



City and County of Swansea

Notice of Meeting

You are invited to attend a Meeting of the

Scrutiny Performance Panel – Service Improvement & Finance

At: Committee Room 5 - Guildhall, Swansea

On: Tuesday, 19 June 2018

Time: 11.00 am

Convenor: Councillor Chris Holley OBE

Membership:

Councillors: P Downing, P R Hood-Williams, L James, M H Jones, P K Jones, J W Jones, I E Mann, B J Rowlands and D W W Thomas

Agenda

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| 2 | Disclosure of Personal and Prejudicial Interests.
www.swansea.gov.uk/disclosuresofinterests | |
| 3 | Commissioning Review - Cultural Services <ul style="list-style-type: none">• Martin Nicholls – Director Place• Tracey McNulty – Head of Cultural Services• Robert Francis-Davies – Cabinet Member Culture, Tourism and Major Projects• Jamie Rewbridge - Strategic Manager Leisure Partnerships Health Wellbeing | 1 - 30 |
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Next Meeting: Tuesday, 10 July 2018 at 11.00 am

A handwritten signature in cursive script that reads 'Huw Evans'.

Huw Evans
Head of Democratic Services
Wednesday, 13 June 2018

Contact: Scrutiny - 01792 637732



Report of the Cabinet Member for Investment, Regeneration and Tourism

Cabinet - 21 June 2018

Commissioning Review: Cultural Services

Purpose:	To update Cabinet on the progress of the procurement exercise undertaken for Leisure and Cultural facilities, following the Service Commissioning Review 2015, and present comparative options for future delivery.
Policy Framework:	Sustainable Swansea – fit for the future
Consultation:	Legal, Finance, Access to Services and schools with dual use Leisure facilities
Recommendation(s):	It is recommended that: 1) Cabinet note the progress of the procurement exercise undertaken for Leisure and Cultural facilities, following the Service Commissioning Review 2015, and the detail of the comparative options for future delivery.
Report Author:	Jamie Rewbridge
Finance Officer:	Ben Smith
Legal Officer:	Debbie Smith
Access to Services Officer:	Ann Williams

1. Background

A Commissioning Review undertaken in 2015 outlined comparative options for the long term delivery of the functions within the council's Cultural Services. These included options for third party contracts and it was agreed to pursue this option in order to ascertain the best and most sustainable model for Swansea. Following the publication of a Contract Notice in the Supplement to the Official Journal of the European Union (OJEU), Pre-Qualification Questionnaires (PQQ) were received and evaluated in January 2017.

This resulted in some services being removed from the procurement process, specifically Galleries and Museums, due to insufficient evidence of an ability to meet our specification. These remain subject to in house remodelling and business planning with our stakeholders and funding partners.

For the remainder, a number of bidders were invited to proceed to the Invitation to Submit Detailed Solutions (ISDS) stage, against the following 'Lots':-

- Lot 1 – Leisure Centres: Bidders were restricted from bidding for select facilities only to remove the risk of us retaining high cost/ low opportunity facilities and contracting out more commercially viable facilities, thereby distorting the appraisal of future benefits. In acknowledging the dual use complexities, bidders were required to identify the impact, in financial and operational terms, of removing each of the 'dual-use' facilities from their bid.
- Lot 2 – Outdoor Leisure: Applications were permitted for both or either:
 - Lot 2A - Ashleigh Road Pitch and Putt
 - Lot 2B – Other Outdoor Facilities
- Lot 3 – Theatres: Applications were permitted for the Grand Theatre or Brangwyn Hall individually or as a combined proposition.
 - Lot 3A - Grand Theatre
 - Lot 3B - Brangwyn Hall
- Lot 5 – Plantasia: Single facility

At this point, several bidders withdrew from the process for their own reasons.

2. Invitation to Submit Detailed Solutions (ISDS) stage

All updated and refined ISDS documents, including a package of supporting information was uploaded to the procurement portal in April 2017. The ISDS stage was designed to enable the Council to engage in productive dialogue with the remaining bidders, who were required to put forward a fully costed and operationally detailed response to our Specifications and defined outcomes.

At this stage an additional specification was included against Workforce Matters following Union consultation. This entailed a mandatory requirement for bidders to submit solutions against variant options of 'TUPE +1' and 'TUPE +2'. There are subtle differences between the two options which are set out to protect 'existing' transferred staff under both scenarios, with option +2 offering protection of existing terms to 'new employees' taken on after the contract start date including membership of the Local Government Pension Scheme. This sits alongside the Code of Practice on Workforce Matters 2014 (Wales) which provides guidance where a body transfers its workforce to a service provider.

The Code requires that any new joiners are employed on terms ‘no less favourable’ than the existing terms and conditions, but it does not require that new joiners are employed on previously held Council terms and conditions. In terms of the pension provision the Code provides that contractors should offer membership of LGPS via an admission agreement or a scheme which meets the auto enrolment provisions.

2.1 Evaluation

The evaluation process was open, fair and transparent to all bidders and focused on obtaining clear evidence and information on which to evaluate the options. The principle at this stage was to shortlist up to three bidders per lot.

The following key areas were the basis of the specification and evaluation:

- Services (e.g. deliverability/added value/customer service)
- Technical (e.g. the capital build and investment plan)
- Commercial (e.g. price, commercial terms, contract)

These are underpinned by a range of detailed criteria within a ‘weighting’ framework for each area as follows:

Table 1 Evaluation Criteria

Level 1 Criteria	%	Level 2 Sub Criteria	Level 3 Sub Criteria
Services	40%	<ul style="list-style-type: none"> • Outcomes • Quality/Customer Care • Operational Delivery 	<ul style="list-style-type: none"> • Specific areas, such as Sports Development, Staffing, Health & Safety
Technical	10%	<ul style="list-style-type: none"> • Development/ Design • Planning Risk • Maintenance 	<ul style="list-style-type: none"> • Design and maintenance proposals • Environmental Approach
Commercial	50%	<ul style="list-style-type: none"> • Usage, Expenditure & Revenue • Affordability • Contract Acceptance • Capital Costs • Delivery & Risk 	<ul style="list-style-type: none"> • Deliverability of financials, financial, risk

2.2 Responses were scored on a weighting of 1-10 as follows:

Table 2 Scoring weighting

Score	Rating	Criteria for Assessing Score
0	No response	No response
1	Unsatisfactory / Unacceptable	Unsatisfactory/unacceptable response that does not address all aspects of the question/method statement/specification asked of the bidder or irrelevant response. Significant lack of detail and/or proposes a solution that is unrealistic to implement and manage.
2	Poor	Poor response that is only partially relevant to the question/method statement/specification. Lack of detail provided and/or proposes a solution that is very unlikely to be implemented and managed successfully.
3	Very Weak	Very weak response that addresses some aspects of the question/method statement/specification. Significant issues in relation to the ability of the bidder to implement and manage the solution successfully.
4	Weak	Weak response that falls moderately short of responding to the evaluation criteria/question/method statement/specification in full. Significant minor issues in relation to the ability of the bidder to implement and manage the solution successfully.
5	Acceptable	Acceptable response that appears to address the question/method statement/specification but some minor issues in relation to the ability of the bidder to implement and manage the solution successfully.
6	Satisfactory	Satisfactorily meets requirements and is supported by clear evidence.
7	Good	Good response that responds adequately to the question/method statement/specification. No minor issues in relation to the ability of the bidder to implement and manage the solution. [and] [Solution will bring some relevant added value / benefit in the delivery of the services]

