CITY OF CARDIFF COUNCIL CYNGOR DINAS CAERDYDD



CABINET MEETING: 19 MARCH 2015

CARDIFF INTERNATIONAL SPORTS STADIUM

REPORT OF DIRECTOR OF SPORT, LEISURE AND CULTURE

AGENDA ITEM:4

PORTFOLIO: COMMUNITY DEVELOPMENT, CO-OPERATIVES AND SOCIAL ENTERPRISE (COUNCILLOR PETER BRADBURY)

Appendix 2 is not for publication as it contains exempt information of the description in paragraph 16 of Part 4 of Schedule 12A of the Local Government Act 1972

Reason for this Report

To seek Cabinet approval to remove the Cardiff International Sports Stadium from the Council's wider procurement process for leisure facilities and lease the Stadium and grounds to Cardiff and Vale College, which would sub-let the sports facilities to the House of Sport Limited. The agreement to issue a lease would be dependent upon the Council receiving a satisfactory final business plan from the College. A draft has been received and a summary is appended to this report. The College, allied with the House of Sport, would invest in the facilities, add new ones and take a full repairing lease on the facilities and premises, with the exception of the track.

Background

- 2. Currently, the Cardiff International Sports Stadium (CISS) is one of 10 Council-run leisure facilities within the leisure management procurement process. Pre-Qualifying Questionnaire returns have been made by a number of organisations interested in managing the stadium, which has been promoted to the market as a separate 'lot' to the other facilities, in order to afford the Council the opportunity to remove it from the procurement process should there be a desire to do so. In light of Council officers having previously identified potential local interest in CISS, there is a saving against CISS in 2015/16 of £305,000.
- 3. A proposal has been received by Cardiff and Vale College to take CISS on a 30 year lease from the end of June 2015, enhance the facilities there and to manage it for community and student use. Sports facilities on the site would be sub-let to The House of Sport (a 50/50 joint venture company between Benjaya Assets of Malaysia and Borley Engineering Page 1 of 7

Ltd). Council officers have had a number of discussions with both the College and the House of Sport, and clarity is emerging on the core principles of the proposal. The basis of the proposal is as follows:

- The Council would issue a 30 year lease to the College with peppercorn rent that could be reviewed should significant new financial investment over and above the initial planned development be pledged to be made into the premises and grounds in the future.
- Any surpluses retained within the operation would be re-invested into CISS.
- The College would govern via a Sub-Committee of its Finance and Estates Committee, on to which the Council and House of Sport would be co-opted into membership. There would be a wider stakeholder group, which would represent the interests of user organisations and involve bodies such as Cardiff Athletics Club, Welsh Athletics and the Sports Council for Wales.
- The House of Sport would take a sub-lease on the sports facilities from the College. Sub-leases would be assigned to Welsh Athletics and Cardiff Athletics Club as core tenants of the building and grounds.
- The College would take on a full repairing lease from the Council for the stadium and grounds, although the full repairing element of the lease would exclude the track.
- The College would replace the artificial pitch, potentially add a further artificial pitch, and a further sports hall would be constructed at the House of Sport.
- The College would redesign the internal accommodation of the grandstand to create sports education and sports medicine services, and operate Higher Education courses from the site in sport fitness.
- The complex would be recognised as the 'Leckwith Sport and Education Campus'.
- The Council would pay the capital cost of replacing the track at an estimated cost of circa £500,000 as a one-off payment, which would be required in three to four years' time. The track replacement would be to recreational standard. Any additional cost to upgrade the track to elite level would have to be secured by the College from external sources. Beyond this initial payment, there would be no funding provided by the Council towards meeting the costs of track replacement in the future.

Issues

Business Plan

4. A draft business plan has been submitted by the College, which is a background document to this report. A short summary of the business plan features as Appendix 1 to this report.

Timing

5. If CISS is to be removed from the procurement process, it would be preferable for this to be done as soon as possible to avoid wasted effort

and costs for the other organisations involved in the leisure portfolio procurement. If CISS is not removed from the procurement process, then there will not be a saving in 2015/16 and the Authority's budgetary plans will be £305,000 short. If CISS is removed from the procurement process, then the Council would not be able to 're-enter' it to that process in the future.

