

## **Cabinet**

**7 January 2014**

### **Report of Cabinet Member for Leisure, Culture & Tourism**

#### **Community Stadium Update**

##### **Summary**

1. The purpose of this paper is to provide:
  - An update on the progress of the stadium and athletics elements of the overall project.
  - Options for the stadium's design and increased base capacity.
  - A delivery plan for the Athletics facility at the University of York.
  - The procurement timetable and the stages at which key decisions will need to be made.
  - Risks to the delivery and ongoing operation of the project.
  - A more detailed paper covering all aspects of the project (including details of the leisure facilities contract) will be presented to Cabinet later in the year, once a preferred bidder has been identified.
  
2. Decisions are required from Cabinet to:
  - Note progress on the project to date and the timetable for the procurement and associated decisions.
  - Agree the change to the design requirements for the stadium
  - Agree the Athletics delivery plan and site as outlined in the report.
  - Note the key risks highlighted and the process in place for risk management.

## **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 2012 meeting of the Cabinet Member for Leisure, Culture & Tourism the outline procurement strategy was agreed for the project. The procurement process ongoing is 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 further report will be brought to Cabinet setting out the full details and cost implications of the Preferred Bidder's final proposals. This will include proposals relating to the City's leisure facilities.

## **Project Progress**

6. This procurement is being conducted by Competitive Dialogue which is governed by strict EU regulations that requires strict confidentiality due to commercial sensitivities. The contract is for the Design, Build, Operation and Maintenance of the Stadium, as well redevelopment and investment into the Council's leisure facilities. This will be for a 13 year period with the option for an additional 5 years (total 18 years).
7. Formal bids were submitted in September 2013 and subsequently assessed and scored. The final two bidders have been confirmed and final proposals are being prepared. This phase will run until March when dialogue will be closed. During this period, all aspects of the detailed design, commercial and operational arrangements must be finalised, before bidders are asked to make their competitive bids.
8. A summary of the issues arising from the ITCD submissions is provided below:
  - All submissions were able to meet the basic minimum criteria set of 6,000 capacity all-seat stadium, community hub within the financial parameters of the project

- Changes are required to the design requirements if an attractive and well balanced stadium is to be delivered. The built in expansion requirement from 6,000 to 12,000 has considerable cost and design implications for something that may never happen.
- Scope exists to increase in the base capacity of the stadium through cost efficiencies and alternative design solutions, including the consideration of the use of some terracing.

### **Stadium Business Case**

9. The business case was approved at the March 2012 Cabinet. This is an iterative process and the business case has developed as the procurement has progressed.
10. The over-arching principle agreed remains in place that the costs of running the stadium will be covered through a mix of the rentals from the sports clubs, the community hub tenants and other commercial income streams brought forward by each bidder. This will include full maintenance and lifecycle costs as part of a 13 year operational contract.

### **Arrangements with core tenants**

11. Throughout the life of the project, the risks of operating shared stadiums have been highlighted. To this end, it was always clear that the full costs of operating the stadium could not be realistically met by the sports clubs. The business model has always been underpinned by the inclusion of other commercial uses. This commercial activity, would not be possible without the stadium development, thus is directly connected to its delivery.
12. Detailed legal agreements with all partners need to be in place prior to contract award. Negotiations regarding these agreements are at advanced stages with all partners. To minimise the ongoing risk to the Council and the partners, leases and agreements with tenants have been structured to assume the lowest base rentals only. A surplus share mechanism has been established that will provide payment to the Council if higher returns are achieved through improved commercial performance. This is structured to incentivise all parties to achieve the best commercial returns.
13. The contract is structured so that the operator is responsible for the collection of rents. As the Council is the land owner and sponsor of the project it would ultimately bear the risk for any long-term rental / lease default. However, as set out above, the agreements are structured so they are reliant only on base rentals. Furthermore, the

procurement is structured in a way to encourage bidders to propose operational solutions that minimise the risk. The detailed impact and risk analysis for this will be reported to Cabinet prior to contract award.

14. **Sport Clubs:** Formal match-day agreements for the occupancy of the stadium have been prepared. These have involved detailed discussion between all parties. All agreements will be subject to the award of the overall contract award.
15. The matchday agreements include accounting mechanisms based on the provision of baseline rents with risk / reward structures if attendances improve. Thresholds have been agreed with each club regarding the current operating position at the existing stadiums (Bootham Crescent and Huntington Stadium). Due to the differences between the starting positions of each club, these thresholds are considerably different and the base rentals have been adjusted to reflect this, adopting the risk / reward principle.
16. These arrangements remain within the original financial parameters, that the costs of running the stadium will be covered by the rentals and other commercial income streams providing a sustainable facility for the life of the contract. The final details will be subject to contract and reported to cabinet prior to contract award.