Score	Rating	Criteria for Assessing Score
8	Very Good	Very good response with a robust and detailed solution that gives the Authority a degree of confidence that the solution could be implemented and managed successfully. [and] [Solution will bring relevant added value / benefit in the delivery of the services]
9	Outstanding	Outstanding response with robust and comprehensive solution that gives the Authority a high degree of confidence the solution could be implemented and managed successfully. [and] [Solution will bring significant relevant added value/ benefit in the delivery of the services]
10	Exceptional	Exceptional response with robust and a fully detailed solution that gives the Authority full confidence that the solution can be implemented and managed successfully. [and] [Solution will bring very significant relevant added value / benefit in the delivery of the services].

2.3 'Affordability'

Throughout the process we were clear with staff, colleagues, stakeholders and bidders that the outcome may not result in a contract award to the 'best' bidder, as that was only one option being explored. Diverting from Council management would only be undertaken if it was evidenced that a third party could achieve the qualitative, quantitative, regulatory and technical outcomes that the Council delivers – at less cost coupled with greater investment, to secure a sustainable future service. Financial sustainability therefore became a significant part of the evaluation framework which was described as 'affordability'.

The 'affordability' level was set at how much the services currently cost the Authority overall (i.e. not just Cultural Services revenue budget) once savings from in-house transformation phase were delivered 16/17. This was to ensure that we were assessing the 'solutions' for improving areas that we had no more capacity to improve ourselves. The staffing and operational model is therefore currently at its leanest possible threshold. Evaluation was based on a calculation of how far below the affordability levels the bidders scored, with a maximum score of 10 if they were at the following levels below the affordability level.

- Lot 1 – £500,000 per annum below affordability of 1.6M cost to Council
- Lot 2A – £30,000 per annum below affordability of -£5.5k payment to Council
- Lot 2B – £100,000 per annum below affordability of 18k cost to Council
- Lot 5 – £200,000 per annum below affordability of 150k cost to Council

2.4 Evaluation

A cross-council governance structure was established, with each aspect of the evaluation framework being led by a specialist team. These reported to the Project Team and subsequently CMT & Cabinet Members. Each evaluation team was responsible for evaluating a particular area, within the framework described in 2.1 of this report.

Robin Thompson of RPT Consulting was retained to offer summary analysis, background information, support and advice and a level of moderation, but only participated in establishing scores for the Commercial Evaluation.

Following Member consultation it was agreed that there was insufficient evidence to warrant progressing to Full and Final Tender for Theatres and these were removed from the process, and are now subject to in house modelling to achieve further improvements.

The process revealed that there was sufficient evidence to progress with the highest scoring bidders for Lot 1, 2a and 2b, and 5, with a number of caveats and recommendations.

Lot 1 (Leisure Centres)

- a. Lot 1 to proceed to Final Tender stage of the procurement process, with the remaining bidders invited to submit a full and final tender, with an anticipated outcome of awarding a contract to the highest scoring bidder, alongside a reserve bidder. This is due to the evidence provided by these bidders that their solutions offer the same or improved outcomes, plus investment, at less cost and reduced risk to the Council.
- b. We continue to operate the LC through partnership having extended the management agreement with the existing operator to 30th September 2018, to coincide with anticipated contract start timescales for the successful bidder.
- c. The option of TUPE +1 as a minimum remains, understanding that all options could be retained into the final stage for consideration. Further engagement with Unions has informed the decision to retain TUPE Plus 2 as an optional variant.

- d. The minimum length of contract for standard bids increased to 15, with a 20 year option as a variant in the final tender, this was to seek an improvement in the overall financial position and ensure any capital is repaid.
- e. Pentrehafod Sports Hall was removed from Lot 1 and formal discussions have commenced with the school and staff to transfer back to school management, with zero contributions from 2019/20

Lot 2a and 2b (Outdoor Leisure)

- a. Lot 2a (Ashleigh Road Golf) to proceed to Final Tender stage of the procurement process, with bidders invited to submit a full and final tender, with an anticipated outcome of awarding a contract to the highest scoring bidder. This is subject to the Final Tender submitted by the highest scoring bidder offering the same or improved outcomes as the Council is able to deliver, plus investment, at less cost and reduced risk to the Council
- b. Lot 2b (remaining Outdoor Leisure) proceeds to the Final Tender stage of the procurement process.

Lot 5 (Plantasia)

- a. Accepted that no option will deliver a nil cost revenue outcome in the medium term along with the knowledge that there are likely to be significant costs of £500k-£1m to close the facility.
- b. A new revenue affordability limit of 150k per annum was agreed as acceptable. Formal agreement for the removal of the further £110k savings target still remaining against Plantasia in the budget, retaining C£150k as the operational affordability target.
- c. To seek final tender option on the understanding that interest in pursuing the delivery of this is likely to be predicated on that bidder being awarded a contract in another Lot.
- d. To develop a new in-house business plan based upon the potential new opportunities detailed in this paper, as well as utilising any negotiated sum from Parc Tawe developments, within an agreed 150k affordability envelope. This to proceed in parallel to the procurement option, for comparative purposes. Both options considered at a later stage, including consideration of the implications of retaining the asset in-house from lifecycle cost perspective, including required revenue funded annual maintenance and future capital works.

2.5 Alternative Options Review

In seeking an evidenced based options appraisal, all Services included in the Procurement, i.e. Lot – 1, 2, 3 and 5, as well as those removed from the process, were reviewed and modelled against the criteria in order to assess both the feasibility and the resource implications of continuing an in house operation. This informed a parallel process for the option of transferring to a newly established company, such as a charitable trust.

The work was undertaken by RPT Consulting for Leisure Centres, Outdoor Leisure and Plantasia (Lots 1, 2 and 5). With David Clarke Associates (DCA) providing a report on the Grand Theatre, Brangwyn Hall and Museum Services; Lots 3a, 3b and the remaining part of Lot 4. The Glynn Vivian Art Gallery is undergoing a separate process for business planning and resilience as part of a funded programme with Arts Council of Wales. This work is continuing.

3. Full and Final Tender

3.1 Process

Bidders were invited to submit Final Tenders (ISFT). At the same time we continued to assess the feasibility and implications of continuing an in house operation, as well as the establishment of a new Not for Profit Organisation (NPDO) for the remaining Lots. The key outcomes and principles of that assessment, together with current and anticipated future constraints, are highlighted in this report, as are the supporting evaluation matrices and detailed evaluation.

