

Dartmouth Indoor Pool

NOT FOR PUBLICATION

This report contains exempt information as defined in Paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (applies to appendices C and D only)

Report to: **Executive**

Date: **18 June 2015**

Title: **Dartmouth Indoor Pool – Link with Leisure Review**

Portfolio Area: **Assets**

Wards Affected: **Dartmouth and surrounding wards**

Relevant Scrutiny Committee:

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

Date next steps can be taken: **Current**

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Recommendations:

1. To pay the grant of £400k to Dartmouth and District Indoor Pool Trust (DDIPT) and look to transfer the land to Dartmouth Town Council or DDIPT along with it,

or, if the land transfer cannot be agreed
2. To hold the drawdown of the grant to DDIPT, until the initial market feedback on the operation costs of the future facility, are received via the Leisure Review (est. September) and any revenue funding deficit resolved.

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1. Executive summary

Dartmouth and District Indoor Pool Trust (DDIPT) have a grant agreement with SHDC, for £400,000 to support the construction of an indoor pool on SHDC land.

They wish to draw down this funding (and others from DCC and the Town Council) and commence construction, using Kier as a management contractor.

The business case submitted to SHDC for the operation of the pool is predicated on an annual subsidy of £20k via the Trust, as well as savings derived from shared operation with the existing facility, which may no longer be achievable. Independent professional scrutiny of this business case (with these assumptions) has shown it to be optimistic. The reality could be significantly higher than £20k/yr and therefore challenging for DDIPT to honour.

SHDC, so as to undertake appropriate due diligence against the long term failure of the pool, wish to include the facility in the leisure review (agreed E60/14). The market will then determine conclusively the quantum of the operation subsidy required in the long term. This will also conclude the grant requirement of a written commitment for this revenue stream, as it will then be quantified.

The leisure review programme determines that this information should be available in September, which would cause a delay to the Trust's programme of 3/4 months.

The price the Trust have been offered from Kier to build the pool following a tender exercise was issued in the middle of May 2015 and is valid for 45 days to early July. This price is £200,000 higher than the Trust had originally anticipated. Kier are not able to hold the price to September, so a start at that time would be subject to a fresh tender exercise and would most probably be higher. At the time of writing the construction sector is running at a quarterly inflation of 1.6% (~£35k/quarter).

So as to mitigate the significant risk to the Council of the pool on SHDC land, it is recommended to transfer the freehold of the land to Dartmouth Town Council or DDIPT, at the time of issuing the grant funding. If a land transfer cannot be agreed with either party on terms acceptable to SHDC the following is recommended:

That the grant drawdown is held until the outcome of the Leisure Review, so the operation costs and how they could be funded can be ascertained. If this recommendation is accepted, DDIPT's construction costs will be higher and DDIPT are already at or close to their limit of affordability.

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2. Background

DDIPT have been working towards obtaining a final price for the construction of an indoor pool in Dartmouth. This was finally achieved in the middle of May 2015 and put them in a position to sign a contract with Kier, subject to:

- 1) funding drawdown from DCC, SHDC and Dartmouth Town Council (DTC)
- 2) Their own affordability criteria
- 3) The specification remaining fit for purpose following a cost cutting exercise to lower the capital costs.
- 4) A building licence from SHDC (as land owner)
- 5) A lease agreement from SHDC (ditto)

At the time of writing, 4 & 5 have been broadly agreed and are ready for signing. The final price issued by Kier, whilst being £200k more expensive than budgeted by DDIPT, is within their affordability criteria, but with no contingency.

The design has been thoroughly rationalised and as a result offers excellent value for money in terms of capital construction cost. This is at the expense of long term maintenance and operation costs, which will not be as good as a facility constructed to full Sport England standards.

Quantifying this additional running cost, is hard and may depend to a significant extent on the quality of key mechanical and electrical (M&E) components, such as boilers. This issue is of relevance, as any additional running / maintenance costs, above and beyond the norm will not have been included in the business case submitted by the Trust.

To date, the Trust has not drawn down any of the grants from DCC, SHDC or DTC. They wish to do so immediately and commence construction.

SHDC has deep concerns around the ongoing operation costs of the pool, and do not wish to have a facility constructed on SHDC land which may have an uncertain future due to unsustainable operating costs. A mothballed asset on our land would attract a significant annual cost to keep safe, and an even more significant cost to demolish.

A full commentary on the business case, similar to that shared to date with DDIPT is included in Appendix C.

