

Full Council

Date:	24 September 2013
Title:	Swimming Pool
Purpose of the Report:	To receive an update on the balance of maintenance costs to be released from the holding budget
Contact Officer:	Helen Stewart, Town Clerk

Background

The swimming pool was a joint venture between the town, district and county council. It was funded by the town, located on school land owned by the county council and attached to a district council facility which was managed by a leisure company under contract to the district council.

To accommodate this multi partnership arrangement a Joint Use Agreement (JUA) was drafted which all parties were expected to sign. The pool opened in December 2002 but the Joint Use Agreement was still under discussion and not signed by any of the parties, when all of the responsibility for the pool was transferred to the district in July 2011.

The JUA was intended to be the framework by which the management, use and maintenance of all the facilities on site were divided between the interested parties. Many aspects of the JUA were agreeable to all but there were some that had not been resolved.

There was a significant lack of procedure as to how repairs and maintenance were ordered, priced, signed off and paid for. The Town Council continually raised this with the County Council as far back as 2005 and reflected its discontent by not settling invoices for such because of a lack of supporting document to substantiate payment.

In July 2009 County Cllr Nick Carter tried to assist with the matter and there is an email on file from him that states that Claire Pollock, Deputy Corporate Income Manager had said that she herself would be refusing to pay the invoices if she were in the same situation.

Eventually at the end of 2009 a spreadsheet detailing work going back to 2005, the location of the work and split of costs was received. In February 2010 a number of queries were raised with Gerald Hayes, Service Manager Asset Management.

Discussion between the County and Town Councils continued sporadically until in November 2012 the County Council acknowledged that from a sample extrapolation of receipts it had probably charged the Town Council £24,674 in error over the period up to 2009.

In April 2009 the management of the pool was transferred to a new provider – Nexus. The new contract provided exactly the same services to both the district and town council. The main difference from the Town Council's perspective was that all maintenance costs were to be met by Nexus rather than being invoiced to the Town Council.

This moved the risk away from the Town Council but also ensured that the management company Nexus, had more financial interest in what repairs or maintenance were required, the costs for such and how effectively they were done before it agreed payment from its own finances.

Since there was never any contract in place between the Town and County Council for work at the swimming pool the Town Council informed the County that any further work was the responsibility of Nexus with the same arrangements it had with the district council.

Whilst the new management arrangements were out for tender the Town and District Councils agreed the terms and conditions whereby the Town Council would relinquish all responsibility for the swimming pool. This would enable the District Council to manage the leisure facilities as one entity. The tender was worded so the company awarded the new contract was fully aware of the situation. The transfer happened in July 2011 when all the paperwork was signed accordingly.

The County Council , continued to invoice the Town Council for maintenance work on the pool for 2009/10 and 2010/11. Each time an invoice was received it was informed that the contract with Nexus assigned all the responsibility for such matters to Nexus, the same service provided to the District Council at that site.

Nexus has contested having to pay these invoices but Ian Barclay, the consultant who managed the tender on behalf of the Town Council, wrote to Nexus clearly explaining its responsibilities as agreed in the signed contract.

Resource Appraisal

2004/05	£28,051
2005/06	£26,689
2006/07	£35,066
2007/08	£47,029
2008/09	<u>£55,087</u>
Total	£191922
Less Interim payment	£ 80,000
Less errors in invoices	<u>£ 25,000</u>
Balance to pay	£86,922

Money has been accrued each year to meet the outstanding invoices so this payment will have no impact on the budgets.

Risk Assessment

There is still an element of uncertainty about the total accuracy of all the recharges but the County Council has made a £25000 deduction to account for erroneous recharges based on the challenges from the information that was made available. Whilst this is not the way the Town Council would normally conduct business the prospect of a legal challenge for nonpayment is more of a risk than a qualified audit for surely, the External Auditor will see the Town Council has done everything it can to ensure that the payments being made have been tested to an acceptable degree.

There is a risk that nonpayment for year 2009/10 may result in a challenge by either the County Council or Nexus. At this stage legal advice would be required as to any responsibility the Town Council has, taking into account the tender and contract awarded to Nexus and the lack of any contract with the County Council plus the fact that it was informed that any arrangement was with Nexus from 1 April 2009.

Recommendation:

Council is recommended to agree that:

- i) £86,922 is paid to the County Council to meet the balance of payments due on the invoices from 2004 to 31 March 2009.***