

**CABINET MEETING:**

**June 2023**

**PENTWYN LEISURE CENTRE**

**CULTURE, PARKS & EVENTS (Cllr Jen Burke Davies)**

**AGENDA ITEM:**

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**PORTFOLIO: INVESTMENT & DEVELOPMENT**

Appendices 2, 3, 4 and 5 of this report are not for publication as they contain exempt information of the description contained in paragraphs 14, 16 and 21 of Schedule 12A of the Local Government Act 1972

**Reason for this Report**

1. To provide an update on the Pentwyn Leisure Centre scheme and to seek authority to proceed.

**Background**

2. Pentwyn Leisure Centre is a Cardiff Council owned property currently operated by Greenwich Leisure Limited (GLL). In 2016, as part of the Leisure Services Alternative Delivery Model procurement exercise, Cardiff Council selected GLL to provide leisure and associated services at 8 of the Council's leisure centres, including Pentwyn Leisure Centre.
3. To facilitate delivery of the model, Cardiff Council agreed leases with GLL for the leisure centres on an internal repairing basis, with Cardiff Council retaining external maintenance liability as landlord. A Council client management function was established to monitor the delivery of leisure services over the duration of the 15-year contract.
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. The findings of the review were presented back in March 2021 together with recommendations on how to proceed.
5. The review confirmed Pentwyn Leisure Centre as the poorest performing centre in the GLL portfolio, primarily due to the costs associated with operating the leisure/beach pool, low gym membership and poorly attended

dry-side activities. This is a long-standing trend also experienced by the Council when it operated the centre prior to the GLL contract.

6. Pentwyn Leisure Centre was built in 1989 and is now in need of significant investment and upgrade of facilities 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 available capital funding for improvements in other Cardiff leisure centres within the portfolio, with better potential for delivering a return on investment.
7. Over the course of the COVID-19 pandemic Pentwyn Leisure Centre was closed to community use. The Sports Hall was leased by GLL to the NHS as a Mass Vaccination Centre (MVC) with this arrangement ultimately ceasing in December 2021. During this period Cardiff Rugby also occupied the building under a lease from GLL whilst their own facilities were being used to support the Nightingale Hospital provision at the Principality Stadium. The sports hall has since returned to GLL management on completion of reinstatement works by the NHS and has been available for community use since April 2022. Cardiff Rugby has continued to occupy the first floor.
8. In March 2021, a report was presented to Cabinet to seek authority to vary the Leisure Services contract with Greenwich Leisure Limited (GLL) in response to the COVID-19 pandemic and to improve the long-term sustainability of the contract. As part of this, authority was granted to take forward an alternative approach to Pentwyn Leisure Centre to ensure the facility remains open to the public and to deliver new investment into the site.
9. The initial intention was to remove Pentwyn Leisure Centre from the Leisure Services contract with GLL for the Council to undertake a significant investment programme at the property in commercial partnership with Cardiff Rugby (previously Cardiff Blues). The proposal was to upgrade facilities to provide a high-quality leisure provision to ensure a more viable commercial asset that would be capable of attracting an increased number of memberships.
10. Cabinet agreed to the proposed variation to the GLL contract and delegated authority to:
  - a) Complete the contract variation subject to the detailed legal due diligence set out in the March 2021 Cabinet 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 the report, in line with the proposed design plans, Heads of Terms, Cardiff Rugby Business Case, and subject to satisfactory conclusion of:
    - 1) detailed legal due diligence; and
    - 2) detailed financial due diligence; and
    - 3) an independent valuation.

