

This Report will be made public on 18 January 2021

Report Number: **C/21/75**

To: Cabinet
Date: 26 January 2022
Status: Key Decision
Director: Tim Madden, Transformation and Transition
Cabinet Member: Councillor David Monk, Leader of the Council

SUBJECT: Princes Parade

SUMMARY: The provision of a new leisure centre, housing and public open space at Princes Parade has previously been approved by Cabinet. This report gives an update on the status of the project, recommends appointment of the leisure centre operator and build contractor and seeks approval for financial capital and revenue provision to complete the project.

REASONS FOR RECOMMENDATION:

Cabinet is asked to agree the recommendations set out below because the project has reached decision points needed to deliver the project, and timely decisions are required to be included within the Council's respective budgets.

RECOMMENDATIONS:

Cabinet is asked:

1. To consider report C/21/75.
2. To agree the revised budget and funding requirement, as detailed in paragraph 3.4, and to recommend to Council its inclusion in the Medium Term Capital Programme (MTCP) and revenue budgets as required.
3. To agree additional funding to progress the installation of solar cells on the leisure centre, subject to planning considerations, of £100,000 drawn from the Climate Change Reserve as set out in paragraph 2.4.6.
4. To agree to accept £2 million Brownfield Land Release Funding (BLRF) as described in paragraph 3.6.1 and to delegate to the Director of Housing and Operations, in consultation with the Leader of the Council, the authority to seek and approve other forms of external funding for this project as and when they become available.
5. To award the contract for the operation of the leisure centre to Freedom Leisure (Wealden Leisure Ltd) for the period of the contract as set out in section 2.5.
6. To note the disposal of land for housing, in line with delegation arrangements previously set out in Cabinet report C/18/69 (February 2019).

- 7. To confirm that the contractors BAM proceed to the next stage of the project as outlined in this report (i.e. Phase 1 and 2 works) and the construction contract is finalised on this basis.**
- 8. In line with the recommendation from Cabinet of May 2014 (report C/14/01), to agree that, at an appropriate time, a legally binding covenant be drawn up to protect the scheme's proposed parkland and open space from any future development proposals not directly related to the site's leisure and educational objectives (paragraph 2.2.6) and to note the establishment of a strategic play area.**
- 9. To delegate to the Director - Housing and Operations, in consultation with the Leader and the Cabinet Member for Special projects, the authority to implement the steps required to complete the project.**
- 10. To note that the decision from the Secretary of State (SoS) relating to the Stopping Up Order of Princes Parade has not yet been received and, subsequent to that decision, there will be a period whereby a judicial review could be lodged (see section 2.3), and agree to proceed delivering the project at risk while the SoS's decision is finalized.**
- 11. To note the headline implications if the project does not proceed as outlined in this report (paragraph 4.1).**
- 12. To agree that the web site continues to be the primary channel for information relating to the project, with those interested in project detail and updates being directed to that source for relevant information (see section 5).**

1. Introduction

- 1.1 At its meeting of 13 February 2019, Cabinet approved the Princes Parade Project Business Plan (report C/18/69). The full report and appendices can be found at [Agenda for Cabinet on Wednesday, 13th February, 2019, 5.00 pm - Folkestone & Hythe District Council \(folkestone-hythe.gov.uk\)](https://www.folkestone-hythe.gov.uk/Agenda-for-Cabinet-on-Wednesday-13th-February-2019-5.00-pm) .

For ease of reference, the proposals agreed were:

- A new leisure centre, located to the eastern end of the site including a main 25m by 6 lane swimming pool, teaching pool, 100 station gym, studio space and a café.
- The relocation of the existing Princes Parade road in order to provide an 11m wide promenade.
- A comprehensive area of open space to the western end of the site linked to a central area of open space by a linear park.
- Up to 150 residential units provided in two land parcels either side of the central open space, including 45 (30%) units of affordable housing.
- The potential for commercial activities, including a boutique hotel, café, restaurant, adjacent to the promenade and central open space.
- Car parking to accommodate both residents, visitors and users of the leisure centre.

Since the report was considered and agreed in 2019, work has progressed in line with the decisions taken and there have been a number of developments to bring it to the current position. The following section sets out the progress with the project.

- 1.2 As a result of the February 2019 report, a core consultant team was appointed with Faithful and Gould appointed as the lead consultant. The range of the consultants acting at any one time depends upon the stage of the project and this was set out in paragraphs 2.18 to 2.22 of that report. Work also commenced to appoint: (a) a main contractor (through a two stage procurement process); (b) the procurement process for the Leisure Centre operator; and (c) to progress disposal of the residential land.
- 1.3 On 2 August 2019 the Council received an application for a judicial review (JR) on the decision to award planning permission to the development on Princes Parade. In light of that legal action it was considered appropriate to delay the actions delivering the development until this had been resolved. The JR was finally quashed on the 3 December 2020. The project recommenced in January 2021.
- 1.4 Since then the key actions undertaken for the next stages of the development have been:
- Re-engaging with the core consultancy team for them to recommence their work.
 - Completing the procurement process for the main contractor. The successful contractor was BAM. This is a two-stage procurement process, the first stage of which is the Pre Construction Services Agreement. This has taken the development to a stage 4 RIBA design

which gives more detail on matters relating to delivering the project, before progressing to the second stage which is the construction contract.

