Corporate Director): Owns the business case and governs risk, makes timely decisions and manages the programme of work with the Project Manager, manages relationships.
16. A Community Stadium Partnership Forum has been established. This will deal with all issues relating to the development of the community aspect of the stadium and also be the formal point of contact between the Project Director, Project Sponsor and the project stakeholders. The minutes and action points from the meeting will be presented to the Project Board and once agreed the minutes will be publicly available.

17. A separate governance structure will be agreed and put in place for the delivery of the athletics facilities. Representatives from the Council and University of York will make up the steering group, supported by key consultative stakeholder groups including City of York Athletic Club. Reports from this group will feed into the Project Board as there is still a critical dependency between the delivery of the athletics facilities and the delivery of the Community Stadium.

18. Proposed Governance/Management Structure:



Update on the Business Case

19. The financial structure of the business case was last updated in March 2012. As the project has now progressed and the procurement route is a single DBOM the indicative budget headings have now been developed.

20. Table 1 below sets out the capital expenditure headings as approved in the Business Case proposed changes to the expenditure and project costs. The total cost of the project remains unchanged.

Table 1: Total Capital Costs as approved in Business Case March 2012 and Proposed November 2012.

Component	Approved March 2012 (£000s)	Proposed Nov 2012 (£000s)
On site facilities (sub-total)	15,700	15,250
Stadium	11,000	10,650
External works	1,500	1,450
Community floor space	3,000	2,950
3G Floodlit Games Court	200	200
Off site facilities (sub-total)	2750	2750
Athletics Facilities	2,000	2,000
Community sport & interim costs	750	750
Project Costs	750	1,200
Total	19,200	19,200

21. The funding streams to deliver the project were agreed as part of the Business Case these are set out in Table 2 below. The position has not changed.

Table 2: Project Costs

Component	Capital Cost (£000s)	Comment
S106 Contribution	14,850	S106 agreement dated 5 th July 2012
CYC Capital	4,000	Council approved capital programme
YCFC Capital	350	Minimum contribution from Bootham Crescent disposal
External Funding		Zero assumed
Total	19,200	
Expenditure Profile		
2011/12	136	
2012/13	2,514	
2013/14	2,550	
2014/15	7,000	
2015/16	7,000	
Total	19,200	

22. Due to the procurement strategy of using a DBOM there will be a number of bidders developing the design of the scheme through the dialogue process. To ensure CYC maintain a reasonable level of control and that bidders have the comfort that they are not being asked to commit to an unreasonable level of fee exposure, it is proposed that the Council put in place a programme of support works. This will include surveys, feasibility and where appropriate enabling works. Bidders will not need to separately procure or fund this information that will be common to all parties. For example ARUPs have already been commissioned to bring forward a package of enabling works for the site, that could be jointly commissioned with the retail scheme John Lewis, Marks & Spenser etc). Decisions regarding sewerage, water mains and other services could provide considerable savings if investment decisions are taken in advance and infrastructure put in place ahead of the stadium development.

23. An example of this would be the provision of a foul water sewer upgrade. If the work is undertaken with the retail park development, it would offer in the region of 60% savings. However, there would be an upfront cost of c.£300K to provide the improvements. Although these are part of the capital works allowance, they will need to be funded ahead of the main building contract. Such investment decisions can be only made when there is reasonable certainty that the S106 funding is in place and the Council does not bear unreasonable financial risk. Under the proposed governance arrangements such matters will be dealt with by the Project Board and only referred on, if the risks are not clearly manageable.

24. Consideration also needs to be given to the actual project costs in running the procurement exercise. When the budget was agreed, there was no provision for the inclusion of the leisure service in the exercise. It is now being managed as one procurement under the stadium budget, resulting in a higher fee allowance for a number of headings (legal, commercial and property). More project management resources will be needed during the first 18 months of the project, to manage the complex dialogue phase and ensure that all the survey, legal and enabling works are delivered to programme. The growing number of partners involved in the project requires considerable co-ordination as part of the process.

25. Overall, the fees and costs in delivering this project need to be structured in a different way to that initially set out. A higher degree of costs will be directly incurred in the first stages of the procurement. However, these will be balanced out over the life of the project. The percentage of total fees may be slightly greater, but this will be balanced against the opportunity to achieve greater risk transfer to the bidders and the future operator. This should result in a more cost effective package for the future management of the stadium and the City's leisure facilities. It will also reduce the risk to the Council of managing and co-ordinating three separate procurement processes. The estimated increase in directly incurred project costs are set out in Table 3, these will be offset by savings achieved in the schemes delivery.
26. An option does exist to pass these costs on to the bidders in the initial design phase, but this may deter consortia from bidding and would create a much higher degree of risk that would likely undermine confidence in the process and take away control from the council as the client. The existing and proposed cost headings are set out below in confidential annex 3.

