

**NOT FOR PUBLICATION**

This report contains exempt information as defined in  
Paragraph 3 of Part 1 of  
Schedule 12A to the Local Government Act 1972  
(applies to Appendix A)

AGENDA  
ITEM  
**7**

**SOUTH HAMS DISTRICT COUNCIL**

AGENDA  
ITEM  
**7**

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| <b>NAME OF COMMITTEE</b> | <b>EXECUTIVE</b>   |
| <b>DATE</b>              | <b>11 December 2014</b>  |
| <b>REPORT TITLE</b>      | <b>Dartmouth Indoor Pool – Requirement for Financial Bond</b>  |
| <b>Report of</b>         | <b>Head of Assets &amp; Estates Manager</b>  |
| <b>WARDS AFFECTED</b>    | <b>All Wards clustered around Dartmouth from where potential customers of Indoor Pool could be attracted</b> |

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**Summary of report**

- (1) To consider whether the Council at the request of Dartmouth and District Indoor Pool Trust (DDIPT) would be prepared to remove the requirement for a Financial Bond under the terms of the Building Licence Agreement to facilitate the construction of the Indoor Swimming Pool.
- (2) Consider whether there are other safeguards to protect the Council from financial exposure in the event of default on the obligations to complete the construction of the Indoor Swimming Pool.

**Financial implications**

In 2009 the Council approved a £400,000 grant to DDIPT under the Investment in the Community Project.

In addition to the grant approval, the Council also agreed the principle of providing a site for the pool by granting a Ground Lease to the DDIPT. Terms for the Building Licence Agreement and 99 year Ground Lease are currently being negotiated with DDIPT.

The construction of the Indoor Swimming Pool on Council land raises a financial and reputational risk for the Council in the event of underperformance or default by DDIPT or their Development Contractor to complete the construction of the Indoor Swimming Pool.

**RECOMMENDATIONS:**

- 1.1 That the Executive does not accept the request from DDIPT to waive the requirement for a Bond under the terms of the Building Licence Agreement.

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## **1. BACKGROUND**

- 1.1 The Executive meeting 10 September 2009 approved an allocation of £400,000 under the Investment in the Community towards the provision of an indoor pool at Dartmouth (E35/09), subject to conditions. It was later agreed in May 2012 (E14/12) to offer a Ground Lease to provide a site for the swimming pool on Council owned land adjacent to the Leisure Centre in Dartmouth.
- 1.2 In April 2011 Devon County Council agreed a grant to Dartmouth and District Indoor Pool Trust (DDIPT) of £1.5 million, subject to conditions.
- 1.3 Dartmouth Town Council has resolved to grant £150,000 to DDIPT towards the capital cost of the pool together with an annual subsidy.

## **2. ISSUES FOR CONSIDERATION**

- 2.1 Since approval from the Executive in May 2012 Officers have been in dialogue with DDIPT to progress terms for Building Licence Agreement and Ground Lease. During this period there have been many issues for DDIPT to consider with obtaining planning consent and redesign of their project to meet their funding constraints.
- 2.2 DDIPT have recently signed a Scape Access Agreement (Scape System Build Limited which is a Local Authority Controlled company) to publicly procure works, goods and services. In this context Kier Construction have been appointed by DDIPT to act as lead Consultant and Contract Administrator for the building contract.
- 2.3 There have been a number of property related issues arising from the proposed Ground Lease and the Building Licence Agreement with negotiations ongoing between Officers and DDIPT Trustees. However, there is now a fundamental issue with the requirement of the Council requesting a Financial Bond from DDIPT to protect the Council (as landowner) from any financial exposure in the event that the building project is not completed or built to a specified standard. DDIPT have indicated that they have made enquiries to obtain a Bond but are unable to obtain an insurance policy due to the prohibitive cost of the premium and the adverse impact of other terms and conditions that the Insurers would seek to impose due to the status and financial standing of the Trust.

- 2.4 The request for a Bond is a standard requirement when a landowner gives consent for a third party to undertake building works on their land. The essence of the Bond is to protect a landowner in the event of default by the third party tenant or their contractor(s) to complete the project in accordance with the terms of the Building Licence Agreement.
- 2.5 As this is a very prominent gateway site into Dartmouth and an operational asset of the Council (adjoining Leisure Centre, Park and Ride and Sports Pitches) there are significant reputational and financial risks to the Council in the event the project is not fully completed once works have commenced.

### **3. RISK AND BENEFIT MANAGEMENT**

- 3.1 The Risk Management implications are shown in the table at the end of this report which illustrates the risks that may occur and adversely impact upon the Council in the event default by DDIPT or their Contractor.
- 3.2 In summary the major benefit arising from this community led initiative is the provision of a long awaited indoor swimming pool and learner pool in Dartmouth. This will bring health and well being outcomes from the provision and access of a pool adjacent to an existing Leisure Centre and is located in a ward which is nationally in the most deprived quintile.
- 3.3 The major risks arising for the Council as both landowner and funder link to:
- 1) The possible overrun of capital costs on an already tight budget
  - 2) Non completion of the project once works have commenced
  - 3) A request for further capital funding from DDIPT if the project runs into financial difficulties

### **4.0 CONCLUSION**

- 4.1 The Council has made clear its principle intent to support an indoor pool in Dartmouth and has backed this up with an offer of £400,000 grant in 2009 and the offer for the land adjacent to the current Leisure Centre to be used as the site for the new Indoor Swimming Pool.
- 4.2 Authority to the grant of the Building Licence Agreement and Ground Lease were approved by the Executive in 2012 but, also indicated that the Council would not support any further requests for revenue or capital funding to support this project.
- 4.3 If the Council doesn't agree with the request from DDIPT to remove the requirement for a Bond then there is a risk that the project will not be able to proceed due to the additional financial costs of providing a Bond. Therefore, the opportunity to provide an indoor pool which was the subject of the initial grant offer would be foregone and, with this, the additional funding from Devon County Council and Dartmouth Town Council.

