**POLICY AND RESOURCE COMMITTEE – 17 OCTOBER 2017**

**PART I - DELEGATED**

**4. AQUADROME, BURY LAKE YOUNG MARINERS (BLYM)**

(DCES)

1. **Summary**

1.1 To update the Committee on progress on the initiative to develop a replacement facility at the Aquadrome for use of the Bury Lake Young Mariners (BLYM).

1.2 To make the Committee aware of recent VAT implications for the scheme and the preferred option going forward.

2. **Background**

2.1 The May 2012 Leisure and Community Policy and Scrutiny Committee received a presentation from BLYM on the latest design for a new clubhouse at the Aquadrome to house BLYM, the Nomad Kayak Club and other Bury Lake Clubs i.e. The Colne Valley Special Sailors, Windsurfing and Model Boating. BLYM are the project lead for this scheme, not the Council. As a consequence of both the report and the presentation, the Committee recommended to the Executive Committee that this project was exceptional. The Executive Committee agreed.

* 1. The Council subsequently agreed to include £1m in the Council’s 2015/16 Capital programme as its contribution to the project. This was made up of £750,000 grant and a £250,000 loan, repayable interest free over 25 years. BLYM then obtained planning approval for the scheme.
  2. The June 2015 meeting of this Committee received a presentation from BLYM, updating the Committee with progress on the scheme. Since 2012 BLYM have undergone a change of trustees, severe flooding to the existing facility in 2013/14 and, as a result, the scheme at that time had been thoroughly re-evaluated for both financial viability and environmental risks. The key features of the revised scheme presented at that time were:
* The estimated cost is still £2m, but following a revised design now includes both clubhouse and boathouse.
* BLYM had requested a lease of 50 years as opposed to 25, although the loan element of the Council’s contribution will still be repayable over 25 years. BLYM has indicated that this would assist them depreciating their capital investment over a longer period.
* BLYM has also requested that, should the costs come in under £2m and they have not managed to completely fund-raise their 50% proportion, the Council still contributes the £1m, split 75% grant and 25% loan as above.
  1. The June 2015 Leisure, Health and Wellbeing Committee resolved the following:

1. Noted the updated project for the revised BLYM scheme as detailed in the report.
2. Recommended to the Policy and Resources Committee that the lease between Bury Lake Young Mariners and the Council be for fifty years.
3. Agreed the scheme now include both clubhouse and boathouse as detailed in section 2.4 of the report.
4. Agreed to the Council’s contribution of £750,000 grant and £250,000 loan.

2.5 The July 2015 Policy and Resources Committee resolved that the lease between Bury Lake Young Mariners and the Council be for fifty years.

3. **Update**

3.1 There have been numerous meetings and considerable dialogue between BLYM representatives and TRDC Officers from Leisure, Major Projects, Finance, Legal and Planning.

3.2 Throughout the initial dialogue with BLYM, they advised Officers that they had been in contact with HM Revenue and Customs (HMRC) regarding how VAT on the scheme was to be dealt with.

3.3 At a meeting in July 2016, BLYM advised; ‘Three lines of enquiry are being progressed with regards to the VAT situation. The risk of the VAT is no longer the high project risk it was a few months ago’.

3.4 Shortly before the meeting of 4 October 2016, we were advised by BLYM that the VAT issue was once again a major issue for them. They passed on correspondence from their VAT advisers; this was in turn forwarded onto the Council’s VAT advisers via Finance. The crux of the issue appears to be the precedent set in a recent legal case brought about by HMRC against the Longridge Rowing Club.

3.5 Following advice from the Council’s VAT advisers, Finance met BLYM with VAT advisers from both the Council and BLYM on 18 October 2016 to discuss the implications of the legal case and to look at potential options. Following further advice from the Council’s VAT advisers, a meeting was held between Leisure and Finance to discuss potential viable options for the project to proceed. The key issue was whether the Council could be regarded as gaining ‘consideration’ from its contribution. A clear gap had to be maintained between the Council funding the project and who would have ownership (and control) of the buildings once constructed.

3.6 On 16 November 2016, a meeting was held between Leisure and BLYM representatives to discuss the potential viable options. (See Section 4 below). Following this meeting, it was agreed to amend the Council’s contribution to a £1,000,000 interest free loan, repayable in equal instalments of £20,000 over 50 years. It was also agreed that BLYM would retain ownership of the buildings until lease expiry at the end of the fifty-year period – the Council would secure its loan on the assets created.

