



Shropshire Council  
Legal and Democratic Services  
Shirehall  
Abbey Foregate  
Shrewsbury  
SY2 6ND

Date: Thursday, 20 October 2016  
:

**Committee:  
Environment and Services Scrutiny Committee**

**Date: Friday, 28 October 2016**

**Time: 10.00 am**

**Venue: Shrewsbury/Oswestry Room, Shirehall, Abbey Foregate, Shrewsbury, Shropshire, SY2 6ND**

You are requested to attend the above meeting.  
The Agenda is attached

Claire Porter  
Head of Legal and Democratic Services (Monitoring Officer)

**Members of Environment and Services Scrutiny Committee**

Vince Hunt (Chairman)

Keith Roberts (Vice Chairman)

Dean Carroll

Ted Clarke

Nigel Hartin

Roger Hughes

Christian Lea

Pamela Moseley

Vivienne Parry

Arthur Walpole

Your Committee Officer is:

**Tim Ward** Committee Officer

Tel: 01743 257713

Email: [tim.ward@shropshire.gov.uk](mailto:tim.ward@shropshire.gov.uk)

# AGENDA

## **1 Apologies for absence and substitutions**

## **2 Disclosable Pecuniary Interests**

Members are reminded that they must not participate in the discussion or voting on any matter in which they have a Disclosable Pecuniary Interest and should leave the room prior to the commencement of the debate.

## **3 Public Question Time**

To receive any public questions or petitions from the public, notice of which has been given in accordance with Procedure Rule 14. The deadline for this meeting is 5.00pm on 25 October 2016

## **4 Member Question Time**

To receive any questions of which members of the Council have given notice. Deadline for notification for this meeting is 5.00pm on 25 October 2016

## **5 Call In of Cabinet Decision - Improved Swimming Facilities for Shrewsbury (Pages 1 - 44)**

A copy of the Call-In Notice received from the leader of the Council's Liberal Democrat Group together with the report considered by Shropshire Council's Cabinet meeting on 28 September 2016 are attached.

This decision has been called in by the Liberal Democrat Group, as detailed in the Call-in Notice. The Scrutiny Committee is asked to consider the report and the decision taken by Cabinet.

If having considered the decision, the Scrutiny Committee is still concerned about it, then it may refer it back to Cabinet for reconsideration, setting out in writing the nature of its concerns or refer the matter to Council. If the Scrutiny Committee does not refer the matter back to Cabinet or Council, the decision shall take effect on the date of the Scrutiny meeting.

## **6 Date/Time of next meeting**

The Committee is next scheduled to meet on 28 November 2016 at 2.00pm



**This page is intentionally left blank**

# Agenda Item 5

The Liberal Democrat group wishes to call in the decisions concerning Improved Swimming Facilities for Shrewsbury, taken by the Cabinet on Wednesday 28 September 2016. The reasons for calling in the decision, and the proposed alternatives, are as follows:

- 1) The Report states in recommendation A that the Council's preferred location for improved swimming provision is the Shrewsbury Sports Village, based on the options appraisal which was reported to cabinet on 13th July 2016. At the time of the Cabinet meeting on 28th September, no such decision regarding the preferred location of swimming provision had been made; in fact the Cabinet decision of 13th July deferred such a decision until such time as all acceptable business cases could be put forward for evaluation. The options appraisal includes assumptions regarding gym and swimming attendance, costs and income which are not well supported in evidence and require further scrutiny. The past, present and forecast attendance rates should be made available for scrutiny

**Alternative:** No decision regarding the preferred location will be made until all acceptable business cases are put forward. (This need not preclude a business case for the Sports Village being developed by Shropshire Council, but it removes a strong bias from the future decision making process..

- 2) The report states on P1 that '*Business cases will be evaluated against whether they meet the Council's minimum requirements referenced within the Terms of Reference for the pool to be sustainable and affordable; to meet the Council's vision for future swimming provision in Shrewsbury; to respond to the Council's draft sports facility strategy (DSFS); and to provide social, environmental and economic benefits.*' The Council's vision for future swimming provision has been repeatedly stated to include a modern and efficient 8 lane 25 m pool (i.e. new) facility at a multi-sports facility, together with a 20 m by 10 m pool with a moveable floor. It is evident that a reasonable and sustainable business case to refurbish the existing facility at the Quarry will not meet these requirements. The DSFS specifically states that the replacement of the Quarry swimming facility is developed on 'a site where there are existing leisure facilities', which may or may not preclude the Quarry Park, depending on whether the Council views the Park itself and the play facilities there to be 'existing leisure facilities'

**Alternative:** A refurbishment bid at the Quarry pool will not be excluded (non-compliant) simply on the basis of its location, or the number, size or arrangement of the pools, the nature of the surrounding leisure facilities, or other aspects of the site that cannot be readily changed.

- 3) The report states in recommendation E that '*a report on the outcome of the evaluation of all submitted Full Business Cases will be brought back to cabinet in due course for a decision on the final preferred location*'. It is considered important, given the level of public interest, that the business cases are examined by the relevant scrutiny committee prior to a decision being made by Cabinet.

**Alternative:** That a report on the outcome of the evaluation of all submitted business cases, and the business cases themselves, will be made available for scrutiny by the relevant scrutiny committee, and Cabinet will receive the outcome of that scrutiny process prior to making its decision.

- 4) The Terms of Reference on P15 set out three possible future Management Arrangements. The options as listed preclude the sensible and pragmatic approach of a community organisation taking over management of the site, whilst Shropshire Council retains liability for major repairs and maintenance of the building. This is the approach currently in place, and that proposed for the many other services that are to be run by community organisations or town and parish councils. The legal advice appended to the terms of reference requires further scrutiny, as it precludes this sensible option on the basis of one paragraph which requires clarification. Clarification is also required as to whether and how any financial penalties for changing management arrangements will be considered when evaluating bids.  
**Alternative:** A fourth Management Arrangement is included, whereby an organisation can run and operate the facility whilst Shropshire Council retains the responsibility for the land, buildings and major repairs.
- 5) It is not clear from the report whether the process of assessing the Outline Strategic Business Cases will be available for scrutiny.  
**Alternative:** The preliminary assessment of the Outline Strategic Business Cases and the OSBCs themselves will be made available for scrutiny by the relevant scrutiny committee.
- 6) The report states that the Council wishes to run the facility 'subsidy-free' (P18). However, the business case for a swimming pool at the Sports Village will consider the subsidy for both the swimming pool and the sports village, whilst any proposal to retain swimming at the Quarry Pool will have no effect on the subsidy at the Sports Village. It is possible that a sustainable and 'subsidy free' proposal will be put forward for the Quarry Swimming pool, which is ultimately rejected as it does not diminish the Sports Village subsidy. Scrutiny is required of the existing subsidy and management arrangements for both sites, including an investigation of performance against the contractor's projected performance at bid stage. The measures that might be taken to reduce the subsidy to the Sports Village should be considered without moving swimming provision to that site. Given the level of public support for a town centre pool, it would be perverse to move this facility to Sundorne in order to make the Sports Village break even.  
**Alternative:** All bids will be judged on the affordability of swimming provision and not on the combined affordability of the Sports Village and swimming provision.
- 7) The report lays down how each Evaluation of Business Cases is to be assessed. The 4<sup>th</sup> criterion needs further clarification.  
**Alternative:** What does the business case provide in terms of social, environmental and wider economic benefits?



Cabinet  
  
28<sup>th</sup> September 2016

Item  
  
Public

## Future Swimming Provision in Shrewsbury

**Responsible Officer** George Candler, Director of Place and Enterprise  
e-mail: [George.candler@shropshire.gov.uk](mailto:George.candler@shropshire.gov.uk) Tel:(01743)255003

### 1. Summary

This report clarifies the recommendations made by Cabinet at its meeting on 13<sup>th</sup> July 2016 with respect to future swimming provision in Shrewsbury. In particular, the report recommends that the original seven pool options should be reduced to two locations, the Shrewsbury Sports Village and the Quarry site / town centre for the reasons set out in this report.

The recommendations further seek authority for officers to prepare a Full Business Case (FBC) for the Council's recommended preferred option, the Shrewsbury Sports Village, alongside any alternative business cases put forward by interested organisations who wish to retain swimming provision at the Quarry and / or any other town centre location. Any interested organisation may put forward an alternative business case.

The report sets out the detailed Terms of Reference, including the process for submitting business cases; the availability of and process for accessing information and the opportunity to ask questions and receive further information; the stages in the process and the indicative timetable for submitting business cases; the evaluation criteria; and the evaluation methodology.

Business cases will be evaluated against whether they meet the Council's minimum requirements referenced within the Terms of Reference for the pool to be sustainable and affordable; to meet the council's vision for future swimming provision in Shrewsbury; to respond to the council's draft sports facility strategy; and to provide social, environmental and economic benefits. For a business case to be compliant it will be required to meet these minimum requirements. All compliant business cases will be evaluated on a comparative basis.

The report confirms as previously agreed by Cabinet that all interested organisations who put forward a business case, including Shropshire Council, will have up to 12 months to prepare their business case. Following this it is recommended that a report is taken to Cabinet, informed by Council officer's evaluation, confirming the Council's preferred approach.

In accordance with best practice it is also recommended that there should be an interim stage and that interested organisations are provided with the opportunity to submit a Strategic Outline Business Case (SOBC). Council officers supported by their advisors will consider whether the interested organisation has met the initial

criteria laid out in the Terms of Reference and has provided a business justification for their SOBC. Any interested organisation which does not meet these criteria will be given an opportunity of addressing weaknesses or may choose to withdraw their interest.

After Cabinet approval of the preferred option, detailed feasibility and design work will be undertaken; a final decision on future swimming provision in Shrewsbury will then be subject to a Cabinet recommendation.

