

<b>Bath &amp; North East Somerset Council</b>		
<b>DECISION MAKER:</b>	<b>Cllr Terry Gazzard, Cabinet Member for Development and Major Projects in Consultation with Cllr Malcolm Hanney, Resources and Deputy Leader</b>	
<b>DECISION DATE:</b>	<b>On or after 1<sup>st</sup> December 2010</b>	<small>EXECUTIVE FORWARD PLAN REFERENCE:</small>
		<b>E 2216</b>
<b>TITLE:</b>	<b>Bath Western Riverside Corporate Agreement</b>	
<b>WARD:</b>	All	
<b>AN OPEN PUBLIC ITEM</b>		
<b>List of attachments to this report:</b>		
Overview of Corporate Agreement		

## **1 THE ISSUE**

- 1.1 To secure the development of Bath Western Riverside (BWR) and the agreed commercial outputs it is necessary to enter into a legal agreement with the developer of the land that sits alongside the Section 106 and funding agreements. The S106 Agreement runs with the land whereas this agreement, a 'Corporate Agreement' (CA) is between the principal parties and it sets out the roles and responsibilities of each.
- 1.2 The negotiation of the CA between Crest Nicholson Regeneration Limited (Crest) and Bath and North East Somerset Council for the Bath Western Riverside West (BWR West) development has been completed. A Single Member Decision to authorise signature of the agreement on behalf of the Council is therefore now required so that the agreement can be sealed.
- 1.3 The Council's Planning Development Management Team has concluded negotiations with Crest on the Planning Conditions and Section 106 for BWR West. The CA is an important contribution towards the securing of the comprehensive development of the site as a whole.

## **2 RECOMMENDATION**

The Cabinet member is asked to:

- 2.1 Agree and authorise that the council enter into a Corporate Agreement with Crest Nicholson Regeneration Ltd;
- 2.2 Authorise the Chief Executive in consultation with the Cabinet Member for Economic Development, Cabinet Member for Resources, the Divisional Director (Finance) and the Divisional Director (Legal & Democratic Services) to settle the final form of the Corporate Agreement and authorise its execution, subject to his being satisfied that financial, technical and regulatory compliance issues have been resolved.
- 2.2 Agree that an additional £2m budget be allocated in the 2011/12 capital programme for infrastructure, funded by a Homes and Communities Agency grant.

### 3 FINANCIAL IMPLICATIONS

#### **Bath and North East Somerset Council Cost and Receipts Implications from the CA**

Secured Land (as shown on plan 2 below)

	£'000	For explanation see note
<b>Income</b>		
Partial recovery of Historic Costs	940	A
Contribution to ongoing costs	560	B
<b>Total secured Income</b>	<b>1,500</b>	
<b>Expenditure</b>		
Affordable Housing contribution	-6,900	E
Infrastructure funding (current)	-5,500	D
Infrastructure funding (additional)	-2,000	C
<b>Total Expenditure</b>	<b>-14,400</b>	
<b>Net Total</b>	<b>-12,900</b>	

#### **Comments**

##### ***Income***

- **Explanation note A:** Historic costs of £940k will be recovered in the secured land phase (as shown on plan 2 below, land either owned or secured by Crest or the Council) on 29 March over the years 2015 to 2018 (inclusive)
- **Explanation note B:** Crest will contribute £80k per annum to the council's ongoing costs for further involvement in the project on 1 December in each of the years 2011 to 2017 (inclusive)

##### ***Overage***

- The Council will be entitled to a third of development profit (up to a maximum allowance of £12.4M) after accounting for development expenditure and payment to the Developer of a priority return on sale proceeds.
- It is proposed that the HCA will also be entitled to overage and it is possible that the Council and the HCA will effectively "share" a third of development profit; however, the Council's agreement to such an arrangement would be dependent upon the Council's maximum allowance remaining intact. It is understood that the HCA's allowance would reflect its investment in the development.
- Overage will be calculated on two occasions within the secured land development.

## ***Expenditure***

- The above expenditure is within current approved budgets, with the exception of the £2m additional infrastructure funding, which will be funded through a grant from the Homes and Communities Agency (HCA).

### **HCA infrastructure funding contribution (Explanation note C)**

- The HCA has agreed to invest £2m in the delivery of public infrastructure work around the BWR development. This funding will be used to build public infrastructure in relation to the BWR development (eg. roads). The £2m would be paid to the Council for Crest to implement; it is not currently included in the Council's capital programme and therefore approval is sought as part of this report to add this amount to the current £5.5m infrastructure budget.

