

CABINET MEETING: MARCH 18 2021

REVIEW OF THE LEISURE SERVICES CONTRACT WITH GREENWICH LEISURE LTD (GLL)

CULTURE & LEISURE (COUNCILLOR PETER BRADBURY)

AGENDA ITEM:

Appendices 1, 2, 5, 6, 8, 9 and 10 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14 and 16 of Part 4 of Schedule 12A of the Local Government Act 1972.

PORTFOLIO: CULTURE & LEISURE

Reason for this Report

1. To seek authority to vary the Leisure Services contract with Greenwich Leisure Limited (GLL) in response to the COVID-19 pandemic to improve the long-term sustainability of the contract.
2. As part of (1) above, to seek authority to remove the Pentwyn Leisure Centre from the GLL contract and to take forward an alternative approach to ensure the facility remains open to the public and to deliver new investment into the site.
3. Also, as part of (1) above, to seek authority to further vary the GLL contract to remove the Velodrome facility from the Maindy Leisure Centre site to pave the way for delivery of a new Velodrome facility at the International Sports Village.

Background

4. In November 2020, following the sustained impact of the COVID-19 pandemic, Cabinet authorised a detailed review of the GLL Leisure Services contract to identify potential variations that would improve its long-term sustainability and protect service delivery.
5. The requirement for a review was in response to a number of emerging issues:
 - The significant financial impacts and uncertainty caused by the COVID-19 pandemic.

- The Review of the Council's Leisure Services report undertaken by Audit Wales in 2019/20.
 - The requirement to remove the Maindy Velodrome from the GLL contract to enable the expansion of Cathay High School.
6. The Council entered into a contract for the operation of eight Leisure Centres with GLL from 1st December 2016. Prior to this, the centres were operated by the Council and were subject to an annual operating subsidy of circa £3.5m. The procurement of an operating partner aimed to eliminate the operating subsidy at a time of significant budget pressures whilst implementing new working practices and an improved offer to customers, placing the service on a stronger and more sustainable footing for the long-term.
 7. From the outset, both the Council and GLL fully understood that it would take time for the operating deficit forecast in the early years of the contract to be eliminated. GLL's proposal was to cross-subsidise during this period, from other profitable parts of its business with a view to recovering the position through the following years of the contract.
 8. The Council paid a tapered management fee for the first 3 years of the contract, to support the transition and capital funding was allocated to enable investment in the centres, to be repaid by GLL over the term of the contract. Under the contract, the Council retained control over certain aspects of the service provision, such as pricing and the protection of terms and conditions of Council staff transferred to GLL.
 9. Prior to the on-set of the COVID-19 pandemic, GLL's original projections for eliminating the operating deficit were behind schedule as set out in Confidential Appendix 1. This was mainly due to capital investment works taking longer to deliver than originally expected with service disruption affecting income generation.
 10. The COVID-19 pandemic has increased the financial pressure on the contract and eliminated GLL's ability to cross subsidise from other profitable parts of their business as all of their Leisure contracts are now under pressure. As the pandemic has progressed, the prolonged closure of leisure and gym facilities has resulted in a total loss of income and significant financial uncertainty moving forward.
 11. In the trading year January to December 2020, GLL, supported by the Council, have been able to secure circa £1.86m from the Welsh Government Hardship Fund in addition to circa £1.5m through the UK Government Coronavirus Job Retention Scheme. Even with this unprecedented level of support, the contract has remained in deficit as set out in Confidential Appendix 2.
 12. Although the Leisure Services contract with GLL enabled the Council to eliminate its previous operating subsidy, the priority was to ensure that all facilities remained open to the public. For this position to be sustained over the longer term, GLL will need to eliminate their operating deficit. The main financial

pressure relates to the operation of swimming pools, in particular, leisure pools which demand greater staffing resource. GLL will work with the Council to develop a Five Year Recovery plan to mitigate for the loss of cross-subsidy from other parts of the GLL business and the support from government during the pandemic with a view to eliminating the operating subsidy.