## **2. Recommendations**

That Cabinet confirms that:

- A. The Council's preferred location for improved swimming provision in Shrewsbury is the Shrewsbury Sports Village. This decision is based on the options appraisal which was reported in detail to Cabinet on the 13<sup>th</sup> July 2016.
- B. In view of the outcome of the public consultation and interest in the retention of a town centre location any interested organisations who wishes to do so, is given the opportunity of up to 12 months to develop alternative business case proposals to retain swimming provision at the Quarry or other town centre location.
- C. There should be an interim stage and that interested organisations are provided with the opportunity to submit a Strategic Outline Business Case. Any interested organisation which does not meet minimum criteria will be given an opportunity of addressing weaknesses or may choose to withdraw their interest.
- D. All Strategic Outline Business Cases and Full Business Cases, including the Council's Strategic Outline Business Case and Full Business Case for the Shrewsbury Sports Village, will be evaluated against the process, timetable, evaluation requirements and methodology set out within the Terms of Reference included as Appendix 1 on a comparative basis.
- E. A report on the outcome of the evaluation of all submitted Full Business Cases will be brought back to Cabinet in due course for a decision on the final preferred location. A decision on whether to go ahead with the replacement of the existing pool can be taken thereafter in light of the Council's Financial Strategy.
- F. The detailed implementation of all aspects of the recommendations made within the report is delegated to the Director of Place and Enterprise in consultation with the Portfolio Holder for Leisure, Libraries and Culture.



## REPORT

### 1.0 Risk Assessment and Opportunities Appraisal

A detailed risk framework has been prepared and is kept under regular review by the Project Board. A number of issues to the successful implementation of the project have been identified.

<b>Risk</b>	<b>Mitigation actions</b>
<p>Detrimental impact to the development of plans for new swimming provision resulting from lack of public and partner engagement and failure to communicate effectively</p>	<p>A five-month public consultation on pool options was carried out in 2015. There has been strong and regular engagement with and from a range of stakeholders including the Shrewsbury Business Improvement District, Quarry Swimming and Fitness Forum and Shrewsbury Town Council. Work on the development of options for future swimming provision have been frequently referenced within the local media resulting in strong local awareness and engagement. An opportunity is being provided to interested organisations to develop business cases that retain swimming provision at the existing Quarry or an alternative town centre location.</p>
<p>Changes to swimming provision fail to meet Disability Discrimination Act (“DDA”) and Equality Act and social inclusion requirements*</p> <p>[*Note: Existing swimming provision at the Quarry is not fully compliant with current legislation and best practice expectations]</p>	<p>A detailed Equality and Social Inclusion Impact Assessment (ESIIA) has been prepared by the Council and will continue to be kept under review alongside further detailed stakeholder engagement. Visit: <a href="http://new.shropshire.gov.uk/get-involved/swimming-provision-in-shrewsbury/">http://new.shropshire.gov.uk/get-involved/swimming-provision-in-shrewsbury/</a></p> <p>The Terms of Reference for the submission of business cases include a requirement for interested organisations to detail how their submission will take account of equality and disability considerations, meet current legislation and best practice expectations and the impact of their proposals on “protected groups”.</p>
<p>Submitted business case proposals do not meet the council’s key requirement for the recommended pool provision to be affordable and to support participation for at least 25 years from the completion of the project resulting in delay and consequent financial risk (see below).</p>	<p>The affordability of pool provision and its ability to support participation over the next 25 years was considered by the Council in the preparation of the extensive work which underpins the recommendation that the Shrewsbury Sports Village is the preferred option. All business cases will be expected to take into account the requirements published within the Terms of Reference. Any option which does not meet these requirements will not be considered compliant and will be recommended for rejection. To potentially reduce delay and to strengthen individual business cases an opportunity has</p>

	<p>been developed for interested organisations to put forward a SOBC to establish if the business case / cases is potentially viable and meets minimum requirements; feedback on business cases will be provided at this point.</p>
<p>Lack of clarity, transparency and probity in the development, evaluation and confirmation of third party and Council business cases in support of a preferred approach to future swimming provision in Shrewsbury results in challenge to the council's decision and delay (see below).</p>	<p>The Council is offering any interested organisation an opportunity to develop business cases that retain swimming at the Quarry or alternative town centre site.</p> <p>Terms of Reference setting out the process for submitting business cases, a timetable and the evaluation requirements and methodology have been developed and published.</p> <p>Two separate Council teams will be established, one to carry out the development of the Shrewsbury Sports Village option and the other to evaluate all submitted business cases.</p>
<p>Financial risks and costs resulting from extended uncertainty and delay to taking a final decision on future swimming provision including:</p> <ul style="list-style-type: none"> <li>• Pressures on budgets and therefore on discretionary services such as swimming are likely to increase and in the future the Council may not be able to afford to approve any option for swimming provision in Shrewsbury.</li> <li>• Building costs will increase compromising future affordability and the potential availability of funding.</li> <li>• Risk of catastrophic failure and / or significant building costs to the Quarry.</li> </ul>	<p>This project has already experienced delay and the continuation of uncertainty for a further 12 months will almost certainly impact on the affordability and feasibility of new pool options. This risk cannot, therefore, be wholly mitigated. The project is managed by a Project Board chaired by the Director of Place and Enterprise. A project plan alongside a risk management framework is kept under review.</p> <p>The Terms of Reference set out a transparent and fair process and mitigate the risk of any further delay in taking a decision after the end of the 12 months.</p>

## 2.0 Financial implications

Shropshire Council is projected to have an annual revenue funding shortfall of £77million by 2018/19, resulting in spending on services such as leisure, libraries, museums, public open spaces and support for youth activities facing significant cutbacks or in the worst case scenario closure.

Therefore, the key question, which the Council will need to consider when evaluating the business cases for future swimming in Shrewsbury is whether Shropshire Council will be able to support non-statutory swimming and leisure provision except to the extent that it is already contractually obliged to do so.

This report is written on the assumption that the Council would wish to support the continuing availability of public swimming in Shrewsbury for the benefit of the community, if at all possible, but that given financial constraints, that it must be provided and operated as efficiently and effectively as possible as identified below.

The current annual revenue budget for the Quarry Pool of £296,792, including a repair & maintenance budget of £30,000, has been identified as a possible saving requirement within the Shropshire Council Financial Strategy 2016-2019. Ideally options for future swimming provision in Shrewsbury should demonstrate and evidence how this cost can be eradicated (which is the preferred approach) or substantially reduced.

The proposed affordability requirements are set out within the Terms of Reference included in **Appendix 1**.

The decision on whether to go ahead with the replacement of the existing pool provision will be taken in due course in the light of the Council's financial strategy and forecast financial position at that time. The decision will need to be considered in the context of the:

- Impact of any potential capital investment on the revenue cost to Shropshire Council of the Quarry facility as set out in the current leisure contract to Shropshire Community Leisure Trust
- Potential impact on the overall revenue costs of this contract during the whole of the contract period
- Long term cost of the provision of the Council's leisure centres and the implications for the Council of proceeding with a replacement option

Reference: Shropshire Council's Financial Strategy, Cabinet, 13<sup>th</sup> July 2016  
<http://shropshire.gov.uk/committee-services/mgChooseDocPack.aspx?ID=3358>

To further develop the Council's business case for swimming provision at the Shrewsbury Sports Village, to assist with the evaluation of business cases and to carry out other associated matters relevant to progressing swimming provision in Shrewsbury it will be necessary to incur revenue expenditure on specialist advice. This cost will be incurred from within existing revenue budgets.

### **3.0 Background**

The Cabinet report of 13<sup>th</sup> July 2016 can be viewed on the Council's web site at:  
<http://shropshire.gov.uk/committee-services/mgChooseDocPack.aspx?ID=3358>

A range of relevant supporting material and reports can be viewed on the Council's web site at: <http://new.shropshire.gov.uk/get-involved/swimming-provision-in-shrewsbury/>

#### **3.1 Recap of the evaluation of different pool options**

The outcome of a detailed evaluation of seven short listed options was included in the Cabinet report of 13<sup>th</sup> July 2016. This identified that only 2 options achieved a score of over 600 –in first place the Shrewsbury Sports Village, and in second place the Quarry New Build. The evaluation recommended that the preferred and most viable option is the Shrewsbury Sports Village for the following reasons:

- It is the most affordable option and all other options are significantly less affordable based on a combination of the capital costs and the operational or revenue consequences in the short, medium and longer term.
- It provides the greatest opportunity to meet the Council's vision and priorities, in particular to sustain swimming provision for the next 25 years in a modern and efficient environment, and to develop complimentary public health, learning and community partnerships.
- The development of the Shrewsbury Sports Village will enable swimming to continue uninterrupted on the Quarry site whilst the new facility is being built whilst any redevelopment on the Quarry site may result in the closure of the existing facility for a minimum of 18 months.
- The full renovation of the Quarry is in theory capable of being delivered on a phased approach keeping some swimming provision open at all times, but in view of the factors set out below this may not be possible throughout the renovation process and there is the risk of unplanned closures.
- A decision to develop at the Quarry will require consideration of how alternative temporary swimming provision should be provided. There are options which would enable the delivery of this but these are costly and are likely to provide only limited swimming.
- The Quarry site is a challenging site due to its location adjacent to a Grade II listed park, on a narrow one-way street, and close to the flood plain. It is also a very tight site with restricted access, which means delivery of the rebuilding and renovation provision including all of the construction team's site traffic together with all recommended infra-structure for a re-build and a renovation will be difficult to achieve and it may not be possible to provide any or sufficient car parking during the build process even for people with disabilities, without even taking account of the requirement for family friendly car parking spaces adjacent to a ground floor reception. The former gives rise to an argument that the Council could be in breach of its equalities duties during the build process. There is also a risk that keeping some of the facility open may, in practice, be difficult, for example because of health and safety issues and unexpected asbestos issues both of which could delay the completion of the project and potentially add cost. There may be further difficulty including achieving the coach parking required to deliver school swimming or a minimum turning circle for this and other parking.
- The current Quarry facility is over a number of levels, which does not provide fully compliant access to people with disabilities. The nature of the site means that any new facility would also have to be built over a number of levels and this may impact on user flow throughout the building especially for people with disabilities. All of these difficulties will increase the build cost.
- The Shrewsbury College site is available, but unlike the Shrewsbury Sports Village and the Quarry it is not owned by the Council and there are operational issues to resolve prior to any development. The demolition of existing sports facilities would be required and the identification of recreational and curriculum needs and their re-location during facility development would need to be considered and provided. This may also mean an additional project cost.
- There was minimal public interest in the options to provide new provision at either Clayton Way or Ellesmere Road and these sites have been evaluated as being less advantageous than the other options.

Although the detailed evaluation within the 13<sup>th</sup> July 2016 Cabinet report supported the Shrewsbury Sports Village as the preferred option, it acknowledged that within the public consultation and subsequently there continues to be an overwhelming

preference to retain swimming provision at the Quarry, and that recently this has developed into an offer from interested parties to develop viable business cases in support of this approach (see section 3.4).

