

HINCKLEY SQUASH AND RACKETS CLUB

**REPORT OF DEPUTY CHIEF EXECUTIVE – COMMUNITY DIRECTION &
DEPUTY CHIEF EXECUTIVE – CORPORATE DIRECTION**

WARDS AFFECTED:

1. PURPOSE OF REPORT

- 1.1 To report on the position regarding Hinckley Squash and Rackets Club (HSRC), who are required to relocate as part of the Crescent Regeneration Scheme.
- 1.2 To seek Member support to the procurement arrangements set out below, in order to facilitate the delivery of a four court state of the art squash centre at Tungsten Park, Hinckley.

2. RECOMMENDATION

- 2.1 That Members note and endorse the positive progress made in securing the opportunity of a new site and premises for Hinckley Squash and Rackets (HSRC) Club.
- 2.2 That Council approves the procurement arrangements to facilitate the delivery of the new Squash Club as set out in the report, subject to the legal agreements outlined in Section 5 of this report.
- 2.3 That, as permitted by paragraph 1.4 of all Contract Procedure Rules at Part 4 of the Constitution, Council resolves to waive the application of all of the Contract Procedure Rules to the construction contract and any sub-contract or other agreement to be entered in to in relation to the proposals contained within this report. The waiver is, on the basis that this is a specialist development and the Council's appointed Quantity Surveyor has satisfied himself that the appointment of Tungsten Properties Limited will provide value for money on the construction of the squash club.
- 2.3 That Council approves the following supplementary budgets for 2014/2015:
- A capital budget of £998,338 + VAT+£2,380 SDLT for the capital costs of the work.
 - An income budget of £1,026,104 to represent the funding to be received for the capital works
 - Re-designation of the current expenditure budget of £49,000 to reflect that this contribution which was approved by Executive on 20 November 2013 will no longer be awarded to the squash club as it will not be required, but will be set aside (see 2.5 below) to meet any potential SDLT liability arising on the squash club..
- 2.4 That Council notes that, under this arrangement, the Council will make a saving (after legal and VAT advice costs) of £51,885 .
- 2.5 That Council approve that the £51,885 saving is retained in a ring fenced reserve to meet any SDLT liability that the Hinckley Squash and Rackets Club may incur due to the grant of the long lease. This potential liability is estimated at £48,000

- 2.5 That Council grants delegated authority to the Chief Executive in consultation with the Leader of the Council and Lead Member for Finance, to agree the final legal agreements subject to the community use of the facility being secured within the documentation and the financial implications are within the budgeted cost set out in this report..
- 2.6 That Council approve the purchase of the freehold of the land at Tungsten Park upon which the squash club will be constructed and that, should the squash club wish for it, the granting of an option to purchase for a nominal sum to HSRC in the lease agreement at the end of the 125 year lease to be granted.

3. BACKGROUND TO THE REPORT

- 3.1 Following the grant of planning consent for The Crescent Regeneration Scheme on the Hinckley Bus Station Site in 2011 and the grant of Compulsory Purchase Order by the Secretary of State in 2012, negotiations have taken place with a number of owners and occupiers to facilitate their relocation. This has helped to secure a satisfactory outcome in respect of the relocation or compensation for moving off site to enable The Crescent Scheme to be developed. Formal notices have now been served on occupiers and the General Vesting Order seeking possession of the site has been served and the date for completion was 10 May 2014. This now enables work on the Bus Station site to commence on 2 June 2014 and to be complete and open to the public in autumn 2015.

New Squash Court Centre

- 3.2 Over the last six months, discussions have been undertaken with HSRC and England Squash and Racket Association, to seek to secure an enhanced replacement facility on Tungsten Park, Coventry Road which could be made available for community use. The scale of the new facility (in the region of £1M) not only replaces the three court facility currently on the Bus Station site, but will provide a fourth court which will allow the centre to be used for regional competitions.

