

**CABINET MEETING: 20 OCTOBER 2022**

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**REVIEW OF THE LEISURE SERVICES CONTRACT (GLL)**

**CULTURE, PARKS & EVENTS (COUNCILLOR JEN BURKE-DAVIES)**

**AGENDA ITEM: 3**

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*Appendices 1, 2 and 5 of this report are exempt from publication pursuant to paragraph 14 of Part 4 of Schedule 12A to the Local Government Act 1972.*

**Reason for this Report**

1. To seek authority to make a relief payment to Greenwich Leisure Ltd (GLL) to mitigate the current increase in energy costs to enable existing levels of service to be maintained at all of the Council's leisure centres.
2. To update Cabinet on the work undertaken to review the GLL leisure services contract to identify opportunities to improve the revenue position following the Covid-19 pandemic without the need for any significant closures or reductions in service or price increases and to present the Council's proposals to improve the sustainability of the leisure services contract with GLL.
3. To present the latest plans for the modernisation of Pentwyn Leisure Centre and to set out a programme for delivering the scheme.

**Background**

4. The administration's strategic policy document Stronger Fairer Greener 2022 recognises the contribution that the Council's leisure and community facilities make across a wide range of portfolio areas and the contribution they make towards the Health and Well-being of Future Generations (Wales) Act 2015.
5. The significant budget pressures faced by local authorities over recent years has led numerous Council's to reduce the level of their leisure service provision and some have chosen to close leisure centres. Despite the pressures, Cardiff Council has remained committed to keeping all of its leisure centres open and to retaining and enhancing the level of service.
6. In 2016, the Council entered into a long term (15 year) contract with Greenwich Leisure Ltd to manage eight leisure and community facilities, these being:
  - Llanishen Leisure Centre

- Pentwyn Leisure Centre
- Fairwater Leisure Centre
- Western Leisure Centre
- Eastern Leisure Centre
- Maindy Centre
- STAR Hub
- Penylan Library and Community Centre

The opportunity was secured through a competitive process and the contract commenced on 1 December 2016.

7. The contract with GLL enabled the Council to eliminate its previous annual revenue subsidy for the above facilities amounting to circa £3.5m per annum whilst keeping all of the centres open to the public. The removal of the subsidy for the Council was achieved within three years of the commencement of the contract. The Council paid an initial management fee for capital investment on a reducing basis from £4.2m in 2016. These investments improved the quality of offer at centres and increased participation and income prior to the outbreak of the pandemic.
8. As part of the agreement with GLL, the Council retained ownership of the facilities and has landlord responsibility for maintaining the fabric of the buildings. £3.465m of capital funding was made available at the outset of the contract to deliver improvements to the centres to increase attendances, drive income and realise energy efficiencies.
9. GLL's proposal for Cardiff was based on an initial operating deficit which was underwritten from surpluses on better performing contracts throughout their UK portfolio. Their aim was to reduce the deficit in the early years of the contract through a combination of capital investment, efficiencies and income generation. Significant progress had been made prior to the pandemic to increase membership numbers and income. Although the whole operating deficit had not been eliminated, primarily due to the impact of capital works on some centres, the contract was heading in the right direction and GLL were able to continue to manage the deficit through surpluses elsewhere in their business.
10. In November 2020, following the sustained impact of the Covid-19 pandemic, Cabinet was updated on the implications for GLL who had suffered a significant loss of income right across their business. Whilst short-term funding was made available through government hardship support to keep the leisure industry afloat, the main implication for the contract in Cardiff was GLL were no longer able to fund a deficit in Cardiff from surpluses elsewhere. At the same meeting Cabinet was informed that the risk of contract failure had been escalated onto the corporate risk register where it remains. Cabinet also authorised a detailed review of the GLL Leisure Services contract to identify potential variations that would improve the long-term sustainability of the contract and protect service delivery.
11. In March 2021, as an early intervention, it was agreed by Cabinet that the Pentwyn Leisure Centre (PLC), identified as the centre requiring the highest

level of operational subsidy, could be removed from the Leisure Services contract. This was negotiated with GLL alongside the release of the Maindy Cycle Track to support other Council objectives. The release of PLC was on the basis that an alternative delivery model would be put in place to keep the centre open to the public. The Maindy Cycle Track provision was proposed to be replaced at the International Sports Village.