### **Stadium Design**

17. Based on the submissions received, it is evident that some of the original criteria set out for the stadium are not achievable. It is not possible to build a stadium that meets the 'built-in' expansion requirement (up to 12,000 all seat) with an initial capacity of 6,000 seats, without significant compromise to the appearance and design of the stadium. The lower the base capacity and the higher the expansion target the greater the design challenge.
18. The 6,000 capacity has been a design requirement from the outset of the project. This was always considered to be the maximum capacity possible with the funding available, as the FSIF funding terms insist on the more expensive requirement of an 'all seat' stadium. This has added considerable design challenge when added to other constraints, particularly that of funding and future expansion.
19. The requirements have therefore been reviewed with the clubs and the design teams with the following considerations:

- If 'built-in' expansion is required, a much larger main stand is needed. For a 6,000 base capacity this has a major impact on the appearance and design of the stadium bowl.
- There has been ongoing pressure from the public and the football club to increase the base capacity from 6,000 and to include some terracing.
- One of the options to increase the capacity would be to consider the use of terracing. For example, if both ends had an all seat capacity of 1,000, a terraced solution could be provided giving an increase to c.1,700 within the same footprint.
- The best way of enhancing the design and appearance of a lower capacity stadium, is to provide a more even spread of the seats per stand. The more seats / bulk to each stand in a low capacity stadium, the more options that are open to design a more attractive bowl.
- Requiring built-in expansion adds considerable cost and design constraint, for something that may not be required.
- The expansion to 12,000 is no longer necessary as Super League requirements are for a 10,000 capacity.
- The requirement for an all seat stadium comes from the FSIF grant conditions, which adds considerable cost to the design.
- FSIF funding arrangements state that the grant payment is only payable once a safety certificate is provided for the new stadium. Thus there remains a risk that it will not be secured, particularly as this would have to be achieved through a charge against the disposal of Bootham Crescent.
- Outline planning permission was granted for a 6,000 all seat capacity. Any increase in capacity would need to be part of a new full planning submission that assessed any planning and transportation issues, costs and mitigations.

20. In preparation for the final tender stage, strict design criteria need to be set for effective evaluation. As it is not possible to have variant options for different capacities at final tender stage, only funding that is secured can be used. Therefore it is proposed, that flexibility is sought within design to enable the provision of a larger all seat stadium, however, this can only be achieved with the preferred bidder if the FSIF money is secured at a later date.

21. Therefore it is proposed that the design criteria for the stadium be changed and bidders are asked to provide within the budget available to design a stadium that:

- Meets current Football League and Rugby Football League entry requirements.
- Removes any 'built-in' expansion requirement.
- Results in a well balanced and attractive stadium bowl.
- Maximises the base capacity.
- As an option, considers the use of some terracing as a means of increasing the base capacity.
- Makes provision within the design to increase the capacity as an all seat solution if the FSIF funding can be legally secured and / or promotion to the Football League 'Championship' is achieved at a later date.
- Demonstrates an all seat capacity of 10,000 can be achieved at a later stage, within the stadium footprint.

22. Any proposal to increase the base capacity above that of the original outline planning consent would need to demonstrate that there is no adverse transport impact of the increase from the original outline planning consent.

### **Capital & Project Costs**

23. The financial structure of the business case was last updated in November 2012.

24. The delivery of the project remains within the overall financial parameters last reported.

### **Procurement Timetable**

25. The indicative timeline below outlines the key points in the procurement process:

Table 1: Indicative Timetable – Events and Milestones

<b>Key Milestone</b>	<b>Estimated date</b>
<b>Final Tenders</b>	May 2014
<b>Planning &amp; Project Agreement Live</b>	January 2015
<b>Site Mobilisation</b>	February 2015
<b>Stadium Operational</b>	February / March 2016

26. The following key actions will take place during this final stage of the procurement process:

- Review and development of commercial proposals
- Submission of final bids
- Preparation of detailed design and planning submission
- Public Consultation sessions for planning process
- Detailed lease agreements with tenants and partners
- Finalisation of Match-Day agreements for the Sports Clubs
- Delivery of Athletics facility
- Delivery of Knights training and interim facilities
- Formal Planning application

27. The project now moves into a new delivery phase and should be treated like any other major capital project. The delays in starting the ITCD stage were well documented due to a number of inter-related problems, including securing the S106 funds.

