	<b>REPORT TO THE DEPUTY LEADER TO BE HELD ON 13 SEPTEMBER 2007</b>
	<b>Key Decision</b> <b>Yes</b>  <b>Forward Plan No</b>
<b>Corporate Priority</b>  <b>Building Prosperous Communities</b> <b>Creating Healthy and Vibrant Communities</b>	<b>Cabinet portfolio</b> <b>Cllr H Tindall</b> <b>Holder</b>

**REPORT OF: THE HEAD OF ENGINEERING AND HARBOUR SERVICES - HEngH/07/47 AND THE HEAD OF REGENERATION SERVICES - HRgn/07/27**

**WARDS AFFECTED: WHITBY AND DISTRICT**

**SUBJECT: WHITBY SHELLFISH HOLDING FACILITY**

**RECOMMENDATIONS:**

It is recommended that, authority be given:

- i. to enter into a contract with Yorkshire and Humber Seafood Group to accept additional funding for the project of £322,904 (to be added to existing funds of £7k);
- ii. for inclusion of the project in the Council's capital programme with a value of £329,904;
- iii. to grant an exemption from contract procedure rules under CPR rule 20(2)(j); and
- iv. to approve entry into the following contracts:
  - (a) with Quibells & Son (Hull) Ltd in respect for design and build of the building in the sum of £201,762;
  - (b) with Aqua Logistix in respect of the internal fit out, in the sum of £99,500.

## **REASON FOR RECOMMENDATIONS:**

To enable the construction and fit out of Whitby Shellfish holding facility in line with previous decisions to build the facility for the future prosperity of the fishing industry in North Yorkshire.

## **HIGHLIGHTED RISKS:**

- Principally failing to assist in securing the future viability of the fishing industry in Whitby and other risks as shown in the attached risk matrix.

## **1. INTRODUCTION**

- 1.1 The proposal for a shellfish holding facility in Whitby was developed by officers working with an Overview and Scrutiny Committee Working Group with funding from Yorkshire Forward. The original arrangement was that external funding for the facility would be provided to the Council, however, report HRgn/07/13 and HEngH/07/29 to Cabinet of 19 June 2007 explained that external funders had provided the funding to Yorkshire and Humber Seafood Group to undertake the project, on the understanding that the Council would project manage the project on behalf of Yorkshire and Humber Seafood Group (YHSFG).
- 1.2 It has become apparent however, that this is not the most efficient mechanism to deliver the project, in particular the cost would be greater to the Yorkshire and Humber Seafood Group if delivered by it, in that manner and it will be undeliverable within the YHSG's available budget. With the agreement of Yorkshire Forward, the Yorkshire and Humber Seafood Group propose to pass on the funds provided to it for the project to the Council for the Council to undertake and manage the project. This in effect returns the proposal to the previously proposed arrangements that formed a project within the Council's capital programme, however, it means that any cost over run will also pass to the Council.

## **2. CORPORATE OBJECTIVES AND THE COMMUNITY PLAN**

- 2.1 The Shellfish Holding Facility Project meets the key objectives identified within the corporate plan:
- Building Prosperous Communities
  - Creating Healthy and Vibrant Communities

## **3. BACKGROUND AND ISSUES**

- 3.1 The purpose-built facility on Whitby's Fish Quay will house specialist holding ponds, enabling the storage of all five of the principal target species of brown crab, scallops, nephrobs and lobster and most notably velvet crab, for periods

of up to 3 months. Such a facility has been identified as necessary to ensure the local fishing industry's success and sustainability.

