

Subject:	King Alfred Development		
Date of Meeting:	10th October 2019		
Report of:	Executive Director Economy Environment & Culture		
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Ward(s) affected:	Central Hove (directly) all others indirectly		

FOR GENERAL RELEASE

1. PURPOSE OF REPORT AND POLICY CONTEXT:

- 1.1 This report formally advises the Committee of the Preferred Developer's withdrawal from the King Alfred Development project. The Council appointed Crest Nicholson in partnership with the Starr Trust (Crest) as Preferred Developer in January 2016. As a consequence of Crest's withdrawal at this late stage, some 4 years since the contract was awarded, it is proposed that the current procurement is ended, and the current project is closed, pending initiation of a new project in revised form.
- 1.2 The report also provides a high-level summary of the work proposed for the next stage to establish a new project, together with new governance arrangements to support that process.

2. RECOMMENDATIONS:

That the Policy & Resources Committee:

- 2.1 Note Crest's withdrawal from the King Alfred Development project.
- 2.2 Agrees that the procurement should be closed, that the current project should be ended and that the Council should serve a notice under Regulation 55 of the Public Contracts Regulations 2015 confirming that the Council will not be awarding a contract.
- 2.3 Confirms that provision of a modern Sports Centre in the west of the city remains a Council priority and agrees that new plans should be formulated.
- 2.4 Notes the outline of key activities proposed as part of the next stage to establish the new project;
- 2.5 Agrees to the establishment of a new cross-party Project Board to oversee the new project; notes that the membership of the Board will be on the basis of nominations from each political group; and notes that terms of reference will be brought to a future meeting of this Committee for approval.

2.6 Agrees that a detailed report with proposals for the way forward be brought to a future meeting of this Committee.

3. CONTEXT/ BACKGROUND INFORMATION:

3.1 The current King Alfred Development project began in 2012, some 4 years after termination of the Karis ING scheme (2001 – 2008). Detailed preparatory work including financial analysis informed the procurement exercise that was launched in October 2014. Following an intensive ‘Competitive Dialogue’ tendering process conducted between 2014 and August 2015, the Council appointed Crest as Preferred Developer in January 2016.

3.2 Initial progress was made but within months of appointment Crest alerted the Council to significant additional financial viability challenges. This led to a prolonged period of negotiation, during which time consideration was given to opportunities to address the financial problems. Additional public funding from the Housing Infrastructure Fund was secured in February 2018, which together with the Council’s agreement in December 2015 to revised arrangements relating to the delivery of affordable housing, was expected to address the problems and allow the project to proceed.

3.3 At its 24th January 2019 meeting the Policy Resources & Growth Committee considered a detailed report on progress towards finalising the terms of the Development Agreement (DA). At the time of publication of the 24th January 2019 committee report, the terms of the DA were substantially agreed by both parties. Therefore, consistent with the committee’s 6th December agreement to the end of January 2019 deadline for entering into the DA, the committee was recommended to agree the terms and authorise officers to enter into it by the end of January 2019.

3.4 Following publication of the report and immediately prior to the committee meeting, on 23rd January 2019 Crest wrote to the council advising of its unwillingness to enter into the DA at that time due to ongoing Brexit uncertainties. In the light of Crest’s letter a number of Group amendments were agreed resulting in amended recommendations, key among which agreement to an extended deadline of 30th March 2019 for entering into the DA.

