

## **PUBLIC CABINET – 21 JULY 2015**

### **BELVEDERE SPLASHPARK – OUTCOME OF TECHNICAL STUDY**

#### **ISSUES**

Managing the water quality at Belvedere Splashpark has become more difficult and an increasing concern. Changes to procedures were implemented at the start of the 2014 summer season and external advice sought which indicated that the current recirculating system no longer met industry standards and changes would be needed to bring about improvements. Consequently, following further reviews at the end of the 2014 season, Watermans Building Services (WBS) were commissioned to review the current facility and provide indicative technical solutions and outline costs to address these issues. (Their report is at Appendix 1).

WBS have identified that both the replacement of the recirculating system and the introduction of a mains fed, 'once-through' solution are technically feasible. WBS have flagged concerns about whether a once-through solution would receive Thames Water approval, but have suggested that a reduction in the size of the splash facility, and a change in the type of feature used, could probably mitigate this risk.

Within their report WBS have provided ranges of capital costs (final costs are dependent upon the detailed design solution) and also revenue costs for the two schemes. Capital costs range from £0.175m to £0.38m, with revenue costs ranging from £0.035m to £0.042m. It would also be necessary to undertake further detailed design work, prior to procurement, at a one-off cost of circa £30-£50k to the Council.

This report summarises the key issues and addresses the options available.

#### **OPTIONS**

- (1) To delay a final decision on the future of the splashpark until autumn / winter 2015, to provide an opportunity for interested parties to consider whether they are able to address the requirements as identified in this report, in relation to the replacement of the plant and equipment, the development of a robust, viable and sustainable business plan and the transfer of risk associated with operating the Splashpark facility;
- (2) To take a decision on the issues now;
- (3) To adopt an alternative approach

#### **PROPOSED DECISIONS**

- (1) To delay a final decision on the future of the splashpark until autumn / winter 2015, to provide an opportunity for interested parties to consider whether they are able to address the requirements as identified in this report, in relation to the replacement of the plant and equipment, the development of a robust, viable and sustainable business plan and the transfer of risk associated with operating the Splashpark facility;

- (2) The Cabinet Member for Community Safety, Environment and Leisure to consider a further report from Officers in the autumn / winter of 2015, which will provide feedback on the outcome of any bids, and their ability to address the conditions set out in this report, and at that stage, either commit to progressing a scheme, or delegate authority to Deputy Director (Communities, Leisure, Libraries and Parks) to close and decommission the facility, and (subject to available funding,) replace the splashpark with a “dry” children’s play area.

## REASONS

In view of the current significant financial pressures facing the Council, the level of costs identified in the WBS report, particularly the on-going revenue cost of the facility, the recommendation is that the Splashpark facility is closed. However, in view of the level of local interest and subsequent “in principle” offers to provide either some capital funding or to operate and manage the facility, it is proposed that the final decision on closure is not taken until autumn / winter 2015. This will provide a period for organisations to come forward, with a serious business proposition, with regard to funding, managing and operating the facility.

This report provides a clear and definitive steer as to the conditions which any organisation will need to satisfy, before the Council will consider this approach – which are, in summary:

- Agreement to resolving the design issues in line with the recommendations within the WBS report (a partial ‘fix’ will not be acceptable) and;
- Evidence of a viable, robust and sustainable business proposal based on a realistic business model and plan that demonstrates how the capital and revenue costs will be at no costs to the Council and supported with a relevant surety bond / bank guarantee, as appropriate, and;
- Agreement to total risk transfer (including all health and safety risk) from the Council (landlord), through, for example, bespoke warranties, supported by relevant Indemnity cover.

Should such a proposal (or proposals) be submitted, the Council will work with the interested parties and assess their proposals against these key criteria to assess if an appropriate procurement process can be undertaken. It should be noted that there are a number of issues which are yet to be clarified, in relation to this approach – including issues associated with the potential need for disposal of open space if the site is managed by a third party, and issues associated with public access across parkland. These issues will be considered further over the coming months, as appropriate.