- 3.2 Once built, it is proposed that the management, running and maintenance of the facility is undertaken by a fishermen's co-operative under the terms of a lease to be determined by the Head of Property Services. The co-operative has still to be established as a legal entity, but this is now in hand.
- 3.3 Funding of £322,904 has been secured for construction by the YHSFG, with this amount spread between Yorkshire Forward and the Marine Fisheries Agency (MFA). In addition there is a residual amount of £7,000 remaining from the feasibility study funding previously allocated by Yorkshire Forward, they have indicated that this can be used to support the funding required to deliver this project. As the funding was to be to YHSFG rather than the Council, it was previously recommended that the Council act as project managers for YHSFG who would act as client for the construction project. A licence was to be granted to YHSFG to build the facility on Council land, subject to release of the building to the Council upon completion. The Council would then be able to enter into an agreement with the co-operative.
- 3.4 The previous report identified that the funding secured by YHSFG is £322,904. In order to ensure that a suitable design can be delivered within budget, a revised specification has been agreed with YHSFG the contractor and co-operative. This means that the shellfish trays will be arranged on 2 tiers for the maximum expected storage requirement. This enables the reduction of the floor space required by one quarter of the original.
- 3.5 The table below identifies the estimated cost of the new specification, inclusive of VAT which would have to be met by YHSFG, if acting as construction client. YHSFG is not VAT registered and so is not able to reclaim VAT from Customs and Excise.
- 3.6 The budget available for the project is £329,904 which includes a sum of £7,000 carried forward from the feasibility stage of this project.

	Net Cost £	VAT £	Total £
Design and Build contract	201,762	35,308	237,070
Fit out contract	99,500	17,413	116,913
SBC Project Management fee	20,000	3,500	23,500
<b>Total including contingency</b>	<b>321,262</b>	<b>56,221</b>	<b>377,483</b>

- 3.7 The design and build contract should mean that the risk of cost overrun is low, and an adequate contingency is included to mitigate against the risk to the Council should an overrun occur. Inclusion of non recoverable VAT would increase the cost considerably.
- 3.8 Discussions between Yorkshire Forward and YHSFG have identified that although no increase in MFA funding is likely. Yorkshire Forward would be sympathetic to additional and justified funding of this arose. However, funding

cannot be extended to cover the costs of VAT. An alternative arrangement for project delivery has therefore been proposed and agreed by YF & MFA. Rather than act as project manager for YHSFG, the Council will act as contract client as well as project manager. Funding will still be drawn down by YHSFG with whom the funding arrangements have been made. The funding will then be passed over to the Council in a timely manner. By this arrangement, as the Council is able to reclaim VAT, the project can be delivered within the sum inclusive of contingency of £329,904.

## **4. CONSULTATION**

4.1 Consultation with the following stakeholders have previously taken place in the detailed development phase of the scheme:

- Council's services
- Portfolio holder
- Local Ward Councillors
- Scarborough Borough Council Cabinet.
- Economic Development and Harbours Overview and Scrutiny Committee
- Development and Regulation Committee
- Whitby Harbour Users
- Whitby Fishermans Co-operative
- Whitby residents: Through the statutory planning process

4.2 The scheme location, design and development has been informed through engaging with these groups.

## **5. ASSESSMENT**

5.1 It is considered that the risk to the Council arising from the alteration of arrangements for project delivery remains manageable. It will be necessary to ensure that YHSFG draw down and pay to the Council the monies in a timely fashion and this has been built into the proposed financial agreement with the YHSFG and Scarborough Borough Council. The project can be delivered for a lower overall cost by the Council acting as contract client and project manager.

5.2 There is now a need to approve the project for inclusion in the Council's capital programme, as the previous planned method of project delivery was for the Council to act only as project manager.

5.3 The conditions of the funding offers require that the building is built, fitted out and fully operation by the 20 March 2008. In order to comply with this, the contract must be let early in September 2007. This can be achieved provided that the necessary funding is agreed between Yorkshire Forward, the MFA and YHSFG are in place and that approval is given for the Council to agree to accept funding from YHSFG and to contract for works for the sums specified at 3.6.

## **6. IMPLICATIONS**

### **(a) Policy**

- 6.1 If not made as an Urgent decision, the scheme would need approval from Council as it involves the addition of a project to the Council's capital programme.
- 6.2 However, the scheme was originally included in the Council's capital programme when it was hoped that external funders would provide funding to the Council direct, and Council previously agreed to this. It was only removed from the programme as a consequence of the external funders decision to fund Yorkshire and Humber Seafood Group to deliver the scheme rather than the Council. The proposed decision returns the proposal to the previous arrangement.