Interim Arrangements for Waterworld contract

27. The Cabinet paper (6 March 2012) outlined the proposed business plan for the new community stadium. In particular, it highlighted a risk to the Council in relation to the existing lease arrangements for Huntington Stadium (Waterworld, Courtney's and the Stadium) being surrendered by the current operator Greenwich Leisure Ltd (GLL).
28. The current lease with GLL is for the term 1 April 2011 to 31 March 2016, but allows both parties an option to terminate giving 6 months notice from 1 October 2012. The lease is based on a rental fee paid from GLL to the Council of £268,079 per annum.
29. Officers have worked with GLL directors to understand the current operation as part of the business planning stages for the new community stadium and understand that GLL are making a loss on the contract. The sum can be seen in confidential annex 3. GLL are a social enterprise who cannot support these levels of losses in the current market place.
30. On the 1 October 2012, GLL have written to the Council to advise that they will be terminating the lease, giving six months notice. This

means from 1 April 2013 the Council will no longer have an operator.

31. The current procurement timetable to select a new operator for the stadium and existing leisure facilities (Energise and Yearsley) is due to be completed by December 2013 and including a period of slippage it could be up to 30 June 2014.
32. There are a number of options open to the council now that GLL have served notice:

Option A – Close the facility

33. This has significant issues for the current procurement exercise both in terms of message to the market and a new operator having to build the business from scratch. The cost to decommission the building and put in security arrangements (as experienced with the Barbican £120k pa), on top of losing the rental income would be a significant cost implication. Therefore this option is rejected.

Option B – Accept keys back from GLL and the Council operate

34. The cost and risk to the Council would be significantly more than option A and C. The Council would incur considerable set up costs, TUPE issues and other operational risks making it commercially unviable.

Option C – Agree new terms with GLL to secure them as operators until the end of the procurement exercise.

35. Negotiations with GLL have resulted in a proposal to (i) reduce their financial exposure by offering a rental discount period from 1 April 2013 to 31 March 2014 (ii) Agreement to continue to operate for a further 3 months, up to 30 June 2014 if required, but the Council would have to underwrite any losses during the last 3 months. GLL would provide open book accounting. A deed of variation would be required to the existing lease to secure GLL as operators until 30 June 2014 and terms will state only the Council will be able to terminate the contract during this new lease period. See confidential annex C for the discounted sum.

If the council wishes to secure the continuity of the service at the Huntingdon Stadium complex (including the provision of athletics,

rugby league games and swimming at Waterworld) Option C is the recommended option. All other options would either place the Council under considerable operational and financial risk, or require the cessation of the service.

36. A number of service reductions have been discussed with GLL but no significant savings could be projected to offset option C.
37. It would not be viable to run even a mini procurement to source a new operator for such a restricted contract of under 12 months.

Implications

Financial

38. Stadium Budget – The overall budget is not changed. The project fees have risen due to the procurement route now taken and the inclusion of a leisure operator in the stadium procurement. However, it will provide bidders more security through the process and enable a more consistent and transparent bidding process with the potential to transfer some risk to the bidders in this high value capital project.
39. GLL lease extension – The council is paying to secure continuity of the service to ensure there is no cessation in provision. At present the incumbent operator could serve 6 months notice and stop operation. This may have a greater financial impact on the council and would threaten the interim operation until the new contract was in place.
40. The potential loss of income (rent) from the lease discussed in paragraphs 29 – 37 will require additional revenue funding. This will be included as part of the budget proposals currently being considered for 2013/14 and 2014/15.
41. Human Resources (HR) – none
42. Equalities: A Community Impact Assessment was undertaken in 2011 as part of the development of the business case. This work will be further developed as procurement process progresses.

