

 Finance and Audit Scrutiny Committee – 2 April 2019		Agenda Item No. 7
Title	Leisure Development Programme - Completion of Phase I	
For further information about this report please contact	Rose Winship Rose.winship@warwickdc.gov.uk Paddy Herlihy Padraig.herlihy@warwickdc.gov.uk	
Wards of the District directly affected	Leamington/Warwick	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No A separate report is included in the Private and Confidential section of the Agenda with commercially sensitive and/or legally privileged information relevant to this report.	
Date and meeting when issue was last considered and relevant minute number	Member briefings May 2017	
Background Papers	Briefing to all members – 8 th May 2017	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	N/A
Equality Impact Assessment Undertaken	No – N/A

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive	20 th Mar 2019	Andrew Jones
Head of Service	20 th Mar 2019	Rose Winship
CMT	20 th Mar 2019	Andrew Jones, Chris Elliott, Bill Hunt
Section 151 Officer	20 th Mar 2019	Mike Snow
Monitoring Officer	20 th Mar 2019	Andrew Jones
Finance	20 th Mar 2019	Mike Snow
Portfolio Holder(s)	20 th March	Cllr Coker
Consultation & Community Engagement		
Insert details of any consultation undertaken or proposed to be undertaken with regard to this report.		
Final Decision?		Yes
Suggested next steps (if not final decision please set out below)		

1. **Summary**

- 1.1 The Leisure Development Programme (LDP) Phase I commenced in April 2016 with ambitious projects to refurbish and extend the leisure centres at Newbold Comyn, Leamington Spa and St Nicholas Park, Warwick. St Nicholas Park Leisure Centre was finally completed in April 2018 and Newbold Comyn Leisure Centre in October 2018.
- 1.2 As previously reported, both sites experienced significant delays during the construction phase, and as a result incurred additional costs in terms of compensation to the construction contractor, the leisure centre operator, materials and professional services, and officer time.
- 1.3 The final costs report has now been received from our project managers, Mace and has been presented to the Project Board. A high level summary extracted from the Cost Report is attached as Appendix A.
- 1.4 As Members were informed in May 2017, based on legal advice, it was the intention at the completion of the projects, to make a financial claim against the relevant utility companies for their role in the delay in the projects. These claims have now been made as described in the private and confidential report elsewhere on this agenda.

2. **Recommendation**

- 2.1 Members of the Finance and Audit Committee are asked to note the report.

3. **Reasons for the Recommendation**

- 3.1 As explained in the briefing given to Members in May 2017 (Appendix B), both sites experienced significant disruption to the construction programme as a result of delays in works by a number of utility companies. These delays were extremely disappointing given that a programme of "Enabling Works" had been undertaken ahead of the official contract award in order to mitigate such delays, and that it had been agreed with Speller Metcalfe (SML), the construction contractor, to place orders in summer 2016 with the appropriate utility company to avoid delays later in the programme.
- 3.2 In summary, the delays were the result of:
 - 3.2.1 Water mains diversions at Newbold Comyn and St Nicholas Park; burst waterpipes; redesign of utility infrastructure to address problems that emerged with original plans.
 - 3.2.3 Delay in initial works and in redesign of electricity infrastructure to address problems that emerged with original plans.
 - 3.2.4 Delay in carrying out gas diversions at St Nicholas Park and delay in commissioning the new mains.
 - 3.2.5 Further details of the causes of the delays can be found in the private and confidential report elsewhere on the agenda.
- 3.3 At the point that officers briefed Members in May 2017, the pool at St Nicholas Park Leisure Centre was due to open on 4th September 2017 with the gym and

studios opening in Spring 2018. These dates were achieved and the official opening with Colin Jackson MBE took place on 21st April 2018.

- 3.4 It was anticipated that Newbold Comyn Leisure Centre would be complete with all the facilities open by Spring 2018. Further delays were experienced at this site due to issues related to the water mains, which were impacting on the “buildability” of the sports hall, colonnade, entrance area and car park. The designs produced and implemented by the utility company proved to be unviable, and contractors failed to carry out the works to the approved plans. The Centre was finally completed and fully open to the public on 17th October 2018 with an official open day celebrated on 17th November 2018.
- 3.5 The works undertaken on the project by the utility companies are outside of the “Contract Works” being undertaken by SML, and therefore the management of the utility companies carrying out these works was the responsibility of the Council rather than SML. Under the terms of the NEC3 Engineering and Construction contract, SML were therefore entitled to claim compensation from the Council for the delays. Each compensation event that SML claimed for was assessed by Mace Ltd, our Project Manager, and involved forensic study of SML records, site records, site diaries and SML quotations in order to ensure that the SML claim for compensation events was justified and auditable. On behalf of the Council Mace Ltd undertook a forensic assessment of the SML claim, and advised the Council to settle on a figure that they believed was fair and reasonable. Details of the settlement can be found in the private and confidential report.
- 3.6 There was a further implication of the delays at each site, in that under the terms of their contract with the Council, Everyone Active were able to claim for loss of income due to the facilities not being completed on schedule. Details of this claim are also included in the private and confidential report.
- 3.7 Given the scale and complexity of the issues relating to the delays, advice was sought from Warwickshire Legal Services and Counsel on the approach and strategy to be taken in approaching these companies. Based on their advice Deputy Chief Executive (AJ), in consultation with Councillors Coker and Rhead, has lead the process to seek compensation from each of the three utility companies. Letters were sent in January 2019. The private and confidential report provides members with an update of the current situation in terms of these claims.