Including the pool in the leisure review would allow the facility to be costed in the long term, and potentially offer significant operational savings by facilitating a joint facility with the existing leisure centre.

The programme of the leisure review would mean delaying the grant funding draw down until September. This would force Kier to re-tender the pool construction and the price most probably would increase. The quantum of this increase is hard to ascertain, but it would be driven by the market in terms of inflation and the amount of other work available to the supply chain. It could therefore exceed sector inflation.

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Kier are prepared to offer a price to start in September, but as they would then be taking that risk, the price is significantly higher than currently offered. SHDC and DDIPT have and continue to negotiate with Kier a risk share mechanism so that this price can become more favourable. DDIPT's current resources would not be able to sustain a rise in the capital construction costs, without further fund raising. DDIPT's fund raising plans are unknown to SHDC at this time. A raise of 1.6%, which is the current sector inflation, would add approximately £35k to the cost of the pool construction.

The Council needs to make a decision on the release of the grant funding as DDIPT now wish to commence construction and are, for the first time, able to do so.

The grant conditions, (Appendix B, page 2, numbered 1 – 14) have been fulfilled. However, the letter (which forms part of the agreement), stipulates that: *Written confirmation of revenue funding for the project will need to be provided by the Trust before any payment of this capital grant can be made by South Hams District Council* (page 1, paragraph 3). As this is yet to be quantified conclusively, it is hard for DDIPT to fulfil this obligation.

The leisure review would quantify the revenue costs of the pool and would therefore allow DDIPT to provide a written confirmation of the revenue funding as above.

The Overview and Scrutiny Committee (04/06/15) debated these issues, (reference Appendix A, List of questions and draft minutes), and had the opportunity to consider the representations of key members of DDIPT, who attended in person. The recommendation of the committee to the Executive was to issue the grant money . It should be noted that the Overview and Scrutiny Committee did not have the business case available to them for reference.

It should also be noted that the payment terms of the grant are for it to be released in thirds, with the first third being issued when costs have been accrued with the contractor of one third of the value of the grant (page 3, paragraph 6). The executive may choose to waive this condition were they mindful to do so.

3. Outcomes/outputs

SHDC want to achieve a viable pool for Dartmouth in the long term. The construction element of this project needs to be affordable by DDIPT, but more importantly, the ongoing operation of the pool needs to be done professionally and affordably.

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The leisure review market feedback, which should be available in September would provide a definitive operation cost which DDIPT could then assess. DDIPT would have to be able to realistically guarantee any ongoing subsidy to keep the pool open. DDIPT and SHDC would be able to move forward confidently with the construction of a new pool facility.

4. Options available and consideration of risk

There are four options available:

- 1) Issue the grant funding with immediate effect
- 2) Issue the grant funding and look to transfer the land to the Town Council or DDIPT
- 3) Hold the grant funding until the operational costs are resolved
- 4) Withdraw the grant funding offer and cease SHDC involvement

Option 1 – Issue the grant funding with immediate effect

This carries the least risk to DDIPT's construction budget as they can afford the current contract price offered by Kier. The contract is "fixed price" and the risks that fall outside of the contract are relatively small, but not zero. DDIPT have no further assets, so in the event of a contract overspend, would need to rely on personal guarantees to cover a deficit or construction would cease.

Construction would commence and the facility could still be included in the leisure review. However, the risk to DDIPT failing to be able to afford any ongoing funding requirement is high, as it would not be quantified ahead of construction starting. It also requires the executive to conclude that DDIPT have to-date fulfilled all the conditions of the grant and waive the payment terms.

This option carries significant risk to SHDC and the viability of the facility in the longer term. The operational costs of the facility will not be known until after the contract has been signed and construction started.

It leaves SHDC vulnerable to having a facility on SHDC land that cannot be operated due to a funding deficit. It leaves DDIPT responsible for any financial subsidy, which is as yet un-quantified and could be a significant annual cost.

Option 2 - Issue the grant funding and transfer the land to the Town Council or DDIPT

The most significant risk to SHDC arising from this project is the legacy issue of a pool on SHDC land that is unable to open due to the operating costs. If the land which is currently proposed to be leased to DDIPT was transferred out of the ownership of SHDC, this potential liability would transfer with it.

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A freehold transfer of the land is not without risk, as SHDC would no longer have control over the land by way of a lease. Were DDIPT to cease to exist, the land would most likely fall to the charity commission. This could frustrate any long term wider development objectives for the area.

How willing the Town Council would be to such a transfer is yet to be explored, but failing that, DDIPT may well be more open to such an offer.