13. In 2019/20, Audit Wales undertook an audit of the GLL Leisure Services contract to determine whether the Council's approach to Leisure Services supported the achievement of its well-being objectives as described in the Council's Corporate Plan and with a particular focus on the well-being objective of 'Safe, Confident and Empowered Communities'. The report is attached as Appendix 3.
14. Audit Wales made a number of recommendations aimed mainly at improving contract management and risk / performance management, ensuring risks and issues are reported corporately to provide the Council with greater certainty that its Leisure Services contract with GLL is sustainable and delivering value for money. The Council's response to the Audit Wales Review is on-going and is set out in summary form in Appendix 4.
15. A key recommendation was to undertake a review of the GLL contract to ensure that the Council properly considers its long-term financial sustainability. The Council has initiated a review with GLL to understand in detail the key challenges and to identify measures that will support post COVID-19 recovery. It is clear that the previous financial challenges have been magnified by the pandemic and the Council remains committed to working with GLL to secure sustainability of the contract.
16. The review of the contract will be an on-going process over the coming months as the leisure sector emerges from lockdown. The initial proposals set out in this report represent an immediate response to the COVID-19 challenges. Continued monitoring and review will be required adapting to changing circumstances, demand and need.

Issues

17. In September 2020, GLL wrote to the Council highlighting their financial concerns, in particular the negative impact that the operation of the Pentwyn Leisure Centre was having on their ability to reduce the operating deficit. The financial performance of all Leisure Centres during the 2019 trading year is set out in Confidential Appendix 2.
18. During the autumn of 2020, the Council approached GLL regarding proposals to relocate the Velodrome facility to the International Sports Village. The Velodrome facility provides a key income stream for the Maindy Leisure Centre, also set out in Confidential Appendix 2. Pre-COVID-19, the Centre operated close to break-even. In 2019, it may have achieved a surplus if it had not suffered from disruption owing to capital improvement works. The proposed removal of the Velodrome would place the Maindy Leisure Centre into an operating deficit position.

19. This report puts forward a proposal to remove both the Pentwyn Leisure Centre and the Velodrome facility at the Maindy Leisure Centre from the GLL contract. The removal of Pentwyn Leisure Centre would more than off-set the financial pressures arising from the removal of the Velodrome facility.
20. In addition to the above, GLL has intimated that their ability to repay the capital recently invested by the Council to upgrade some of the Leisure Centres will be constrained for a considerable length of time and in light of COVID-19 may need to be reconsidered altogether. At this stage in the contract review process Cabinet is not being asked to make a decision on capital repayment. However, in recognition of the fact that there may be a pending issue, this report seeks authority to freeze the current programme of investment until the issue has been fully considered and (as required) report back to a future meeting of Cabinet.

Pentwyn Leisure Centre

21. Pentwyn Leisure Centre continues to be the poorest performing centre in the GLL portfolio, primarily due to the scale of operations of a leisure/beach pool, the absence of a 25 metre pool tank, low gym membership and poorly attended dry-side activities. This is a long term trend and was also experienced when the facilities were operated by the Council. The opening of the Cardiff International Pool in 2008 has meant that the leisure shaped, beach entry pool was no longer a destination facility attracting visitors from wider afield.
22. The facility was built in 1989 and is now in need of significant investment to meet new trends, customer needs and to bring it up to date to attract increased membership and participation. Given the poor performance of the centre over a prolonged period of time, GLL has chosen to invest capital funding available in centres with better potential for delivering a return on investment.
23. Following GLL's letter to the Council in September 2020, a number of possible interventions relating to the Pentwyn Leisure Centre have been considered as a means of improving the overall performance of the GLL contract:
 - a) **Full closure of the Centre.** This would have an immediate positive impact on the wider GLL contract. The estimated benefit is set out in Confidential Appendix 2. However, this would mean a complete loss of provision for the local community.
 - b) **Partial closure of the Centre.** Removal/repurposing of facilities that are loss making, such as the leisure pool, would improve the financial position, however the centre would still operate at a significant deficit. Any repurposing of facilities would also require investment that would need to be re-paid. Closure of the leisure pool would have the greatest impact on the financial position, but would significantly impact the leisure offer.
 - c) **Upgrade the Centre.** This would attract new patronage and would improve the financial position. However, it would not have the effect of placing the overall GLL contract into a significant surplus position and able to service the debt associated with investment in the Centre. If additional capital were

available for investment, GLL would prefer to invest in other centres that have better potential for return on investment.

