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on 27 April 2006

**Folkestone**

Hythe & Romney Marsh  
Shepway District Council



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Report Number **C/05/135**

**To: Cabinet**  
**Date: 3 May 2006**  
**Status: Key Decision**  
**Responsible Officer: Andy Jarrett, Director of Regeneration**  
**Responsible Portfolio Holder: Councillor Mrs C J Waters, District Secretary for Tourism and Leisure**

**Subject: SHEPWAY LEISURE PFI**

**SUMMARY:**

On 5 April 2006, the Cabinet approved the recommendations contained in Report C/05/132, to authorise expenditure in the sum of £28,072 being monies spent and £35,000 being the monies due to enable the Folkestone Sports Centre Trustees (FSCT) to undertake a valuation on its land and for legal advice. The latter sum being authorised on the proviso that the FSCT agrees the facilities mix for the new Project and agrees the Heads of Terms. It was resolved also to update Cabinet on the fee position and on the affordability of the Project. A number of issues concerning Hythe Town Council (HTC), which have the potential to impact upon affordability, have come to light in recent weeks and these are discussed in this report.

**REASONS FOR RECOMMENDATION:**

Cabinet is asked to agree the recommendations set out below:

- a) To enable the Project to progress in accordance with the revised programme submitted and approved by the DCMS
- b) To enable HTC to progress with the lease arrangements for the land at South Road, Hythe.

**RECOMMENDATIONS:**

1. To receive and note the Report C/05/135.
2. To approve an additional budget of £100,000 to fund the further expenditure as outlined in the attached schedule of projected fees (appendix 2) and the financial officers comments.
3. That portfolio holders contain total net expenditure within the approved budget, in accordance with Minute 133 of report C/05/102 (6 February 2006).
4. To agree to take receipt of the SEEDA funds amounting to £100,000 and £100,000 from the HTC as match funding to enable its expenditure in financial year 2006/07.
5. To agree reimbursement of the monies to HTC outlined in 3 above less any expended monies for the provision of a new pitch.
6. To agree that £6,500 be allocated to cover the cost of a Parish Poll being called in Hythe
7. That the request by HTC that the District Council takes a lease of the whole of the South Road Recreation Ground on the basis that HTC does not make annual payment to the PFI scheme in the sum of £18070 be rejected.
8. To meet HTC's legal costs in respect of the Town Green application.

## **1. INTRODUCTION**

- 1.1 The fee position has not changed significantly since the Cabinet meeting on 5 April 2006 and is summarised in 2 below.
- 1.2 HTC wrote to the Council on 4 April 2006 ([Appendix 3](#)) outlining the resolutions passed at its meeting on 30 March 2006. The issues have been discussed at length with the HTC representatives on the PFI Steering Group culminating in a special meeting of the Group on 29 March 2006, which was called specifically to discuss the HTC contribution to the unitary charge.
- 1.3 HTC has resolved that the Shepway District Council (SDC) should agree to cover its costs on all matters. Legal costs in defending the Town Green application (estimated) and Parish Poll costs would be one-off amounting to £16,500.

## **2. FEES**

- 2.1 It had been assumed that following the issue of the OJEU notice, the procurement process would move forward with no requirement for significant work outside the standard advice required for a project of this nature.

However, due to the various complications with the Project, this has not been the case and changes/delays have meant that the Project Team is still some time away from issuing the Invitation to Negotiate. This document will need to be re-visited in the coming months.

- 2.2 The updated projected fee table attached to this report shows additional fee expenditure in the sum of £146,500 being the sum required to progress the project at this stage (refer to appendix 2). Although we will seek to minimise the additional work required the Council should be aware that additional fees above those approved on 5<sup>th</sup> April 2006 and those sought in this report will be required.

## **3. SOUTH EAST ENGLAND DEVELOPMENT AGENCY (SEEDA)**

- 3.1 The location of the proposed new Sports Centre at South Road Recreation Ground, Hythe will result in the loss of a football pitch, which HTC is looking to replace as soon as possible with a new pitch on land it owns. The land was formerly used as allotments that had become overgrown. HTC recently resolved to improve its maintenance and this work took place during the week commencing 10 April 2006.
- 3.2 SEEDA has set aside £100,000 of its funding for use as a capital contribution towards the new Sports Centre at Hythe and HTC is putting in match funding of £100,000 totaling a capital contribution of £200,000 towards the project.
- 3.3 The SEEDA funding needs to be spent before 31 March 2007. As the PFI project has been delayed it is necessary to take action to ensure the monies are available to the scheme.