3.5 At the January meeting the committee resolved to (truncated list with recommendations central to this report only – full list shown at Appendix 1):

- Authorise officers to enter into the Development Agreement on the terms set out in the Summary attached to that report, the full version of which (excluding Annexures) was presented in the Part 2 report;
- Note the contents of the letter from Crest dated 23 January 2019, and agreed that, in light of the letter, that if the DA is not signed by the end of January 2019, the Executive Director Economy, Environment & Culture is authorised to explore all alternative delivery options, including the potential use of prudential borrowing, and in-house delivery of the project;
- Agree that if the DA has not been signed by 30 March 2019 the Council will not enter into the DA with Crest Nicholson and will bring the matter back to the

next Policy Resources & Growth Committee including the initial evaluation of the alternative delivery options;

- 3.6 At the time the committee agreed the 30th March 2019 deadline, the date for the UK's exit from the EU was 29th March 2019. Subsequent agreement reached between the UK Government and the EU resulted in a revised timetable and an extension of the exit deadline to 31st October 2019. In view of that development, its bearing on major investment decisions, and Crest's previously stated position in relation to the timing and uncertainty caused by Brexit, the Council continued discussions with Crest beyond the 30th March deadline.

Preferred Developer Withdrawal

- 3.7 Following further negotiations and exchange of correspondence aimed at finalising the terms of the DA in the 6 month period since the 24th January PRG Committee meeting, on 8th August 2019 Crest Nicholson advised the Council of its withdrawal from the project.
- 3.8 Crest's decision came more than 3 years after their appointment as Preferred Developer. Crest's letter to the Council advised that *"... our Board has reluctantly come to the conclusion that the ambition of the scheme in these uncertain times is too great and that the project is simply unlikely to be able to deliver the required social and physical outputs given the related costs and values."* Also, *"that it has become a more complicated project than originally envisaged in terms of both planning and delivery. It is now increasingly apparent that the increasing cost of delivering the scheme.....at a time when uncertainty has been growing and values falling, that the project can no longer support the provision of affordable housing and remain viable."*
- 3.9 The Starr Trust, a local based charity supporting young people through sports, arts and education, was part of the consortium of which Crest Nicholson was nominated lead bidder. Consideration has been given as to whether it might be possible to engage with another developer working alongside the Starr Trust. However the city council is not able to award the contract to an organisation which was not successful following the procurement process. Whilst acknowledging the Starr Trust's role in establishing its relationship with Crest and that the Starr Trust was a member of the Crest consortium, it was not the organisation with whom the Council would have entered into a contract. The nominated lead bidder was Crest who made clear as part of their bid that they would take 100% of the responsibility for the planning, development and construction aspects of the project. The selection criteria were met on the basis of the economic and financial standing and the technical and professional ability of Crest. Crest's financial covenant and construction experience were key. It would therefore be unlawful to award a contract to any party other than Crest.

Procurement and Project Closure

- 3.10 It is precisely 5 years since the current procurement process began and more than 3.5 years since Crest was appointed. Whilst it was known at the time of embarking on the project that it was complex and challenging, and that 'Competitive Dialogue' was a resource intensive and lengthy process, it has taken far longer than originally anticipated. Indeed, at the time of Crest's

appointment, the indicative timetable showed contract finalisation within 3 months, thus enabling the DA to be entered into by mid-2016.

- 3.11 The timetable was known to be ambitious for a complex project of this nature, and that a short extended period was required was not altogether unexpected, but Crest's withdrawal after a more than 3 year delay confirms that it is appropriate to formally end the current procurement. With the committee's agreement to this, the Council will serve a notice on the unsuccessful bidder, Bouygues Development, under Regulation 55 confirming that the Council will not be awarding a contract.
- 3.12 It is also considered appropriate to close the current project and to take stock ahead of working up new plans. It is now 7 years since the project objectives were set, the sports centre requirements were established, and the development route and objectives were agreed.

Housing Infrastructure Fund

- 3.13 Crest's withdrawal directly impacts the £15.2m Housing Infrastructure Funding (HIF) awarded to the project in 2018. Closure of the current project means the HIF funding is lost as the award was based on Homes England's detailed evaluation of Crest's specific proposals and the funding gap that existed at that time, as opposed to being a funding award capable of assisting any future project on the site.
- 3.14 The Council has kept Homes England fully informed of developments through the past year in particular, has made them aware of Crest's withdrawal, and will continue to engage with them as any new project is established.