- 6. An agreement to lease would need to be agreed by 31 March 2015, which would include a licence for the College to occupy the premises, with view to the lease being signed by the end of June 2015, transfer of staff at the end of June and the College taking over the operation of the facility from the Council on 1 July 2015.
- 7. The College believes that its business case would not enable the Stadium to operate at the required and optimum financial level until September 2015, when students would be on site and when the new artificial pitch could be in place. Also, as April, May and June are busy times for Athletics and there are already forward bookings for this period, the Council would continue to manage and finance the Stadium and facilities until 1 July, when the College would take over the responsibilities. This would enable a smooth transfer and ensure that there was sufficient time for new operating processes to be put in place by the College, which through the access agreement, would be able to work alongside the Council in the first three months of operation in the 2015/16 financial year. Based on the first three month's operation of CISS in 2014/15, the Council's financial commitment required for this period could be in the region of £150,000.

Track Replacement

8. The track at the CISS has to be replaced every 12 to 14 years or so at a cost of approximately £750,000 for an elite level track as at present, or approximately £500,000 for a recreational level track. The track will need to be replaced in approximately four years' time. It is proposed that the Council would pay for the track replacement when due in three or four years' time as a one-off payment and that this would be to recreational level. Thereafter, the Council would have no liability to pay for track replacement. Note that currently, there is no allocation within the Council's programme for track replacement, although it is worth noting that the Council would have to have made such provision anyway in the near future if the Stadium was to be kept by the Council.

Local Member Consultation

9. The views of Councillors Richard Cook, Elsmore and Patel have been sought and to date, there has been no negative view expressed.

Reason for Recommendations

10. The rationale for removing the Stadium from the leisure procurement process is strong in that it would enable continuity of operations within the locality, as the College and House of Sport have good track records

in Cardiff. The leisure procurement process cannot guarantee the level of savings that the lease arrangement promises, and is very unlikely to make the required level of savings in the financial year 2015/16. Also, the leisure procurement process cannot be guaranteed to attract the level of capital investment into new facilities on the site intended by the proposed arrangement. The arrangement would ensure that the Council made the financial saving against the Stadium.

Property Considerations

11. The fundamental reason for pursuing this transfer is to safeguard the public provision at the Cardiff International Sports Stadium. Whilst there will be a property transaction in the form of a 30 year lease to be granted to the Cardiff and Vale College at a peppercorn rent, the main benefit to the Council is that it would no longer have to meet the revenue expenditure. The market value and occupier demand for a unique leisure asset such as this is likely to be limited and the ability to generate commercial revenue is therefore restricted. Pursuant to the General Disposal Consent (Wales) 2003, the Council has power to dispose of land at an undervalue of up to two million pounds if it considers that the disposal is in the interests of the economic, social or environmental wellbeing of the local economy.

Financial Implications

- 12. The detailed financial implications of the proposal in respect of CISS will not be known until a full business plan is received and reviewed. The proposal is based on the Cardiff and Vale College entering into a 30 year lease with the Council and the sports facilities then being sublet to The House of Sport which is a 50/50 joint venture company between the Benjaya Assets of Malaysia and Borley Engineering Ltd.
- 13. The review of the full business plan will need to further set out the financial issues and risks attached to the proposal including the treatment of tax and VAT in particular. Discussions have commenced with the College to set out the Council's VAT position in respect of the facility and to understand how the College will manage any VAT liability.
- 14. As a result of these discussions the Council will also need to consider whether there are any VAT partial exemption calculation implications for the Council. A particular area of concern could be around the treatment of monies the Council contributes in respect of the replacement of the track on a recreational basis.
- 15. The review of the full business plan would include gaining further assurance that the financial investment in the Stadium that is referred to is deliverable. In addition, the review will need to undertake due diligence on the proposals set out in the business plan and the associated plans of those parties the College plans to sub-let to.
- 16. A key saving that has been identified is that of NDR. The College, as a registered charity, should qualify for 80% Mandatory Rate Relief whilst

they are in rateable occupation of the whole site, but if as proposed parts of the facility are sub-let to The House of Sport, then the rating assessment will need to be reviewed and it is possible that those parts let out will then become subject to their own rating assessments. If the tenants of these separate assessments are commercial organisations they will not be eligible for charitable rate relief. The NDR cost for the building is £224,000, therefore the resolution of this issue is a key point within the deliverability of the proposal.