Facilitating the delivery of the new Squash Centre

- 3.3 Following an approach by HSRC during the autumn 2013, the Councils' Executive considered a request for financial assistance up to £49,000 in grant funding to help facilitate the delivery of the four court new squash facility, subject to a Management Agreement regarding public use. As outlined in the financial implications, this funding is no longer required.
- 3.4 HSRC recently approached the Council with regard to a shortfall in funding arising from the rising cost of the land and construction for the new facility. Tungsten Park has, over the last 12 months, seen a significant increase in commercial interest and as a result, the majority of plots and units have been acquired. In order to help safeguard the early delivery of the new squash centre at Tungsten Park, officers have had discussions about the possible structures that may be used to provide the assistance to the Squash Club. There are various possibilities, all with risks and various legal transactions associated with them.
- 3.5 Following discussions a plan of action has been agreed in principle with representatives of Tungsten Park developers and HSRC. The following summarises the proposed key components of this action:
- The Council acquire the land and procure the construction of the squash club building from Tungsten Park at a total cost of £998,339 plus VAT.

- HSRC and HBBC enter in to an agreement to lease, allowing for HSRC to be granted a long leasehold interest of 125 years in the land and building by the Council.
 - Tungsten Park will be contracted by the Council to construct and deliver the new centre following a value for money and due diligence assessment for a fixed price of £800,000 plus VAT. The necessary warranties for the construction will also be secured from sub-contractors.
 - On completion the Council grants a long term lease to the Squash Club and operate the squash club following completion of the development by early 2015. HSRC will be offered an option of a further lease thereafter or an option to purchase for a nominal sum at the end of the 125 year term. This offer will however be subject to Tax advice being obtained confirming there are no long term VAT or SDLT implications arising from this
 - The community use of the facility is secured within the lease agreement between the Council and HSRC.
- 3.6 If the current proposals are advised against or any significant issues or risks arise then, under the delegated authority sought, officers would seek to renegotiate the proposals to secure the most acceptable deal for the Council. If this resulted in a material difference financially then a further report will be brought to Council.
- 3.7 The funding for the delivery of the development will be provided from the compensation payable by the Tin Hat Regeneration Company in respect of the Compulsory Purchase Order for the Bus Station site and the transfer of £110,000 of resources from HSRC to the Council.

Community Benefits

- **National Best Practice** - The project will be following in the footsteps of national good practice established by England Squash and Racketball at Hallamshire Squash Club and Pontefract Squash Club in having public squash courts alongside members squash courts. On average usage at both of these Centres has risen by **40%**. The Hinckley project is supported by England Squash and Racketball Governing Body.
- **Public Usage** – The new facility is expected to attract over 3,200 casual visits per year. Combined with current Hinckley Squash Club membership and the potential for the Hinckley Squash Club to attract new members, we expect to see a **25% growth** in usage, with the majority of members coming from within borough boundaries.

Current Leisure Centre Usage (3 courts) Based on average 9 court bookings per day	Potential usage of new facility on Tungsten Park (4 courts)
Circa 9,400	Circa 12,600

- **School links** - With the new facilities the club will work with the Borough's School Sports Physical Activity Network to develop a programme of school coaching and competitions to attract new players. The school projects will be supported by England Squash and Racketball Association, Leicestershire & Rutland Sports Partnership and the Council's Cultural Services Team. It is estimated that with the strong school partnerships which will be developed over **250** pupils will be introduced to squash.
- **Regional Facility** - The development offers the opportunity for the club to host National and Regional tournaments to inspire and attract new players.

Current Usage	Potential Growth	%Growth
No of Courts 2	No of Courts 4	50%
Current Membership 120 (60 per court)	Membership 240	100%

- **Coaching** – The new facility will create additional capacity for juniors to receive high quality squash coaching. This will include talented player identification.
- **Sustainability** - The club has developed a robust business plan to ensure that they attract and retain new members and get more people more active more often.
- **Environmentally Friendly** – The design of the new facility will have a reduced carbon footprint compared to the existing facility.
- **Accessible** – The new facility will be disability friendly
- **Monitoring** - The club would be willing to submit an annual reports to the Council which captures key achievements and outcomes. Financial performance, which is available to view in the public domain, would also be presented.

Management Agreement

3.8 If Members support this proposal enabling the early delivery of the new squash facility, it is proposed that this would be subject to provision within the lease to secure community use of the centre, subject to HSRCs prevailing fees charged for use of the facility. A key benefit of this approach is that it will continue to provide squash facilities available to the public following the closure of the existing Leisure Centre. It will also allow a more proactive approach for encouraging community use of the new facility on Tungsten Park.