- A significant amount of ecological work has been undertaken under the supervision of the Council's appointed ecological consultants (Lloyd Bore) as part of the project team. This includes preparation of alternative sites for reptile relocation, the relocation of reptiles, and moving the known badger population under the direction of the Natural England (NE) badger license, which included the creation of a new badger sett to replace that in use.
- Agreeing relevant planning consents and the discharge of planning conditions including ecological conditions, construction of the badger sett, surface water outfall, a new substation and minor amendments to the leisure centre appearance.
- Extensive site investigations have been undertaken (including trial pits, bore holes) in order to form a more detailed view of any contamination in the site and to inform the resulting remediation strategy.
- Development of the remediation strategy and associated plans for future works to address known contaminants.
- Further design on the landscaping of the western open space which will be available for community recreation as well as providing additional play facilities. Members are reminded that following its meeting of 28 May 2014, it was agreed that a legal covenant would be drawn up to protect the scheme's proposed parkland and open space from any future development proposals not directly related to the site's leisure and educational objectives (report C/14/01). This will be put into effect at the appropriate time.
- The procurement process for the Leisure Centre operator has been undertaken. The results of this are shown in section 2.5.
- Disposal of the residential land areas has been undertaken (see section 2.6).
- Further consultation on the "stopping up" of the existing Princes Parade road was undertaken. Subsequently the Secretary of State was asked by statutory consultees for a Public Inquiry to resolve the matter. This took place for six days during the period 19 October 2021 to the 4 November 2021. The latest position with regard to this is set out in section 2.3.

1.5 The sections below consider the current position and the decisions required by Cabinet to deliver the project.

2 Current Position

2.1 Description of Site Investigations & Findings

2.1.1 BAM were appointed in February 2021 to commence the detailed designs required for the remediation, civil engineering, drainage, and infrastructure required for the development. This scope also included the required testing and attendance works pre-contract to conclude the design work streams.

- 2.1.2 The assessment of land contamination and mitigation options, and land contamination and remediation work streams, have been led by experts LBHGEO as BAM's chosen specialist consultant.
- 2.1.3 These assessments (undertaken from March 2021) have followed professionally recognised procedures, National Quality Mark Scheme (NQMS), and started with the production of a Preliminary Land Contamination Assessment, and a desktop review of the previous investigations and findings on the site.
- 2.1.4 An additional phase of site investigation was designed by BAM's specialist LBHGEO in order to have a far more detailed, intensive and targeted array of data across the site to see if there were any variances or higher concentrations of contaminants found that needed relevant mitigating actions to be taken. IDOM Merebrook were employed by BAM to undertake the additional site testing works during March and April 2021.
- 2.1.5 The IDOM Merebrook's factual report was issued with these detailed additional results and updated as the work progressed to include laboratory testing data, and preliminary gas and groundwater monitoring, with their final report being issued on 30th June 2021.
- 2.1.6 This information has been used by LBHGEO and a Land Contamination Assessment (LCA) report has been produced on behalf of BAM. This assessment (current version 1.2 dated 17/12/2021) has been progressively updated since June 2021 to show the key assessment criteria, the risks and the potential mitigation options for the site taking into account the latest site investigation findings.
- 2.1.7 The LCA accesses the specific levels of compounds and chemicals found in the soils for their exceedance against screening values, this data is then risk assessed with mitigation measures to limit their exposure and means to sever the pathway to the receptors. This process follows the government's Land Contamination Risk Management (LCRM) guidance.
- 2.1.8 The LCA is publicly available and has been issued as part of the Reserved Matters planning application which is currently being reviewed and commented on by both the Environment Agency and F&HDC and specifically to address part b) of condition 25 of the planning application Y17/1042/SH.
- 2.1.9 The necessary mitigation and remediation works have been prepared into an overall Remediation Plan by BAM, and a Remediation Implementation Plan for the initial earthworks has been prepared by BAM's tendered contractor. The Plans have been accepted in principle by the Environment Agency (EA) as providing a viable solution to the matters reported in the Land Contamination Assessment. The LCA, Remediation Plan and Remediation Implementation Plan will all be subject to statutory body consultation and regulatory approval prior to the commencement of any construction works which is scheduled for April 2022.

- 2.1.10 As part of the regulatory approvals for all of the solutions used, a verification plan will also be developed and agreed between BAM, their consultants, the Environment Agency and F&HDC Environmental Health. This will specify the site monitoring and testing requirements that need to be undertaken for each phase of the works. It will set out what information will be collected and what criteria will be used as evidence to validate the works have been satisfactorily carried out. This process, and the resulting mitigation measures, will provide suitable planned protection to address relevant Health and Safety matters during the works for human interaction including the public. When the scheme is completed it will also ensure the protection of users of the site and that public safety is maintained.
- 2.1.11 The physical site works will involve further material testing, material movement and the selection of appropriate materials and soils for reuse. This will allow the current volume of material on site to be utilised efficiently, minimise waste movements, and prevent creating more waste off site than absolutely needed. Various compaction methods will be used on site to stabilise and consolidate the materials. Controls will be put in place to restrict airborne particles and suppress dust generation from the site. Monitoring and sampling the air at certain locations at the site boundary throughout the period of planned works will provide data which will be reviewed by specialists to ensure that the works are not causing health and safety concerns or harm.
- 2.1.12 Hard standings, roads and the civil infrastructure will all be treated with binding agents in the form of lime and cement to provide a stronger platform to construct from. The whole development area will receive a high visibility marker layer to indicate the potential risk to future site users that may need to dig down, and this layer will then be capped with new material at the appropriate construction depths for roads, or with clean materials for planting and landscaping.
- 2.1.13 This 'clean cover' approach will separate exposure from the site contamination to the receptors (e.g. the environment, site users, public or future contractors). This is a well-used industry technique on brownfield sites which caps and isolates known contaminants from being accessed by the public and home owners.
- 2.1.14 In addition to the site-wide mitigation measures overseen by BAM and undertaken by the various specialist organisations, these principles have also been discussed with the National House Building Council (NHBC) through the processes undertaken to date. The final level of remediation controls and mitigations used specifically on the residential areas of the site will be the responsibility of, and delivered by, the residential developer and their consultant team.
- 2.1.15 The most recently commissioned reports and investigations show that contaminants exist on the site in a higher concentration than previously indicated. This is due to the latest site investigations and land contamination reports having been through a more detailed process which is required at this particular stage in the project's development. It also helps

