

CITY OF DURHAM

COUNCIL
3rd August 2006

REPORT OF THE EXECUTIVE DIRECTOR

**1. PROPOSED SWIMMING POOL DEVELOPMENT, FREEMANS PLACE
- UPDATE REPORT**

1.0 Purpose of Report

1.1 The purpose of this report is to update Council on progress to date on the above project, and to seek agreement on the terms of two key agreements in connection with the project.

2.0 Fitness Partner

2.1 Cabinet have previously resolved that Competition Line UK were the preferred partner in a proposed public/private partnership relating to the provision of a large high quality Health and Fitness suite, to be situated on the first floor of the new building. This appointment was made following an exhaustive procurement exercise in line with European Union procurement regulations.

2.2 Negotiations have progressed over the last few months and a conclusion has been reached by both parties on the proposed terms of the agreement. The key issues are as follows.

- The agreement term would be 20 years with various break mechanisms built into the legal agreement regarding issues surrounding failure and non compliance.
- Competition Line would invest a total of £2,000,000 (minimum) into the facility. This includes a contribution to the actual construction costs, a high quality internal fit-out, provision of reception desks and furniture, and a complete range of high quality health and fitness equipment.
- Competition Line would appoint a Health and Fitness Membership Co-ordinator who would be based in the new building who would oversee and manage issues relating to the marketing of the suite and maintenance of the membership lists. The co-ordinator would be in post a minimum of 6 months prior to the opening of the Fitness Suite.
- The basis of the membership would be an exclusive rate, inclusive of access to the swimming pools and some organised dance/fitness classes.
- Competition Line would provide, free of charge, all income collection and debt management services with the City Council receiving a monthly audited payment.
- Competition Line would refurbish the suite, inclusive of the complete re-provision of fitness equipment in year 7 and 14 of the agreement.

- Competition Line would contribute to joint promotional activity in regard to the Health and Fitness suite.
 - Other issues such as marketing, maintenance, payment periods, determination etc have been included in a draft legal agreement negotiated by the Director of Legal and Administration Services.
 - Further details of the agreement are included in the 'In Private' section of this Council agenda due to their commercial sensitivity.
- 2.3 This agreement is broadly in line with the overall Swimming Pool Project Development Appraisal and also is in line with the outputs described in the Swimming Pool Business Plan.
- 3.0 Land Issues
- 3.1 The proposed site of the new building is in the ownership of Durham County Council and the stewardship of Durham and Gilesgate Sixth Form College.
- 3.2 Various meetings have taken place with both parties in order to negotiate the basis of joint usage agreements in line with the City Council's proposal to be the catalyst to increased educational use. The joint usage details will be included in an over-arching lease for the use of the land which has been the subject of protracted discussions with Durham County Council. In order to aid these discussions two key pieces of work were commissioned.
- (i) Durham City Council commissioned an independent external consultancy, PMP, to undertake a complete review of the Swimming Pool Business Plan in order to provide an external validation of the revenue issues relating to the project. PMP undertook a 4 week study which eventually led to the provision of the necessary validation.
 - (ii) Durham County Council via its School Sports Co-ordinator undertook a comprehensive study of anticipated Primary, Secondary (and Private) school usage of the new facility. Included in the study was anticipated usage of other available pools in the District. A further later study was undertaken in relation to coaching and teaching issues in relation to pool usage. The outcome of the initial study indicated a potential demand in line with our Business Plan projections. The second study indicated a desire, from a reasonable number of schools, to look for increased usage via individual commercial arrangements that had not been included in our Business Plan.
- 3.3 Negotiations with Durham County Council have now been concluded and the key issues are as follows:
- The agreement term would be 99 years.
 - The cost of the agreement would be one peppercorn.
 - Durham City Council would provide free use of the sports hall for educational use via Durham Sixth Form College from 9.00 a.m. to 5.00 p.m. on school term days if required. If not required, usage and income from usage revert to Durham City Council.