28. There are a large number of issues that need to be covered in the final stage of the dialogue process. This process cannot be closed until all outstanding matters have been satisfactorily resolved and the project team undertaken all necessary due diligence. For these reasons, the timetable for delivery has been adjusted to build in some contingency time. As set out in the indicative timetable above final tenders will be sought in May 2014. Also additional time has been factored into the planning submission preparation. This is as a precaution.

29. If delay were to occur, the main impact would be with the sports clubs. York City Knights would not be able to occupy the Stadium at the start of the Season 2016. The estimated timetable set out would see the stadium operational for the beginning of that season. It has been agreed with the club that the timetable and progress will be monitored. Both clubs will use Bootham Crescent as an interim ground share facility during construction. It is intended that this arrangement will last for only one season however, as a precaution the agreement will need to make provision for two years as a maximum.

### **Athletics Facility Timetable and Delivery**

30. The Cabinet paper (6 March 2012) outlined the proposed business plan for the new community stadium and associated athletics development. The replacement athletics facility is a requirement in providing vacant possession of Huntington Stadium to the winning bidder.
31. Feasibility studies have now been completed on both the Heslington East Sports Village site and the Heslington West campus. Authority to build a facility with the University and use of the £2M capital funds was confirmed in the March 2012 Business Case approved by Cabinet.
32. Heslington West has been confirmed as the preferred site due to the improved ground conditions, enabling a quicker build, significant financial savings in comparison to the East site and the ability to deliver a better facility due to the existing infrastructure and facilities surrounding it. The proposed specification and plan for the facility is included in Annexes 1 and 2.
33. The capital budget is £2m which includes a grant payment of £31,000 to CYAC. A grant agreement will secure the services of City of York Athletics Club to assist CYC in strategic development of community athletics at the new facility for the first five years. The key deliverables are:
- County Standard athletic track and facility
  - New sand dressed artificial hockey and football pitch
  - Grass infield to track suitable for both athletics field and football
  - 500 capacity covered viewing stand
  - Club house and changing facilities
34. The current delivery timetable, shown below in Table 4, for planning and delivery of the project is due to be completed by September 2014 and including a period of slippage it could be up to 30 October



2014. Planning permission for the artificial pitch site is already in place and the Athletics planning application has just been submitted.

35. Heads of Terms have been agreed for the delivery of the project and signed by all 3 parties, CYC, CYAC and University of York. Sport England and the local planning authority have also confirmed approval and willingness to discharge the relevant planning conditions if this facility is approved.

**Table 4: Heslington West Athletics Development – Key Dates**

<b>Event</b>	<b>Planned Date</b>
Project Approval to Proceed	August 2013
Sign-off of Legal Agreement, following cabinet approval	January 2014
Selection of Specialist Athletics Consultant Support	September 2013
Replacement JLD Pitch	
Issue Tender Enquiry	October 2013
Award Contract	December 2013
Commence Work	January 2014
Completion	May 2014
Athletics Track and Stand	
Development of Outline Design	December 2013
Submission of Planning Application	December 2013
Planning Approval	March/April 2014
Issue Tender Enquiry	January 2014
Contractor Selection	February 2014
Commence work on Athletics Facilities	April 2014
Complete Athletics Facilities	August 2014
Final Snagging and Acceptance	September 2014

## Implications

### Financial

36. As set out in the Update Business Case section of this report, the overall financial contribution from the Council is not changed.
37. Arrangements reached with project partners and sports clubs set out in paragraphs 14-16, base rents are used within the DBOM contract to minimise the on-going risk to the council. The surplus share mechanism offers the council the possibility of improving the financial position.
38. The dialogue regarding the stadium design has confirmed that it is more cost effective to reduce the range of the capacity expansion. This reduces the overall cost risk.
39. Securing the funds from the FSIF through the disposal of Bootham Crescent remains a risk until a high ranking charge can be secured against the asset. Therefore, it is sensible that the design process caters for changes to be made at a later stage without compromising the final bid process.
40. Athletics Delivery – The capital budget is £2m which includes a grant payment of £31,000 to CYAC. A grant agreement will secure the services of City of York Athletics Club to assist CYC in strategic development of community athletics at the new facility for the first five years.
41. Human Resources – There are no new equalities implications arising directly from the recommendations contained in this report.
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 consultation for the planning process progresses.
43. Legal – detailed legal comments will be provided once negotiations are completed and prior to contract award
44. Crime and Disorder – none
45. Information Technology (IT) – none
46. Property – none