12. The same report to Cabinet also provided an update on a review of the contract undertaken by Audit Wales. Following the Audit Wales report, the Council commissioned Local Partnership to carry out an independent review of contract arrangements, focussing on the improvement actions with a brief to carry out benchmarking with other leisure operators and local authorities across the UK. Local Partnerships were asked to:
- Consider the long-term financial sustainability of the contract by reviewing the service specification and its ability to deliver a financially neutral position and recommend changes and solutions as required. Benchmarking with Core Cities to compare approaches, levels of investment, subsidy provided.
  - Consider the Council's approach to integrated services and partnerships (Libraries, Social Services, Education, Public Health, other Health services, GP surgeries etc) and the potential for leisure centres to adapt and retro fit to accommodate such services.
  - Review the current contract management processes and client function to assess its suitability and compare governance arrangements with other similar arrangements.
  - Consider the social value of leisure and the impact on wellbeing in light of the current arrangements and any impact on wellbeing as a result of changes to the service specification. (Wellbeing of Future Generations Act).

The Local Partnerships report is attached at Confidential Appendix 1.

## **Issues**

13. The Council's requirement to keep all of its leisure centres open for business and to maintain the full range of services in each leisure centre remains a priority for the Council and a significant challenge for GLL. The main financial pressures have always related to the operation of swimming pools, and in particular, leisure pools which are in effect heavily subsidised.
14. Whilst the post-pandemic recovery has been encouraging, the centres are yet to fully recover and are operating on average at around 90% of previous income levels. The removal of hardship support means that the leisure services contract continues to operate at significant deficit. At the beginning of this financial year, as the country began to emerge from the pandemic, GLL estimated an operating deficit of c£500,000 for the 2022/23 financial year.

15. The recent energy crisis has accentuated the problem and prior to the UK Government intervention was forecast to more than double the anticipated operating deficit for the current financial year to in excess of £1m.
16. The leisure services contract was established through an OJEU procurement process based on a detailed specification and therefore the scope for variations to the contract are constrained by procurement law. External legal advice was obtained from Counsel on the earlier proposal to remove the Pentwyn Leisure Centre and the Maindy Cycle track facilities from the contract and although deemed to be permissible, Counsel advised there was little scope for any further variations.
17. The plans to modernise Pentwyn Leisure Centre have been delayed due to the cost pressures being felt right across the construction sector. This has required a fundamental review of the proposals. The Council remains committed to the project, however, in the context of the wider consideration of issues affecting the GLL contract, and the limitation to the extent of variations that are permissible under the contract, the delay has inadvertently created an opportunity to further consider which other options might improve the commercial viability and sustainability of the leisure services contract with GLL.

### **Local Partnerships Review**

18. Local Partnerships were appointed to undertake an unconstrained independent review of the contract. From the outset it was understood that many of the potential interventions that could be proposed, such as closing swimming pools, would not be acceptable to Cardiff Council but nonetheless a comprehensive review was agreed.
19. As expected, many of the proposals set out by Local Partnership in their report are not acceptable to the Council who remain committed to retaining all of the centres, all of the swimming pools, and to ensuring the terms and conditions of staff transferred to GLL remain protected. There are a wide range of proposals including closure of the poorest performing centres, closure of individual pools, and price increases etc, to more moderate reductions of service such as implementing shorter operating hours in certain centres and reviewing the service mix to swap low earning/poor performing facilities with facilities that have better earning potential. The Council intends to focus on the proposals that have potential to improve the financial situation without affecting service delivery.
20. The main opportunity arising from the Local Partnerships work is the idea to comprehensively upgrade the energy infrastructure at all of the centres. This will require a review of each centre to fully understand current infrastructure and a plan for each centre to provide replacement infrastructure from green sources such as PV, wind and ground/air source heat pumps. The potential reduction in energy costs from a conversion to renewables will need to be modelled to understand the full potential impact on the operating deficit. There will however be significant upfront cost required to implement the new technical solution. It

is therefore the Council's intention to first of all understand the full costs, and then to approach various government sources for funding that is currently available to local authorities to support a transition to carbon zero.