- 17. The position set out in the following paragraphs therefore assumes that the initial high level proposal can be delivered and potential concerns in respect of VAT and NDR overcome. The net budget for CISS in 2014/15 is £538,000 and gross spend is £823,000, which includes £346,000 for facilities management and the £224,000 for NNDR. The Council's Budget for 2015/16 includes a requirement to make savings of £305,000 in 2015/16 against a net budget for the facility of £538,000. Even taking into account the requirement to meet the net costs of the first three months operation, which would be in the region of £150,000, the deliverability of the £305,000 savings is considered to be achievable. If any further savings is realised in 2015/16 then this would help to offset the additional income targets set for the Sport, Leisure and Culture Directorate for 2015/16 and provide some assurance that savings targets in that Directorate for the year could be achieved.
- 18. Clearly, it is possible that by continuing with CISS in the procurement process for the leisure centres, a nil subsidy position could be achieved at some stage in the future. However, the procurement is not at a sufficiently advanced stage to be assured that this is likely to occur. The Director considers that the procurement process would be unlikely to generate the level of capital investment into the site that this proposal suggests and also it cannot be assumed that the procurement process will result in contractors agreeing to full repairing leases.
- 19. The proposal is predicated on the Council providing a one-off payment to replace the existing track to a recreational level standard and an amount of circa £500,000 has been identified as a potential cost. As stated in the body of the report this amount is not currently included within the Capital Programme and further work should be done alongside the review of the full business plan to identify the best way to include this commitment in the medium term. The stadium currently has an asset value on the balance sheet based on the depreciated replacement costs which is historic cost net of depreciation and has been calculated in accordance with accounting guidelines. Prior to completing the review of the proposal, it may be necessary to engage professional valuation with expertise of stadia valuation as part of the best value consideration in respect of the proposal.

Legal Implications

- 20. There are a number of risks which the Council faces in respect of any decision, whether that decision is to:
 - retain the facility in the procurement process;
 - remove the facility from the procurement in order to accept the detailed proposal which develops the initial business case in support of the proposal.

Timing of decision

21. If CISS was removed from the procurement process, then it is better overall for this decision to be made as soon as possible. Equally, once removed it will not be possible to reinstate it into the procurement process. If the proposals are not developed into a final offer which is acceptable to the Council and meets the issues referred to below then the Council could end up having to undertake a further procurement with significantly increased risks of not achieving the required level of savings.

Further Legal Considerations

22. A number of legal matters have to be reviewed in respect of a proposal such as this. A paper has been prepared (Appendix 2) to deal with these issues, which is provided as an exempt, legally privileged advice note designed to assist in understanding the various risks.

HR Implications

23. Currently, there are 11.65 full time equivalents (14 people) who work at CISS. It is envisaged that the Transfer of Undertakings (Protection of Employment) TUPE would apply. The new organisation is currently reviewing whether they are likely to restructure following transfer. Full consultation will take place with Trade Unions and the affected staff regarding the transfer and the conditions of TUPE will be met by the Council.

RECOMMENDATIONS

The Cabinet is recommended to:

- (a) agree that on submission of a final, detailed and satisfactory business plan from Cardiff and Vale College to remove the Cardiff International Sports Stadium from the leisure management procurement process
- (b) delegate authority to the Director of Sport, Leisure and Culture to negotiate the lease and any ancillary documentation to Cardiff and Vale College, in conjunction with the Cabinet Member for Community Development, Co-operatives and Social Enterprise, the Cabinet Member for Corporate Services and Performance and the Section 151 Officer

(c) agree that the arrangement between the Council and Cardiff and Vale College should be predicated on public access to the facilities being guaranteed for the future and the Council being able to monitor and influence its success.

