

Appendix A & B of this report contains exempt information contained in Paragraphs 3 and 5 of 12A of the Local Government Act 1972 (information relating to the financial and business affairs of the Council and a third party and also information to which legal professional privilege could be applied)

Report to: **Hub Committee**
Date: **31st October 2017**
Title: **Meadowlands Leisure Centre – Legal Decision**
Portfolio Area: **Assets / Cllr Neil Jory**
Wards Affected: **Tavistock / all**

Relevant Scrutiny Committee:

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: After full council

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That the Hub Committee resolves:

- 1) To continue to try and hold political discussions for the next 30 days and then;

To Recommend to Council that:

- 2) Having considered the Report and Risks Comparison, to enter into the legal agreements as drafted (or as may be revised during further negotiations with TTC), recognising that in the event of a breach by WD and TTC enforcing the terms of the agreements, WD would have to give up possession of the land, and bear the cost of demolition of the Meadowlands Leisure Centre.

1. Executive summary

- 1.1. Negotiations over the terms of the legal agreements between Tavistock Town Council (TTC) and West Devon Borough Council (WDBC) with respect to Meadowlands Pool have reached a stage where a decision needs to be made as to whether to enter into them or not.

- 1.2. TTC is the Landlord, WDBC the tenant with a 999 yr lease and Fusion the sub-tenant. The agreements are a licence to alter, licence to underlet and some associated side letters with additional terms.
- 1.3. A decision is needed now because, Fusion wish to proceed with the planned improvements to the centre in early December and these agreements are required to necessitate the works. Furthermore, it is felt that the lengthy legal negotiation with TTC has run its course.
- 1.4. If the Council decides to enter in to the agreements as they stand, it will face a greater risk of forfeiture than it did previously, and of the entire lease, rather than just the land associated with the leisure centre.
- 1.5. Subject to the TC's decision to enforce or not, forfeiture would result in the loss of the lease including the Wharf and car park, closure and demolition of the leisure centre and a significant cost incurred under contract with Fusion.
- 1.6. If it does not proceed with the agreements then the Council will suffer a claim under contract from Fusion which will be a substantial cost (reference Appendix B).

2. Background

- 2.1. The strategic leisure review, which culminated in the award of contract to Fusion to run West Devon Borough Council (WDBC) leisure facilities, commenced over 5 years ago.
- 2.2. The project had multiple strands, one of which was that of stakeholder engagement with local councillors, town councillors, user groups, sports clubs and the general public.
- 2.3. The fact that Meadowlands Leisure Centre is constructed on land leased by WDBC on a 999 year lease from Tavistock Town Council (TTC) has meant that they are a very significant stakeholder, as both landlord and democratic representation of Tavistock.
- 2.4. Minutes from a 2012 stakeholder meeting with TTC show that that both parties were fully in support of the leisure review and were both "*...committed to work together for the benefit of the town...*"
- 2.5. At this time, One Life were running Meadowlands Leisure Centre on behalf of WDBC as they had since 2004, under a contract supported by a sub lease. This situation was to be mirrored in the arrangements between WDBC and the new operator (Fusion).
- 2.6. The head lease between WDBC and TTC requires that TTC give written consent to any sub lease (such as the one that existed to One Life), although the author can find no record of that ever having been given.
- 2.7. In December 2016, Fusion were awarded the leisure contract, and work was then able to start on the lease arrangements for the six sites. It had to wait until then, because the terms of the lease had to be negotiated between all the relevant parties.
- 2.8. Of the six leases required to Fusion, four were a direct landlord / tenant relationship, and two were that of tenant / sub-tenant. In Okehampton and Tavistock WDBC is a tenant and Fusion a sub-tenant.

- 2.9. Since early 2017, WDBC and TTC have been undertaking a lengthy legal negotiation over the terms of the sub lease and other associated documents. The cost of both parties' solicitors has been paid for by WDBC, to date £19,000 to TTC's solicitors and a further £21,000 on WDBC solicitors.
- 2.10. WDBC officers have been unsuccessful in getting agreement from TTC to a set of legal documents that allows it to move forward carrying the same level of risk it did when One Life were in occupation.
- 2.11. WDBC members recently proposed a meeting of Cllrs from the respective parties to find a political solution, however TTC members were advised not to attend by their legal advisors. In the absence of any further options and a pressing need for Fusion to commence improvement works to the pool, it is felt that a decision must now be taken.
- 2.12. The author is not comfortable using delegated authority to take the decision to proceed, given the legal risks that now present themselves and would like to ask members to consider the options set out below.

