

## Cornwall Council

Report to: **Cabinet**  
Date: **2 September 2015**  
Title: **Ships and Castles Leisure Centre, Falmouth**  
Portfolio Area: **Resources**

Divisions Affected: **Falmouth**

Relevant Scrutiny Committee: **Scrutiny Management Committee**

Key Decision: **Y** Approval and clearance obtained: **Y**  
Urgent Decision: **Y** Date next steps can be taken: **12 September 2015**  
(e.g. referral on of recommendation or implementation of substantive decision)  
Appropriate pre-decision notification given where an executive Decision? **N**

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### Recommendations:

1. That Cabinet determine which of the options they wish to implement in relation to Ships and Castles Leisure Centre i.e.
  - i. Do nothing, and close the centre. Closure would lead to a one off compensation claim from Tempus in the region of £0.350m and ongoing holding costs for security and empty rates estimated at £0.100m per annum

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- ii. Spend the minimum amount to keep the centre open but excludes addressing the high risk of critical systems failure, i.e. £0.722m
- iii. Spend the minimum amount to keep the centre open, which includes addressing the risk of critical systems failure i.e. £1.549m
- iv. If Cabinet approves option (i)., that the current policy of pooling all capital receipts is waived and any future capital receipt is allocated to the service to either provide a loan or a "capital" dowry to assist in the successful implementation of the Leisure Strategy.

### 1. Executive summary

The Cabinet authorised £3.9m expenditure on emergency health and safety (H&S) works, which included an initial estimate of £0.500m on the Ships and Castles centre in Falmouth. Further investigation demonstrated that significantly more spend was required to address all H&S issues at this centre.

The Cabinet in July 2015 allocated a one-off sum of £1.2m to provide limited funding against the significant backlog maintenance liability across the whole Leisure estate including the major elements of plant (boilers etc) that are in desperate need of replacement or overhaul in many of the Council's Leisure centres.

The Council's leisure facilities are currently the subject of a review, which includes a soft market test pursuant to the Council's ambition to achieve leisure centre provision at a nil subsidy.

The Council's Leisure Resources Strategy ('the Strategy') identifies that some sites may be released to provide a capital receipt in order to generate monies potentially for re-investment into the broader portfolio. A desk top valuation has indicated that the Ships and Castles site valued at £1.6m - £2.2m and the indications are that there are potential alternative uses for the site subject to planning and the usual due diligence. The value of the site would ultimately be driven by any alternative development proposals that could emerge following the implementation of the Strategy.

### 2. Background

The H&S works (capital fund £3.9m) approved by Cabinet in 2014 has been implemented across the leisure property portfolio, with the exception of Ships and Castles. These works addressed issues that would otherwise put the Council at risk of breaching H&S legislation, with high impact and significant financial and reputational consequences. The works have dealt with all the critical issues but have not addressed all the issues in all the

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centres and in particular it has not dealt with the significant maintenance backlog and the risks around major plant failure unless it was a critical health and safety issue. The remaining budget of £0.427m is available for work at Ships and Castles but work has not been instructed because a review has revealed that significant further works are required as a matter of urgency. The £1.2m allocated by Cabinet in July 2015 from the 2014/15 underspend to the Leisure Service is also available but if both the £0.427m and the £1.2m is used to address issues at Ships and Castles there will be no budget remaining to address the maintenance backlog or any emergency issues that arise in any of the other Leisure centres in the County. The H&S issues at the site therefore have not been addressed (with the exception of some issues picked up by routine maintenance). A detailed inspection has now been undertaken and has added detail to the options available.

Ships and Castle benefits from 194,000 visits per year and is a base for five primary schools that use the site for swimming lessons. Tempus also have 1,060 Breeze members. The centre is used to host some cardiac rehabilitation sessions with nurses from Treliske in the fitness studio one day per week and two classes run accommodating approximately twenty customers.