4. **Policy Framework**

4.1 **Fit for the Future (FFF)**

The Council’s FFF Strategy is designed to deliver the Vision for the District of making it a Great Place to Live, Work and Visit. To that end amongst other things the FFF Strategy contains several Key projects.

The FFF Strategy has 3 strands – People, Services and Money and each has an external and internal element to it. The table below illustrates the impact of this proposal if any in relation to the Council’s FFF Strategy.

FFF Strands		
People	Services	Money
External		
Health, Homes, Communities	Green, Clean, Safe	Infrastructure, Enterprise, Employment
<u>Intended outcomes:</u> Improved health for all Housing needs for all met Impressive cultural and sports activities Cohesive and active communities	<u>Intended outcomes:</u> Area has well looked after public spaces All communities have access to decent open space Improved air quality Low levels of crime and ASB	<u>Intended outcomes:</u> Dynamic and diverse local economy Vibrant town centres Improved performance/ productivity of local economy Increased employment and income levels
Impacts of Proposal		
Impressive cultural and sports activities Cohesive and active communities Increased physical activity for all the community Better quality public facilities	Area has well looked after public spaces Safe and vibrant public facilities where the community feel comfortable at all times	Dynamic and diverse local economy Increased employment and income levels
Internal		
Effective Staff	Maintain or Improve Services	Firm Financial Footing over the Longer Term
<u>Intended outcomes:</u> All staff are properly trained All staff have the appropriate tools All staff are engaged, empowered and supported The right people are in the right job with the right skills and right behaviours	<u>Intended outcomes:</u> Focusing on our customers' needs Continuously improve our processes Increase the digital provision of services	<u>Intended outcomes:</u> Better return/use of our assets Full Cost accounting Continued cost management Maximise income earning opportunities Seek best value for money
Impacts of Proposal		
The proposal will enhance the experience of the Leisure Development Programme team in managing large scale capital schemes	Focusing on our customers' needs The management of this project will assist us to continue to improve our management of large scale capital schemes	Better return/use of our assets – the new facilities will improve the Council's revenue position and assist us in delivering best value for money

5. **Budgetary Framework**

- 5.1 The Original Budget for the project was £15.26m, as reported to Council in November 2016. This included the costs of getting to RIBA stage 4 of £522k. The Budget was subsequently approved to be increased to £16.555m to allow for the anticipated increased costs as a consequence of the problems encountered with the scheme as discussed in Section 3, with an additional £1.3m included in the Capital Budget.
- 5.2 Appendix A shows a comparison to the originally agreed budget of £15.26m, as shown below. As shown in Appendix A
- | | |
|----------------------------------|-------------|
| Approved Original Project Budget | £15,259,800 |
| Total project costs | £16,543,349 |
| Overspend | £1,283,549 |
- 5.3 Compared to the subsequently agreed budget of £16.555m, the projected spend above would represent an underspend of £12k. If the Council is successful in recovering costs as discussed within the confidential report, this will enable the Council to reduce the funding required for the scheme.
- 5.4 There was significant additional work required to ratify and challenge the delay claim made by SML, and to provide evidence to support the compensation claims to the utilities summarised above. This work was carried out by Mace Ltd. It was agreed at the time of approving this work by Mace that the Council would, if successful with the claims against the utility companies, be willing to discuss payment of a proportion of any compensation received to Mace Ltd in recognition of this additional work and the costs accrued by Mace.
- 5.5 A sum has been paid to Everyone Active, as explained in the confidential report under the terms of the contract between Everyone Active and the Council. There is an opportunity for Everyone Active to make a further claim for loss of income under Clause 11 of the contract, which is based on the loss of income over the life of the contract due to the delay experienced at the start of the contract. Due to the nature of this claim it is not yet possible to assess whether this claim will be made and officers are keeping this under review with Everyone Active through the normal contract monitoring process.

6. **Risks**

- 6.1 There is a significant risk that the utility companies will challenge the respective claims made against them. The response we receive from the utilities companies will determine our next actions and whether we decide to pursue the matters further with each utility company.

7. **Alternative Option(s) considered**

- 7.1 The Council could have chosen to have absorbed these costs and not made a claim against the utility companies. This would have saved on fees paid to legal advisers and to Mace to prepare the case for the claim. However, the Council is clear that the utility companies are at fault and that they have caused this additional expense. It is therefore considered appropriate to proceed with the actions described in this report.