

## Report of the Cabinet Member Wellbeing & Healthy City

Cabinet – 18 November 2014

### PROPOSED LEASE OF UNDERHILL PARK TO MUMBLES COMMUNITY ASSOCIATION

<b>Purpose:</b>	To seek approval to negotiate and agree Heads of Terms and enter into a lease with Mumbles Community Association for Underhill Park, including the immediate management of community use and secondary hires and lettings.
<b>Policy Framework:</b>	Council Policy City of Sport; Sustainable Swansea New Models of Delivery.
<b>Reason for Decision:</b>	To transfer community management for the facility and subject to milestone approvals, enable the Association to seek funding and progress a phased programme for facility improvements.
<b>Consultation:</b>	Legal, Finance and Access to Services.
<b>Recommendations:</b>	It is recommended that Cabinet: -  <ol style="list-style-type: none"><li>1) Notes the financial and operational implications and authorises the Director of Place to negotiate and settle the terms of the proposed lease (and thereafter any required Deeds of Variation) and to instruct the Head of Legal, Democratic Services and Procurement to finalise the legal documentation;</li><li>2) Agrees, in principle, the long-term ambitions and phased programme of improvements proposed by Mumbles Community Association;</li><li>3) Authorises the Director of Place to agree the phased programme subject to gateway and milestone reviews, funding, access, contract and any other required legal procedures being satisfied.</li></ol>
<b>Report Author:</b>	Ian Beynon / Lewis Hinds
<b>Finance Officer:</b>	Sarah Willis
<b>Legal Officer:</b>	Nigel Havard
<b>Access to Services Officer:</b>	Catherine Window

## **1.0 Background**

- 1.1 Underhill Park is a busy community open green space providing a range of facilities including sports provision for football, rugby and cricket.
- 1.2 The Park is owned by the Authority and is maintained by Parks Operations from within the Waste Management service. The Pitch lettings function is provided by Cultural Services.
- 1.3 The Park is home to Mumbles Rangers AFC and Mumbles RFC who both run junior, youth and senior teams. There are also a number of Cricket clubs who regularly use the site.
- 1.4 All clubs currently pay a permit fee to the Authority for all matches played at Underhill and the Parks service provides a match day attendant.
- 1.5 Both the Rugby and Football clubs have separately leased changing rooms on site which have recently been upgraded. The facilities date back to WW2 and have a limited lifespan.
- 1.6 The Authority's changing facilities were demolished in 2008 as they were deemed to be unsafe.

## **2.0 Proposal**

- 2.1 Mumbles Rangers AFC and Mumbles RFC are keen on undertaking a self management function within the Park, with a vision to develop and improve the range and quality of the sports facilities, both for the sports clubs and the general public who use the sports facilities. They have formed themselves into Mumbles Community Association (MCA) to further develop this aspiration.
- 2.2 In the long term MCA has a master plan to provide the following features and facilities within the park, based on a phased approach;
  - 2.2.1 Phase 1: The lease for the ground to the newly formed management company. This will result in;
    - Improved sports pitch playing surfaces to accommodate all levels of rugby, football and cricket.
    - An amended pitch layout, including potentially increasing the number of pitches to maximise usage.
  - 2.2.2 Phase 2: The provision of a fenced, floodlit 3<sup>rd</sup> generation (3G) synthetic grass pitch, subject to funding and planning consent, which could potentially generate income from hire. The Association has indicated that enquiries for funding for this development have been warmly received.

2.2.3 Phase 3: The building of a new Community Centre, also subject to funding, planning consent and a sustainable business plan, comprising changing rooms, gym and clubhouse to replace the existing structures and provide a headquarters for the Association.

2.3 It is proposed that in the first instance, that there be a lease for Underhill Park so as to enable Phase 1 to be delivered. Depending on progress and successful funding applications, business plan and planning consent approvals, the terms of the lease will be amended where necessary to enable Phase 2 and subsequently, Phase 3 to be delivered. Approvals to these phases will be based on an agreed programme of delivery, gateway reviews and consents obtained based on funding, financial viability and the sustainable provision of a community facility without intervention by the Authority

2.4 The successful implementation of the plan and long-term self management of the Park by MCA will provide the following benefits;

- Community cohesion through the ownership, involvement and interest in local facilities.
- Partnership working with the community in managing and safeguarding valuable community assets.
- Investment in modern, fit for purpose facilities which the Authority is not in a position to provide.
- Increased access to local formal and informal sporting and recreational opportunities.
- Access to funding opportunities not available to the Local Authority.

### **3.0 Property Implications**

3.1 To make it possible for MCA to have the opportunity to apply for funding opportunities and facilitate the above mentioned improvements they must have a legal interest in the land they are looking to develop.

3.2 Therefore, MCA have requested a 125 year lease of Underhill Park (as shown outlined in red on the attached plan) at a peppercorn rent. However, MCA will pay the Council the necessary amount to maintain the park to an agreed standard.

3.3 It is important to note that the lease will require the Park to remain as a public open space and there are many other lease specifics that need to be agreed to protect the Authority's best interests before any Heads of Terms can be agreed.

3.4 If MCA are able to proceed with a lease on the principles identified above, although the disposal is likely to be at best consideration this is difficult to prove conclusively. Therefore, at a later date it is likely that the

Authority's Wellbeing powers will need to be used to dispose of the property at less than best consideration.

