

Report to: **Executive**
Date: **1 December 2016**
Title: **TADPOOL Asset Transfer**
Portfolio Area: **Customer First**
Wards Affected: **Totnes**
Relevant Scrutiny Committee: Internal

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: N/A

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Recommendations:

1. That the Executive notes that the urgent powers delegated in the Council's Constitution have been exercised in order to make amendments to the terms of the asset transfer of the Totnes Leisure Centre to Tadpool, which were previously agreed by Council in July 2016. The amended terms which have been agreed by the CoP Lead for Assets is set out in paragraph 3.2 below.

1. Executive summary

1.1 The Head of Paid Service has determined (in accordance with the urgent powers set out in the Constitution) that an urgent decision was required regarding amendments to the terms of the Asset transfer to Tadpool. These terms differ from those agreed at the Council meeting in July 2016. The Head of Paid Service therefore delegated to the CoP Lead for Assets, authority to makes these amendments. It has been necessary to amend the terms agreed as a matter of urgency because the Leisure contracts commences on 1 December 2016 and there is no relevant meeting before that date.

- 1.2 Where the urgent powers have been exercised, the Council's Constitution requires that a report on the exercise of these powers is brought to the next meeting of the relevant body for noting.
- 1.3 Tadpool were not prepared to accept the terms of the asset transfer as previously agreed by members, when the detail was fully considered by them and their legal team.
- 1.4 An alternative proposal has been reached that ensures continued delivery of leisure in Totnes, investment in the centre and a single operator (Fusion) delivering the service.
- 1.5 The new proposals are:
 - 1.5.1 The existing lease to Tadpool for the pool and gym only to remain with 12.5 years left to run.
 - 1.5.2 A new lease for the dryside only, on a pepper corn rent, to be agreed, which will have a matching 12.5 year term. Both leases have repairing obligations for Tadpool.

2. Background

- 2.1 Tadpool currently have 12.5 years left to run on a protected tenancy of the swimming pool and gym in Totnes. The rest of the centre; sports hall, changing rooms, bar area are currently leased to Tone Leisure, lease expiring 1st December 2016.
- 2.2 One key priority for the leisure procurement process was to ensure that the centre was operated going forward by one organisation, as operationally the current arrangement was unsatisfactory. Tadpool made it clear that they would prefer an asset transfer of the whole of the centre, so that they could operate it.
- 2.3 In July 2016, minute reference 33/16, South Hams District Council (SHDC), approved the terms of an asset transfer to Tadpool, the recommendation was as follows:
- 2.4 That an asset transfer of the Totnes Pavilion to Tadpool (by way of a 25 year, full repairing and insuring lease) be approved; and
- 2.5 That a loan facility to Tadpool of up to £1.5 million (to be funded by prudential borrowing) be approved, subject to a business case to be approved by the COP Lead for Assets and the COP Lead for Finance (Section 151 Officer), in consultation with the Monitoring Officer, the Leader of Council and the lead Executive Member, to be paid back over the lease period.
- 2.6 The terms that have finally been agreed between Tadpool and SHDC are not the same as those above, as detailed in section 3.

2.7 In addition to this, an amount of money was to be paid to Tadpool, in lieu of undertaking dilapidation works that were SHDC's responsibility, as identified in dilapidation surveys commissioned by the Council. Currently £150,000 is set aside in the Capital Programme for "repairs to leisure centres" with this in mind.

2.8 The value of the dilapidation works required to the dryside part of the Totnes leisure centre has been agreed between Tadpool and SHDC as £150,000, matching the figure in the Capital Programme.

3. Outcomes / outputs

3.1 Unfortunately whilst the principal the transfer had been agreed by Tadpool's committee, the detail was not. The main issue was that the 25 year lease that was on offer was not a protected tenancy, in the way that their current one is.

3.2 Agreement has now been reached, but on slightly different terms as follows:

3.2.1 Tadpool retain their existing lease of the pool and gym.

3.2.2 Tadpool are granted a further lease for the dryside part of the leisure centre, coterminous with their other lease, giving it a term of 12.5 years. This lease will not form a protected tenancy and it will still include an obligation to "repair and keep in repair".

3.2.3 Tadpool are required to enter into a contract with Fusion to run the leisure centre, on terms that have to have prior acceptance by SHDC.

3.2.4 The payment of £150,000 for dilapidation works is subject to SHDC acceptance of the contract between Fusion and Tadpool.

3.2.5 Should the contract with Fusion terminate, Tadpool are required to either appoint another operator or operate the centre themselves.

3.3 The use of delegated, urgent powers by the head of paid service, has been required to implement this agreement, as the lease term has changed from 25 years to 12.5, and due to the quantum of the dilapidation settlement.

4. Options available and consideration of risk

4.1 The negotiated position set out above, is the best outcome for the Council that was available. It achieves the following:

4.1.1 Both the dryside and wetside of the leisure centre will stay open beyond December 1st 2016 as a result of getting agreement.

4.1.2 A single professional operator will run the centre, and an investment proposal will be implemented by them over time, calling on the borrowing already agreed by members.

4.1.3 The Council has resisted granting a protected tenancy for the entire centre for 25 years.

4.1.4 The lease requires the centre to remain open even if the Fusion contract terminates, so leisure provision is protected for the term of the leases.

5. Proposed Way Forward

5.1 That officers conclude the legal agreements required to arrange a lease of the dryside to Tadpool.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Council's Constitution delegates urgent powers (as determined by the Head of Paid Service) to officers to make decisions otherwise reserved to a Council body, in circumstances where a decision needs to be made before the appropriate meeting. Where such a decision has been made under these powers, a report needs to be taken to members to note the decision and the reason why it was made.</p> <p>The leases will be drafted by the in-house legal team in accordance with the revised terms agreed under the urgent powers.</p>
Financial	Y	<p>The leases will be for a pepper corn rent, therefore leisure is being provided at no cost to the Council in Totnes.</p>
Risk	Y	<p>Should the Fusion contract terminate, the standard of leisure may drop should</p>

		Tadpool deliver it themselves. The Council would be able to assist in outsourcing the operation to another provider were that deemed in everyone's best interests.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	Not applicable.
Safeguarding	N	Not applicable.
Community Safety, Crime and Disorder	N	Not applicable.
Health, Safety and Wellbeing	N	Not applicable.
Other implications	N	Not applicable.

Supporting Information

Council Meeting Minutes reference 33/16