

Castle Cove Dartmouth

1. A report was presented to Executive on 6 March 2008 recommending that a sum of £35000 be agreed as a contribution to the re-instatement of the path to Castle Cove bathing platform. It further recommended that following re-instatement the ongoing liability for the repair and maintenance of the path be transferred to a local trust which will be set up for this purpose.
2. Executive resolved to accept the two recommendations.
3. The path to the platform has been a matter of public concern and debate for some time and as the report pointed out there is wide public demand for its reinstatement since the bathing platform is a popular location.
4. There are a number of factors which although in the report are not reflected in the recommendations.
 - a. The funds are not to be released until such time as the balance of the funding from the community is fully secured and banked.

Comment: The funds may well be produced without a suitable and sufficient trust in place to manage the structure after completion. This would mean that the Council would still remain liable for a structure which could well be considerable in view of the location and its exposure

- b. There needs to be a local; trust set up to take responsibility for the maintenance and repair of the structure.

Comment: The trust needs to be competent to take on the responsibility for the structure. What guidelines will be used to determine their competency and how will this be monitored. Trust membership will change over a period of time. If the trust ceased to operate would there be a liability reverting to the Council?

- c. There is considerable concern over the stability of the cliff face

Comment: The following are the comments of James Stubbs (interim Head of Property Services) regarding the cliff:

"I've asked Paul Taper to look into what measures we would have to put in place to guarantee the long term stability of the surrounding rock face. The initial appraisal is that they may be too onerous to undertake, but Paul will advise fully in due course.

The stabilisation works to make the cliff suitable to build the bridge are included in the estimated costs. However the issue is that the rock is constantly changing and will require regular inspections. Also, it may be a number of years before the community group raise the funds in order to commence work. By this time the rock conditions may have changed.

By way of information, I have spoken with Gaynor Hughes in External Funding to find out what the status the community group has i.e. are they a charity or a trust. Gaynor reports that they would still have to form themselves legally and they were awaiting the outcome of the Exec.”

Whilst accepting that this is a natural structure and there is little that the Council can do to mitigate against any movement or falls, the implication from the recommendation to the Executive is that we will carry on with the work. Members of the public may well only dwell on the minutes of the Executive and the report without considering the risks including in the report. The factors that may affect the work being started, let alone completed, need to be spelled out in the resolution so that there can be no doubt in anyone's mind that there are quite definite conditions attached to the recommendation and subsequent resolution

- d. The opinion of our insurers was sought by Keith Way our insurance officer regarding our public liability cover for the structure.

Comment: The opinion of Zurich Municipal is shown below. It will be seen that they are of the opinion that if we knowingly place members of the public in a situation where they could be affected by unstable cliffs they would not accept liability and we would void our insurance cover.

“I have spoken to Mohammed Islam in Zurich Municipal's public liability claims section. I explained the issue with the possible reopening of the footpath to give access to the bathing platform where the surrounding cliffs that are owned by SHDC are still unstable. The advice I received is quite straightforward - if we allow the reopening of the footpath where we know that it could be affected by unstable cliffs (with the associated public liability issues) then we would be knowingly creating a hazard and therefore void our insurance cover. “

5. Whilst accepting that there are very good community reasons for this project to go ahead we need to ensure that the public are aware that there are conditions which need to be met before any funds are utilised and any work is commenced. Additionally we need in place a plan to ensure that the trust are not only competent to take on the liability but also to maintain that competency into the future

Pete Osborne
Risk and Health and Safety Advisor
14 March 2008

	Risk	Action to Mitigate
1.	Works are undertaken and the community fails to secure 50% of the funding for the project	<ul style="list-style-type: none"> • No works are to be commenced until the balance of the funding is fully secured and banked.
2.	Cost estimates for the project do not accurately reflect the actual costs which then lead to the budget being exceeded	<ul style="list-style-type: none"> • No contract will be awarded until officers are confident that costs will be within budget. If tenders exceed the budgeted figure this will be referred back to Members for consideration.
3.	Ongoing rock falls create risks to path users and additional costs for the Council	<ul style="list-style-type: none"> • Works to the cliff face are included in the cost estimates for the work. However, ongoing risk of failure is difficult to mitigate in this exposed environment. • The stability of the rock face to be reviewed prior to commencing any works to install the path, and in the event that movement is evident which would lead to significant costs the Council's decision to part fund the project shall be reviewed.
4.	Local trust is not established to take responsibility for ongoing maintenance of the structure	<ul style="list-style-type: none"> • The local community will have to be clear that if the path is constructed South Hams Council will not take responsibility for its ongoing maintenance in any case.
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5.	Council reputation is adversely affected when the it exercises the right not to commence work or ceases work during construction due to instability of cliff	
6.	Local trust proves not to be competent to take on the liability	
7.	Local trust not able to obtain public liability insurance to cover the risks	
8.	Local trust ceases to operate or cease to be able to demonstrate competency	
9.	Council employees, Members of the public and/or contractors injured due to rock falls either during construction or following construction but before handover to trust	

10.	Claim against the Council following an injury on the grounds that the trust were not competent to take on the liability	
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