

Single Member Cabinet Decision

**Executive
Forward Plan
Reference**

E2216

Bath Western Riverside Corporate Agreement

Decision maker/s	<p>Cllr Terry Gazzard, Cabinet Member for Development and Major Projects In consultation with Cllr Malcolm Hanney, Cabinet Member for Resources and Deputy Leader</p>
The Issue	<p>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.</p> <p>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.</p> <p>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.</p>
Decision Date	<p>01 December 2010</p>
The decision	<p>The Cabinet Member agrees and authorises that the council enter into a Corporate Agreement with Crest Nicholson Regeneration Ltd.</p> <p>The Cabinet Member authorises 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.</p> <p>The Cabinet Member agrees that an additional £2m budget be allocated in the 2011/12 capital programme for infrastructure, funded by a Homes and Communities Agency grant.</p>
Rationale for decision	<p>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</p>

issuing of the Planning permission.

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.

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.

Financial and budget implications

Secured Land (as shown on plan below)

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

Comments

Income

- **Explanation note A:** Historic costs of £940k will be recovered in the secured land phase (as shown on plan 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.

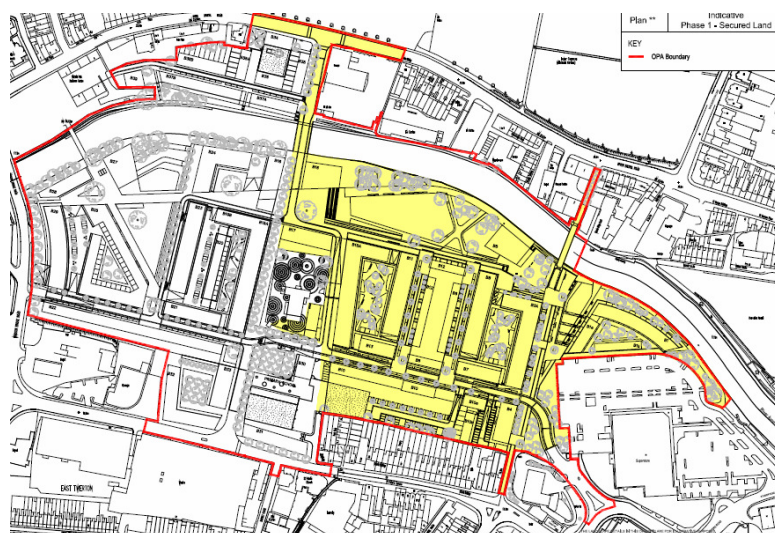
Affordable Housing Contribution (**Explanation note E**)

- 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 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.

Plan: BWR Secured land (marked yellow)



Issues considered	Sustainability; Property; Corporate; Other Legal Considerations
Consultation undertaken	Cabinet colleagues; Other B&NES Services; Stakeholders/Partners; Section 151 Finance Officer; Chief Executive; Monitoring Officer
How consultation was carried out	<p>Consultation and updates on the progression of the DA and CA negotiations have been held regularly:</p> <p>A formal Cabinet report was presented in April 2006.</p> <p>A Formal Cabinet report was presented in November 2008.</p> <p>Strategic Directors' Group and Informal Cabinet have been updated on progress regarding the negotiations and agreements on a regular basis.</p>
Other options considered	<p>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.</p> <p>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</p>

	advisers to not complete a Development Agreement.
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Signatures of Decision Makers	
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Date of Signature	01 December 2010
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THIS DECISION WAS CONSIDERED UNDER RULE 16 OF THE ACCESS TO INFORMATION RULES (SPECIAL URGENCY) AND IS NOT SUBJECT TO CALL-IN