- c) Subject to the above, deal with all aspects of the procurement and implementation of the proposed improvements to the Pentwyn Leisure Centre subject to the agreed financial envelope and in line with the scheme presented and the estimated costings presented.
11. In December 2021 procurement of the prospective design team was completed with detailed design and planning work scheduled to commence immediately.
12. In October 2022, a further report was presented to Cabinet following detailed legal due diligence, and work to review the sustainability of the wider GLL contract undertaken by Local Partnerships. Legal advice relating to the proposed removal of Pentwyn Leisure Centre from the GLL contract suggested it would significantly limit the scope for further variation of the wider GLL contract should that be required to support long term sustainability. As such, an alternative approach to Pentwyn Leisure Centre was proposed in the report and approved by Cabinet. The Centre would remain with GLL who would continue to manage the building and operate the public fitness centre (gym), the main sports hall, and the external pitches (outside of Cardiff Rugby agreed hours of use). Space within the building would be let to 3<sup>rd</sup> parties such as Cardiff Rugby to generate income to fund the repayment of 'Invest to Save' capital proposed to be invested by the Council in the building. Cabinet authorised the preparation of a business case detailing final costs to be presented back to a future meeting of Cabinet. An 'Invest to Save' allocation of £4m was made in the Council's capital programme and a further £1m-£1.5m of capital anticipated to be realized from the disposal of land adjacent to the Pentwyn Park and Ride site was also earmarked towards the project.

## Issues

13. As design work on the proposed investment in the building progressed, the cost of construction within the UK continued to rise. Building cost increases since the original decision have in some areas increased by up to 50%, which has meant the cost of construction of the original proposal almost doubled to circa £10m.
14. In addition to construction cost increases, since March 2021, interest rates have also more than doubled with the current PWLB borrowing rate at circa 5%, whereas in 2021 interest rates were circa 2-2.50%. This means the revenue requirement to service the debt has also doubled.
15. The cost of energy also increased significantly across the UK with forecasts at the time suggesting costs could more than double by 2023/24. It was therefore important to ensure future energy usage and cost was incorporated as a fundamental factor of design to minimise future running costs for the operators and to ensure the development of a viable operating model.
16. The £1m-£1.5m provisionally ring-fenced from the disposal of land adjacent to the Pentwyn Park and Ride is no longer able to be allocated towards the project as the costs associated with delivering the road-link and bridge and from the A48 to Ball Lane have also soared.

17. Given all of the above, the original scheme for Pentwyn Leisure Centre has been unaffordable. The Council has therefore taken time to develop an alternative scheme capable of being delivered within allocated budgets, subject to final confirmation of costs through a procurement. This re-evaluation has resulted in a longer than anticipated process to ensure the requirements of the brief are met whilst keeping construction costs affordable and ensuring the final design are sustainable from an operating and business case perspective.

### **New Proposed Scheme**

18. The new proposed scheme for Pentwyn Leisure Centre is attached at **Appendix 1** and can be summarised as follows:
- New 20x8m pool with a primary use as a 'learn to swim' pool but also allowing for casual swimming.
  - New cafeteria.
  - New relocated public fitness centre (gym) on the ground floor.
  - Refurbished family changing facility.
  - New full-sized 3G pitch and mini pitch.
  - New hall and external space to lease to third-party, potentially a padel tennis operator (tbc).
  - Minor face-lift to external areas such as guttering, fire doors and fascia boards as required.
19. The overall revised costs for the project are set out at **Confidential Appendix 2**.
20. The capital allocation to fund investment in the centre is 'Invest to Save' and is required to be recovered and therefore the following opportunities for lease income have been identified as illustrated at **Appendix 1**:
- Area A - retained and operated by GLL.
  - Area B - Pool Area, Cafeteria & Soft-play – potential lease to a third-party operator. (15-year term, peppercorn)
  - Area C - lease to Cardiff Rugby. All works within this area to be delivered by the tenant not the landlord. (25-year-term)
  - Area D – lease to third party operator, potentially padel tennis. (15-year term)
  - Area E – external pitches leased to Cardiff Rugby (25-year-term). Pitches are to be delivered by the Council. Cardiff Rugby will accommodate community bookings outside their hours of use which will predominantly be mornings/afternoons on week days.
21. An overview of the projected revenues to meet debt service requirements, justifying the 'Invest to Save' investment is set out at **Confidential Appendix 3**.

