
Executive

17th March 2016

Report of the Deputy Chief Executive / Director of Customer Business Support Services

Community Stadium & Leisure Facilities Report

Summary of the report

1. This report sets out recommendations to proceed with the Community Stadium and Leisure Facilities Project (“Project”), agree the required Project budget and agree to complete all final negotiations and legal agreements for the Project. In doing so this represents a major decision by the Council in taking forward a scheme that will bring considerable enhanced facilities to the city, improve the leisure offer, provide a home for both the local professional football and rugby clubs, create jobs, and provide a range of community use within the development.
2. In the February 2009 Budget the Council approved a £4m investment into a new Community Stadium for the city. In March 2012 the original business case for the Project was approved at full Council.
3. In July 2012 outline planning consent was granted for the Vangarde Retail Park, providing for a minimum 6000 all seat community stadium on the grounds of the existing Huntington Stadium.
4. In September 2012 a competitive dialogue procurement exercise commenced to procure a partner to design and build a New Stadium and Leisure Complex (“NSLC”) and operate the NSLC together with the city’s wider leisure facilities, Energise and Yearsley Swimming Pool under a 13 year contract.
5. In September 2014, the Cabinet confirmed Greenwich Leisure Ltd (“GLL”) as the preferred bidder from the procurement exercise and GLL have been working with the Council and a wider team of partners since their appointment to finalise the NSLC scheme.
6. During late 2015 / early 2016 significant work has been undertaken to progress the NSLC scheme to a final position ready for construction. Members of the Executive have been closely involved in the development of the NSLC scheme over this period, in order to demonstrate the Council’s commitment to partners, and to get to the point where a clear recommendation to progress the scheme can be made. Extensive value engineering has been ongoing since June 2015 to reduce the capital cost by a sum in excess of £4m, whilst incorporating additional community use space and increased Project contingency.

7. The Project will deliver an exciting NSLC scheme, comprising:
 - I. An 8,000 all-seat community sports stadium to host professional football and rugby league games (“Stadium”).
 - II. A new leisure and sports centre (“New Leisure Facility”), including:
 - 25m swimming pool,
 - teaching pool (with spectator provision),
 - leisure fun pool,
 - 100 station gym,
 - dance studio,
 - group cycling studio,
 - competition standard sports hall (with spectator provision),
 - extreme Clip ‘n’ Climb play centre,
 - outdoor high ropes climbing facility,
 - 3G astro-turf pitches (multi-use games area).
8. The proposed NSLC will also see the delivery of a large community hub within the Stadium’s East Stand (“Community Hub”) providing a range of uses and space for Community Partners (identified below) focused around an atrium containing an Explore Library and cafe meeting area. Explore Library will provide a new type of library aimed at accessing new users & groups, allowing users to access books, IT equipment, free Wi-Fi and a range of learning activities.
9. York Teaching Hospital NHS Foundation Trust (“NHS”) will have a significant 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. These areas will become a hub for learning and development, including collaborative work with partner organisations in the fields of health promotion/education and wellbeing. The use by the NHS of the Stadium for these purposes proposed will be a national first, creating a true community stadium.
10. York Against Cancer, a locally based charity, will have a prominent presence within the Community Hub through a retail unit, office and meeting space. Their inclusion in the NSLC will allow them to expand their current organisation and help increase awareness for the projects they currently fund, which include cancer care, research, education and information.

11. The proposed NSLC will be delivered together with a commercial development comprising a state of the art Multiplex Cinema and a number of restaurant and retail units (the “Commercial Development”). The cinema will consist of 13 screens, a lounge, a bar and the city’s first digital IMAX screen. There will be in total 5 restaurant units and 3 retail units.
12. The proposed NSLC and the Commercial Development will provide a major boost to the City’s sport and leisure offer by establishing a range of exciting high quality leisure facilities that far exceed those currently available.
13. The Project also covers the operation and maintenance of Energise Leisure Centre and until the NSLC is operational (as a minimum), Yearsley Swimming Pool.
14. Members agreed up to £0.3m per annum funding from the New Homes Bonus for up to five years to maintain Yearsley Swimming Pool as part of the 2015/16 budget. A Review is currently underway to examine different potential operating models for the management of the pool. A report will be brought to Executive later in the year to confirm the long term operation of Yearsley Swimming Pool following the completion of the Review (as set out in the main report at paragraphs 24 - 31).
15. The Project has already delivered, in partnership with the University of York, a new regional standard athletics facility and new sand dressed astro-turf pitch, significantly improving the City’s sport offer.
16. In terms of the timetable for the delivery of the Project, it is anticipated that the construction of the NSLC will reach practical completion by winter 2017 and will be operational early 2018, following fit-out and the attainment of the requisite Stadium safety certificate licences for the facilities.

Financial Summary

17. The NSLC is proposed to be funded by a mix of Council capital funding (borrowing), s106 funds (from the Vangarde Retail Park development), a contribution from York City Football Club (YCFC) and funds arising from the Commercial Development.
18. The capital costs of the Project are greater than those in the budget approved in September 2014. However, the revenue costs over the 13 year contract period are significantly lower than the current approved budget.
19. The costs and the proposed funding for the Project as well as a comparison of the current costs against the current budget (approved by Cabinet in September 2014) are summarised in table 1 below.

20. Table 1 – Project Cost Summary

Project cost summary	Sept '14 approved position (£'000)	March '16 revision (£'000)	Variance (£'000)
CAPITAL COSTS			
Total capital cost	37,000	44,200	+7,200
FUNDING			
External funding:	29,000	29,800	+800
Section 106 - Stadium	15,000	15,300	+300
Section 106 – Transport + highways		1,200	+1,200
Commercial Land Receipt	12,000	11,300	-700
YCFC / FSIF	2,000	2,000	0
Council funding:	8,000	14,400	+6,400
Prudential Borrowing	8,000	13,400	+5,400
Venture Fund	0	1,000	+1,000
Total Capital Funding	37,000	44,200	+7,200
13 Year Revenue Costs (leisure budget)	5,600	1,300	-4,300
Potential additional business rates over 13 year period	0	-3,000	-3,000

21. As set out in table 1 the change in capital cost to the Council compared to the current budget is an increase of £7.2m, of which £5.4m is recommended as CYC additional prudential borrowing. The change in revenue costs compared to current budget is a reduction of £4.3m.
22. The NSLC scheme will also achieve in the region of £3m of business rates (revenue income) over the 13 year period which are not assumed in any budget forecasts. This is on the assumption that only 25 per cent of the full rates receipt can be retained by the Council as per the current local government finance system. It should be noted that this may change as the government are looking to allow local authorities to retain a larger share of business rates in the future.
23. It is proposed that the capital costs increase is funded from a combination of additional prudential borrowing (£5.4m), the use of an element of the s106 agreement funding provided for Highways and Transportation (£1.2m), and £1m from the Council Venture fund.

24. The increase in the capital costs of the Project are a result of the progression of the scheme's design up to a much more detailed level, construction inflation, delays in the timetable and the inclusion of an increased Project contingency.
25. The annual cost of the additional £5.4m prudential borrowing is approximately £0.4m. This cost will need to be incorporated into the 2017/18 budget as a committed growth bid.
26. As table 1 above sets out, the overall Project provides a significant revenue saving from that approved in September 2014. This is due to the level of external income that is brought to the Project from the Sports Clubs, Community Partners and Stadium Naming Rights Sponsorship. It should be noted however that in the early years of the contract there is a cumulative budget shortfall of up to £0.3m. It is proposed that the early years deficit will be mitigated by use of the Venture Fund where necessary. Following the first four years of the contract there will be significant budget savings. This will allow for the Venture Fund to be repaid and provide a spare leisure budget of c.£0.5m per annum from 2023/24.