Ships and Castle has experienced 3 closures over the last 2 years (primarily caused by mechanical failures). On each occasion a mitigation plan whereby other nearby facilities, (Truro and Helston) was successfully implemented. However, it should be noted that previous mitigation plans addressed relatively short periods of time, and it is believed that these centres will not be able to deliver the required additional capacity in the long term. As such, any closure of Ships would be detrimental to Falmouth's local schools, the 600+ children currently register on the centres swim school and other local users.

In either the invest or close scenarios, the centre operator, Tempus Leisure, is likely to seek compensation. The contract between the Council and Tempus Leisure provides for partial termination and sets out a mechanism for compensation. Clearly, until a decision is made and implemented, the level of compensation will not be definitively known, however closure of the centre under option 1 is likely to result in compensation in the region of £0.350m being payable to Tempus Leisure. If the centre is closed temporarily to carry out the remedial works (options 2 and 3), in addition to the cost of the works, Tempus may wish to seek compensation however the Council considers that on the basis of the terms of the contract, compensation is not likely to be payable.

### **3. Outcomes/outputs**

The decision from Cabinet is needed to deliver certainty regarding the centre's future. If a decision is made to close it, officers will work with the

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operator, Tempus, to identify the implications and mitigate them wherever possible. It is anticipated that closure would take place on or around 30 September 2015. If a decision is made to keep the centre open, a programme of works will be required to be planned, managed and implemented in conjunction with Tempus Leisure to minimise impact to existing operations. This work would start as soon as reasonably practicable.

The centre is currently open as efforts are being made to mitigate the risks. However, the Council is of the view that we cannot safely maintain the centre indefinitely and an urgent decision is required either to close the centre or to prioritise the allocation of sufficient funds to address the issues. If the funds are prioritised to Ships and Castles then there will be no funding remaining to address any of the maintenance backlog or any major issue in any of the Council's other leisure centres. It is essential therefore that a decision is made whether or not to keep the centre open through the allocation of a significant capital sum.

If the centre is closed it is proposed that it be mothballed pending the implementation of the Strategy, at which point an operator may wish to invest and reopen the centre. If the site does not reopen, pending the appropriate approval, the proceeds of sale could be used as a "capital" dowry or loan to an operator to facilitate investment in the wider portfolio.

A further alternative would be for the Council to realise a capital receipt in the future and offer to assist the University with their long held aspiration to develop a pool at the Tremough Campus in exchange for some public use sessions.

### **4. Options available and consideration of risk**

The maintenance options open to the Council are as follows:

Option 1: 'Do Nothing' resulting in the closure of Ships and Castles Leisure Facility triggering compensation to Tempus Leisure in the region of £0.350m and holding costs in the region of £0.100m per annum

If the issues (summarised below) are not addressed to any degree, the Ships and Castles leisure centre will need to be closed by the end of September 2015. This will either be indefinitely due to a disposal of the site or it could reopen if at the conclusion of the tender process for the wider portfolio of leisure centres, a leisure provider decides to put it back into use. The centre would be mothballed and no immediate steps taken to pursue other options.

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The crux of the matter is that the centre is in urgent need of investment to ensure reliability of service e.g. the heating system is in a state of deteriorating poor condition, the main boiler modules are failing with the site being reliant on temporary boiler plant, which is unlikely to be sufficient to sustain another winter without significant investment in replacement along with new combustion air and gas supplies and associated flues. More importantly than heating systems is that there is a risk of serious injury and death to maintenance personnel if they were to work on maintenance of mechanical and electrical systems located at high level. The risk is mitigated currently because access is not being permitted to high level unprotected platforms, but consequently no maintenance of significant systems can be undertaken]. This is not a sustainable position and whilst it is currently being managed, it cannot continue beyond the end of September 2015 without the risk escalating beyond what is professionally advisable.

Without proactive maintenance of plant there are increased risks, but these are currently mitigated by a regime of testing.