- d) **Transfer the Centre.** Identify an alternative operator able to repay investment to maintain service provision.
24. The Council remains committed to Pentwyn Leisure Centre remaining open to the public, including the retention of swimming at the site. As such, option (d) provides the best opportunity for long-term sustainability, both for the GLL contract and the community the Leisure Centre serves.
 25. During the COVID-19 pandemic Cardiff Blues gave up their home pitch and associated facilities at the Cardiff Arms Park to accommodate the Local Health Board in the provision of the Dragon's Heart Hospital at the Principality Stadium and to treat patients hospitalised owing to the virus. The Council worked with the Cardiff Blues to identify an alternative venue to operate during this period as elite rugby was permitted to continue.
 26. Given the operating deficit, Pentwyn Leisure Centre was likely to be the last centre to return to full operation and therefore the Council and GLL permitted Cardiff Blues to occupy the Centre whilst it remained closed to the public.
 27. Cardiff Blues have had a positive experience during their temporary use of the Centre and have recently submitted a proposal to the Council that would allow them to establish the Centre as their long-term training base. Their proposal is to provide a rent for operating the Centre, in return for the Council providing capital investment to upgrade. There would be no on-going subsidy from the Council. The proposal is attached as Confidential Appendix 5 and Heads of Terms for a lease attached as Confidential Appendix 6.
 28. As part of their proposal, the Blues would plan to retain the first floor area for dedicated use. The ground floor area would be reconfigured to provide a much-improved cross fit gymnasium, a new 25m swimming pool, retention of the main hall, community rooms, a new catering concession and some office space.
 29. It is also proposed to replace the existing grass pitch with a full sized 3G pitch and a new mini 3G pitch for dual use. As part of the proposal Cardiff Blues plan to develop the site as a Community Rugby Hub and will provide community access to the Cardiff Blues services such as medical and physiotherapy. Learning opportunities and apprenticeships will also be made available. Details of the proposed investment scheme are attached at Appendix 7 and initial costings are attached as Confidential Appendix 8.
 30. The Cardiff Blues proposal would have the effect of eliminating the Pentwyn Leisure Centre operational deficit from the GLL contract whilst keeping the Centre open for public use, including an improved swimming offer. GLL have confirmed that they are content with the Cardiff Blues proposal.
 31. As a result of the temporary closure of Pentwyn Leisure Centre, GLL and the Council have supported Cardiff and Vale Health Board's response to the

pandemic by allowing the main hall to be used as a Vaccination Centre. The occupation of the building is on an initial 12 months lease, up until February 2022. It is anticipated that the facility will remain closed to the public during this period. COVID-19 Regulations do not currently permit outdoor sports, therefore community football has not restarted. As a result, the local football clubs who potentially could be displaced as a result of Cardiff Blues' temporary use of the grass football pitch to train remain dormant.

32. The Council's draft Playing Pitch Strategy, due to be presented to Cabinet in summer, provides a review of playing pitch needs and demands both current and future. The strategy identifies the need for a further six, Third Generation artificial pitches with a particular need in the Pentwyn area. These pitches are able to accommodate fixtures equivalent to four grass pitches, with the advantage of being playable fifty-two weeks of the year for training and competition. The impact of inclement weather in Cardiff has resulted in up to sixteen weeks of cancellations for grass pitches for league fixtures, per season, this has led to long periods of reduced physical activity.
33. The introduction of a 3G pitch as part of a redevelopment will enable local clubs to achieve growth in membership whilst providing a facility that meets the criteria of the Welsh League structure and ground regulations. This will help clubs to reach higher representation in the Welsh football pyramid.
34. The introduction of a 3G pitch as part of a redevelopment will enable the resident club, Pentwyn Dynamos, to achieve growth in membership whilst providing a facility that meets the ground criteria for the highest division of Welsh Football League. The new 3G pitch will also help other local community clubs access much needed training and playing facilities.
35. The financial plan for the Centre and associated outdoor facilities is set out in Confidential Appendices 8 and 9. In summary, the proposed investment in the building would be funded through the proposed rent from Cardiff Blues. Investment in the proposed outdoor facilities would be funded through the disposal of land assets in the Pentwyn ward, as part of the Llanrumney Redevelopment Plan approved by Cabinet in November 2020.
36. The current use of the facility as a Vaccination Centre and its closure to the public until February 2022 would provide an opportunity to undertake works over the period as the pool area remains outside of the UHB lease and will not impact on its operation.