### **Infrastructure Funding (Explanation note D)**

- The infrastructure funding from the council of £5.5M shall be paid to Crest within 20 working days of receipt of a Claim for eligible expenditure from Crest (anticipated during the first year of development). This will be on the basis of completed works.
- The Council's infrastructure funding will only be paid against certificates evidencing that works have been undertaken which are to be adopted or maintained by the Council or to be transferred to or at the direction of the Council.
- £1.8m of the Council's £5.5m infrastructure funding is earmarked for development of the Destructor Bridge. Prior to payments of this funding the developer will either have entered into a bonded highways agreement in respect of delivery of the Destructor bridge or, if funding is to be used for other infrastructure works, the developer will have provided the Council with a bank guarantee for the funding paid for other infrastructure works. This is to ensure that if the Destructor Bridge is not delivered by occupation of the 650th unit, the funding paid for other infrastructure works will be returned to the Council to assist with investment in outstanding bridge works.

### **Affordable Housing Contribution (Explanation note E)**

- The progress of the project is dependent on HCA funding approval announcement anticipated in December 2010 and the project will be reviewed at this point.

- The Councils' contribution to affordable housing in the secured land (refer to plan 2 below) totals £6.9m and will be paid to Somer Community Housing Trust as registered social housing provider for this scheme. This funding will be used to deliver the minimum requirement of 25% affordable housing within the secured land. It will be paid on a per unit basis.
- The funding agreement with Somer Community Housing Trust relates to an initial £3.45m of contribution from the Council towards the delivery of affordable housing within the first phase of the development comprising the area of the Detailed Planning Application No 06/04013/EFUL. The remaining affordable housing funding will be subject to a further agreement with a Registered Social Landlord, up to a maximum combined sum of £6.9M.

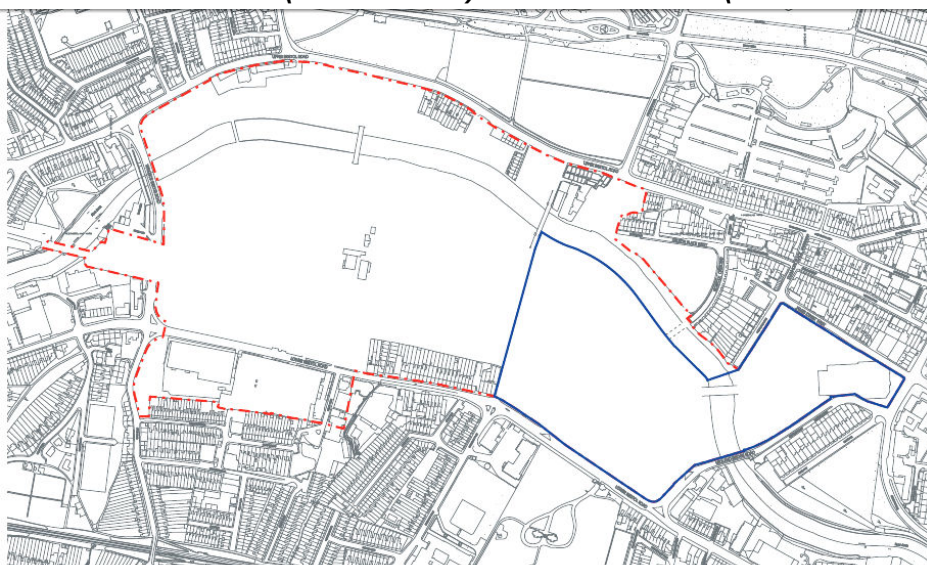
#### 4 CORPORATE PRIORITIES

- *Building communities where people feel safe and secure*
- *Sustainable growth*
- *Improving the availability of Affordable Housing*
- *Improving transport and the public realm*

#### 5 THE REPORT

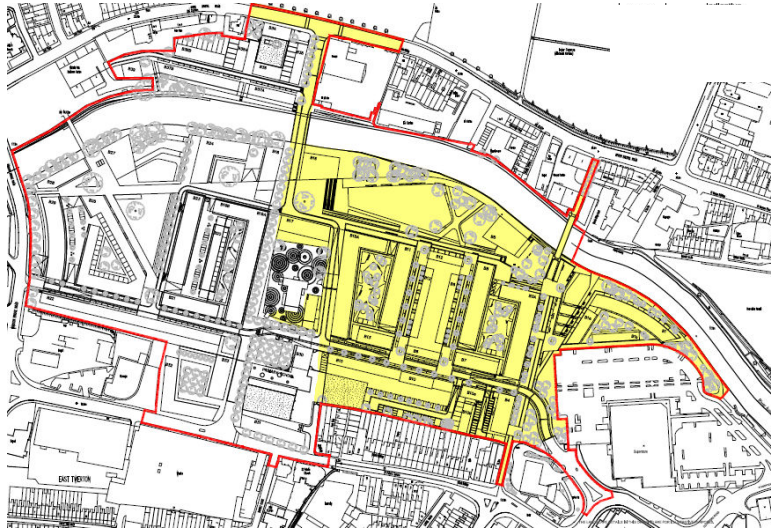
- 5.1 The very first vision for BWR encompassed the whole of BWR West (marked in red on map below) and East (marked in blue on map below)

