

FALKIRK COUNCIL

Subject: TOWN CENTRES STRATEGY: BO'NESS INITIATIVE
Meeting: ECONOMIC STRATEGY & DEVELOPMENT COMMITTEE
Date: 22ND SEPTEMBER 2009
Author: DIRECTOR OF COMMUNITY SERVICES

1.0 INTRODUCTION

- 1.1 The purpose of this report is to update Members on the progress of the regeneration proposals for Bo'ness harbour and foreshore including the outcome of negotiations between the Council and ING Real Estate, in line with approvals by the Policy & Resources Committee on 16th March 2004, 19th October 2004, 12th June 2007 and 8 April 2008. The report confirms the main terms agreed in the Development Agreement and identifies the next stages with regard to the development programme.

2.0 BACKGROUND

- 2.1 The Council is committed to the regeneration of Bo'ness town centre, harbour and foreshore and has been progressing the Townscape Heritage Initiative and proposals for the harbour and foreshore in partnership with developers, retailers and the local community. The Council's strategy for the regeneration of the Bo'ness harbour and foreshore was agreed at the 16th March 2004 Policy and Resources Committee, approving recommendations that the Council should:-

- a) Appoint ING Real Estate Development UK Ltd as the Council's preferred developer, subject to more detailed negotiations to satisfy financial and project feasibility conditions; and
- b) Note that the Director of Community Services will report back on the outcome of these negotiations, prior to conclusion of an appropriate Development Agreement.

- 2.2 On 19th October 2004 the Policy and Resources Committee:-

- a) Agreed that the Council enter into a formal agreement with ING Real Estate Development UK Limited in the form of a Co-operation Agreement; and
- b) Noted that the Director of Community Services will report back on the outcome of these negotiations, prior to conclusion of an appropriate Development Agreement.

- 2.3 On 12th June 2007 the Policy and Resources Committee agreed to:-

- a) Heads of Terms by which the Council should enter into a Development Agreement with ING RED UK (Bo'ness) Ltd with ING RE BV as guarantor, subject to financial checks.
- b) extend the Co-operation Agreement; and
- c) proceed as Harbour Authority in the management and maintenance of the harbour once restored and operational.

- 2.4 On 11th March 2008, as a consequence of the economic downturn, a revised phasing

scheme and Heads of Terms were submitted to the Policy and Resources Committee recommending:-

- a) Approval of the revised Heads of Terms by which the Council should enter into a Development Agreement with ING RED UK (Bo'ness) Ltd with ING RE BV as guarantor.
- b) Agree the phased development of the harbour restoration works as outlined in the report.

2.5 This matter was then referred to Full Council on 30th April 2008 where it was agreed that further consultation was required. Subsequently on 25th June 2008 the Full Council considered the outcome of consultation involving the Bo'ness community. It agreed that:-

the revised phasing of the Initiative should proceed and that the Director of Community Services be authorised to work with ING RED UK (Bo'ness) Ltd, with ING RE BV as guarantor, to progress and deliver the regeneration masterplan and finalise a Development Agreement on the terms set out in the original Policy & Resources Committee Report of 11th March 2008.

2.6 Following these approvals, Council Officers, ING and specialist advisers have progressed a detailed and comprehensive Development Agreement based on the Heads of Terms agreed through Policy and Resources Committee on the 11th March 2008.

3.0 DEVELOPMENT AGREEMENT

3.1 It was agreed as outlined in 2.4 that the Development Agreement be concluded on the basis of delivering the regeneration project as follows:-

- The transfer of Council land on the foreshore incorporating Blocks 15 and 16 with an option over Block 14.

In return for:-

- A residual site value of £500,000, subject to various conditions including pre-sale requirements.
- Payment of a £100,000 in return for an option agreement on Block 14. (Total value of Block 14 being £500,000).
- Payment of £400,000 where the option for block 14 is taken up.
- Payment to the Council of 100% of the overage above 12% developers profit on sales revenue.
- Establishment of a framework partnership agreement confirming agreed terms for the development of future blocks within the regeneration project sensitive to market conditions.
- ING's commitment to work in partnership with the Council in the phased development of the harbour works as funding becomes available from receipts generated by the scheme.

The Heads of Terms outlined above have now been incorporated into a detailed and comprehensive Development Agreement.

