

Report of the Deputy Chief Executive/Director of Customer and Corporate Services (Portfolio of the Executive Member Culture, Leisure & Tourism)

Community Stadium & Leisure Facilities Report

Summary

1. The main purpose of this report is to provide the Executive with the findings and recommendations of the Yearsley Swimming Pool review (the “Review”).
2. The report also provides the Executive with a brief update on the progress of the wider Community Stadium and Leisure Facilities Project (“Project”) since the last Project report brought to Executive in December 2016.

Recommendations

3. The Executive are asked to:
 - a) Note the work of the Review which was to secure a long-term future for Yearsley Swimming Pool (“YSP”).
 - b) Approve Option A-4 which would allow Greenwich Leisure Ltd (“GLL”) to continue to operate YSP for 91 hours per week under the Design, Build, Operate and Maintain contract (“DBOM Contract”) until 2024/25. (Details of Option A-4 are set out at paragraphs 22 – 24)
 - c) Acknowledge the £300k New Homes Bonus budget allocation previously approved by Members at the 2015/16 Budget Council will be used from 2019/20 to 2023/24 financial years to maintain the operation of YSP.
 - d) Acknowledge that a decision on the continued operation by GLL of YSP and the funding considerations for YSP from 2024/25 onwards can only be made at the point of considering the overall financial position of the DBOM Contract for the full Project. A further report will be brought to Executive detailing the final financial position of the full Project prior to Financial Close later in the year (“Final Executive Report”).
 - e) Approve for the Director of Economy and Place to have delegated powers to agree terms with Nestle to formalise access and use of the adjacent Nestle car park which is used by YSP customers.

Reason: To agree the long-term management arrangements for YSP following the opening of the New Leisure Facility to be delivered as part of the proposed New Stadium and Leisure Complex (“NSLC”) at Monks Cross.

Yearsley Swimming Pool Review

Background

4. At the 2015/16 Budget Council, Members approved the use of up to £0.3m New Homes Bonus per annum funding to maintain the operation of YSP for up to five years. This allows YSP to remain funded through to 2023/24.
5. In August 2015 the Executive agreed that this Review would commence in October 2015 and report back to the Executive when concluded. This reflected the firm commitment given by the new administration for the long-term future of YSP.
6. The Review process has examined different potential operating models for the future management of YSP. This comprehensive assessment has sought to ensure a cost effective solution is identified with minimal disruption to service delivery.
7. The operation of YSP was part of the OJEU competitive dialogue procurement exercise (the "Procurement") that commenced in September 2012 to procure a partner to design, build, operate and maintain a NLSC together with the city's wider leisure facilities (Energise and YSP) under a 13 year contract.
8. At final bid stage of the Procurement the Council stated to bidders that it only required YSP to be operated up until the point that the NSLC was operational as it did not have the budget available to support the ongoing operation of YSP beyond that date. This meaning YSP would only be operated for 18 months under the DBOM Contract.
9. Prior to the Review commencing, the Corporate and Scrutiny Management Committee (CSMC) agreed in January 2015 that an adhoc scrutiny review be carried out on YSP to investigate ways to reduce the subsidy given to YSP while securing its long term future. However, CSMC took the decision on 13 July 2015, to discontinue the scrutiny review on funding arrangements for YSP.
10. The work of the scrutiny review and relevant reports are referenced as a background papers under the Annexes and Information section of this report. The progress made by the scrutiny review has been built upon to support this Review.

Consultation

11. Over the past two years considerable consultation with a wide range of stakeholders has taken place in relation to the Procurement and the future operation of YSP including; Nestle, York St John University, Tadcaster Leisure Centre, Yearsley Pool Action Group, professional bodies such as Amateur Swimming Association and North Yorkshire Sport, aquatic clubs, Officers and Councillors.

12. Consultation has focussed on seeking alternative management arrangements for YSP which has involved discussions with a number of organisations by Officers.
13. Sharing of information has been a key part of the Review, offering a transparent and open process to allow interested parties access to the data they need to be able to engage fully.
14. The sharing of data has allowed detailed reviews of income, expenditure, user figures, pool programming, building lifecycle and maintenance plans. This has been successful and led to financial efficiencies being identified.
15. The Yearsley Pool Action Group as the key community/user representative has been involved in the Review from the start with opportunities to influence and challenge the Review process.
16. The feedback from the consultation has identified that although the New Leisure Facility within the NSLC at Monks Cross will provide adequate fit for purpose facilities, YSP remains an important local facility for local residents and local aquatic clubs. YSP offers a wide programme of activities including; swimming lessons, fitness swimming, aquatic keep fit classes, fun inflatable sessions, school access, training for York's swimming clubs and more unusual activities like under water hockey. YSP also has a regional and national role for elite sport like Canoe Polo. Without YSP the nearest pools for long course training would be Leeds and Sunderland.
17. The scrutiny report of 13th July 2015 sets out in detail the views of stakeholders and users. This report is referenced as a background paper under the Annexes and Information section of this report.

