

**REVIEW OF THE LEISURE SERVICES CONTRACT (GLL): PRE-DECISION
SCRUTINY**

Appendices 1, 2 and 5 of the Cabinet Report, Appendix A are not for publication as they contain exempt information of the description contained in paragraph 14 of Part 4 of Schedule 12A of the Local Government Act 1972. It is viewed that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Purpose of the Report

1. To provide background information to Members to aid their scrutiny of the draft report to Cabinet titled '*Review of the Leisure Services Contract (GLL)*', attached at **Appendix A**, which is due to be considered by Cabinet at their meeting on 20 October 2022.
2. Members should note that **Appendices 1, 2 and 5** of the Cabinet report, at **Appendix A** are exempt from publication. Members are requested to keep this information confidential, in line with their responsibilities as set out in the Members Code of Conduct and the Cardiff Undertaking for Councillors.

Scope of Scrutiny

3. At their meeting on 20 October 2022, the Cabinet will consider a report that
 - i. seeks approval in principle to make a relief payment to Greenwich Leisure Ltd (GLL)
 - ii. seeks agreement in principle for GLL to acquire energy through the Crown Commercial Service
 - iii. Seeks agreement in principle to proposal to upgrade leisure centres energy infrastructure, and

- iv. Seeks agreement in principle to the approach to modernisation and future operation of Pentwyn Leisure Centre.
4. During this scrutiny, Members can explore:
 - i. The proposed relief payment
 - ii. The proposal to enable GLL to acquire energy from the Crown Commercial Service
 - iii. The proposed review of leisure centres to plan for full conversion to renewable energy infrastructure
 - iv. The proposals regarding Pentwyn Leisure Centre
 - v. Whether there are any financial implications for the Council
 - vi. Whether there are any risks to the Council
 - vii. The timeline and next steps
 - viii. The recommendations to Cabinet.

Structure of the meeting

5. The Chair will move that this item be considered in two parts: an open session, where Members will be able to ask questions on the issues and papers that are in the public domain; and a closed session, where members of the public will be excluded, where Members can ask questions that pertain to **Appendices 2-4 inclusive**.
6. Members will hear from Councillor Jennifer Burke-Davies (Cabinet Member – Culture, Parks and Events), who will be invited to make a statement. Neil Hanratty (Director of Economic Development) and Steve Morris (Operational Manager – Sport, Leisure and Development) will give a presentation. The whole panel will be available to answer Members' questions.
7. Members will then be able to decide what comments, observations or recommendations they wish to pass on to the Cabinet for their consideration prior to making their decisions.

Background

8. In December 2016, a new partnership arrangement with GLL commenced, with a formal 15-year contract between the Council and GLL. The contract covers the following leisure centres:
 - Llanishen Leisure Centre
 - Eastern Leisure Centre
 - Fairwater Leisure Centre
 - Western Leisure Centre
 - Pentwyn Leisure Centre
 - Maindy Leisure Centre
 - STAR (Splott)
 - Penylan Library and Community Centre ¹

9. The contract enabled the Council to eliminate its subsidy of leisure services, which amounted to circa £3.5m per annum. GLL's proposal was to work to reduce the deficit and use surpluses from elsewhere in their UK portfolio to underwrite the initial operating deficit. Prior to the covid pandemic, GLL had made significant progress in reducing the operating deficit.

10. The Council retains ownership of the facilities and has landlord responsibility for maintaining the external fabric of the buildings. £3.465m capital funding was allocated at the outset of the contract to deliver improvements to leisure centres.

11. The covid pandemic resulted in a significant loss of income for GLL, across their business². The WG hardship support enabled GLL to keep operating. However, GLL no longer had a surplus to offset the operating deficit in Cardiff. In November 2020, Cabinet was informed the risk of contract failure had been escalated onto the Corporate Risk Register. Cabinet authorised a review of the contract to identify potential variations that would improve the long-term sustainability of the contract and protect service delivery.

¹ Penylan Library and Community Centre included in contract as it hosts a gym

² £5.225 million WG Hardship Fund support for the period March 2021 – March 2022 (point 30, **Appendix A**)

12. In March 2021, Cabinet agreed to vary the contract by removing Pentwyn Leisure Centre, which required the highest level of subsidy, on the basis that an alternative delivery model would ensure the centre remained open to the public. At the same time, GLL agreed to release the Maindy Cycle Track to support other Council objectives, with replacement provision proposed at the International Sports Village site.
13. In December 2020, Audit Wales released their investigation report on Leisure Services in Cardiff, which proposed a review of the contract. The Council commissioned Local Partnerships to carry out an independent review, attached as Confidential Appendix 1 to the Cabinet Report at **Appendix A**, covering:
- Potential for partnership and collaboration
 - Current governance and contract management arrangements, including client management and monitoring
 - Sustainability of the contract and
 - Effectiveness of service specification.