In the absence of a viable business proposal that meets all criteria being submitted, or in the event that it is not possible to complete an appropriate and sustainable procurement process, it is proposed that the facility will close.

Signed: ..... Date: .....  
Councillor Teresa O’Neill OBE, Leader of the Council

**LAST DATE FOR CALL-IN:**

## **PUBLIC CABINET – 21 JULY 2015**

### **BELVEDERE SPLASHPARK – OUTCOME OF TECHNICAL STUDY**

#### **1. BACKGROUND**

The staff responsible for managing the plant room and filtration system at Belvedere splashpark reported that at times during the summer of 2013 they had experienced greater problems in managing the water quality at the Splashpark. They reported that the water often lacked clarity and was very turbid and the level of manual supervision and monitoring of the plant was increasing. These are indicators that suggest there could be difficulties with the recirculating filtration system and technical guidance recommends that operating procedures should be reviewed. Consequently the following changes to operating procedures were introduced:

- water tank cleaning regime was increased to twice weekly, with a weekly disinfecting programme taking place
- water in the tank was regularly drained and refilled
- additional water sampling was undertaken, to provide more frequent information
- the normal operational procedure to close the site for cleaning, on those occasions where a faecal contamination was suspected, was retained

Additional cleaning, disinfecting and regular replacement of water did not, however, improve the water quality and staff remained concerned that it was becoming increasingly difficult to manage the risks of contamination. The park was closed on 38 occasions in 2014 for either planned or emergency cleaning.

The splashpark should operate within standard biological parameters and it should produce water with good clarity. Many of the water quality results, daily inspections and the requirement to frequently replace water indicated that normal operating standards were not being achieved.

Due to the deteriorating position, officers sought advice from specialists. Initial advice (summer 2014) was sought from one of the country's suppliers of water parks. They indicated that a single tank was no longer recommended guidance and that the filtration system may need to be updated, to meet current guidelines and improve water quality. This resulted in officers elevating their concerns to senior managers and Members at the end of the 2014 season, and consultation to close the facility due to increasing concerns and costs, was carried out as part of the Council's proposals to balance its budget. This, in turn, resulted in further advice being sought from the Council's specialist term consultant, Watermans Building Services (WBS) as to why these water quality issues were being experienced, and why occurrences were becoming more regular. Following discussions and a site meeting, WBS were commissioned on 30<sup>th</sup> January, 2015, to investigate the issues and provide an initial report on their findings.

#### **2. THE CONSULTANTS' BRIEF**

The brief to WBS included a requirement for the following:

- Site visits and a non-intrusive survey - to gain a better understanding of the existing issues;

- Identification of which intrusive surveys (such as below ground drainage) would be required to enable answers to be provided;
- WBS to attend site with the relevant contractors as necessary, to oversee / review any intrusive surveys and understand issues;
- Production of a report, which:
  - a) provided an overview of the current water and drainage system configuration and key issues;
  - b) provided an initial view as to the technical solution required to enable the current recirculating plant / system to be renewed or replaced, to make it safe and fit for purpose.

WBS were asked to include assurances that, if a replacement recirculating system was proposed, that any revisions or upgrades would robustly maintain a clean and safe environment, compliant with all relevant, contemporary water quality standards;

  - c) provided an initial view as to options for a new technical solution, based on a 'once through' mains-fed water system;
  - d) provided an initial view of decommissioning / replacement options, for a 'dry' playground facility;
  - e) provided indicative capital costs and indicative revenue costs for the three options above ('b-d').
  - f) identified any key issues and risks associated with both systems.