### **3.2 Summary of Cabinet recommendations 13<sup>th</sup> July 2016 and the implications of the decision**

At its meeting on 13<sup>th</sup> July 2016 Cabinet confirmed the following recommendations:

- A. That Cabinet is minded to confirm and approve in principle that in the absence of alternative proposals developed to retain swimming provision on the existing site in recommendation B, that the preferred location for the replacement of existing swimming provision (with new swimming provision) is the Shrewsbury Sports Village based upon the options appraisal evidenced within this report.
- B. That Cabinet would welcome all parties who wish to do so, including the Shrewsbury BID, Quarry Swimming and Fitness Forum and Shrewsbury Town Council are to be given an opportunity for up to 12 months to develop alternative proposals to retain swimming provision on the existing site. Any alternatives will need to meet the Council's key objectives referenced within the evaluation criteria described within this report, including for the pool to be affordable and to support participation in the future.
- C. That a further report is brought back to Cabinet on the proposed next steps and the detail including the timetable, process and terms of reference in relation to Recommendation B.

The decision of the 13<sup>th</sup> July 2016 means that the Council will not be able to decide which option is the preferred option in September 2017 as the only option(s) with a detailed and up-to-date business case will be the option(s) put forward by an interested organisation. The available information for the other original seven options will be less detailed and out of date by September 2017. In order to carry out a fair comparative process detailed business cases will need to be completed for all seven options between now and September 2017 so that they can be compared on an equal basis. The process of developing detailed business cases will be time consuming and costly.

There is a further risk that there may be new circumstances resulting in a recommendation for a further time consuming public consultation. This will not be known until the autumn of 2017.

It is, therefore, recommended that Cabinet decides upon the Council's preferred option for future swimming provision in Shrewsbury based on the information provided in July 2016. This has the following advantages:

- The Council can develop a business case for its preferred option, the Shrewsbury Sports Village, in parallel to the work being carried out by other interested organisations.
- The Council will be able to compare all submitted business cases in a similar way at the same time.
- It will reduce cost.
- There will be no further delay in taking a decision to proceed with a business case and thereafter to implement the preferred option.

- It is fairer to the third parties who are carrying out the work on business cases for the Quarry options or other town centre locations as the evaluation of all business cases will be based on equivalent up to date information.

It is therefore recommended that Cabinet should decide that the Shrewsbury Sports Village new build option (ranked first) is the Council's preferred option. This decision does not affect decision B of the Cabinet of July 13<sup>th</sup> and enables the Council to confirm that interested organisations should have the opportunity to develop business cases for the Quarry refurbishment, renovation and new build options (ranked respectively second, fourth and fifth) alongside alternative town centre locations.

### **3.3 Alternative options to the Shrewsbury Sports Village**

As identified, a number of interested organisations have shown an interest in the development of alternative business models that would support on-going swimming provision from the existing Quarry site. In particular, suggestions have been received from the Shrewsbury Business Improvement District and the Quarry Swimming & Fitness Forum in June and these were included in the Cabinet Report of 13<sup>th</sup> July 2016.

### **3.4 The current contractual arrangements with Shropshire Community Leisure Trust**

From 1<sup>st</sup> August 2012 the Council's leisure centres, including the Quarry Pool have been operated by the Shropshire Community Leisure Trust, with Serco Leisure Ltd acting as their managing agent. They are the operators under a 10-year contract which includes an opportunity for the Council to agree a 5-year extension. The contract and associated leases were entered into with the current operator following an open market competitive process carried out during 2011/2012. A subsequent Contract Variation enables the Council to vary the current arrangements to implement the approved option for future pool provision in Shrewsbury.

A brief explanatory note setting out the key contractual terms is included within **Appendix 2**.

### **3.5 Draft Sports Facility Strategy, 2016 - 2037**

The most recent Council Leisure Facilities strategy, was approved in 2009. It is out of date because of subsequent changes, both financial and from a local policy perspective. Consequently, the council has developed a new draft strategy which is out to public consultation until 30 September 2016. The strategy is based on the need to identify a future for leisure facilities that are affordable, sustainable, future proofed and that deliver value for money. Once the results of the consultation have been analysed the draft strategy will be considered by Cabinet before December 2016.

The vision for the strategy is "to deliver a network of modern, efficient and sustainable sports facilities in the county". Specifically, the strategy recommends that "the replacement of the Quarry swimming facility is developed on a site where there are existing leisure facilities to maximise participation and participative opportunities, optimise investment benefits and reduce overall expenditure".

Whilst the timing of the approval process for the new strategy is not ideal the final business cases ought in due course to be cognisant of the approved strategy and meanwhile they should take into account the current draft.

For further details visit: <http://new.shropshire.gov.uk/get-involved/draft-sports-facilities-strategy-2016-2037/>

#### 4.0 Updated Legal Advice

Updated legal advice is attached at **Appendix 2**. This has been prepared for Shropshire Council by its external legal advisors, Léonie Cowen & Associates. This is advice on the matters set out in this report and appendices. It is in addition to the advice provided to Cabinet of 13<sup>th</sup> July 2016.

#### 5.0 Next steps

An indicative timetable for the return and evaluation of SOBCs and FBCs is set out below.

<b>Milestone</b>	<b>Action</b>
28 Sept 2016	Cabinet approval of report and agreement of Terms of Reference for the development of business cases in support of new swimming provision in Shrewsbury
5 October 2016 – Noon 9 December 2016	Register an Expression of Interest by Interested Organisations
5 October 2016 – Noon 23 December 2016	Opportunity for Interested Organisations to raise questions and queries with the Council in support of their proposed SOBCs
5 October – 13 January 2017	Provision of information by the Council and response to questions and queries raised with respect to the SOBC
5 October 2016 - 30 June 2017	Opportunity for Interested Organisations to raise questions and queries with the Council in support of their proposed FBCs
5 October 2016 - 14 July 2017	Provision of information by the Council and response to questions and queries with respect to the FBC
Noon 27 January 2017	Return of SOBCs
27 January to 17 February 2017	Preliminary assessment of SOBCs carried out by officer team
17 February 2017	Feedback to Interested Organisations submitting a SOBC on whether officers consider they are likely to meet the identified minimum requirements; any Interested Organisation which does not meet minimum criteria will be given an opportunity of addressing weaknesses or may choose to withdraw their interest.
Noon 29 Sept 2017	Return of FBCs
29 September to 31 October 2017	Seek clarification and answers from Interested Organisations
29 September to 31 October 2017	Evaluation of FBCs by officer team and thereafter recommendations to Cabinet
December 2017 (to be)	Approval of the preferred approach and the next steps by Cabinet

| confirmed) |

The advantage of this approach is that it provides an opportunity for early feedback to be provided to interested organisations on whether SOBCs meet the Council's minimum requirements. Based on this initial feedback interested organisations can either withdraw or seek to address the issues which have been identified.

This approach is also fairer to interested organisations who are having to self-fund and may therefore not want to spend funds on the development of a business case that may have little chance of success.

Once the Council has confirmed its preferred approach to future swimming provision within Shrewsbury it is anticipated that any required detailed feasibility and design work will be undertaken, with a final decision subject to a Cabinet recommendation considering the approaches' viability in the light of funding opportunities and the Council's financial strategy.

## **6.0 Development and Evaluation of Business Cases**

Detailed "Terms of Reference" for the development and evaluation of business cases are set out in **Appendix 1**. The Terms of Reference detail:

- The process for submitting a SOBC and FBC.
- The availability of and process for accessing information and the opportunity to ask questions and to receive further information.
- The stages in the process and the indicative timetable for submitting business cases.
- The evaluation criteria.
- The evaluation methodology.

The Council's objective in publishing these Terms of Reference is to conduct an open, fair and transparent comparative process which enables the Council to take a proper, considered and sound decision about what is its preferred approach for future swimming provision in Shrewsbury.

The evaluation of submitted business cases will be carried out in two stages:

- Preliminary assessment of SOBC
- Detailed evaluation of FBC

The Terms of Reference are based on the submission of business cases that meet certain minimum pool requirements:

- A. Sustainable and affordable swimming provision
- B. The Council's vision for future swimming provision in Shrewsbury
- C. Draft Sports Facility Strategy, 2016-2037 (and in due course the approved Strategy)
- D. Social, environmental and economic impact

No specific guidance is provided on the structure of business cases (an executive summary will be sufficient for SOBCs) but, as a minimum, interested organisations will be expected to provide the following:

- Details of the interested organisation's proposals
- Overview of the organisation / s who is putting forward the business case



- Summary of proposed management arrangements and any related legal considerations for the future management of the pool (the Business Operating Model) as appropriate
- Capital Investment Plan
- The revenue impact of proposals
- A cash flow statement
- An Implementation Plan including, if appropriate, a Transition Plan
- Risk Assessment

In determining which business cases will best meet the Council's requirements, business cases will be assessed on the basis of four broad questions:

1. Is the business case deliverable? Does it set out a legally sound delivery model (business operating model)? Does it address site constraints, planning considerations, etc.)? Does it provide a realistic implementation and transition plan? Is there a clear understanding of associated risks and mitigating actions?
2. Is the business case affordable and sustainable based on predicted throughput for 25 years?
3. Does the business case meet the Council's vision and strategy for swimming provision, and does it address Council priorities through its outcomes? Does it address considerations including Health and Safety, Equality Act, Disability Discrimination Act, etc.
4. Does the business case provide additional social, environmental and economic benefits and impact?

In carrying out the evaluation of submitted business cases the Council will form two teams:

- The "client" team, supported by advisors if necessary, will carry out the evaluation of submitted business cases
- The project development team, supported by advisors if necessary, will prepare the business case for the Shrewsbury Sports Village.

This will allow for impartiality and transparency and give the external bodies putting forward business cases the confidence of knowing that the Council will evaluate each business case in an equal manner.

## 7.0 Conclusions

Ultimately the decision on whether to go ahead with the replacement of the existing pool and which option is preferred will have to be taken in the light of Shropshire Council's financial strategy, assessing the impact of the decision not just on the current cost to the Council of the Quarry facility but also the impact on the wider costs of the Shropshire Community Leisure Trust contract as a whole and the long-term financial impact of investing in pool replacement.