- The learner pool and occasionally 2 lanes of the main pool will be provided to free use by Education (mostly primary schools) for two block sessions per day totalling approximately 5 hours per day term time. If not required, usage and income from usage reverts to Durham City Council.
- If teaching and coaching is required, individual schools or Education would pay for these additional services (or provide these themselves).
- Durham City Council and Durham County Council would enter into a joint promotional agreement where we would assign up to 100 'golden' (free entry) tickets per annum for Countywide promotion or competition winners.
- Three school swimming galas will be held per year.
- If the public/private fitness partnership significantly exceeds projected income targets, Durham County Council would receive an annual overage payment based on a percentage agreed relating to the capital value of the land and the building project cost. The overage would relate to Durham City Council's fitness partnership income share only and the base line figure, above which overage would be payable, has been negotiated at 15%, approximately, over our Business Plan projections. Annual increases in the baseline will be included in the agreement.

3.4 The agreement is broadly in line with our aspirations for Educational usage. The financial impacts of this agreement can be accommodated in current Business Plan projections. Indeed, the feedback from the studies suggests that ancillary income for increased usage may improve financial predictions. It is not envisaged that the overage provision will be used. The baseline represents that a significant increase over and above projected membership numbers would be necessary to trigger the agreement clause and neither Leisure Officers nor Competition Line representatives are confident on this level of increased success. The golden ticket promotion is a significant advantage to our marketing opportunities for the new building.

4.0 General Update

4.1 The project received full Planning Permission at a special meeting of the Development Control meeting on 24th May 2006.

4.2 A joint capital/revenue bid for £500,000 has been considered by Sport England and the Regional Sports Board in July 2006. An update on the progress of the bid will be given verbally at the meeting.

4.3 The process to select a Development Partner in regard to the joint development in conjunction with the University of Durham of the existing Baths site concluded on 7th July 2006. This allows the projected capital receipt for this project to be accurately calculated. An individual report on this development will be reported to Cabinet.

4.4 The Swimming Pool project has been submitted to tender in line with the European Procurement Regulations. Tenders will be returned at 12.00 noon

on 7th August 2006. The outcome of this process will be the subject of an individual report to Cabinet.

- 4.5 Overage in the agreed sum of £200,000 has been received from AMEC Developments in relation to the acquisition of land at Back Silver Street. This sum is currently held in our accounts in readiness for transferring into the Swimming Pool Development Budget.
- 4.6 A significant amount of detailed work has been undertaken on the design of the new facility. Data Sheets for every area within the building have been designed. The most significant alteration to the project is that of the profile of the main pool. A great deal of detail was collected in the consultation process regarding the Communities' aspirations for the new building. This has led to the examination of numerous options for the eventual pool design and discussions with National Sports Bodies. The Swimming Pool Steering Group have agreed a proposal to have an all deep large pool with a full length flexible floating floor. The depth of the main pool will be from 2 metres to 2.5 metres with the ability to alter this depth up to 2 metres to a minimal depth. Investigations are ongoing to attempt to provide ancillary use of the floating floor as a pool cover. A full floating floor is also included in the learner pool.
- 4.7 Archaeological surveys of the site have commenced.
- 4.8 The Swimming Pool risk register has been thoroughly reviewed by the Risk Management Working Group.
- 4.9 The Swimming Pool Business Plan is undergoing a thorough review and the next revision of the Plan will be the subject of an individual report to Cabinet.
- 5.0 Conclusion
- 5.1 The complexities of the design and the desire to include a significant amount of detail in the Design and Build specifications have led to requests to extend the tender periods which have been agreed. Protracted discussions in relation to the two key agreements have exceeded time estimates. The project is now approximately 4 weeks behind its original project programme but it is envisaged that this can be rescued later in the project. At present there are no financial consequences attached to this delay. Therefore the project remains on target for completion in mid 2008.
- 5.2 Due to the size of both agreements, with Competition Line and Durham County Council, it will be necessary, under the Council's constitution to present this report to Council for consideration also.
- 6.0 Recommendations
 1. That Council agree to a 20 year term agreement with Competition Line UK in relation to the Health and Fitness Suite within the new Building.
 2. That Council agree to a 99 year lease agreement with Durham County Council on terms as laid out in the report.
 3. That Council note the work undertaken to date on the design and organisation of the project.

2. JOINT DEVELOPMENT, ELVET WATERSIDE – SELECTION OF PREFERRED DEVELOPER

1 Introduction

1.1 Cabinet has previously considered reports on 1 August 2005 and 12 September 2005 regarding an opportunity for a joint development partnership with the University of Durham at Elvet Waterside. This report outlines the conclusion of the developer selection process.

2 Selection Process – Stage 1

2.1 The initial bidding process was concluded on 5 May 2006 when a total of thirteen bids had been received by the appointed Agent, Knight Frank. After inspection, seven of these bids fell below the minimum financial threshold and under the terms of the Joint Marketing Agreement, these were rejected.