3.2 The residual value of the project is ring fenced for the restoration of the harbour, and is identified by accounting for the development value calculated on the basis of total house sales, less development costs including 12% developer profit. As a condition of the

Development Agreement, future sites will be transferred to ING at market value, assessed by the District Valuer. 100% of any profit overage at a minimum of £16m will also transfer to the Council, until the harbour restoration works are completed, with a 50:50 split of profit overage thereafter. The Council has committed to the requirement to transfer the residual value of each block and any profit overage payments into a harbour fund, ring fenced specifically to restore the harbour.

- 3.3 The terms of the Development Agreement include provision for cost validation and assessment of profit overage. This is to ensure that the Council obtains best value for its land contribution to the project. All costs will be validated through an independent assessment procedure and will be assessed over the term of the project to confirm that costs are realistic, have been reasonably incurred as part of the project and should be incorporated into the financial assessment in determining the profit overage. The Council's Development Services will instruct an independent cost consultant to validate all the costs incurred by the developer.
- 3.4 The Council's interests in the first phase of development of the site, (identified as the location for Blocks 15 and 16 as well as the site for Block 14 where the option agreement is exercised), have been valued. As advised previously to the Council, in consideration of the developer's financial appraisal, the Council's independent advisors and the District Valuer have confirmed that, on the basis of the proposed heads of terms detailed in item 3.1 above, the Council is receiving best value for its interests.

4.0 KEY COUNCIL REQUIREMENTS

- 4.1 In addition to the above principal terms identified in the Development Agreement, further key Council requirements have been incorporated into the Development Agreement.
- 4.2 The Council has secured trigger points (longstops) within the development timetable leading up to the completion of the scheme where the Council can terminate the agreement if ING are not meeting the deadlines for each stage.
- 4.3 The market values for blocks 14, 15 and 16 have been agreed and confirmed as best value by the District Valuer. The balance of future sites will be subject to District Valuer approval as per the committee report.
- 4.4 ING are required to continue with the role as principal developer throughout the development process with third party involvement only on the basis of a contractor. ING are to remain responsible for the delivery of the overall masterplan.
- 4.5 Clear parameters have been set to maintain the integrity of the Masterplan. The Council's consent is required for any subsequent material changes. These are:-
- any change in the concept of a strong urban street block pattern of town houses and apartments with integral open space;
 - the development of detached/semi-detached housing;
 - the development of uses other than residential where residential development has been identified in the agreed Masterplan;
 - removal of the park area identified in the Masterplan;
 - revisal of the intended commercial uses identified in the detailed planning

application for the Harbour development(Phase 1);

- changing the height of:-
 - (i) Block 3 and Block 17 to a height greater than that identified in the Agreed Masterplan; and
 - (ii) all other Phases not identified under paragraph (i) above a height of more than five storeys.
- changing the Harbour Works to be delivered by the Council.

4.6 100% overage is to be paid to the Council up to the value of the Council Harbour Works subject to a minimum of £16m. ING are to deliver all access to the development site including delivery and implementation of the lifting bridge at the harbour subject to a continuation of development beyond Blocks 14, 15 and 16.

5.0 DEVELOPMENT PROCESS

5.1 The following key stages have been identified by ING and the Council in order to progress the revised phasing of the masterplan:-

Key Milestones	Target Completion date
Development Agreement	August 2009
Preconditions	February 2010
Flood Prevention Scheme	September 2010
Detailed Planning determination for Blocks 15, 16	September 2011
Block 16 Constructed	April 2014
Block 15 Constructed	May 2016
Block 14 Constructed	November 2018
Proposals Submitted for future blocks	May 2019

A project team involving the Council and ING has been established and will meet regularly over the course of the project to maintain progress.

