



Public Agenda Item: Yes

Title: **Granting of Long Leases to Sports Clubs**

Wards Affected: **All Wards**

To: **Council** On: **13 July 2011**

Key Decision: **No**

Change to Budget: **No** Change to Policy Framework: **No**

Contact Officer: **Chris Bouchard, Asset Management**

☎ Telephone: **01803 207920**

✉ E.mail: **Chris.Bouchard@tedcltd.com**

1. What we are trying to achieve and the impact on our customers

- 1.1 To promote a policy which enables and encourages sports clubs to develop longer term strategies for the provision of sports facilities.
- 1.2 To provide Members with guidance on a proposal to grant long term leases to sports clubs.
- 1.3 Long term leases would allow the clubs to apply for grants to improve their facilities.

2. Recommendation for decision

- 2.1 **That the Mayor be recommended to authorise the Executive Head of Commercial Services, in consultation with the Chief Executive of the Torbay Development Agency, to grant leases for up to 40 years to sports clubs on acceptable terms with each case being considered on its merits.**

3. Key points and reasons for recommendations

- 3.1 The Mayor met with the Sports Council on 9 June 2011 to discuss a proposal to grant 40-year leases to the Bay's major sports clubs as he felt that this would give them a better chance of applying for grants to improve their facilities.

3.2 A report setting out the available options was discussed at the Place Policy Development Group meeting on 27 June and the recommendation from that group was that option 2 be adopted. This would allow the Council to grant leases with the Clubs having the confidence that, if they need longer term lease to assist with grant applications, then the Council would be supportive.

For more detailed information on this proposal please refer to the supporting information attached.

Steve Parrock
Chief Executive, Torbay Development Agency

Supporting information to Report

A1. Introduction and history

- A1.1 There are a large number of sports clubs within Torbay who already have or are negotiating leases with Torbay Council – see Appendix 1 for details. The length of lease varies from club to club with the length being dependant on both the aspirations of the club and the Council's long term views for the leased areas.
- A1.2 The Council does not presently have a policy for determining the length of leases and responds to requests from clubs on a case by case basis. For example, a 40-year lease was granted to the Torquay Tennis Club to facilitate the creation of the indoor courts at Shedden Hill costing circa £1 million.
- A1.3 The Senior Natural Environment Officer within Residents & Visitors Services has advised that a number of funding bodies do not require clubs to hold leases for longer than 21 years to obtain funding. For example, it is understood that the funders only required Torquay Tennis Club to have a 21-year lease for the creation of the indoor courts.
- A1.4 40-year leases have also been granted to the umbrella club for the rugby and cricket clubs and to the bowling clubs at Queen's Park, Paignton and officers are currently in negotiation with clubs at Torquay Recreation Ground and Cricketfield Road Playing Fields for the granting of 40-year agreements.
- A1.5 The leases already granted were on the basis that the clubs pay the market rent for the facilities. Officers do have delegated powers to offer grants to help clubs off-set the full or partial cost of the market rent in certain circumstances. For example, the Torquay Tennis Club was awarded a grant of £4,000 pa to cover the full rent for their premises.
- A1.6 In the majority of cases the clubs have also become responsible for the maintenance of the land and building with the rent reflecting their increased liability.
- A1.7 For the purposes of this report a sports club is defined as being a recognised club with a sport governing body. As such, for example, whilst a Sea Scout group may undertake sporting activities (e.g. sailing and canoeing) they would not be considered to be a sports club.

A2. Options / Issues and Risks

Available Options

1. That the Council by default grants 40-year leases on acceptable terms to all sports clubs within Torbay.
2. That the Council grants leases for up to 40 years on acceptable terms with each case being considered on its merits.
3. That the status quo is maintained with the Council considering requests for leases on a case by case basis having regard to the aspirations of the clubs and the Council's long term views for the leased area.

A2.1 Outline of significant key risks / issues

A2.1.1 There are a number of risks, which are applicable to all 3 options (regardless of the length) and these are set out below.

It may also not always be appropriate to offer leases to all clubs. It is possible that a lease to one particular club for a small area within a larger asset may prevent the development of that larger asset. This may be for purposes other than sport but it may also prevent a larger scale sports development, which would benefit the wider community.

The granting of medium to long term leases will mean that the Council loses control over the provision of sporting facilities within the Bay for the duration of the leases. It is unclear what facilities will be required in the future and the Council would not be able to directly control the use of its land and buildings during the period of the leases.

There is also the risk that, if the clubs took the lease and did not apply, or were unsuccessful, in obtaining grant funding then the land might not be used to its full potential for the length of the lease with the Council being unable to use it for the same or any other purpose. For example, a club's membership may fall significantly over time and it may not be able to provide the same level of activities with the Council being unable to make use of the land.

A2.1.2 The following is an assessment of each option.

Option 1

A number of clubs already have leases with the Council. They may not want to commit their current and future members to taking on the liabilities associated with a 40-year lease. A surrender and re-grant may have Stamp Duty Land Tax (SDLT) implications for the club since they will have to pay tax on the value of the new lease. There will also be a cost implication in terms of the costs involved with preparing the surrender documentation and the new lease. In normal circumstances the Council would look to the clubs to pay these fees but, if it offers the clubs new leases they may expect the Council to pay its own and their legal and surveyor's fees.