to ensure that the correct protocol is being used to address the issues found on the site. Earlier assessments were not able to be undertaken to the same degree of detail and this increasing level of understanding of contamination on brownfield sites is a normal part of the development process.

2.1.16 Now that contaminants from the former waste site are known, if the development is not progressed some of the mitigation / remediation strategy will be required to provide long-term protection for future users. While the detail of this would need to be considered, it may include activities such as:

- Stripping the remaining vegetation and suitably capping the site, and re-landscaping.
- Fencing areas off and restricting access to certain portions, or the whole site.
- A hybrid option of the two approaches above.

2.1.17 All of these options would require further, more detailed consideration and a thorough assessment of risks of the appropriate solutions which would be dependent on the future intended use of the area.

2.2 Ecological work

2.2.1 The reptiles on site were successfully trapped and relocated to the receptor site to the north of the Royal Military Canal in 2021. A vegetation strip took place following their relocation to remove any suitable habitat and prevent recolonisation of the site.

2.2.2 The new badger sett was constructed and badger activity recorded in the new sett which then allowed the old badger sett to be closed and removed under the terms of the Natural England (NE) license.

2.2.3 The vegetation on the remainder of the site is planned for removal end February 2022 to ensure this is completed outside the bird nesting season and to check for any other badger setts ahead of construction works starting.

2.2.4 The proposed landscaping to the western open space, and the linear park leading to the bridge over the Royal Military Canal, maintains ecological areas along parts of the canal bank and around the new badger sett which won't be accessible to the public. In addition to this the new public realm will provide new ecology and foraging opportunities for the badgers and other wildlife.

2.2.5 A plan showing the proposed landscaping is included in Appendix A. This also indicates the intention for the western open space to be designated a Priority Play Area (PPA) for the park. This will replace the smaller play area at the Seabrook end of the Royal Military Canal which had PPA status in the Play Area Strategy 2020-2030 approved by Cabinet in June 2020 (report C/20/04).

2.2.6 At the Cabinet meeting of May 2014 (report C/14/01), it was agreed “that, at the appropriate time, a legal covenant be drawn up to protect the proposed parkland and open space from any future development proposals not directly related to the site’s leisure and educational objectives”. As part of the Council’s desire to ensure the green space is retained in the future, Cabinet is asked to renew this commitment as part of the scheme and to put in place the relevant covenant as previously set out.

2.3 Stopping Up Order

2.3.1 The development includes a redirection of part of the current Princes Parade road to run behind the proposed development and in parallel to the Royal Military Canal in order to provide an enhanced vehicle-free public promenade for leisure users. In order to build the leisure centre as planned, this required the “stopping up” of an existing length of road. Following a public consultation where statutory consultees objected to the order, the Secretary of State was obliged to hold a public inquiry into the matter. This was held for a six day period from the 19 October to 4 November 2021. All documentation relating to the inquiry can be found at: [Princes Parade Stopping Up Order Public Inquiry - Folkestone & Hythe District Council \(folkestone-hythe.gov.uk\)](https://www.folkestone-hythe.gov.uk/princes-parade-stopping-up-order-public-inquiry).

2.3.2 The Inspector has written to the Secretary of State who has not, as at the time of writing, announced his decision. This is expected shortly. Following this final decision, there is a period of 6 weeks when it is possible for a JR to be applied for by either party. At the time of writing it is not known if this will be applied for, or if there are grounds for doing so. An oral update will be provided at the meeting if there is anything further to report on this matter. If the Council is successful in achieving the stopping up order, it will need to consider whether to proceed given the potential risk of a further appeal against the decision.

2.3.3 It is anticipated that should a favourable decision be made for the Council by the end of January, then approximately £2 million of further investment delivering the scheme will be spent in the ensuing 6 week period (for example on utilities) without the process having been fully closed. Moreover, during this period should a JR of the decision be allowed, there will be a significant amount of further spending as the scheme progresses. In order to maintain progress delivering the scheme, Cabinet is asked to confirm their intentions to maintain momentum and to press ahead while accepting this risk, with further legal advice being taken and reported to the Leader and relevant portfolio holders, depending on the outcome of the Secretary of State’s decision and if any further challenge is lodged and progressed. Not to progress the scheme at risk will mean further delays with the potential loss of planning due to permissions effectively being “timed out” in particular in relation to the residential planning permission.

2.4 Carbon / Environmental Considerations

2.4.1 An energy assessment has been completed for the leisure center building in accordance with the current Building Regulations Part L (Conservation of Fuel and Power). As part of this assessment, the complete building is

modelled and that thermal model used to provide advice on the building's carbon credentials and demonstrate that the leisure centre improves on the notional baseline set out in the Building Regulations.

