

REPORT OF THE CHAIRMAN OF FINANCE AND PROPERTY COMMITTEE

DISSOLUTION OF THE CLASP CONSORTIUM

Purpose of the Report

1. To seek approval of the Policy Committee for Nottinghamshire County Council's support for the dissolution of the CLASP Consortium and the transfer of CLASP intellectual property rights to Scape.

Information and Advice

Background

2. CLASP is an acronym for the Consortium of Local Authorities Special Programme which is an unincorporated association made up of local authorities. Nottinghamshire is a full member of the CLASP consortium together with Manchester City Council, Warwickshire County Council, Nottingham City Council, Derbyshire County Council, Derby City Council and Gateshead Council. Full members can vote at all general meetings and meetings of the consortium's management committee. The consortium also has a number of honorary members able to use CLASP services but not determine policy.
3. All members have the right to use the intellectual property and services of the Consortium. The Council is the "trustee authority" which manages arrangements on behalf of the organisation with the support of Derbyshire County Council in relation to all financial matters.
4. The consortium was established in 1957 at the instigation of the then Ministry of Education for the purpose of improving the construction and delivery of schools. The consortium addressed issues of skill and material shortage together with a high demand. It turned to a systematic form of construction. One which relied on a high proportion of prefabricated elements and had the ability to be built on sites with poor ground conditions including mining subsidence.
5. The CLASP technology has developed to meet the changing needs of its members. The original technology has moved on and changed significantly. CLASP was largely self-funded, using income generated from licencing the CLASP building systems and maintenance services. However, the ability of CLASP to develop the opportunities open to it were limited by its structure.

6. In 2005, the consortium, as part of its modernisation programme, took the decision to establish a trading company. This allowed for the ability to trade the developed construction technology commercially. In 2005, the Council's then Cabinet considered and approved the Council's participation in the proposed new company and the transfer of existing operational staff to the new company.
7. Six of the seven full members formed the local authority controlled trading company called Scape System Build Limited ("**Scape**") which was incorporated in 2006, through which CLASP's intellectual property and services are made available. CLASP retained ownership of the intellectual property which is licensed to Scape, as a safeguard, in case Scape was not successful in the early years.
8. The consortium has played a limited role since the formation of Scape. The CLASP consortium activities mainly involve holding an AGM each year with the business of approving the annual accounts, appointing auditors and agreeing a modest budget for the following year.
9. CLASP convened an Extraordinary General Meeting ("EGM") in September 2013 to consider proposals to dissolve CLASP and transfer the consortium's intellectual property to Scape. The full members of CLASP have the ability to dissolve the consortium under the current constitution. A decision to dissolve the consortium can be taken by a two-thirds majority of the full members present and voting.
10. CLASP has considered the proposals and given its approval, in principle, to the dissolution of CLASP and the transfer of the intellectual property rights to Scape and has requested constituent members of the CLASP consortium obtain approval from their respective local authorities. The Council, as Trustee to CLASP, in liaison with the legal advisors acting on behalf of CLASP, has been tasked with finalising the detail of the legal and contractual arrangements.
11. The decision in principle of the consortium will need to be voted on by CLASP's full members, including the Council, at the next consortium meeting where this business is to be decided. Policy Committee is asked to consider its support for the decision in principle to dissolve CLASP, transfer the intellectual property and for putting in place the necessary legal and contractual arrangements to effect the dissolution and transfer of intellectual property.

Intellectual property

12. The Council holds the intellectual property rights on behalf of the CLASP, these include amongst other things, the CLASP technology and trademarks such as the CLASP and Scape logos.
13. The original rationale for CLASP retaining the intellectual property is no longer present. Scape is now well established with its own strong identity and the CLASP heritage is no longer considered to be a significant part of what Scape is doing in its own name.
14. The Council as Trustee has reasonability for maintaining and managing the intellectual property on behalf of CLASP; however most of the dealings with the intellectual property are

carried out by Scape under licence. Most commonly, Scape will permit its clients and contractors access to CLASP archive material from time to time. Transfer of the intellectual property rights would release the Council from its responsibilities in relation to management of the intellectual property on behalf of CLASP and allow Scape to take over full control of the intellectual property and would pave the way for the dissolution of CLASP to take place.