## **Decarbonisation and Reducing Running Costs**

22. The report to Cabinet in October 2022 on the sustainability of the wider GLL contract, included proposals for green energy interventions across the Leisure Centre estate, to improve carbon performance and to potentially mitigate the sharp increase in energy costs. Authority was granted to develop a case for investment to be presented back to Cabinet for final sign-off.
23. The proposal is for the Council to provide a solar energy solution on the roof-space of each of the properties included within the GLL contract. The costs of implementing the scheme will be met by an application for loan funding to the Salix Fund managed by Welsh Government, a capital contribution from GLL, an FRM contribution from the Council and a small capital contribution through the Council's maintenance budgets. Full details of the scheme and the proposed funding package is attached at Confidential Appendix 5. The potential operational saving to energy costs across the whole of the Leisure Centre estate is anticipated to be circa £200k per annum. This would represent a significant contribution towards reducing the current GLL operating deficit. If Cabinet is minded to approve the proposal, it is anticipated that the procurement of a contractor would commence in July/August with a view to implementing the scheme this financial year.
24. In addition to solar panels being erected on the roof, the refurbishment proposals for Pentwyn Leisure Centre set out in this report include a proposal to heat the proposed new swimming pool through a ground source heat pump. The specification of the pool is optimised to enable heating through a ground source heat pump without the need for supplementation by gas boilers.
25. The interventions outlined above will not totally eliminate the use of fossil fuels at the centre, as the solar panels on the roof will not provide enough energy for the centre to become completely self-sufficient. Although the ground source heat pump will remove the largest call on the gas boilers, they will still be required to manage the ambient temperature inside the building during winter months.

## **Implications for the Leisure Services Contract with GLL**

26. In March 2021, Cabinet gave authority to vary the Leisure Services Contract with GLL by removing both the Pentwyn Leisure Centre from the contract and the cycle track facility that forms part of the Maindy Leisure Centre. The intervention was agreed following the sustained impact of the COVID-19 pandemic as an initial mitigation to help make the contract more sustainable. The decision was supported by QC advice regarding the extent to which the contract could be varied whilst remaining within the scope of procurement regulations.
27. The same QC advice also confirmed that if the Council progressed with this variation there would be very little scope for any further variation in the future. The on-going impact of the pandemic led the Council to undertake a review of the sustainability of the contract through appointed advisors Local Partnerships. The Council decided not to progress with the proposal for

Pentwyn Leisure Centre until this review was completed. Following the review, the Council decided to amend the proposal for Pentwyn Leisure Centre retaining the centre within the GLL contract and instead agreeing to sublet parts of the building to 3<sup>rd</sup> parties to generate income to fund improvements. This principle of this revised strategy was approved by Cabinet in October 2022 subject to confirmation of costs.

28. Given the previous QC advice, the current proposal represents less of a variation than was previously approved given that GLL will continue to manage the building and operate key facilities such as the gym and the main sports hall. However, if in the future any additional variations to the GLL contract are proposed, King's Counsel (KC) advice will be required to ensure the proposals do not push the contract beyond permissible procurement thresholds.

### **Recent Progress**

29. A planning application has been submitted by the Council for the works to deliver the proposed external 3G pitch. It is anticipated that the application will be determined in August/September. If Cabinet is minded to approve the proposals set out in this report, the appoint of a contractor(s) will be undertaken over the summer months to enable implementation of the proposals as soon as possible, if planning is approved.
30. The Council is currently negotiating lease terms with potential tenants via external surveyors. The proposal is to enter into property leases with tenants rather than service contracts. Such arrangements do not require a procurement process. The Council will instead be required to demonstrate best value through independent valuation. In addition, prior to entering into any lease, the Council will be required to undertake detailed due diligence on the proposed tenants to be satisfied of their ability to fulfil the terms of their lease.
31. In addition to the planned due diligence on the proposed tenants, action will be taken to identify alternative options and mitigations as required to provide resilience in the event of the original lease plan not proceeding as anticipated.