**List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)**

Draft Sports Facility Strategy, 2016 – 2037

New pool for Shrewsbury, Cabinet, 30 July 2014

Shrewsbury Swimming and Fitness Options Report, Strategic Leisure, June 2015  
Shrewsbury Swimming Pool update, Environment & Services Scrutiny, 22 June 2015  
Shrewsbury Swimming Pool update, Environment & Services Scrutiny, 30 November 2015  
Shrewsbury Swimming Pool update, Environment & Services Scrutiny, 13 June 2016  
ESIA, April 2016  
New Swimming Pool for Shrewsbury, Cabinet, 13 July 2016

**Cabinet Member:**

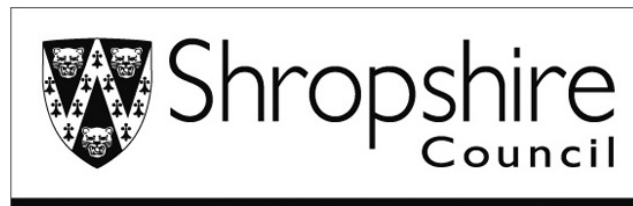
Cllr Stuart West, Portfolio Holder for Leisure, Libraries and Culture

**Local Members:**

Cllr Andrew Bannerman, Cllr Peter Adams, Cllr Vernon Bushell, Cllr Ted Clarke, Cllr Anne Chebsey, Cllr Hannah Fraser, Cllr Miles Kenny, Cllr Jane Mackenzie, Cllr Peter Nutting, Cllr Alan Mosley, Cllr Pam Moseley, Cllr Nic Laurens, Cllr Kevin Pardy, Cllr Mal Price, Cllr Keith Roberts, Cllr John Tandy, Cllr Dean Carroll & Cllr Amy Leibich

**Appendices:**

Appendix 1: Terms of Reference for future swimming provision in Shrewsbury and the process and methodology for the evaluation of Business Cases  
Appendix 2: Legal advice



**Terms of Reference for Future  
Swimming Provision in Shrewsbury  
and  
the process and methodology for the  
evaluation of Business Cases**

19 September 2016

## **Part 1**

### **Terms of Reference**

#### **1.1 Introduction**

These Terms of Reference set out the Council's requirements for future pool provision in Shrewsbury and detail the information required for a compliant business case. They also include:

- The process for submitting a strategic outline business case and full business case (respectively SOBC and FBC).
- The availability of and process for accessing information and the opportunity to ask questions and to receive further information.
- The stages in the process and the indicative timetable for submitting business cases.
- The evaluation criteria.
- The evaluation methodology.

The Council reserves the right to alter the terms of Reference and any related matters should circumstances change or this otherwise become necessary.

#### **1.2 Instructions for the return of Business Cases**

There are a number of stages in the development of a business case and these are described below:

Stage 1 - Expression of Interest. Registration by organisations interested in the development of a business case (Interested Organisation) with brief details of who the Interested Organisation is, their contact details and the nature of their interest. This will enable the Council to keep the Interested Organisations informed of any additional or changed information or responses to questions.

Stage 2 - Provision of information by the Council to Interested Organisations and an opportunity for Interested Organisations to ask questions.

Stage 3 - Submission of a SOBC by Interested Organisations and its preliminary assessment by the Council. This stage will enable all Interested Organisations to confirm their case for change, their preferred way forward and to ensure that the business justification for the option which is being put forward has been demonstrated in sufficient detail for there to be confidence that the proposal is viable. Council officers (assisted by advisors where necessary) will carry out an assessment of any SOBCs which are submitted and give feedback on whether they are likely to meet the evaluation criteria.

Stage 4 - Submission of a FBC by Interested Organisations and its evaluation by the Council. Submissions should include the information set out within the Terms of Reference. Council officers (assisted by advisors where necessary) will carry out an evaluation against the evaluation criteria.

Stage 5 - Report to Cabinet seeking approval of preferred solution and confirmation of next steps based on Council officer (assisted by advisor where necessary) evaluation of FBCs.

Once the FBCs have been considered by Cabinet and the Council has confirmed its preferred approach to future swimming provision within Shrewsbury it is anticipated that any required detailed feasibility and design work will be undertaken, with a final decision subject to a Cabinet recommendation considering the approaches' viability in the light of funding opportunities and the Council's financial strategy.

### 1.3 Criteria and information required for a compliant Business Case

For a business case submission to be compliant it will need to provide robust information which addresses and responds, as a minimum, to the Council's identified minimum requirements for future pool provision.

With respect to proposed future **management arrangements** Interested Organisations should note that the Council considers that there are three possible viable options and these are set out below. The Council requires Interested Organisations to identify and detail which of the three options they are proposing:

- A. Management delivered in accordance with the legal framework of the current Council contract (as varied) with the Shropshire Community Leisure Trust
- B. A land transaction whereby the Interested Organisation delivers the leisure services having acquired a lease or freehold interest in the land.
- C. Management by the Town Council within relevant legislative powers. This option can only be submitted by the Town Council and not by any other Interested Organisation.

These options and their legal implications are set out in more detail in the **Legal Appendix** which should be read in conjunction with these Terms of Reference.

The Council is not prescriptive about the structure or format for business cases. A suggested minimum set of requirements is set out below, although the Council recognises that the information that is provided will need to reflect the management arrangements that are being proposed (i.e. not all of this may be relevant).

**Table 1**

<b>Strategic Outline Business Case (SOBC)</b>	
Executive Summary of your proposals	<p>Provide a brief summary of your proposals, showing how the business case will meet the Council's minimum pool requirements:</p> <ol style="list-style-type: none"> <li>1. Sustainable and affordable swimming provision</li> <li>2. Council's vision for future swimming provision</li> <li>3. Draft Sports Facility Strategy, 2016-2037 and once this has been approved the approved strategy</li> <li>4. Opportunities for the pool to provide social, environmental and economic social value impact</li> </ol> <p>Your summary should also provide:</p> <ol style="list-style-type: none"> <li>5. Details of your organisation and its legal status</li> <li>6. An outline of your proposed management arrangements and</li> </ol>

	<p>any related legal considerations for the future management of the pool (the Business Operating Model)</p> <ol style="list-style-type: none"> <li>7. An overview of any proposed investment and any proposed/secured sources of capital funding</li> <li>8. An overview of the proposed impact of your proposals on revenue expenditure and income over 25 years</li> <li>9. A headline delivery timetable including any key milestones; reference should also be made to any transitional arrangements to secure on-going leisure provision, for example during a rebuild or refurbishment of the Quarry</li> <li>10. A headline risk assessment</li> </ol>
--	--

<b>Full Business Case (FBC)</b> (adapt to your proposed management arrangements)	
a. Details of your proposals	<p>Provide a summary description of your proposals showing how your business case will meet the Council's minimum pool requirements:</p> <ol style="list-style-type: none"> <li>1. Sustainable and affordable swimming provision</li> <li>2. Council's vision for future swimming provision</li> <li>3. Draft Sports Facility Strategy, 2016-2037 and once this has been approved the approved strategy</li> <li>4. Opportunities for the pool to provide social, environmental and economic social value impact</li> </ol>
b. Overview of your organisation / s – who is putting forward the business case?	<p>Business cases should include:</p> <ol style="list-style-type: none"> <li>1. Contact details for your organisation</li> <li>2. Description of your organisation and its legal status</li> <li>3. Description of your organisation's relevant experience and, if you are offering to deliver the services (options B and C), your experience and track record in delivering similar services</li> </ol>
c. Summary of your proposed management arrangements and any related legal considerations for the future management of the pool (the Business Operating Model)	<p>Business cases should include (as appropriate):</p> <ol style="list-style-type: none"> <li>1. Summary of your proposed model for the management and day to day operation of the pool</li> <li>2. Details of any property, procurement or other legal implications of your proposal</li> <li>3. Details of your proposed management structure (including skills, experience and knowledge held by members)</li> <li>4. Details of your proposed staffing structure with reference to staff terms and conditions, staff welfare, TUPE, pension liabilities etc.</li> </ol> <p>Organisations will need to explain any implications in relation to the existing contractual arrangements that Shropshire Council has with the Shropshire Community Leisure Trust (see Legal Appendix) whichever option is being put forward.</p> <p>Your business case should also include reference to your approach to the development of policies, systems, procedures and minimum standards including for example:</p> <ul style="list-style-type: none"> <li>• Customer care</li> <li>• Cleaning and housekeeping</li> </ul>

	<ul style="list-style-type: none"> <li>• Health and Safety</li> <li>• Equal opportunities</li> <li>• Protection of children, young people and vulnerable adults</li> <li>• Environmental management</li> <li>• Car parking and travel</li> <li>• Catering, vending and retail</li> <li>• Maintenance of the property and equipment</li> <li>• Charging and fees (see also(e) revenue impact)</li> <li>• Programming</li> </ul>
d. Your Capital Investment Plan	<p>Business cases should include:</p> <ol style="list-style-type: none"> <li>1. Details of what investment is proposed and over what time period; include a timeline of key tasks and activities and how the capital funding will be profiled</li> <li>2. Details of the source of all capital required to deliver the investment plan, how it has been secured, with confirmation of this, and any risks associated with sourcing the capital</li> <li>3. Details of who will be responsible for delivering the investment plan and how the project will be managed</li> <li>4. A consideration of any capital 'life cycle costs' that may be incurred, i.e. costs of replacement of plant and equipment over the 25-year term, and how the costs would be funded</li> <li>5. Any taxation assumptions relevant to investment (e.g. irrecoverable VAT)</li> </ol>
e. Revenue Impact	<p>Business cases should include:</p> <ol style="list-style-type: none"> <li>1. The impact of your proposals on revenue expenditure and income budget headings</li> <li>2. Your charging, booking and hiring policy and a summary of proposed fees and charges and whether these differ from current fees and charges</li> <li>3. A consideration of any borrowing requirements on on-going revenue costs</li> <li>4. A consideration of the creation of, and annual contributions to, sinking funds for the replacement of major equipment and the facility as a whole</li> <li>5. The proposed source(s) of funding that will offset any one-off or ongoing revenue deficit generated by the facility following investment</li> <li>6. Any taxation assumptions relevant to costs or income (e.g. non domestic rates)</li> </ol> <p>This should include detailed profiled 10-year forecast revenue income and expenditure projections and indicative profiled 25-year forecast revenue income and expenditure projections.</p>
f. Cash Flow Statement	<p>Business cases should include:</p> <p>A monthly cash flow statement for the period of all capital investment plus the following two financial years if the period of any of the capital investment is less than 25 years.</p>
g. An Implementation Plan including, if appropriate, a Transition Plan	<p>Business cases should include:</p> <p>An Implementation Plan including, if appropriate, a Transition Plan. A Transition Plan is required if the option being put forward is to redevelop and/or refurbish the existing Quarry or if the proposals</p>

	<p>could have an impact on any existing Town Centre leisure provision.</p> <p>The <b>Implementation Plan</b> should identify key delivery milestones.</p> <p>The <b>Transition Plan</b> should describe how public access to swimming will continue to be provided in the Town Centre in the event of investment in the Quarry (or any other site with existing pool and/or leisure provision which will be affected by the proposals) and detail the operational and financial implications of providing temporary provision.</p>
h. Risk Assessment	<p>Business cases should include a full and methodical risk assessment which identifies all risks associated with all aspects of the successful delivery of the proposal, the level of risk, the likelihood of each risk occurring, mitigation strategies if any such risk occurs and any other relevant information.</p>

Interested Organisations preparing business cases should note the Council’s **minimum pool requirements** described below:

A. Sustainable and affordable swimming provision

Business cases should show how sustainable swimming provision will be provided over a 25-year period from the commencement of delivery of the new leisure provision.