In addition to the heating and access issues the emergency lighting and fire alarm systems are close to the end of their serviceable life and need to be replaced. Planned repairs are also required to the building fabric (pool tile repairs/flume stairs and high level glazing)

### Option 2 - £0.722m – Essential health and safety works – no plant

Expenditure of this sum (£0.722m) prioritises the essential H&S works (as detailed above), but does not allow for replacement of major plant items i.e. the pool AHU, chiller and boilers. The risk of them failing without notice would remain high, particularly given the recent notification of further boiler issues and thus puts into question the merit of an approach that would retain such a high risk of failure. The Council could spend the money and still have to close the centre without notice due to critical systems failure.

### Option 3 - £1.549m- Essential health and safety works with plant

This option would include all essential H&S works, including replacement of all necessary plant. All known issues with the mechanical and electrical services and essential building fabric would be addressed. However, general/non-essential refurbishment works are not allowed for and the public would see very little physical difference from the implementation of

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any investment option because the principal spend would be on mechanical and electrical systems and improved access for maintenance personnel.

There are residual risks remaining with each of the above options but with either option 2 or 3 the centre could remain open. Doing nothing would result in closure.

There are contractual and lease implications from the closure of the whole centre as set out in the Legal implications of this report.

The site value is estimated to be between £1.6M and £2.2M but this is a high level desktop review and would be driven by a specific scheme which could significantly impact the figure either positively or negatively. Demolition costs also have not been assessed. Closure could generate a capital receipt which could be used in a variety of ways. One option would be to allow the receipt, subject to the appropriate approval, to provide a potential "capital" dowry for an operator to invest in the early part of any new contract or could be used to facilitate a loan to an operator on which interest at an appropriate (taking into account the opportunity cost to the Council and State Aid regulations) rate could be offered.

Only Option 3 (works with plant) enables the Council to address the risk of immediate machinery and plant failure.

Significant investment could be made only to find as a result of the tender process that the site is earmarked for alternative use by a bidder;

The plant / machinery / facilities for wet side and dry side activities (cooling / heating / changing rooms / emergency lighting/ electrical systems) are one and the same and so operating dry side only would not be a viable alternative and could generate significant additional abortive spend if the centre was subsequently required to operate both wet and dry facilities again. Hence the options relate to investment in the centre as a whole or for the centre to close and be mothballed.

### **5. Proposed Way Forward**

It is recommended that Cabinet agree a preferred option from those set out above. On making the decision, the Council will notify Tempus as a matter of urgency, in case mitigations are needed to be put into place.

### **6. Implications**

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Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The legal implications associated with each option are as follows:</p> <p><u>Option 1</u></p> <p>The Council has a contractual right under the Management Agreement with Tempus Leisure to close individual facilities on 12 months' notice. Given the time constraints noted in the report, the Council is not able to give the required contractual notice period in this case. If the Council closes the Ships and Castles centre without giving notice, it must pay compensation to Tempus Leisure equivalent to the profits that Tempus Leisure would have earned had the centre remained open for the 12 month period.</p> <p>In addition, the Council is required to compensate Tempus Leisure for direct losses incurred as a result of the closure of the centre, including redundancy payments in respect of employees who are no longer required, and payment for goods or materials ordered before closure which cannot be cancelled.</p> <p>As set out in the report, the total compensation payable to Tempus if the centre is closed is estimated to be £350,000.</p> <p>In the event that the Ships and Castles centre is closed the lease between the Council and Tempus Leisure will automatically determine; no compensation is payable to Tempus Leisure in respect of the determination of the lease.</p> <p><u>Options 2 and 3</u></p> <p>Under the terms of the Management Agreement the Council is entitled to close facilities in whole or in part in order to fulfil its repair and maintenance obligations, provided reasonable notice is given to Tempus Leisure. In these circumstances compensation is only payable if the Council fails without justification to carry out the works within</p>

