
Executive

19 October 2017

Report of the Deputy Chief Executive/Director of Customer and Corporate Services

Portfolio of the Executive Member for Culture, Leisure & Tourism

Community Stadium & Leisure Facilities Update Report

Report Summary

1. The purpose of this report is a concluding update to the Executive on the progress of the Community Stadium and Leisure Facilities Project (“Project”) since the last Executive report in July 2017.
2. This report confirms significant progress since July 2017, identifies a new risk highlighted at paragraph 16, and confirms that all necessary legal agreements are expected to be entered into soon.

Report Recommendations

3. The Executive are asked to:
 - a) Note the contents of this report and the progress made since the last report brought to Executive in July 2017;
 - b) Note and accept the new risk highlighted on the Commercial Development Capital Land Receipt, as per the details set out at paragraph 16.

Reason for recommendations: To progress with the Project and enter into all necessary legal agreements at Financial Close to deliver the New Stadium and Leisure Centre (“NSLC”) and operation by Greenwich Leisure Ltd (“GLL”) of the NSLC and the city’s wider Existing Leisure Facilities.

Project Update:

4. Significant progress has been made on the Project since the last report brought to Executive in July 2017. All aspects within the control of the Council that need to be in place before entering into the Design, Build, Operate and Maintain Contract (“DBOM Contract”) are expected to be complete within October 2017.

5. This includes the signing of the Community Partner agreements with York Teaching Hospital NHS Foundation Trust (“NHS”) and York Against Cancer. The signing of these Community Partner agreements, along with the existing legal agreements with York City Football Club and York City Knights RFLC, is another significant step forward in the Project and further prepares the Council to enter into the finalised DBOM Contract with GLL.
6. The last Project report presented to the Executive in July 2017 advised that GLL had concluded their re-tender exercise to appoint a new Building Contractor to their consortium team and that they were close to formally appointing its preferred new Building Contractor. It can now be confirmed that GLL have since appointed Buckingham Group Contracting Ltd as their new Building Contractor.
7. Pre construction design works have now been agreed with the Building Contractor and formally started on the 2nd October 2017, this further helping to enable a planned construction site mobilisation in November 2017.
8. The signing of the DBOM Contract is planned within October 2017.

NSLC Commercial Development

9. The Commercial Development outputs proposed at the NSLC site, which are being brought forward by Wrenbridge Sport (the “Developer”) and which will ultimately be acquired by Legal and General (the “Investment Fund”), remain in principle the same as those set out in detail in the March 2016 Executive Report.
10. As set out in the July 2017 Executive Report, the Council was expecting to receive in total £10.76m from the Commercial Development. From the £10.76m, £8.7m (funding to the Project) would be paid through Capital Land Receipts in respect of the grant of the long lease of the East Stand Restaurant Units and the freehold transfer of the Southern Block to the Investment Fund. A further £2.06m would be received from the Commercial Development through contributions by the Investment Fund to the cost of the Stadium works, this contribution being used to meet part of the Construction Cost.
11. The Capital Land Receipts are to be received by the Council in two parts. £4.9m to be received at Financial Close (before construction commences) upon the execution of the freehold land transfer from the Council to the Investment Fund of the Southern Block. £3.8m (subject now to possible reductions as set out in paragraph 16 below) to be

received at practical completion of the construction works, this being the point the Investment Fund will enter in to the long lease of the East Stand Restaurant Units (pursuant to an Agreement for Lease to be entered into at Financial Close).

12. As set out in the July 2017 Executive Report, legal agreements between the Council and the Investment Fund are in the process of being finalised. However, the execution of agreements between the Council and the Investment Fund can only take place once the following Investment Fund conditions have all been satisfied:
 - Southern Block -
 - I. exchange by the cinema of an agreement for lease with no conditionality – *complete*;
 - II. satisfactory Planning Consent being received in relation to required amendments to the design of the Southern Block – *complete*;
 - III. confirmation of a fixed price building contract for the Commercial Development – *complete*;
 - IV. exchange on a 15 year agreement for lease with the Council for commercial space within the Southern Block – *at time of writing this is being finalised*;
 - V. one restaurant unit to have been pre let within the Southern Block - *at time of writing this is being finalised*.
 - East Stand Restaurant Units -
 - VI. two of the three restaurant units within the Stadium east stand to have been pre let – *in progress*.
13. As above, the conditions for the Southern Block have almost been satisfied. Once satisfied the freehold transfer of the Southern Block to the Investment Fund can be entered into, this securing the Southern Block Capital Land Receipt and the Commercial Development contributions to Stadium works. This freehold transfer will take place at Financial Close and would enable the DBOM Contract to be entered into.
 14. With regards to the East Stand Restaurant Units Agreement for Lease, condition VI above has not yet been met and is unlikely to be met in full by the proposed October 2017 Financial Close date. Good progress is being made by the Developer to sign up two restaurant

operators, but at this time these have not progressed to the point where restaurant operators have signed legal agreement for leases.

