AGENDA ITEM:	**4.3**

EXECUTIVE

DATE:	**20TH APRIL 2009**	
SUBJECT:	**LUTON AQUATICS CENTRE - OUTLINE BUSINESS CASE**	
JOINT REPORT BY:	**CHIEF EXECUTIVE/ HEAD OF CORPORATE FINANCE**	
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IMPLICATIONS:

LEGAL	✓	**STAFFING**	
EQUALITIES	✓	**COMMUNITY SAFETY**	
FINANCIAL	✓	**RISKS**	✓
OTHER			

CONSULTATIONS:

COUNCILLORS CONSULTED	✓	**SCRUTINY COMMITTEE CONSULTED**	
STAKEHOLDERS CONSULTED	✓	**OTHER**	

WARDS AFFECTED: All

LEAD EXECUTIVE MEMBER(S): Cllr Simmons

RECOMMENDATION(S)

1. Executive is recommended to approve:

(i) The Outline Business Case appended to this report;
(ii) The continuation of work to procure Luton Aquatic Centre on the basis that the capital cost of the facility can be met from prudential borrowing.
(iii) That the project be delivered through the Local Education Partnership (LEP).
(iv) The selection of Active Luton as the preferred operator for the Luton Aquatics Centre

(v) Delegation of authority to the Head of Resources & Performance Review for Housing and Community Living to negotiate any necessary amendments to the Funding and Management Agreement with Active Luton.

(vi) That the Outline Business Case be submitted to the Performance, Resources and Assets Scrutiny Committee for their consideration.

<u>REPORT</u>

Purpose

2. The purpose of the Outline Business Case ("OBC") is to set out the key elements and criteria for decision making, including the strategic context and business need for the Luton Aquatics Centre, the options considered, the indicative costs, and the value for money and affordability of the project to the Authority.

   The OBC sets out the options for:

   - site,
   - procurement,
   - facilities,
   - management and
   - operation

   that have been considered as part of the options appraisal process.

Recommendations of the Outline Business Case

3. The OBC recommends that:

   - the Aquatics Centre should be built at Luton Regional Sports Centre at the junction of the A505 Hitchin Road and Butterfield Green Road
   - the preferred scope will deliver a facility that will meet the needs and aspirations of users,
   - Active Luton should operate the Centre, meeting the standards expected and providing value for money,
   - the LEP should deliver the project as the most cost effective means of procurement
   - an affordable, deliverable business plan has been developed that meets the requirement that ongoing revenue costs can be met from within current levels of support,
   - that the capital costs of the project be met from prudential borrowing funded from a first call on the London Luton Airport Limited dividends, subject to meeting the requirements of the Authority's Model for Assessing Levels of Affordable Borrowing.

4. The evidence to support these recommendations is detailed in the report which is included in Appendix A

Capital Costs

5. The preferred option for the Aquatics Centre is a new build facility on a site at the Luton Regional Sports Centre at the junction of the A505 Hitchin Road and Butterfield Green Road. A detailed cost plan has been developed in conjunction with QED Wates, the preferred bidder for the Local Education Partnership (LEP), on the basis of the concept design that estimates the capital cost at £25.5 million. This is slightly above the original estimate of £25 million but it is expected that further value engineering work during the development of the design will keep the cost to a maximum of £25 million.

6. The principal advantages of the preferred option are:-

   - Purpose built new facility will reduce maintenance and energy costs.
   - The layout minimises operational/staffing costs.
   - A new building will allow for a whole life costing approach.
   - An undeveloped site reduces development risks.
   - The Luton Regional Sports Centre continues to operate during construction of Aquatics Centre.

7. The overall financial impact on the Council of all options will however need to be another key issue in making a final decision on the facility and facilities mix. It is important that this impact is based on best estimates of the whole life costs of each option, not just the initial costs.

Capital Funding

8. Options for using funding that could be raised by London Luton Airport Limited are currently being explored with specialist advisors. However, they have confirmed that, considering the current state of the financial markets, the most likely option has to be borrowing by the Council, with the costs of repaying that borrowing funded as a first call on the Council's airport dividend.

9. The Local Government Act 2003, together with the Prudential Code for Capital Finance in Local Authorities, requires authorities who are considering capital investment to have regard to affordability, prudence, sustainability, value for money, stewardship of assets, service objectives, and practicality.

10. Affordability for any scheme cannot be considered in isolation from the rest of the Council's budget, and capital programme. So the impact of the costs of an Aquatic Centre on the revenue budget, capital programme, medium term financial strategy, and the estimated Council budgets for the life of the Centre, all have to be considered.