The affordability of swimming provision will be determined in due course in light of the council’s financial strategy and forecast financial position at that time (see also the Report and Legal Appendix to the July Cabinet), but for business cases to be considered they should demonstrate that the forecast revenue deficit to Shropshire Council generated by the facility over 25 years will be no more than £7.967m\* (+15% tolerance level to take into account any increase in forecast interest rates). This figure equates to the total forecast revenue cost to the Council over 25 years of the Council’s preferred location option – a new build at Shrewsbury Sports Village. The figure represents the total loan cost to the Council over 25 years, and therefore represents the full cost of borrowing, debt repayment and interest based on the forecast cost of borrowing between June 2018 and March 2019.

Although a new build at Shrewsbury Sports Village is the most affordable of the options proposed by Shropshire Council, the Council is ideally looking to eradicate its current annual revenue subsidy of Quarry facility, and therefore any option generating ongoing revenue costs to the Council may not be considered to be affordable when a decision on whether to replace existing provision is taken.

\*The total loan cost of the Shrewsbury Sports Village New Build option published within the Council’s 13<sup>th</sup> July 2016 Cabinet report “Improved Swimming Facilities for Shrewsbury” was £9.113m; however, a subsequent reduction in forecast interest rates means that the revised estimated total loan cost is now £7.967m.

B. The Council’s vision for future swimming provision in Shrewsbury

Business cases should show how they will meet the Council’s vision to:



- increase participation in swimming and physical activity, and in so doing
- improve the wider health and wellbeing of the community.
- provide a long-term swimming facility that's affordable to run from the commencement of delivery and for the next 25 years.
- be complementary to other leisure and recreational provision in the town.

Priority aims	<ul style="list-style-type: none"> <li>• Recreational swimming</li> <li>• School use</li> <li>• Competition use</li> <li>• Learn to Swim programmes</li> <li>• Club use</li> </ul>
Objectives for future swimming facilities	<ul style="list-style-type: none"> <li>• Be modern, efficient and sustainable</li> <li>• Provide value for money for the Council</li> <li>• Link to other aquatic provision</li> <li>• Be fit for purpose and meet customer requirements now and in the future</li> <li>• Reflect current and any proposed industry standards including meeting both local authority Equality Act duties (see section 149) and Disability Discrimination Act requirements</li> <li>• Deliver learning and health opportunities</li> </ul>
Ideal minimum facility requirements (based on new pool facilities)	<ul style="list-style-type: none"> <li>• A 25m x eight lane main pool, 500 sq m</li> <li>• A 20m x 10m four-lane learner pool with full moveable floor, 200 sq m</li> <li>• Facilities to introduce people to water (to aid water confidence and for fun), 100 sq m plus</li> <li>• Fitness facilities, 100 stations</li> <li>• (2 studios, ideally 3, subject to affordability)</li> <li>• Spectator seating for 250 people (in support of a facility that can support regional galas)</li> <li>• Café and vending provision</li> <li>• All appropriate facility infrastructure e.g. plant, offices, storage, first aid room, meeting room, changing rooms, toilets, etc.</li> <li>• Appropriate provision of parking for people with “protected characteristics”, families, drop off for coaches, and access for emergency vehicles.</li> </ul>

C. Draft Sports Facility Strategy, 2016-2037

Business cases should show how they respond to recommendations set out within the draft Sports Facility Strategy (for Shropshire), 2016 – 2037 and once this has been approved the approved strategy.

D. Social, environmental and economic impact

Business cases will be expected to demonstrate the social, environmental and economic impact of proposals.

For more information and guidance on suggestions for showing social value visit:  
<http://shropshire.gov.uk/doing-business-with-shropshire-council/social-value/>

#### **1.4 Information in support of the development of Business Cases**

The Council is making available all the information it has commissioned in support of its detailed options analysis and other relevant public information. This has been brought together on the Council's web site at: <http://www.shropshire.gov.uk/leisure/>

The information provided includes:

##### 1. Context, background and key decisions

- New pool for Shrewsbury, Cabinet, 30 July 2014
- New Swimming Pool for Shrewsbury, Cabinet, 13 July 2016
- Equality Impact and Social Inclusion Statement, April 2016
- Draft Sports Facility Strategy (for Shropshire), 2016 - 2037  
<http://new.shropshire.gov.uk/get-involved/draft-sports-facilities-strategy-2016-2037/>

##### 2. Evaluation of different swimming pool options

- a. The condition of the existing Quarry site and future building and plant maintenance requirements
  - Quarry Swimming and Fitness Centre Condition Survey, Faithful & Gould, November 2014
- b. The future scale of swimming and fitness facilities
  - Sport England Facility Planning Model, June 2015
  - Shrewsbury Swimming & Fitness Assessment of Need, Strategic Leisure, July 2016
  - Detailed pool programme, Strategic Leisure, July 2016
- c. Options for swimming provision in Shrewsbury
  - Options for the provision of public swimming (and fitness) facilities in Shrewsbury, revisions to the main the report, 1 September 2015
  - Shrewsbury Swimming & Fitness options report, June 2015
  - Shrewsbury Swimming & Fitness options report, detailed appendices, June 2015
- d. Outcomes of the public consultation
  - Shrewsbury Swimming Pool Consultation Analysis, 4global, March 2016
- e. Evaluation of different site options
  - Shrewsbury Swimming pool evaluation July 2016

##### 3. Details of service provision

A range of information on existing service provision, including the facilities, activities offered, fees and charges, opening hours, etc. can be viewed at:

[https://www.shropshireleisurecentres.com/the\\_quarry/HOME](https://www.shropshireleisurecentres.com/the_quarry/HOME)

4. “Best practice” guidelines for swimming pools

Sport England have brought together a range of guidance documents including:

- a. Information on the design and construction of pools including case studies.  
<https://www.sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/swimming-pools/>
- b. Guidance on ‘Affordable Pool Models’.  
<https://www.sportengland.org/facilities-planning/affordable-models/>
- c. Guidance on accessible facilities.  
<https://www.sportengland.org/facilities-planning/tools-guidance/design-and-cost-guidance/accessible-facilities/>
- d. guidance on to potential community asset transfers.  
<https://www.sportengland.org/facilities-planning/tools-guidance/asset-transfer/>

## Part 2

### Process for the Evaluation of Business Cases

#### 2.1 Preliminary assessment of Outline Strategic Business Cases

Officers (assisted by advisors where necessary) will carry out a preliminary assessment of all SOBCs against the requirements referenced within table 1, section 1.3, the “Executive Summary of your proposals”; these requirements are based on the criteria against which each FBC will be evaluated.

Officers (assisted by advisors where necessary) will consider the case made for change, the proposed way forward, the business justification for the option which is being put forward and its proposed viability.

Officers will provide feedback on all SOBCs and on whether they consider that they are likely to be capable being further developed in order to meet the detailed evaluation criteria set out in these Terms of Reference.

Officers will not be agreeing or rejecting any SOBC (see Part 4 for further details) but after carrying out an evaluation will express their opinion of the information which is submitted.

#### 2.2 Evaluation of Full Business Cases

Officers (assisted by advisors where necessary) will carry out an evaluation of all FBCs against the detailed requirements set out within these Terms of Reference 1.3. Business cases will be scored against the criteria and weighted scoring set out below.

In determining which approach (if any) the officers will recommend to the Council as best meeting the Council’s requirements, FBCs will be assessed on the basis of four broad questions. Note, the references to points within Table 1 is indicative only.

1. Is the business case deliverable? Does it set out a legally sound delivery model (business operating model)? Does it address site constraints, planning considerations, etc.)? Does it provide a realistic implementation and transition plan (if required)? Is there a clear explanation and understanding of associated risks and mitigating actions?

*Business case guidance, table 1, points (a), (b), (c), (g) and (h)*

**SCORED CRITERIA, 10% of total marks**

2. Is the business case affordable and sustainable based on predicted throughput for 25 years?

*Business case guidance, table 1, points (a), (d), (e) and (f)*

**SCORED CRITERIA, 40% of total marks**

3. Does the business case meet the Council’s vision and strategy for swimming provision, and does it address Council priorities through its outcomes? Does it address considerations including Health and Safety, Equality Act, Disability Discrimination Act, etc.

*Business case guidance, table 1, points (a) and (c)*

**SCORED CRITERIA, 30% of total marks**

4. Does the business case provide additional social, environmental and economic benefits and impact?

*Business case guidance, table 1, points (a) and (c)*

**SCORED CRITERIA, 20% of total marks**

Business cases will be scored using the scoring scheme described within Table 2.

**Table 2**

Excellent	10	Exceeds the minimum requirements, demonstrates added value
	9	
Good	8	Satisfies the minimum requirements with minor added value
	7	
Acceptable	6	Satisfies the minimum requirements
	5	
Minor Reservations	4	Satisfies the minimum requirements with minor reservations
	3	
Serious Reservations	2	Satisfies the minimum requirements with major reservations
	1	
Unacceptable	0	Does not meet the minimum requirements

The use of odd numbers indicates that a score lies between definitions. The score for each question must be a full number.

If the FBC does not achieve a minimum score of 4 (satisfies the minimum requirements with minor reservations) for each of these four questions it will be considered to be non-compliant and recommended for rejection.