2.4.2 The energy assessment also considers several initiatives for climate change adaptation and the use of zero and low carbon technologies within the building.

2.4.3 The allowance for adaptation to climate change is best addressed using the energy hierarchy for the project, as a means to classify energy options contributing toward reducing the carbon emissions of the project. This hierarchy is an industry recognised method of looking at all aspects of energy use.

2.4.4 The definition of each level of the energy hierarchy, and the measures incorporated in the leisure centre building and the associated carbon savings over the notional baseline required by Building Regulations, are as follows:

Table 1: Energy Hierarchy

Energy Hierarchy	Measures Incorporated in the project & Carbon Savings
<p>Be lean: use less energy and manage demand during operation through fabric and servicing improvements and the incorporation of flexibility measures.</p>	<p>To reduce the amount of heat and cooling required within the building the construction materials have energy efficient elements (U values and g values) that include insulating materials and glazing systems that keep the heat in the building in winter months and assist in reducing the need for mechanical cooling in the summer months.</p> <p>This results in a 2% reduction in carbon emissions compared to the notional baseline required by Building Regulations.</p>
<p>Be clean: exploit local energy resources (such as secondary heat) and supply energy efficiently and cleanly by connecting to district heating networks, where available.</p>	<p>There are no district heating / cooling networks local to the project so this was discounted.</p> <p>Consequently, a gas micro combined heat and power (CHP) system has been included. This is one of the low carbon technologies encouraged to be adopted in the built environment. Its efficiency lies in reduction of energy waste.</p> <p>This results in a further 2% reduction in the carbon emissions of the project.</p>
<p>Be green: maximise opportunities for renewable energy by producing, storing,</p>	<p>The following systems have been included:</p>

<p>and using renewable energy on-site.</p>	<ul style="list-style-type: none"> - Energy efficient LED lighting and lighting controls. - Energy metering for the installed systems. - Energy efficient pumps with inverter drives. - Energy efficient fans for ventilation systems. - Mechanical ventilation with heat recovery. - Variable flow refrigerant systems (VRF) with recovery. - Energy efficient gas boilers. - Use of a building management system that helps to keep systems running efficiently by control and monitoring of the building engineering services. <p>This results in a further reduction in carbon emissions of 4.4%, which takes the total reduction to 8.4% compared to the notional baseline required by Building Regulations which equates to a saving of 42.09 tonnes of carbon per annum.</p>
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2.4.5 The project engineers also carried out a feasibility study for all available low and zero carbon solutions. The systems reviewed as part of this feasibility study included:

- Air source heat pumps.
- Photovoltaic cells (PV).
- Wind power.
- Hydrogen fuel cells.
- Ground source heat pumps.
- Biomass boilers.

2.4.6 Each system was analysed and the use of PV panels on the roof of the building has been identified as a suitable option, subject to funding and planning approvals. This is not currently included in the project brief and an additional cost of £100,000 would need to be approved if this were to be incorporated. This would result in a further 4.5% carbon reduction in addition to the 8.4% outlined in the above table, which increases the reduction in carbon omission from the notional baseline required by the Building Regulations to 12.9%. This additional cost will have a payback period of approximately 4-5 years and is proposed as a suitable cost to be drawn from the Climate Change Reserve. The financial benefit of this will fall to the Leisure Centre operator and this will be the subject of further discussions as the contract is finalised.

2.5 Leisure Centre Operator.

- 2.5.1 The Princes Parade Project Business Plan approved by Cabinet (C/18/69) recommended in para 2.26 that the Council *'seek to secure an operator for the new leisure centre through an open procurement process. It also recommended that the Council procure specialist advice to manage this process and achieve the best possible financial and service proposals for the Council.'*
- 2.5.2 The Council subsequently appointed The Sports Consultancy (TSC) to assist with the tender for the new leisure centre operator. The tender process commenced in August 2021 following a soft market testing exercise carried out earlier in the year.
- 2.5.3 In summary, the Council proposed:
- 2.5.3.1 A ten-year contract with an optional five-year extension at the Council's discretion.
- 2.5.3.2 The leisure operator to be responsible for the operational costs including their own fixtures, fittings, equipment and utilities costs.
- 2.5.3.3 The leisure operator to be responsible for most ongoing maintenance costs.
- 2.5.3.4 The leisure operator to control the leisure centre car park.
- 2.5.3.5 The leisure operator to propose an annual management fee payable to the Council as well as a surplus share proposal.
- 2.5.3.6 Existing Hythe Pool employees to be transferred to the new leisure centre operation when the new building opens with their employment rights protected under TUPE.
- 2.5.4 The tender was publicly advertised and eight companies expressed an interest. Discussions were held with interested parties and tender submissions were received from:
- Wealden Leisure Ltd (trading as Freedom Leisure).
 - Sports and Leisure Management Ltd (trading as Everyone Active).
- 2.5.5 Two other operators (Places Leisure and Serco Leisure) had actively engaged in the tender stage of the project but withdrew due to the Council's requirement for the operator to take on the full utility risk (this followed significant volatility in the energy market that was experienced in the autumn 2021).
- 2.5.6 The tenders were evaluated on 70% Technical (Quality) and 30% Price. The evaluation criteria were further subdivided as follows:

TECHNICAL CRITERIA	Weighting
1. Programming and Pricing	10%
2. Asset Management and Cleaning	10%
3. Sports Development, Health & Wellbeing and Outreach	8%
4. Marketing, Customer Care and CRM	10%
5. Staffing	8%
6. Financial Management, Reporting and IT Systems	4%
7. Environmental Sustainability	10%
8. Demonstrating Social Value	8%
9. Contract Mobilisation	2%
Technical weighting	70%
COMMERCIAL CRITERIA	Weighting
1. Proposed Management Fee (annual average over 10-year term)	26%
2. Surplus share	4%
Commercial weighting	30%
Total weighting	100.0%

2.5.7 The full tender evaluation report prepared by TCS is attached as Appendix B.

2.5.8 In terms of the Price Evaluation the respective scores are as follows:

Tenderer	Freedom Leisure	Everyone Active (SLM)
Average Annual Management Fee Over Ten Years	£175,843	£100,456
Aggregate Management Fee Over Ten Years	£1,758,431	£1,004,556
Management Fee Score	26.0%	14.9%
Surplus Share Score	4%	3.12%
Overall Price Score	30%	18%

2.5.9 The average management fee shown above is payable by the leisure operator to the Council. The actual management fee over the ten-year period will vary each year, and for both bidders there would be a fee payable by the Council to the leisure operator in Year 1 for the initial set up costs of the operator with an income in subsequent years. Full details of the management fee breakdown are set out in Table 2 page 4 in the TSC report in appendix B. A due diligence exercise was completed to benchmark both bidders'

income and earnings projections. This is summarised in para 2.8 to 2.13 of appendix B. The annual management fee will be index linked and uplifted annually.

2.5.10 The technical evaluation was assessed based on method statements submitted by each of the bidders for each evaluation category. The final technical scores are as follows:

TECHNICAL CRITERIA	Weighting	FL	EA
1. Programming and Pricing	10%	8.0%	8.0%
2. Asset Management and Cleaning	10%	6.0%	8.0%
3. Sports Development, Health & Wellbeing and Outreach	8%	6.4%	6.4%
4. Marketing, Customer Care and CRM	10%	8.0%	8.0%
5. Staffing	8%	6.4%	6.4%
6. Financial Management, Reporting and IT Systems	4%	2.4%	2.4%
7. Environmental Sustainability	10%	8.0%	8.0%
8. Demonstrating Social Value	8%	4.8%	4.8%
9. Contract Mobilisation	2%	1.2%	1.6%
Technical weighting	70%	51.2%	53.6%

2.5.11 The final combined price and technical scores are as follows:

Tenderer	Commercial	Technical	Overall
Freedom Leisure	30.0%	51.2%	81.2%
Everyone Active (SLM)	18.0%	53.6%	71.6%

2.5.12 The recommendation, based on the outcome of the tender evaluation, is that Freedom Leisure (Wealden Leisure Ltd) are awarded the contract for the leisure operator for the new leisure centre at Princes Parade. The contract will start from the completed construction of the new leisure centre with a mobilisation period scheduled in advance of the centre opening.

2.5.13 Freedom Leisure manage over 100 leisure centres including Sandwich Leisure Centre and the Ashford Stour Centre. Notable features of their tender include:

- The recruitment of a full-time Active Communities Manager, who will be responsible for the sports development programme.
- A commitment to working with the local Clinical Commissioning Group, police, youth services, local clubs and other groups.
- A comprehensive learn-to-swim programme.
- One apprenticeship and four work experience placements per year.
- A commitment to using local suppliers wherever possible, e.g. currently 60% of their reactive and planned preventative sports programmes are delivered by local suppliers.
- A commitment to sourcing green energy (through their supplier Haven Power).
- Achieving ISO14001 accreditation for the new Centre.
- Achieving 50% recycling and waste management.

2.6 Residential Providers

2.6.1 As part of the February 2019 Cabinet decision it was agreed that to progress the scheme the residential and commercial land at Princes Parade and at the existing Hythe Swimming Pool site should be disposed of. Delegations were given to the respective director, in consultation with the Leader of the Council and the Portfolio Holder. Throughout the summer of 2021, a marketing exercise was undertaken by BNP Paribas to determine interest in the site and to invite offers.

2.6.2 Following the conclusion of the exercise, the successful bid was agreed in early January 2022 for both the Princes Parade site and the South Road site. In total this equates to a receipt of £26.6 million for both sites and includes the commercial space on Princes Parade, affordable housing on both sites, a café and toilet block on the South Road site which also has the provision of beach huts. It also includes the demolition of the existing Hythe Pool once the new leisure centre is open. It should be noted that this offer at South Road also includes the provision of these community assets which will benefit the Council and community in the long run with additional financial detail to be firmed up as the residential scheme is agreed and revenue income streams are secured.

2.6.3 Officers are currently working through the detailed contract with the successful bidder so as to progress the scheme. The reserve matters application for the residential element of the site will need to be submitted by July 2022 and therefore discussions will proceed at pace with the chosen developer.

2.7 Planning

2.7.1 A summary of the various planning applications and permissions is provided below:

- Planning permission was received for the project on 19 September 2017.

- Conditions 15, 16 and 17 (ecology) were discharged 3 September 2021.
- The new badger sett application was approved 27 August 2021.
- S96a Non Material Amendments to the planning permission was approved 6 December 2021.
- New applications have been submitted for: (a) a new electrical sub-station; and (b) drainage outfalls to the beach. This will be determined at the Planning Committee on 25 January 2022.
- Reserve Matters (excluding the residential plots) was submitted and validated 10 December 2021.
- Discharge of Conditions application was submitted and validated 29 November 2021.