Options considered for Yearsley Swimming Pool

18. At the start of the Review there were initially 3 main YSP operating options considered, each containing different sub options. These are summarised as:
 - Option A - GLL to continue to operate YSP under the DBOM Contract
 - i. at no cost to the Council;
 - ii. operate the pool in its current form;
 - iii. with reduced opening hours;
 - iv. with revised programming model;
 - v. adding a new gym facility.

- Option B – Working with a new community led organisation to take on the operation of YSP
- Option C – Working with an existing organisation to take on the operation of YSP
 - i. York St John University;
 - ii. Nestle;
 - iii. Tadcaster Swimming Pool Trust;
 - iv. Staff led social enterprise.

Rejected Options

19. Following consultation with the relevant stakeholders several of the initial options were concluded to not be viable and rejected from the Review process, these are shown in Table 1 below.

Table 1 – Rejected Options

Option Rejected	Reason
A i - GLL to operate at no cost to the Council	The Council assessed this option within the Procurement. No bidders could come back with a cost neutral option and this was therefore simply not achievable. Since then this option has been re-tested with GLL and there still remains no cost neutral solution.
A iv - GLL operate with a revised programming model	This option does not provide any public access, as YSP would be programmed with private club use only. This option has therefore been rejected as it does not support the Council's commitment to keeping YSP open to the public.
A v - Add a new gym facility	A latent demand survey which calculates the potential demand for a new gym has been considered, but without significant additional dedicated parking, the business case would not be strong enough to justify the potential capital investment. It has not been possible to acquire any new land for this option.
B - Work with a new community led organisation	The Council approached the Yearsley Pool Action Group to establish if they would be prepared to take on the operation of YSP. Following such discussions it was Yearsley Pool Action Group's view that given the responsibilities and liabilities associated with running YSP, YSP should be managed by a professional organisation, rather than by a community led group.
C i - York St John operate the pool	York St John University are not in a position to operate YSP.

C ii - Nestle operate the pool	Nestle confirmed they are not in a position to operate YSP.
C iii - Tadcaster Swimming Pool Trust operate the pool	After significant discussions and sharing of business trading information with Tadcaster Swimming Pool Trust, a view was reached by their board that they were not in a position to operate YSP.
C iv - Staff led social enterprise operate the pool	A meeting with the YSP management team was held in December 2015 to discuss the opportunity to roll out a staff led social enterprise. Following the discussion it was clear the YSP management team did not want to pursue this option.

Analysis Of Options

20. As Table 1 outlines above the Review process showed that many of the initial options for YSP continued operation were not viable and that only the GLL options (Option A) were viable for further consideration under the Review. Therefore at this point Options B and C were not taken forward.
21. To analyse and further develop Option A detailed discussions took place between Officers from the Council's leisure management team, Yearsley Pool Action Group and GLL representatives. This work led to four refined options being agreed for GLL to provide detailed financial forecasts against and consideration be given under each refined option to any implications for users.
22. The final four refined GLL options assessed under the Review were:
- Option A-1: YSP open on the current basis operated by CYC (Approx 100 opening hours a week)
 - Option A-2: YSP open on a single shift (8 hour day) basis which would reduce opening down to 56 hours a week
 - Option A-3: YSP open on a reduced hours basis, following detailed usage analysis to close at the quietest times
 - Monday: 7:00am-5:00pm
 - Tuesday: 7:00am-6:00pm
 - Wednesday: 7:00am-7:00pm
 - Thursday: 7:00am-6:00pm
 - Friday: 7:00am-6:00pm
 - Saturday: 8:00am-4:00pm
 - Sunday: 8:00am-4:00pm
- Total hours: 71 hours

- Option A-4: YSP open (as option 3 above) but allowing club usage concurrent before and after the times shown

- Monday: 5:30am-7:00pm
- Tuesday: 7:00am-7:30pm
- Wednesday: 7:00am-8:00pm
- Thursday: 7:00am-8:00pm
- Friday: 7:00am-8:00pm
- Saturday: 6:00am-9:00pm
- Sunday: 8:00am-7:00pm
- Total hours: 91 hours

23. In terms of financial analysis, Table 2 below details the costs of these final four options to operate YSP for a further five years following the first 18 months of operation by GLL already secured under the DBOM Contract.