Staffing Implications

37. There will be implications for the staff currently employed by GLL at Pentwyn Leisure Centre. Under the proposals presented in this report, Cardiff Blues will become the operator and employer. TUPE will apply to all staff and the Council will require existing terms and conditions to be protected.

Legal Due Diligence

38. The Council will need to undertake legal due diligence prior to concluding any agreement to ensure the proposal is in line with contract law, property law requirements, procurement regulations and is state aid compliant (subsidy regime).

Maindy Velodrome

39. As part of the proposal to release Pentwyn Leisure Centre from the GLL Contract, the Council would require GLL to release the Maindy Velodrome and associated land from their operation as part of the Maindy Leisure Centre.
40. The proposal is to relocate the Velodrome to the International Sports Village (ISV) as part of plans to complete the leisure destination at this location. The ISV plans are set out in the Cabinet report presented at the March 2021 meeting. The proposal is for the replacement track facility to be funded by the Council's Education Department and from the 21ST Century Schools Programme. The ISV plan is to supplement this investment with additional facilities creating a leading cycling hub in the city for use by all local clubs and the public. Initial consultation in respect of the design of the facility has taken place with local cycling clubs and is on going.
41. The proposal is for the new Velodrome to be constructed and operational at the International Sports Village before the existing facility at Maindy is closed. The remaining facilities at the Maindy Leisure Centre will not be affected by these proposals and will remain open to the public.

Service Specification

42. In addition to the proposed variation of the contract presented in this report, the Council and GLL will continue to review the Leisure Services Contract Service Specification to identify opportunities for meeting the current and future needs and demands for Sport, Leisure and Physical Activity. A number of changes have already been identified as follows:
 - Removal of receptionists to be replaced by a concierge type service
 - Cashless automated payments only
 - Turnstile entry
 - Targeted programming aligned to emerging strategies and in response to the Well-being of Future Generations (Wales) Act 2015
 - Revised opening hours to reflect the needs of the community each centre serves.
43. These proposed changes will contribute to the sustainability of the contract through smarter deployment of resources, reductions in waste, and improved

overall efficiencies. The proposals are within normal contract tolerances and will be implemented from 1 April 2021.

Reason for Recommendations

44. To improve the long-term sustainability of the Leisure Services Contract with Greenwich Leisure Ltd following the COVID-19 pandemic.