Option 2

This is a pragmatic option which gives all sports clubs the opportunity to request leases of up to 40 years. Whilst each request will be considered on its merits, it is anticipated that leases of up to 40 years may be granted.

Option 3

The status quo is considered to still be an option but it does not give the clubs the confidence that the Council would support the principle of a long lease. The length of time spent negotiating leases can vary for many reasons but it is considered that sufficient time should be spent by both the Council and the clubs to consider the terms since the lease will set out long term commitments for both parties.

A2.1.3 Whichever option is adopted officers are of the view that a protocol should be set up for the Council to consider requests for longer leases. A suggested protocol is as follows:

- A. Requests are considered by the Place Policy Development Group for a steer about whether the request is agreed 'in principle'.
- B. Ward Councillors and the relevant community partnership to then be consulted about the principle.
- C. A report then to be taken to Council for their consideration with the views of the Ward Councillors and the community partnership being incorporated into the report.

Consideration will also need to be given as to the principal terms of any long term lease. It is suggested that the principal terms of any lease should be as follows with any variation being agreed with the Executive Leads with responsibility for assets, sport (tourism) and sport (residents):

- i) The Club pays a market rent for the premises.
- ii) The Club is responsible for the insurance and maintenance of the land and buildings with the Club taking the facilities in their existing state.
- iii) Where no existing lease (within the provisions of the Landlord and Tenant Act 1954) is in place, the lease is excluded from the security provisions of the L&T Act 1954.
- iv) The Club to adhere to the agreed sports development plan (if required by the Council).
- v) The Club pays the Council's reasonable legal and surveyor costs associated with the granting of the lease and, if applicable, the surrender of the existing lease.

The granting of any lease of open space is deemed to be disposal of open space and therefore the proposed granting of the lease needs to be advertised in accordance with the Local Government Act 1972.

A2.2 Remaining issues / risks

A2.2.1 It is felt that the policy should be extended to all sports clubs within the Bay to avoid a claim that the Council is being selective. Care will, however, have to be taken as to what premises is leased to the clubs. A large number of football clubs hire pitches and the use of the changing rooms from the Council at, for example, Clennon Valley and King George V Playing Fields in Watcombe. It would be impractical to lease out an individual pitch with changing facilities as this would deny the other clubs who use these at other times from using them. In these instances it may not be possible to offer any type of lease, regardless of its length.

Whilst football is used as an example above the same principle could apply for a number of other sports.

A2.2.2 The Council will also need to ensure that it complies with its Financial Regulations in respect of property disposals – see Appendix 2 for details. For those premises not currently occupied by clubs consideration will therefore need to be given as to whether the lease should be tendered or the Council deals with one particular club. If the former then the Council will be able to demonstrate that

it has received reasonable consideration. If the latter then it is considered that any agreed rent would need to be verified by an external valuation.

A3. Other Options

- A3.1 The Council could consider lease requests, which are longer than 40 years. This, however, is not considered appropriate for leases to sports clubs since, as far as officers are aware, no funders require clubs to have leases for longer than 40 years with a number only requiring terms of 21 years or less.

The Council has in the past capped leases to sports clubs at 40 years. For any lease, which is longer than 40 years the Upper Tribunal (formerly the Lands Tribunal), under s84 of the Law of Property Act 1925 may on certain grounds, after 25 years into the term, discharge or modify restrictions as to user or buildings on the land affecting the leasehold interest.

Only granting leases to a maximum lease of 40 years therefore prevents clubs applying to the Upper Tribunal thus safe guarding the Council's position.

A4. Summary of resource implications

- A4.1 Asset Management of the Torbay Development Agency, Residents & Visitors Services and Legal Services would be involved with the negotiation and preparation of the legal documentation although none are sufficiently resourced to deal with a possible influx of requests for leases. This could result in the lease preparation taking longer with costs potentially being higher.

A5. What impact will there be on equalities, environmental sustainability and crime and disorder?

- A5.1 It is possible that other voluntary organisations (e.g. scout groups) may consider that a policy about granting long term leases to sports clubs is inequitable and that the policy should be expanded to cover other voluntary groups.
- A5.2 The granting of long terms leases will assist with the sustained provision of sporting facilities within Torbay.
- A5.3 It is considered that the ability to participate in sport will help provide a positive outlet for people's energies, which may reduce their desire to take part on criminal activities. This can, however, be achieved without granting long term leases.

A6. Consultation and Customer Focus

- A6.1 The proposal has already been discussed with the Sports Council and further consultation will be carried out on the receipt of any request for a longer lease with the relevant Community Partnership in line with the suggested protocol outlined in this report.

A7. Are there any implications for other Business Units?

- A7.1 No

Appendices

Appendix 1 – List of Agreements with Sports Clubs

Appendix 2 - Extract from Financial Regulations

Documents available in members' rooms

None

Background Papers:

The following documents/files were used to compile this report: None