

Report of the Cabinet Member for Investment, Regeneration and Tourism

Cabinet – 15 November 2018

**Financial Procedure Rule 7
Capital Development Proposals for Leisure Centres in
Partnership with Freedom Leisure**

Purpose:	<p>To confirm level of funding for the Leisure Centre capital development proposals in partnership with Freedom Leisure.</p> <p>To comply with Financial Procedure Rule No 7 (Capital Programming and Appraisals) to commit and authorise the schemes, as set out in the Tender from Freedom Leisure, within the Council's Capital programme.</p>
Policy Framework:	<p>Sustainable Swansea – fit for the future.</p>
Consultation:	<p>Legal, Finance, Access to Services and schools with dual use Leisure facilities.</p>
Recommendation(s):	<p>It is recommended that:</p> <ol style="list-style-type: none">1) The overall Capital Development principles are approved together with their financial implications;2) Authority is given to draw down the Capital borrowing and to authorise the schemes contained within the Capital Development principles;3) A Project Board is developed to manage the individual schemes with appropriate officer representation;4) Grant funding opportunities are explored in partnership with Freedom Leisure to increase the level of capital available to further enhance the development proposals and expand where feasible, other facility upgrades.
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1.0 Introduction and background

- 1.1 As a culmination of the Cultural services commissioning review and subsequent procurement exercise, a decision to operate 6 Community Leisure Centres and the LC under a 19.5 years contract with Freedom Leisure was made by Cabinet on 21 June 2018.
- 1.2 The evaluation of the Freedom Leisure's submissions provided the Council with evidence that there is an opportunity to deliver higher savings against both the current cost and affordability target than any of the alternative options
- 1.3 Freedom Leisure's solutions evidence that improved outcomes, plus investment can be achieved at significantly less cost to the Council. Freedom Leisure scored well against the specification and delivered significant savings against the affordability. This being subject to the stated capital improvements detailed in the Tender documents.
- 1.4 Freedom Leisure's Solutions deliver significant investment in the facilities, reducing overall net costs to the Council, through applying commercially focused capital improvements, , transferring future maintenance obligations from the Council to the operator, and addressing all backlog maintenance across the facilities.
- 1.5 As a result of the commissioning and procurement exercise, Cabinet decided to appoint Freedom Leisure as the preferred bidder for Leisure Centres and the contract was subsequently awarded and commenced on 1st October 2018
- 1.6 The Cabinet report highlighted that Freedom required a capital investment from the Council of £5.16 million and would require an average management fee over the life of the contract of £724,000 per annum, which was a saving of £900,000 on the current revenue affordability limit of £1.6 million. With the costs of finance factored in for the capital, the savings are £502,000 per annum below the affordability limit. £1.6m compared with £1.098m highlighted within Table 2.
- 1.7 The purpose of this report is to seek approval to invest the £5.16M as set out in the Freedom Tender, to be funded by prudential borrowing. The contents provide broad parameters and highlight proposals, details of the capital development proposal schemes and the mechanisms used to achieve best value and effective delivery in procuring the works.
- 1.8 This report also requests approval to explore and apply for other opportunities to increase the level of capital investment, through appropriate grant funding applications, utilising the available capital per site/project as potential match. With the caveat that the purpose or restrictions of any grant can be fulfilled by Freedom Leisure in the operation of the leisure centres under contract with the Council over the 19.5 year contract term.