11. The Aquatic Centre clearly meets the prudential code requirement of being a key service objective for the administration. This will need to be reflected in its importance in the Council's Corporate Plan. If the Centre is the highest priority for members amongst items that could be funded from London Luton Airport Limited dividends, it would be possible to earmark the costs of the capital financing of the Centre as a first call on the dividend each year. This would make the capital financing costs affordable, subject to the Council continuing to receive sufficient dividend (which is a reasonable assumption at this point) and subject to the impact on the rest of the budget being affordable. For the

scheme overall to be affordable, however, there would need to be reasonable certainty that the running costs, including facilities management, would be no more than, and preferably less than, the current cost.

12. The Airport Dividend is currently used wholly to fund the capital programme. If passenger numbers continue at current levels, then the existing capital programme could continue to be afforded. However, the opportunity to use additional dividend for items such as Highway Maintenance, operational building maintenance, other major capital projects such as schools, housing or roads etc, would not be there. If passenger numbers reduce significantly (which is a risk for any airport operation if we enter a significant recession), then the funding available for the capital programme would also need to be reduced.

13. The Model for Assessing Levels of Affordable Borrowing has been amended to allow borrowing for schemes determined to be the top capital priority for an administration, that meet key service priorities, where the costs of that borrowing can be met from unbudgeted airport dividend on an ongoing basis, and such borrowing is for a sustainable, practical scheme that provides value for money and improves the stewardship of assets. The model requires that 'robust and prudent estimates of the operational costs of the project demonstrate that, after construction, the ongoing net revenue costs of the whole development (after allowing for any associated reorganisation of existing services, and excluding capital financing) will not add to a future projected budget deficit.' This means that the running costs of the new facility cannot be more than the current costs – excluding debt charges. The changes were agreed at Full Council on 18th February 2009.

14. The Executive will also need to regard the affordability of any such scheme in the context of the Council's existing capital programme, its medium term financial strategy and plan, and in the light of whole life-costing estimates, and longer term financial predictions.

Revenue Implications

15. The revenue costs of the capital funding, assuming prudential borrowing, will depend upon the interest rates available at the time, and the number of years the building can reasonably be expected to last. They are likely to be between £1.5m and £2.2million per annum.

16. Whilst the final facilities management / lifecycle costs cannot be determined until the design of the facility is finalised, the team are working towards at least a cost neutral position overall, excluding the costs of borrowing – and achieving such a position is, as stated above, the minimum requirement for the borrowing to be in accordance with the Council approved scheme for assessing levels of affordable borrowing Active Luton's a five year business plan includes a subsidy requirement that contributes towards meeting this criterion. The aim is to ensure that the ongoing revenue costs can be met from within current levels of support.

Continued Project Development

17. The development of projects in conjunction with the LEP will be governed by the Strategic Partnering Agreement between the Authority and the LEP. This

identifies a two stage approval process designed to ensure that projects meet the Authority's requirements and provide value for money whilst protecting the commercial viability of the LEP.

18. To progress the project, further work is required to develop the preferred option to an outline design (RIBA stage A/B) and update the outline business case accordingly. This will form the basis for a New Project Request (NPR) to the LEP which it must respond to within twenty working days to indicate if it wishes to proceed with the project. If it does it will submit a New Project Proposal to the Council within 3 months

19. The New Project Proposal will include:

- a description of the New Project;
- an outline of:
  - the proposed building solution and design;
  - the proposed facilities management service and
  - the designs and indicative costing for the project up to RIBA B;
- an explanation of how the project meets the Local Authority Requirements;
- an assessment as to the most appropriate contractual route to deliver the Aquatics Centre;
- a fixed project management fee
- an estimated programme indicating the likely timescale in respect of taking the project through to contract signature;
- a value for money assessment:

20. On receipt of the proposal the Authority will consider it on the basis of whether it meets its requirements and whether the LEP has performed adequately in the other projects before approval can be given for the project to proceed. This is termed as stage 1 approval and would require Executive approval. The proposal should be received in August 2009 if decisions are made in line with the current project plan.