## **Proposed Contract Variations**

21. Following the Local Partnership review, the Council now proposes a number of variations to improve the financial performance of the contract. Energy cost remain the single biggest issue at the centres and form the basis of the proposals being presented for approval in this report, as follows:
- The energy crisis has led to an unbudgeted increase in costs that requires short-term assistance from the Council. It is proposed for the Council to provide support in the form of a relief payment. The payment will cover the gap between budgeted energy costs and the actual costs incurred to the end of the financial year. A cap on the amount that the Council is prepared to pay is set out in Confidential Appendix 2. A process of due diligence will be put in place to assess each quarterly claim made by GLL and this will take account of any reduction in costs that can be achieved through government relief programmes and/or through any of the proposals set out in this report or other means.
  - Given that GLL is delivering a Council service on behalf of the Council, and that the Council acquires energy through the Crown Commercial Service at significantly cheaper rates than GLL, it is proposed to enable GLL to acquire their energy either directly or indirectly through the Crown Commercial Service. If GLL is not able to acquire directly, then given that the Council retains full landlord responsibility for the buildings, it is proposed that the leisure services contract is varied to include the provision of energy as part of the Council's landlord responsibilities. The Council would then recharge GLL for their energy use via a service charge. In either situation, direct or indirect access to the Council rates, it is anticipated that the cost to the Council will not increase, as GLL will be required to reimburse the Council fully for their consumption. The Council will need to consider any unforeseen consequences before committing to this proposal such as any VAT implications. Confidential Appendix 2 sets out the conditions for this proposal to be viable. This proposal will either need to be implemented through a deed of variation or side letter.
  - Undertake a review of all centres to fully understand their existing energy infrastructure and to plan a full conversion to renewable energy infrastructure. This will require a business case to be developed in due course that sets out the capital costs of the proposed investment and the revenue benefits to the contract of delivering cheaper, cleaner energy. It is the Council's intention to apply to government for grant funding to cover the capital costs of this proposed investment. The viability of this proposal will depend on the availability of grant funding and this will form a key part of the business case to be presented back to a future meeting of Cabinet.

- Bring forward the modernisation of Pentwyn Leisure Centre (PLC) to eliminate the negative impact of the centre on the operational budget. A new proposal for the operation of PLC is set out below.
- Continue dialogue with Cardiff University to maintain and increase the level of participation at the Maindy Leisure Centre by students.
- More generally, it is proposed to continue to seek sources of capital investment in the centres as the investment made by the Council to date has had a positive impact on patronage.

### **Pentwyn Leisure Centre**

22. The original proposal agreed by Cabinet was to remove the Pentwyn Leisure Centre (PLC), as the worst performing centre, from the GLL contract, to eliminate a large proportion of the operational deficit, whilst keeping it open through an alternative arrangement.
23. The intention was for the centre to remain open to the public through a new lease with Cardiff Rugby, who have made use of the building during the pandemic and are keen to remain on site to establish the centre as their main training base.
24. The proposal with Cardiff Rugby was for the Council to invest in upgrading the building, improving the facilities that remain available to the community, with Cardiff Rugby effectively paying back the cost of the improvements through a rental agreement.
25. However, following the receipt of further advice from Counsel on the scope for variation of the leisure services contract with GLL it is now proposed that Pentwyn Leisure Centre remains within the leisure services contract, with GLL continuing to operate the community facilities and Cardiff Rugby paying a rent to the Council for the areas of the building that will be for their exclusive use. This will require GLL to release part of the premises at PLC from its operating lease. The plans for modernisation of the building will significantly reduce the cost of operation of the centre and will provide improved potential for income generation. To that end GLL would be prepared to make a contribution towards the costs alongside Cardiff Rugby. Further details regarding these proposals and a business case are to be presented to Cabinet at a later date.
26. The proposed modernisation plans for the centre are attached at Appendix 3. Further work is required to bring the costs back in line with the anticipated income from GLL and Cardiff Rugby and this will be presented in the form of Full Business Case back to a future meeting of Cabinet for authority to proceed.
27. The proposed programme for completing the modernisation of the Pentwyn Leisure Centre is set out at Appendix 4.