## Risk Management

47. A recent paper was taken to the Council's Audit & Governance Committee (December 2013) regarding the Risk Process for the Stadium project. A robust risk management process is in place to control the projects risks and issues. The risk and issue registers are commercially sensitive and must remain confidential, however a summary of some of the key risks is provided below.
48. It must be emphasised that these summaries are presented as potential risks i.e. issues or events 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 or has occurred.
49. **Risk 8: Insufficient Bidders:** Two bidders have been invited to the final stage of the process. Although it is possible to continue with project with one bidder, this would remove the competitive nature of the process and weaken the value for money objectives of the process. If both bidders were to withdraw at this late stage, the procurement would end, however this is unlikely at this stage.
50. **Risk 9: YCFC / FSIF £2M:** Only £350K is required from the sale of Bootham Crescent for the purpose of the capital build project. However, this needs to be secured by means of a charge against Bootham Crescent. As set out in the report, the FSIF £2M loan can only be converted to a grant when a safety certificate is provided. It is not possible to continue with the design process to detailed stages without funding certainty. Unless a first charge can be secured against the Bootham Crescent in place of the FSIF charge or some other guarantee provided by the football club the design process will need to proceed assuming the funding is not secured.
51. This will result in a smaller base capacity, however, would release the restriction of an all seat requirement.
52. **Risk 22: Project Resources:** The more advanced the process, the lower this risk becomes. However, this is a complex project with considerable property, legal and design challenges. Failure to properly resource the project through the procurement process may result in a lack of confidence from the final two bidders. 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 risk is controlled by regular budget reports being presented to the Project Board.

53. **Risk 25: Replacement training facilities** for YCKs in line with planning condition 29: This has two impacts, 1) conditions for stadium consent cannot be met 2) scheme cannot progress. Until an agreement is legally binding this will remain a risk.

54. **Risk 36: Interim operation of Huntington stadium:** These proposals provide assurance of the continuity of the service. Although there will be an ongoing financial commitment to keep the stadium open, both YCKs and COYAC need to remain in occupation until alternative facilities are available.

## **Recommendations**

55. Members are asked to:

1) Note progress on the project and procurement to date, particularly that:

- i) The project is proceeding into the final procurement stage within the existing financial parameters.
- ii) The changes made to the estimated project timetable and key milestones.
- iii) Match-day agreements and leases for the project partners will be finalised and that these will all be subject to the overall project contract.
- iv) A detailed report is presented to Cabinet prior to contract award setting out the results of the procurement and the financial implications.

2) Seek tenders that encourage cost effective design solutions for the stadium that:

- i) Meets current Football League and Rugby Football League entry requirements.

- ii) Removes any 'built-in' expansion requirement.
- iii) Results in a well balanced and attractive stadium bowl.
- iv) As an option, considers the use of some terracing as a means of increasing the base capacity.
- v) Makes provision within the design to increase the capacity as an all seat solution if the FSIF funding can be legally secured and / or promotion to the Football League 'Championship' is achieved at a later date.
- vi) Demonstrates an all seat capacity of 10,000 can be achieved at a later stage, within the stadium footprint.

3) Agree that the new Athletics track be delivered at Heslington West Campus as set out in the report, including the payment of a grant of £31,000 for the delivery of a community athletics programme.

4) Note the risks highlighted and agree that the Project Board continue to manage the project risks.

**Reason:**

To ensure the effective delivery of this procurement exercise and that it remains within the financial parameters set.

**Contact Details**

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	<b>Report Approved</b>	√	<b>Date</b>	26 November 2013
<b>Specialist Implications Officer(s)</b>				
<b>Wards Affected: All</b>				√
<i>For further information please contact the authors of the report</i>				

### **Supporting Annexes**

- **Annex A:** Athletics minimum specification for delivery.
- **Annex B:** Site plan for athletics scheme at Heslington West.

### **Background papers**

- Paper 6<sup>th</sup> July 2010: Community Stadium Business Case.
- Paper 6<sup>th</sup> March 2012: Community Stadium Business Case.
- Decision Session of the Cabinet Member for Leisure, Culture & Tourism 9<sup>th</sup> January 2012.
- November 6<sup>th</sup> 2012: Community Stadium Cabinet Update.

### **Glossary of Terms:**

**DBOM – Design, Build, Operate and Maintain (contract).**

**OJEU – Ordinary Journal of the European Union.**

**EU – European Union.**

**ITCD – Invitation to Continue Dialogue, (a stage of the procurement exercise).**

**FSIF – Football Stadium Improvement Fund.**

**JLD – University of York name for Astroturf pitch.**

**CYC – City of York Council.**

**CYAC – City of York Athletic Club.**

**S106 – Section 106 of the Town & Country Planning Act 2000 (as amended).**

**YCFC – York City Football Club**

**YCK – York City Knights Rugby Football League Club.**