The final score for each FBC shall be calculated by adding together all of the scores.

### **2.3 Indicative Timetable**

An indicative timetable for the return and evaluation of SOBCs and FBCs is set out in table 3. The timetable is indicative and the Council reserves the right in its sole discretion to amend and/or vary this or any of the dates set out in this table or elsewhere in these Terms of Reference in its sole discretion.

**Table 3**

Milestone	Action
28 Sept 2016	Cabinet approval of report and agreement of Terms of Reference for the development of business cases in support of new swimming provision in Shrewsbury
5 October 2016 – Noon 9 December 2016	Register an Expression of Interest by Interested Organisations
5 October 2016 – Noon 23 December 2016	Opportunity for Interested Organisations to raise questions and queries with the Council in support of their proposed SOBCs
5 October – 13 January 2017	Provision of information by the Council and response to questions and queries raised with respect to the SOBC
5 October 2016 - 30 June 2017	Opportunity for Interested Organisations to raise questions and queries with the Council in support of their proposed FBCs
5 October 2016 - 14 July 2017	Provision of information by the Council and response to questions and queries with respect to the FBC
Noon 27 January 2017	Return of SOBCs
27 January to 17 February 2017	Preliminary assessment of SOBCs carried out by officer team
17 February 2017	Feedback to Interested Organisations submitting a SOBC on whether officers consider they are likely to meet the identified minimum requirements; any Interested Organisation which does not meet minimum criteria will be given an opportunity of addressing weaknesses or may choose to withdraw their interest.
Noon 29 Sept 2017	Return of FBCs
29 September to 31 October 2017	Seek clarification and answers from Interested Organisations
29 September to 31 October 2017	Evaluation of FBCs by officer team and thereafter recommendations to Cabinet
December 2017 (to be confirmed)	Approval of the preferred approach and the next steps by Cabinet

## Part 3

### Additional Guidance and Return of Business Cases

#### 3.1 General

The Council is inviting the submission of a business case from any Interested Organisation in accordance with the provisions of these Terms of Reference.

The process for the submission and evaluation of business cases will be an open, fair and transparent comparative process which will enable the Council to take a proper, considered and sound decision about its preferred approach for future swimming provision in Shrewsbury.

Interested Organisations are responsible for obtaining all information necessary for the preparation of their business case. Interested Organisations shall be responsible for paying all costs, expenses and liabilities which they incur in connection with the preparation and submission of a business case.

Interested Organisations shall be deemed to have agreed upon submission of their business case that they have satisfied themselves that they fully understand the requirements set out within these Terms of Reference and related supporting information and any clarification or additional information provided in response to any query and/or clarifications.

Interested Organisations prepare and complete business cases at their own risk and the Council is not bound to complete the process set out in these Terms of Reference, accept any submitted business case, may terminate the process of seeking business cases, vary its requirements or take all such other steps in its absolute discretion as it may consider appropriate.

The Council may decide in its sole discretion that it will not consider the business case of any Interested Organisation which does not comply with the requirements of these Terms of Reference.

#### 3.2 Freedom of Information Act

The Council is bound by the Freedom of Information Act 2000 (FOI) and Interested Organisations are advised that although the Council will use all reasonable endeavours to keep any commercially sensitive or other confidential information supplied by organisations confidential, this is subject to the Council's statutory obligations under the said Act. Organisations are referred to advice on the Council's web pages at: <https://www.shropshire.gov.uk/access-to-information/freedom-of-information/>

When raising a query or clarification question supplying information (including their SOBC, FBC and any responses to clarification requests), Interested Organisations are requested to indicate which information they consider is confidential and should not be disclosed, if a request for disclosure is received, and why. The Council will consider your request and reserves the right to disclose any information that meets the requirements of the Act without consulting/having first given the Interested Organisation an opportunity of commenting.

The evaluation process for SOBCs and FBCs and all reports to the Council may be considered by the Council in its sole discretion to be exempt from disclosure under the FOI under one or more of the statutory exemptions.

### **3.3 Intellectual Property**

Any Interested Organisation which submits a business case warrants that it either owns the intellectual property (IP) in its submission or has a full and unrestricted licence from the owner of such IP to submit the said business case and provide the Council with a licence to use the said IP (or as much of it as is required by the Council) for the purpose set out in these Terms of Reference and thereafter to implement the said business case and (without prejudice to the generality) as set out in the next following paragraph

The Interested Organisation hereby grants the Council an unrestricted, free and irrevocable licence to use its IP in the delivery of its FBC and/or to the extent required, will do anything required to implement the transfer of any such licence and/or IP from the person who owns it to allow the Council to use any such IP to deliver the FBC at no cost to the Council.

Intellectual property means patents and copyright, design rights, registered designs, trademarks, rights in respect of any confidential information or similar rights

### **3.4 Return of Business Cases**

Ideally an Interested Organisation can only submit a business case if the Interested Organisation is registered in accordance with the process and timescale set out in Part 1 of these Terms of Reference.

Business cases should be signed by a person / persons authorised to do so by the Interested Organisation.

#### **Strategic Outline Business Cases (SOBCs):**

SOBCs should address the requirements referenced within guidance included in 1.3, the “Executive summary of your proposals” and elsewhere in these Terms of Reference.

SOBCs should be returned by email to [shrewsburyswimming@shropshire.gov.uk](mailto:shrewsburyswimming@shropshire.gov.uk) by no later than noon on 27<sup>th</sup> January 2017.

#### **Full Business Cases (FOBCs):**

FBCs should address in more detail all the points described within the guidance for developing business cases included in 1.3 and elsewhere in these Terms of Reference.

FBCs should be returned by email to [shrewsburyswimming@shropshire.gov.uk](mailto:shrewsburyswimming@shropshire.gov.uk) by no later than noon on 29<sup>th</sup> September 2017.

No FBCs will be opened until after the expiry of the submission deadline.

### **3.5 Clarification of (1) requests for further information, (2) requests for visits to the Quarry and/or Shrewsbury Sports Village or other premises, and (3) the process for approaching or discussions with members, officers or external advisors**

Should any Interested Organisation have a query, a request for further information or a request for clarification in connection with these Terms of Reference or supporting



documents or require any further information the Interested Organisation should contact the Locality Commissioning Manager in accordance with the timetable set out at section 2.3. The Council will use reasonable endeavours to respond to any such queries or requests for clarification in accordance with the timetable set out but shall not give a guarantee or warranty that it shall do so or shall be able to respond to any queries or request for clarification either within the timetable or at all.

All responses will be supplied to all Interested Organisations on a uniform basis (unless expressly stated otherwise). If an Interested Organisation wishes the Council to treat a question as confidential this must be expressly stated. The Council will consider such requests and may or may not (at its absolute discretion) be prepared to treat any such request as confidential.

If an Interested Organisation requests information which the Council considers confidential the Council may either refuse to provide such information or provide it subject to the Interested Organisation entering into a confidentiality agreement at its sole discretion.

Interested Organisations may visit the Quarry, Shrewsbury Sports Village (or any other premises owned and occupied by the Council for which the Interested Organisation wishes to submit a business case) at the sole discretion of the Council at reasonable times on request but may only do so by appointment with the Locality Commissioning Manager.

Interested Organisations shall not directly or indirectly approach and/or have discussions, concerning the business case process with any member, officer of the Council or any external advisor or obtain information from any other person who has been contracted to supply goods or provide services or works to the Council.

**All requests for additional information, clarifications of the process, visits to premise, return of business cases, etc. should, in the first instance be directed in writing (and not by telephone or other method of communication) to the Locality Commissioning Manager at:  
[shrewsburyswimming@shropshire.gov.uk](mailto:shrewsburyswimming@shropshire.gov.uk)**

## Part 4

### Details of Client Team and Project Development Team

The process to be followed by the Council is as set out below.

The Council will form two separate teams as follows: -

- The “client” team, supported by advisors. This team will manage the process on behalf of the Council, will carry out the evaluation of all of the SOBCs and the FBCs.
- The project development team. This team will prepare the Council’s SOBC and FBC for the Shrewsbury Sports Village for submission to the Council.

For the avoidance of doubt, the client team will evaluate business cases provided by external organisations and the Council in an equal manner and using a similar methodology.

Details of the two teams are provided below:

<b>Client Team</b>	<b>Project Development Team</b>
Led by the Director of Place and Enterprise who has overall responsibility for the evaluation process and for the development of recommendations to Cabinet	Led by Leisure Services Manager who has overall responsibility for submitting a business case on behalf of the Council
Supported by the Council’s Locality Commissioning Manager	Specialist input, internal and / or external, as appropriate from:
Specialist input, internal and / or external, as appropriate from: <ul style="list-style-type: none"><li>• Audit and Procurement teams</li><li>• Financial and Legal</li><li>• Property and estates</li><li>• Others as appropriate</li></ul>	<ul style="list-style-type: none"><li>• Leisure</li><li>• Legal</li><li>• Finance</li><li>• Others as appropriate</li></ul>
The Director has discretion to seek such internal and/or external advice as he thinks fit	

**APPENDIX 2**  
**APPENDIX TO REPORT TO CABINET OF 28<sup>TH</sup> SEPTEMBER 2016 ON IMPROVED**  
**SWIMMING PROVISION IN SHREWSBURY**

**CONFIDENTIAL AND PRIVILEGED LEGAL ADVICE FOR SHROPSHIRE COUNCIL**

**PART 1**

**General introduction and advice set out**

1. I have been asked to provide advice which will be an appendix to the Report to Cabinet of 28<sup>th</sup> September on the above. In preparing this advice I have taken into account the decisions taken by the Cabinet on 13<sup>th</sup> July, officer recommendations in the 28<sup>th</sup> September report and the terms of reference in Appendix 1 of this report.
  
2. As the Council remains committed to being open I have been asked to allow this advice to be public. I have agreed to this as the matters set out are part of the relevant considerations for the Cabinet and will be relevant to the Council and any third parties who are preparing a business case for new pool provision. However, as before, there is an important caveat, the advice is given solely to the Council and not to any third party and should not be relied upon by any third party. Third parties should obtain their own legal and any other advice which they need either for inclusion as part of their business case (if they consider it appropriate to include this) or otherwise. This advice should be read in conjunction with the advice included as an appendix to the 13<sup>th</sup> July Report as issues identified in that report have only been referred to and expanded upon to a limited extent.
  