### **3. THE REPORT**

The report received from WBS is attached at Appendix 1. The key messages, issues and risks are summarised below:

#### **3.1 ISSUES WITH THE CURRENT SYSTEM**

WBS's review of the current Splashpark facility identified a number of reasons for the intermittently poor water quality issues that were being experienced. Key issues included:

- Sand filters – the current filters are 'shallow bed' filters. For an operation of this type, deep- bed filters are now recommended – the current filters need replacing. Deep- bed filters can be introduced, but due to their size, it would be necessary to either extend the plant room, or provide a container next to the existing plant room, to house the new plant;
- Tank – the current tank accommodates both clean and dirty water in one tank. This compromises the effectiveness of the cleaning system - water storage needs to be split into 2 separate tanks;
- Pumps – may need replacing;
- UV filters, in combination with a Powder Activated Carbon (PAC) dosing system, should be introduced, to increase the efficiency of the cleaning system;

- Safety surface – splash parks are beginning to move towards concrete surfacing, rather than safety surfacing, in order to minimise opportunities for bacteria to be retained – WBS indicated that the Council should seek further advice on this issue from a surfacing specialist;
- Raising of edging between the splash pad and grass (except at entry points), to reduce the transfer of dirt from the grass and trees into the system;
- Adding new gullies and channels at points of entry, to enhance drainage;
- The removal of the grass on the sides of the splashpark – replacement with concrete, to reduce the transfer of dirt into the system;

WBS also flagged the fact that much of the existing plant and equipment is now 10+ years old, so will soon require replacement.

In addition to identifying issues with the system, WBS also flagged some operational maintenance issues, which they considered would help prevent future water quality issues. These included:

- The introduction of a controlled bather number system, to reduce the potential for over-loading the system;
- The introduction of pre-cleanse showers and foot baths to reduce the load placed on the system
- Ensuring that grass is kept short and trees are regularly trimmed, to limit their impact on the system;
- Regular maintenance of the new gullies and channels to prevent blockages;

WBS also indicated that the practice of draining the tank on a regular basis, as a means of managing water quality, must not continue.

### **3.2 TECHNICAL ADVICE – RECIRCULATING SYSTEM v. MAINS-FED SYSTEM**

After reviewing the current operation, and informed by discussions with both site staff and two leading suppliers of splash parks, WBS concluded that both water park options - either the substantial replacement and upgrading of the current recirculating system, or the introduction of a 'once through', mains fed system, would be technically feasible.

However, they identify a number of key messages / risks / issues that would need to be taken into consideration, if either scheme were to be progressed. They are as follows:

#### **a. Issues applicable to both a recirculating system and a mains-fed system**

- The paddling area needs to be removed, as this standing water provides a breeding ground for bacteria;
- If intrusive works are undertaken as part of any future replacement programme, the safety surfacing will be damaged in places. WBS propose that, in view of this, and

because of concerns about the possibility of the safety surfacing trapping bacteria, it should be totally removed. This approach is in line with current practice, which is moving towards concrete surfacing in splash parks, rather than safety surfacing;

- Whilst a capital cost range has been provided for each scheme, it has not been possible to provide a specific cost, as detailed designs are not yet available for either scheme.
- Revenue costs are indicative – the provision of robust revenue costs will be dependent upon the final design solution and the operational approach taken.
- Despite best endeavours, there will be an on-going maintenance requirement - as it is not possible to make a facility of this nature 'maintenance free';

#### **b. Issues specific to the replacement of the current recirculating system**

- An extension to the plant room will be required (or plant could possibly be sited in a container alongside the plant room, and screened off). This would require planning permission;
- Whilst recognising that some of the system monitoring may be undertaken via remote technology, the nature of the system is likely to require an on-going level of staffing on the site – indicative revenue costs have been included, although these may need adjusting, depending on the final design and operational approach taken;
- The capital costings provided have been based on an assumption that some of the current plant and equipment will be reused. However, some of this plant and equipment is nearing the end of its lifespan, so additional lifecycle replacement costs should be anticipated in the short/medium term. These have not been included in the capital cost range quoted by WBS;
- Due to the re-use of some of the current plant and equipment as part of any replacement, securing warranties for the new plant and equipment will be more complicated than with a total new build option;