Project risks

27. The Project contains a number of significant risks, which Members need to consider carefully, and be fully aware of. This is one of the largest capital projects the Council will have embarked upon, with only West Offices and the joint Waste Scheme with North Yorkshire County Council being of similar or greater value. It is also by its nature a project that involves a number of different partners, and different funding sources. The ongoing long term use of the NSLC, and associated revenue implications are risks. Income streams from the various users, and the letting of the elements of the NLSC and Commercial Development that the Council is responsible for, cannot be guaranteed over the period of the contract. Whilst some risks can be mitigated to some extent, even after mitigation there remain significant risks inherent within the Project. These significant risks, in terms of construction and ongoing viability, are set out further in the report.

Implications of not proceeding with the Project

28. It should be noted that the procurement exercise undertaken to date, and the commercial negotiations around the Commercial Development, require that the Project must be taken forward in its entirety. It is not possible at this stage of the Project to select and take forward only certain recommendations. It is a complete Project proposal, with the Council's ability to pay for the construction of the NSLC underpinned by the values realised by the Council from the land transactions relating to the Commercial Development.

29. The report recommends approval to progress with the Project, conclude the procurement and enter into all legal agreements required to deliver the construction and operation of the NSLC, the operation of the city's wider leisure facilities, and the realisation of the Commercial Development adjacent to and within the NSLC site.
30. The implications and abortive costs that would arise from a decision by Executive (or Full Council) not to progress with the Project are identified in the report at paragraphs 134 - 141.
31. The initial implication from withdrawing from the procurement is that it will be necessary to write off £4.2m of abortive costs from the Project that have currently been charged to capital expenditure and charge these costs to revenue in the 2015/16 accounts. This has significant implications for the Council as this would ultimately impact Council reserves reducing them to £2.7m compared to a minimum recommended level of £6.4m. This position would require Members to make further decisions to reduce expenditure in 2016/17 to rebuild reserves to a prudent level.
32. Members would also need to consider a new approach to re-procurement of a new stadium facility and management of the existing leisure facilities. Should Members choose to simply deliver the minimum requirements of the s106 obligation, a new stadium and public amenity/multi games use area (3G astro turf pitches), there will be £19.6m capital available for the re procurement of these two elements. This approach would not though provide new swimming or leisure facilities, new retail development with associated additional business rates or deliver the revenue savings that the NSLC scheme offers.
33. Not proceeding with the Project and therefore having to start a new procurement process to deliver a new community stadium will delay the opening of any new stadium by at least 2-3 years from the scheduled operational date set out in this report.

Recommendations

Executive is asked to recommend the following to Full Council:

- I. That agreement is given to proceed with the Community Stadium and Leisure Facilities Project.
- II. That the Director of Customer and Business Support Services, in conjunction with the Leader and Executive Member for Leisure & Culture be authorised to complete all final negotiations and arrange execution of the following legal documents:
 - a) the Design, Build, Operate and Maintain contract (“DBOM Contract”) and ancillary documents to the DBOM Contract;
 - b) Freehold transfer of the land adjacent to the proposed South Stand of the NSLC (“Southern Block”);
 - c) Agreement for lease of the East Stand Retail Units;
 - d) Agreement for lease of commercial space on first floor of the Southern Block;
 - e) Agreements for lease with the Community Partners.

In relation to the project finances;

- III. The approval of a total capital budget of £44.2m for the Project (as set out at table 2).
- IV. Recommend funding for the Project as set out below:
 - a) £15.3m Stadium s106 contribution
 - b) £2.0m Football Club contribution
 - c) £1.2m Highways S106 contribution
 - d) £11.3m Commercial Capital Land Receipt
 - e) £13.4m Prudential borrowing
 - f) £1.0m Venture Fund

£44.2m
- V. That additional borrowing of £5.4m, within the revised total Capital budget of £44.2m, is undertaken to fund the Project (as set out at paragraph 63).

- VI. That the annual additional borrowing costs (£0.4m) relating to the prudential borrowing set out under recommendation V be included as a committed growth item in the 2017/18 Revenue Budget.
- VII. That the Venture Fund be used to fund £1.0m of the capital expenditure which will be repaid from later years leisure revenue budget savings (as set out at paragraph 75).
- VIII. The use of the Venture Fund to manage early years deficits on the leisure revenue budget, up to a total of £0.3m. This to be repaid from later years savings on the leisure revenue budget (as set out at paragraph 75).
- IX. That £1.2m of the transport mitigation monies from the Vangarde Section 106 Agreement be used to fund the Project (further detail of which are set out at paragraph 58).
- X. That £0.4m be used from the existing stadium capital budget for continued early design works through to DBOM Contract signature (“Financial Close”). This £0.4m will be netted off from the overall DBOM Contract capital cost set out in the report and is therefore not an additional cost.

In relation to the Commercial Development;

- XI. That the Commercial Development proposal be approved bringing the “Capital Land Receipt” and capital contribution to Stadium works to the Project (further detail of which are set out at paragraphs 32 - 41).
- XII. That the freehold land transfer from the Council to the Investment Fund of the Southern Block is approved.
- XIII. That the terms of Agreement for Lease of the East Stand Retail Units under which the Council will grant a 250 year lease to the Investment Fund be approved.
- XIV. That the Director of Customer and Business Support Services, in conjunction with the Leader and Executive Member for Leisure & Culture be authorised, following further negotiations, to finalise and arrange execution of a 15 year lease with the Investment Fund for a portion of commercial space in the Southern Block (further detail of which are set out at paragraphs 42 - 43).

In relation to the other matters in respect of the Project;

- XV. That the Director of Customer and Business Support Services, in conjunction with the Leader and Executive Member for Leisure & Culture be authorised to complete all final negotiations and arrange execution of the Stadium Naming Rights Sponsorship agreement.
- XVI. That the terms of the current DBOM Contract, as set out at paragraphs 22 - 29 be acknowledged and in relation to Yearsley Pool note the continuing Review which will be subject of a separate Executive report to be brought in Autumn 2016.
- XVII. That the current anticipated Project timetable for delivery of the NSLC in the report is acknowledged, as set out at table 7.
- XVIII. That the risks of the Project as set out in the report, that cover the period to reaching DBOM Contract signature and through the NSLC construction period and the ongoing operation of the full term of the DBOM Contract, are noted.

Reason for recommendations:

To progress with the Project and enter into all legal agreements to deliver NSLC and operation by GLL of the NSLC and the city's wider leisure facilities.

Should Executive not approve the recommendations to proceed with the Project, the implications and abortive costs that would arise are set out at paragraphs 134 - 141.

Main report

PROJECT BACKGROUND

1. The following section of the report sets out the background and key decision points in the Project over recent years;
2. February 2009 – Budget Council approved a £4m investment into the Community Stadium Project subject to a detailed business case report being taken back to Executive (brought back in March 2012).
3. January 2012 – Approval received at decision session for the Executive Member for Leisure, Culture & Social Inclusion to develop the procurement framework for a competitive dialogue procurement which would include the design, build, operation, and long term maintenance (“DBOM”) of a stadium and the city’s wider leisure facilities.
4. March 2012 - Original business case approved by Full Council for the Stadium Project.
5. July 2012 – Outline planning consent granted for the Vangarde Retail Park, providing for a minimum 6000 all seat community stadium.
6. September 2012 – Competitive dialogue procurement commenced.
7. September 2014 – Executive report approves GLL as preferred bidder from procurement process along with the NSLC scheme details. This report also seeks Council approval for additional £4m prudential borrowing for the capital investment in the replacement leisure facilities at NSLC, including a new swimming pool.
8. October 2014 – Council approve additional £4m prudential borrowing for the capital investment in the replacement leisure facilities.
9. March 2015 – Detailed planning approval granted for the NSLC scheme.
10. August 2015 – Executive report receives approval to proceed in entering an early works agreement with GLL to commence early site works in preparation of the main DBOM Contract. This work included the demolition of the existing site stadium/leisure facilities, the expansion of the adjacent park & ride facility and progressing design work.
11. November 2015 – Early works commence for the demolition of the existing site stadium/leisure facilities and the expansion of the adjacent park & ride facility.
12. March 2016 – Approval is sought through this Executive report to proceed in entering into the DBOM Contract with GLL for the delivery of the NSLC scheme and long term operation of the NSLC and the city’s existing leisure facilities.