5.2 Preconditions

Prior to the preparation and submission of a detailed planning application both the Council and developer are required to resolve a number of issues that could affect the delivery of the project. These are:-

- Acquisition of third party interests.
- Conclude S75 Agreement with regard to the original outline planning application
- Finalise site and title plans
- Resolve outstanding title issues
- Finalise detail of historic costs in relation to preparatory work

5.3 Flood Prevention Scheme & Harbour Design

Works around the harbour are currently underway and relate to the Flood Prevention

Scheme (FPS), with a construction period from March 2008 to September 2010. These works will put in place the necessary safeguards to facilitate occupation of the site. Additionally, they will incorporate a coffer dam at the entrance to the Inner Dock which will offer flood protection and retain a body of water within the dock area making this a more attractive environment in the short term. Further restoration work around the Harbour will be designed as funding becomes available. A Sub Group involving local members, community groups, ING, consultants providing specialist harbour guidance and Council officers has been set up to take forward and prioritise the work around the harbour. In the meantime, Development Services will initiate a risk assessment covering the harbour area to make sure all health and safety requirements are in place.

5.4 Planning Submission

Once preconditions have been resolved the developer will initiate a detailed planning application in relation to Blocks 14, 15 and 16. In advance of a submission the developer is required to submit these plans to Falkirk Council as landowner for approval. If the proposals are materially changed, the Council would be required to report to Committee and present to the community for feedback prior to submission for planning approval.

5.5 Construction Stage

Construction of the scheme will be subject to market conditions. If the market improves and unit sales increase the blocks will be constructed quicker than timescales currently identified. In accordance with the development agreement the developer has to build each block within a set timescale, agreed through external advisers as commercially realistic and best value. If these trigger points are not met the Council can terminate the agreement.

6.0 **IMPLICATIONS**

6.1 Financial

The Council has agreed a capital contribution of £819,000 towards the scheme. On the basis of transferring a site accommodating Blocks 15 & 16 to ING, the Council will receive a receipt of £500,000 which has been independently confirmed to the Council as representing best value. This is on the basis that it represents best price available in cognisance of ground conditions and market conditions and permits the regeneration scheme to proceed as proposed. A further £100,000 receipt will be received committing Falkirk Council to an option agreement on the site for Block 14, with a further £400,000 on sale of the site if the option is exercised, as set out in item 3.1 above. This is also considered to provide best value for the Council.

- 6.2 In addition the developer has accepted a maximum level of profit of 12% on sale revenue which is considered to be lower than normal practice for schemes of this type. Any value above 12% will be transferred to the Council to be ring fenced for investment to enable completion of the restoration of the harbour area and flood prevention works with a 50:50 split thereafter.

6.3 Legal

The Council's independent valuer, the District Valuer and a development adviser (CBRE) valued the Council's interest to determine whether ING's proposals are considered to meet the requirements of S74 of the Local Government (Scotland) Act 1973 for the Council to obtain best consideration for assets disposed. It has been confirmed that on the basis of the agreed heads of terms, the Council is receiving best value.

6.4 Planning & Policy

The regeneration proposals for the foreshore site are consistent with the Structure Plan strategy of 'Sustainable Growth in All Our Communities'. The proposals support policies aimed at promoting the vitality and viability of the Town Centre, enhancing the tourism role of the town and conserving the built heritage. A detailed planning application will be required for Blocks 15 and 16 and will be dealt with in due course. The full context of the scheme, including detailed planning and roads issues, will be fully assessed through the planning application process. The proposals are also consistent with the Strategic and Local Community Plans and the *My Future's in Falkirk* Initiative.

7.0 CONCLUSION

- 7.1 The proposals for the regeneration of Bo'ness Harbour and Foreshore have now progressed to the extent of concluding a comprehensive and detailed development agreement between ING and Falkirk Council. The Council has incorporated a number of safeguards including control over the development timescale, design and third party involvement. As outlined in item 3 above, the main terms within the development agreement match the heads of terms approved through Policy and Resources Committee on 11th March 2008 and Full Council on 25th June 2008. This is a significant step forward in the regeneration of the harbour and foreshore site and with the Townscape Heritage Initiative and recent award of investment through the Town Centre Regeneration Fund, will enhance prospects for the town overall.

8.0 RECOMMENDATIONS

- 8.1 **It is recommended that the Economic Strategy & Development Committee note the progress made on the Bo'ness Harbour and Foreshore project, as set out in the above report.**

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Director of Community Services

14th September 2009.

Contact Officer: Colin Frame. Ext: 0972.

LIST OF BACKGROUND PAPERS

1. Town Centre Strategy Files.

Any person wishing to inspect the background papers listed above should telephone 01324 590972 and ask for Colin Frame.