3. This advice is intended to support the recommendations in this report and address the legal implications of the following matters in particular the:-
  - 3.1 decision of 13<sup>th</sup> July and recommendations in this report;
  
  - 3.2 options which are capable of being compliant with the requirements of paragraphs A, B and C of 1.3 of Appendix 1; and

### 3.3 business case process.

4. I have also attached a brief résumé of the relevant provisions of the Contract (as amended in 2015) as Part 2 of this advice.

### **The legal implications of the decision of 13<sup>th</sup> July and recommendations in this report**

5. An explanation of the legal implications of the decision of 13<sup>th</sup> July are set out in the body of the report and take into account this legal advice so there is no need to repeat these.
6. I have given careful consideration to the recommended next steps as set out in this report and to whether there are any prudent alternative approaches to those as recommended in the report. I have concluded that in view of the careful and detailed options appraisal and evaluation which has been carried out by officers (supported by external advisors and reported to Cabinet on 13<sup>th</sup> July) the Council ought to decide on its indicative preferred option now for the reasons set out in the Report and in paragraph 7 of this legal advice. The recommended decision on the Council's indicative preferred option is not inconsistent with giving third parties an opportunity of submitting a business case for an alternative option for pool provision in Shrewsbury. In addition to the rationale for taking such a decision set out in paragraph 7 of this advice, stating an indicative preference will allow Interested Organisations to respond in their business cases to the identified benefits of the Shrewsbury Sports Village and seek to negate these.
7. Providing swimming provision by building at the Shrewsbury Sports Village is the only option which officers and advisors consider is likely to be able to meet the Council's four criteria and other requirements set out at Table 1 of Part 1 of the Terms of Reference (Appendix 1 to this report) and expanded on within Appendix 1. The recommendation that the Shrewsbury Sports Village should be agreed in principle as the preferred option takes into account the agreed criteria and all of the factors considered as part of the evaluation requirements. In particular the Council's current and likely future financial position has been taken into account. None of the other options are considered by

officers and advisors to be affordable or able to meet the criteria and requirements as effectively as the Shrewsbury Sports Village (or necessarily at all in some instances).

8. As identified, since the consultation closed, the Council's financial position has significantly worsened. The rationale behind the decision to give third parties an opportunity lasting 12 months to put forward alternative business plan proposals is understood, in view of the outcome of the public consultation, but from the information which I have seen there is a need to ensure that a provisional decision to support the Shrewsbury Sports Village is taken as early as possible so that a business case can be prepared for the Shrewsbury Sports Village in parallel with the work being carried out by external Interested Organisations to reduce the further delay in implementing the preferred solution. If this recommendation is not accepted, Cabinet ought to detail the reasons that it is rejecting the officer recommendation.

**Options which it is recommended are capable of being compliant with the requirements of paragraphs A, B or C of 1.3 of Appendix 1**

**Introduction and general**

9. At its meeting on 13<sup>th</sup> July, the Cabinet did not approve any preferred approach to the submission of business cases nor did it seek to limit the type of options which are submitted. The current report clarifies the recommendations made in July and as part of this recommends that the Cabinet should limit the number of business case options which will be considered compliant. There are a number of specific reasons for this as set out in the following paragraphs.

**An option which is capable of being delivered in accordance with the legal framework of the current Council contract with the Shropshire Community Leisure Trust**

10. The Council carried out a detailed, robust and transparent open market procurement process in 2011/12 which accepted the recommendations in a detailed appraisal of the alternative delivery options for the Council's leisure centres. This recommended that the future management of the Council's five leisure centres should be procured as a single portfolio via a competitive, robust process.

11. The outcome of this process was that Shropshire Community Leisure Trust were appointed as the Council's leisure contractor for the portfolio. Shropshire Community Leisure Trust is supported in its delivery by its agent Serco Leisure Limited. This is the outcome which it is considered delivered best value in 2012.
12. The current Contract and Leases (as varied by Variation 2) includes sufficiently wide Variation provisions to enable the Council to implement the option of the development and delivery of swimming provision at the Shrewsbury Sports Village, or the redevelopment or rebuilding of the Quarry. This is on the basis that the outcome of this will be the continuation of service delivery thereafter of the enhanced pool provision in Shrewsbury by the current Contractor. Further brief details of the current legal documents as varied are set out in Part 2 of this advice.
13. If an alternative Town Centre site is proposed or other option to the options currently envisaged, the contractual and procurement implications will need detailed consideration as any such option will probably not be capable of delivery by the Council, if this is the proposal, without a further open market procurement. The Council's procurement in 2011/12 and the later Variation took place on the basis of the current portfolio of properties. The current public procurement regime would not allow a new additional property to be added to the current Contract. I consider that the Council would be required to carry out a further open market procurement.
14. No justification has been put forward in the responses to the consultation or otherwise which would support carrying out a further procurement to deliver an alternative procured option. It is technically possible for the Council to terminate the part of the current contract which includes the Quarry and let a separate contract for the building works and/or delivery of leisure services from the Quarry or elsewhere. Any such option would require commercial discussions with the current contractor and a further detailed, robust and transparent open market options appraisal followed by a procurement process for this one site pursuant to the Concession Contract Regulations 2016. This legislation was not in force in 2011/12 and it adds additional complexity and therefore potential cost to the process. The outcome of any such approach is commercially and operationally uncertain, it would be a costly and risky process for many reasons. Any

procurement is intrinsically uncertain and costly to deliver, there is a risk that the procurement of a single leisure centre which primarily consists of pool provision and which does not have extensive additional fitness facilities will not attract significant market interest and the outcome of the procurement, if it is successful, could well result in a higher and therefore unaffordable net contract price. The terms of and portfolio for the 2011/12 procurement were based on a report and recommendations from specialist external consultants. There is no information suggesting that a single site procurement so soon after a robust procurement would provide value for money. It cannot be recommended.

15. It follows from the above legal analysis that if the Council decides either to develop new provision at the Shrewsbury Sports Village, or approve a procured solution at the Quarry or other Town Centre site, it is recommended that this ought to be within the legal framework of the existing contract with Shropshire Community Leisure Trust.

**A land transaction whereby the Interested Organisation delivers leisure services having acquired an interest in the land**

16. This option would require the Interested Organisation submitting a business case to put forward an option whereby a third party would acquire the Quarry (or other land from which the Town Centre leisure services would be delivered) and manage the leisure services because they have an interest in the land (a lease or freehold). As identified in paragraph 14, the Council would have to terminate the part of Contract which relates to the Quarry and this will have commercial implications. The option of selling the Quarry was identified in general terms in the legal appendix to the July report. This option would mean that the current contractual arrangements between the Council and the Shropshire Community Trust Limited would be terminated and the Interested Organisation would either take responsibility for delivering the leisure services from the Quarry in a manner which complies with the criteria set out in paragraph 1.3 of Appendix 1 to the Report or would put forward an alternative governance model.
17. There are a number of aspects to this option. There are numerous leisure centres and other community facilities in England and Wales which are run by third party organisations and are either independently funded or supported by capital and revenue

grants. Some of these flourish and some do not.

18. Community organisations delivering former public sector services or delivering, for example public houses and village shops, by taking over these properties to avoid their closure has been encouraged and recognised as a legitimate model by the Localism Act 2011. As identified in the legal appendix to the July report, the Quarry has been registered as an asset of community value which means it cannot be sold unless there is a delay (as required by the Act) except to an organisation which meets the definitions in the Act.
19. This second option which is considered to be a potentially a compliant option is therefore an option utilising the principles set out in the Localism Act and allowing a Localism Act compliant organisation to put forward an option that they will take a lease or have the freehold transferred to them so that they can rebuild or redevelop the Quarry and thereafter deliver leisure services from it.
20. This option has a number of complexities for the Council and also for the Interested Organisation putting it forward. A number of the key legal issues have already been identified in the legal appendix to the report to Cabinet of 13<sup>th</sup> July (see paragraphs 16 - 23 in particular). The option would have to be structured to ensure that the exclusion of property transactions from the requirements of public procurement regime is triggered. This means that there would be no contract in existence between the Council because as also identified in paragraph 13 a local authority is unable directly to let a contract of this size without an open market procurement.
21. This is a very complex aspect of the law based on European case law. To put it simply the Council would have to lease or transfer the freehold to the relevant organisation but could not attach a specification or other detailed conditions relating to use of the Quarry because a specification or the type of conditions typically found in a contract have been interpreted as bringing the arrangement within the public procurement regime. The only terms which could be included would be those which would be interpreted as property or planning terms and conditions. Whilst leasing the land would enable the Council to recover the Quarry if the premises are not developed and/or used as required (e.g. because the lessee cannot afford to repair and it is only partly used or even derelict), a freehold disposal would not even enable this. A freehold disposal cannot therefore be



recommended.

22. There are a number of matters which it is recommended that an Interested Organisation putting forward a land transaction should give particular thought to in their business cases. The criteria and information sought in the table forming part of 1.3 of Appendix 1 are generic, they apply to all three models. There are specific aspects of a property model which an Interested Organisation will need to consider and address in its business case, if this is the preferred model. These are as follows:-
  - 22.1 (As identified) how they will satisfy the Council that their legal model will provide the Council with the confidence that future leisure provision (as set out in the Council's strategy) will be secured and continuous for up to 25 years. Without such a guarantee of continuity provision this option cannot be recommended.
  - 22.2 The terms on which they are offering to buy or lease the Quarry, taking into account that the Council will need to consider whether any offer is consistent with its fiduciary duties, the Council's duties under section 123 Local Government Act 1972 and the rules relating to State Aid (see paragraphs 4, 18, 19 and 23 of the Legal Advice to the report to Cabinet of 13<sup>th</sup> July).
23. It will be up to an Interested Organisation which puts forward such an option to demonstrate how it will meet the criteria, is defined in law as a property transaction and to provide the information required for a compliant business case in paragraph 1.3 of Part 1 of Appendix 1 to the Cabinet Report. It is therefore recommended that within these constraints that Interested Organisations should have flexibility to set out their offer.

### **Management by Shrewsbury Town Council**

24. This option can either be delivered by the Town Council on its own or potentially in partnership with a third party if it decides to carry out an open market procurement.
25. The most straight forward version of this option would be that the Council enters into an agency agreement with the Town Council pursuant to the relevant Local Government

legislation whereby the Town Council delivers the services in-house either at the Quarry or from an alternative Town Centre site on behalf of the Council. As it is recommended that each business case should be evaluated on an equal basis the Town Council would need to put forward its business case and address all of the issues identified in paragraph 3.1 and elsewhere within Appendix 1 to the report. These include identifying how they would achieve all of the Council's minimum pool requirements and to satisfy the Council that this is a legally sound option (see below for more details).