3.2 Criteria

The previous criteria still stands, but in addition, bids were to fulfil the following criteria:

- Standard bid – ie. a 15* year contract, based on TUPE Plus 1 Scenario with full life cycle costs the responsibility of the contractor (Standard bid for Lot 2a (Golf) was 10*** year, with a 15 year variant);
- Variant bids – which included for TUPE Plus 2 scenario and 20** year contract terms for Lot 1
- For Lot 1 bidders were also asked to provide the impact of removing any one of the schools from the Lot.

***nb** *15 year is presented as 14.5 years, assuming contracts commence 1st Oct 2018*

***20 year is presented as 19.5 years, assuming contracts commence 1st Oct 2018*

**** 10 year is presented as 9.5 years, assuming contracts commence 1st Nov 2018*

The TUPE scenarios were based on the following parameters:

- TUPE Plus 1 scenario was to ensure that all existing staff were transferred and remained on existing terms and conditions whilst employed.;
- TUPE Plus 2 was based on all new/future staff also being appointed on these terms.

4. Procurement Process and Evaluation

The evaluation matrix has remained consistent throughout the process—including affordability and targeted savings.

The governance structure and process of evaluation by specialist teams has also remained consistent at this final stage.

4.1 Evaluation Overview

All the bids received were good quality, submitted by organisations with significant track records in the industry, both operating and developing new, relevant facilities.

Affordability limits for the Final Tender were modelled on the current costs to the Council providing the services, less required and targeted savings over three years from 16/17. Targeted Cultural Services savings for the remaining facilities in the Lots is a further £300k, planned for between 19/20 and 20/21, these follow savings of £700k across 16/17 -18/19, in order to achieve the £1M targeted saving identified as part of the commissioning process.

Whilst these figures provide us with clarity on the incoming proposals in terms of investment and operational enhancements required, and the ability of the third party to deliver, it demonstrates that ‘do nothing’ is not an option. The Service has delivered significant savings to the degree that retaining the facilities in house will require some staffing and budgets to be reinstated in order for business as usual to be sustainable. Enhancement and growth will require further capital investment and revenue growth. This is a key component in the options appraisal later in this report.

It is also important to note that the affordability assessment was aggregate with the scoring for the other factors including customer benefit, qualitative and investment factors and should not be seen in isolation.

All bids present savings in excess of £500,000 per annum on the affordability level presented for Lot 1, at £1.6 million cost per annum (n.b. this includes all maintenance overheads and back office costs, not just Cultural service budgets). We summarise in the table below the management fee and the cost of finance for each of the standard bids, together with the capital investment required in order to yield these improvements.

Lot 1 Evaluation (Leisure Centres)

The bids present different solutions to the operation and investment in the facilities

Table 3 Lot 1 Evaluation Summary

Lot 1	Bidder 1	Bidder 2	Bidder 3
Services (40%)	29.8%	34.4%	33.7%
Technical (10%)	6.8%	6.5%	8.0%
Commercial (50%)	44.4%	45.9%	46.7%
Total	81.0%	86.8%	88.4%
Rank	3	2	1

All score within 7% of each other and between 81 to 88% and this reflects their technical, financial and services proposals. Scores of this level evidence that the Council's specification and required outcomes are met and in some instances exceeded through 'added value' offered in the bidders' solution.

All bids propose detailed and costed investment in the facilities, including a range of schemes and options for addressing and funding backlog maintenance; improving the facilities to increase commercial opportunities; increased use and improved outcomes through service delivery, and investment in facilities and equipment. The proposals have been developed through dialogue with the Project Team and the schools, addressing safeguarding issues at dual use sites and proposing much needed refurbishment and improvements to the facilities.

*NB: Affordability Level £1.6 million (1600)
Current Cost - £2.13million (2130)*

Table 4 – Lot 1 Average financial submissions

Average Annual Cost to Council (14.5 year contract)	Average of the Bidders submission (£'000's)
Management Fee paid by the Council	765
Cost of Finance at 7% (incurred by Council)	333
Total Annual Cost to the Council	1098.5
Total Capital Amount of Capital Required	4936

Notes

1. The capital requirements will need to be provided by the Council and funded through prudential borrowing.
2. The prudential borrowing costs are the cost of finance shown above on the basis of a standard cost to the Council of £70,000 per annum per £1million borrowed. These costs are not paid to

the Bidder but are incurred by the Council as 'landlord'/ owner of the asset.

Although a standard 7% cost of capital has been included in the bid for comparison and evaluation purposes it should be noted that actual finance costs will depend on the rate of interest on the day the borrowing is undertaken.

The bidders were also asked to price a scenario based on TUPE Plus 2 and a twenty (19.5) year contract. The costs of implementing these range as follows

Table 5 Lot 1 Range for Variant Options

Average Annual Additional Cost/(Saving) to Council	Range of bidders submission (£'000's)
20 year contract	(70) to 290
TUPE Plus 2 Scenario	124 to 603

Two bidders propose that the management fee can be reduced annually for a 19.5 year contract by up to £70,000. One bidder proposes that it will be increase over a longer term by £290,000

All bidders propose that a TUPE plus 2 scenario will be more expensive for the Council at a value between £124,000 and £603,000 per annum.

4.2 Lot 1: Evaluation Conclusions

Overall, the procurement exercise has demonstrated that several bidders can deliver equal or improved outcomes, at significantly less cost than currently incurred and below the affordability level.

The high quality of the submissions received is evidenced by an average score in excess of 80% across the board. The review team were particularly pleased with some of the added value elements within the submissions, as well as the investment proposals, improvement of systems, equipment and diverse programming.

The summary quality scores and overall financial submission indicates that the highest score is awarded to Bidder 3. Their submissions scored 88.4% overall.

If the decision is taken to contract the services, they should be awarded preferred bidder status. Bidder 2 scored second on the evaluation at 86.8% and should be awarded reserve bidder status.

Consideration should be given to the inclusion of TUPE plus scenarios and length of contract due to the impact on the benefits to the Council and customer. The benefit of a longer contract is the opportunity to achieve greater savings. The implications of maintaining TUPE plus 2 as a condition will cost the Authority between £124,000 and £603,000 per annum.

Should we proceed, then 'preferred bidder' negotiations and finalisation of the terms and agreements should commence as soon as possible, in order for the contract to be live from 1 October 2018, ensuring continued operation of the LC.

4.3 Legal Considerations

A 'model' contract has been provided to bidders during the dialogue process. At final tender stage bidders were asked to provide a full mark-up of the contract in line with the instructions and guidance to bidders. The contract mark-up returns have been reviewed by the Council's Legal team and their advisers, to assess the extent to which bidders have, in their final tenders, accepted the proposed conditions of contract for the Cultural and Leisure Services.

All bidders within the process scored 10/10 for their acceptance of the proposed contract structure, indicating that the contract terms have been accepted and agreed, subject to any 'fine-tuning' at preferred bidder stage.