**Plan 1: BWR West (marked red) and BWR East (marked blue)**



- The scale of the overall BWR project as outlined in the Supplementary Planning Document are 2000 housing units + and around 1 million sqft of commercial uses;
- Initially it was envisaged that all of BWR would be delivered within a comprehensive Masterplan, with a major lead developer and governed by a development agreement placing positive obligations on that developer;
- Even before the credit crunch it was recognised that redevelopment of BWR East was a very significant commercial challenge and with the current financial climate it has proved unachievable at present.
- In order to deliver the City's housing needs as soon as possible it has been necessary to separate the housing and commercial elements.
- The impact of the credit crunch on residential values and the different types of residential units has added to the commercial challenges faced by the developer.
- In parallel, the level of financial commitment residential developers were able to make to projects such as BWR and associated risk they will accept both significantly reduced. This position remains, and is likely to continue for the foreseeable future.
- Given the challenges of finance and land assembly it has been necessary to conclude that a phased approach to development of the secured land of BWR within a comprehensive Masterplan is the most deliverable way forward.
- There has been a recognition that the secured land represents a major development project in its own right (delivery of around 800 housing units, including at least 25% affordable housing and associated small retail space) with a probable build out period of approximately 8-10 years (refer to plan below with secured land shaded in yellow).

**Plan 2: BWR Secured land (marked yellow)**



- Once the CA is signed, planning permission for the Outline Planning Application No: 06/01733/EOUT and Detailed Planning Application No: 06/04013/EFUL will be issued. Crest are planning to commence development of the first phase of the BWR West development early in 2011. This first phase comprises a mix of 299 residential units of which at least 25% will be affordable.
- It is still the Council's intention that the land shown within the red line on Plan 2 above will be developed to eventually deliver around 2000 housing units. Crest at this time would like to be the lead developer for this but won't be under a contractual obligation under this CA to do so.

## 5.2 Why is the Council proposing to enter into a Corporate Agreement (CA)?

The Council is proposing to enter into a CA with Crest as it gives the Council more control over the development and secures the commercial aspects of the negotiations.

The agreement will govern the following aspects of the development:

- The CA will significantly underpin the Comprehensiveness of the Crest Nicholson scheme and thereby facilitates the granting of Outline Planning permission for BWR.
- Upon commencement of development by Crest the CA will guide the general process of development and how the Council and Crest operate together in the future (further detailed below) in order to try to deliver the BWR project over time. In order to ensure that the CA is not at odds with procurement regulations Crest must be under no obligation to proceed with the development of BWR though.
- The CA ensures the Council's involvement in the development of general design and mix of uses for future development phases after DPA1 as they evolve, together with involvement in the phasing of the development.
- The CA will control the degree to which Crest introduces joint venture partners for the project. It regulates that if a joint venture partner will have a role that encompasses more than simply funding the Development the Council's approval must be obtained by the Developer.
- The CA sets out how, when and how much the Council invests both its own money into the project, and wider public sector monies.
- The contribution from Crest to the Council to recover an element of its project costs incurred to-date and those that the council has been anticipated to incur in the future (refer to Section 3)
- The provision of overage payments to the Council, how much, when and on what basis (particularly important bearing in mind the long-term nature of the project).
- The CA ensures that should Crest choose to sell their land-holdings before delivering the overall BWR West project, any acquiring party is obligated to continue with developer obligations set out in the CA.
- The CA provides an element of required comfort for the HCA to invest its proposed significant affordable housing funding into the project via the Registered Social Landlord.



- It will be the “vehicle” under which the parties aim to continue assembling the overall land required to implement the complete BWR project.

## **6 RISK MANAGEMENT**

6.1 The report author and Cabinet members have fully reviewed the risk assessment related to the issue and recommendations, in compliance with the Council's decision making risk management guidance.

The risk register for the project is reviewed in project board meetings on a bi-monthly basis. Corporate Risks arising from the project are fed into the corporate risk register.

6.2 Signature of the CA will commit the Council to its financial contributions according to the payment criteria agreed in the CA and detailed in section 3 of this report.

6.3 The Financial Risk to the council is managed in the following manner:  
Financial contributions for infrastructure will only be paid out against Claims against eligible expenditure as defined in the CA. This will be after measured works are completed.