15. Given this position and to not further hold up Financial Close, discussions have been held between all relevant parties to reach a solution that enables the entering into of the East Stand Restaurant Units Agreement for Lease between the Council and the Investment Fund before condition VI (at paragraph 12 above) has been fully met.
16. These discussions in relation to the conditionality on the East Stand Restaurant Units has led to the Investment Fund proposing to the Council a revised financial proposal as set out directly below. This revised financial proposal being solely around the Capital Land Receipt for the East Stand Restaurant Units lease:
 - A. The Investment Fund will pay the Council the full East Stand Restaurant Units Capital Land Receipt sum of C.£3.8m upon entering the long lease for East Stand Restaurant Units should two of the three restaurants have been let by the time Practical Completion of the Stadium has been reached. This the same position as set out in the July 2017 Executive Report and would result in the Council receiving all anticipated receipts under the Commercial Development;
 - B. In the event that no restaurants have been let at the time Practical Completion of the Stadium is reached, the Investment Fund will still enter in to the long Lease for the East Stand Restaurant Units but pay a reduced Capital Land Receipt of C.£2.4m, a reduction of C.£1.4m on the full anticipated receipt;
 - C. In the event that only one restaurant has been let at the time Practical Completion of the Stadium has been reached the Investment Fund will still enter in to the long Lease for the East Stand Restaurant Units but pay a Capital Land Receipt of C.£3.1m, a reduction of C.£700k on the full anticipated receipt.
17. This revised financial proposal from the Investment Fund in relation to the East Stand Restaurant Units lease is the only basis on which the Investment Fund will now proceed if Financial Close is to take place before condition VI (at paragraph 12) is met.
18. Other resolution options have been fully exhausted between the Council and Investment Fund to reach this point. With other scenarios assessed around partial ownership of the Commercial Development, or the Council underwriting restaurant agreements. However, none of these were deemed acceptable by the Investment Fund, this mainly

as the Investment Fund require full ownership of the Commercial Development or none.

19. Even if the Investment Fund had been prepared to consider partial ownership of the East Stand Restaurant Units and/or Council covenant, there would have been additional risks upon the Council.
20. This revised financial proposal (at paragraph 16) does not expose the Council to a risk of ownership for the East Stand Restaurant Units, or result in the Council having to meet ongoing revenue implications around these East Stand Restaurant Units. The risk to the Council under this revised financial proposal for the East Stand Restaurant Units Lease is purely in the form of the total Capital Land Receipts generated as part of the Commercial Development.
21. Under this revised financial proposal the Developer has agreed to cover an element of rent and cost to both the Investment Fund and the Council.
22. The Developer is financially incentivised to ensure all available space across the Commercial Development is let at the earliest opportunity and by the time Practical Completion is achieved. Otherwise any loss in rent to the Investment Fund is taken from the Developer's profit, this includes loss of rent on all three of the East Stand Restaurant Units.
23. With the revised financial proposal around the East Stand Restaurant Units lease this means there is a risk to the Council that should no East Stand Restaurant Units be let by the time Practical Completion of the Stadium is reached, and when the long lease for the East Stand Restaurant Units would be granted to the Investment Fund, the Council would receive as a minimum £9.36m, not £10.76m across the whole Commercial Development deal.
24. Given the Developer is in detailed negotiations for the letting of two of the East Stand Restaurant Units already this is considered a low risk, but one that the Council needs to accept formally.
25. Whilst this risk is considered low, the impact if it were to materialise in full (no restaurant units lets) would be a shortfall in capital funding to the Project of C.£1.4m. In this context it should be noted that the July 2017 Executive Report identified a revenue surplus of some £3.4m across the life of the Project and some of this could be utilised should this risk materialise.

Community Partners

26. Significant progress has been made with all Community Partners since July 2017 with legal agreements for the NHS and York Against Cancer expected to exchange in October 2017.

York Teaching Hospital NHS Foundation Trust (“NHS”)

27. The Agreements for Lease between the Council and the NHS relating to the areas they will take within the Stadium are now complete and due to exchange in October 2017.
28. These legal agreements include the lease premium to be paid by the NHS as set out in the July 2017 Executive Report.

York Against Cancer

29. Agreements for Lease between the Council and York Against Cancer are now complete and due to exchange in October 2017.

Project Financials update

30. No changes are required in the overall budgets agreed previously by Council. Whilst there is a new risk under the East Stand Restaurant Unit Lease to be considered, as set out at paragraph 16, this does not require a change in the budget at this stage. It is merely a risk at this stage, and one which is considered capable of moving to a satisfactory position.
31. The report to Executive in July 2017 showed a revenue surplus across the contract period (13 years) of £3.4m, and that £300k which was previously approved from the Venture Fund was unlikely to need to be called upon, but is retained within the Project.
32. Should the risk of a lower Capital Land Receipt for the East Stand Restaurant Unit Lease materialise, there is clearly the potential to consider the use of some of this surplus to provide funding, though this would require initial funding to cover the shortfall as the revenue surplus occurs over a number of years.
33. The proposal from the Developer and Investment Fund, as set out at paragraph 16, mitigates this risk down to a maximum of £1.4m. In addition the Developer has agreed to fund £70,000 of the Council’s costs should this risk materialise. This sum represents the interest costs for two years on borrowing half of the potential shortfall (i.e. some £700k).