Issues identified in the Cabinet Report

14. The draft report to Cabinet entitled '*Review of the Leisure Services Contract (GLL)*' is attached at **Appendix A** and has 5 appendices
- **Confidential Appendix 1** – Local Partnership Review
 - **Confidential Appendix 2** – Proposed Relief Payment
 - **Appendix 3** – Pentwyn Leisure Centre Plans
 - **Appendix 4** – Pentwyn Leisure Centre delivery programme
 - **Confidential Appendix 5** – Counsel Advice.
15. The report sets out:
- i. it is a priority for the Council to keep all of its leisure centres open for business and to maintain the full range of services in each leisure centre
 - ii. leisure centres are operating at around 90% of pre-pandemic income levels
 - iii. the hardship support fund is no longer operating
 - iv. the energy crisis is accentuating the operating deficit.

16. **Point 16** of the report to Cabinet states that the scope for varying the contract is limited by procurement law. **Points 18 – 21** summarise the Local Partnership review, highlight many of the possible contract variations identified by the review are not in line with the Council's commitments, and set out the proposed contract variations including:

- i. Relief payment to cover the gap between budgeted energy costs and actual costs incurred to the end of the financial year, subject to a cap set out in **Confidential Appendix 2**
- ii. Enable GLL to acquire energy from the Crown Commercial Service, directly or indirectly by the Council providing energy as part of their landlord responsibility for the buildings; a deed of variation or side letter will be required
- iii. A review of all centres to fully understand existing energy infrastructure and to plan full conversion to renewable energy infrastructure; costs anticipated to be met by government grant funding
- iv. To bring forward the modernisation of Pentwyn Leisure Centre (*see Point 17 below for more details*)
- v. To continue dialogue with Cardiff University to maintain and increase the level of student participation at the Maindy Leisure Centre
- vi. To continue to seek sources of capital investment in the centres.

17. **Point 17** of the report to Cabinet states that plans to modernise Pentwyn Leisure Centre have been delayed due to cost pressures in the construction sector; this delay has given time to consider other options. **Points 22 – 27** set out the following proposals:

- i. Retain Pentwyn Leisure Centre within the leisure services contract
- ii. GLL to continue to operate the community facilities and to release part of the building to the Council
- iii. Cardiff Rugby to pay rent to the Council for the areas of the building that will be for their exclusive use
- iv. GLL and Cardiff Rugby to contribute towards the costs of modernising Pentwyn Leisure Centre.

18. **Appendix 3 and Appendix 4** of the report to Cabinet set out the proposed modernisation plans and programme for Pentwyn Leisure Centre. A Full Business Case will be developed and brought to a future meeting of Cabinet for authority to proceed.

19. **Point 28** of the report to Cabinet highlights that Counsel advice has been sought to ensure variations are permissible within the constraints of procurement and contractual law; this is provided at **Confidential Appendix 5**.

20. **Financial Implications** are at **points 30 - 41** and state that:

- i. The report does not include an estimate of costs to modernise Pentwyn Leisure Centre. Updated costs details and confirmed funding arrangements will need to be set out in the full business case planned to be presented to a future Cabinet; these will need to be with no additional financial impact on the Council budget
- ii. No financial information is provided in the report on the proposal for GLL to release part of Pentwyn Leisure Centre for the Council to enter into a lease with Cardiff Rugby; this will be set out in the full business case, and it is essential financial due diligence is undertaken to inform this
- iii. Any abortive costs arising from design and initial work will need to be borne by the existing revenue resources within the Directorate
- iv. There is no Council budget provision for the proposed energy upgrade works; the report states external funding will be sought
- v. The report does not identify the funding source for the proposed relief payment to GLL; it is essential that funding is clearly identified and approved before any commitments are made
- vi. It is essential that detailed legal and financial due diligence is concluded prior to any decisions regarding the proposal that the Council take back responsibility for energy payments to suppliers at the leisure centres.

21. **Legal Implications** are at **points 42 - 51** and highlight:

- i. Detailed legal advice should be sought in the implementation of the recommendations of the Local Partnerships Report

- ii. Counsel advice is that the proposed relief payment can be made in accordance with MEOP (Market Economy Operator Principle)
- iii. Counsel advice on the Council taking back responsibility for energy provision at leisure centres is at **Confidential Appendix 5**. It will require a deed of variation or side letter
- iv. Legal advice should be sought when further details are presented to Cabinet on the proposed upgrade of energy infrastructure
- v. Specific property and procurement legal advice should be sought when substantive details are available regarding modernisation and future operation of the Pentwyn Leisure Centre
- vi. Cabinet must have regard to the Council's duties under the Equality Act 2010, including the Socio- Economic Duty, Welsh Language (Wales) Measure 2011, Welsh Language Standards, and the Well-Being of Future Generations (Wales) Act 2015, including the sustainable development principle.
- vii. Cabinet must be satisfied the proposal is within the Policy and Budget Framework.

22. **Property Implications** are at **points 52-53** and state these are set out in the body of the report, that any changes should be done in accordance with the Council's asset management and property management processes.