2.7.2 It is anticipated that the Reserve Matters and Discharge of Conditions applications will be determined at the March 2022 Planning Committee meeting. A Reserve Matters application will be submitted for the residential plots by the appointed developer by July 2022.

2.8 Procurement

2.8.1 Cabinet report C/18/69 recommended (paragraph 2.16):

In order to deliver the project it will be necessary for the Council to procure a main contractor to deliver phases 1 and 2. The options open to the Council include the use of a procurement framework or the more traditional competitively tendered OJEU route. The issue of contractor procurement is covered in detail in the Procurement and Programme Review (see Appendix 1) which sets out the following recommendations:-

- *A single contractor is appointed for the remedial works, leisure centre and infrastructure (Phases 1 and 2).*
- *A two stage develop and construct procurement route be adopted.*
- *Design developed to RIBA Stage 4a in conjunction with the contractor and for the completion of the second stage tender.*
- *A fixed lump sum price is obtained for the works at the second stage tender.*
- *Key designers (e.g. architects, mechanical/electrical engineer and civil/structural engineer) would be appointed by the Council to complete the design to RIBA Stage 4a and then novated to the contractor to complete the design.*
- *The contractor is procured through the Southern Construction Framework, although this needs to be soft market tested to ensure there is sufficient interest from contractors on this framework.*

In the report Phase 1 & 2 were defined as:

Phase 1

- *Site remediation works.*

Phase 2

- *Construction of leisure centre.*
- *Realignment of Princes Parade and construction of western car park.*
- *Relocation of existing rising main along realigned Princes Parade.*
- *Provision of new promenade.*
- *Construction of new linear park (including installation of planting along the embankment to the northern boundary, adjacent to the Royal Military Canal).*

2.8.2 Following completion of a tender via the Southern Construction Framework, BAM were appointed as the contractors for the pre-construction stage and the potential construction phase (subject to Cabinet approval and final contract). The recommendation to Cabinet in this report is to confirm that BAM proceed to the next stage of the project as outlined in this report (i.e. Phase 1 and 2 works) and the construction contract is finalised on this basis.

3. Financial Issues

- 3.1 The main contractor, BAM, were appointed under a Pre-Construction Services Agreement following a competitive tender through the Southern Construction Framework, to work with the Council and their consultant team to carry out further site investigations, engage with utility suppliers, work with the Council's design team to develop the detailed design, and to tender the sub-contractor packages.
- 3.2 BAM's pre-construction fee, construction fee, preliminaries, and overheads and profit were fixed at the first stage tender. BAM then competitively tendered subcontractor work packages for the second stage tender to confirm a fixed price contract sum.
- 3.3 Following the review of all tender packages received from BAM and the conclusion of financial negotiations on the second stage tender, a Contract Sum of £40,518,210 has been confirmed. This is a fixed price contract sum, whereby BAM take on risks associated with the design, ground conditions, remediation, supply chain issues such as labour and material shortages, and inflation.
- 3.4 This price includes the cost of bringing new utilities to the site, including off-site upgrade works, but any changes to these tendered costs from the date of price submission will remain the Council's risk, and consequently a 3% contingency allowance has been made for this and any other unforeseen project costs. As this is a fixed price contract with BAM, cabinet is advised by our external cost consultants that a 3% contingency allowance is sufficient and an appropriate amount for the risks identified.

The following table provides a summary of this together with the other project costs:

Table 2 – Costs of Project

Cost Heading	Cost
Construction Costs	£40,518,210
Consultant Fees, license fees, and other Council direct costs	£3,566,823
Contingency (3% of construction costs)	£1,215,546
Total	£45,300,579

- 3.5 This is an increase in the project budget of £16,235,579 which was agreed in the 2020/21 MTCP. The main reasons for this increase are set out in the table below which compares current costs to the original capital programme budget agreed in 2019.

Table 3 – Cost Differences from January 2019

High Level Cost Differences between Jan 2019 and Jan 2022	Cost	Comment
January 2019 Cost Plan	£29,065,000	
Site remediation and ground works	£5,339,575	Costs now based on more extensive detailed ground investigations. These are the remediation costs required for the planned site.
Utility infrastructure (on and off site)	£1,433,075	Offsite reinforcement works are now required following detailed capacity assessments by utility companies.
Leisure centre cost	£1,057,019	Design detail improvements required to provide a high-quality leisure centre within the detailed planning consent.
Western open space and linear park	£1,529,117	These are now being completed directly by the Council rather than the residential developer to provide certainty to secure better land sales values for the council and
Promenade	£916,553	

		complete these works at an earlier date.
Seapoint Canoe Centre (SCC) works	£200,000	Enabling works to the Charity's facility which are required to allow the road to be built.
Normal inflation	£1,902,788	Increased inflation due to delay in delivering the project as a result of the planning Judicial Review.
Current market conditions	£3,857,452	Extraordinary inflation due to delay in delivering the project as a result of Covid, Brexit, material and labour shortages, energy prices, etc.
Total Increase	£16,235,579	
Total Project Cost (Excl VAT)	£45,300,579	

3.6 Funding

3.6.1 The overall funding required for the project has changed significantly since the project was last considered in the 2019 Cabinet report. The delay in the project, together with inflation alongside other factors, has increased the costs as described above. In addition, the delay in the project resulted in the loss of the Homes England Accelerated Construction Programme Grant of £1,977,879 that was awarded in 2019. During the summer of 2021, a new grant was made available for local authorities to bid for through One Public Estate (DLUHC / formally MHCLG). This was the Brownfield Land Release Fund (BLRF) and the Council was successful in applying for a grant of £2 million to support the project and the costs of remediation. This was not a like-for-like replacement however it has helped the overall funding of the project. Further grant funding opportunities will continue to be sought, with approval for submitting and accepting funds being delegated to the Director for Housing and Operations in consultation with the Leader of the Council, and reported to council as part of the normal budget monitoring processes.