5. Leisure Centre In-house and alternative options review

The work to model an in-house option was undertaken by external consultants and is complementary to the previous commissioning review and explored the viability of financial, operational and sustainability factors for two options:

- Further in-house transformation;
- Development of a new 'Not for Profit Distributing Organisation' (NPDO).

The purpose of this work is to enable the Council to make a fully informed decision on the preferred model for future provision, by providing a comparator to external bidders' solutions and costs. It has already been expressed that 'do nothing' is not an option as the staffing and revenue levels are severely limited and unsustainable, and the backlog maintenance and investment needs are further hindering long term planning and improvement.

5.1 Summary and Recommendations for Lot 1

The review was conducted and delivered to the Council ahead of RPT consulting accessing the Tenders at ISDS submission stage, therefore avoiding any conflict of interest. It covers services across all Lots detailed in this report 1, 2 and 5. The review was developed in dialogue with staff and assessment of the facilities, budgets and opportunities or requirements for improvement. For example, changes to catering and fitness equipment; digital and financial/data/customer processing and marketing improvements; changes to opening hours; staff terms and conditions; energy savings; rate relief and VAT advantages.

5.2 Management Options Comparison

We summarise in the table below a comparison against the deliverability of the opportunities for each of the management options.

Table 6 – Opportunity Model Options

Opportunities	In House Model	New NPDO
Investment Schemes	May not be delivered even if business case is robust due to other Council priorities. Likelihood of servicing the debt within existing or reduced budget a risk	Would be delivered subject to business case and financing. Financing will be the biggest challenge
Staffing Terms & Conditions	Any changes are unlikely bearing in mind potential for two tier workforce	Changes could potentially be delivered over the longer term
Staffing Structure	The appetite for change may not exist within the Council and if so will take a long time to implement	Can deliver but are likely to take time
Marketing	Can changes be made within the Council corporate framework? For example is there the appetite for stand alone websites?	NPDO will have a single focus and ensure market geared towards leisure and cultural market
Opening Hours	Yes can deliver, subject to Council agreement	Yes can deliver subject to Council agreement
Other service changes (eg pricing)	Subject to agreement through specification by Council	Subject to agreement through specification by Council

Opportunities	In House Model	New NPDO
LC Senior Management	Unlikely to be required	Unlikely to be required but may need additional senior support as part of structure
Support Services	Likely to remain as current position	Changes through service level agreements
NNDR Relief	Cannot deliver	Yes – opportunity to deliver
VAT savings	Potential opportunity for savings as result of recent legal case	Opportunity for VAT savings

There are some differences between the approach for each of the two management options, in particular consideration will need to be given as to whether the in house option can deliver on some of the key changes versus the cost and time implications to set up, fund and fully establish a new NPDO. Also unless the NPDO is wholly owned and controlled by the Council (with limited ability to undertake services for others) then the NPDO once established will need to tender for the operation of these Council facilities.

5.3 Financial Implications of Management Options

In terms of financial outcomes, there are a number of options available, including for the future operation of the LC. Option (a) shows the implications of transferring the operation of the LC facility back in-house after the end of the current Operators contract; the other Option (b) shows a potential impact if we were to re-contract the LC only to an existing operator, but continue to operate all other facilities in-house.

The figures below represent the assumed position across each of those options, measured against both the current cost/budget and against the affordability target of 1.6M.

Overall, it can be seen that there are some opportunities to improve the current financial position of £2.13M cost to the Council for Lot 1 through each option, and this ranges from savings of between £168k - £458k by year 5. However, every option is more expensive than the affordability target of £1.6m by between £92k and £368k by year 5.

Table 7 Lot 1 – Leisure Centres- In-house and Alternate Options

(Income)/Cost (£'000's)	In House (a) (Inc LC)		In House (b) Exc LC)		New NPDO	
	Year 1	Year 5	Year 1	Year 5	Year 1	Year 5
Existing Budget/cost	2,136	2,136	2,136	2,136	2,136	2,136
(Savings)/Cost	13	(168)	(277)	(458)	(161)	(444)
Lot 1 - Future Budget	2,149	1,968	1,859	1,678	1,976	1,692
(Savings)/Cost v Affordability (£1.6m)	549	368	259	78	376	92

Additionally, the future budgets presented above do not include any investment costs to make improvements or to deal with considerable backlog maintenance costs (circa £1.5M) that have been identified through the condition surveys, which will need to be funded by the Council at the required time.

5.4 Summary and financial comparisons with bidder's solutions

As with other decisions in the current climate, it is by necessity informed by savings requirements and balanced against the factors of governance of operation and quality, which is secured through in house models only. We will forgo significant savings by retaining the services, and incur a period of remodelling and investment need in return.

Of the in-house options, the most cost efficient option would be to re-contract the LC (shown as option (b) above), so for the purposes of comparison exercise this option (b) has been depicted below.

The preferred and reserve Bidders average submission has been presented based upon the average Management Fee over a 20 year period and including a TUPE+2 scenario, which is the assumed position of retaining in-house or creating a new NPDO.

The average management fee of the bidders solutions include average capital borrowing of £4.9M and associated repayment costs of the prudential borrowing.

Table 8 Lot 1 Average Costs Comparisons

(Income)/Cost	Preferred and Reserve Bidders average solutions	In House (b) (Exc LC)	New NPDO
	Average management fee across contract (£'000's)	By Year 5 (£'000's)	By Year 5 (£'000's)
Existing Budget	2,136	2,136	2,136
Potential Future Budget	1,553	1,678	1,692
(Savings)/Future vs Existing	(583)	(458)	(444)
(Savings)/Future vs Affordability (£1.6m)	(47)	78	92
Rank	1	3	2

() Represents cost below existing costs and affordability levels

As shown above, the average submission of bidders delivers better financially against the existing and future affordability of the services compared to the in-house (b) and New NPDO option, with their average solutions delivering over and above the required savings set by the affordability level. Both the in house (exc LC) and NPDO fall marginally short by 78-92k of delivering against the affordability target.

Importantly, bidders solutions deal with backlog maintenance and required investment within the facilities. The cost of financing this has been factored into their overall management fee submission and represents £333k per year of the £1553k required over a 20 year contract with TUPE plus 2.

The saving would be greater in a TUPE plus 1 scenario and differs when an average s not applied. The long term repair and maintenance of the assets can be transferred to the preferred bidder if contracted, and otherwise is likely to remain a risk retained by the Council.

On the basis that the preferred bidder scored 88%, which indicates that each of the criteria for Services, Technical and Commercial elements of the Specification are met, with significant added value, this demonstrates that the Council's requirements can be delivered through the tendered solutions.

In order to deliver the identified potential savings through any New NPDO or In-house model, there are significant risks associated with the deliverability of identified opportunities. If these opportunities are not

realised this will have an impact on the level of savings and financial planning, therefore the Council carries that risk.

