

This report will be made public on 21 August 2006

**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



Report Number **C/06/30**

**To:** Cabinet  
**Date:** 30 August 2006  
**Status:** Non-Key Decision  
**Responsible Officer:** Andy Jarrett, Director of Regeneration  
**Responsible Portfolio Holder:** Councillor Mrs C J Waters, District Secretary for Leisure and Tourism

**Subject:** SHEPWAY LEISURE PFI

### **SUMMARY**

A revised business case was submitted to the Department for Culture, Media and Sport (DCMS) at the end of June 2006. The business case concluded that in order for the PFI project to remain affordable to the Council, an increase in credit allocation of £7.6m would be required. In her letter to Alistair Stewart dated 19 July 2006, Cathy Page of the DCMS indicated that no additional credits would be allocated to this project based upon the latest business case.

On 9<sup>th</sup> August 2006, officers from Shepway District Council and its partners, Hythe Town Council and Folkestone Sports Centre Trust (FSCT) met with Cathy Page to discuss a way forward for the project. At this meeting, it was determined that the project could only be delivered if one facility (say Folkestone) were procured via the PFI method and utilising the £9.821m credit allocation, and the other (Hythe) procured by via a design, build, operate and maintain (DBOM) contract. In order to ensure affordability, it is likely that the current facilities mix would need to be addressed and possibly reduced. Further consultancy work would be required in order to demonstrate that the method of delivery is viable, that is affordable for the Council and that it remains good value for money. It is estimated that a further fee allocation of £34,500 (£5,000 of which is available from the existing budget) will be required in order to carry out this work and to produce a final business case for submission to the DCMS.

This report also updates Cabinet on the current fee position, which currently stands at £630,000. This is approximately £5,000 short of the Council's budget of £635,000.

### **REASONS FOR RECOMMENDATION:**

Cabinet is asked to agree the recommendations set out below because:

- a) The fees required in order to produce a final business case are over and above the approved budget and in accordance with Minute 133 of report C/05/102 portfolio holders are required to contain total net expenditure within the approved budget.
- b) The business case submitted to the DCMS in June 2006 demonstrated that the project was no longer affordable to the Council and a change in direction and in method of procurement is required to ensure that the project remains deliverable.

- c) The Council is committed to improving the district's sporting facilities for the next thirty years and beyond.

**RECOMMENDATIONS:**

1. To receive and note the Report C/06/30.
2. To accept the part PFI part DBOM method as the way forward in which to deliver this project.
3. To accept the current fee position.
4. To approve an increase in the additional budget in the sum of £29,500 for additional fees to enable a final business case to be submitted to the DCMS.
5. To agree to use uncommitted earmarked reserves to fund the additional budget required.

## **1. INTRODUCTION**

### **1.1 Change of Direction**

The business case which was submitted to the DCMS at the end of June 2006 demonstrated that the project had become unaffordable to the Council and without the potential to increase the PFI credit allocation to this extent, an alternative means of deliverability had to be found. The key issue was to secure the existing credits but on a slightly amended project. The DCMS also indicated that a further £1.9m (20% of the original credit allocation) could be available if the project were to be financially viable. Early discussions with the DCMS indicate that a twin contract arrangement involving part PFI and part DBOM would be acceptable to them provided the Council could continue to demonstrate that the project still delivered good value for money. The management aspect of delivery was also discussed with the DCMS and this is dealt with in detail in 2.1 below.

Representatives of the two partners were present at the meeting with the DCMS and when it met on 15 August 2006, the Project Steering Group endorsed the recommendation that this delivery option be investigated further.

### **1.2 Current Fee Position**

Following the agreement of FSCT to enter the partnership in January 2006, and in order to move the project forward, on 5 April 2006, Cabinet agreed to authorise revenue expenditure in the sum of £35,000 to enable the FSCT to undertake a land valuation on its property, to take legal advice on its ability to enter into a PFI scheme and for a revised business case to be prepared and submitted to the DCMS. This work is now complete and the monies spent, leaving a commitment of £10,000 remaining for the legal advice. FSCT has appointed its legal advisor, Lawrence Graham solicitors and they have commented the £10,000 allocated will be wholly insufficient if they continue to advise the FSCT to financial close. A further commitment to the defence of the Town Green application was agreed by Cabinet on 3 April 2006. This leaves only approximately £5,000 of the budget available.

### **1.3 Projected Fee Position**

Should Cabinet endorse the recommendation to investigate this option further, it is estimated that a further £34,500 will be required in order to produce a new business case. A further report will be brought to Cabinet at the appropriate time as soon as there is some certainty to these costs and the ongoing fee commitment to financial close.

## **2. WAY FORWARD**

- 2.1** The PFI/DBOM method described in 1.1 above is now the only viable means of procuring this project and it has the full support of the DCMS provided value for money can be demonstrated. The detail around the delivery

method was discussed with Cathy Page and there are two options, which should be considered. Delivery could be either by a 'design, build, operate and maintain' contract or by 'design, build and maintain' with the operational element being provided by a newly formed trust, incorporating the three partners. With both options, one of the sites (probably Folkestone) would be funded by PFI credits, the other (Hythe) by capital investment. The management of sports facilities in this way has a number of benefits such as the avoidance of payment of non-domestic rates.

- 2.2** Management of sports and recreation facilities through a trust is becoming a popular choice for councils with approximately 90 trusts now running such facilities. This represents 21% of all council provided facilities in England (*source: Audit Commission, June 2006*).

Trusts potentially enable the management of leisure facilities to be more accountable to the community and provide greater opportunities for investment.