CHRIS HESPE

Director 13 March 2015

The following appendices are attached:

Appendix 1 - Executive Summary of Draft Business Plan

Appendix 2 - Legal Advice Note for Cabinet Members (Exempt)





Proposal to operate and develop the CISS for public benefit and to establish a Sports Campus

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary

Current position

The procurement Memorandum of Information stated that the Cardiff International Sports Stadium (CISS) currently requires a subsidy of £374k although the budget for 2014-15 shows a deficit of £538k. There is also a "hidden" cost relating to the refurbishment of the track of between £350k and £750k every 10 years.

Why does the CISS currently require a subsidy?

The CISS is a "specialist asset" combined with primarily a "seasonal pattern" for core activity.

The simple economics of the current situation is that the current utilisation of the asset in terms of volume of income earning activity and/or the level (price) charged is insufficient to cover the fixed running costs of the asset.

Simply transferring the ownership or management of the asset will not change that.

Something different needs to be done to change the utilisation of the asset and hence the income generated to offset the fixed running costs.

The proposal

The operation of the CISS and the Sports Campus will be a joint venture between Cardiff and Vale College (CAVC) and Cardiff City House of Sport Limited (HOS). This will address the current funding deficit in two different ways, reflecting the skills, experience and contributions of the partners:

- 1. CAVC will relocate the teaching accommodation for their sports department to the refurbished interior of the stadium building.
 - This will provide year round utilisation of the interior space to increase the sharing of running costs and generate additional rental income for the external facilities.
- 2. HOS will fund the installation of a new 3G pitch that will generate additional rental income from the demand for such facilities. They will also secure additional utilisation of the wider stadium facilities and possibly additional grant investment in further facilities, from securing the relocation of Cardiff City Football Club Academy and incorporating the management and promotion of the CISS with their existing arrangements for the House of Sport facilities next to the CISS.

This will provide both year round utilisation of the external space that will generate additional rental income and also increase the sharing of running costs.

Both of these step changes in the utilisation of the CISS will require both partners to invest around £500k each to enable the above proposals to proceed.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary

The Public Sector "safeguard"

It is proposed that the CISS will be leased and the staff (via TUPE) will transfer to Cardiff and Vale College (CAVC).

CAVC is a Further Education College, established by statute and an exempt charity. For the purposes of the Charity Commission it is regulated by the Welsh Government.

The Welsh Government provides around 80% of the College's funding and regulates the College via a Financial Memorandum and Terms and Conditions of funding.

The combination of these factors has established the following regulatory and operational framework on the College:

- It has no shareholders and cannot distribute any surpluses:
- It has a Governing Body, none of whom receive remuneration;
- The Governing Body include the City of Cardiff and Vale of Glamorgan Councils' Cabinet members for Education;
- It is required to have independent internal and external audit, prepare annual accounts and make them publically available;
- The Wales Audit Office have right of access;
- It is subject to the Welsh Language Act, Freedom of Information Act, Public Sector Equality Duty and other legislation and regulations relevant to public sector bodies;
- It has agreed an All Wales Further Education Contract of employment for staff with the Joint Trade Unions;
- It has a Union recognition agreement with UCU, Unison and ATL/Amie; and
- It is a Scheme Member of the Local Government Pension Scheme.

The Council will also be aware that the College successfully transferred the Adult Community Learning Provision, including the TUPE transfer of 110 Council staff, in January 2013. It has previously attended the Council's relevant Scrutiny Committee to enable them to monitor and review progress of that transfer.

The College is also in the process of agreeing the asset transfer from the College to the Council of its Trowbridge Road site as part of the development of the new Eastern High School.

It should also be noted that there is another model of a Welsh Further Education College owning and operating an athletics stadium with Coleg Cambria in Deeside.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary

The importance of the Private Sector "partner"

As noted at the start of this paper, the "problem" that needs to be resolved to reduce the deficit that the CISS is operating at is under-utilisation of the asset.

To address this will require both:

- investment to ensure the facilities are attractive to users; and
- marketing and commercial expertise in maximising the utilisation of sporting assets.