5.5 Key Risks and Considerations– In-house or new NPDO

There are a number of key risks that are associated with the two management options including

- **Operational performance** – in both options the risk of future operational performance will effectively remain with the Council. The in-house option is part of the Council and the performance will directly sit with the Council. A new NPDO will initially have limited reserves (if any) and as such any poor performance will impact on the Council, including governance or financial.
- **Delivery of Savings** –It will be important to ensure the leadership is right and also that the savings require a different approach. It is important that the Council consider whether these can be delivered and some fundamental principles are changed.
- **Backlog Maintenance** – there are significant costs associated with any backlog maintenance and the costs and responsibility for these and future maintenance works are likely to remain with the Council under the two options. Current backlog maintenance is £1.5M across the portfolio.
- **VAT** – although there are potential VAT advantages due to the recent legal case, there is also a potential VAT risk to the In-House option – as income will become VAT exempt there is a risk that any large expenditure at any of the sites (for example any capital works) could cause the Council to breach it's partial exemption limits and this would result in the Council being unable to reclaim a significant sum of VAT from HMRC (over £1m).
- **Support Services and reducing resource-** savings already made across the leisure centre portfolio have already impacted negatively on operational and staff development. There has been a reduction in the direct Management, reducing from 3 posts to 2; reduced support and development of Swimming, Gymnastics and Fitness by deletion of 3 posts and reduced capacity to manage, supervise and drive improvements. An ability to develop and drive new business and income has been lost, and cannot be sufficiently delivered by the existing provision, in a sustainable way. Given the portfolio includes numerous leisure centres and outdoor sites (excluding the LC), this lost capacity will need to be reinstated to some degree, as a minimum we would anticipate a reinstatement of £230k per annum, including on costs.

However, reductions in other parts of the Council also have an impact. Continued reductions in Finance, HR, Procurement and Legal, with a model geared around self-serve are impactful to an already reduced establishment for what are front facing, operational sites requiring a workforce focused on regulatory, community and commercial priorities.

These risks will need to be taken into account when considering any comparisons with the proposal from the preferred bidder, which will resume responsibility for all support and Developmental posts to support the business, and will bring economies of scale through regional management.

- **Legal issues** - see Legal Implications section at paragraph 18.

6. Schools Engagement

Continued and detailed engagement and discussions and update sessions with Schools/ Education colleagues regarding the inclusion of the dual use facilities has been undertaken throughout the commissioning and procurement process.

A previous update paper was presented to each school Head and this was shared separately with relevant Cabinet Members. This resulted in the majority of schools providing written commitment that they will support Cultural Services in including their school based facility in the final tender stage.

It was agreed that there was to be further and direct dialogue between the project team, bidders and the schools on the implications of each of the submissions.

During the Final Tender stage, schools have had a number of opportunities to engage with the bidders and vice versa, facilitated by the Project Team. Specific sessions at which bidders were given the opportunity to present themselves as organisations, their approach to dual use arrangements plus safeguarding, and importantly to test their conceptual improvement ideas for the individual sites. Sessions took place between each school and bidder, and schools were encouraged to use the opportunity to engage Governors in the discussions, which was positive. As a result of the dialogue and engagement a number of improvement ideas were developed and feature within the final tender solution as proposals.

Throughout the process Bishopston and Penyrheol have declared an interest in operating the leisure facility at their site, but no detail has been discussed or shared as to how that may work financially or operationally. It is anticipated that this will only be considered in the event of a school(s) being dissatisfied with the specific options presented by the preferred bidder for their site, and can therefore be reported and options

considered at that stage. Again it is worth remembering that Cultural Services may remain the preferred operator and the decision to transfer to the school – and by implication from one part of the authority to another – should only be considered subject to the same financial and operational considerations as outlined previously.

Bidders were asked to price on this basis, so that it could be clearly understood what the financial implications of removing one or more dual use facilities from the Lot. Removing any one site has implications for the overall affordability and the same consideration to doing so will need to be applied as with retaining in house.

As of 8th June all Schools engaged throughout the process have signed and returned a confidentiality agreement setting out their commitment to in principle work with the preferred bidder if this is the decision taken by Cabinet , subject to a final ratification by the schools Governing body.

Pentrehafod Comprehensive was removed from the final procurement stage with the understanding that the facility has a limited existing budget, which would be phased to zero moving forward. The transfer of staff implications of the 2 part-time employees, plus any regular casual staff have been dealt with and the School is currently working within a business plan model largely based on previous performance. The budget for Pentrehafod is circa £5k and it has been agreed to transfer this from Cultural Services for 18/19 and zero from 19/20. The Pentrehafod Sports Hall programme is based on a traditional block hire basis, which unlike the other larger sites is not complex. It would make sense for the Sports Hall operation to sit with the school especially as they are currently directing the swimming pool programme.

7. Conclusion and Recommendation

The evaluation of the preferred bidders submissions provides us with evidence that there is an opportunity to deliver higher savings against both the current cost and affordability target than any of the in-house options or alternate New NPDO option.

The preferred bidders solutions evidence that improved outcomes, plus investment can be achieved at significantly less cost to the Council. The preferred bidder (Bidder 3) and reserve bidder (Bidder 2) score well against the specification and deliver significant savings against the affordability.

Solutions deliver significant investment in the facilities, dealing with both capital improvements, transferring future maintenance obligations and dealing with all backlog maintenance across the lot. It is recommended therefore to proceed with appointing Bidder 3 as the preferred bidder for Leisure Centres.

8. Lot 2A & 2B Evaluation (Outdoor Leisure)

8.1 Lot 2 – Outdoor Leisure was split as follows

- Lot 2A - Ashleigh Road Pitch and Putt
- Lot 2B – Other Outdoor Facilities
(Blackpill Lido, Land Train, Singleton Boating Lake, Southend Gardens)

The evaluation of the bids for Lots 2A and 2B are shown below.

Table 9 Lots 2A and 2B Evaluation Summary

	Lot 2A (Golf)		Lot 2B (Outdoor Leisure)
	Bidder 4	Bidder 5	Bidder 6
Services (40%)	28.8%	16.1%	14.0%
Technical (10%)	7.1%	0%	0%
Commercial (50%)	28%	25.2%	19.4%
Total	63.9%	41.3%	33.4%
Rank	1	2	1

Bidder 4 scored better for Lot 2A through providing relevant method statements and a detailed approach for their operation.

They have included within their submission opportunities for investing their own capital and development of the golf facility, this does not require prudential borrowing. Their management fee for a 14.5 year contract is a payment to the Council considerably better than the affordability target.

Bidder 4 have accepted the contract terms and conditions and have included full repairing and maintenance responsibilities for the building and grass for the duration of the contract.

8.2 Lot 2a and 2b Financial evaluation

The financial submissions for the two Lots are summarised below in comparison to the Affordability Levels of (£5,500) payment to the Council for Lot 2A (Golf) and £17,950 cost to Council for Lot 2B (Other Outdoor Leisure).

The bids for Lot 2A (Golf) were comparable and within £2,000 of each other and meet the affordability levels.

It should be noted that whilst Bidder 4 doesn't offer the best financial return for the Council for Lot 2A in isolation, the best offer is from Bidder 5.