2.2 The remaining bids were scrutinised by a Joint Officer Working Party where two key issues were examined.

- Financial standing of bidder
- Adherence to the agreed Development Brief

The City Council's Head of Audit undertook detailed appraisals of each bidder's financial standing. The Head of Cultural Services and the Development Control Manager undertook critiques of each of the bidder's development proposals and their adherence to the Design Brief. Ten key tests were applied to each proposal.

2.3 Following these comprehensive studies, two bidders were rejected on financial status grounds and one further bidder was rejected due to their bid not complying with the Design Brief.

3.0 Selection Process – Stage 2

3.1 The three Companies which remained following the initial Stage 1 process were:

- 1) Kebbell Developments Ltd
- 2) Yuill
- 3) H J Banks and Esh Group Consortium

3.2 The Officers Working Group designed the Stage 2 process to allow sufficient time for individual meetings to take place with each bidder. These meetings were conducted by the Head of Cultural Services, the Development Control Manager with Knight Frank attending. These meetings concentrated solely on each bidder's proposal and its adherence to the Design Brief. The purpose of the meetings were for each bidder to understand any outstanding concerns relating to the Design and its setting and to have sufficient time to remodel and strengthen proposals. This process was completed on 26 June 2006.

3.3 Best and final proposals were submitted to the appointed Agent by 30 June 2006.

3.4 The ten person Selection Committee met on 7 July to consider the three proposals. As part of the process each bidder gave a presentation on the detail of their proposal and their strategy for community consultation. Time for full question and answer sessions was included.

4.0 Decision Making Process

4.1 The decision making framework was laid out in the Joint Marketing Agreement. A total of 25 points could be allocated to a bid with a maximum of 13 points for price and a maximum of 12 points for other issues, which were accurately defined.

4.2 The meeting unanimously agreed that the bid from H J Banks and Esh Group Consortium was the best overall proposal. Financial details of the bids are included in the Private section of this report.

5.0 Proposed Timetable

5.1 More detailed discussions will need to take place with the preferred developer. However, the provisional timetable is as follows:

September 2006	-	Exchange of contracts
1 September 2007	-	Long stop date for planning and completion of purchase
2007/2008	-	Phased vacant possession

5.2 The preferred developer has produced a Community Engagement Strategy and indicated a minimum of a 16 week comprehensive community consultation as part of their design process.

6.0 Financial/Risk Issues

6.1 The three main risks can be classified as financial, deliverability and design.

6.2 Financial details are disclosed In Private due to the commercial sensitivity of the project at this time. The preferred developer's bid exceeds the Agents land valuation and the City Council's financial share of the receipt exceeds the amount needed to be transferred into the Swimming Pool development budget.

6.3 The Selection Committee discussed delivery risk and were minded that the preferred bidder was very financially stable, were local with strong links to Durham City and had a very robust record of delivery and were community focussed in their objectives.

6.4 The main risk will always be the ability of the developer to secure a planning permission. A great deal of interaction has already taken place with relevant Officers as part of the selection process. The developer's Architect has a strong record of projects within Durham City. However, this initial work must now be built upon to maximise all opportunities in the design and planning process, in consultation with the Community.

7 Conclusion

- 7.1 Design Briefs set a level of clarity that assists developers in bringing forward their design and development land use mix. This does not circumvent the planning process. Further work will be undertaken to move to the full assessment of proposals via a planning application supported by technical detail. This in turn will be subject to the scrutiny of the community, statutory consultees and of course the Development Control Committee in due course.
- 7.2 The defined and agreed selection process was somewhat prolonged but robust. The site is special and therefore was advertised nationally. Financial issues, although very important were satisfied early in the process and design, quality, context, setting and consultation issues dominated the Stage 2 selection process. The selection of the preferred developer was unanimous, and represents the best that is available following a full open market procurement exercise.

8.0 Recommendations

- 1) That H J Banks and Esh Group Consortium be approved as the developer for the Elvet Waterside joint development site.
- 2) That the City Council in partnership with the University of Durham now commit to the legal work necessary to sell freehold of the land to the appointed developer.
- 3) Full public consultation be undertaken with all residents and stakeholders throughout the design process in line with the development brief.

Background Papers

- Numerous working files held by Executive Director.