Project Review and New Project

- 3.15 Embarking on a new project brings uncertainty and inevitably involves further delay to meeting the project's primary objective; delivery of a new Sports Centre. However, it also provides the opportunity to review the project, its aims and objectives, the development aspirations, and the appropriate means of meeting these.
- 3.16 Failure of the current scheme after 5 years from commencing the procurement, and taking account of the previously aborted Karis/ING scheme (2001 – 2008), confirms that to embark upon a third tendering exercise on a similar basis would be ill-advised. It is also highly questionable whether such an approach would generate sufficient market interest.
- 3.17 The project cannot afford another failure and it is therefore vital that time is taken to undertake the work necessary to ensure that any new project is given the best possible opportunity to succeed. This will involve learning lessons from the latest attempt, reflect changed circumstances, evaluate options, test viability, and consider the procurement route.
- 3.18 The key activities fall under the following main headings:

- Project review

- Establish new project objectives
- Sports Centre site location and alternative sites
- Project Viability and Development route

3.19 This work, which it is proposed will be led by a cross-party Project Board, will include consideration of the following issues/options (not intended as an exhaustive list and it should be noted that there are hybrid development scenarios):

- Learn lessons; review failed project particularly the procurement process, its operation and effectiveness.
- Establish current condition of the King Alfred Leisure Centre, the operational and financial pressures for renewal, and timing in relation to the Council's Sports Facilities Management Contract.
- The need for realism; establish project objectives (sports and housing) that address known challenges, and which are considered achievable and financially viable.
- Review Sports Centre facility requirements (core components) including consideration to separation of wet and dry facilities (co-location brings economies of scale).
- Consider location of the new Sports Centre, whether the current site is appropriate, and what alternative sites may be available in the west of the city.
- Consultation arrangements.
- Review development options e.g.
 - Deliver new stand alone Sports Centre on part of the current King Alfred site and dispose of remainder of the site for housing development.
 - The potential for the Council to use prudential borrowing to meet the capital cost of the Sports Centre and thus reduce reliance on the enabling development and the scale of that.
 - Disposal of entire King Alfred site for housing development with new Sports Centre delivered on alternative site, ideally Council owned, in the west of the city.
 - Potential for the Council to undertake in house delivery of the Sports Centre.
- Financial viability testing.

3.20 The above activities will also need to be taken forward in parallel with the Council's review of the overall future provision of the council's sports facilities within the city (including the existing King Alfred Leisure Centre). This review, which is currently out to tender, is to identify the condition and lifecycle costs of the facilities enabling the development of an Investment Plan to ensure the effective long term planning of the facilities.

Project Board

- 3.21 As with many major projects, the King Alfred Development project was previously overseen by a cross-party Project Board. Such Board's provide an effective means of ensuring cross-party engagement, active Member involvement, and support. Boards are non-decision making, but it is through them that reports are referred to appropriate committee meetings.
- 3.22 The most recent Board was established at the time of the project's inception in late 2012. The Board provided strategic management and oversight and was instrumental in the development of the project at all key stages spanning a 4 year period i.e. throughout the tendering process up to selection of the Preferred Developer in January 2016.
- 3.23 The Board set the project objectives, agreed the sports centre facility requirements, and agreed the wider development aspirations. It also considered financial viability and the known financial constraints, the procurement options, and approved the tender documentation and process by which 'Competitive Dialogue' was conducted.
- 3.24 Project Boards were dissolved in mid-2016. They were replaced by the then newly created Strategic Delivery Board, a cross-party Member Board chaired by the Leader of the Council. Termination of the current project and inception of a new one would be an appropriate point at which to consider establishing a new Project Board. The Board, whose sole role would be to manage this single project, would enable Members to have a greater involvement in and awareness of key project issues. This would enable Board Members to play a more active role than the Strategic Delivery Board, and be involved in the detailed arrangements through which any new project would be established. It is therefore proposed that terms of reference are drafted and will be brought back to this Committee for approval.