Table 2 – Final four options cost analysis

YSP operation costs per each GLL option	GLL option A-1	GLL option A-2	GLL option A-3	GLL option A-4
	YSP remains open as per current hours (C.100hrs/wk)	YSP open on a single shift (56 hrs/wk)	YSP open on reduced times (71 hrs/wk)	YSP open on reduced times + club usage (91 hrs/wk) ^{*1}
First 18 months of the Contract	Cost already included in the DBOM Contract			
Next 5 years GLL operating cost	£1,477k	£1,145k	£1,360k	£1,360k
Next 5 years Lifecycle cost ^{*2}	£110k	£110k	£110k	£110k
Total cost	£1,587k	£1,255k	£1,470k	£1,470k
CYC Budget	£1,500k	£1,500k	£1,500k	£1,500k

Table 2 Notes -

**1) Option 4 is the same cost as option 3 as the additional club usage would operate on a full cost recovery basis.*

**2) Budget required for CYC to allocate towards the lifecycle plan to cover CYC liability under the DBOM Contract.*

24. As part of the Review considerable time and effort has been spent working with GLL to analyse all expenditure items to ensure YSP is managed as efficiently as possible in all areas. Those findings have been reflected in the financial figures in Table 2 above. An example of this has been seen by reviewing with GLL the long term building lifecycle model that concluded a £45k saving over a 13 year period, which represents a 6% reduction.

Conclusion Of The Review's Option Appraisal

25. After considering the final four GLL options in consultation with Yearsley Pool Action Group, GLL and Officers it is the conclusion that Option A-4 be the recommended option of the Review. Option A-4 offers reasonable financial revenue savings per year to the Council of C.£117k when compared to carrying on running YSP as it is now, this with very limited impact to the operation of the facility.
26. Under Option A-4 YSP would retain opening hours to accommodate the peak times where the pool is at its busiest, allowing aquatic clubs to continue to operate and overall is only a less than 10% reduction.

Next Steps

27. The Executive is asked under recommendation b) of this report to approve Option A-4 from the Review to be taken forward.
28. A Final Executive Report will be brought to Executive detailing the final financial position of the Project prior to Financial Close later in the year. Only at this point will the Project be able to confirm the funding position for YSP from 2024/25 financial years onwards and whether YSP could continue to be operated by GLL for the remaining term of the DBOM Contract
29. Subject to Members approval of Option A-4 and any subsequent decision by Members following the Final Executive Report, the draft DBOM Contract would be amended before Financial Close to extend the operation of YSP by GLL beyond the first 18 months of the DBOM Contract.

Review Implications

Financial Implications

30. Acknowledge the £300k New Homes Bones budget allocation previously approved by Members at the 2015/16 Budget Council will be used from 2019/20 to 2023/24 financial years.

31. Funding requirements from 2024/25 will need to be considered in the full context and affordability of the DBOM Contract and wider revenue model of the Project, this will be presented within the Final Executive Report later this year. This will also take into account further variables such as inflationary modelling and any financial impacts under the DBOM Contract.

HR Implications

32. The operational staff at YSP will not be impacted by this Review as the staff will have already transferred to GLL on the commencement of the DBOM Contract.

Legal Implications

33. Legal advice has been sought and a summary of this advice, which is legally privileged and confidential, is included at Confidential Annex A to this report.

Property Implications

34. The YSP site has limited public access and the Council recognises the support Nestle already provides to the operation of YSP in terms of access and use of Nestle's east car park. This remains critical to the operation of YSP allowing customers free access to the 50 spaces (subject to availability), 7 days a week.
35. Nestle has a long history of supporting YSP over the years and have always pledged publically to support any long term plan for YSP to remain open.
36. Discussions between the Council and Nestle have taken place over the past 12 months. The outcome of those discussions with Nestle have been very positive with confirmation that the current use of Nestle's east car park will be maintained allowing customers free use of the 50 spaces (subject to availability) for the foreseeable future. Nestle have also agreed to formalise this arrangement to provide access rights to any future operator of YSP.

Equalities Implications

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

ITT Implications

39. There are no ITT issues relating to this report.

Risk Management

40. The main risk associated with the Review is that it is reliant on Financial Close being reached on the DBOM Contract which is not due until later in the year.

Community Stadium & Leisure Facilities Project Update

41. The purpose of this section of the report is to update the Executive on the progress of the wider Community Stadium and Leisure Facilities Project (“Project”) since the last report brought to Executive in December 2016.
42. In doing so this section of the report provides an up to date position on the following Project areas:
 - The outcome of the Judicial Review Claim (“JR Claim”) into the Project’s planning permission.
 - A progress update on the position with our preferred bidder from the Procurement exercise, Greenwich Leisure Ltd (“GLL”). This prior to entering into the Design, Build, Operate and Maintain Contract (“DBOM Contract”).
 - The latest anticipated Project timetable for delivery of the New Stadium Leisure Complex (“NSLC”).