3.7 Subsequent meetings and dialogue with BLYM followed covering a range of issues around financials and contingency provisions, cash flow, business plan, planning, legal documents and Aquadrome Bridge. In August 2017, BLYM representatives and TRDC Officers from Leisure, Major Projects, Finance, Legal and Planning agreed on the principles of a substantially revised scheme comprising a new Boathouse, Clubhouse (wet-side only) and demolition of the existing Boathouse, subject to Member approval and to mutual agreement on revised contract terms reflecting these changes.

3.8 On 4 September 2017, a briefing paper was presented to Cabinet / Management Board and the proposal was not opposed.

**4. VAT implications of the scheme and the potential viable options going forward**

4.1 Three potentially viable options were explored:

1. TRDC to loan £1 million to BLYM – interest free.  To be paid back over 50 years.  BLYM would be responsible for VAT. BLYM would own the buildings.
2. TRDC would take over the project as is and fund it accordingly.  Potentially an additional £600,000 for the Council to find.  BLYM would be required to pay ‘commercial rent’ on the facility.  This would need to be TRDC procured and require TRDC project management resource. TRDC could recover the VAT on the construction by electing to ‘opt to tax’ the land and buildings. TRDC would own the buildings.
3. TRDC to scale back the project up to £1.15 million.  BLYM would need to fit out. This would require planning permission and TRDC project management resource and BLYM to meet VAT on fit-out.
   1. Three other options were explored:
4. For the Council to be the Client and for BLYM to then carry out all the work. The Section 151 Officer rejected this, as there are major VAT implications for the Council, which would cause the Council to exceed its partial exemption threshold of 5%. The potential liability would be for seven years and would run into millions of pounds. Also, the Council would need to re-procure as set out within the Council’s Contract Procedure Rules.
5. For the Council to transfer the land and facility to BLYM. This was discounted as disposal of land was against Council Policy.
6. To add the construction of the Watersports replacement facility at the Aquadrome, as Lot 4 to the Leisure Management Facilities Contract via Design, Build, Operate and Manage (DBOM). This was discounted given the Council was at the Invitation to Submit Outline Solutions stage of the procurement. This would have meant a significant or substantial change and could lead to potential challenges and introduce delays into the Leisure Management Facilities Contract process.
   1. It was decided that the best option for the Council was to loan £1 million to BLYM, interest-free.  This is to be paid back over 50 years.  BLYM would own the buildings for the duration of the lease and would be responsible for accounting for VAT in the project.
7. **Financials and contingency provisions**

5.1 The cost of the project is to be met from the following funding streams:

BLYM - £525,000

Sport England – £150,000 – Grant (via TRDC)

TRDC - £1,000,000 - Loan

**Total - £1,675,000**

* 1. Overall project cost is now **£1,643,700** which includes £150,000 contingency.
  2. BLYM has indicated that it has already spent in the region of £190,000 on this project and previous unsuccessful schemes, but that was noted to be at their expense. They have indicated that it is their intention to carry out the Club House (dry-side) at a later date and they have advised that the cost of construction would be circa £480,000, plus fees and VAT. BLYM have provided the necessary evidence and confirmed to our satisfaction that they have available £525,000 in their bank account as their contribution to the initial project, (i.e. before any spend on the dry-side).
  3. BLYM has acknowledged that the Council’s financial contribution to the project (excluding some preliminary tree works) is capped at the £1,000,000 loan, which is interest-free and repayable to the Council by equal instalments of £20,000 per annum over 50 years, this being the term of the proposed lease.
  4. Sport England has very recently reconfirmed their contribution of £150,000 towards the scheme. They are presently considering transferring the contribution directly to BLYM.
  5. **Cashflow**
  6. BLYM’s funds will be released and drawn down first, followed by Sport England (SE) and then TRDC. Both SE and TRDC funds will be released in instalments and any draw down will be against work agreed and certified as complete, and not in advance of any works. The first instalment of TRDC funds is estimated to need to be released in about month 4 of the project. Depending on the timing of the receipt of the £150,000 funding from SE, it may be necessary for the Council to cashflow part, or all, of this sum against the value of works, on the basis of any administrative delay at SE.
  7. BLYM has carried out a full procurement exercise and has appointed Borras Construction Ltd. as preferred bidder to carry out the construction works. A commencement date is dependent on a number of factors but it is expected to take around 9 months to complete the works.

1. **Business Plan**

The Business Plan produced by BLYM now appears satisfactory both from a financial perspective and in meeting BLYM’s participation targets; their projections are forward estimates, but appear realistic and are based on demonstrable past performance. It should be noted that achievement of those targets is a requirement of the lease. Failure in this respect would give the Council grounds to forfeit the lease, should it wish to do so. This would leave BLYM in the position of having to apply to Court for relief.