### **Next Steps**

32. If Cabinet is minded to approve the proposals for Pentwyn Leisure Centre set out in this report, the next steps would be to:
  - conclude designs,
  - secure planning permission for the new external pitches,
  - undertake detailed due diligence and independent valuations to enable the proposed lease agreements to be completed,
  - procure a contractor(s) to deliver works.

The Council should be able to commence with works in the autumn of 2023 and conclude the full scheme by end of 2024. Some works such as pitches, the fitness centre and changing rooms should be completed by early 2024.

## **Reason for Recommendations**

33. To bring forward a new affordable scheme for the improvement of Pentwyn Leisure Centre.

## **Financial Implications**

34. Earlier reports to Cabinet in March 2021 and October 2022 sought approval in principle of a proposed variation to the GLL contract in order to support future sustainability of the contract and to ensure service levels would be maintained.
35. This report updates on the earlier reports and now proposes a scheme whereby GLL would retain and operate the gym and changing room facilities but with the main building area and new external pitches leased to Cardiff Rugby under a property lease which is currently in negotiation. Updated plans are set out at Confidential Appendix 1. Draft heads of terms for the proposed property lease are set out at Confidential Appendix 4 with the tenant to be responsible for all fitout, repairs and running costs within their demise. In addition, a lease to a third-party operator on similar terms is proposed to be developed for a pool, cafeteria and soft play area. Consideration needs to be given to the level of assurance provided by the proposed heads of terms as drafted within Confidential Appendix 4 to ensure these are sufficiently robust to protect the Council.
36. The revised scheme costs as set out in Confidential Appendix 2 are still subject to detailed design, procurement and planning and there is a significant risk that these costs will be higher than estimated. The capital programme budget allocation of £4 million is based on an Invest to Save repayment scheme, with spend to date of £300,000 against this allocation. Subject to the final scheme costs, consideration may need to be given to the availability and use of either earmarked reserves or a reprofiling of the currently approved Capital Programme. Confidential Appendix 3 provides a forecast of the anticipated revenue opportunities and cashflow from the proposal towards repayment of this borrowing.
37. Detailed financial due diligence and the consideration of alternative mitigations will need to be undertaken prior to finalisation of the proposed leases and property plan to determine the full level of risks in the financial performance forecast as set out in Confidential Appendix 3, to ensure that the proposal is financially viable and to ensure that there is no additional liability remaining with the Council.
38. Confidential Appendix 5 sets out detail regarding a proposed solar energy scheme. The investment is aimed at mitigating energy cost increases at the centres thus improving the viability of the leisure contract and contributing to a reduction in the Council's carbon footprint. The appendix details the potential energy cost savings across the centres along with the estimated capital investment requirement, subject to detailed surveys and a procurement process. It is proposed that costs would be part funded through an invest to save zero interest Salix loan, with the operational savings contributing towards payback of the investment.

39. Tax and legal advice has been sought previously to determine the optimum benefit and risk of any future contract variation and investment at the centres. This has identified a number of essential considerations, including the requirement to clearly identify responsibility for any works proposed and any income to be generated as a result. If any of the capital works undertaken by the Council are deemed to be GLL responsibility under their existing lease, this could lead to irrecoverable VAT, adding a further 20% to the cost of these works and could invalidate the non-business peppercorn lease. There is also a risk that if the income to fund works is not the Council's income, this could also result in an additional 20% cost due to irrecoverable VAT.
40. This tax and legal advice will need to be revisited once the substantive details of the proposal are finalised to understand the full implications of the revised proposal and to ensure that there is no detriment to the Council's VAT position. In particular, the timing of any decision to opt to tax the land and property at Pentwyn will be crucial as well as ensuring that the proposals do not impact on the existing non-business lease arrangements at the centres.