- 43. Legal – none
- 44. Crime and Disorder – none
- 45. Information Technology (IT) – none
- 46. Property – awaiting comments
- 47. Other – none

Risk Management

- 48. The updated Project Risk Register is provided in confidential annex 2. It is redacted in full as it contains commercially sensitive information relating to the procurement process that cannot be disclosed. Below the key & high scoring risks have been summarised. It must be emphasised that these are taken from risk register and presented as potential risks i.e. issues that may arise or are yet to be resolved and may require mitigating action. They are not predictions or statements of actions that will occur.
- 49. **Risk 4 Capital Overspend:** This is a medium risk as the procurement process has set affordability targets. A limit for the capital expenditure is set and all bidders are aware of this. If it becomes apparent that the full specification is unlikely to be met, the option exists to engineer down the specification or seek alternative funding sources. A decision can be sought from Cabinet on this issue prior to the contract being awarded.
- 50. **Risks 7 & 10 Delay or failure to make the S106 contribution from the retail development.** This is a high risk. The council has no direct control on the delivery of the retail scheme. Detailed planning permission has been granted and agreements signed with 3 key tenants by Oakgate Monks Cross. The S106 agreement sets out the funding arrangements with the provision of an on-demand bond. However, this bond cannot be called upon until development has started. Until this point is reached, the costs of the project remain at the Council's risk. The ongoing fees, and project management costs will continue to be absorbed by the Council's capital allocation. If the retail scheme fails to progress, these will be non recoverable abortive costs to the Council.
- 51. These risks can be mitigated by the phasing of any feasibility or enabling works. Ensuring that only necessary work is undertaken

until certainty regarding the S106 funding is in place. All bidders in the procurement process are responsible for their own costs. Prior to the ITCD stage (Feb / March 2013) the Council will need to provide a detailed position statement on funding. This process can be delayed or stopped if necessary.

52. **Risk 22 Insufficient funds to adequately resource the delivery of the project:** Failure to properly resource the project through the procurement process may result in the lack of bidder interest and / or bidders withdrawing from the process. It is also essential that a fair balance of risk is maintained through the process to ensure that bidders' costs do not become too great. The process must be professionally controlled and specialist input sourced as required. This can be mitigated by the introduction of the new proposed governance arrangements and project resource costs. It also requires a flexible resource plan actively managed by the Project Board.
53. **Risk 24 & 25 Failure to agree terms with the UoY and the potential for costs escalation:** Conditions of the outline planning consent require arrangements for the replacement athletics facilities to be in place and agreed prior to the demolition of the stadium. Until those proposals are finalised this remains a high risk. These risks can be mitigated by a range of measures including the identification of alternative sites, seeking of additional funding from project partners and external funding agencies and the options of specification reduction.
54. **Risk 35 Failure to establish an effective project governance structure for the delivery of the project:** This is a high value and complex development project. It is essential that effective and reactive arrangements are in place to manage the project. This paper sets out a new structure with clear roles and responsibilities for the key individuals and Project Board. Failure to implement new arrangements will threaten the successful delivery of the project.
55. **Risk 36 Failure to agree Terms with GLL for interim operation of Huntington stadium Complex:** These proposals provide assurance of the continuity of the service. Although there is an additional financial cost to the council, the alternative may result in the cessation of the service or considerable additional expense.

Recommendations

56. Members are asked to:

1. Note progress on the project to date and the timetable for the procurement and associated decisions, in particular the key issues set out in para 9 relating to the financial challenges facing the future provision of the existing leisure facilities in the City.
2. Agree the key amendments to the business case and note the financial implications.
3. Note the updated risk register, the potential financial impact of any abortive costs.
4. Agree the proposed Governance arrangements for the project.
5. Note the roles, responsibilities and delegated powers of the key individuals and bodies within the governance structure (set out in detail in Annex 1) and in particular the role of the Project Board set out in para 14.
6. Agree Option C set out in para 35 as the new interim contract arrangements for the Huntington Stadium Leisure Complex (Waterworld).
7. Note the financial implications of the interim arrangements for the Huntington Stadium Leisure Complex (Waterworld) contract.

Reason: To update Cabinet on this scheme, agree key amendments and new arrangements for Waterworld in order to progress the project.

Contact details

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	Report Approved	√	Date	25 October 2012
Specialist Implications Officer(s)				
Wards Affected: <i>List wards or tick box to indicate all</i>				All <input type="checkbox"/> <i>tick</i> <input type="checkbox"/>
For further information please contact the author of the report				

Supporting Annexes

- **Annex 1:** Roles responsibilities and delegations of the new governance arrangements
- **Annex 2:** Confidential Redacted Risk Register for Community Stadium Project.
- **Annex 3:** Confidential Redacted items from the report

Background papers

- Paper 6th March 2012: Community Stadium Business Case
<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=733&MId=6681&Ver=4>
- Decision Session of the Cabinet Member for Leisure, Culture & Tourism. 10th January 2012: The Community Stadium and Council Leisure Facilities: Procurement of Operator Arrangements
<http://democracy.york.gov.uk/ieListDocuments.aspx?CId=736&MId=6691&Ver=4>