Bidder 6 are offering a price for Lot 2B that is outside the affordability limit for 14.5 years and 19.5 years.

9. In-house and alternative options for Outdoor Leisure

This work concluded that there appears to be limited opportunities to improve the revenue or invest, as the facilities are operated at a low budget and already maximise the opportunities available.

9.1 Financial Performance

Table 10 Lot 2 Current cost vs affordability

Lot (£'000's)	2017/18 Budget			Affordability Target
	Income	Expenditure	Net Cost/ (Income)	Net Cost/ (Income)
2 – Outdoor Leisure	108	122	14	12

It is highlighted that the Outdoor Leisure service also has backlog maintenance requirements totalling around £25,000, with the majority of these costs residing in Blackpill Lido plant and pool and for our older buildings, such as flat roofs etc.

The same options and principles as previously described were modelled for Outdoor Leisure (Lot 2), with limited scope as commercial opportunities were already being explored through a short term partnership or an existing commercial in-house operation. The benefits of an in-house and NPDO therefore show a negligible saving against the existing and meets affordability target of £12.5k.

Table 11 Lot 2 Options analysis

Lot 2 – Outdoor Leisure (Income)/Cost (£'000's)	In House		New NPDO	
	Year 1	Year 5	Year 1	Year 5
Existing Budget	14	14	14	14
(Savings)/Cost	(2)	(2)	(2)	(2)
Lot 2 - Future Budget	12	12	12	12
(Savings)/Cost v Affordability	-	-	-	-

The key issues for Lot 2 is that the net budget is relatively low and the opportunity to award a contract for Lot 2a will improve the overall position.

However, it must be noted that the forecast budgets above do not include the condition survey backlog maintenance costs, which will still need to be met, and this should be recognised when comparing against other alternative delivery options. The risk of delivering the services and meeting income targets under an in-house operation would remain with the Council, along with the liability of the assets and their repair and replacement

10. Summary Conclusions and Way Forward

Lot 2A (Golf)

It is recommended that Bidder 4 is appointed as preferred bidder and negotiations to finalise the contract are commenced.

Lot 2B (Outdoor Leisure)

Bidder 6 did not score highly and the solution was unaffordable. The in house operation is continued and further options are explored.

11. Lot 5 – Evaluation (Plantasia)

Lot 5 – Evaluation. Plantasia formed a Lot on its own, with outcomes and terms adapted to reflect its commercial potential as a visitor attraction and therefore, an affordability level set at £150k to the Council.

Update from previous report

- a. The evidence that no option will deliver a nil cost revenue outcome in the medium term was noted and accepted, along with the knowledge that there are likely to be significant costs to close the facility.
- b. A new revenue affordability limit of between £120k-£150k per annum was agreed as acceptable as was the removal of the

further £110k savings target still remaining against Plantasia in the budget.

- c. Council sought a final tender option from Bidder 7. However, this will be on the understanding that their ability and interest in pursuing the delivery of this is likely to be predicated on them being awarded a contract in another Lot.
- d. To develop a new in-house business plan based upon the potential new opportunities detailed in this paper, as well as utilising any negotiated sum from Parc Tawe developments, within an agreed 150k affordability envelope. This to proceed in parallel to the procurement option, for comparative purposes. Both options considered at a later stage, including consideration of the implications of retaining the asset in-house from lifecycle cost perspective, including required revenue funded annual maintenance and future capital works.

11.1 Finance

It should be noted that Plantasia has been operating on a reduced budget since 2014/15, when previous management put forward closure and alternative operating options which were not realised. Current and previous performance of the facility shows a continued overspend against the current budget.

At financial closing in 17/18 Plantasia showed a considerable overspend compared to the budget allocated. Although partly because of costs due to the ongoing delays in relation to the café and general site disruptions, there is an underlying shortfall in the budget. Despite strict adherence to budget controls, the costs of operating the facility and providing adequate customer care and animal welfare are incurring unavoidable operational costs whilst it remains open.

The Affordability limit for Plantasia was reviewed and set at £150k per annum cost to the Council.

11.2 Evaluation

There was only one submission for Plantasia from Bidder 7 who presented a bid which has improved the existing position/ cost per annum to the Council with a submission just below the affordability position. However, this was on the basis that they were successful in another Lot. The submission was based upon an average management fee plus capital repayments on prudential borrowing of £1M to invest into the facilities and attractions.

Following clarification, Bidder 7 have indicated that they would be seeking additional management fee, if they were offered Lot 5 in isolation to cover additional management, marketing and operational costs could not be defrayed across a wider Leisure Centre portfolio locally. However,

they would be willing to enter into dialogue with the Council to seek to adapt the business plan in a collaborative way.

The impact of TUPE Plus 2 would be a considerable increase on top of the annual management fee.

It is important to note that the liability for maintenance of the asset could be transferred for the duration of the contract (15 years) which is likely to be substantial.

11.3 Evaluation Scoring

Bidder 7 submission has been evaluated and the scores are presented below.

Table 12 Lot 5 *Evaluation Summary*

Lot 5	Bidder 7
Services (40%)	30.0%
Technical (10%)	6.7%
Commercial (50%)	25.2%
Total	61.90%
Rank	1

The submissions and solutions presented by Bidder 7 at Final Tender stage have considerably improved with higher average scores of 7 and 8, representing Good to Very Good with some added value.

The proposals from Bidder 7 present exciting and innovative solutions to operate Plantasia and introduce new interactive exhibitions and events, which will provide a new focus for the attraction. The proposal will seek to offer the Council with an affordable, inspirational visitor attraction that the City and its people would be extremely proud of. With a vision for Plantasia for it to deliver an inspirational interactive educational play experience which is in keeping with the Plantasia theme.

The overall business model is to make major improvements which include innovative ideas and solutions for attractions, marketing and commercialism.

11.4 Staffing

The bid was submitted in line with the guidance and instructions and both TUPE plus 1 and Plus 2 were provided and impact of TUPE plus 2 has been described in an earlier section.

The proposed solution seeks to revise the existing structure, bringing in additional resource to manage the newly invested facility with Visitor Experience and Marketing Manager, Plantasia Technicians and Maintenance Technicians as additional Senior support and key holders to support the overall Manager.

As there is only one bidder, consideration must now be given in terms of the future acceptable cost of the facility/service to the Council, as the procurement process has demonstrated that a 'Nil Cost' cannot be achieved through the Market. It is evident that a reduction in ongoing revenue costs can be achieved, but this will require investment of £1M through Prudential Borrowing to change and improve the offer available.

12. In-house and alternative options review for Plantasia

The current opportunities for the facility were considered and summarised as including a potential development of the café/reception area; creation of retail space; improvements to the overall approach for catering which should seek to identify the most commercial strategy possible to diversify customers. In terms of branding and marketing, further opportunities were identified such as dedicated websites and promoting the facility as a destination tourist attraction to seek to attract a regional visitor audience.