**Legal Implications (including Equality Impact Assessment where appropriate)**

41. The report provides updated proposals for Pentwyn Leisure Centre under which GLL would continue to operate part of the centre; namely to manage the building and operate the public fitness centre (gym), the main sports hall, and the external pitches (outside of Cardiff Rugby agreed hours of use. In addition, details are provided on proposals of how the other parts of the centre will be updated and utilised. The report also gives an update decarbonisation/energy efficiency proposals at the centre.
42. The first recommendation (recommendation 1) (i)) seeks approval of the proposals/scheme for the development of the Centre as per appendices 1 and 3 and seeks delegated authority to the Director of Economic Development to deal with all aspects of the procurement of a contractor(s) to undertake the necessary design/development and/or undertake the works required at the Pentwyn Centre.
43. The second recommendation (recommendation (1 (ii))) relates to property and leases, the advice for which is provided below.
44. The third recommendation (recommendation 2)) seeks approval of the proposals/scheme for solar energy and seeks delegated authority to the Director of Economic Development to deal with all aspects of the procurement of a contractor(s) to undertake all the works necessary to implement the 'solar energy scheme'.
45. Detailed legal advice should be sought in the implementation of the above proposals including advice relating to the procurement process and to the drafting of the draft terms and conditions of contract, as the same are developed.



### Legal Property Implications

46. The Council has power to grant leases of property pursuant to s.123 of the Local Government Act 1972 on the best terms reasonable obtainable. The Council's Acquisition and Disposal of Land Procedure Rules require the decision maker to have regard to advice to a qualified valuer.
47. The proposal to let part(s) of Pentwyn Leisure centre to third parties will be subject to GLL having first released and surrendered such parts of the premises from the existing operating agreement and lease that it holds in relation to the premises. It is understood that the retained parts of the leisure centre will continue to be operated by GLL under existing operating arrangements. The part(s) to be surrendered will revert to the Council's control and it may then enter into leases of respective parts with third parties for the areas set out as set out in Paragraph 19 of this report. It is noted that at the time of this report Heads of Terms have been agreed in relation to the letting to Cardiff Rugby. It is envisaged that Heads of Terms will be developed and further agreed in respect of other parts of the premises noted in the report and approved under the delegations provided in this report. Until such leases are entered into the Council will retain responsibility for those areas. If required, further legal advice can be provided on those matters at the relevant time.

### General Legal Implications

#### Equalities & Welsh Language

48. 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.
49. 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

50. 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 2023-26.

51. 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
52. 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
53. 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.

### **HR Implications**

54. There are no HR implications directly arising from this report.

### **Property Implications**

55. All property implications are contained within the body of the report.

## **RECOMMENDATIONS**

Cabinet is recommended to:

- 1) Approve the scheme for Pentwyn Leisure Centre as illustrated by the design plans at Appendix 1 and the financial proposal at Confidential Appendix 3 and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture, Parks and Events, the Section 151 Officer, and the Legal Officer to:
  - i) Deal with all aspects of the procurement of a contractor(s) to undertake the works set out in this report subject to the financial envelope set out at Confidential Appendix 3;

- ii) Conclude lease agreements with tenants on the terms set out at Confidential Appendices 3 and 4, subject to detailed due diligence and independent valuation to demonstrate best value.
- 2) Approve the solar energy scheme as set out at Confidential Appendix 5 and delegate authority to the Director of Economic Development in consultation with the Cabinet Member for Culture, Parks and Events, the Section 151 Officer, and the Legal Officer to deal with all aspects of the procurement of a contractor(s) to deliver the solar energy scheme as set out in this report and at Confidential Appendix 5, subject to the financial envelope set out at Confidential Appendix 5.

<b>SENIOR RESPONSIBLE OFFICER</b>	<b>Director Name</b>
	Date submitted to Cabinet Office

*The following appendices are attached:*

- Appendix 1 - Pentwyn Leisure Centre Updated Plans
- Confidential Appendix 2 - Updated Cost Plans
- Confidential Appendix 3 - Financial Proposal
- Confidential Appendix 4 - Cardiff Rugby revised Heads of Terms (Leases - Building & Pitches)
- Confidential Appendix 5 – Leisure Centre Solar Energy Scheme
- Appendix 6 – Equality Impact Assessment