2 Capital Development Principles

- 2.1 The procurement process was awarded through entering into Competitive Dialogue procedure under the Public Contracts Regulations 2015. The aim of the Competitive Dialogue was to identify and define the means best suited to satisfy Council and stakeholder needs.
- 2.2 The Competitive Dialogue included discussions on the current conditions of the assets and opportunities to improve commerciality and therefore reduce costs overall. These discussions included risk profiles, life cycle costings and approach to achieve the best value for money. The process also evaluated design solutions and opportunities to reduce overheads as well as improve income through satisfying and increasing market demands for facilities.
- 2.3 In addition to the above factors, throughout the procurement process it was identified through Council commissioned non-invasive condition review reports that there was Circa £1.5m backlog maintenance across the portfolio of Leisure facilities requiring attention.
- 2.4 It was discussed through dialogue with the bidders how these backlog maintenance issues could be met through any proposed capital development schemes.
- 2.5 It was acknowledged throughout that the intention of the procurement exercise was to identify ways in which the current leisure centres could be retained and secured for the future, rather than continue to decline, due to cost avoidance or investment opportunities available to a third party.
- 2.6 The principles remained that all future maintenance obligations would reside with the operator and commercial targets resulting from investment were the liability and risk of the operator. This also served to ensure decisions and allocations would be grounded in their industry expertise, and result in an improved leisure provision at less cost to the Council.
- 2.7 It was acknowledged that provided the terms of the contract award were fulfilled, the resultant operator would be at liberty to review and revise future investment opportunities in other ancillary or associated assets, in consultation with the Council, where this would prove beneficial to the overall cost envelope, commerciality and long term sustainability of assets.

3 Capital Development Proposals and Principles (Freedom Leisure)

- 3.1 Detailed proposals, project plans and development plans were submitted as part of the final tender submission by Freedom Leisure, contracted to Clarkson Alliance their preferred project partner with input from company Leisure Energy.
- 3.2 The final tendered submission contains proposed development plans, project plans, schemes of work per facility, costings, timescales, planning considerations and key risks are outlined in full. These draft proposals were

accepted as part of the tendering process and agreed by Cabinet. These proposals still remain subject to final review, screening and ratification through the appropriate project board framework described within this report and draft Capital Works Agency Agreement as described in item 4 below.

- 3.3 An overview of the Capital Development proposals across the portfolio are detailed in Table 1 below

Table 1

Capital spend	Bishopston	Cefn Hengoed	Morrison	Penlan	Penyrheol	Elba	LC	TOTAL
Improvements	413,573		383,011	469,044	1,046,168		330,862	2,642,685
Energy Works	15,000	17,000	92,364	307,682	297,756		274,506	1,004,308
Backlog Maintenance	48,100	313,867	352,717	315,905	439,033	27,585	17,750	1,514,957
Key changes Summary	Refurbish and reconfigure public spaces to increase capacity of fitness suites; create new public facilities; improve entrance/access.	Refurbishment, updating, redecoration and replacement of fixtures/fittings where needed. Improved energy efficiency and systems.	Refurbishment and re-purpose to create new fitness capacity; New access routes; improved security; new lift.	Reconfigure and create lobby and foyer space; cafe seating area; create new fitness space and access routes;	Reconfigure and remodel to create new accessible facilities; circulation routes and viewing areas; New fitness studios;	Refurbishment, updating, redecoration and replacement of fixtures/fittings where needed..	Reconfigure and remodel kitchen, catering and cafe layout to diversify use and sales; create new facilities for early years.	
TOTAL	476,673	330,867	828,092	1,092,631	1,782,957	27,585	623,118	5,161,923

- 3.4 As set out to Cabinet previously, improvements are mainly focused on repurposing available space to take commercial advantage of floorspace and efficiency of staff management. For example converting under-utilised space to modern gyms, inserting mezzanine floors, re-orientating entrances to improve security, data capture and avoid duplicating costs and so on. Whilst there is limited scope to undertake this kind of work, in the immediate future, to the existing facilities at Elba and Cefn Hengoed, Freedom remain committed to exploring and collaborating with partners to enhance and improve these facilities to improve access, sustainability and commercial opportunities. For example a new 3G pitch at Cefn Hengoed is in planning and all leisure space will be brought up to standard, with greater energy efficiency. This will enable cost avoidance as well as marketing opportunities, to create demand and kick start a cycle of reinvestment.
- 3.5 Works to other sites will be completed within the first 2 years of contract start, with a timeline agreed, as per the Tender. Completion of the majority of these works is within 12 months, focussing on energy improvement works to reduce cost and programming all work on dual use sites in the summer school holiday period 2019, to improve commercial return.