The report identified that the current opening hours for Plantasia at 10am – 5pm, 7 days a week throughout the year should be reviewed to allow for seasonality. This would give the opportunity to tailor the opening to meet demand and ensure that there are opportunities to be more efficient and generate revenue. A pricing structure review concluded the service is competitive with local/national competition, but there remains opportunity to introduce additional tariffs around themes and a bespoke usp in line with the current approach for premium events e.g. Dinosaurs in the Jungle.

12.1 Financial Performance

As previously reported, Plantasia is operating on a reduced budget due to previous savings

The table below summarises the potential financial improvements for each of the management options.

Table 13 Lot 5 Financial Improvements

Opportunity (£'000's)	In House		New NPDO	
	Year 1	Year 5	Year 1	Year 5
Marketing	(2)	(8)	(2)	(8)
Opening Hours	(8)	(33)	(8)	(33)
Staffing T & C	N/A	N/A	0	(5)
Utilities	(1)	(4)	(1)	(4)
Set Up Costs	N/A	N/A	50	0
Senior Staff Structure	N/A	N/A	N/A	N/A
NNDR (Benefit)/Cost	N/A	N/A	(6)	(6)
VAT Savings	0	0	0	0
Total (Savings)/Costs	(11)	(45)	33	(55)

There is the potential for circa £45,000 improvement to the current financial position for the in-house option by year 5 and £55,000 improvement for a new NPDO in year 5. Bidder 7 offers an improvement that is over and above this, and takes responsibility for maintenance.

The key for Plantasia is to consider its repositioning in the marketplace and also to reflect that it should be delivering a commercial opportunity. We have reflected this in the suggested review into the opening hours and also the marketing improvements.

Both of the management options are likely to be hampered in their commercial approach through restrictions on staffing and the marketing. Neither option would appear to have the potential to deliver on the affordability of 'Nil Cost', i.e. aiming for breakeven and a more commercial approach is likely to be more effective.

12.2 Other considerations – inc. Parc Tawe and City Centre

Given the improvement work to be undertaken and the potential to further future proof the attractiveness and viability of the facility, it has been requested to set aside the additional sum collected as a result of the Parc Tawe work in a Capital account for further improvements to Plantasia. There are some other key items of equipment investment required after the café refit i.e. Furniture, Shelving for secondary sales and potential to lease/purchase hire of soft play equipment to improve the overall sustainability of the attraction through in/house or alternate delivery models.

13. Future Options

It has been identified earlier in this section that there opportunity to make a more commercial visitor attraction approach to operating Plantasia, but

under any model; partnership, in-house or New NPDO, this is not going to deliver a nil cost outcome.

The recent investment, increase in floor area and potential for further investment through carefully utilising the remaining sum, opens up a number of opportunities for the Council. There is potential for some of this money to be matched with grant funding to deliver and develop positive educational and learning outcomes, and early discussions with the Council's external funding teams have been positive.

The larger, refurbished, more visible and attractive café and circulation areas will potentially drive new business, providing that business offer is target marketed accordingly. The visibility of the café will be increased as the opening up of the Parc Tawe site places the entrance and café on the thoroughfare of the new development, supported by other business offers that will drive and increase footfall.

As previously mentioned, a number of events hosted at Plantasia work well commercially, and there is potential to develop these ideas to create a specific usp for the venue, thus providing a unique a reason to for tourists and residents to visit and revisit respectively.

Some of the ideas for future opportunity and investment are subject to further exploration by the management team, but could significantly improve the offer and financial position, these have been summarised below:

- a. Re-brand the facility with a usp build around the 'Dinosaurs in the Jungle', investing in life-size permanent models within the attraction and enter into a contract agreement to host dinosaur attraction events regularly with an approved provider, which have been extremely successful and commercially rewarding over school holidays.
- b. Invest in fixed soft play equipment within the extended café area, aligned to the agreed usp for the venue. This would encourage a purpose to visit the café, could levy an additional charge and improve the overall offer and repeat visits.
- c. Consider the model for the operation of the newly refurbished café and investigate opportunities to improve the offer, service and quality and yield for the Council through a catering concession, as has been achieved in other Cultural Services venues.
- d. Opportunity to permanently replace the recently lost Koi carp attraction with Cayman (Crocodile) reptile, which would again drive the purpose to visit and repeat visit, along a similar line of the usp as 'dinosaurs in the jungle'. Indications are that a Cayman can be housed in Plantasia free of charge, subject to zoo licence compliance and improvements to the tank enclosure.
- e. Consider any sub-letting opportunity that could be explored through use of the new garage/animal welfare room, with potential to partner commercially with organisations in the animal welfare, botany or research sectors, which could also have in-kind returns to drive down the cost of operations.

- f. Reconsider the educational offer along the lines of a new usp and provide supportive learning and interpretation packages, plus secondary sales that support the chosen theme and that is revenue driving.
- g. Seek a funding partner or headline sponsor to support the facility through some naming rights or joint promotion once a long term and sustainable plan is agreed.

14. Conclusions

Neither of the in-house options arrived at, or the one solution from the external bidder, or any the other ideas to further invest in a new usp can deliver at a cost less than the affordability target per annum

The only way to realise full revenue savings from Cultural Services would be to close the service, however inevitably this will result in closure costs, redundancies/redeployment, security, dilapidations etc, the level of which remain unconfirmed. However, previous enquiries indicated that dilapidations could be significant, or that handing the site back as we can do under the lease, could be even more significant which would cover demolition and clearance. The disproportionately high cost is due to the fact that glass would have to be removed by hand.

To continue with the operation of a service at Plantasia, all options could reduce the current cost to a more reasonable and potentially affordable level, but this entails a reasonable and realistic view of what level is affordable and acceptable given the opportunity to contribute to the viability of the city centre, attractiveness of Swansea as a destination, cultural and community education impact.

Under a transformed in-house model it must be considered that future investment (capital) and current maintenance (revenue) costs would remain with the Council. The building costs and long term liabilities under this model must be fully explored up from an affordability perspective and compared against any other options e.g. remaining bidder's solution.

However, it is quite clear that without significant investment, and/or reliance on grant funding to maximise any centrally held capital monies the Council operation will struggle to meet this revenue costs per annum. Additionally, when the costs for maintenance budgets are considered the true cost are likely to be considerably higher. Any improvements are likely to take time, up to 5 years to realise between £45-£55k per annum saving.

The option to contract to Bidder 7 with a TUPE Plus 1 as a minimum criteria is predicated on the basis that £1M is invested through Prudential borrowing. With investment, Bidder 7 solution brings significant added-value through investment in the facilities, services and staff, safeguarding and sustaining the operation for a 15 year period including the transfer of risk of building maintenance.

15. Recommendation

To proceed with discussions and negotiations with Bidder 7 as the preferred bidder and prospective operator for Plantasia.

16. Equality and Engagement Implications

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.

Our Equality Impact Assessment process ensures that we have paid due regard to the above.

