

FALKIRK COUNCIL

Subject: TOWN CENTRES STRATEGY: BO'NESS INITIATIVE
Meeting: POLICY & RESOURCES COMMITTEE
Date: 11TH MARCH 2008
Authors: DIRECTOR OF COMMUNITY SERVICES

1.0 INTRODUCTION

- 1.1 The purpose of this report is to update members on the progress of regeneration proposals for Bo'ness harbour and foreshore including the outcome of ongoing negotiations between the Council and ING Real Estate, as agreed by the Policy & Resources Committee on 16th March 2004, 19th October 2004 and 12th June 2007. The report outlines the impact that market conditions and site constraints have had on the scheme and progress in negotiating the proposed development agreement relating to the site. It recommends that the Council enter into a development agreement with ING RED UK (Bo'ness) Ltd., on the basis of a phased programme of works to regenerate the harbour and develop the site in accordance with the overall masterplan.

2.0 BACKGROUND

- 2.1 The Council's strategy for the regeneration of Bo'ness was agreed at the 16th March 2004 Policy and Resources Committee, approving recommendations that it should:-

- a) Appoint ING Real Estate Development UK Support Ltd (formerly 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) The Council entering into a development agreement with ING RED UK (Bo'ness) Ltd with ING RE BV as guarantor;
- 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 Following these approvals, Council staff, ING and specialist advisers have been progressing the masterplan proposals with a view to commencing the scheme once a development agreement is concluded.

3.0 MARKET CONDITIONS

- 3.1 The recent collapse of the sub-prime mortgage market in America and the subsequent crisis experienced by Northern Rock Building Society has led to a significant slowdown in the UK housing market. It has also created a substantial degree of uncertainty in the commercial development sector. Even before these events there were signs that the boom in the residential market was coming to an end. The British Bankers Association has reported that mortgage approvals in December 2007 were nearly 40% below their level a year earlier, reflecting a new 10 year low.
- 3.2 The resulting impact of this uncertainty on the residential market has been a slowdown in sales of new build housing, particularly over the last 3 months. Consequently housebuilders are cautious in looking at new developments until the direction of the market becomes more certain.
- 3.3 The residential market in Scotland is not normally affected to the same extent as England. However a significant slowdown has been witnessed, fuelled by both market conditions and media speculation about a potential downturn affecting housebuyers perceptions. While the residential market has slowed, construction costs are continuing to rise with construction inflation anticipated to outstrip house price growth.
- 3.4 In Bo'ness, the construction of 750 houses is vital to the regeneration of the site. Following the conclusion of design works and site investigations and, taking into account rising construction costs, the costs for delivery of the scheme have risen significantly. Harbour restoration work is now assessed as £20m compared to previous estimates of £12m. Taking into account land remediation measures and costs for the provision of services and infrastructure, the "up-front" capital costs for the site now exceed £40m.

4.0 DEVELOPER POSITION

- 4.1 The change in market conditions and increases in construction costs associated with the scheme have resulted in a significant change for the developer and have substantially increased the level of financial risk involved. This is materially different from the position during 2006 and early 2007 when the market sustained high residential price growth. Given this situation, ING are no longer willing to fund the full extent of harbour works planned at Bo'ness as the first phase of the development as originally conceived. However they are keen to proceed with the masterplan as agreed and wish the development agreement to reflect an amended phasing of works, with an initial phase of flood defence works to the harbour and to commence housing development in Phases 15 and 16.
- 4.2 To appraise these concerns and to understand the market circumstances facing the scheme, the Council independently instructed specialist housing regeneration consultants to review the financial appraisal issued by ING. This has confirmed that, given present market conditions, the project as originally proposed is not financially viable. This validates ING's financial assessment and suggests that an alternative approach to delivery of the scheme is appropriate.

5.0 DEVELOPMENT AGREEMENT

- 5.1 The original heads of terms to the development agreement agreed through Policy and Resources Committee dated 12th June 2007 are now considered by both ING and the Council's commercial advisers, not to be deliverable.
- 5.2 As a result, negotiations have been undertaken to secure revised Heads of Terms and a development agreement with ING for delivery of the harbour and foreshore scheme. It is important to stress that this still involves the delivery of the overall masterplan as proposed. However ING now propose to rephrase the scheme to improve cash flow and allow the delivery of the scheme to be more sensitive to market demand. These negotiations have now been concluded and have been validated by the Council's advisers. It is proposed that the Development Agreement can now 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 (see Appendix 1).

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).
 - A further 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.
- 5.3 The residual value of the project taking into account the development value based on total house sales deducting development costs including 12% developer profit (12% of total house sales value) is identified as the profit overage of the project.

$$\text{Development Value} - \text{Development Cost} = \text{Profit Overage}$$

- 5.4 As part of the framework agreement between the Council and ING, future sites will be transferred to ING at market value, assessed by the District Valuer. It is proposed that 100% of any development overage will also transfer to the Council, until the harbour restoration works are completed, with a 50:50 split thereafter. The Council will require to transfer the residual value of each block and any overage payments into a partnership account and this will be utilised to fund the restoration of the harbour.
- 5.5 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 part in the project. The development will be taken forward on an 'Open Book' basis with all costs validated through an independent consultant. The costs will be assessed quarterly throughout the term of the project to confirm that the costs identified by the developer are realistic and have been reasonably incurred as part of the foreshore project and should be incorporated into the financial assessment in determining the residual profit. On completion of the project any residual profit value above the developer's 12% profit on

sales revenue will be transferred to Falkirk Council, subject to a 50:50 split for future blocks after the harbour and flood prevention works have been fully funded.