NEW STADIUM LEISURE COMPLEX FACILITY OUTPUTS

NSLC scheme

13. The NSLC scheme will offer the following community and leisure facilities:
- I. An 8,000 all-seat community sports stadium to host professional football and rugby league games (“Stadium”).
 - II. A new leisure and sports centre (“New Leisure Facility”) including:
 - 25m swimming pool,
 - teaching pool (with spectator provision),
 - leisure fun pool,
 - 100 station gym,
 - dance studio,
 - group cycling studio,
 - competition standard sports hall (with spectator provision),
 - extreme Clip ‘n’ Climb play centre,
 - outdoor high ropes climbing facility.
 - 3G astro-turf pitches (multi-use games area)
 - III. A Community Hub, including a central atrium, within the Stadium East Stand which will offer;
 - cafe meeting area;
 - access to stadium & leisure facilities;
 - community uses which will be occupied by (subject to agreement of lease documentation being finalised) the following Community Partners;
 - York Teaching Hospital NHS Foundation Trust (“NHS”) Facilities – the NHS will have a significant 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 which will become a hub for learning and development including collaborative work with partner organisations in the fields of health promotion/education and wellbeing as well as statutory and mandatory training.

- York Against Cancer – This York based charity is to have a prominent presence within the Community Hub through a retail unit, office and meeting space. York Against Cancer is an established local charity who raise money to help and support cancer patients and their families living with cancer, and the effects of cancer, in the York and surrounding area. Moving to the Community Hub will be the start of a new phase of its development, which will have a positive affect and put its name in front of many more supporters, in turn allowing the charity to expand its support to additional worthwhile projects and enable them to help more people across the region.
- York Gateway Explore Library – Library offer based in the main atrium area, integrated within the cafe. Providing a new type of library aimed at accessing new users & groups, allowing users to access books, IT equipment, free Wi-Fi and a range of learning activities.

14. The Commercial Development proposed at the NSLC site will see the delivery of:
 - I. A cinema – 13 screen Cinema, VIP lounge and bar, including the city's first state of the art digital IMAX screen. This is part of the Southern Block.
 - II. 5 Restaurant Units – 3 Restaurant Units in the Stadium East Stand, with a further two Restaurant Units within the south east location of the Southern Block (adjacent to the Cinema entrance). Heads of terms have been agreed with national restaurateurs who together offer a blend of dining to complement the NSLC and existing Vangarde Retail Park.
 - III. 3 Retail Units – These will be in the Southern Block and will have access to dedicated car parking.
 - IV. Leisure Unit - Leisure space on the first floor of the Southern Block (adjacent to the Cinema).
15. Further details with regards the proposed Commercial Development associated with the NSLC are set out at paragraphs 32 - 43.
16. The NSLC scheme also provides significant additional economic benefits, including employment relating to construction and operation of new leisure and retail facilities. In addition, the scheme will deliver in the region of £3m of business rates (revenue income) over the 13 year period which is not assumed in any budget forecasts. This is based on the assumption that only 25 per cent of the full rates receipt being retained by the Council as per the current local government finance system. It should be noted that this may change as the government are looking to allow local authorities to retain a larger share of business rates in the future.

17. Artist impressions and plans of the proposed NSLC scheme and associated Commercial Development can be seen within Annex A.

NSLC Site Management

18. GLL will be responsible for the overall management of the NSLC site and the direct management of the Community Hub, the New Leisure Facilities and associated assets under the terms of the DBOM Contract. As part of the procurement process, GLL have appointed York City Football Club (YCFC) through a stadium operating company as the FM sub-contractor to provide stadium management services. The FM sub-contractor will work with CGC (York Racecourse Hospitality Company) to deliver catering at the NSLC.
19. GLL will be responsible for the management and reporting arrangements of all partners and tenants within the Stadium & Community Hub. The DBOM Contract sets out the Council requirements under which GLL are required to operate including a detailed service specification and payment and performance monitoring system.
20. This service specification is largely output based and sets out the performance standards that are required in the delivery of the services for all facilities. The structure of this services specification directly relates to how the performance standards will be assessed for the purposes of the payment and performance monitoring system as set out below:
 - Part A – General (e.g. Facilities to be available, pricing requirements)
 - Part B – Availability Requirements (e.g. Opening hours, staffing, health and safety requirements)
 - Part C – Monthly Performance Requirements (e.g. Cleaning, customer care, marketing, sport and physical activity operational plan)
 - Part D – Annual Performance Requirements. (e.g. Authority outcomes, quality accreditation)
21. The Council is keen to work in a positive partnership with GLL to ensure that the outcomes it requires from the services are met and continuous improvement is achieved throughout the contract period.
22. To facilitate this aim, the Council will adopt a payment and performance monitoring system that is both effective in helping to achieve the desired outcomes and efficient to operate whilst enabling financial deductions to be made if performance failures are experienced. In addition, a bonus points system has been included to incentivise GLL to over-achieve in key areas.

Wider City Leisure Facilities

23. The DBOM Contract includes the operation of the NSLC (as set out above), the Energise Leisure Centre and until the NSLC is operational (as a minimum), Yearsley Swimming Pool.

Yearsley Swimming Pool Ongoing Review

24. 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 Yearsley Swimming Pool review explained below.
25. In August 2015 the Executive agreed that a Yearsley Swimming Pool review (the Review) would commence in October 2015 and report back to the Executive when concluded. This was part of the new joint administration's 12 point plan commitment to provide a sustainable long-term operational solution for the pool.
26. The Review process is examining different potential operating models for the future management of the pool. This comprehensive assessment will seek to ensure a cost effective solution is identified with minimal disruption to service delivery.
27. The operation of Yearsley Swimming Pool was part of the original procurement process and is already included in the DBOM Contract for the first two years up until the point that the NSLC is operational.
28. The outcome of the Review cannot be pre-determined but it is possible that an outcome is that the Executive recommends that Yearsley Swimming Pool should be continued to be run by GLL. In light of that possibility the DBOM Contract includes a pre-agreed costed variation mechanism which, should the Executive recommend this option, can be exercised to enable Yearsley Swimming Pool to remain within scope of the services to be provided by GLL for the remainder of the contract.
29. If the recommended outcome of the Review is not for GLL to continue to operate Yearsley Swimming Pool, it will no longer form part of the services under the DBOM Contract following the opening of the NSLC. If this were to be decided Executive would need to consider future operating options for the facility.
30. The ongoing Review includes a number of key stakeholders:
- GLL.

- Nestlé – who own all the surrounding property interests including the car parks. Nestlé recently made a commitment to working collaboratively with the Council.
 - Yearsley Action Group - 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.
31. It is anticipated that the Review will be complete and a recommendation for the future operation of the pool brought back to the Executive in Autumn 2016.

NSLC COMMERCIAL DEVELOPMENT

32. As part of the procurement exercise GLL brought forward a scheme which included a Commercial Development proposal to complement the leisure offer. The Commercial Development also provides a significant amount of the funding for the NSLC. The scheme proposed by GLL received planning approval in March 2015.
33. Since the approval of planning in March 2015 GLL and their commercial Developer, Wrenbridge Sport, have progressed the Commercial Development identifying end tenants and engaging with the Investment Fund who will ultimately acquire the Commercial Development.
34. Throughout the progression of the Commercial Development the Council has received independent market expert advice from Savills UK Ltd (“Savills”) on the value for money of the GLL proposal.
35. In March 2016, Savills provided the Council with a commercially confidential formal RICS valuation report on the Commercial Development deal proposed by the Investment Fund, and reflecting the Heads of Terms for pre-lets which have been agreed. The report concludes:
- The aggregate Capital Land Receipt value of £11.25m payable to the Council in the opinion of Savills is reflective of the current value in present market conditions.
 - The Developer’s Profit presented within the Commercial Development appraisals is in the opinion of Savills in line with market expectations for a scheme at this stage of progress in terms of pre-lets and exposure to outstanding letting risks.
 - The inputs into the gross development value in terms of pre-let rents, target rents on remaining unlet units, together with the investment yields applied are realistic and reflective of market conditions, certainly

those prevalent at the time which the commitment to the Investment Fund was agreed.