The College already has a long term relationship with House of Sport through the hire of its two facilities on the site opposite the CISS. In a short period of time House of Sport has demonstrated its ability to set up and successfully market sporting facilities for the local community.

House of Sport have confirmed that they are willing to make a capital investment of around £500k in the CISS site to upgrade one of the outdoor pitches to a modern 3G standard as well as their own investment in a third sports hall at the House of Sport site.

The opportunity to combine the marketing and operation of the CISS and House of Sport facilities as a "Sports Campus" provides the necessary platform for dramatically increasing the utilisation of the CISS in a cost effective manner.

Governance and oversight

It is proposed that the College will establish a formal sub-committee of its Finance and Estates Committee to oversee the management and development of the CISS. We would propose to co-opt onto this committee a representative from:

- Cardiff City House of Sport Ltd
- City of Cardiff Council
- the Sports community (Sports Wales)

There will also be a Stakeholder Management Committee to oversee use/utilisation of the facilities and include community representation as well as appropriate club and representative bodies.

This will include Welsh Athletics, Cardiff Athletic Club, Cardiff City Academy, Cardiff City Community Foundation, Cardiff and Vale College, House of Sport and other major user groups such as Canton RFC and Fitzalan High School as appropriate.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary

Safeguarding the stadium asset

It is proposed that there will be a long term (30 years) peppercorn lease for the use of the stadium granted to the College. This lease will include covenants preventing both sale and change of use.

There will be an option to extend the lease beyond 30 years if CAVC and HoS bring forward a proposal for further significant investment in the facilities (for instance the establishment of a sports science centre with a partner University or the relocation of the Cardiff City Academy).

The lease will need to allow for sub-letting and retention of funds from such sub-letting to allow such income generated to offset the costs of the asset and for the existing sub-leases with Welsh Athletics and Cardiff Amateur Athletic Club to continue. A sub-lease will be granted to HoS by the College to allow it to manage and invest in developing the sports facilities.

There will be a requirement for the Council to fund the next refurbishment of the track due in 3 to 4 year's (cost of between £350k and £750k depending on the "standard" of the track). Thereafter the cost of track replacement will be the responsibility of CAVC and HoS that will need to raise these funds by charging users of the facilities.

The membership of the Governing Body management committee by a representative from the Council will provide additional oversight / transparency for the Council that the management and use of the stadium remains "for the public benefit".

Safeguarding staff

1. TUPE

Some £380k of the budgeted cost in 2014-15 is staffing. Many of these staff have long service and Council pay and terms and conditions including membership of the Local Government Pension Fund.

These staff will transfer to CAVC with their current terms and conditions after the appropriate TUPE consultation period with the staff and their union representatives.

We are currently reviewing with the Council which staff will be included in the TUPE transfer. There will be a need to consider how the existing job descriptions of those staff will fit with the nature of the job roles that will be required by the College and HoS, given the changes that will be needed to the operation of the stadium to deliver the £500k savings that are required.

It is hoped that as the College successfully "TUPE'd" some 110 Council staff with the ACL service in January 2013 this proposal will, during consultation, receive the support of staff and unions.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary

Safeguarding staff (continued)

2. Pensions

As CAVC is already a scheme member of the Cardiff and Vale LGPS scheme there will be no issues regarding this transfer as there were none with the ACL transfer.

The actuary will though need to establish the funding transfer value within the scheme between the Council and CAVC – for-inter scheme transfers such as this the funding approach adopted with the ACL staff transfer was that the funding transfer was set at 100% so that CAVC does not inherit the scheme deficit/underfunding of the staff relating to their period of service with the Council

Date of transfer

The provisional date of transfer is 1 July 2015.

This allows time for the formal TUPE consultation with staff to be completed as well as the legal aspects of the transfer and due diligence.

This timing also allows for the bulk of the summer season School Sports days and the major Welsh Athletics Championships to be completed under the current management arrangements, allowing the new team time to shadow these events to develop their understanding of their specific requirements, rather than having to "hit the ground running".

It is also important to note that the only way that the proposals will be able to address the substantial deficit / subsidy situation is by making major investment in the facilities to generate new income streams and spread and share the fixed running costs.