### **(b) Legal**

- 6.3 Approval is being sought as an urgent decision in accordance with the Council's Constitution and within the powers conferred on the authority by statute. The decision is requested to be made as an urgent decision, as unless the project is let in September 2007, it will not be possible to deliver the scheme within the external funders' required timescale. Accordingly it is not possible to delay a decision.
- 6.4 The value of the contracts is below the level at which EU Directives apply. The project was originally tendered in 2006. Two tenders were returned for the design and build element and only one tender for the fitting of the building. An exemption from contract procedure rule 20.2(j) is therefore sought on the grounds that the number of tenders returned was below four. The tenders originally received exceeded the project budget. Those tendering for the design and build element have been approached with a revised specification and only one revised tender fell within the project budget, it is proposed that that tender be accepted (Quibells Ltd) and the single tender for fitting the building (Aqua Logistix). It is intended that the form of contract used for the building will be the JCT Design and Build Contract 2005. The form of contract used for the supply and fit of internal equipment will be the Council's standard services contract.
- 6.5 Initial design work on the scheme by the contractor has been commissioned on a letter of intent limited to a sum within the funds currently held by the Council for the scheme.

### **(c) Financial**

- 6.6 Funding of £329,904 for the scheme (including funds currently held by the authority) has been secured by the YHSFG and £321,262 is required. It is not expected that there will be a need for a contingency for the internal fittings as these are being fitted in new purpose built building. The design and build contract however, will have a contingency equating to 8.5% of the contract value. The proposed contract with YHSFG includes a clause making the company liable for overspend on the project save if this is unreasonable.

- 6.7 In terms of viability of the completed facility, a full business plan and commercial viability assessment for the facility has been undertaken by the YHSFG which indicates that the facility will be financially sustainable.
- 6.8 It should be noted that should the co-operative responsible for undertaking the lease and management of the facility cease to exist, the revenue costs associated with the facility would revert to the Council. However the likelihood of this happening within the foreseeable future is assessed as being low and in mitigation the Council would either undertake the operation of the facility directly or offer the lease to other private operators.

**(d) Equality & Diversity**

- 6.9 Consideration of equality and diversity issues has been taken into account in the design of this facility.

**(e) Planning, Crime and Disorder, Health and Safety and Environmental Implications**

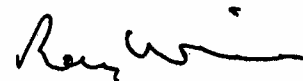
- 6.10 All health and safety and environmental implications will be encompassed within the construction contract in accordance with construction law and the Council's Constitution.
- 6.11 No other significant implications will arise from this decision.

## 7. ACTION PLAN

- 7.1 Outline Action Plan:
- |                                     |                   |
|-------------------------------------|-------------------|
| Design and build contract initiated | by September 2007 |
| Construction starts                 | October 2007      |
| Facility built and fitted out       | March 2008        |
| Building operational                | by April 2008     |



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## Risk Matrix

<b>Issue/Risk</b>	<b>Consequences if allowed to happen</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigation</b>	<b>Mitigated Likelihood</b>	<b>Mitigated Impact</b>
Approval for SBC to act as building contract client and project manager not approved.	Project may not proceed.	<b>Not Likely</b>	<b>Major</b>	Capacity exists within SBC to undertake the works at an acceptable monetary rate within the time period required.	Not Likely	Low
Revised project costs escalate over and above allocated budget.	Scheme not completed or more capital required.	<b>Very Likely</b>	<b>Medium</b>	Detailed cost estimates have been undertaken by the preferred tenderer and project management team on a footprint.  Sufficient contingency has been built into the cost estimate.	Not Likely	Low
Delays in project delivery, start September, complete 20 March 2008.	Funding may be withdrawn.	<b>Almost Certain</b>	<b>Medium</b>	Early approval and start on site.	Likely	Low

Issue/Risk	Consequences if allowed to happen	Likelihood	Impact	Mitigation	Mitigated Likelihood	Mitigated Impact
<p>No operator to undertake management of the facility. Funding condition of additional 2 jobs.</p>	<p>Facility may be redundant leading to possible claw-back of funding, capital loss to the Council, unnecessary environmental impact and reputational damage.</p>	<p><b>Likely</b></p>	<p><b>High</b></p>	<p>Fisherman's co-operative is being established and are committed to undertake management, maintenance and running of the facility. 2 staff full time as minimum.</p> <p>Alternative arrangements as specified in 6.5 of this report.</p>	<p>Not Likely</p>	<p>Low</p>