3. Outcomes/outputs

- 3.1. The legal documents that are required to be agreed between the parties are as follows:

WDBC - TTC	Licence to sub let
	Licence to Alter
	Side letters with further terms*
WDBC - Fusion	Sub Lease

- 3.2. *At the TTC's request, some of the terms that had been negotiated have been removed from the above documents and put into two side letters, dealing with pool closures in both planned and emergency situations.
- 3.3. A summary of the legal risks that WDBC now faces should it enter into the documents is as follows and set out in full in Appendix A:
- Provisions which had previously existed within the Tavistock Act are now brought into the agreements explicitly but with a different interpretation, *leading to:*
 - Increased chance of forfeiture.
 - Increased risk of forfeiture of whole head lease (including the wharf), instead of just the leisure centre land for relevant infringement.
 - Increased risks associated with the closure of the pool (resulting in forfeiture).
 - Any forfeiture event would result in a substantial claim under contract by Fusion.
 - Unpractical notice periods for closure, and unpractical total periods of time for closure (when considering the planned and unplanned maintenance requirements of a pool over 25 years).

4. Options available and consideration of risk

- 4.1. The provision of leisure facilities in WD is a priority of this Council. Consequently, its members have the following Options:
- 4.2. Option 1. Accept the legal documents as they are drafted, to facilitate the planned investment in the leisure centre. Recognising that there is a high chance of breach of the terms, which could see the centre close prematurely and at great cost to WDBC should TTC enforce their position. Furthermore this event would put WDBC in breach of its DBOM contract with Fusion.
- 4.3. Option 2. It could not sign the legal documents, but in doing so would be breaching the Design Build Maintain and Operate (DBOM) contract with Fusion and would see the centre close.
- 4.4. Option 3. It could continue to try to negotiate with the TTC towards more reasonable terms, which carries time related risks.

Option 1:

- 4.5. This course of action is the only one that results in Meadowlands remaining open and therefore is at one level without doubt that which offers most public benefit and aligns with WDBC's members wishes to provide high quality health and wellbeing facilities.
- 4.6. Members should be in no doubt that the documents as drafted do represent a significant change to WDBC's position as a tenant of TTC. However, as with any technical legal risk, should it arise, it would require action from TTC for it take effect. As such, it is possible that in future TTC would not choose to enforce against WDBC, should a breach occur, but WDBC have no way of quantifying this risk.

Option 2:

- 4.7. To take this course of action would result in a breach of the DBOM and a compensation claim from Fusion. Furthermore as it would lead to the closure of the pool, WDBC would under the terms of the lease be required to demolish the pool and hand back the land to TTC.
- 4.8. The cost of the demolition may be £250 - £300k and the cost of the breach of DBOM contract would be significantly more. The loss of revenue from the centre would also equate to a further significant loss (reference Appendix B) over the next 25 years.
- 4.9. WDBC would not be supporting health and wellbeing in Tavistock.

Option 3:

- 4.10. It is theoretically possible for both TTC and WDBC to reach a position that is acceptable to both parties. To date, officers working with solicitors have been unable to achieve this and it is not felt that any more progress can be made at that level. If TTC change their position and agree to talks with WDBC Cllrs then it is more likely that a resolution could be reached.
- 4.11. Fusions investment and improvement programme has started and they wish to undertake works in December. Given the notice periods currently drafted (3 months), ongoing negotiations would have to be held on the basis that TTC recognise this date even if no progress is made.

4.12. The costs incurred to date are significant and WDBC are paying both sides legal fees. TTC have made it clear that they will not engage with us in anyway without an undertaking for their full costs and so a decision to undertake further negotiation must also consider that it would likely come at a price, so long as it can be shown to be reasonable on the part of TTC

5. Proposed Way Forward

- 5.1. That a final attempt to hold political talks with TTC be made in the next 30 days and;
- 5.2. That members accept the risks before them and recommend to enter into the legal documents as drafted.

6. Implications

Implications	Relevant to proposals Y	Completion of the outstanding legal documentation relating to Meadowlands.
Legal/Governance	Y	<p>Reference Section 3 and Appendix A.</p> <p>Appendix A & B of the report is potentially exempt under paragraphs 3 of schedule 12A of the Local Government Act 1972 in that it concerns the financial or business affairs of the Council. The public interest has been assessed and it is considered that, at this stage, the public interest is better served by non-disclosure to the press and public.</p> <p>The legal risks arising out of a possible breach of contract have been highlighted in the main body of the report. A breach of contract is likely to result into a claim for compensation. Such a claim is likely to be significant whether the Council were to sign the agreements in their current format or not. The costs are however likely to be more substantial if a claim were to be made after the leases have been signed and breached.</p> <p>The reputational damage that may follow such claim is also significant.</p> <p>Delegated authority has been given to officer to finalise. Where the officer is unable to take decisions, the decision must be taken by the body that gave that delegated authority and in this case, that is the Full Council meeting.</p>
Financial		Reference Section 2

Risk		Reference Section 3 and 4
Comprehensive Impact Assessment Implications		
Equality and Diversity		N/A
Safeguarding		N/A
Community Safety, Crime and Disorder		N/A
Health, Safety and Wellbeing	Y	A decision not to enter into the agreements would result in a pool closure.
Other implications		

Supporting Information

Appendices:

Appendix A - Legal Risk Comparison Report

Appendix B – Finance and contract risks

Approval and clearance of report

Process checklist	Completed
Portfolio Holder briefed	Yes
SLT Rep briefed	Yes
Relevant Exec Director sign off (draft)	Yes
Data protection issues considered	Yes
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	N/A.