#### **c. Issues specific to the new mains fed ('once through') system**

- Whilst changing the system to a mains-fed scheme is technically possible, WBS have stressed that it is very unlikely that Thames Water will approve a scheme of the size of the current splash park, due to the amount of water that is required to be taken off of the mains, and also the amount of discharge into the foul sewer;
- WBS suggested that Thames Water might be amenable to a reduced size scheme, if the equipment is changed to 'low flow'. Low flow systems incorporate different types of sprays and water play equipment that use less water than the traditional/existing schemes. Whilst initial contact has been made with Thames Water, they have advised that they can only approve or reject a scheme of this nature when they have fully assessed the detailed design proposals. There is a risk, therefore, that a detailed design may be undertaken, and then the scheme fails to get approval, although the consultants and suppliers have suggested that by reducing the size of the scheme and introducing new equipment, this risk should be reduced;

- As the system is mains-fed, it requires substantially less supervision, as it is a constant 'clean feed', so should not require an on-site presence.

#### **4. SUMMARY OF FINANCIAL IMPLICATIONS**

The review undertaken by WBS included an assessment of indicative capital and revenue costs associated with both options. As neither scheme has been designed in detail, financial ranges, rather than definitive costs have been provided. They are as follows:

##### **4.1 Recirculating system**

The capital cost range provided by WBS for the recirculating system is **£0.23m - £0.38m**. This does not provide any allowance for lifecycle replacement costs for the parts of the existing system and features which will be re-used in the upgraded system.

The indicative revenue costs associated with the recirculating system are **£0.042m**. Actual costs can only be provided when a full design has been developed, as this may impact on the approach adopted in relation to staffing / cleaning / chemicals / utilities costs etc.

##### **4.2 'Once Through', mains-fed system**

The capital cost range provided by WBS for the recirculating system is **£0.175m - £0.33m**.

The indicative revenue costs associated with the once-through system are **£0.035m**. Actual costs can only be provided when a full design has been developed, as this may impact on the approach adopted in relation to any staffing and utilities costs.

It is clear that replacement with either system would require a large capital commitment, and also on-going revenue support, as well as the costs of replacing the plant (lifecycle). In view of the severe financial climate, the Council is not in a position to commit to these costs going forward.

#### **5. CONCLUSIONS AND RECOMMENDATIONS**

The Council recognises the popularity of the splash park, particularly for residents with young children. In view of this, officers have been seeking to find a technical solution, which ensures the safety of the borough's children, and is also affordable. Affordability is vital, due to the severe financial pressures faced by Bexley, and indeed every local authority across the country, at a time when central government grant is rapidly diminishing, and demand for critical support is increasing rapidly.

This situation requires the Council to make some difficult decisions, in order to ensure that the Borough remains financially viable and so that it can continue to fund services and activities where Council support is most needed – for example, ensuring that Bexley's young people are safe, providing critical support and care to the borough's older people and delivering critical universal services to all residents (e.g. waste collection). This has, unfortunately, resulted in the need to make some very difficult decisions in other service areas, where it is recognised that services have significant positive impact and are very much loved, but cannot be given as high a financial priority as the more critical areas.

It is for this reason that it has been made clear that the splash park can only continue if it can be upgraded at no cost to the council (capital costs) and if there are no on-going costs associated with the running of the facility (revenue costs).

In relation to capital costs, approximately £0.25m capital funding has been identified, through a combination of business sponsorship and S106 funding, which may be sufficient to develop a new scheme (capital costs range from £0.175m - £0.38m).

However, it is clear that, whichever system was installed, there would remain on-going running costs of at least, and probably in excess of, £0.035m per annum. Furthermore, there would also be costs associated with lifecycle replacement of plant and equipment over time. If a new system was installed, this would require phased replacement, with an indicative cost of approximately £0.25m over a 10 year period. There would also be costs associated with developing the new Splashpark system (either recirculating or mains-fed) to a stage when it can be procured – the cost of developing a detailed design / engineering solution, to enable the scheme to be procured (as a design and build contract) would be £0.03m - £0.05m.