- The overall approach and methodology set out in relation to the key components of the Commercial Development appraisals, including the finance costs, are reflective of an appropriate approach in current market conditions.
- It must be appreciated that land values for a mixed use development project of this nature are notoriously volatile, and in the absence of the agreed pre-lets and the forward funding & forward commitment agreed with the Investment Fund the value of £11.25m would not be achieved.

36. The Council will receive in total £13.75m from the Commercial Development. £11.25m will be paid as a Capital Land Receipt shown as additional funding to the Project and £2.5m through a contribution to the Stadium works, shown as a reduction in capital cost.

37. The Capital Land Receipt will be received in two instalments;

- I. £7m on the execution of the DBOM Contract. This is payable by the Investment Fund for the freehold of the land for the Southern Block, which will house retail units, the cinema and a car park.
- II. £4.25m on Practical Completion (PC) with the grant of a 250 year long leasehold for the East Stand Retail Units within the Stadium. The terms of the leasehold will be governed by an agreement for lease signed simultaneously with execution of the DBOM Contract.

38. The contribution to the Stadium works will be received as follows;

- I. £1m will be paid towards the cost of the construction of the Stadium East Stand Retail Units. This will be payable upon reaching PC on the East Stand Retail Units.
- II. £1.5m will be paid towards the cost of the highway and public realm works that need to be carried out alongside construction of the NSLC. This will be paid as works are incurred to ensure no adverse cashflow implications for the Council.

39. Heads of terms have now been agreed between the Developer and the Investment Fund whom are purchasing the rights to the Commercial Development. A legal agreement will be in place transferring the benefit of the Commercial Development from Wrenbridge to the Investment Fund prior to completion of the freehold transfer and agreement for lease described at paragraph 37 (I) and (II) above. The freehold transfer of the Southern Block and lease of the East Stand Retail Units will ultimately be transactions between the Council and the Investment Fund direct.

40. It should be noted that execution of an agreement between the Council and the Investment Fund is conditional upon the following:
- I. exchange by the cinema of an agreement for lease with no conditionality;
 - II. exchange on a 15 year agreement for lease with the Council for commercial space within the Southern Block;
 - III. confirmation of a fixed price building contract for the Commercial Development;
 - IV. satisfactory Planning Consent being received in relation to the required amendments to the design of the Southern Block which are being addressed through a section s73 application that has been submitted to the Local Planning Authority.
41. It is intended to complete the documentation between the Investment Fund and the Council as soon as is reasonably practicable but to make the execution of the relevant documents conditional upon Financial Close of the DBOM Contract.

CYC Commercial lease of space within Commercial Development

42. The Investment Fund has insisted that the Council take a 15 year lease on a portion of commercial space in the Southern Block. The Council's covenant strength gives certainty to the development appraisal which gives the Investment Fund the required confidence to sign up to the agreement with some commercial space not pre-let.
43. The Council's intention is to onward sub let this space. However until the Council finds an end tenant there will remain a void risk on this space. The exact details of the lease are still under discussion with the Developer and it is proposed that a final decision on the detail of the lease is delegated to the Leader in order to prevent any delay to Financial Close of the Project.

PROJECT FINANCIALS

Capital Costs

44. Since the capital costs were last reported in full at Cabinet in September 2014 considerable progress has been made on the Project. Through this 17 month period the construction costs for the NSLC under the DBOM Contract (the "NSLC Construction Cost") has increased, however, it now represents a final cost rather than cost plan provisions that were subject to inflationary increases.
45. During late 2015 / early 2016 significant work has been undertaken to progress the NSLC scheme to a final position ready for construction. Extensive value

engineering has been ongoing since June 2015 to reduce the capital cost by a sum in excess of £4m, whilst incorporating additional community use space and increased Project contingency. Members of the Executive have been significantly involved during this period in ensuring continued commitment to the scheme to partners, whilst at the same time seeking to ensure cost reductions were achieved.

46. The increase in the capital cost of the Project is a result of the progression of the schemes design up to a much more detailed level, construction inflation, delays in the timetable and the inclusion of a Project contingency.
47. A NSLC Construction Cost for the Project was received by the Council on 3rd March 2016 which represents a cost that aligns to the final proposed scheme and the timetable for delivery set out in this report.
48. The NSLC Construction Cost is held by GLL for a period up to 3 months beyond the scheduled DBOM Contract signature date of June 2016. Although the current NSLC Construction Cost represents a fixed cost, should further design changes be made before the DBOM Contract is signed, the cost could be subject to change.
49. Table 2 below sets out the final NSLC Construction Cost at March 2016 alongside the wider Project costs to present an overall capital outturn position for the Project.
50. Table 2: Project Capital Costs

Overall Project Capital Cost Summary	Sept 2014 Budget (£'000)	March 2016 Executive (£'000)	Difference (£'000)
NSLC Construction Cost ^{*1}	31,000	36,700	+ 5,700
Other Project costs ^{*2}	6,000	7,500	+ 1,500
Capital Cost Subtotal	37,000	44,200	+ 7,200

Table 2 Notes -

**1) Includes the Early Works Agreement Costs, including the park & ride expansion. Excludes the Commercial Development construction costs for the Southern Block which are part of a separate agreement between the building contractor and GLL's developer, Wrenbridge Sport.*

**2) Project costs adjusted to account for budget pressures through the Project's delayed extension and provide sufficient contingency through to Project close. Project costs also include the Athletics track reprovsn, York City Knights (YCK) interim first team arrangements at Bootham Crescent, YCK long term reserve team and training agreement at York St John University, Project team and advisor costs.*

Funding

51. The report to Cabinet in September 2014, and ratified at Full Council in October 2014, detailed an overall funding requirement for the Project of £37m.
52. Members agreed to the borrowing of £4m in March 2012 to fund the athletics facility within York University and a commitment to the delivery of the Project.
53. From the original Stadium business case, approved by Members in March 2012, the Project identified that the Vangarde s106 monies of £13.7m plus fees of £1m once received would be used to fund the scheme. These s106 funds were received by the Council on 14th May 2013.
54. In addition to the Vangarde s106 monies of £13.7m plus fees of £1m, there is a s106 contribution of £0.3m towards the building of a public amenity/multi-use games area due before Stadium construction works are complete.
55. In a report to Cabinet in September 2014, and ratified at Full Council in October 2014, an additional £4m capital to deliver the enhanced New Leisure Facilities of the proposed NSLC scheme was approved. In addition, the Project will receive a contribution from YCFC of £2m which is due on the sale of Bootham Crescent.

Funding movements since last presented to Cabinet in September 2014

56. *S106 funds* - The Vangarde s106 funds have been accruing interest, to the value of £0.3m and it is proposed that this interest is used to support the overall Project. The interest derived equates to circa 0.5% per annum which has been the average interest earned on Council cash balances since the cash was received in May 2013. This has generated interest payments through to the scheme of c.£0.1m per annum.
57. *Funds arising from the Commercial Development* - When reported in September 2014 the funds arising from the Commercial Development being delivered as part of the NSLC were based on the development appraisal at that point and had not been to market to source a final Investment Fund. An Investment Fund is now in place and the land receipt is now anticipated to be £11.3m compared to the £12.0m assumed in September 2014.
58. *S106 highways contribution* - The s106 Agreement for the original stadium/Vangarde scheme included £2.3m for highways mitigations to be used to extend the existing park & ride car parking capacity and other specified transport mitigation measures relating to the stadium and Vangarde developments. This report seeks approval for £1.2m of this highways mitigation s106 money be used towards the costs of extending the capacity of the park & ride. Costs above £1.2m have already been expended through the Early Works Agreement approved by Executive in August 2015 and contained within the NSLC Construction Cost. The financial risk and legal implications relating to the

use of this funding are set out later in the report at paragraph 121 and confidential Annex B – legal risk and implication, at paragraphs 18 - 21.