This option does not address any of the risks identified with the revenue and business case of the pool, it simply seeks to mitigate the impact to the Council.

Option 3 - Hold the grant funding until the operational costs are resolved

This would allow the facility viability to be tested by the market, quantifying the running costs definitively. Subject to the market test showing that the pool requires no subsidy from SHDC, the grant funding could be drawn down.

It has the potential to provide security to the pool in the long term via its operation by a third party, joined up with the existing leisure offering. It also opens up the door to capital investment from a third party operator, for example, for the construction of a physical link to the existing facility.

The risks to DDIPT are high, as they are already at the upper end of their affordability criteria, so, in the absence of any further fund raising, may not be able to fund the construction of the pool.

DDIPT however, have indicated that they may be able to raise further funding, and have proved to date that they are very effective in doing so.

As with all legal agreements, it is possible that DDIPT are of the opinion they have fulfilled the terms of the grant and there is a low risk that they may commence legal action against the council.

It should be noted however, that the grant offer does define the timescale for which it should be paid and that point has not yet been reached, as one third of the grant value has not yet been accrued by DDIPT.

The executive, were they to be mindful to proceed with this recommendation, may choose to offer an increase to the grant to the value of the inflation of the capital costs, which is estimated at ~£35k and would be based on the relevant index of inflation for the construction sector (BCIS).

Option 4 – Withdraw the grant funding offer

Preventing the construction altogether would remove the risk to SHDC from the potential of an unviable, high operating cost facility, being built on SHDC land, and the legacy associated therewith.

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SHDC would be at risk from a legal challenge from DDIPT for renegeing on the grant offer and associated costs, reference Appendix D.

5. Proposed Way Forward

To date, Option 1 & 3 have been discussed at length with members of DDIPT. SHDC officers have also been working closely with DDIPT and Kier to try and mitigate future construction cost rises by looking at alternative contract risk provision.

It is recommended to the Executive that Option 2 is taken forward and discussions with Dartmouth Town Council are commenced forthwith in regard to the freehold transfer of land into their ownership. If an agreement in principal cannot be reached within by 30th June then it is recommended that Option 3 is followed.

As part of this recommendation it is proposed that the Executive delegate the power to undertake the freehold land transfer to the CoP Lead for Assets, in consultation with the Portfolio Holder for Customer First. It is also proposed that should Option 2 be unviable by 30th June, DDIPT would then be formally notified of SHDC's intentions to follow Option 3 by the Executive Director (Strategy and Commissioning).

This recommendation is made, as it is considered that the risks of the long term running costs of the pool being too high for it to remain viable, should be mitigated through land transfer, or quantified and resolved through the leisure review process.

This officer recommendation is not made lightly, given the recommendation of the Overview and Scrutiny Committee. It is important that the Executive should give due weight and consideration to the recommendation of Overview and Scrutiny, which noted the importance of honouring a previous commitment.

6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The public interest has been assessed and it is considered that the public interest will be best served by not disclosing the information contained in Appendix C & D because they contains financial information about the Council and a third party as well as information to which a claim to legal privilege may be maintained in the legal proceedings.</p> <p>Accordingly Appendix C & D contains exempt information as defined in paragraph 3 & 5 of schedule 12A of the Local Government Act 1972.</p>

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Financial	Y	Option 1 – Grant payment of £400k (Section 4) Option 2 – Grant payment of £400k (Section 4) Option 3 – Grant payment of £400k, plus possible inflation related costs (Section 4) Option 4 – Reference Appendix D
Risk	Y	Reference report section 4 for further risk info: 1) Financial 2) Legal 3) Reputational
Comprehensive Impact Assessment Implications		
Equality and Diversity		The net impact of the pool would be positive, as facilities would be more readily available to the local population. If the pool was not to move forward, there would be change to the current situation in this regard.
Safeguarding		N/A
Community Safety, Crime and Disorder		N/A
Health, Safety and Wellbeing	Y	There is a close link between swim provision and the health and wellbeing agenda
Other implications		

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Supporting Information

Appendices:

Appendix A – Overview and Scrutiny Committee:

(i) list of questions posed to DDIPT

(ii) Draft minutes of meeting

Appendix B – Grant offer letter to DDIPT

Appendix C – Business Case Commentary [Exempt]

Appendix D – Legal commentary [Exempt]

Background Papers:

[under provisions of the Local Government Act 1972]

Executive Report May 2012, Item E14/12.

Approval and clearance of report

Process checklist	Completed
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted. (Executive/Scrutiny)	Yes