

Bath & North East Somerset Council		
MEETING/ DECISION MAKER:	Cllr Dine Romero, Leader of the Council	
MEETING/ DECISION DATE:	On or after 12th Dec 2020	EXECUTIVE FORWARD PLAN REFERENCE:
		E 3252
TITLE:	RULE 15 Bath Quays North – Supplemental Agreement to the Development Agreement	
WARD:	All	
AN OPEN PUBLIC ITEM		
<p>List of attachments to this report:</p> <p>Please list all the appendices here, clearly indicating any which are exempt and the reasons for exemption</p> <p>WECA Committee Approval of CO for BQN Grant Agreement</p>		

1 THE ISSUE

The Development Agreement between Legal and General Development Assets Holdings Ltd and B&NES Council for Bath Quays North was entered into on 19 July 2019 and subsequently amended by Supplemental Agreement 1 on 8 October 2020.

A further supplemental agreement is now required to be entered to align approved West of England Combined Authority (WECA) funding changes, to be enacted through into the Development Agreement.

2 RECOMMENDATION

The Leader in consultation with the Chief Executive, Monitoring Officer and S151 Finance officer is asked to;

- 2.1 To approve entering a Supplement Agreement to amend the Development Agreement for Bath Quays North between Legal & General Capital Investments Ltd, BQN Ltd (as novated from L&G Development Assets Holdings under supplemental agreement 1) and Bath & North East Somerset Council.

3 THE REPORT

- 3.1 The entered Development Agreement defines that the Infrastructure Development Works are undertaken by the developer and grant funding claimed after the satisfaction of Conditions Precedents (CPs).
- 3.2 The infrastructure development works are to be part funded by the West of England Combined Authority (WECA), utilising both Local Growth Fund (LGF) and Economic Development Fund (EDF) funding.
- 3.3 A Change Order under the Council's Grant Agreement with WECA was approved in March 2020 to enable the Council to commit infrastructure works prior to satisfaction of Conditions precedent under the DA and meet critical expenditure obligations under Local Growth Funding
- 3.4 These advanced enabling works comprise service diversions, archaeological works, demolition of the Riverside coach park, construction of a temporary carpark and associated professional fees.
- 3.5 The advance enabling works will improve the sites future delivery by
 - (1) increasing the prospect of achieving CP's
 - (2) mitigate further programme delays
 - (3) add value to the land holding.
- 3.6 The Supplemental Agreement will vary the Development Agreement to:
 - (1) Undertake advanced enabling works in advance of achieving Conditions Precedent
 - (2) Alter the utilisation of WECA funding within the DA to reflect the advanced enabling Works being executed by the Council.
 - (3) Adjust the definitions of "viability appraisal" and "updated viability appraisal" to reflect the advanced enabling works. This has no effect on the viability of the project.
- 3.7 The development agreement needs to be varied to undertake the advanced enabling works. This needs to be undertaken urgently to allow these works to be planned (scoped, quotations obtained, contracts awarded) and implemented before 31st March 2021. As a result, the Council will enter the decision under Rule 15 General Exception powers to ensure it can meet the 31st March deadline.
- 3.8 Entering the supplemental agreement to secure the LGF funding, avoids the likelihood of a viability gap. To progress and build out the development will bring economic prosperity for the city, especially post Covid.

4 STATUTORY CONSIDERATIONS

- 4.1 Statutory considerations were set out in decision E3122, when authorisation was sought to enter the Development Agreement. These are not affected by this decision.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

- 5.1 There are no changes to the project's budget, its profiling or funding resulting from this paper.
- 5.2 The advanced enabling works are budgeted at £2.877M.
- 5.3 When the Council secured a change request from WECA to permit drawdown of the LGF funding, the advanced enabling works were anticipated to be £2.435m. The balance of £0.442m reflects the refinement of estimates and will be funded within the approved project budget, pending submission of a further WECA change request.

6 RISK MANAGEMENT

- 6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance.
- 6.2 The principle risk is that the Council are incurring further infrastructure expenditure and drawing down grant funding in advance of achieving Conditions precedent. Whilst this improves the value of the land, the funding may need to be repaid should conditions precedent not be achieved and the scheme does not progress to delivery.

7 EQUALITIES

- 7.1 An EIA was undertaken in 2019 prior to securing grant funding for the scheme and this does not materially change as a result of entering a supplemental agreement.

8 CLIMATE CHANGE

- 8.1 Bath Quays North is a highly sustainable development that has been future proofed to allow net zero carbon emissions to be achieved by 2030. It is an all-electric scheme, with no combustion, it reduces carbon by 75% beyond SAP10, there is considerable provision for cycle parking and electric vehicle charging points, it far exceeds government targets for biodiversity net gain, it incorporates PV panels and has a sustainable drainage strategy. This decision to enter the supplemental agreement protects this provision.

9 OTHER OPTIONS CONSIDERED

- 9.1 Do nothing – The Council does not undertake the advance enabling works, these works are undertaken once Conditions Precedents achieved, negating the need to amend the Development Agreement.

The WECA LGF grant will be lost, which will result in a funding gap. As viability is a condition precedent, the project will not proceed if the viability does not meet the Councils minimum premium requirement, unless the Council choose to accept a reduction in the minimum premium or can plug the funding gap. In addition, the programme would extend to reflect the works being undertaken once conditions precedent achieved.

Alternatively, either party at this stage could terminate the agreement. The developer would lose its investing bidder for the scheme which is progressing the planning application to its current status. The Council would lose the social, economic and sustainability benefits which the development brings, the minimum premium would be lost, the opportunity to have a new carpark asset would be lost, the Council would have the burden of the existing Avon St carpark which is in a poor condition, and the Council could run the risk of having to run another procurement or land sale in the future, which would incur further cost and time.

- 9.2 Request an extension to the LGF funding – This has been explored, but there is no flexibility to extend as this deadline to expend LGF has been imposed by Government. Further at WECA level, the use of LGF is overprogrammed so if we do not utilise it for this it will be reallocated to the other Authority's to meet approved project spend within the LGF programme.

10 CONSULTATION

- 10.1 This report has been prepared in consultation with the Leader of the Council, the Chief Executive, the Cabinet Member for Economic & Community Regeneration; the Cabinet Member for Finance and Efficiency; the Section 151 and Monitoring Officers and the Director for Economy & Growth

Contact person	Simon Martin
Background papers	E3122 Decision to proceed with preferred developer ODD to enter supplemental Agreement 1
Please contact the report author if you need to access this report in an alternative format	