21. If stage 1 approval is given, the LEP will prepare a New Project Final Approval Submission (NPFAS). The submission will include:

- A draft of the project agreement
- details of the facilities management proposals and managed ICT solution in relation to the project;
- detailed design solutions (RIBA level D) reflecting an integrated approach to ICT and building services
- necessary plans and drawings for the Centre
- relevant detailed planning permissions and any other relevant planning approvals
- a financial model based on the agreed contractual route for the project

- an explanation (together with appropriate supporting evidence) as to why the NPFAS meets the Authorities requirements
- confirmation of the project management fee
- a value for money assessment explaining why the LEP's proposals represent value for money taking into account both estimated capital cost and whole life cost;
- a timetable and method statement setting out the stages and timescales for the period between achieving Stage 2 approval and the execution of the project agreements
- How the project will be delivered which shall include (but not be limited to):
  - proposals for the effective management of the construction programme;
  - confirmation that risks in relation to asbestos, latent defects ground conditions and/or contamination, if any, have all been fully addressed
- details of the nominated project service providers and sub-contractors together with evidence and explanation of the benchmarking and market testing undertaken by the LEP in relation to the project.
- a completed risk register for the project showing the potential risks identified in relation to the delivery of the project

22. On receipt of the proposal the Authority will consider it on the basis of Authority's approval criteria,

    - whether the costs of the project are within the target cost notified to the LEP by the Authority;
    - whether it has been demonstrated that the project provides value for money;
    - whether the Authority, acting reasonably, is satisfied that the NPFAS meets all the Authority's requirements;
    - whether any changes or amendments to the form of the project agreement have been proposed;
    - whether the NPFAS contains all the information required
    - whether the implementation of the project would breach any Law.

    before approval can be given for the project to proceed. This is termed as stage 2 approval. Executive approval would be required before a planning application is submitted, expected to be in November 2009, and for approval of the NPFAS, expected in March 2010 if decisions are made in line with the current project plan.

23. If stage 2 approval is given, project will then progress to financial and contractual close which would be expected in June 2010 with a start on site shortly after if decisions are made in line with the current project plan.

LEGAL IMPLICATIONS

24. There are the following legal implications to this report and this has been agreed with Mary Cormack in Legal Services on 14 April 2009.

25. The European Commission has stated that it will review all procurement from the standpoint of compliance with the principles of the Treaty of Rome in respect of transparent and fair competition processes. The procurement process undertaken must be seen to be reasonable, fair and non discriminatory and there is therefore a risk of challenge if a contract is awarded without a competitive process.

26. The proposed selection of the LEP to develop the project has already been through a competitive procurement process.

27. The proposed selection of Active Luton as operator of the new pool involves a variation of the existing Funding and Management Agreement between it and the Council under which Active Luton manages all of the Council's leisure and sports facilities. Under the terms of the agreement, the Council is required to give Active Luton the opportunity to compete to manage any new facilities opened by the Borough and accordingly the risk of challenge is considered to be low.

EQUALITIES IMPLICATIONS

25. An Equalities Impact Assessment on the proposal has not been completed because the proposal has not progressed to stage where adequate details are available to carry out the assessment. Consultation with affected groups will continue throughout the development of the project. A full assessment will be carried out when the new project proposals are received from the LEP.

FINANCIAL IMPLICATIONS

26. It is estimated that the revenue funding required to progress the project to financial close can be met within the provision included in the budget for 2009/10. The current estimate is that, if a carry forward of 2008/09 funding is approved, a further £225k will be required. The budget included £350k, so a saving in this area is currently predicted to offset pressures elsewhere.

27. The ongoing revenue implications of the scheme cannot be determined until the proposals are finalised, as stated in paragraph 16 above. However, it is essential that the finalised scheme is designed to ensure that the running costs are no more than current costs. Otherwise borrowing for the scheme will not meet the Council's own criteria for prudential borrowing, which would have major implications for the Council's financial management, and its key objective in the Corporate Plan of being a financially sound and efficient Council. This has been agreed with Dave Kempson on 15 April 2009.

RISK IMPLICATIONS

27. The project risks are managed through a risk register that is regularly reviewed by the project board. Risk management actions are coordinated by

the Project Manager. When the New Project Proposal is submitted, the LEP will take on responsibility for managing the risk register.

28. If approval to proceed is given there is a risk that:

- Adequate capital funding is not available for the project to proceed.

29. If a decision is taken not to proceed the principal risks are:

- There remains no viable replacement for Wardown Sports and Leisure Centre.
- The Centre will become uneconomic to run in the short to medium term.

COUNCILLORS CONSULTATIONS

30. The lead Executive Member, Cllr Simmons, has been consulted in the preparation of this report.

STAKEHOLDERS CONSULTATIONS

31. Sport England and the Amateur Swimming Association have been consulted.

OPTIONS

32. Executive can accept the recommendations as set out or decide not to proceed with development of the project.

APPENDIX

33. Appendix A – Luton Aquatics Centre Outline Business Case (numbered separately)

BACKGROUND PAPERS

Executive Report 17th November 2008 – Item 8 Luton Aquatics Centre Feasibility Study