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| <b>Corporate priorities engaged:</b>                | This report primarily relates to 'community life' contributing to health and social outcomes.  |
| <b>Statutory powers:</b>                            | S19 Local Government (Miscellaneous Provision) Act 1976; S2 of the Local Government Act 2000   |
| <b>Considerations of equality and human rights:</b> | No specific issues arising from this report  |
| <b>Biodiversity considerations:</b>                 | No specific issues arising from this report  |
| <b>Sustainability considerations:</b>               | No specific issues arising from this report –however overall funding available to DDIPT will influence build efficiency  |
| <b>Crime and disorder implications:</b>             | No specific issues arising from this report - however use of leisure facilities is recognised as having beneficial impacts in relation to anti-social behaviour. |
| <b>Background papers:</b>                           |  |
| <b>Appendices attached:</b>                         | Appendix A - Exempt Information  |

## COUNCIL'S STRATEGIC RISKS TEMPLATE

| No    | Risk Title  | Risk/Opportunity Description   | Inherent risk status       |                            |                                    | Mitigating & Management actions  | Ownership |
|-------|---|--|----------------------------|----------------------------|------------------------------------|--|-----------|
|       |   |  | Impact of negative outcome | Chance of negative outcome | Risk score and direction of travel |  |           |
| DDIP1 | Capital Funding Shortfall   | That DDIPT fail to have a sufficient contingency to cover unforeseen costs or cost overrun   | 5                          | 3                          | 15 ⇔                               | Council has no direct control on DDIPT's financial or contractual management of the build process. The Building Licence Agreement has imposed certain obligations including the requirement for a Bond to protect the Council from any adverse impact as a result of the construction of the Indoor Pool on Council owned land | Council   |
| DDIP2 | Public Expectations – as Leisure Provider and landowner                         | <p>If the indoor pool project is not completed there will be an expectation from the public that the Council will step in to complete the swimming pool project.</p> <p>There is potential reputational risk if the Council is perceived as acting unreasonably if a semi-completed pool is located on land adjacent to the Leisure Centre</p> | 5                          | 3                          | 15 ⇔                               | There is no mitigation other than a financial bond which would be used to complete the project. The Council has issued clear statements that it will not provide any further capital or revenue funding for this project   | Council   |
| DDIP3 | Contractual Risk  | DDIPT will enter into a 'fixed price' contract with Kier to deliver 25-30 work packages to construct the new indoor pool   | 5                          | 4                          | 20                                 | There is no guarantee from Kier or the sub-contractors/suppliers that the build contract will not incur further costs for DDIPT during the construction phases   | Council   |
| DDIP4 | Overrun of costs due to events outside the control of DDIPT or their Contractor | That events outside the control of DDIPT or their Contractor occur which impact on budget costs  | 5                          | 2                          | 10                                 | There is a question whether the contingency or other financial resources available to DDIPT would be sufficient to cover any unforeseen costs  | Council   |

| No    | Risk Title   | Risk/Opportunity Description  | Inherent risk status       |                            |                                    | Mitigating & Management actions   | Ownership |
|-------|--|---|----------------------------|----------------------------|------------------------------------|---|-----------|
|       |  |   | Impact of negative outcome | Chance of negative outcome | Risk score and direction of travel |   |           |
| DDIP5 | Estimates and Cost forecasts are inaccurate  | At this stage it is unknown whether the tender price for the contract will be within budget   | 5                          | 1                          | 5                                  | DDIPT will not enter into contract unless it is within budget   | Council   |
| DDIP6 | The general risk of an error or omission in the specification                          | There may be changing requirements after the project has started due to errors, omissions or changing project brief after the project has started.  | 4                          | 2                          | 8                                  | DDIPT have engaged the services of Kier who are professionally and technically competent in this area of work and have a track record on delivering similar projects  | Council   |
| DDIP7 | Project disrupts operations of the adjoining Leisure Centre                            | There is potential that the building works disrupt the operations of the adjoining Leisure Centre   | 3                          | 2                          | 6                                  | The Building Licence Agreement imposes practical obligations to limit any nuisance or disruption together with financial penalties on DDIPT   | Council   |
| DDIP8 | Cost of materials or labour rates increase dramatically after tender process completed | There is a risk that costs will rise after the tender process has been completed and certain sub-contractors may not be able to fulfil their obligations to the contract  | 4                          | 2                          | 8                                  | Although a fixed price contract there is a risk that any additional costs as a result of 3 <sup>rd</sup> party default would rest with DDIPT  | Council   |
| DDIP9 | External change Risks  | Risks that are beyond the immediate project environment but which could have a major impact. 'Force majeure' events that are exceptional, unforeseen or circumstances that are beyond the reasonable control of the DDIPT or their Contractor | 4                          | 1                          | 4                                  | DDIPT have engaged the services of Kier who are professionally and technically competent in this area of work and have a track record on delivering similar projects. The project contingency would help mitigate any risks in this respect | Council   |

Direction of travel symbols ↓ ↑ ⇄