26. This option would require the Council to terminate the part of the Contract with the Shropshire Community Leisure Trust Ltd with the implications identified in paragraph 14 and it is recommended that the Council would enter into a formal agency agreement with the Town Council. The Town Council and not the Council would have to satisfy itself that entering into this course of action is affordable and fulfils its fiduciary duties. The staff employed in the delivery of the services would transfer to the Town Council pursuant to TUPE and the Town Council would be responsible for pension and other liabilities.
27. I considered a more complex variant on this, for the Town Council to enter into a consortium arrangement with a third party. It would be up to the Town Council to consider and establish the terms and legality of any such option.
28. As with all of the options, there are a number of complexities which the Town Council would need to address in its business case. In particular, they would need to satisfy the Council that what they are proposing is legally sound. Contracts between two public sector bodies are subject to the public procurement regime. As identified, this is a concession contract and the law relating to concession contracts was codified and amended from April 2016 when the Concession Contracts Regulations 2016 came into force. To be compliant, the business case offer will need to comply with the requirements set out in paragraph 1.3 of Appendix 1 but will also need to be demonstrate that this will be a co-operative arrangement in the public interest rather than an arrangement similar to a conventional contract. Taking into account the Council requirements as set out in paragraph 1.3 it is considered that this will be difficult to demonstrate. The regulations have also added an additional test for inter authority contracts, that the open market value of the activities of the Council and Town Council

must form less than 20% of the turnover of the Quarry (or other facility which is put forward).

### **The Business Case Process**

29. The recommended business case process for the Council and any external Interested Organisations is set out in the report and I have assisted in its drafting. The comments in this section of my advice are intended to provide additional background about the reasons for the approach set out in the report.
30. Careful thought has been given to the recommended process and in particular the complexity of the process especially for external Interested Organisations who do not have necessarily have access to similar information or resources as those available to the Council.
31. I identified in my advice to the Cabinet of 13<sup>th</sup> July the requirement for the Council to treat each individual external Interested Organisation fairly and transparently. Having given the matter further thought in conjunction with Council officers, I would go further in this advice. I support the recommendations in the report that the Council should set up a fair and transparent process which provides equal information to all who wish to put in a business case, including the Council officers and advisors who are preparing a business case for the Shrewsbury Sports Village. This approach will ensure that the process is able to be a genuine and fair process allowing external Interested Organisations to have a similar starting baseline. The Council will be able to evaluate any externally submitted business cases in parallel with and in a similar manner to the business case for the Shrewsbury Sports Village confident in the knowledge that all external Interested Organisations have been treated equally.
32. I also consider that whilst it is recommended that the Council approves the Shrewsbury Sports Village in principle as its preferred option (for the reasons set out in the report of 13<sup>th</sup> July and in this report) having agreed to give external Interested Organisations a 12 month opportunity to put forward alternatives it follows from the July decision that the Council ought to be open minded about the possibility that external Interested Organisations may well be able provide a better and different alternative approach.

33. In my advice to the Cabinet report of 13<sup>th</sup> July, I referred in outline to the legal and procurement issues which will have to be considered and addressed by each Interested Organisation which submits a business case before it can be considered compliant. In view of the freedom provided to external Interested Organisations to structure their option, it is important to stress again that each business case must address the legal issues identified, to the extent that these are relevant to the relevant option, and any other legal issues which arise. These may or may not be complex, depending on the suggested option. Demonstrating compliance is up to the Interested Organisation submitting the business case as the Council will only be able to evaluate what is submitted. Whilst it is possible that the law may change and the constraints on the Council's ability to be flexible in the current public procurement regime will be abolished because of Brexit, the law will not change by September 2017 when the business cases must be submitted.
34. The process being put forward in the report and Appendix 1 includes an interim process for a strategic outline business case ("SOBC") to be submitted and evaluated in parallel with any SOBC put forward by the Council. The rationale behind this is that there is a Treasury guidance ("the Green Book") which provides a practical 5 step by step to the development of business cases and whilst this is too complex to be adopted in whole for this project and is not wholly appropriate as it is meant for much larger procured projects, the philosophy and general approach is useful. Stage 1 of this process corresponds directly to Gate 1 in the Office of Government Commerce (now Cabinet Office) process. Gateway reviews are peer review for major projects whereby independent practitioners from outside the project use their experience to examine the progress and likelihood of the project being successfully delivered.
35. Having considered the stage the Council has reached in this project, I consider that the Council currently has an incomplete Stage 1 (using the language of the Green Book). Stage 1 is scoping the proposal and preparing the SOBC. The case for change should be made, the way forward explored and the business justification completed. I recommend that this should be completed by the provision of SOBCs by the Council and other Interested Organisations because without this stage being completed it is not easy to progress the next stage and for the Council or third parties putting forward business

cases to agree their delivery strategy. I therefore support the recommended approach whereby there is a stage of consideration of the SOBCs, i.e. the client evaluation team which is outside the project, carries out an evaluation of the Gate 1, business justification and gives feedback on the outcome of its evaluation.

36. I am very mindful of the cost and other resources which external Interested Organisations will need to expend to produce a business case and in my view this interim stage is fair to any such organisation and the Council team preparing the Shrewsbury Sports Village business case as it provides an opportunity for an interim critique. If an Interested Organisation is informed that in the view of officers and advisors there is insufficient business justification for their proposals to pass Gate 1, they have the opportunity of addressing any deficits or withdrawing and not spending any more time and cost on seeking to complete the full business case (FBC). To let Interested Organisations spend up to 12 months and significant funds on what could be an approach which is very unlikely to meet the Council's criteria and without any interim stage would not seem fair.

### **Conclusion**

37. It will be appreciated from the above and from the advice attached to the 13<sup>th</sup> July report and the current report that the business case process and subsequent consideration and approval of the preferred approach by the Council in 2017 raise complex legal and procurement issues.
38. This advice is provided on the basis of current information. Each option to be evaluated with care and the legal and procurement implications identified and confirmed as part of the evaluation of the SOBC and FBC to establish that such an option is legally and governance sound.
39. The Council's evaluation will be on the basis of the information which has been supplied by the Interested Organisations and it is recommended that the terms of reference for a compliant business case should include legal and procurement compliance.
40. I have sought to set out the currently identified legal issues in my two legal appendices

(to this report and to that of the report to Cabinet of 13<sup>th</sup> July 2016) but it will be essential for Interested Organisations to consider whether they ought to take their own legal advice and how far they ought to include a consideration of legal and procurement issues because if an option is not legally compliant with the terms set out it will be recommended for rejection.

## **PART 2**

### **RÉSUMÉ OF RELEVANT PROVISIONS CONTRACT (AS AMENDED BY A VARIATION DATED 24 APRIL 2015) AND LEASES**

#### **The Contract**

41. The Council entered into a contract (with supporting specification) and leases with Shropshire Community Leisure Trust Ltd to deliver its leisure centres at the Quarry, Shrewsbury Sports Village and at three other centres. The contract is from 1 August 2012 for 10 years until 31 July 2022 with the opportunity for an extension for a further 5 years thereafter. With the Council's approval, Shropshire Community Leisure Trust Ltd has appointed Serco leisure to deliver the leisure services on its behalf. On 24 March 2015, the parties entered into a formal Variation of the Contract and lease of Shrewsbury Sports Village.
42. This résumé sets out those terms of the varied contract and leases which are relevant to the report.
43. The terms of the varied contract and leases of the Quarry and Shrewsbury Sports Village allow the Council to terminate the parts of the contract and leases which relate to each of these properties on 6 months' notice and vary the terms of the services to allow for the:-
  - 43.1 Closure of the Quarry for it to be redeveloped or refurbished (if this cannot be carried out in parallel with some service delivery) and grant of a new lease on completion to the Shropshire Community Leisure Trust Ltd;

- 43.2 Closure of the Quarry if it is to be replaced with pool provision on the site of the Shrewsbury Sports Village and termination of the lease of the Shrewsbury Sports Village to enable the construction to take place and a grant of a new lease to Shropshire Community Leisure Trust Ltd thereafter; or
- 43.3 termination of Council contracted provision at the Quarry.
44. The contract provides that if it is partly or wholly terminated or varied and there are financial consequences, for example if the approved project means that part only of the Quarry were to be open to the public during a refurbishment or rebuilding process, the contractor is entitled to receive capped compensation for loss and in certain circumstances, redundancy payments for staff may be payable. It is not considered appropriate to include the detail of these payments within an open report and if any Interested Organisation provides evidence that it needs this information to prepare its business case and is prepared to enter into a confidentiality agreement the Council can consider whether it is able provide required information.
45. Whilst the terms of the Variation are flexible, as identified in the legal appendix to the report to the Cabinet on 13<sup>th</sup> July, the Council is bound by the public procurement regime and other legal principles so any solution which is put forward must take into account these restrictions.
46. Whatever the approved solution it is envisaged that there will be a requirement for a further Variation before it can be implemented.
47. It is envisaged that the Council will need to agree a protocol with Shropshire Community Leisure Trust Ltd regarding the provision of information during the process for third parties to submit a business case. A protocol is required to ensure that all parties are given similar information and because the contract provides that Shropshire Community Leisure Trust Ltd should not disclose the terms of the current Contract without Council consent so they would not be able to provide individual parties with any information regarding the contractual terms without this consent.

## **Further Provisions of the Leases**

48. The lease of each of the facilities is for 15 years on the basis that if the contract is not extended the leases would end at the same time as the contract and if the contract is extended there is no need for further leases to be entered into.
  
49. The leases have a split of landlord and tenant responsibilities. The Council retains responsibility for the majority of the repairs and maintenance at each of the facilities. This is particularly material in the case of the Quarry because it is an old facility. The ongoing cost of maintenance at the Quarry and current and any future risk of plant or building failure is a significant factor and concern for the Council and, as identified, is material to consideration and evaluation of the preferred option.
  
50. The leases all include a provision allowing the Council to terminate the lease on 6 months' notice if the Council considers in its sole discretion that it is not economic to repair or maintain a facility.

Léonie Cowen

Léonie Cowen & Associates

13 September 2016