3.9 Members are recommended to support this proposal.

4. FINANCIAL IMPLICATIONS [SK/KP]

4.1 The total **fixed** development cost for the new facility (including the land) has been agreed with Tungsten Park at £1,198,007 as outlined in the table below. Given the value of the land, the Council will be liable for Stamp Duty Land Tax (SDLT) of 1% on the value of the land i.e. £2,380.

	Cost	VAT	Total	SDLT	Total
	£	£	£	£	£
Land	198,339	39,668	238,007	2,380	240,387
Building	800,000	160,000	960,000	0	960,000
Total	998,339	199,668	1,198,007	2,380	1,200,387

4.2 The total cost of the land and the building (£998,339) will be met from the following financing:

- CPO compensation from the Tin Hat Partnership of £916,014.
- The Squash Club's own internal financing of £110,000 which will be transferred to the Council

- 4.3 As outlined in 3.3, by structuring the funding of the development in this manner, the Club would no longer require the £49,000 grant funding from the Council as previously agreed and budgeted for. This effectively is therefore a saving for the Council.
- 4.4 On the basis of the above therefore, the Council will make a net saving against the current budget of £74,385 (surplus + previous grant offering). Of this amount, it is estimated that £22,500 will be required to fund legal and VAT advice required for the transaction. The net gain is therefore estimated at £51,885. It is proposed that this amount is ring fenced by the Council to meet any potential SDLT liability arising on the Squash Club on the granting of the long lease.

	Cost	VAT	SDLT	Total
	£	£	£	£
Building	800,000	160,000	0	960,000
Land	198,339	39,668	2,380	240,387
VAT reclaim	0	-199,668	0	-199,668
Total capital cost	998,339	0	2,380	1,000,719
CPO	-763,420	-152,684	0	-916,104
Squash Club Internal Finance	-110,000	0	0	-110,000
Withdrawal of previous funding	-49,000	0	0	-49,000
Total income	-922,420	-152,684	0	-1,075,104
Net cost/(income)	75,919	-152,684	0	-74,385
Forecast legal costs				20,000
Forecast tax advice				2,500
Net cost/(income)				-51,885

- 4.5 With regards to VAT, the Council is required to adhere to “partial exemption limits”. Partial exemption is based on the principle that VAT incurred on expenditure that relates to the generation of VAT-exempt income is not recoverable. However, if such exempt-attributable VAT incurred is ‘insignificant’, it can still be recovered. For a local authority, HMRC consider ‘insignificant’ to mean less than 5% of all VAT incurred. A local authority is permitted to exceed this limit so long as this limit is not surpassed **on average** over a 7 year period. External advice has been obtained from PricewaterhouseCoopers LLP that this threshold will not be breached based on calculations and forecasts for the relevant period.
- 4.6 In order to establish budgets for these transactions, the following supplementary budgets are requested for approval in line with financial procedure rules:
- A capital budget of £998,338 + VAT+£2,380 SDLT for the capital costs of the work.
 - An income budget of £1,026,104 to represent the funding received for the capital works

- Re-designation of the current expenditure budget of £49,000 into a ring fenced account to reflect that this contribution will no longer be awarded to the squash club but will be held as a fund to meet any SDLT liability arising on the Squash Club.

4.7 In structuring this transactions, the Council has received advice from Price Waterhouse Coopers LLP and Eversheds LLP.

5. **LEGAL IMPLICATIONS (EH)**

In relation to the Council's ability to act it has the general power of competence under the Localism Act 2011. The purpose for which the Council acts is important, as the use of the general power of competence for a commercial purpose requires the use of a company. In this matter, the Council's purpose is not commercial but is for the achievement of community benefits, as set out in the report. In the absence of any specific prohibition the Council therefore has sufficient power with which to act. The power to acquire the property would be under s120 of the Local Government Act 1972.