Financial Implications

45. The Council has begun a process of reviewing the GLL contract. Cabinet is being asked to agree in principle to proposals to vary the contract subject to further work being undertaken before final decisions are made. Appendix 2 sets out the pre-pandemic issues for each leisure centre but it is not yet clear how the proposed measures set out in this report resolve the financial position. It is noted that the WG Hardship Fund provides support for the lost net income suffered by the contractor as a result of the pandemic. Appendix 3 highlights that without the unprecedented level of support from WG and the Job Retention Scheme the contract would be in deficit by in excess of £3 million. Any reduction in this level of support would put a lot of pressure on the success of the contract as once centres reopen attendance figures will be subject to uncertainty for the forthcoming period of twelve months at least. Further work is required by GLL to provide a detailed Recovery Plan covering all of the centres that form part of the contract.
46. Before a final decision is taken, further work will be required to understand the detailed financial and staff impact of the removal of the Maindy Velodrome and Pentwyn Leisure Centre from the contract and the risks associated with the proposals and their level of achievability.
47. The Council paid a tapered management fee for the first 3 years of the contract, to support the transition and capital funding was allocated to enable investment in the centres, to be repaid by GLL over the term of the contract. Under the contract, the Council retained control over certain aspects of the service provision, such as pricing and the protection of terms and conditions of Council staff transferred to GLL. The capital programme anticipates a repayment from GLL based on a financial profile based on amount of capital investment based on front loaded management fees. Any default in those payments from GLL in future years will result in a funding gap (see Confidential Appendix 2) that would need to be funded from Council financial resources.
48. Confidential Appendix 1 sets out GLL's original financial plan. Further work will need to be undertaken to understand the level of financial impact to GLL as a result of the proposed changes. Due diligence will also need to be undertaken on the Cardiff Rugby financial submission for Pentwyn Leisure Centre to determine the full level of risks in this financial performance being achieved and any liability remaining with the Council.

49. The financial impact of Pentwyn Leisure Centre as Vaccination Centre has not been finalised but it is presumed that direct costs only associated with that services will be recovered.
50. Tax advice has been sought to determine the optimum benefit from formally transferring the management of Pentwyn Leisure Centre from GLL to Cardiff Blues Rugby. The advice is based on the premise that the site would be closed during its refurbishment and that the Council has clear intention to lease the whole site to CBR and – subject to the Council opting to tax it's interest in the site, there would be the potential for the VAT incurred on the development to be recovered in full. In respect of the lease granted to the NHS it is clear that whilst the rest of the building would be closed for use the space let to the NHS will remain open and in use till at least March 2022. To make this grant a Taxable supply CCC would either need to opt to tax the site prior to taking on the lease terms or re-negotiate the supply as the provision of serviced facilities which whilst subject to VAT would be VAT recoverable in the hands of the NHS under the Contracted Out Services VAT rules operated by the NHS. Fuller advice can found within Confidential Appendix 10.

Legal Implications (including Equality Impact Assessment where appropriate)

51. The report recommends that the decision in this matter is made in principle only so, amongst other things, detailed legal consideration can be given to the various legal issues raised. The proposals raise a number of potential legal issues that will require detailed consideration, once full information is provided, in order to assess if the proposals can be achieved within legal constraints and or any potential risks raised assessed. As well as consideration of the legal issues raised, these proposals will require appropriate consultation, equality impact assessment and evaluation in relation to the Council's wellbeing objectives. Any decision taken (pursuant to the delegated authority sought) on whether to implement the in principle decision or not, must take into account the outcome of any such consultation, assessment and evaluation.

General legal advice

Equalities & Welsh Language

52. In considering this matter the decision maker must have regard to the Council's duties under the Equality Act 2010 (including specific Welsh public sector duties) . Pursuant to these legal duties Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. Protected characteristics are: (a). Age, (b) Gender reassignment(c) Sex (d) Race – including ethnic or national origin, colour or nationality, (e) Disability, (f) Pregnancy and maternity, (g) Marriage and civil partnership, (h)Sexual orientation (i)Religion or belief –including lack of belief.
53. The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

The Well-being of Future Generations (Wales) Act 2015

54. The Well-Being of Future Generations (Wales) Act 2015 ('the Act') places a 'well-being duty' on public bodies aimed at achieving 7 national well-being goals for Wales - a Wales that is prosperous, resilient, healthier, more equal, has cohesive communities, a vibrant culture and thriving Welsh language, and is globally responsible. In discharging its duties under the Act, the Council has set and published well being objectives designed to maximise its contribution to achieving the national well being goals. The well being objectives are set out in Cardiff's Corporate Plan 2020 -23.
55. When exercising its functions, the Council is required to take all reasonable steps to meet its well being objectives. This means that the decision makers should consider how the proposed decision will contribute towards meeting the well being objectives and must be satisfied that all reasonable steps have been taken to meet those objectives. The well being duty also requires the Council to act in accordance with a 'sustainable development principle'. This principle requires the Council to act in a way which seeks to ensure that the needs of the present are met without compromising the ability of future generations to meet their own needs. Put simply, this means that Council decision makers must take account of the impact of their decisions on people living their lives in Wales in the future. In doing so, the Council must:
- Look to the long term
 - Focus on prevention by understanding the root causes of problems
 - Deliver an integrated approach to achieving the 7 national well-being goals
 - Work in collaboration with others to find shared sustainable solutions
 - Involve people from all sections of the community in the decisions which affect them
56. The decision maker must be satisfied that the proposed decision accords with the principles above; and due regard must be given to the Statutory Guidance issued by the Welsh Ministers, which is accessible on line using the link below: <http://gov.wales/topics/people-and-communities/people/future-generations-act/statutory-guidance/?lang=en>