1. **Planning**

BLYM has recently submitted a ‘Minor Material amendment’ application (i.e. to exclude the Dry-Side Club House). BLYM have been made aware that approval by Planning Committee (as it cannot be an officer decision) is completely at their risk.  They have also been advised that no TRDC funds will be released until the application has been approved by Planning Committee.

1. **Legal documents**

There are a number of legal documents that are being updated to reflect the present position. These include the Loan Facility Agreement, the Lease, the Construction Licence and a new Deed of Adherence. Collateral Warranties in favour of TRDC will be required from all subcontractors where there is a design element. BLYM has been advised that TRDC must approve the form of these and it is anticipated that they will be in the standard JCT format. TRDC Legal will be assisted by external legal advisers (Bond Dickinson) to undertake this exercise and it is anticipated that finalised working drafts will be ready in early October. It is not anticipated that there will be substantial redrafting, but there will be strengthening of the existing drafts. They will then be forwarded to BLYM’s solicitors. BLYM has accepted the position that there will be minimal, if any, changes made at this stage.

It should be noted that the new lease following construction will result in TRDC not owning the buildings until the lease expires in fifty years’ time.

1. **Aquadrome Bridge**

With respect to the Reconstruction and Enlargement of Watersports Facility (BLYM) at the Aquadrome, a condition survey of the bridge will be undertaken before and after the construction works and there will also be a monitoring regime in place during the works. (Note the last inspection report was undertaken in November 2016). The cost of the survey will be met from existing budgets.

BLYM has provided a Risk Assessment and Method Statement for the Aquadrome Bridge and it has confirmed that Borras will be responsible for any damage caused by construction vehicles. Within the Method Statement, they have stated that there will be no construction vehicles over 15 tonnes. The draft Construction Licence already contains indemnity provisions and it is intended that these will remain in place.

1. **Reasons for Recommendation**

10.1 Officers now feel able to recommend the approval of the project and commencement of the revised scheme of a new Boathouse, a new Clubhouse (wet-side only) and demolition of the existing Boathouse. BLYM have finally provided all information requested and agreed all TRDC requirements. Any approval will be subject to all conditions of contract being finalised and agreed. Further and subject to any comment by Cabinet Management Board, it is proposed that the Policy and Resources Committee be asked to resolve that:

“The project funding be revised and now be by an interest-free loan of £1,000,000 repayable over 50 years from the date of first drawdown by equal monthly instalments, subject to officers’ approval of all necessary legal and financial documents and to the grant of permission for a minor material variation by the Planning Committee.”

11. **Policy/Budget Reference and Implications**

11.1 The recommendations in this report are within the Council’s agreed policy and budgets for 2017/18.

The relevant policy is entitled:

**Community Strategy 2012 - 2018:**

Priority 1: Children and Young People’s Wellbeing

Priority 2: Health and Disability

Priority 3: Adult Skills and Employment

Priority 4: Crime and Anti-Social Behaviour

11.2 **Three Rivers District Council Strategic Plan 2017 – 2020:**

1.1.4 Minimise waste and optimise recycling.

1.1.5 Minimise energy and water consumption, reduce CO2 emissions and increase the use of renewable energy.

1.2.2 Champion the local economy.

2.3.1 Reduce anti-social behaviour and crime.

2.5.1 Improve and facilitate access to leisure and recreational activities for adults.

2.5.2 Contribute to partnership working to reduce health inequalities.

2.5.3 Provide a range of supervised leisure activities and facilities for young people.

11.3 **Leisure and Community Services Service Plan 2017 – 2020**

**12**. **Financial Implications**

12.1As contained in the report.

**13.** **Legal Implications**

13.1 As contained in the report

**14.** **Equal Opportunities Implications**

14.1 **Relevance Test**

|  |  |
| --- | --- |
| Has a relevance test been completed for Equality Impact? | Yes |
| Did the relevance test conclude a full impact assessment was required? | No |

**15.** **Staffing Implications**

15.1 The BLYM scheme will be overseen by the Head of Property and Major Projects and Head of Community Services. Input from Senior Management, Project Team, Finance, Planning, Legal, Property, Leisure, Grounds Maintenance and Trees and Landscapes will be required throughout the project.