3.6.2 The ongoing work has sought to identify all sources of relevant funding to address the current position of the project. In particular, the residential land values have increased and provide a greater level of financial support for the scheme (see above in relation to residential values) and the successful leisure centre operator means the Council will receive an average positive cash flow in addition to removing the heavy liability of the current pool. Set out below are the key funding sources to meet the overall costs of the project:

Table 4 – Funding

Item	£
Nickolls Quarry – Section 106 (with indexation as at the time of writing)	5,309,010
Hythe Imperial Section 106 (Affordable Housing)	1,416,000
CIL Funding	2,500,000
Play area funding (CIL)	650,000
SCC funding (offset expenditure)	200,000
Income from residential sales	26,600,000
BLRF Grant	2,000,000
Total	38,675,010

3.6.3 The detail above identifies a funding gap of £6,625,569. In addition, as identified in section 2.5, the award of the new leisure centre contract will generate an average positive cash position estimated at £175,000 per annum over the period of the contract. Also, there will be no requirement to fund the existing Hythe Pool once this closes. This will save a further £165,000 per annum (excluding fixed costs and any exceptional costs, such as emergency / unplanned maintenance which is increasingly found to be necessary due to the age and deteriorating condition of the building). Overall this will provide a revenue turnaround estimated at £340,000 per annum which will be sufficient to cover the costs of funding approximately £10 million of additional borrowing if required. Revenue turnaround has not been included in the tabulated figures above but is part of the overall business case for consideration.

4. Further Considerations

4.1 The main body of the report sets out some of the key issues in relation to the project and in particular the increase in costs associated with the need for further remediation of the site and increased costs arising largely as a result of the delays to the project. As part of cabinet's overall consideration on the matter, there will be implications if it is determined that the project should not proceed. In particular the following are of note:

- To comply with the Environmental Protection Act 1990: Part 2A, the Princes Parade site will require remediation activity and it will not be allowed to remain in its current state now that the contaminants on site are known. While planning permission is in place and being delivered an agreed approach is in place however, if this scheme is not now pursued then the Council would need to determine the most appropriate remediation action for the site in order to meet necessary environmental standards. This will require further, more detailed assessment dependent on the future intended use of the area but could potentially require significant additional costs depending on the options chosen.
- The spending on the scheme to date, estimated at £2.56 million, would not be recoverable as a capital cost against the scheme and would need to be charged against the Council's revenue account.

This would become a charge during 2021/22 and would create further pressures on the Council's revenue finances.

- The current Hythe Pool building is ageing and requiring further maintenance. Significant expenditure (£167k) has been incurred recently for a new roof, a pool liner and a chlorine storage system. It is likely that additional costs will continue to be incurred as the building ages. If an alternative site is sought then the costs of assessing and preparing for the development of that site would be incurred.
- There would be a loss of the £2 million BLRF grant.
- The provision of 150 units on Princes Parade and a further 66 on South Road, including the affordable housing component for both of these sites, would be lost or delayed.
- The site itself has been established recently as suitable for development in the Places and Policies Local Plan and the site, if not used for the original multi-purpose of housing, leisure and open space, may be susceptible to proposals for just housing development in the future. The current scheme on Princes Parade also allows for Affordable Housing at 30% as opposed to the emerging policy of 22%. This additional 8% 'policy-on' position is positive and offers the chance to secure 12 additional affordable housing units beyond the current 22% emerging policy position.
- Further decisions will need to be taken as to the future of both the existing Princes Parade site and also for the future provision of a leisure / swimming facility for the district. The work to prepare for these decisions will take some time.

5. Communications

- 5.1 The project has, and is expected to continue generating, a significant amount of public interest. A dedicated section of the website has successfully been set up to provide information on the project and to provide an FAQ section for any queries arising from correspondence into the dedicated email address or through other channels. This method of communication is working well and due to the expected high volume of enquiries as works on the site progresses, cabinet is asked to agree that the web site continues to be the primary channel for information relating to the project with those interested in project detail and updates being directed to that source of information accordingly.

6. Risks

Perceived Risk	Seriousness	Likelihood	Preventative Action
Stopping up order is not granted by the Secretary of State or further delay due to judicial review challenge.	5	4	SoS decision expected during January. Content will need to be reviewed to determine impact of any decision.

Residential sales values do not meet expectations.	4	3	Current bids have been made which are at a market value and are incorporated within the overall budget reported. Heads of Terms are still being drawn up to finalise the arrangements and need to be concluded.
Increasing costs of project during construction.	5	3	Construction price is fixed for the council so risk is with the contractor.
Utility costs increase from tendered price.	5	3	Contingency allowed of 3% to cover risk. External advice given to council that this is sufficient.
Contamination on site is in excess of that expected.	5	3	Significant investigations have been undertaken and a remediation strategy developed which will provide an informed means of dealing with any contamination. Risk is with the contractor.
Planning deadlines not achieved.	5	4	Planning timetable established to ensure deadlines are met. There is dedicated planning resource is available as a specialist consultancy and also a PPA has been agreed with the Council for the project.
Necessary ecological activities cause overall delay to programme.	4	3	Ongoing ecological work being undertaken by specialist ecologists to ensure all relevant concerns are addressed in a timely manner.