59. The funding movements since the report to the Executive in September 2014 are summarised below in table 3 below.

60. Table 3: Funding Budget position

Overall Funding Summary	Sept 2014 Budget (£'000)	March 2016 Executive (£'000)	Variance (£'000)
CYC approved borrowing	8,000	8,000	
Stadium s106	15,000	15,300	+300
FSIF / YCFC	2,000	2,000	
Commercial Capital Land Receipt	12,000	11,300	- 700
s106 highways contribution to P&R		1,200	+1,200
Funding Subtotal	37,000	37,800	+ 800

Combined Capital Costs and Funding

61. The increase in the capital cost of the Project of £7.2m from September 2014, alongside the additional funding of £0.8m shown above leads to an overall capital pressure at March 2016 of £6.4m, as summarised in table 4 below.

62. Table 4: Capital Costs Vs Funding

Capital Costs Vs Funding	Sept 2014 Budget (£'000)	March 2016 Executive (£'000)	Variance (£'000)
Capital Cost Subtotal	37,000	44,200	+7,200
Funding Subtotal	37,000	37,800	+800
Capital Pressure Total	0	+6,400	+6,400

63. It is proposed that the additional £6.4m is funded from a combination of borrowing from the Venture Fund up to the value of £1.0m and additional prudential borrowing of £5.4m. The use of the Venture Fund is considered at paragraphs 72 - 75 below. The additional prudential borrowing will add approximately £0.4m per annum to the treasury management costs and should Members agree to the additional borrowing, will be included as a pressure when Members consider the 2017/18 budget position.

Revenue Position – Leisure Budget

64. The ongoing revenue element of the Project relates to the running costs payable to GLL over the life of the DBOM Contract and the income streams coming direct to the Council from the two Sports Clubs (YCFC & YCK) and the Stadium Naming Rights Sponsorship.
65. The current agreed base revenue budget available for the Project totals £5.6m over the 13 years of the DBOM Contract. The initial budget of £0.3m in 2016/17 increases as prudential borrowing and Salix commitments end against existing leisure facilities, which increases the available budget to £0.5m by the final year of the DBOM Contract.
66. The rents from both Sports Clubs and the proposed Stadium Naming Rights Sponsorship agreements, as shown in table 5 below, are managed directly by the Council and provide further funding to the Project alongside the base revenue budget.
67. Table 5 below sets out the Project’s revenue summary over the 13 years of the DBOM Contract.
68. Table 5: Revenue Summary (through DBOM Contract Period)

Revenue Summary	Total Budget (£'000)	Total Cost (£'000)	Variance (£'000)
GLL DBOM Contract	5,600	3,300	-2,300
Other Project Revenues	0	-2,000	-2,000
Total Revenues	5,600	1,300	-4,300

69. Table 5 above shows that the total revenue cost to the Council over the 13 year period is £1.3m. This accounts for GLL’s DBOM Contract total fee, less all other Project related income and expenditure (e.g. Sport Club rents and Stadium Naming Rights Sponsorship).
70. The total revenue cost of £1.3m compares to a total available leisure revenue budget of £5.6m. The saving to the Council against the budget over the 13 years is therefore £4.3m.
71. It is important to highlight however that the revenue costs in the early years of the contract exceed the Council available budget (£0.1m in year 1), and rise to a cumulative shortfall of £0.3m, whilst from year 5 the costs are significantly below budget (up to £0.5m per annum). The impact of these costs is considered further at paragraphs 72 -77.

Council Venture Fund

72. The Council established a Venture Fund with an initial capital injection of £4m. The Fund makes monies available for Council projects that have the ability to

generate revenue savings or increased income. Advances from the Fund are required to be repaid over an appropriate life of a project and/or in relation to the life of an asset.

73. The current balance on the Venture Fund is £1.7m and the latest forecast is that the Fund will reduce to £1.5m in 2018/19 following advances to support the Older Persons Homes review. Repayments in to the Venture Fund are also being made on an annual basis most notably from the West Office project at £0.15m per annum.
74. It is proposed that the Venture Fund will be utilised to manage the revenue cash flow deficits (currently forecast at a maximum of £0.3m).
75. The proposal to utilise £1.0m for capital costs and up to £0.3m for dealing with the early year shortfall in the revenue budget will reduce the Venture Fund balance to £0.2m by 2018/19. Current projections suggest that the Venture Fund will be repaid by surplus revenue in the Project by 2022/23. Following that date there will be a budget available of c. £0.5m per annum to support the leisure budget and other Council priorities.
76. Table 6 – Revenue cash flow impact over the 13 year DBOM Contact
77. Table 6 shows the overall cash flow impact on the Project over thirteen years including the repayment to the Venture Fund of the capital advance of £1.0m.

Overall cash flow impact on Project over 13 year DBOM Contract period	Capital pressure (£'000)	Revenue shortfall / (surplus) (£'000)	Cumulative position (£'000)
2016 / 17	1,000	100	1,100
2017 / 18		100	1,200
2018 / 19		100	1,300
2019 / 20		0	1,300
2020 / 21		(100)	1,200
2021 / 22		(500)	700
2022 / 23		(600)	100
2023 / 24		(600)	(500)
2024 / 25		(500)	(1,000)
2025 / 26		(600)	(1,600)
2026 / 27		(500)	(2,100)
2027 / 28		(500)	(2,600)
2028 / 29		(500)	(3,100)
2029 / 30 (3 months)		(200)	(3,300)
Total	1,000	(4,300)	

STADIUM NAMING RIGHTS SPONSORSHIP

78. Within the original Stadium Business Case consideration was given to the sale of the Stadium naming rights as a contributory element to the overall operating model.
79. In 2012 property and valuation advisors Edward Symmons valued the naming rights between £40k - £60k per annum. This valuation was consistent with the estimate made in the original business case of between £50k to £70k per annum.
80. As part of the Project, the Council has retained the commercial rights to the name of the new Stadium as well as associated stand naming and sponsorship of the North and East Stands.
81. As part of Matchday and Lease agreements with the two Sports Clubs, arrangements are in place giving rights to and/or providing allowances for individual stand naming of the South (YCFC) and West (YCK) Stands.
82. In 2014 specialist advice was provided relating to stadium and stand naming rights matters from StadiArena Consultants Ltd. The company previously had in-depth involvement in the commercial aspects of a number of new stadiums in the UK.
83. They advised that:
 - Naming rights for stadia are rarely advertised. The majority of the sponsors in the UK have had either a previous or an existing relationship with either the club or the town/city.
 - The value of the contract is rarely disclosed.
 - There are usually considerable costs associated with the contracts making a large difference between the gross and net cost of the contract.
84. Following the commercially confidential advice from StadiArena Consultants Limited a base sponsorship package was determined for each element (stadium name & stand names) with further work carried out to determine the 'likely' value (and therefore cost) of each package item and the potential 'sale' value of the package items.

Choosing the Naming Rights Sponsor for the Stadium

85. The sale of the naming rights for a stadium is outside the EU procurement regulations and does not require an OJEU compliant tender process as the Council is not procuring goods, works or services but rather it is selling an asset.

86. The process to find a sponsor has been structured based on external advice (referred to at paragraph 82 above) which was sought to ensure that best value is achieved for the naming rights package in line with market practice.
87. On the basis of the advice received from StadiArena Consultants Ltd, a focused marketing exercise was undertaken by the Council identifying potential organisations with an appropriate profile. A short list of targets was prepared and approaches were made to five major businesses with an interest in York. Further detail in relation to the Council's fiduciary duty to achieve best consideration for its assets is included in confidential Annex B - Legal risks and implications, at paragraph 17.
88. Discussions with one of these businesses have continued and draft terms have been agreed subject to Council approval, as per recommendation XV.
89. In January 2016 further written commercially confidential advice was sought from Lambert Smith Hampton for an opinion on the value of the offer received from the potential sponsor. The advice stated that the offer is attractive and agreement to the proposal is recommended.
90. If the terms of the Stadium Naming Rights Sponsorship are approved through recommendation XV in this report, parties will proceed to finalise the draft form of contract with a view to executing final documentation prior to Financial Close of the Project.