In view of the very difficult service prioritisation decisions the Council is faced with making, it cannot, therefore, support the replacement of the current splash park at Belvedere.

However, in view of the support being shown for the splashpark by a small number of Bexley residents and suggestions that there may be organisations interested in resolving the current design and technical difficulties, providing funding and taking over the management of the site, it is recommended that the final decision to close the facility is delayed until Autumn / Winter 2015. This will allow any business with a realistic, bona fide proposal and ability to run the splash park to come forward and discuss their proposals with the Council.

It must be made clear at the outset that the Council is required to ensure that any outsourcing of this site must be technically achievable in terms of design and management of health and safety risks and also financial capability and sustainability, therefore, proposals received will only be considered suitable if they demonstrate that they meet the following criteria:

### **5.1 Resolving the design issues**

The design solution proposed resolves all the health and safety / water quality requirements as described in the WBS report. This report was developed by a leading specialist consultant, who in turn was advised by the leading suppliers of splash parks nationally, so the Council will only accept a design solution which is in line with the solution in the WBS report and fully addresses each of the issues in the report. For the avoidance of any doubt, a 'partial fix' solution will not be accepted – the interested party must subscribe to replacing the facility as detailed in the WBS report.

### **5.2 A viable, robust and sustainable business case**

There is a fully developed business plan, which demonstrates how the interested party will operate the facility, at nil cost to the Council, over a long-term period (10 years+). The business plan must be supported by an appropriate surety bond, or bank guarantee.



### **5.3 Risk transfer**

There is a clear understanding that the Council will not have any involvement in running of the facility, and neither will it be responsible for any risk or liability associated with the facility for the 10 year period, particularly in relation to Health and Safety (regardless of any responsibilities which might normally fall to a landlord). Any interested parties, who feel they can provide a solution which fully meets these requirements, should contact the Council for an early discussion. The council will expect interested parties to agree to total risk transfer (including all health and safety risk) from the Council (landlord), through, for example, bespoke warranties, supported by relevant Indemnity cover.

Should any business plans be received, the Council will consider these, and how they meet the requirements as stated above, to inform a final decision.

## **6. PROCUREMENT**

If one or a number of organisations come forward with robust business plans that meet the three key requirements outlined in section 5 above (5.1-5.3) then the Council will undertake a procurement exercise, as appropriate. It should be noted that there are a number of issues which are yet to be clarified, in relation to this approach – including issues associated with the potential need for disposal of open space if the site is managed by a third party and issues associated with public access across parkland. These issues will be considered further over the coming months, as appropriate.

Due to the level of risks involved with running a facility of this type (health and safety requirements, maintenance requirements, environmental requirements etc) the council would require assurances that these issues would be addressed appropriately, before further consideration of any proposals.

## **7. CONSULTATION AND TIMESCALES**

Consultation was undertaken in autumn 2014. The work that has been undertaken since this time is directly in response to the outcome of this consultation process.

In the absence of a viable business proposal that meets all requirements being submitted, or in the event that it is not possible to complete an appropriate and sustainable procurement process, it is proposed that the facility will close. A further report will be considered by the Cabinet Member in the autumn / winter of 2015, which will provide feedback on the outcome of any bids, and either commit to progressing a scheme, or seek authority to close and decommission the facility, and (subject to available funding) replace the splashpark with a “dry” children’s play area. No further consultation is planned.

## **8. SUMMARY OF LEGAL IMPLICATIONS**

Having asserted that the Council cannot afford to retain the on-going management and operation of the Splashpark, this report essentially sets out the rationale for considering a “business” and or “group” to take responsibility for improving, operating and maintaining the Splashpark. The report sets out the criteria to be satisfied for such an arrangement to proceed. On the basis of the report to date, there appears to be the following options:

- Dispose of the site under a lease with a user clause that only permits it to be used for its current purposes;
- Commence a procurement process for an operator to run the site and carry out the necessary upgrading works. There would usually be a lease granted as part of this process.