EIA Screenings have been completed at stages during the process and a decision made that a full EIA was not required. Equality implications will continue to be monitored as progress is made with the proposal.

Since March 2016 the Council has been subject to Welsh Language Standards set out in a Compliance Notice - Section 44 Welsh Language (Wales) Measure 2011 and treats the Welsh Language as protected characteristic within its EIA process.

17. Financial Implications

The financial implications have been dealt with throughout the body of the report.

18. Legal Implications

The procurement process as outlined in this report has been undertaken in compliance with the Council's Contract Procedure Rules and the Public Contract Regulations 2015.

If a decision is made to pursue a management option for the leisure centres which involves an extension or renewal of the current management agreement for the LC with the existing operator as per paragraph 5.4 of the report, then it should be noted that this cannot be achieved without a separate procurement exercise exposing this opportunity to an element of competition.

If a decision is made to pursue a management option which involves the establishment of a NPDO, then it should be noted that unless this new organisation satisfies the requirements of a "Teckal" company and is wholly owned and controlled by the Council it will have to tender for the operation of these Council facilities and they cannot be awarded without

competition. The Council will also need to comply with relevant state aid legislation.

Cabinet when making its decision shall have regard to the duty to undertake sustainable development and the five ways of working promoted by the Well-being of Future Generations (Wales) Act 2015. The recommendations if approved will contribute to the 7 well-being goals by ensuring that the Council and its partners work collaboratively to ensure the sustainability and improvement of these leisure/cultural assets to positively benefit present and future citizens and visitors to Swansea.

Background Papers: None.

Appendices: None.



Report of the Head of Legal, Democratic Services & Business intelligence

Service Improvement and Finance Panel – 19th June 2018

Exclusion of the Public

Purpose:	To consider whether the Public should be excluded from the following item of business.	
Policy Framework:	None.	
Consultation:	Legal.	
Recommendation(s):	It is recommended that:	
1)	The public be excluded from the meeting during consideration of the following item of business on the grounds that it involves the likely disclosure of exempt information as set out in the Paragraphs listed below of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007 subject to the Public Interest Test (where appropriate) being applied.	
	Item No.	Relevant Paragraphs in Schedule 12A
	5	14
Report Author:	Scrutiny	
Finance Officer:	Not Applicable	
Legal Officer:	Tracey Meredith –Head of Legal, Democratic Services & Business Intelligence (Monitoring Officer)	

1. Introduction

- 1.1 Section 100A (4) of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007, allows a Principal Council to pass a resolution excluding the public from a meeting during an item of business.
- 1.2 Such a resolution is dependant on whether it is likely, in view of the nature of the business to be transacted or the nature of the proceedings that if members of the public were present during that item there would be disclosure to them of exempt information, as defined in section 100I of the Local Government Act 1972.

2. Exclusion of the Public / Public Interest Test

- 2.1 In order to comply with the above mentioned legislation, the Panel will be requested to exclude the public from the meeting during consideration of the item of business identified in the recommendation to the report on the grounds that it involves the likely disclosure of exempt information as set out in the Exclusion Paragraphs of Schedule 12A of the Local Government Act 1972 as amended by the Local Government (Access to Information) (Variation) (Wales) Order 2007.
- 2.2 Information which falls within paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended is exempt information if and so long as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
- 2.3 The specific Exclusion Paragraphs and the Public Interest Tests to be applied are listed in **Appendix A**.
- 2.4 Where paragraph 16 of the Schedule 12A applies there is no public interest test. Councillors are able to consider whether they wish to waive their legal privilege in the information, however, given that this may place the Council in a position of risk, it is not something that should be done as a matter of routine.

3. Financial Implications

- 3.1 There are no financial implications associated with this report.

4. Legal Implications

- 4.1 The legislative provisions are set out in the report.
- 4.2 Councillors must consider with regard to each item of business set out in paragraph 2 of this report the following matters:
 - 4.2.1 Whether in relation to that item of business the information is capable of being exempt information, because it falls into one of the paragraphs set out in Schedule 12A of the Local Government Act 1972 as amended and reproduced in Appendix A to this report.
 - 4.2.2 If the information does fall within one or more of paragraphs 12 to 15, 17 and 18 of Schedule 12A of the Local Government Act 1972 as amended, the public interest test as set out in paragraph 2.2 of this report.
 - 4.2.3 If the information falls within paragraph 16 of Schedule 12A of the Local Government Act 1972 in considering whether to exclude the public members are not required to apply the public interest test but must consider whether they wish to waive their privilege in relation to that item for any reason.

Background Papers: None.

Appendices: Appendix A – Public Interest Test.

Public Interest Test

No.	Relevant Paragraphs in Schedule 12A
12	Information relating to a particular individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 12 should apply. His view on the public interest test was that to make this information public would disclose personal data relating to an individual in contravention of the principles of the Data Protection Act. Because of this and since there did not appear to be an overwhelming public interest in requiring the disclosure of personal data he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
13	Information which is likely to reveal the identity of an individual.
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 13 should apply. His view on the public interest test was that the individual involved was entitled to privacy and that there was no overriding public interest which required the disclosure of the individual's identity. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
14	Information relating to the financial or business affairs of any particular person (including the authority holding that information).
	<p>The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 14 should apply. His view on the public interest test was that:</p> <p>a) Whilst he was mindful of the need to ensure the transparency and accountability of public authority for decisions taken by them in relation to the spending of public money, the right of a third party to the privacy of their financial / business affairs outweighed the need for that information to be made public; or</p> <p>b) Disclosure of the information would give an unfair advantage to tenderers for commercial contracts.</p> <p>This information is not affected by any other statutory provision which requires the information to be publicly registered.</p> <p>On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which</p>

	they must decide when considering excluding the public from this part of the meeting.
No.	Relevant Paragraphs in Schedule 12A
15	Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 15 should apply. His view on the public interest test was that whilst he is mindful of the need to ensure that transparency and accountability of public authority for decisions taken by them he was satisfied that in this case disclosure of the information would prejudice the discussion in relation to labour relations to the disadvantage of the authority and inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.
16	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
	No public interest test.
17	Information which reveals that the authority proposes: (a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) To make an order or direction under any enactment.
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 17 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by the public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.
18	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime
	The Proper Officer (Monitoring Officer) has determined in preparing this report that paragraph 18 should apply. His view on the public interest test was that the authority's statutory powers could be rendered ineffective or less effective were there to be advanced knowledge of its intention/the proper exercise of the Council's statutory power could be prejudiced by public discussion or speculation on the matter to the detriment of the authority and the inhabitants of its area. On that basis he felt that the public

<p>interest in maintaining the exemption outweighs the public interest in disclosing the information. Members are asked to consider this factor when determining the public interest test, which they must decide when considering excluding the public from this part of the meeting.</p>
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Agenda Item 5

By virtue of paragraph(s) 14 of Schedule 12A
of the Local Government Act 1972
as amended by the Local Government (Access to
Information) (Variation) (Wales) Order 2007.

Document is Restricted