PROJECT TIMETABLE FOR NSLC DELIVERY

91. The current scheduled operational date for the delivery of the NSLC is early 2018, the key milestones for the Project are set out in table 7 below.
92. Until the DBOM Contract and the 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.
93. Minor amendments to the planning consent have been submitted and although these are not significant, construction cannot start until the necessary approvals are in place and other legal processes observed. Further details on this matter are set out at paragraphs 101-105.

94. Table 7: Current anticipated Project timetable

Date	Milestone
End March 2016	Early works completed (P&R and demolition)
June 2016	S73 planning amendment process concluded (Judicial Review period passed) ^{*1}
June 2016	DBOM Contract + Commercial Development Agreements Financial Close (contracts signed) ^{*2}
1 st July 2016	DBOM Contract live (GLL operation of Energise and Yearsley) ^{*3}
Summer 2016	NSLC construction starts ^{*4}
Winter 2017	NSLC construction complete ^{*5} (practical completion of NSLC facilities)
Early 2018	NSLC facilities operational ^{*6} (Stadium, Community Hub and new leisure centre open to public)

Table 7 Notes -

- *1) Formal planning amendments underway, until complete and Judicial Review period has passed DBOM Contract will not be signed. Further details on this planning position are set out a paragraphs 101 – 105.*
- *2) Subject to NSLC Commercial Development legal agreements and Funding be finalised and ready for execution simultaneously. Subject to the Judicial Review period having expired without challenge on the in progress s73 planning amendment application. Further details of which are set out a paragraph 101 – 105.*
- *3) Operational preference that GLL will take over the operating of the existing leisure facilities (Energise & Yearsley) from the start of the first month after which DBOM Contract is signed.*
- *4) Assumes early design works continued from March 2016 through to June 2016, further details of which are set out at paragraph 98 - 100. If additional early design works are not undertaken a 3 month period would be added from DBOM Contract signature until full works starts to allow for final design / site mobilisation to be carried out. In addition, if additional early design works are not undertaken the Council will incur additional*

capital costs in respect of the NSLC Construction Cost set out in this report.

**5) Main construction of NSLC facilities (Stadium, Community Hub and New Leisure Facility) completed by Building Contractor to practical completion status. At this point they will not be operational ready facilities and will require further GLL and Stadium Operator fit out. For the Stadium this will include obtaining all necessary safety licences.*

**6) Based on such an operational date for the NSLC facilities, and in particular the Community Stadium, both Sport Clubs will be playing at the new Stadium for their respective 2018/19 seasons.*

ASSOCIATED PROJECT UPDATES

Early Works

95. In September 2015 Executive approved that early works take place to ensure Project progression.
96. An Early Works Agreement (“EWA”) was subsequently put in place and covered the following:
 - Demolition of existing site buildings, site clearance and diversion of underground services.
 - Extension to the park & ride, including all associated attenuation + drainage works.
 - Early design brought forward from main DBOM construction mobilisation period.
97. The early works commenced on 9th November 2015 and the demolition of the existing buildings is now complete. The park & ride expansion and remaining works under the EWA are scheduled to be complete by the end of March 2016.
98. In order to maintain Project progress and achieve the delivery timetable set out in table 7, further early design work is proposed to continue from the end of March 2016 through until DBOM Financial Close is reached in June 2016. This will enable the main construction works to start sooner on site once DBOM Financial Close is met, helping to ensure the delivery of the construction programme in the most efficient time possible. This further early design work currently forms part of the NSLC Construction Cost set out in this report.

99. Recommendation X seeks approval to bring the cost of these early design works forward, requesting approval for £0.4m to be used from the existing stadium budget. The £0.4m will be netted off from the overall NSLC Construction Cost set out in this report once DBOM Financial Close is reached and is therefore not an additional cost to the Project. These further early design works will be carried out under the same terms as the already signed EWA by way of a deed of variation to the EWA.
100. If additional early design works are not undertaken, a 3 month period would be added to the delivery timetable as set out in table 7 from DBOM Financial Close before the main construction works commences, to allow for final design / site mobilisation to be carried out. In addition, if these additional early design works are not undertaken, the Council would incur additional capital costs above the NSLC Construction Cost set out in this report.

NSLC Planning Approval

101. Detailed planning permission for the NSLC was granted in March 2015 and the Judicial Review period expired without challenge in July 2015. As part of the finalisation of the NSLC scheme minor design amendments have occurred since the original planning approval in March 2015. These amendments primarily relate to meeting the design requirements of the Cinema provider in order to offer better disabled access and layout for its users.
102. A s73 planning application is required to formally amend the approved drawings of the original March 2015 approval and to revise the March 2015 Environmental Impact Assessment (“EIA”) as a result.
103. Changes include increasing the height by 4 metres and length by 6 metres of the Southern Block and alterations to the internal layout and use classifications of the East Stand. The application also picks up minor changes to the overall layout as the detailed design has progressed.
104. The s73 planning process is underway, a summary of the timeline for this process is set out in table 8 below. It should be noted that until this matter has been concluded and approved by the Local Planning Authority (“LPA”) and the Secretary of State (“SoS”), and the Judicial Review (“JR”) period has passed without challenge, it is not proposed to execute the DBOM Contract with GLL and the relevant legal agreements relating to the Commercial Development Agreement, as this would represent too great a risk for the Council, GLL and the Investment Fund. This is therefore the current critical path to reaching DBOM Financial Close in June 2016.

105. Table 8: Planning amendment application milestones

Date	S73 Milestone
25 th Feb 2016	S73 planning amendment application formally submitted
2 nd March – 23 rd Mar 2016	EIA 21 day public consultation period
By 1 st Apr 2016	LPA delegated officer decision
4 th Apr – 29 th Apr 2016 *1	Mandatory 4 week allowed for SoS referral and ratification
2 nd May – 10 th June 2016 *1	Mandatory 6 week allowed JR review period
From 13 th June 2016 *1	JR review period ended. DBOM Contract and Commercial Development Agreements can now be entered into

Table 8 Notes -

**1) It should be noted that the milestones outlined in table 8 are dependent on the LPA delegated officer approval being made by the date outlined.*

HUMAN RESOURCES (HR)

106. There has been regular briefing and consultation with Council staff and trade union representatives on the progress and development of the proposals for Sport & Active Leisure services.
107. Council staff employed at Energise and Yearsley will transfer to GLL who will manage the existing leisure services 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.
108. GLL has confirmed that they will sign an admission agreement with the North Yorkshire Pension Fund.
109. Individual and collective consultation with staff and trade union representatives will be on going throughout the process up to the actual transfer which is estimated to be the 1st July 2016.

EQUALITIES

- 110. There are no equalities issues relating directly to this report.
- 111. A full Equality Impact Assessment has been completed for the Project and reported previously, this can be seen at Annex C, updated as at February 2016.

COUNCIL PLAN PRIORITIES

- 112. 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.
- 113. 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

- 114. The Project contains a number of significant risks, which Members need to consider carefully, and be fully aware of. This is one of the largest capital projects the Council will have embarked upon, with only West Offices and the joint Waste Scheme with North Yorkshire County Council being of similar or greater value. It is also by its nature a project that has a number of different partners, and different funding sources. The ongoing long term use of the NSLC, and associated revenue implications are risks. Income streams from the various users, and the letting of the elements of the NLSC and the Commercial Development that the Council is responsible for, cannot be guaranteed over the period of the DBOM Contract. Whilst some risks can be mitigated to some extent, even after mitigation there remain significant risks inherent within the Project.

Financial – risk assessment

- 115. The specific financial risks relating to the Project are set out at paragraphs 116 – 130 below.

Project Affordability

- 116. A number of the capital funds for the Project are not received at the commencement of construction. The YCFC contribution of £2m is not due until the sale of Bootham Crescent which is likely to be after construction is completed. The risk of not receiving the contribution is mitigated through the

Council legal charge on Bootham Crescent upon its sale, and through securing £0.35m from YCFC from the outset of the NSLC construction.

117. Delay in achieving Financial Close in accordance with the timeline set out in table 7 provides a risk that the Commercial Development deal as set out in this report may be withdrawn or varied by the Investment Fund. Commercial advice is that if this scheme be taken back to the market following such an event it is unlikely that an offer in line with the current Capital Land Receipt would be achieved. The result of the current Commercial Development deal being withdrawn would likely lead to the current procurement having to end without reaching Financial Close.