6.4 Affordable housing funding will be paid to Somer Community Housing Trust (Somer) on a per unit basis after Substantive Implementation of a unit. For the affordable housing units delivered as part of the first 299 units of development (Detailed Planning Application No 06/04013/EFUL) this funding will be paid up to the threshold shown in section 3) of this report. The final number of affordable units acquired by Somer will depend on the affordable housing match funding Somer will receive from the HCA. Per planning agreement no less than 25% affordable housing will be delivered within the Detailed Planning Application.

6.5 Somer will have to account for the funding they receive from the Council separately. Somer will be obliged to repay funding if units are not delivered as agreed.

6.6 The funding conditions regarding the £2M infrastructure funding allocated by the HCA will be passed on to Crest by the Council through a separate agreement.

6.7 Procurement will be in accordance with EU processes.

## **7 EQUALITIES**

7.1 An equalities impact assessment has been carried out using corporate guidelines.

## **8 RATIONALE**

- 8.1 As advised by the Local Planning Authority (LPA) planning permission for BWR West should be granted after the CA with Crest is signed. The planning permission is essential for the development to start on site and for resultant outputs for the Council to be delivered. Any delay in completing the CA would similarly delay the issuing of the Planning permission.
- 8.2 By moving to secure a planning permission through entry into the Section 106 and the CA the Council is in a position to crystallise the progress made to date on this major development project. It is also a demonstrable step highlighting Bath and North East Somerset Council's commitment to the delivery of this strategic regeneration site which in itself will act as a catalyst by unlocking the potential of the City Centre and adjacent areas through infrastructure investment.
- 8.3 The Chief Executive, in consultation with Monitoring Officer and Divisional Director of Legal and Democratic Services, Divisional Director of Finance, Strategic Director of Resource and Support Services, Divisional Director of Property Services, and Strategic Director of Development and Major Projects have agreed that the urgency process for this decision should be implemented. The Strategic Director of Development and Major Projects has been authorised to request the Cabinet Member for Economic Development and Major Projects, to make the decision in accordance with the Council's urgency provisions contained in Rule 16 of the Access to Information rules in the Constitution.

## **9 OTHER OPTIONS CONSIDERED**

- 9.1 Not signing the CA would put the Council in a position where it only had the influence on the future site development through the planning process with no prospect of financial recovery.
- 9.2 Completion of a "traditional" Development Agreement which would have incorporated wider reaching obligations on Crest with regard to starting on site and commencing development. Completion of such an Agreement is no longer possible due to European procurement legislation. The Council has therefore been advised by its legal advisers to not complete a Development Agreement.

## **10 CONSULTATION**

10.1 *Cabinet members; Other B&NES Services; Stakeholders/Partners; Section 151 Finance Officer; Chief Executive; Monitoring Officer*

10.2 Consultation and updates on the progression of the DA and CA negotiations have been held regularly:

A formal Cabinet report was presented in April 2006. A Formal Cabinet report was presented in November 2008. Strategic Directors' Group and Informal Cabinet have been updated on progress regarding the negotiations and agreements on a regular basis.

## 11 ISSUES TO CONSIDER IN REACHING THE DECISION

11.1 *Sustainability; Property; Corporate; Other Legal Considerations*

## 12 ADVICE SOUGHT

The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

<b>Contact person</b>	<i>Melanie Birwe, 01225 477593</i>
<b>Background papers</b>	<p>Bath Western Riverside Supplementary Planning Document (2008) - Source:  <a href="http://www.bathnes.gov.uk/NR/rdonlyres/1307375C-EE57-4D8A-8758-56B29541321D/0/BWR_SPD_Final_Proof_140308_Part_1_Strategic_FrameworkPDF247kb.pdf">http://www.bathnes.gov.uk/NR/rdonlyres/1307375C-EE57-4D8A-8758-56B29541321D/0/BWR_SPD_Final_Proof_140308_Part_1_Strategic_FrameworkPDF247kb.pdf</a></p> <p>Cabinet Paper: Bath Western Riverside Developer Status &amp; Compulsory Purchase Order: Future for Bath Compulsory Purchase Order (5 of April 2006)            Cabinet Paper: Bath Western Riverside West Development Agreement ( 5 of November 2008)            Outline Planning Application - OPA1, No: 06/01733/EOUT            Detailed Planning Application - DPA1, No: 06/04013/EFUL            Outline Planning Application -OPA2, No:06/03396/EOUT            Detailed Planning Permission - Enabling Works, No: 07/02879/EFUL            Conservation Area Consent, No: 06/01750/CA</p>
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