These investments will take time as they require building and refurbishment work – during the busiest season for activity at the CISS – but until these are completed then no additional income will be generated.

For example – the College will not be able to use the income generated from the courses delivered at CISS until September 2015 when the students will be on site. Conversely, the College must be able to "fully operate" from 1 September – the first day of term.

HoS will also need to have the current pitch replaced with the new 3G before increased rental income will be forthcoming. Accordingly, the College will need a "licence to occupy" and a "license for works/alterations" from 1 April 2015 to commence those works.

This date of transfer is part of the arrangement for the Council to support the partners until they are able to deliver those cost sharing and income generation measures.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Financial forecasts

The following forecasts are for the first full year of operation once CAVC Sport is using the facilities and the new 3G pitch and HoS marketing of the facilities are operating. They are are based on the following assumptions:

- Not all Council staff in the 2014-15 CISS staffing budget will TUPE across as a result of held vacancies, internal transfers to other Council departments or through taking up appointment in new College roles based at the new campus;
- The past pension deficits derived during TUPE staff service will be fully funded on transfer and the contribution rate will not increase significantly;
- The lease will be a peppercorn rent;
- Increases in external income will arise from the investment in the 3G pitch and HoS lettings and marketing;
- CAVC Sport operates from the refurbished stadium allowing sharing of running costs;
- CAVC is able to obtain rate relief as the building will be used for educational purposes;
- CAVC will invest £550k of capital in the refurbishment of the stadium to create classrooms and install appropriate IT infrastructure;
- House of Sport will invest £500k of capital in the creation of a new 3G pitch;
- The Council will fund the next track refurbishment in 3 to 4 years' time the partners will need to fund the next track replacement 10 to 12 years after that and so will need to generate income from fees charged for the use of the facilities to fund that replacement.

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

	CAVC	HOS	
			Shared costs
	£'000	£'000	/ recharges
Income			, recital geo
FE Courses	1,078		
14-19 Courses	29		
HE Courses	167		
CISS External income (per 14-15 budget)	61	159	
Booking fees		17	
C&VC Hire of 3G		78	А
Academy		31	
Advertising		11	
	1,335	296	
Staff costs			
TUPE staff	168		
Staffing recharge	(136)	136	В
Teaching staff	582		
Support staff	131		
Management		21	
Premises costs			
Utilities etc	98	28	
HOS Hire of 3G	78		А
HOS 1 & 2 lease	158		
HOS letting agency fee	6		
Other costs			
Examination fees	47		
Recuritment / marketing	40		
Teaching materials	40		
Supplies & services	30	2	
Transport	20	1	
Depreciation / sinking fund			
Stadium (classroom) refurbishment	37		
IT	25		
3G pitch		37	
3G Loan interest		21	
Track sinking fund		10	
Total Costs	1,324	256	
Operating surplus / deficit	11	40	
Tax		6	
Loan Capital		26	
Net surplus / deficit		8	

PROPOSAL TO OPERATE AND DEVELOP THE CISS & ESTABLISH A SPORTS CAMPUS

Executive Summary - <u>Indicative timescale</u>

Date	Action / task	Time scale to complete
2 February 2015	CAVC Governing Body approve proposal	Completed
19 March 2015	Cabinet approval of proposal	Same day
After Cabinet approval	TUPE consultation commence	45 / 90 days (depends on Council's union agreement)
After Cabinet approval	Legal agreements and due diligence commences	
After Cabinet approval	Council commences discussions with current tenants (Welsh Athletics and Cardiff Athletic Club regarding transfer of their sub leases)	
By 1 April 2015	Council grants agreement to Lease	
By 1 April 2015	Council grant license to occupy and license for works	
From 1 April 2015	CAVC commences refurbishments works on stadium HoS commences installation of new 3G pitch	
1 July 2015	TUPE transfer and full lease occupation comes into force	
From 1 July 2015	HoS commence marketing and management of stadium and grounds facilities	
From 1 August 2015	Enrolment and open day events for CAVC sport	
1 September 2015	CAVC sport – first day of term and full operation of campus	