NSLC Construction Cost

118. The NSLC Construction Cost now received by GLL is held for a period up to 3 months beyond the scheduled DBOM Contract execution date of June 2016. Although the current construction cost represents a final cost, should further design changes be made before the DBOM Contract is signed, the cost could be subject to change. There is therefore a risk of capital costs increasing. A contingency has been included within the Project fees to cover minor variances that may occur, however significant cost increases would require further Member approval.
119. As is usual in projects of the nature being proposed, certain risks are shared between the private and public sector. Although the DBOM Contract price is fixed at Financial Close, once in Contract and construction commences there are circumstances and eventualities where the Council retains risk, such that if they arise, they could affect the cost. These events are defined as Compensation Events in the DBOM Contract and relate to typical risk matters including title related breaches, breach of Council obligations and certain site matters. There are also Relief Events set out in the DBOM Contract. These are typically matters which are not caused by a fault of either party, may be insurable and result in a delay to the construction programme. If a Relief Event occurs it may result in a delay to the Project for which no delay damages will be payable because the Contractor will be granted an extension of time. During the construction phase there will be extensive Project management and monitoring procedures put in place to endeavour to mitigate the risks identified in this paragraph.

Revenue Budget

120. The revenue model included in the report is based on the cost submission from GLL. All costs are shown as nominal including assumed Consumer Price Inflation (CPI) of 2% where applicable. The numbers quoted in the report are therefore dependent on the actual level of CPI. Prudent sensitivity analysis shows however that an additional 1% in assumed CPI across the period of the DBOM Contract would equate to an increase in revenue costs of £0.3m across the 13 years of the Contract.

Highways and Transport s106

121. The use of £1.2m funding from the Vangarde Highways and Transport s106 allocation reduces the contribution for overall transport mitigation measures and to meet the Council's obligations under the section 106 agreement. Should the pressures on the Highway Network be such that further funding is required for remedial measures this will need to be considered as part of future capital budget considerations. See paragraphs 18 – 21 of confidential Annex B (Legal Risks and Implications) for further detail.

Void risk on CYC 15 year lease on space within Commercial Development

122. As set out at paragraphs 42 - 43, a pre-condition of the Investment Fund's offer for the Commercial Development is a requirement that the Council enter into a 15 year lease for commercial space in the Southern Block.
123. The Council's intention is to onward sub let this space to a leisure provider ahead of construction completion to ensure that the Council as a minimum covers rental requirements through the full 15 year term. Until let there will remain a void risk on this space and should the Council not be able to sub-let this space throughout the 15 year term the Council would be at risk of having to pay the rent, business rates and service charges on this space with no income being received.
124. Within the Project's overall revenue financial model assumptions have been made for some void periods on the CYC commercial space through the 15 year term, however the Commercial Property Team will seek to use their knowledge of the market to maximise occupancy of the space.

Void risk on Community Partners rental space within the NSLC

125. There are in principle deals agreed with the Community Partners to take lease agreements on areas within the NSLC Community Hub. Some of these agreements contain 5 year break clauses. As part of the current contractual position reached with GLL under the DBOM Contract, should these Community Partner break clauses be invoked, or should the Community Partners default and vacate early, the Council would be responsible for a proportion of the rental void that would arise until a replacement tenant and rental income could be secured. The council will therefore take most of the financial risk over rent levels and occupancy levels.
126. If Community Partners do not enter into their proposed lease agreements there will be a financial pressure to the Project. However, demand for the space within the Stadium is anticipated to be strong and therefore it is considered that this is not a significant risk.

Void risk on vacant community rental space on the 2nd floor of the NSLC leisure building

127. There is community space of c500 sq metres located on the second floor of the NSLC leisure building which is currently unlet. This space is to be marketed in due course to local community partners. The current revenue financial model assumes a prudent rental income per square metre of this space. However, until let, the void space remains a Council risk.

Sports Clubs

128. The assumptions from the Sports Clubs are relatively prudent (in particular they take account of the possibility that YCFC may not be playing in the Football League). There is potential additional income to the Council should attendances increase for both Sport Clubs. However, the rents from the Sport Clubs will ultimately depend on the success of professional sport within York.

Stadium Naming Rights Sponsorship

129. The Stadium Naming Rights Sponsorship assumptions have been modelled over the agreed term (10 years). However there is a break clause at 5 years that would potentially reduce income to the Project. There is also a potential extension of 3 years, that could increase income to the Project. The total level of income relating to Stadium Naming Rights Sponsorship therefore remains a risk to the Council.
130. There is an opportunity for the Council to generate further revenues as the Council holds the naming rights for two of the stands within the Stadium. Income from these rights has not currently been factored into the financial model.

Legal – risk assessment

131. The Council has been advised on the Project by external law firm Bond Dickinson LLP.
132. As is usual in projects of the nature of the one being proposed, certain normal contractual risks are shared between the private and public sector.
133. In addition to the normal contractual risks that the Council would be exposed to as part of a DBOM Contract there are a number of risks that the Council would be required to take as a result of the commercial elements of this scheme which would not typically be included in a Design, Build, Operate and Maintain (DBOM) project. Due to commercial sensitivity related to these arrangements prior to DBOM Financial Close and the timing of concluding such arrangements, these details are contained in confidential Annex B - Legal Risks and Implications.

Implications of not proceeding with the Project

Abortive Costs

134. If the Council were not to progress with the Project as set out in this report, or it were delayed to the point that it fails, there would be considerable financial implications to deal with.
135. The money spent to date is being charged to the capital programme. If the scheme does not proceed then a number of costs would have to be charged to the revenue budget as abortive costs. These being the majority of the Project management, feasibility and legal costs incurred in progressing the Project and procurement to this point.
136. If the Council frustrates or completely withdraws at this late stage from the Procurement it is likely to be open to claims of wasted bidder costs. There is already an agreement with the preferred bidder, GLL, obligating the Council to pay GLL's costs up to £1.6m should the Council unilaterally withdraw from the Procurement exercise before DBOM Contract Financial Close. If this were to happen the Council would however have access to and rights to use all design documentation created up until the point of withdrawal.
137. The costs charged to the Project as at 31st March 2016 are anticipated to be £7.5m. These are broken down as follows in table 9:
138. Table 9 – Project costs paid/incurred to date

Project costs paid/incurred to date	Abortive cost (yes / no)	Cost (£'000)
Project Fees	Yes	2,200
NSLC early design fees paid under the EWA	Yes	400
NSLC early works paid under the EWA (demolition & P&R expansion)	No	2,000
Other facilities re-provision (Athletics track, YCK interim first team arrangements, YCK training + reserve team arrangements)	no	2,900
Total costs	-	7,500

139. Should the procurement be abandoned the abortive costs of £2.6m plus the payment to GLL of up to £1.6m (referred to at paragraph 136 above) would need to be written off to revenue in the 2015/16 accounts. This potential liability of £4.2m is significant compared to council reserves of £6.9m. There could also potentially be further claims for abortive bid costs from bidders who were part of the procurement exercise. The £4.9m that has been spent on the Athletics track reprovion, YCK interim first team arrangements, YCK training & reserve team arrangements and the NSLC Early Works could be carried forward to a

new procurement, but would be the first costs allocated to the subsequent procurement / budget.

140. The £4.2m abortive costs highlighted in paragraph 139 would need to be accounted for in 2015/16 and ultimately impact the council reserves. The impact on council reserves would be to reduce them to £2.7m compared to a minimum recommended level of £6.4m.
141. Should Members wish to withdraw from the current procurement it will be necessary for a report to be produced by the Director of Customer and Business Support Service for Executive before the end of April reviewing current spending levels and providing options on further in year savings in order to build reserves back up to recommended minimum levels.