### **Counsel Advice**

28. The Council has sought external legal advice from Counsel on the package of proposals presented in this report to ensure that the variations are permissible within the constraints of the procurement and contractual law. The advice is attached as Confidential Appendix 5.

### **Reason for Recommendations**

29. To present the Council's proposals to improve the sustainability of the GLL contract.

### **Financial Implications**

30. The report to Cabinet on 18<sup>th</sup> March 2021 sought approval in principle to a proposed variation to the GLL contract in order to support future sustainability of the contract and ensure service levels would be maintained. It considered the financial pressures being experienced by GLL due to the significant loss of income and periods of enforced closure of leisure centres during the Covid 19 pandemic. WG Hardship Fund support arising from the response to the Covid 19 crisis and claimed on behalf of GLL amounted to £5.225 million for the period March 2021 to end of March 2022.
31. The variation would result in the removal of the Pentwyn Leisure Centre from the GLL contract as part of a proposed lease arrangement to be established with an alternative operator, subject to legal and financial due diligence. In addition, the report set out plans for the release of the Maindy Cycle Track. These proposals were contingent on planned procurement and capital improvements works to the Pentwyn Leisure Centre subject to a financial envelope and scheme detail as set out in the earlier confidential appendices to the report.
32. This report updates on developments since the earlier report and identifies that these earlier plans for the Pentwyn Leisure Centre now require a fundamental review. The related capital investment proposals have not progressed largely as a result of wider external considerations including increasing cost pressures across the construction sector.
33. The latest proposal as set out within the report for approval in principle is that Pentwyn Leisure Centre remains within the scope of the GLL contract. GLL would be assisted in this through the planned modernisation of the centre. An update is not included within this report on the estimated costs of any works programme for modernisation of the facilities at Pentwyn. The Capital Programme for 2022/23 provided for an overall programme cost of £5.5 million of which £1.5 million was assumed to be met by a capital receipt with the balance of £4 million representing an invest to save borrowing approval. This approval was predicted on repayments from a planned lease arrangement to be determined and based on financially viable business cases for all parties. Updated cost detail and confirmed funding arrangements will need to be set out in the full business case planned to be presented to a future Cabinet. This

must also clearly identify how it is planned for any investment and related borrowing to be repaid with no additional financial impact on the Council budget.

34. GLL plan to release part of the premises at Pentwyn in order for the Council to enter into a lease with Cardiff Rugby for their training base and related facilities. No financial information on this proposal is provided within this report and it is intended that this will also be set out in the full business case. It should be noted that it has not been possible to date to carry out any financial due diligence with regard to the developing proposals due to the unavailability of required information. It will be essential that this is completed with full supporting information provided to facilitate this process and provide assurance to members as part of any final proposed programme.
35. Consideration will also need to be given to whether initial costs for design and working up of the original business case may result in abortive costs should this scheme not proceed. Any such costs would need to be met within the existing revenue resources for the Directorate.
36. The report highlights the significantly increased financial pressures on the GLL contract as a result of the energy crisis and seeks approval in principle for a number of measures to enable existing service levels to be maintained. These include plans for a comprehensive upgrade of the energy infrastructure at all of the 8 leisure centres.
37. The Council has retained ownership of centres under the GLL contract with landlord responsibility for maintenance of the external fabric of the buildings. The report references the potential for a significant upfront cost for the proposed energy upgrade works but does not provide an estimate of costs at this stage. The report identifies that it is planned to seek external funding sources that may be available to assist local authorities linked to plans for carbon footprint reductions. There is currently no Council budget provision for this proposal.
38. Authority is also sought in principle for the Council to make a relief payment to GLL for the current financial year only as mitigation against the significant overspend within the contract. The report does not identify how this will be funded and it is essential that before any commitments are made that funding is clearly identified and approved. Please refer to Confidential Appendix 2 which sets out the background in this regard. Any proposal for additional assistance beyond April 2023 is planned to be brought back to Cabinet for consideration.
39. In addition to the measures highlighted above, it is proposed that the Council explores the potential to take back responsibility for energy payments to suppliers at the leisure centres. Costs would be fully recharged to GLL with the benefit of the Council's preferential purchasing arrangements contributing to an improved financial position. The report seeks approval for delegation of authority in this proposal to the Director of Economic Development in consultation with the S151 Officer and Cabinet member for Culture, Leisure and Parks in order that the required variations can be made to the current contract and any new lease arrangements. It is essential that detailed legal and financial