The second option could be expressed as a “concession” contract, in the event the Council left the contractor to exploit the facility and take all of the risks. Although there is a new EU Directive for “concessions”, it is not currently incorporated into UK law. The Public Contracts Regulations 2015 do not cover concessions, but they are subject to the usual EU principles of equality and transparency.

With regard to the “de-risk” aspect of the report, the Council’s potential liability can be limited by appropriate indemnities in the contract and lease. Further, it would be necessary for the Council to introduce a requirement for the contractor/ tenant to have in place appropriate insurances.

At this stage, the extent to which any residual risks remain with the Council is dependent upon nature of the arrangements to be entered into with a provider.

The preliminary legal advice will be revisited following any further development of the proposals.

## **9. SUMMARY OF OTHER IMPLICATIONS**

### **Public Sector Equalities Duties**

None directly associated with this facility.

### **HR Implications**

None – staffing savings have already been made.

### **Community Safety**

There are no specific community safety implications arising from this report.

### **Environmental Impact**

The Council has been advised that the recent practice of draining down the water tank and refilling it, in order to attempt to manage water quality cannot continue on environmental grounds. Permission for any new scheme (either recirculating or mains-fed, ‘once through’), would be required from Thames Water. They have advised that they review the scheme when detailed designs are provided to them.

### **Human Rights**

There are no specific Human Rights implications arising from this report.

### **Health and Well-Being of the Borough**

If the facility were to be managed by a third party in the future, it would be necessary for them to demonstrate how they could take over all responsibility for health and safety associated with the facility, so that there was no risk to the Council.

### **Property and Asset Management Implications**

If the splashpark facility is closed, the site will be decommissioned. The Council has an indicative dry play scheme that could be introduced on the site, although some residents have indicated that this would not be welcomed. The intention would be for the park to remain as an operational park site.

If an organisation does come forward with a suitable proposal (which addresses all the issues outlined above) a lease will be required. Given the amount of expenditure required on the facility, it is unlikely that anyone would be interested in a lease of less than 25 years, particularly if grant funding needs to be secured. In these circumstances, Disposal of Open Space procedures would need to be undertaken, as a lease over 7 years is considered to be a disposal. If, as part of the Disposal process, there is an objection to the proposal that cannot be overcome, the issue would then be referred to the General Purposes Committee to decide whether an Inquiry should be held.

Any lease granted could seek to pass across responsibilities for the facility, however, due to landlord responsibilities, it is difficult to transfer all risk, and indemnities will be required. In relation to risk, recent case law has added to the occasions when local authorities may have a 'non-delegable duty of care'. In practical terms this means that even where a particular function has been outsourced to a contractor or partner, the local authority could still be liable for any claims arising from the function. This situation means that it is important to ensure that any agreement with an organisation taking over the running of the Splashpark contains clear and unambiguous warranties to ensure that the organisation meets its obligations, including the repair and replacement of the facility to an appropriate specification. It would also cover routine maintenance, inspection and testing of the facilities to ensure public safety.

To mitigate against the risk of an organisation failing in its duties and obligations, specific indemnity clauses would need to be incorporated into the agreement. Where appropriate these indemnities would need to be backed by appropriate insurance cover, for example, a public liability policy. Appropriate compliance with these obligations would also need to be undertaken.

If these issues are not carefully managed within the agreement, then any risks and potential claims associated with the running of the facility are likely to revert to the Council.

There may also be issues associated with rights of way over the park, and possibly also for maintenance access. These issues would need to be understood / resolved before any outsourced solution was developed.

## **LOCAL GOVERNMENT ACT 1972 – SECTION 100D**

### **List of Background Documents**

Watermans Building Services report (attached as an Appendix)

**Contact Officer:** Toni Ainge, Deputy Director (Communities, Leisure, Libraries & Parks), Direct Dial: 020 3045 4879

**Reporting to:** Director of Regeneration, Communities and Customer Services)