Planning - Judicial Review Claim

43. The December 2016 Executive report set out in detail the background to this matter, in summary that a claimant (VUE Cinemas) had lodged a JR Claim to the High Court regarding the Local Planning Authority’s (“LPA”) process used to determine the Project’s s73 planning amendment permission.
44. A Court Hearing regarding this JR Claim took place in London on 18th January 2017. At this Court Hearing the Judge found in favour of the LPA and rejected the JR Claim lodged by the claimant. The Judge stated that the process undertaken by the LPA to determine the Project’s planning amendment by way of an s73 application was correct.
45. The period for appeal of this High Court decision has now passed. The planning applicant (GLL) can now therefore proceed to implement this s73 permission in due course.

DBOM Contract with GLL

46. Before the JR Claim arose work was progressing towards concluding all legal agreements in connection with the DBOM Contract by late summer 2016. However, the JR Claim resulted in not being able to conclude these and enter into any of the legal agreements until the JR Claim was satisfactorily resolved.
47. With the JR Claim ongoing until January 2017 previous indicative construction dates outlined to GLL’s Building Contractor, ISG, were not achieved. Further to this whilst the JR Claim had been ongoing it was not possible to provide a definite revised construction start date.

48. Without this definitive position of a revised construction start date it became increasingly difficult for ISG to maintain costs and arrangements with their sub-contractors, from those agreed in the summer. These contributing factors have ultimately led to ISG on 13th February 2017 formerly withdrawing from GLL's consortium. Local media reports to this effect had surfaced in December 2016 but at that time no formal legal separation had occurred between GLL and ISG.
49. GLL have now therefore started their own re-procurement exercise to appoint a new Building Contractor to their consortium team. Through this re-procurement new potential Building Contractors will be asked to submit fixed costs for the construction of the NSLC, accompanied by detailed contractor proposals and construction timetable programmes.
50. It should be noted that the Council through the structure of the DBOM Contract will only be entering into contract with GLL and will have no contractual relationship with the Building Contractor. It is therefore GLL's responsibility to conduct the re-procurement exercise, appoint and then manage a Building Contractor to deliver its legal obligations to the Council under the DBOM Contract.
51. The indicative timescales for GLL to conclude their Building Contractor re-procurement exercise are set out under the Project timetable shown at Table 3.

NSLC Commercial Development

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

Project Financials Update

55. The detailed financial position/budget of the Project currently remains as outlined in the March 2016 Executive Report.
56. Council instructions to GLL have been very clear in that any revised Construction Cost from their Building Contractor re-procurement must meet the existing approved March 2016 budget. However, until GLL have received final revised Building Contractor cost submissions there remains a risk that the Construction Cost could differ from that presented in the March 2016 Executive Report.
57. A Final Executive Report will be brought to the Executive detailing the final financial position of the Project following the conclusion of GLL appointing a new Building Contractor and prior to Financial Close.

Project Timetable for NSLC Delivery

58. Until GLL have appointed a new Building Contractor and there is an agreed Construction Cost the next phase of the Project is unable to commence or be confirmed. This next Project phase being the execution of the DBOM Contract and construction of the NSLC starting.
59. At this time, the Project is still working towards having the Stadium and New Leisure Facility built and operational by late 2018.
60. Table 3 below sets out an indicative Project timetable that is based on the following key assumptions, each of which currently remain risks to the Project:
 - That GLL have appointed their new Building Contractor following a re-procurement exercise by June 2017. This enabling a revised Construction Cost to be held reflective of a correct construction works start date.
 - The DBOM Contract and associated legal agreements are all agreed and the Construction Cost remains within the March 2016 approved Council budget.
 - The Investment Fund Commercial Development deal is concluded on the same financial terms as set out in the March 2016 Executive Report.