- 2.3** Further research is required in order to test both legal (through our consultants Bevan Brittan) and financial implications of this model but it is by no means unusual. Indeed, there are examples in Leeds and Rotherham where projects have been set up to manage facilities which are part PFI funded, in this way. Contact will be made with these authorities in order to 'tap into' their respective experiences.
- 2.4** It is possible that a more advantageous price for the two sites at Folkestone and Hythe might be obtained by offering them to the bidder/operator as complete development packages. In this way, the purchaser would determine the value and would therefore have greater certainty over the price. Although market testing has been carried out to ascertain values, these figures would have to be updated and based upon this alternative means of transfer.

**3. CURRENT FEE POSITION**

This is shown in the table below:

<b>Approved Budget for Procurement Fees</b>	<b>£635,000</b>
Fees to date	£602,915

Invoices/Amts committed:	(£)
Additional cost of PMP reviewing usage stats	1,450
Town green application	10,000
Parish Poll	5,469
Commitment to FSCT Legal Fees	10,000

	<b>629,834</b>
--	----------------

<b>Budget available</b>	<b>£5,166</b>
-------------------------	---------------

#### **4. PROJECTED FEE POSITION**

- 4.1** It had been assumed that following the issue of the original OJEU notice in August 2005, the procurement process would move forward with no requirement for work outside the standard advice required for a project of this nature. However, due to the various complications with the project over the past year, this has not been the case and the current change in direction will have a significant impact upon the process as follows:-

Procurement. Changes in European Legislation and the requirement for 'competitive dialogue' combined with the change in delivery method will mean that a readvertisement in OJEU will be required. Evaluation of pre-qualifying bids and a comprehensive review of the Invitation to Negotiate will also be necessary.

Business planning. It is possible that the facilities mix will change. This will require a revised outline design for (possibly) both centres and a review of capital costs. The supply and demand model will change which will in turn impact upon income and expenditure projections.

Affordability The business plan will feed into a new affordability model, which is absolutely necessary as it will underpin the final business case.

Business case. A new business case based upon the above work will be required in order to demonstrate to the DCMS that the project is affordable to the Council and it remains good value for money.

Legal and financial. Legal and financial advice will be required on the PFI/DBOM option and in particular to establish the delivery structure and the implications of the trust management proposal.

- 4.2** Although we will seek to minimise the additional work required, the Council should be aware that additional fees, above the current contract and above those approved by Cabinet on 5 April 2006 will be required in order to proceed with this project. An updated projected fee table below shows additional fee expenditure in the sum of £34,500 which will be required to progress the project to submission of the new business case. It is difficult to predict the fee requirement beyond this point (i.e. to financial close). A further report on these fees will be submitted when a true projection is available.
- 4.3** The estimated fee projection to issue of final business case is shown in the table below:

<b>Task</b>	<b>Bevan Brittan</b>	<b>Other</b>
Research delivery options and outline viability exercise	0	£5,000
Review of capital costs	0	£2,500
Business planning	0	£5,000
Affordability modelling	0	£5,000
Preparation of business case	0	£2,000
Legal implications of business case	£5,000	0
Legal implications of OJEU	£5,000	0
Soft market testing (see 2.4 above)	0	£5,000
<b>Total</b>	<b>£10,000</b>	<b>£24,500</b>

In order to remain within the budget an increase in fee allocation of £29,500 (£34,500 - £5,000) will be required.

## 5. CONCLUSION

- 5.1 The Cabinet is requested to note that whilst the report recommends the release of monies to enable the project to move forward, the figures contained in the table (4.3 above) are estimates only. Should Members agree to take the project forward in the manner described in Section 2 of the report, true figures will be established and a further report brought to Cabinet for consideration.
- 5.2 Cabinet is also requested to note that there are no alternatives other than that described in Section 2 above by which to deliver this project.

## 6. RISK MANAGEMENT ISSUES

- 6.1 A summary of the perceived risks is shown below:

<b>Perceived risk</b>	<b>Seriousness</b>	<b>Likelihood</b>	<b>Preventative action</b>
Fees increase over revised budget	High	Medium	Early estimates of events likely to increase fees and early consideration of the alternatives
Council is unable to identify additional	High	Medium	Medium term financial planning

budget			
Project fails and fees are lost	High	Medium	Constant review of partners positions and early consideration of costings

## 7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

### 7.1 Legal Officer's Comments

The Solicitor to the Council has had an input into the production of this report

### 7.2 Finance Officer's Comments (CS)

#### The Way Forward

Detailed costings and financial modeling need to be carried out before any accurate financial assessment of the suggested way forward can be made. However it is felt that in general terms the suggested way forward should be more financially viable for the Council, as it allows for better utilisation of the capital receipts identified for this scheme.

#### Fees

This report seeks approval for an additional revenue budget for procurement fees of £29,500.

The Councils earmarked reserves currently have an uncommitted balance of £100,000. Recommendation 5 suggests the use of some of these uncommitted reserves to fund the additional budget requirement for procurement fees for this scheme. This would leave an uncommitted balance of earmarked reserves of approximately £70,000.

Alternatively if Portfolio Holders could identify uncommitted savings within existing budgets, the additional fees could be funded without any use of reserves.

As soon as information regarding potential fees to financial close can be reliably estimated a report should be brought to Cabinet (as outlined in paragraph 4.2). At that stage Cabinet will need to consider an appropriate strategy which will address the potential financial implications of these fees. The Cabinet is reminded that Minute 133 of report C/05/102 required portfolio holders are required to contain total net expenditure within the approved budget.

### 7.3 Diversities and Equalities Implications

There are none.

## 8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

Councillors with any questions arising out of this report should contact the following officer prior to the meeting

*Colin Paine, Project Manager*

*Tel: 01303 853379 email [colin.paine@shepway.gov.uk](mailto:colin.paine@shepway.gov.uk)*

The following background documents have been relied upon in the preparation of this report:

None

Appendices

None