- 3.4 HTC has requested that the monies from SEEDA and its own match funding is transferred to the District Council before March 2007. SEEDA has agreed that its £100,000 contribution can be used to discharge consultant fees incurred in the delivery of the project and that only monies unspent in the event of the project failing will be repayable to SEEDA.
- 3.5 As a result of the new centre displacing a football pitch, £30,000 is required from the £200,000 capital contribution for relocation of the pitch to the allotments. This work needs to be carried out in advance of financial close and will be split equally between Hythe Town Council and SEEDA reducing the amount held by the Council on their behalf by £15,000 each.
- 3.6 HTC has requested that in the event a new Sports Centre is not built at Hythe, the District Council pays to it a sum equal to the SEEDA funding of £85,000 and its own contribution of £85,000.
- 3.7 HTC is concerned that in the event the scheme does not progress it will be left without a sports pavilion at South Road Recreation Ground and no access to the SEEDA funding.
- 3.8 The Chief Executive wrote to HTC on 2 February 2006 stating that he would expect the District Council to meet SEEDA's claw back demands for the funding but that this would be subject to a formal decision of the Council.

#### **4. PARISH POLL**

- 4.1 Local resident Mr Jon Gammon has given notice to HTC that the South Road Conservation Area Association intends to request a parish poll with regard to the siting of the new sports centre at the western end of the South Road Recreation Ground.
- 4.2 HTC has requested through the PFI Steering Group meeting on 6 February 2006 and resolved at its meeting on 30 March that should a poll take place, the process is funded by the District Council. It is anticipated that this will cost approximately £4,500 with an additional £2,000 for communicating with the electorate. This £2,000 may not be required if an alternative means of public engagement can be established. Essentially, HTC is looking to the District Council to fund in the region of £6,500 for this process to take place.

#### **5. HYTHE TOWN COUNCIL'S CONTRIBUTION**

- 5.1 Bevan Brittan the District Councils' solicitors have outlined to the HTC's solicitors, that HTC will have to indemnify the District Council in respect of any losses that occur to the operator as a result of anything emanating from HTC's use of its retained land. This is because if the District Council is not in control of the whole of South Road Recreational Ground it is unable to give assurances to the operator that it will do nothing on that land to interfere with the operator's running of the new centre. This is one of the reasons why it would be a neater solution for HTC to resolve to let the whole of its land holding at South Road to

the District Council and to continue to pay the maintenance fee of £18,070 as part of the project. HTC accepting this position and appreciating that the operator could offer a more streamlined service to users of the tennis courts, pitches etc. debated including the whole of its land holdings at South Road in the lease to the District Council.

- 5.2 HTC has resolved to lease the footprint of the new Sports Centre (building and car park) at South Road Recreation Ground to the Council for a term of 50 years. However upon considering 5.1 above HTC has resolved that it would only be prepared to include the whole of its site in the lease on the proviso that it does not pay the £18070 per annum into the PFI scheme as its contribution to the unitary charge.
- 5.3 A summary of the income and expenditure relating to the South Road Recreation Ground shown in appendix 1 below. The Project Manager wrote to HTC on 10 February 2006 stating that he was prepared to recommend that the contribution of £18,070 be reduced to £11,787 to reflect the removal of staff salaries which equates to £6,285. The reduced contribution had not been modelled but effectively, this Council's contribution to the unitary charge would need to be increased by the same amount in order to close the affordability gap. The recommendation was not placed before Cabinet in March as planned and at its meeting on 30 March HTC resolved to request that the District Council meets all of these costs should the entire site be leased.

## 6. LEGAL FEES

- 6.1 HTC at its meeting on 30 March 2006 agreed to instruct Counsel to defend the Town Green Application and that the cost of this work should be met by the District Council. The cost of this work is estimated to be approximately £10,000. Please refer to appendix 2

## 7. RISK MANAGEMENT ISSUES

<b>Risk</b>	<b>Seriousness</b>	<b>Likelihood</b>	<b>Preventative Action</b>
Cost of Parish Poll increases	Medium	Low	Contribution to be capped
Unitary charge increases to a point where project becomes unaffordable	High	Medium	Council agrees to lease smaller site
Operator sees project as unviable without pitch inclusion. Unitary charge increases as a result.	High	Medium	Terms of management agreement to be included in ITN

Legal fees increase	Medium	Low	Contribution to be capped
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## 8. LEGAL/FINANCIAL OFFICERS COMMENTS

### 8.1 Legal Officers Comments

The legal issues have been addressed in this report

### 8.2 Financial Officers Comments

#### Fees

The approved budget for procurement process professional fees is £635,000. To date approximately £553,000 has been incurred, leaving an available balance of £82,000. This position has not changed significantly since the report to Cabinet on 5 April 06 (C/05/132).