15. Since the Council holds the intellectual property on behalf of the consortium members, in order to effect the proposed transfer of intellectual property rights the Council, in its capacity as Trustee for CLASP, will need to enter into a contractual assignment with Scape.

Dissolution of the CLASP consortium

16. The consortium has sought external legal advice in relation to the intended dissolution and transfer of intellectual property of CLASP.
17. The consortium sits on significant reserves and the effect of dissolving the consortium would allow for the reserves to be released to the members in the relevant shares after the deduction of any liabilities, for instance, pensions' liabilities. Details of the reserves and liabilities are set out in the exempt appendix to this report.
18. Under the proposed terms of the dissolution agreement, whilst the Council will sign the agreement as Trustee, there is provision within the agreement for an indemnity to be provided to the Council by the other members in case the Council incurs liability as a result of its dealings as Trustee authority. The indemnity would allow for a mechanism under which any costs incurred could be split equally between each member authority. Each member will be a party to the dissolution agreement.
19. As the Council is a full member of the consortium, Policy Committee is being asked to provide its approval to the dissolution of the consortium and authorise the Council, as a member and Trustee, to enter into the legal documentation to effect the dissolution.
20. Councillors are asked to consider the issues set out in the exempt appendix which accompanies this report.

Other Options Considered

21. **To maintain the CLASP consortium and continue the current arrangement:** this option has been considered, however, considering the consortium's limited role and given the members of the consortium are in support of the transfer of the intellectual property rights and dissolution of the consortium. For the reasons set out in the report this option is not considered appropriate.
22. The Council, as Trustee, has an obligation to act in accordance with the majority wishes of the other members. Therefore, even if the Council did not agree with the dissolution and transfer of intellectual property, if at least two thirds of those voting are in favour approval could still be given by the consortium. The consortium has requested that the Council, as Trustee, prepare the legal documentation in readiness for the transfer of intellectual property rights and the dissolution of CLASP.

Reason/s for Recommendation/s

23. The consortium members have already confirmed that they wish to transfer the intellectual property rights and dissolve the consortium at their EGM.
24. The dissolution of the consortium will relieve the Council of its duties as Trustee and Clerk to the consortium. There is a cost in relation to carrying out these duties in terms of resources deployed and risks associated with the responsibility for undertaking such roles.
25. The consortium has a very limited role and the rationale for retaining the intellectual property rights is no longer relevant since Scape is now an established entity.
26. The Council supported the setting up of Scape to allow for the commercial exploration and development of the CLASP intellectual property through Scape. The Council is a shareholder in Scape and sits on the board of directors. Transferring the intellectual property will provide Scape the full freedom to exploit the CLASP intellectual property to its best advantage without the constraints of having to seek permission from the consortium and this will allow for more efficient decisions to be taken by Scape in regard to the intellectual property.

Statutory and Policy Implications

27. This report has been compiled after consideration of implications in respect of crime and disorder, finance, human resources, human rights, the NHS Constitution (Public Health only), the public sector equality duty, safeguarding of children and vulnerable adults, service users, sustainability and the environment and ways of working and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

RECOMMENDATION/S

That Committee:

- 1) Give delegated authority to the Corporate Director for Environment and Resources to negotiate and approve final details of the terms of the transfer for the IP rights up to the value specified in paragraph 5 of the exempt appendix, in consultation with the Group Manager, Legal and Democratic Services and the S151 Officer;
- 2) Subject to the above 1st recommendation, to give delegated authority to the Council's representative to cast a vote in favour of the dissolution of the CLASP and transfer of intellectual property rights to Scape at the CLASP meeting where this business is to be decided;
- 3) Approves the Council entering in the necessary legal agreements to effect the above recommendations;

- 4) Subject to the dissolution of CLASP taking effect, that the list of Outside Bodies be updated as necessary.

Councillor David Kirkham
The Chairman of Finance and Property Committee

For any enquiries about this report please contact: Simon Gill (0115) 9773620

Constitutional Comments (SSR 25/02/2014)

28. The Committee is the appropriate body to decide the issues set out in this report.

Financial Comments (TMR25/02/2014)

29. The financial implications are set out in the exempt appendix to the report.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- None

Electoral Division(s) and Member(s) Affected

- All