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS:

- 4.1 Previous reports to this committee have identified the broad options open to the Council in the event that the partnership with Crest was ultimately terminated. In line with the January 2019 committee resolution that if the DA was not entered into by January 2019, that officers should explore all alternative delivery options, that work commenced in February 2019. An initial stage of work was presented to the Council's Strategic Delivery Board in February 2019, with additional updates provided in March and June 2019.
- 4.2 Detailed analysis of alternative delivery options forms part of the next stage of work, as set out in paragraphs 3.15 to 3.20, the outcome of which will be reported to a future meeting of this committee.

5. COMMUNITY ENGAGEMENT AND CONSULTATION

- 5.1 The 2013 report presented to this committee at the time of inception of the latest procurement, advised of the extensive consultation exercise that informed the Indoor Sports Facilities Plan approved by Cabinet in April 2012. Surveys undertaken as part of that work provided feedback regarding the quality of existing facilities and asked respondents to outline their priorities for any future

development of sports facilities. Those findings therefore assisted the development of the last project but it is recognised that there is a need to review this to inform any future project. Community engagement and consultation will form an important element of the next phase of work, the form and timing of which will be considered by the Project Board.

6. CONCLUSION

- 6.1 Successive attempts to bring about the King Alfred Development serve to confirm that it is, and will remain, a complex major project on one of the most strategically significant and sensitive sites in the city. It was known at the time of launching the last procurement that it was challenging and that realism and pragmatism was required if it was to be delivered successfully. The Council therefore structured the tender opportunity such that developers were given flexibility to respond with tailored solutions but where a key requirement was that they were financially viable. At the time the Council appointed Crest, the scheme was viable and Crest was committed to delivering it.
- 6.2 The December 2018 and January 2019 reports to this committee detailed the financial challenges encountered over the past 3 years. During that time, despite considerable efforts made by all parties, financial viability worsened year on year. Crest's withdrawal is disappointing, bringing as it does further uncertainty and frustration. However, termination of the procurement and closure of the current project does provide a degree of clarity. It allows the Council to take a fresh look at the project and its objectives, something that can take account of past performance, the passage of time, and changed circumstances.
- 6.3 In embarking on a new project and the opportunities it presents, it is critical that it is developed on the firmest possible footing. The work needed to inform this will be undertaken during the next phase, something that will require time, and will be overseen by a new Project Board.

7. FINANCIAL & OTHER IMPLICATIONS:

7.1 Financial Implications:

- 7.1.1 There are no direct financial implications arising from the recommendations of this report.
- 7.1.2 The development agreed with Crest included a council contribution of £8 million. This contribution was to be funded through council borrowing with the financing costs being met from the reduced costs/increased income from a new leisure centre. Therefore this contribution is not guaranteed for any new project.
- 7.1.3 The financial implications of any new proposals will be considered as the project progresses however the ambitions for sports facilities in the west of the city are likely to require financial commitments from the council.
- 7.1.4 The council has incurred approximately £0.420 million external costs up to the proposed closing of the current procurement process. It is therefore likely the new project will require significant resources to support progress. In addition the King Alfred Leisure Centre is likely to need investment in maintenance to ensure

the facility remains operational. The council currently holds a reserve for the King Alfred of approx. £0.280 million which is available for both the project costs and additional maintenance and this resource level will need to be kept under review as the project develops.