7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS

7.1 Legal Officer's Comments (NM)

There are no legal implications arising directly out of this report. However, the Council will need to continue to comply with the public procurement regulations and Legal Services / external legal advisers will need to be utilised as and when necessary.

7.2 Finance Officer's Comments (CS)

The key financial issues related to the project are fully outlined in section 3 of the report. The scheme is now anticipated to require total funding of £45.3 million, with £38.675m having been identified and the remainder (£6.625m) being proposed to be funded from borrowing. The previously approved capital budget did not anticipate any borrowing to be required for this project (apart from that anticipated for cashflow purposes).

The identified funding for the scheme includes £26.6 million from residential land sales with further details outlined in section 2.6. Officers are working on Heads of Terms with the developers, but Members should note the financial risk of progressing with the main contractual commitments without secured capital receipts.

Temporary borrowing of up to £15.9m is forecast to be required for the scheme due to the timing of capital receipts and other contributions earmarked to fund the scheme.

Once all the external funding sources have been received in full, the net prudential borrowing requirement for the scheme is £6.625m and is permissible under CIPFA's latest Prudential Code for Capital Finance.

The scheme's expenditure includes capitalised interest of £430k covering the period from April 2022 until the new leisure centre open in the middle of 2024 and is in accordance with the Council's accounting policies.

Beyond that, the ongoing capital financing costs from the prudential borrowing (MRP and interest on the borrowing) are projected to be met from the net revenue benefit of the scheme identified in the report.

The borrowing requirement for this scheme will be incorporated into the Council's borrowing limits as part of the Capital Strategy for 2022/23 which Full Council will be asked to consider and approve on 23 February 2022.

The report outlines the financial impact to the General Fund should the scheme be cancelled and as noted in section 4 further work would be required to determine the additional cost of appropriate remediation. In addition to the capital sum identified in section 4 (£2.56m), a further capital sum (£710k) was historically incurred at the pre-planning stage of the scheme, this sum was capital funded by revenue and therefore would not have a revenue impact should the scheme be cancelled.

The scheme costs do not currently include the additional £100k outlined in 2.4.6 for PV panels. It is proposed that this is met from the Climate Change Reserve, which currently has sufficient funds to enable this (£4.5m) should members take this decision.

Initial advice received from KPMG suggests the Council will be able to recover all its VAT incurred for the scheme. However further work will be required to clarify the impact this may have for the proposed leisure operator and the property developer.

7.3 Diversity and Equalities Implications (TM)

The diversity and equalities implications have been assessed in the equalities impact assessment which was presented to the public inquiry referred to within the report.

7.4 Climate Change Implications (OF)

The principle of developing the site has been established through the Places & Policy Local Plan with planning permission and conditions on the planning permission as well as a remediation strategy for clearing up the site. Decisions on the operator and developer of the housing and other uses have been subject to relevant procurement processes.

Overall, there will be positive climate impacts arising from this report such as:

Greenhouse gas (e.g. reducing emissions from travel, increasing energy efficiencies etc.) – there is high potential for emissions from contamination however these have been adequately considered with a remediation plan put in place which is said to address issues raised in the land contamination assessment.

Leisure centres, and particularly those including swimming pools, are known as high energy using facilities and this report has considered how these impacts can be mitigated. Suggestion is made to enhance the new facility through the use of PV panels and this is welcomed. The existing Hythe Pool has no carbon reduction measures in place. The council's Carbon Action Plan highlights that gas use accounted for 58 per cent of carbon emissions from the council's estate and operations (891.6 tonnes of carbon dioxide equivalent of the total 1,535 tCO₂e) at the base year (2018/19). Hythe Swimming Pool accounted for 17 per cent of the council's total gas use at the base year (817,426 kilowatt hours), the largest gas consumption of any of the council's properties.

Waste – climate impact will be positive as the report considers how waste will be minimised both on and off site with the proposed leisure operator identifying the matter of minimizing waste as an important element for ongoing consideration.

Pollution – the report highlights potential risks to the public, site users, future home owners / occupiers and proposes a clean cover approach to minimise potential risks by delivering residential areas controls and mitigation. Ongoing monitoring and management of air samples is welcomed.

Resilience – potential future loss of parkland and open space is being addressed with a legal covenant to be drawn up to protect the scheme's proposed parkland and open space from any future development proposals not directly related to the site's leisure and educational objectives.

Conservation and wildlife – overall positive as relocation of reptiles to receptor sites, planting of vegetation strip to prevent recolonization on the site, and a new badger sett construction have taken place. Also there exists potential for the provision of new ecological and foraging opportunities for wildlife.

Social or economic impacts - The report has given consideration to carbon and environmental impacts and states that several initiatives for climate change adaptation and use of zero and low carbon technologies have been considered and will be included in the development. The leisure operator has also identified working closely with the CCG as a priority action, which is welcomed to address matters such as social prescribing. They have also indicated a desire to work with local supply chains and providers, again a welcomed approach.

8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS

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

Tim Madden, Director - Transformation and Transition

Tel: 01303 853371 E-mail: tim.madden@folkestone-hythe.gov.uk

Appendices

Appendix A – Proposed Landscaping

Appendix B – Leisure Management – Tender Evaluation report