- 3.6 In summary, the works across the portfolio would include:
- a) Increase gym and fitness studio capacity, utilising existing unused spaces by introducing mezzanine floors, passenger lifts/stairs and repurposing spaces.
 - b) Reconfiguration of public access and changing /WC spaces to improve customer journey and improve management of safeguarding at a number of school sites.
 - c) Welcoming entrances and offering new catering services where they don't exist and to include branded offers.
 - d) Energy Reduction schemes across the sites to reduce utility cost to Council and schools where there are joint user splits.
 - e) Introduction of new attractions such as climbing wall at community sites, new water features etc.
 - f) Backlog maintenance requirements and significant uplift in look and feel of the facilities.
 - g) Investment into new state of art fitness equipment at start and throughout contract
- 3.7 All programmed works are subject to final design, discussion and approval with key stakeholders, including Cabinet Member, Cultural Services client team, Centre Staff, and the Schools Leadership or Governing body and Education Department for dual-use sites
- 3.8 A governance structure and Project Board will be developed which will set out relevant reporting protocols and approval and sign-off of the works programme.
- 3.9 Cabinet will not need to authorise any amendments to the schemes of work should the principles of the development remain within the themes listed in 3.5 above.
- 3.10 The impact of any element of a capital development proposal may have a potential to alter future use of spaces. If the funding is agreed, all proposals would be subject to the Councils EIA process and any proposed changes would also be subject to necessary consultation with relevant stakeholders.
- 3.11 The Capital development proposals provide for a number of options for specific sites. These options are included within the total project budget of £5.16M, therefore they are planned to be delivered under the proposals. Reporting through the relevant project board will determine if these options need to be amended if budget pressures arise following procurement for works.

- 3.12 A project timeline has been provided within the tendered submission which sets out the key project milestones and timings to coincide with the stand-alone facilities and dual use facilities. An overall timescale of project completion necessary by Sept 2019, to coincide with completing a number of key projects within the 6 weeks school break summer 2019 to minimise disruption.
- 3.13 The delivery of the projects within this timescale is imperative to deliver upon the savings targets and reducing management fee payment by the Council to Freedom Leisure.
- 3.14 Based upon the projected cost of borrowing of approximately 7% (£70k per million borrowed), the profile of capital repayments as a proportion of average revenue cost to Cultural Services has been depicted in Table 2 below, as Cost of Finance (incurred by the Council) This is an exemplar costing using averages used at tender stage. A more accurate reflection of costs (at this point in time) is included in the financial implications in section 5.

Table 2

Average Annual Cost to Council (19.5 year contract) (£'000's)	Freedom Leisure
Management Fee paid by the Council	£724,000
Cost of Finance (incurred by Council)	£374,000
Total Annual Cost to the Council	£1,098,000
Total Capital Required	£5,161,923

- 3.15 A copy of the Councils financial implications summary has been included as an appendix, which sets out the anticipated expenditure per financial year across each of the various categories (Works, Environmental Improvements and Fees) and similarly the financing profile to match.

4. Capital Works Agency Agreement

- 4.1 As part of Freedom Leisure's submission, it has been agreed to enter into a Capital Works Agency Agreement in order for the procurement and payment of all works related to the investment to be managed in a specific way. A copy of the draft Capital Works Agency Agreement between the Council and Freedom Leisure is included as Appendix 1 and has been considered and accepted throughout the tender process by the Councils Procurement team and Contract lawyers, including input from external advisers. The agreement therefore satisfies the Councils procurement policies and procedures.