Options for Re-procurement

142. Members would also need to consider the best approach for a re-procurement. As a minimum this would need to include the requirements of the Vangarde s106 agreement to provide a new stadium and associated games area. The decision would then need to be made as to whether additional facilities are included.
143. An estimate has been incorporated of providing a stadium only solution below in table 10.
144. Tables 10: New procurement costs should current Project be stopped

Position should Project be stopped & a new Procurement for a different solution started	Revenue (£'000)	Capital (£'000)	Total (£'000)
Costs			
Abortive revenue costs	4,200		4,200
Capital costs incurred to date brought forward		4,907	4,907
New Project Fees through procurement period		1,500	1,500
Further interim facility arrangements		500	500
New Stadium / procurement capital envelope		19,600	19,600
Total Costs	4,200	26,500	30,700
Funding			
Section 106		15,300	15,300
Council capital borrowing		8,000	8,000
YCFC / FSIF		2,000	2,000
Transport s106		1,200	1,200
Funding Subtotal		26,500	26,500

145. Table 10 above assumes the Stadium can be procured for £19.6m in line with the capital funding available for the project. However this can ultimately only be concluded through a procurement exercise so is an extremely high risk position.
146. Whilst the cost of such a procurement is lower than the recommended Project, it is necessary to highlight the differences in what would be delivered for the city, as shown in table 11 below.
147. Table 11 – NSLC scheme Vs a stadium only re-procurement

Area	NSLC scheme recommended in this report	A stadium only new re-procurement option
Stadium	Included	Included
Leisure Facilities	Swimming Pools, Sports Hall, Clip N Climb, High Ropes,	No additional facilities
Community Facilities	NHS, York Against Cancer, Explore library Cafe	No additional facilities
Retail / Destination	Imax Cinema, Restaurants, Retail Experience	No additional facilities
Revenue leisure Budget	Saving of £4.3m over 13 years. £0.3m per annum	No assumed Savings of c.£1m. Lower level due to loss of net income from leisure centre, reduced income from sponsorship.
Economy	Business rates of c £3m to council in retail unit	No additional business rates
Abortive Costs	£0.0m	£4.2m
Additional CYC Borrowing	£5.4m	£0m
Cost of Borrowing	£420k per annum	Nil
Project Delay	0 years from timetable in this report (table 7)	+ 2-3 years from timetable in this report (table 7)

148. In summary, the alternative procurement route would involve saving £5.4m additional borrowing costs, however this would incur £4.2m abortive revenue costs and result in reduced revenue savings. In addition, there would be no additional income from business rates and a delay the project by up to 2 -3 years from the timetable set out in this report (table 7). The financial implications of a stadium only solution compared to the Project are set out below in table 12.

149. Table 12 – Financial summary of the NSLC v stadium only

Costs shown over 13 year contract	NSLC scheme	Stadium Only
Abortive Costs	£0.0m	+ £4.2m
Borrowing Costs (13 years)	+ £5.4m	£0.0m
Revenue Savings after £1m Venture Fund Repaid	- £3.3m	- £1.0m
Business Rates	- £3.0m	£0.0m
Impact on CYC finances	- £0.9m	+ £3.2m

150. Table 12 above shows that the alternative re-procurement has a negative impact on the Council finances compared to the NSLC scheme without providing the benefits that the NSLC scheme will deliver.

Recommendations to Council in the event of agreeing to withdraw from the current Procurement Process

151. Should Executive not approve the recommendations proposed in the report the following recommendations will need to be referred to Council;
- I. The current competitive dialogue procurement exercise be cancelled;
 - II. Approve the charge of £4.2m abortive costs to revenue, including an abortive cost payment to GLL of up to £1.6m (such payment in exchange for rights to design information produced to date);
 - III. Note that the impact on reserves from this charge will reduce general reserves from an estimated £6.9m to £2.7m at 31st March 2016. This is significantly below the prudent minimum reserve levels of £6.4m;
 - IV. Request a report to Executive from the Director of Customer and Business Support Services before the end of April 2016 detailing options for how additional savings in 2016/17 can be made in order to reinstate reserves to an acceptable level;
 - V. Note that of the £8m capital budget approved for this Project a total of £4.9m will have been expended leaving £3.1m borrowing along with the £15.3m s106 available for a future procurement of a stadium and new leisure facility provision;
 - VI. To consider a further report before the end of April 2016 setting out options for a new procurement noting the likely timescale of 2-3 years.

Reason for recommendations, should the current Procurement be stopped: To ensure that the financial consequences of withdrawing from the Project are properly considered.

REPORT ANNEXES & INFORMATION

Annexes

Annex A – NSLC scheme plans and images

Plans A ~ Site masterplan outlining components of NSLC

Plan B ~ Identification of land for Commercial freehold transfer

Plan C ~ Identification of East Stand Retail Units that are part of the Commercial Development located in the Stadium

Plan D ~ Images of the NSLC scheme

Annex B – Confidential – Legal Risks and Implications

Annex C – Equality Impact Assessment ~ Updated Feb 2016

Defined Glossary of Terms

Definition	Meaning
Capital Land Receipt	£11.25m in respect of the land transactions for the Commercial Development set out in paragraph 37 (I) and (II) of the main report
Commercial Development	the commercial development comprising a state of the art Multiplex Cinema and a number of restaurants and retail units as set out in paragraph 11 of the report summary and paragraph 14 of the main report
Community Hub	the community hub detailed at paragraphs 8-10 of the report summary and paragraph 13(III) of the main report
Community Partners	NHS, York Against Cancer and York Gateway Explore Library as more fully detailed at paragraph 13 (III) of the main report
CYC	City of York Council
DBOM	Design, Build, Operate and Maintain
DBOM Contract	the Design, Build, Operate and Maintain contract
Developer	Wrenbridge Sport
Early Works	the demolition of the existing site stadium/leisure facilities, the expansion of the adjacent park & ride facility and progressing design work as set out in paragraph [96] of the main report
Early Works Agreement	the early works agreement between the Council and GLL detailed at paragraph [96] of the main report
East Stand Retail Units	3 Restaurant Units in the Stadium East Stand as referred to in paragraph 14 (II) and identified on Plan C of Annex A
Financial Close	the date of signature of the DBOM Contract

FSIF	the Football Stadia Improvement Fund
GLL	Greenwich Leisure Limited
HR	Human Resources
Investment Fund	Entity purchasing the rights of the Commercial Development
ISG	GLL's building contractor
LPA	Local Planning Authority
MDA	Match Day Agreements between CYC and each of YCFC and YCK
New Leisure Facility	the new leisure and sports centre more fully set out in paragraph 7 (II) of the summary and paragraph 13 (II) of the main report
NHS	York Teaching hospital NHS Foundation Trust
NSLC	New Stadium Leisure Complex
NSLC Construction Cost	the construction costs for the NSLC under the DBOM Contract more fully explained in paragraphs 47 – 50 of the main report
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 as more fully explained at paragraph 14 of the report summary and paragraphs 24 to 31 of the main report
RICS	Royal Institution of Chartered Surveyors
s106	The section 106 Agreement dated 5th July 2012 made between CYC and Oakgate (Monks Cross) Limited
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
Sports Clubs	York City Football Club and York City Knights
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 more fully explained in paragraphs 78 to 90 of the main report
TUPE	Transfer of Undertakings (Protection of Employment)
YAC	York Against Cancer
YCFC	York City Football Club
YCK	York City Knights

Report contact details

Authors:	Chief Officer Responsible for the report:				
<p>Ian Floyd Deputy Chief Executive & Director of Customer Business Support Services <i>Tel No. 01904 552909</i></p> <p>Patrick Looker Finance Manager <i>Tel No. 01904 551633</i></p> <p>Rachel Dolby Deputy Head of Legal Services <i>Tel No. 01904 551146</i></p> <p>Mark Wilson Community Stadium Programme Officer <i>Tel No. 01904 552691</i></p>	<p>Ian Floyd Deputy Chief Executive & Director of Customer Business Support Services</p>				
	<p>Report Approved</p>	<p>√</p>	<p>Date</p>	<p>08.03.16</p>	
<p>Specialist Implications Officer(s) <i>List information for all</i></p>					
<p>Wards Affected:</p>				<p>All</p>	<p>✓</p>
<p>For further information please contact the author of the report</p>					