- 5.6 The Council's interests in 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. In consideration of the developer's financial appraisal, the Council's independent advisors have confirmed that, on the basis of the proposed heads of terms detailed in item 5.2 above, the Council is receiving best value for its interests. The Council's Development Services will instruct an independent consultant to validate the costs incurred by the developer as detailed in 5.5 above.

6.0 HARBOUR WORKS

- 6.1 Through the revised development agreement, the Council and developer will work in partnership to deliver the overall masterplan including the regeneration of the harbour. Funding for harbour works will come from both committed sources and future uncommitted sources as detailed below:-

a) Partnership funding:

▪ SEFV	£950,000
▪ Council (Capital Programme/Receipts)	£819,000
▪ BP	£150,000
▪ Residual site value (Blocks 15 & 16):	£500,000
▪ Option Agreement(Block 14)	£100,000
▪ Residual Site Value (Block 14)	£400,000
▪ Profit overage (Blocks 15 & 16)	To be determined
▪ Residual site value for future blocks	To be determined
▪ 100% overage on future blocks	To be determined

TOTAL = £2,919,000 + overage + site values

- 6.2 The first phase of works will include the flood prevention requirements around the harbour including a coffer dam at the entrance to the inner dock. The delay in implementing the scheme has forced the withdrawal of ERDF funding support for the scheme, as this would have demanded the works to have commenced in 2007. Further phases of restoration of the harbour will now proceed on a phased basis as funding from the development of the site becomes available. Specialist harbour restoration consultants will be appointed through the partnership to establish the detailed specification for each phase and relevant cost. Once available a development timescale for each phase can be established.

7.0 DEVELOPMENT TIMETABLE

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

ING Approvals	March 2008
Policy & Resources Decision	March 2008
Flood Prevention Scheme starts	March 2008
Development Agreement Concluded	April 2008
Detailed Planning Process for Blocks 15, 16 & Programming of Harbour Works	June 2008-February 2009
Building Warrant Process	February 2009-May 2009
Block 16 Construction	May 2009-March 2010
Block 15 Construction	April 2010-February 2011

- 7.2 The initial works around the harbour will relate to the Flood Prevention Scheme (FPS) over a construction period from March 2008 to September 2010. This will put in place the necessary safeguards to facilitate occupation of the site. Additionally, it will incorporate a coffer dam at the entrance at the Inner Dock utilised to retain a body of water within the dock area. A report will be submitted by Development Services to the Environment & Heritage Committee confirming any changes to the detail and programme timetable in relation to the Flood Prevention Scheme. Further restoration work around the Harbour will be subject to specialist consultants identifying elements of work that can be incorporated into deliverable contracts, initiated once funding is available.

8.0 IMPLICATIONS

8.1 Financial

The Council's contribution of £819,000 towards the scheme involves a contribution from the Capital Programme and a receipt from the sale of Corbiehall Flats. 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 present market conditions and permits the regeneration scheme to proceed as proposed. A further £100,000 receipt will be received committing the 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. This is also considered to provide best value for the Council.

- 8.2 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 and can be invested in the completion of regeneration works on site, until the harbour and flood prevention works are fully funded, with a 50:50 split thereafter.

8.3 Legal

The Council's consultant 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.

8.4 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. Planning applications 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.

9.0 CONCLUSION

- 9.1 The proposals for the regeneration of Bo'ness Harbour and Foreshore face significant pressures due to changes in market conditions and the up-front costs of the site's preparation for development. While the masterplan proposals to develop the harbour and foreshore remain intact, it is now proposed to change the way it will be delivered, with a revised method of phasing the programme of works. However it remains the full intention of the Council and ING to complete this exciting project.
- 9.2 The Council has received independent confirmation that the residual values proposed for Blocks 15 and 16 provide best value to the Council. In addition ING's agreement to restrict profit levels to 12% and to give the Council 100% of any overage until completion of the harbour offers benefits to the Council. It reinforces ING's commitment to this project. The Council is unlikely to have secured such an agreement from developers who do not have a vested interest in the success of this project. As a result it is recommended that the Council should proceed on the terms set out in this report.

10.0 RECOMMENDATIONS

10.1 It is recommended that the Policy and Resources Committee agrees to:-

- a) Approve the Council entering into a development agreement with ING RED UK (Bo'ness) Ltd with ING RE BV as guarantor and subject to financial assessment for the Bo'ness Foreshore and Harbour regeneration scheme as outlined in Item 5 above; and**
- b) Agree the phased development of the harbour restoration works as outlined in Items 6 and 7 of this report.**

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Director of Community Services

5th March 2008

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.