- 4.2 The purpose of the Agency agreement is for the Council to appoint Freedom Leisure as its agent to deliver and project manage the capital schemes within the specified budget and to act as agent for the Council in arranging for performance by the contractors and consultants of the capital projects in line with the terms of the agreement.
- 4.3 Under the agreement, Freedom Leisure shall not appoint contractors, agree designs, alter designs, terminate contractors or incur additional costs outside of the agreed budget without the Council's prior written approval.
- 4.4 The Council shall be responsible for placing the orders in the Council's name, paying all contractors and consultants in relation to the capital schemes, on the basis that they are within the specified allocated budget.
- 4.5 The Agreement sets out the provisions of establishing a Project Board to facilitate discussion around the capital projects and for the Council to be provided with progress updates, monitor timescales and deal with any matters of difficulty, risks or issues.
- 4.6 Project Board will meet once a month whilst capital projects are being undertaken and each party can make their own relevant appointments as referenced in the agreement.
- 4.7 Freedom Leisure will provide the required levels of professional indemnity insurance during the period of the agreement and for an agreed period after completion. Freedom Leisure and the Council will indemnify each other otherwise in accordance with the Contractors Agreement.

5. Financial implications

- 5.1 The total amount of Capital required is £5.16m. This is to be funded entirely by unsupported borrowing, and the borrowing costs will be funded from the Cultural Services budget identified for the overall contract cost. The exact borrowing costs won't be known until the borrowing occurs, however it is envisaged that the borrowing and loan repayment will be circa £420k pa (allowing for the loan to be completely repaid within the life of the 19.5 year contract).
- 5.2 Due to the nature of the dual use sites the leases at these sites will be classed as exempt leases, meaning any capital spend at these locations will affect the Council's VAT partial exemption calculation. This will be closely monitored to ensure no breach of the Council's limit occurs – there may be a necessity to opt to tax the sites should the limit be in danger of being breached.
- 5.3 Freedom Leisure will provide a schedule of payments required as part of the Contractors Agency Agreement and the Council will have to adhere to this schedule.

- 5.4 There are a number of risks identified by Freedom Leisure within the tendered capital development proposals. Although a risk allowance/contingency has been built into the overall cost plans, should these allowances be exceeded there could be extra costs that would fall to the Council.
- 5.5 The risk analysis identifies the risks which rest with the Council and relate to a number of key areas physical or operational areas, such as latent defects that arise as a result of the planned works or asbestos issues that were not identified through the previously supplied surveys undertaken by the Council. Additional risks in delays to the process as a result of delays in entering into the Contractors Agreement, drawing down capital, raising orders etc. Any changes to the scope of the project due to consultation with stakeholders (Schools, Members etc) would rest with the Council.
- 5.6 Reasonable mitigating strategies have been identified to ensure that action is planned to avoid incurred costs to the overall project.

6. Legal implications

- 6.1 As set out in the cabinet report dated 21 June 2018 the procurement process securing Freedom Leisure as the successful tenderer was undertaken in compliance with the Council's Contract Procedure Rules and relevant EU procurement legislation. No challenge has been received in relation to that process or its outcome.
- 6.2 The Capital Development proposals and the delivery of the individual schemes will be governed by the terms of an agreement with Freedom Leisure as set out in paragraph 4 of this report. This agreement together with the operator agreement and contract security in the form of a performance bond, will ensure that the interests of the Council are protected.

7. Equalities and Engagement

- 7.1 The Council is subject to the Public Sector Equality Duty (Wales) and must, in the exercise of their functions, have due regard to the need to:
- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
 - Advance equality of opportunity between people who share a protected characteristic and those who do not.
 - Foster good relations between people who share a protected characteristic and those who do not.
- 7.2 Our Equality Impact Assessment process ensures that we have paid due regard to the above.
- 7.3 An EIA was undertaken as part of the original report to Cabinet on 21 June 2018. As detailed earlier in this report, once the receipt of funding is approved all detailed works and schemes outlined across the portfolio, they will be subject to the Council's EIA process and this will begin at the earliest opportunity.

Background Papers: None

Appendices:

Appendix 1 – Financial Implications