**16.** **Community Safety Implications**

16.1 None specific.

**17. Public Health Implications**

17.1 None specific.

**18.** **Customer Services Centre Implications**, **Communications and** **Website Implications and Environmental Implications**

18.1 The website will be kept updated with progress on the project.

19. **Risk Management and Health & Safety Implications**

19.1 The Council has agreed its risk management strategy which can be found on the website at http://www.threerivers.gov.uk. In addition, the risks of the proposals in the report have also been assessed against the Council’s duties under Health and Safety legislation relating to employees, visitors and persons affected by our operations. The risk management implications of this report are detailed below.

19.2 The subject of this report is covered by the Leisure and Landscape service plan***.*** Any risks resulting from this report will be included in the risk register and, if necessary, managed within this plan

19.3 The following table gives the risks if the recommendation(s) are agreed, together with a scored assessment of their impact and likelihood:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of Risk | | Impact | Likelihood |
| 1 | That the new facility when complete doesn’t realise the growth in participation | lll | E |
| 2 | That BLYM’s volunteer base is not strong enough to meet demand | lll | E |
| 3 | That the number of volunteers dwindles over a number of years and BLYM are then no longer able to manage the building | lll | D |
| 4 | BLYM is not able to meet its annual revenue costs | lV | E |
| 5 | That there are capital cost overruns on the scheme | lV | E |
| 6 | That a long term drought develops and impacts on water levels in the Aquadrome which reduces the opportunity to sail | lll | E |

19.4 The following table gives the risks that would exist if the recommendation is rejected, together with a scored assessment of their impact and likelihood:

|  |  |  |  |
| --- | --- | --- | --- |
| Description of Risk | | Impact | Likelihood |
| 7 | That BLYM would leave the Aquadrome or fold with loss of participation opportunities | lll | B |
| 8 | The impact on equalities due to the loss of opportunity for the Colne Valley Special Sailors to have access to sailing | lll | A |
| 9 | That the remaining clubs on Bury Lake would have no club base | lll | A |
| 10 | The Council potentially could be perceived as being unsupportive and receive poor publicity | lll | A |

19.5 Of the risks detailed above none is already managed within a service plan.

19.6 The above risks are plotted on the matrix below depending on the scored assessments of impact and likelihood, detailed definitions of which are included in the risk management strategy. The Council has determined its aversion to risk and is prepared to tolerate risks where the combination of impact and likelihood are plotted in the shaded area of the matrix. The remaining risks require a treatment plan.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Likelihood** | A |  |  | 8, 9,10 |  |  | Impact | Likelihood |
| B |  |  | 7 |  |  | V = Catastrophic | A = >98% |
| C |  |  |  |  |  | IV = Critical | B = 75% - 97% |
| D |  |  | 3 |  |  | III Significant | C = 50% - 74% |
| E |  |  | 1,2,6 | 4,5 |  | II = Marginal | D = 25% - 49% |
| F |  |  |  |  |  | I = Negligible | E = 3% - 24% |
|  | I | II | III | IV | V |  | F = <2% |
| **Impact** | | | | | |  |  |

19.7 In the officers’ opinion none of the new risks above, were they to come about, would seriously prejudice the achievement of the Strategic Plan and are therefore operational risks. The effectiveness of treatment plans are reviewed by the Audit Committee annually.

20. **Recommendation**

That the Policy and Resource Committee approve:

20.1 The proposed funding change by which the Council will now provide an interest-free loan of £1,000,000 to BLYM repayable in equal instalments of £20,000 over 50 years.

Report prepared by: Ray Figg (Head of Community Services) and Alan Head (Head of Property and Major Projects).

**Data Quality**

Data sources:

BLYM Development Plan

Data checked by: Ray Figg (Leisure Manager), Bob Watson (Head of Finance), Nigel Pollard (Section Head Accountancy), Alan Head (Head of Property and Major Projects) and James Baldwin (Principal Solicitor).

|  |  |  |
| --- | --- | --- |
| 1 | Poor |  |
| 2 | Sufficient | X |
| 3 | High |  |

**Background Papers**

Reports to Leisure and Community Safety Policy and Scrutiny Committee, 7 June 2011, Minute L.PP04/11.

Report to Leisure and Community Safety Policy and Scrutiny Committee, July 2009. Minute L.PP22/09.

Feasibility Study by Sports Solutions GB.

Minute of the 20 June 2011 Executive Committee EX06/11.

Report to Leisure and Community Policy and Scrutiny Committee, 12 May 2012

Report to Executive Committee, 25 June 2012.

Report to Leisure, Health and Wellbeing Committee, 3 June 2015, Minute LW05/15.