#### **4.0 Equality and Engagement Implications**

An EIA Screening Form has been completed with the agreed outcome that a full EIA report was not required. The reasons for this were:

The community group will improve and enhance the sports facility provision in Underhill Park to enable them to further develop opportunities for the local community. There will be no change in provision or opportunity than at present as the Park will remain fully open to the public as it is now. The only change to current provision is that the Community Association will have the responsibility for the sports pitches and will not have to apply to the local authority for permits to play formal matches. Casual usage will not change or be affected. Access issues relating to the overall site will remain the responsibility of the Authority

#### **5.0 Financial Implications**

- 5.1 Agreement of a long term lease to the Community Association would preclude the Authority from the possibility of the future sale and capital receipts from this site.
- 5.2 The current annual costs for the Parks service in relation to sports pitch provision at Underhill are;
  - Grounds maintenance of rugby, football and cricket pitches - £16,000
  - Sports day attendant duties - £3,500
  - Total £19,500
- 5.3 The average annual income to the Authority from permit fees for all sports is £9,000
- 5.4 There will be an annual loss of income to the Authority of up to £9,000 as the clubs will cease to pay a permit fee to play matches as part of the lease agreement.
- 5.5 There will be financial savings to the Authority from MCA paying an annual figure of up to £16,000 to the Authority for the maintenance of the sports pitches which will cover the existing grounds maintenance costs to the required specification.
- 5.6 There will also be financial savings to the Authority of up to £3,500 from MCA taking responsibility for match day duties, precluding the need for the Parks service to provide an attendant on match days.
- 5.7 Therefore there will be a net saving to the Authority of approximately £10,500 per annum.

- 5.8 There will be no additional long term financial commitment required by the Authority for any new facilities provided by the Community Association, as this will be the responsibility of the Association.
- 5.9 The Authority has received an outline business case from MCA which includes their form of organisation and the proposed community benefits. However before any lease agreement can be progressed, further work will be required by the Trustees of the MCA to provide a long term business plan, which demonstrates a sustainable operation in relation to their proposed developments.

## **6.0 Legal Implications**

- 6.1 Notwithstanding what is stated in Paragraph 2.2.1 above Mumbles Community Association is not registered as a company at Companies House-neither is it registered as a charity with the Charities Commission. It is believed that MCA intend to incorporate themselves as a Charitable Incorporated Organisation which will be a legal entity capable of holding an interest in land .No lease should be granted until the Head of Legal and Democratic Services and Procurement is satisfied that the MCA has been so properly constituted..
- 6.2 Paragraph 3.4 is noted-the contents are not satisfactory. The Director of Place should when concluding his negotiations as to the terms of the proposed lease reach a firm conclusion as to whether or not the consideration the Authority will receive from MCA satisfies or not the statutory duty under Section 123 Local Government Act 1972 to obtain the best consideration reasonably obtainable. It is strongly recommended that on the occasion of the Director of Place exercising his delegated powers(as authorised by this Report) that they are recorded formally in writing and therein the Director certifies whether or not the statutory duty has been discharged. The Director of Place should also certify whether or not the Authority is in compliance with its own Land Disposal Rules in only offering the lease to MCA and not marketing openly.
- 6.3 If the Director of Place reaches the conclusion that prima facie the Authority will be in breach of the statutory duty then the Authority may be able to utilise the General Disposal Consent which does permit a letting at an undervalue provided that such letting is in compliance with the well-being powers provided for in Section 2 of the Local Government Act 2000 ie the power to promote social or economic or environmental well-being. It is essential that the Director of Place in utilising such powers both sets out fully his rationale for the Authority's use of the powers and follows the Welsh Government Guidance on their use. The Consent also can only be used where the difference between the unrestricted value of the interest to be disposed of and the consideration accepted does not exceed £2,000,000.00. The Council's external Auditors will need to approve the use of the Consent and the well-being power

- 6.4 The property is prima facie Public Open Space and prior to any disposal appropriate Notices will need to be advertised and objections considered.
- 6.5 A Report on Title has been carried out and extracts are below-  
Mines and minerals are excepted.

The Land is subject to the covenants and rights reserved by a Conveyance dated 3<sup>rd</sup> August 1923 - the land is subject to rights of light and air. The conveyance also contains a covenant in the following terms '*...that the purchasers their successors and assigns will not erect or suffer to be erected without the approval in writing of the Ninth Duke (of Beaufort) his heirs and assigns upon the said land hereby assured or any part thereof any dwelling house or shop or any building except a Park Keepers Lodge, Weather Shelters or a Refreshment Pavilion or other approved erection necessary or proper in connection with the user of the said land as a Recreation Ground for the use of the Public*' .

Potentially therefore consent may be required from the Duke's successors in title-further work may be required once the terms of the proposed lease are agreed.

The conveyance also contains a covenant requiring the Council to repair and maintain boundary walls and fences.

The Land is subject to the rights granted by a deed dated 30<sup>th</sup> July 1987. This easement grants a right of access over the land, shown on the plan, to the property known as 'Longfields' 98 Newton Road, Mumbles.

Part of the Land is subject to a lease dated 11<sup>th</sup> December 2008, to the Trustees of Mumbles Rangers, which is for a term of 25 years from 29<sup>th</sup> September 2008.

- 6.6 It is noted that the Heads of Terms for the proposed Lease have not yet been negotiated so it is not possible at this stage for the Head of Legal and Democratic Services and Procurement to carry out a detailed risk analysis. It also presumably the intention that the existing Leases as referred to in paragraph 1.5 be surrendered
- 6.7 The Council should be kept fully informed of all grant applications by MCA in order to ensure that any grant agreements (which are likely to be legally binding) are compatible with the terms of the proposed Lease
- 6.8 It is likely that formal Deeds of Variation to the original Lease will be required to provide for the proposed phasing of works by MCA
- 6.9 Any issue as to State Aid will be addressed on the occasion that the Director of Place makes his delegated decision as referred to in Recommendation 1.

**FOR INFORMATION**

**Background papers:** None.

**Appendices:** Appendix A – Plan  
Appendix B – EIA Report