		the planned timeframe.
Financial	Y	<p>The financial implications of the three options is set out in the detail of the report but in summary are:-</p> <p>Option 1 – one-off compensation would be due to Tempus which is estimated at £0.350m along with £0.100m per annum to cover the cost of keeping the empty building secure until its final outcome is decided. These sums would have to be funded from the £1.2m the cabinet has allocated to leisure from the 2014/15 underspend as they are both revenue expenditure and cannot be funded from the current existing capital budget. Any disposal of the site would result in a capital receipt of between £1.6m and £2.2m with a proposal that the existing capital receipt policy is waived to allow the receipt to be used a “capital” dowry or a loan to any new operator in the future arising from the implementation of the Leisure Strategy. Capital receipts can only be used to fund capital expenditure hence the need to ensure it is only used to support such expenditure.</p> <p>Option 2 – A sum of £0.722m would need to be invested, £0.427m would be from the remaining element of the existing capital programme budget and £0.295m from the £1.2m allocated by the Cabinet as part of the 2014/15 underspend. This investment would only address the immediate issues and could be wasted investment if any of the major elements of plant fail and closes the facilities.</p> <p>Option 3 – a sum of £1.549m is invested that address all the health and safety issues as well as the major maintenance backlog at the centre. This would use nearly all the £0.427m and £1.2m currently allocated to the Leisure service to deal with all Health and safety and backlog maintenance issues across the whole Leisure estate. If this option was approved then there would be virtually no funding remaining to address any major issues or the significant maintenance backlog remaining across all the remaining Council’s leisure centre estate.</p>

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Risk	Y	<p>There are the following potential risks:</p> <ul style="list-style-type: none"> <li>• Risk of emergency closure as opposed to planned closure from failure of critical systems (albeit with short run in time frame)</li> <li>• Risk of legal claim from closure</li> <li>• Risk of reputational damage from closure</li> <li>• Risk of customer dissatisfaction from cancelled events</li> <li>• Risk of damage to the relationship with the current provider</li> <li>• Risk of impact on the tender process for the re-procurement of the leisure contract</li> <li>• That the prioritising of all the existing available funding that has been allocated to cover the whole Leisure estate on this one site could have an impact on other sites if major equipment fails</li> </ul>
Comprehensive Impact Assessment Implications		
Equality and Diversity		<p>The current CIA for the Leisure Resources strategy does not expressly capture the possible closure of Ships and Castles. However, the broader assessment of impact of the possibility of closure of any one of the facilities has been considered.</p> <p>The closure of Ships and Castles whether temporarily for works or permanently is not expected to have any impact on Equality and Diversity issues.</p>
Safeguarding		<p>The closure of ships and castles whether temporarily for works or permanently is not expected to have any impact on Safeguarding issues.</p>
Information Management		<p>The closure of Ships and Castles whether temporarily for works or permanently is not expected to have any information management issues</p>

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Community Safety, Crime and Disorder		The closure of Ships and Castles whether temporarily for works or permanently is not expected to have any impact on Community Safety/Crime and Disorder issues
Health, Safety and Wellbeing		The closure of a leisure centre will have an impact on existing users. The mitigation that would be agreed with the management organisation, Tempus, would limit the impact on the ability to access gym and swimming facilities. There are alternative facilities in the locality that would remain accessible, such as hotel pools.  If there is additional investment made in Ships and Castles this would have a positive impact on H&S
Other implications		The decision about Ships and Castles may have an impact on the interest from the companies potentially bidding to run the council's leisure centres.

**Supporting Information**

**Appendices:** None

**Background Papers:** None

**Approval and clearance of report**

**All reports:**

<b>Final report sign offs</b>	<b>This report has been cleared by OR not significant/not required</b>	<b>Date</b>
Legal (if significant/required)	Laurie Trounce Business Partner – Commercial Clients	24 August 2015
Finance Required for <b>all</b> reports	Russell Ashman Assistant Head Financial Services	24-08-2015
Equality and Diversity		

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**Cabinet/individual decision reports:**

<b>Final report sign offs</b>	<b>This report has been cleared by</b>	<b>Date</b>
Head of Service	PETER MARSH	21/8/2015
Corporate Director	Michael Crich	25/08/15