Capital Costs

34. The capital cost of the Project remains within budget and as outlined in the July 2017 Executive Report.
35. The Construction Cost remains effective and held by the Building Contractor until the end of October 2017. Therefore a risk does remains that if Financial Close does not happen by that date costs may rise.

Funding

36. As set out in detail in the March 2016 Executive Report, 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 and funds arising from the Commercial Development.
37. The only potential funding change from that set out in the March 2016 Executive Report relates to the Commercial Development Capital Land Receipt, as detailed at paragraph 16 earlier in the report.
38. The Council also continues to have responsibility to pay for the construction works ahead of contributions being received from the Football Foundation/York City Football Club, NHS, as well as the contribution to the Stadium works and fit out costs from the Commercial Development, all of which will only be received post practical completion of the Stadium works.

Other Project Revenues

39. The Project continues to be supported by revenues from the Sports Clubs, and when a Stadium Sponsor is appointed from Stadium Naming Rights Sponsorship, revenues from Community Partners and Council commercial units within the Southern Block and NSLC for future onward letting.

Project Timetable for NSLC Delivery

40. The current scheduled operational date for the delivery of the New Leisure Centre and Stadium is June 2019, the key indicative milestones for the Project are set out in the table below.
41. Until Financial Close is reached the exact start on site date for construction works is not fixed. Until this point there is therefore a risk further delays could be incurred.

42. *Table 1 - Current indicative Project timetable:*

Date	Indicative Milestone
2 nd October 2017	Pre commencement construction design works - Have now started in readiness for site mobilisation and in line with the July 2017 executive approval
October 2017	Financial Close - DBOM Contract, Commercial Development Agreements and ancillary legal documents signed
November 2017	Construction site mobilisation - Period for Building Contractor following Financial Close to mobilise the NSLC site and complete remaining required construction design work before full construction works commence.
1 st December 2017	DBOM Contract live - GLL operation of Energise and Yearsley commences.
December 2017	NSLC full construction works commence - Full works commence following site mobilisation.
Feb 2019 - April 2019	NSLC construction complete - practical completion of NSLC facilities will be phased, with the Stadiums completion date slightly later than the build completion of the New Leisure Centre. - At the point of the Building Contractor reaching practical completion on the facilities they will not be operational and will require further GLL and Stadium Operator fit out before they are available for use by the public and the Sport Clubs.
From June 2019	NSLC facilities operational - NSLC facilities (Stadium, Community Hub and New Leisure Centre) available for use and operational following all required GLL and Stadium Operator fit out.

Risk Management

43. A detailed risk assessment for the Project was set out in the March 2016 Executive Report. The July 2017 Executive Report updated on these risks as appropriate and/or where changes had occurred. Further updates where applicable are also provided within the body of this report.

Financial Implications

44. The financial implications of this report have been set out under the Project Financial Update section at paragraphs 30 - 39.

Financial Impact of Not Proceeding

45. The March 2016 Executive Report set out in detail the impact of not proceeding with the Project and the significant risks and costs associated with this. This position remains as previously advised and has not altered.
46. It is also important to note that further delays to the Project will lead to further costs, including, but not limited to the construction works as advised earlier in this report (the Construction Cost is only valid until the end of October 2017).

Legal Implications

47. The Council continues to be advised on the Project by external law firm Bond Dickinson LLP.

Report Annexes and Information

Defined Glossary of Terms

Definition	Meaning
Building Contractor	Buckingham Group Contracting Ltd, GLL's building contractor who will construct the NSLC
Capital Land Receipt	£8.7m in respect of the land transactions for the Commercial Development, as set out in paragraph 23 of this 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 paragraphs 16 to 18 of the July 2017 Executive Report
Community Partners	NHS and York Against Cancer as more fully detailed at paragraphs 25-28 of this report
Construction Cost	the construction costs for the NSLC under the DBOM Contract
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
Existing Leisure Facilities	Yearsley Swimming Pool and Energise Leisure Centre
Financial Close	the date of signature of the DBOM Contract and all associated legal agreements to the Project
FSIF	Football Stadia Improvement Fund
GLL	Greenwich Leisure Limited
Investment Fund	Legal and General being the entity purchasing the rights of the Commercial Development
July 2017 Executive Report	The Project report presented at the Executive meeting on the 27 th July 2017

March 2016 Executive Report	The Project report presented at the Executive meeting on the 17 th March 2016
New Leisure Centre	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.
NHS	York Teaching hospital NHS Foundation Trust
NSLC	New Stadium Leisure Complex
Practical Completion	The completion of the construction of the NSLC
Procurement	OJEU Competitive Dialogue Procurement undertaken from September 2012
Project	The Community Stadium & Leisure Facilities Project
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 of the March 2016 report
Sport Clubs	York City Football Club and York City Knights RFLC
Stadium	an 8,000 all seat community sports stadium to host professional football and rugby league games

Report contact details

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