The Council has appointed Eversheds to act for it in relation to this matter, they have provided initial advice on the proposals and will be drafting and negotiating the associated agreements, which will need to be compliant with the Council's legal obligations and will (subject to any change in the proposals) include:

- A Construction Agreement between the Council and the Contractor for the construction of the building. The requirements of the Financial Procedure rules will need to be waived in order to allow the Council to contract with the identified Developer without contravening them. The Council will have all the rights and liabilities under the construction contract, which carries financial risk with it, in the event that the construct faces complications. It should be noted that even if there is scope to secure indemnities from HSRC's trustees, they will be of little value in the event we sought to rely upon them.

The current version of the Construction Contract has been provided to the Council and it should be noted that the figure payable for construction is fixed, with no provision for variance other than where a change is requested.

- Subject to final Legal advice on this point, an agreement between the Council and the Squash Club to ensure none of the arrangements affects the CPO payment being in full and final settlement and that we properly document the purposes for which the Council receives the CPO monies – including those received to date by the club. This will need to be in place prior to any payment of compensation under the GVD as the compensation is due to the Squash Club and this will ensure that there is no possibility of any further claims of compensation at a future date.
- An agreement to secure public use of the squash club. This may be incorporated in the agreement with the Squash Club or secured via a stand alone agreement, however it is requirement of England Squash and Racket Association's funding offer in any event
- The contract and transfer for the purchase of the land by the Council
- The lease to be granted to the Squash Club by the Council. Under the lease to HSRC the Council should seek to ensure all responsibility re maintenance, insurance, repair of the building and premises fall to HSRC to avoid any additional financial liability as HSRC would have been meeting all such costs and liabilities were they proceeding without the Council's assistance.

- Any warranties for works in relation to the construction contract

All contracts entered in to by the council must comply with the Contract Procedure Rules unless they are dis-applied or varied by a resolution of Council. As such, Council is able to make the resolution as at recommendation 2.3 of the report. The need to waive the Contract Procedure Rules on this occasion arises from the fact that the development is substantially negotiated and forms part of a larger development. Specialist contractors are already engaged for the wider project. Given the council is not making any direct financial commitment to the build and due to the niche nature of the development and existing arrangements, it is considered appropriate and necessary to waive the Rules which would otherwise require a formal tender process in order for the Council to proceed.

As the Council is acquiring a freehold asset there are the liabilities and risks that come with this, as with any property ownership. Some may be passed on to HSRC as tenant and indemnities may be obtained in relation any liability, however HSRC and a not-for profit organisation and any indemnities given by the trustees will be off very little value given the relative financial position and lack of assets.

6. **CORPORATE PLAN IMPLICATIONS**

- 6.1 This report supports the Corporate Plan objective for regenerating the economy and improving physical activity of residents in the Borough.

7. **CONSULTATION**

- 7.1 Discussions have been held with key stakeholders, including Hinckley Squash Club and England Squash and Racket Association.

8. **RISK IMPLICATIONS**

- 8.1 The following risks have been identified:

Management of significant (Net Red) Risks		
Risk Description	Mitigating actions	Owner
Failure to support the funding of the new facility will reduce the availability of public squash facilities in Hinckley.	The delivery of the Action Plan proposed in this report, along with the grant assistance from England Squash and Racket Association and this Council will help mitigate this risk.	BC
Failure to provide a publically acceptable facility.	Ensure a Management Agreement is put in place to secure community use of the new facility.	BC
Failure to support the relocation of Hinckley Squash Club may impact on programme of delivery of the Bus Station Regeneration Scheme.	Facilitate by Legal Agreement the construction and delivery of the new squash facility on Tungsten Park.	BC & SK

9. **KNOWING YOUR COMMUNITY – EQUALITY AND RURAL IMPLICATIONS**

- 9.1 This proposal will assist in ensuring services are accessible as set out in this report.

10. **CORPORATE IMPLICATIONS**

10.1 The delivery of The Crescent Regeneration Scheme is a key strategic priority of the Council. The recommendations of this report will secure the smooth delivery of this scheme, as well as ensuring the provision of high quality new squash facilities for the Borough.

Background papers: Report to Executive - 20 November 2013 re: Hinckley Squash Club
Contact Officer: Bill Cullen and Sanjiv Kohli
Executive Member: Councillor Stuart Bray