Table 3 - Current anticipated Project timetable

Date	Milestone
Jan – Feb 2017	GLL Building Contractor re-procurement ~ PQQ stage - Pre Qualification Questionnaire (PQQ) stage of GLL’s procurement exercise. Period allows for tenderers to prepare and submit responses followed by GLL evaluation period.
March – June 2017	GLL Building Contractor re-procurement ~ main tender stage - Main tender stage with the potential Building Contractors reviewing all detailed design bid documentation and pricing their build costs in the external market (12 weeks). Bid submission date followed by GLL evaluation and clarification of bid submissions period (4 weeks).
By the end of June 2017	Final Construction Cost agreed - Due diligence through June on GLL’s new appointed Building Contractor and their Construction Cost to reach a final fixed price for the DBOM Contract ahead of Financial Close.
13 th July 2017	July Executive - Project report presented ahead of Financial Close.
August 2017	Financial Close - DBOM Contract + Commercial Development Agreements signed
1 st Sept 2017	DBOM Contract live - GLL operation of Energise and Yearsley commences.
Aug - Sept 2017	Construction site mobilisation - 6 week period assumed. New Building Contractor to confirm.
From late Sept 2017	NSLC construction starts - Exact construction programme will be set by new Building Contractor through GLL’s re-procurement. Indicative 13.5 month (58 week) construction period assumed at present.
Winter 2018	NSLC construction complete - practical completion of NSLC facilities. At this point they will not be operational and will require further GLL and Stadium Operator fit out before use by public and the Sport Clubs.
Late 2018 / Early 2019	NSLC facilities operational - Stadium, Community Hub & new leisure facilities open to public.

Report Annexes and Information

Annexes

Annex A – Confidential – Yearsley Review Legal Risks and Implications

Background Papers

- Item 13 - Community Stadium and Leisure Facilities Report (Executive 17 March 2016) <http://modgov.york.gov.uk/ieListDocuments.aspx?CId=733&MId=8847>
- Item 5 - Community Stadium & Leisure Facilities Report (Executive 27 August 2015) <http://modgov.york.gov.uk/ieListDocuments.aspx?CId=733&MId=9018>
- Item 7 - Yearsley Pool Update Report on the Work of the former Ad Hoc Scrutiny Committee (Corporate & Scrutiny Management Committee 13 July 2015) <http://modgov.york.gov.uk/ieListDocuments.aspx?CId=144&MId=8900>

Defined Glossary of Terms

Definition	Meaning
Building Contractor	GLL's building contractor who will construct the NSLC.
Capital Land Receipt	£11.25m in respect of the land transactions for the Commercial Development. As set out in paragraph 37 (I) and (II) of the March 2016 Executive Report
Commercial Development	the commercial development comprising a state of the art Multiplex Cinema and a number of restaurants and retail units. Set out in full detail within the March 2016 Executive Report at paragraph 11 of the report summary and paragraph 14 of the main report
Community Hub	the community hub to be present within the NSLC, as set out in in the March 2016 Executive Report at detail at paragraphs 8-10 of the summary and paragraph 13(III) of the main report
Construction Cost	the construction costs for the NSLC under the DBOM Contract
Court Hearing	Court hearing for the JR Claim, held in London on 18 th January 2017
DBOM	Design, Build, Operate and Maintain
DBOM Contract	the Design, Build, Operate and Maintain contract
Developer	Wrenbridge Sport
East Stand Restaurant Units	3 Restaurant Units in the Stadium East Stand, of which will form part of the Commercial Development
Executive Report	This report to the Executive on 16 th March 2017
Final Executive Report	A Final Executive Report will be brought to the Executive later in the year detailing the final financial position of the Project following the conclusion of GLL appointing a new Building Contractor and prior to Financial Close.
Financial Close	the date of signature of the DBOM Contract
GLL	Greenwich Leisure Limited

High Court	The court in London that heard the JR Claim
Investment Fund	Entity purchasing the rights of the Commercial Development
ISG	GLL's building contractor within their consortium team up until 13 th February 2017
JR Claim	The JR claim made by VUE Cinemas on the Project s73 planning amendment permission
Judge	The judge reviewing the JR Claim
LPA	Local Planning Authority
March 2016 Executive Report	The Project report presented at the Executive meeting on the 17 th March 2016
Members	City of York Council elected members
New Leisure Facility	the new leisure and sports centre proposed within the NSLC scheme, as more fully set out in the March 2016 Executive report at paragraph 7 (II) of the summary and paragraph 13 (II) of the main report.
NSLC	New Stadium Leisure Complex
Officers	City of York Council employed staff
Procurement	OJEU Competitive Dialogue Procurement undertaken from September 2012
Project	The Community Stadium & Leisure Facilities Project
Review	the review of different potential operating models for the future management of Yearsley Swimming Pool
SoS	Secretary of State
Southern Block	the land adjacent to the proposed South Stand of the NSLC forming part of the Commercial Development and identified on Plan B of Annex A
Sport Clubs	York City Football Club and York City Knights RLFC
Stadium	an 8,000 all seat community sports stadium to host professional football and rugby league games
YSP	Yearsley Swimming Pool

Report contact details

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Wards Affected:				All	✓
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