At this stage approval is being sought for additional budget of £100,000 (recommendation 2). This sum has been determined as follows: -

Budget for professional procurement fees	635,000
Less: Spending to date	(553,000)
Fees approved in report C/05/132	( 35,000)
Balance of budget remaining	47,000
Additional fees required (Appendix 2)	<u>(146,500)</u>
Shortfall in budget available	<u>99,500</u>

The Cabinet is reminded that Minute 133 of report C/05/102 (6 February 2006) required portfolio holders to contain total net expenditure within the approved budgets. Cabinet must agree a strategy which will address the projected overspendings. Failure to do so would seriously jeopardise meeting the Council's approved budget.

The expected costs to financial close will be: -	£
Fees in relation to FSCT & May 06 Business Case	35,000
Projected fees as outlined in Appendix 2	146,500
Capped fees to financial close	
PMP (£124,000)	104,703
Bevan Brittan (£138,000)	<u>82,233</u>
	368,436
Plus those incurred to date	<u>553,000</u>
Total expected fees to financial close	<u>921,436</u>

On the assumption that the project now proceeds to financial close with no further significant difficulties the total fees are estimated to be £921,000, £286,000 over the approved budget (a further £186,000). It is anticipated that we will exceed the approved budget during 2006/07. Cabinet needs to consider how the expected overspend (£286,000) can be contained within the existing budget.

A further report will be brought to Cabinet outlining the anticipated fee position to financial close. A profile of the anticipated fees to financial close will be included within this report.

### Hythe Town Council / SEEDA Funding

Both SEEDA and Hythe Town Council wish to transfer their funding to the District Council during 2006/07. SEEDA has given approval to use these sums for consultants' fees. However should the project fail these sums will have to be repaid (recommendation 3). A total of £170,000 would be repayable after the provision of the new football pitch (estimated to cost £30,000).

The financial contribution towards the Parish Poll in Hythe and the legal fees associated with the Town Green registration (estimated to be £6,500 and £10,000 respectively) has been allowed for in the above calculation for fees.

If approval is given to reduce Hythe Town Council's contribution towards the unitary payment then the District Council will have to meet this additional cost.

## **9. CONTACT OFFICERS**

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

*Jo Gabell, Solicitor to the Council*  
Tel 01303 853248 e-mail [jo.gabell@shepway.gov.uk](mailto:jo.gabell@shepway.gov.uk)

*Colin Paine, Project Manager*  
Tel: 01303 853379 e-mail: [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*

## APPENDIX 1

### Hythe Town Council

#### South Road income and expenditure for year ending 31<sup>st</sup> March 2005

<b><u>Income</u></b>	<b>(£)</b>
Football fees	3,815.50
Cricket fees	545.11
Tennis fees	2,905.79
Bowling fees	1,991.47
South Road	9,257.97
<b><u>Expenditure</u></b>	<b>(£)</b>
Water rates	542.45
Electricity	572.60
Miscellaneous establishment costs	40.17
Printing	148.00
Recruitment advertising	121.42
Vandalism	180.00
Security	160.38
Property maintenance	766.80
Grounds maintenance	18,513.23
Tennis and bowls	6,285.40*
South Road	27,330.45
Excess of expenditure over income	£18,072.48

\* Total hours worked 1199 @ £5 per hour = £5995.00, plus holiday entitlement £290.70

**APPENDIX 2****ESTIMATED PROJECTED FEE SITUATION**

<b>Task</b>	<b>Bevan Brittan</b>	<b>Other</b>
Advice to FSC Trust	£14,500	-
PFI training session	£2,500	-
Land sale – FSC Trust	-	£30,000
Land sale – Hythe Pool	-	£40,000
External financial advice	-	£10,000
Legal agreement with FSC Trust	£3,000	-
Delivery of marketing strategy	-	£10,000
Extension of EIA at Folkestone	-	£20,000
Town Green Application	-	£10,000
Parish Poll	-	£6,500
<b>Total</b>	<b>£20,000</b>	<b>£126,500</b>