23. There are no **HR Implications**, as stated at **Point 54**.

Proposed Recommendations to Cabinet

24. The report to Cabinet contains the following recommendations:

- i) *Note the contract review undertaken by Local Partnerships attached at Confidential Appendix 1.*
- ii) *Approve in principle a relief payment to GLL to assist with mitigating the rise in energy costs during the current financial year capped as set out in Confidential Appendix 2 and to delegate authority to the Section 151 Officer in consultation with the Cabinet Member for Finance, Modernisation and Performance to authorise payments in line with the methodology and due diligence set out in Confidential Appendix 2.*

- iii) *Agree in principle to the proposal for GLL to acquire energy either directly or indirectly through the Crown Commercial Service and to delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture and Leisure and the Cabinet Member for Finance, Modernisation and Performance, the Section 151 Officer and the Legal Officer to consider all of the implications as set out in this report and in Confidential Appendix 2 and if the proposal is beneficial to the Council and GLL to make such variations as required to the lease and or the contract.*
- iv) *Agree in principle the proposal to upgrade the energy infrastructure at each leisure centre to provide lower cost renewable energy subject to approval of a Full Business Case being presented back to a future meeting of Cabinet.*
- v) *Agree in principle to the approach outlined in this report for the modernisation and future operation of Pentwyn Leisure Centre and authorise the preparation of a full business case detailing final costs to be presented back to a future meeting of Cabinet for authority to proceed.*

Previous Scrutiny

25. **Since 2017**, this Committee has undertaken regular **scrutiny of the partnership** between the Council and GLL, regarding the delivery of contract for leisure services at Better Leisure Centres in Cardiff. This has included requesting details of the GLL User Survey and Usage profiles broken down by age, disability, ethnicity, and gender, which were supplied. In **January 2019**, Members were pleased to note progress made in improving participation and usage rates, increased customer satisfaction and progress in delivering capital programme improvements.

26. In **November 2020**, this Committee considered the **impact of the coronavirus pandemic** on leisure services in Cardiff and carried out pre-decision scrutiny of a report to Cabinet on the contract with GLL. In the resulting Chair's letters Members recognised the impact of the coronavirus pandemic on GLL and the whole of the leisure sector and reiterated their support for leisure and sport activities.

27. In **March 2021**, Members undertook pre-decision scrutiny of a report to Cabinet that sought Cabinet approval, in principle, to vary the Leisure Services contract

with GLL, in respect of **Pentwyn Leisure Centre** and removal of the **Velodrome** facility from Maindy Leisure Centre. The report also highlighted changes to service specifications from April 2021 and changes to capital programme.

28. In **December 2021**, Members undertook policy review and monitoring scrutiny, focusing on progress in delivering the **Leisure Centre Management Partnership** between the Council and GLL (Greenwich Leisure Limited). This scrutiny looked at the impact of the covid pandemic, participation and usage rates, capital programme, customer satisfaction and quality systems, staffing, the Council's commitments and risks to the Council.

29. Also in **December 2021**, Members scrutinised progress in implementing the improvement proposals made by **Audit Wales in their Review of Leisure Services** (2020) report. The response to these improvement proposals included engaging Local Partnerships to review contract management arrangements between GLL and the Council.

Way Forward

30. Councillor Jennifer Burke-Davies (Cabinet Member – Culture, Parks and Events) will be invited to make a statement. Neil Hanratty (Director of Economic Development) and Steve Morris (Operational Manager – Sport, Leisure and Development) have been invited to attend to give a presentation. The whole panel will be available to answer Members' questions.

31. All Members are reminded of the need to maintain confidentiality regarding the information provided in **Appendices 1, 2 and 5** of the Cabinet Report at **Appendix A**. Members will be invited to agree the meeting go into closed session to enable discussion of this information.

Legal Implications

32. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct legal implications. However, legal implications may arise if and when the matters under review are

implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any legal implications arising from those recommendations. All decisions taken by or on behalf of the Council must (a) be within the legal powers of the Council; (b) comply with any procedural requirement imposed by law; (c) be within the powers of the body or person exercising powers on behalf of the Council; (d) be undertaken in accordance with the procedural requirements imposed by the Council e.g. Scrutiny Procedure Rules; (e) be fully and properly informed; (f) be properly motivated; (g) be taken having regard to the Council's fiduciary duty to its taxpayers; and (h) be reasonable and proper in all the circumstances.

Financial Implications

33. The Scrutiny Committee is empowered to enquire, consider, review, and recommend but not to make policy decisions. As the recommendations in this report are to consider and review matters, there are no direct financial implications at this stage in relation to any of the work programme. However, financial implications may arise if and when the matters under review are implemented with or without any modifications. Any report with recommendations for decision that goes to Cabinet/Council will set out any financial implications arising from those recommendations.

RECOMMENDATION

The Committee is recommended to:

- i) Consider the information in this report, its appendices and the information presented at the meeting
- ii) Determine whether they would like to make any comments, observations, or recommendations to the Cabinet on this matter in time for its meeting on 20 October 2022, and
- iii) Decide the way forward for any future scrutiny of the issues discussed.

DAVINA FIORE

Director of Governance & Legal Services

11 October 2022