Policy and Budget Framework

57. The decision maker must be satisfied that the proposal is within the Policy and Budget Framework, if it is not then the matter must be referred to Council.

Property Implications

58. The proposed capital investment in Pentwyn Leisure Centre will require suitable commercial terms to be agreed with Cardiff Blues.
59. In order to ensure the Council does not have responsibility for the up-keep of the site and building, it would be preferable to link any relinquishment of the GLL lease to a new property agreement being completed with Cardiff Blues.

Consideration will also be required in respect of the method of the Council in delivering the capital investment works, which it is likely will be termed "landlord works" as part of the commercial agreement with Cardiff Blues.

60. The detailed property proposals have been outlined in the main body of this report. Where any property transactions are required as a result of these proposals, these should be done so in accordance with the Council's Asset Management process and in consultation with Strategic Estates and relevant service areas.

Human Resources Implications

61. These proposals do not have any direct impact on Council employees as GLL is the employer. However, it is the Council's position that TUPE will apply. The Council expects that in line with its agreement with GLL, they will consult the recognised trade unions, GMB, UNITE and UNISON in advance of any announcements and throughout the process and keep the Council informed of progress. It is expected that the agreed recognition of these trade unions by GLL should form part of the contractual arrangements and TUPE transfer for former Cardiff Council employees.

RECOMMENDATIONS

Cabinet is recommended to:

- i) Note the Audit Wales report attached as Appendix 3 and the Council's initial summary response set out in Appendix 4.
- ii) Agree in principle to the proposed variation to the GLL contract as set out in this report namely the removal of the Pentwyn Leisure Centre and the Maindy Velodrome from the contract and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture & Leisure, the Legal Officer and the S151 Officer to:
 - a) Complete the contract variation subject to the detailed legal due diligence set out in this report and consideration of the outcome of the Equality Impact Assessment;
 - b) Enter into the proposed lease at Pentwyn Leisure Centre as set out in this report, in line with the proposal attached at Confidential Appendix 5 and substantially in the form of the draft Heads of Terms attached as Confidential Appendix 6, and subject to: satisfactory conclusion of point a); detailed legal due diligence as set out in this report; detailed financial due diligence; and an independent valuation.
 - c) Subject to a) and b) above, deal with all aspects of the procurement and implementation of the proposed improvements to the Pentwyn Leisure Centre subject to the financial envelope set out in Confidential Appendix 9 and in line

with the scheme presented at Appendix 7 and the estimated costings presented at Confidential Appendix 8.

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| SENIOR RESPONSIBLE OFFICER | Neil Hanratty Director of Economic Development |
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Appendices

Confidential Appendix 1: GLL Contract Financial Analysis

Confidential Appendix 2: GLL Contract Financial Statement

Appendix 3: Audit Wales Report

Appendix 4: Extract from External Audit Tracker (Leisure Services) March 2021

Confidential Appendix 5: Cardiff Blues Proposal & Financial Plan

Confidential Appendix 6: Heads of Terms

Appendix 7: Pentwyn Leisure Centre Capital Investment Proposals

Confidential Appendix 8: Pentwyn Leisure Centre Capital Investment Costings

Confidential Appendix 9: Financial Envelope - Pentwyn Leisure Centre

Confidential Appendix 10: VAT Advice (March 2021)