Finance Officer Consulted: James Hengeveld Date: 19/09/19

7.2 Legal Implications:

- 7.2.1 Permanent cross party working groups which members sit on need to be established by P&R who need to approve their terms of reference. The terms of reference are included at Part 4 of the Council's Constitution. The board may meet informally to agree their terms of reference before they are formally approved at a future P&R.
- 7.2.2 The Council has previously received advice from James Goudie QC in relation to the procurement risks of revising the Crest proposals. Whilst the legal advice was that it was safe to proceed with the revised contract, the Council's legal advisors were becoming increasingly concerned about the length of time which had passed since the procurement was concluded.
- 7.2.3 It would not be lawful to award a contract to the Starr Trust as Crest was the lead bidder. As part of the procurement process the Council evaluated the bidders' economic and financial standing and their technical and professional ability. Crest's financial covenant and construction criteria were key to the consortium meeting these tests.
- 7.2.4 The Council can in very limited circumstances directly award a contract without first undertaking a procurement. These include situations where there is an extreme urgency for example. They do not apply in this instance.
- 7.2.5 The Council is required to serve a notice under Regulation 55 as soon as possible following a decision not to award a contract. It will need to serve this notice on all the economic operators who submitted tenders.

Lawyer Consulted: Alice Rowland Date: 30/09/19

Equalities Implications:

- 7.3 There are no specific equalities implications arising from this report, but the provision of sports facilities that are accessible to all sections of the community are important to increase participation and subsequently improve health and well-being.

Sustainability Implications:

- 7.4 Any future development will be required to meet the Council's objectives around sustainable development in relation to policies within the City Plan. Sustainability standards will be a feature of any future procurement process for both the sports and leisure centre element and the wider enabling development.

Any Other Significant Implications:

7.5 All significant implications are dealt with in the body of the report

SUPPORTING DOCUMENTATION

Appendices:

1. Policy, Resources & Growth Committee resolutions 24th January 2019 meeting.

Documents in Members' Rooms

None

Background Documents

1. Policy & Resources Committee report 11th July 2013
2. Policy & Resources Committee report 21st January 2016
3. Policy Resources & Growth Committee report 6th December 2018
4. Policy Resources & Growth Committee report 24th January 2019

Policy, Resources & Growth Committee Resolutions 24th January 2019

At its 24th January meeting the committee:

- Noted the work undertaken in negotiating the final terms of the Development Agreement with Crest Nicholson since the 6th December meeting;
- Authorised officers to enter into the Development Agreement on the terms set out in the Summary attached to that report, the full version of which (excluding Annexures) was presented in the Part 2 report;
- Noted the contents of the letter from Crest dated 23 January 2019, and agreed that, in light of the letter, that if the development agreement is not signed by the end of January 2019, the Executive Director Economy, Environment & Culture is authorised to explore all alternative delivery options, including the potential use of prudential borrowing, and in-house delivery of the project;
- Agreed that if the development agreement has not been signed by 30 March 2019 the Council will not enter into the development agreement with Crest Nicholson and will bring the matter back to the next Policy Resources & Growth Committee including the initial evaluation of the alternative delivery options;
- Granted delegated authority to the Executive Director for Economy, Environment & Culture, Assistant Director Property & Design and the Executive Lead Officer Strategy, Governance & Law to make minor amendments to the Development Agreement, settle all the legal documents and take any other necessary steps required to implement the recommendation at 2;
- Approved the Council's capital contribution of £8m (in accordance with the decision of Policy & Resources on 21 January 2016) towards the development of the new public sport and leisure centre, the sum to be through borrowing and the financing costs funded by forecast operational savings resulting in a cost neutral position for the Council;
- Agreed in principle to appropriate the site for planning purposes and delegates authority to the Executive Director for Economy, Environment & Culture to appropriate the site for planning purposes once the indemnity described in paragraph 3.25 has been executed and satisfactory planning permission has been secured;
- Agreed in principle that the council will authorise the use of S203 and delegates the final decision to authorise the use of S203 powers to the Executive Director for Economy, Environment & Culture;
- Authorised officers to enter into the Development Agreement on the terms set out in the Summary, which contains provisions which seeks to ensure that 20% affordable housing is built as part of the development, the full version of which (excluding Annexures) was presented in the Part 2 report; and agreed that following signature of the development agreement if there is any proposal to either downgrade the quality, specification or amenity value of the sports centre that it be brought back to this committee.