due diligence is concluded prior to any decisions in regard to this proposal to ensure no financial detriment to the Council, particularly any related tax implications.

40. Confidential Appendix 5 sets out the detailed advice provided by Counsel with regard to the various proposals under development.
41. The report also details for information at Confidential Appendix 1 the findings of the Local Partnerships independent review of the GLL and Council contract arrangements. This sets out a number of opportunities for other potential service changes and improvements to the future sustainability of the contract. Any future recommendations for implementation of these changes will need to be the subject of a further report to Cabinet with the requisite financial and legal advice contained therein.

### **Legal Implications**

42. The report contains various recommendations the first of which is to note the finalised version of the Local Partnerships (LP) report which was compiled in response to an Audit Wales report (in 2020) as described above in the body of this report. Detailed legal advice should be obtained from legal services in the implementation of the recommendations in the LP report.
43. The second recommendation is to approve a relief payment (capped as set out in Confidential Appendix 2) to be made to GLL for the reasons stated in the report and at Confidential Appendix 2. Counsel advice has been obtained in relation to such payment in which Counsel advises that payment of this can be made in accordance with the MEOP. Cabinet is referred to the Counsel advice which is contained in Confidential Appendix 5.
44. The third recommendation seeks Cabinet approval to take back responsibility for energy provision at all of the leisure centres that are currently under GLL management. At present, GLL is responsible for procuring and paying of energy at all the leisure centres direct to suppliers. The taking back of responsibility will require the Council to take over this process and recharge GLL for their consumption via an energy service charge as mentioned above in the body of the report. Cabinet is referred to the Counsel advice obtained in relation to this at Confidential Appendix 5. It will be necessary to enter into a deed of variation or side letter to effect this change formally.
45. The fourth recommendation seeks Cabinet agreement in principal to upgrade the energy infrastructure at each leisure centre to provide lower cost renewable energy. Further details of this are to be presented to Cabinet in a further report. Legal advice shall be sought in relation to this when substantive details are available.
46. The fifth recommendation seeks Cabinet agreement in principal for the modernisation and future operation of the Pentwyn Leisure Centre and authorisation for the preparation of a full business case detailing final costs. Further details of this are to be presented to Cabinet in a further report. Specific

Property and Procurement Legal advice shall be sought in relation to this when substantive details are available as to the proposed transaction relating to the premises.

### **General legal advice**

#### **47. Equalities & Welsh Language**

In considering this report, 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.

48. The decision maker should be mindful of the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards.

#### **49. The Well-being of Future Generations (Wales) Act 2015**

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 2022 -25.

50. 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

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>

**51. Policy and Budget Framework**

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**

52. The property implications are explained within the body of the Review of The Leisure Services Contract (GLL) report. Any changes to the existing property management arrangements resulting from the implementation of this reports recommendations, should be done so in accordance to the Council's established asset management and property management processes.

53. Where there are any property transactions or valuations required to deliver any proposals, they should also 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**

54. There are no HR implications.

**RECOMMENDATIONS**

Cabinet is recommended to:

- 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.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Neil Hanratty</b>
	Director of Economic Development 14 October 2022

*The following appendices are attached:*

- 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