

Decision Pathway – Report



PURPOSE: Key decision

MEETING: Cabinet

DATE: 03 October 2023

TITLE	Hengrove Park Leisure Centre: Parkwood Community Leisure conversion to Lex Leisure Community Interest Company (CIC)		
Ward(s)	Hengrove and Whitchurch Park		
Author: Guy Fishbourne/Katharine Moran	Job title: Sport & Physical Activity Development Manager/Senior Sport & Physical Activity Development Officer		
Cabinet lead: Mayor Marvin Rees	Executive Director lead: Hugh Evans		
Proposal origin: BCC Staff			
Decision maker: Mayor Decision forum: Cabinet			
Purpose of Report: The purpose of this report is to inform cabinet of an updated proposal presented to the Council (previously approved at November 2019 cabinet, but not implemented due to Covid19 pandemic) by Parkwood Leisure Ltd, that involves them terminating their current leisure subcontract at Hengrove Park Leisure Centre with Parkwood Community Leisure and replacing it with a new leisure subcontract to Lex Leisure Community Interest Company (CIC). The new CIC arrangement will benefit from VAT relief, and consequently provide an annual indexed payment of £106,000 (plus VAT) to the Council, plus a community grant fund of 0.75% of their annual turnover (estimated value currently £24,000)			
Evidence Base: Background			
<ol style="list-style-type: none"> Hengrove Leisure Centre was built under the Private Finance Initiative (PFI) and has been operational for 11 years. The Councils contractor (Bristol Active Limited (BAL)) operates and maintains the facility and is contractually bound to continue doing so until 2037. Under the PFI arrangement, Parkwood Leisure Ltd are their leisure operator and Parkwood Leisure Ltd deliver the services through their current leisure subcontract with Parkwood Community Leisure (a non-profit distributing company (NPDO)). Parkwood Leisure Ltd previously put a proposal directly to BCC to terminate their current leisure subcontract to Parkwood Community Leisure and replace it with a new leisure subcontract to Lex Leisure CIC. A decision to support the original proposal was previously taken at Cabinet on November 5th, 2019, agenda item 16 - Hengrove Leisure Centre: Parkwood Community Leisure Ltd Conversion to Lex Leisure Community Interest Company (CIC). All legal paperwork was subsequently complete and due for final signatures in March 2020, but this was put on hold as all leisure centres were forced to close due to the Covid -19 pandemic. Since re-opening the focus for Parkwood Leisure Ltd has been on business recovery, and the original proposal taken to November 2019 cabinet remained on hold until this year. 			
Original Proposal from November 2019			
The original proposal benefitted the council and included:			
<ol style="list-style-type: none"> An annual payment of £76,000 (indexed) plus VAT to the council for the remainder of the contract (2037). The sum to the Council was guaranteed and indexed ensuring whatever the trading position of Parkwood 			

Leisure Ltd, the benefit to the Council was not at risk. The proposal also requested the Council to waive any income benchmark exercise until 2025.

7. Lex Leisure CIC being entitled to retain 0.75% of sales turnover (£25,000 in 2019) which would be used towards an annual small grants pot for Bristol applicants to bid in to.
8. A further 0.75% of sales turnover contributed by Parkwood Leisure Ltd to the same annual small grants pot which in total equates to 1.5% of the annual sales turn over, to be awarded and administered by the Lex Leisure CIC board.
9. The Lex CIC awarding of the other 0.75% will be done in a way which is consistent of the CIC's stated aims of building on the legacy of the previous 2 x paralympic games.

Current situation and changes to updated proposal

10. We now have an updated proposal from Parkwood Leisure Ltd which officers from Finance, Legal and Public Health have been reviewing, and a Covid Deed of Variation which did not exist previously.
11. The updated proposal provides an improved benefit to the council as it includes:
 - i. An increase in the annual payment to the authority from £76,000 to £106,000 (indexed) for the remainder of the contract (2037) payable from Year 2.
 - ii. A community grant fund of 0.75% of turnover contributed by Parkwood Leisure Ltd (c.£24,000 estimated current value) which will now be paid directly to the council for administering locally against criteria aligned with our Sport and Physical Activity Strategy for Bristol, rather than through the Lex Leisure CIC board as previously proposed.
 - iii. The updated proposal requests a minor adjustment to the Direct Agreement paperwork which would provide for the annual payment (£106,000) to the Authority to be suspended/partially suspended during any period where government directed closures are forced upon the leisure centres, as has been the case during the Covid 19. This differs from the original proposal where the sum to the Council was guaranteed and indexed ensuring whatever the trading position of Parkwood Leisure Ltd, the benefit to the Council was not at risk.
 - iv. The Council's PFI Contractor Bristol Active Limited (BAL) will receive £5,000 per annum for facilitating this arrangement, as Parkwood Leisure Ltd are their contractor. A change from £10,000 per annum in the original proposal.
 - v. The updated proposal does not affect the income benchmark provisions in the PFI project agreement, whereas the original proposal requested it to be waived until 2025.
 - vi. The annual payment to BCC over the rest of the contract term (14 years) paid from year 2 of the conversion/agreement, will add up to over £1.4 million in income for the Council. Any financial benefits in year one (after all of the costs of the conversion have been covered) will be shared 50:50 with BCC.
12. As with the previous proposal:
 - i. Lex Leisure CIC being entitled to retain 0.75% of sales turnover which would be used towards an annual small grants pot (to be administered by the Lex board) for Bristol applicants to bid in to from Year 2.
 - ii. Any residual benefit (over and above the £106,000) will be retained by Lex Leisure CIC as they carry the full income risk in this proposal.
 - iii. All of the mechanisms in the current PFI contract will remain the same including the profit share arrangement. In this way the risk profile is unchanged and does not impact the authority or its PFI Contractor (Bristol Active Limited) other than to provide an additional indexed annual payment.

- iv. All staff would transfer from Parkwood Community Leisure to Lex Leisure CIC under TUPE retaining all of their current terms and conditions. There would be no change to any terms and conditions of employment, hours of work or pension arrangements.
- v. There will be changes required to the Project Agreement and lease to reflect the change of subcontractor to Lex Leisure, and the SPV bank and funders will require their own legal advice and due diligence on the change.
- vi. The proposal will be legally captured by a direct agreement between the Council and Parkwood Leisure Ltd, avoiding the need for a deed of variation to the main contract. The principal reason why the direct agreement approach is suggested is the bank's objection to amending the main project agreement using the change control procedure on the basis that:
 - the current scenario doesn't actually constitute a change for the purposes of the project agreement and so wouldn't allow that mechanism to be used and
 - more commercially neither the Bank nor BAL will accept the risk of the VAT savings being channelled through the PFI SPV
- vii. Service to the customer remains unchanged along with all brands and operating procedures.

Cabinet Member / Officer Recommendations:

1. Authorise the Executive Director: Adult and Communities in consultation with the Cabinet Member for Finance, Governance and Performance, subject to the satisfactory completion of financial and legal due diligence, to take all steps required to support Parkwood Leisure Ltd in the conclusion of the transfer from Parkwood Community Leisure to Lex Leisure CIC, including the negotiation and completion of all necessary legal documentation as outlined in this report.

Corporate Strategy alignment:

1. Using our assets wisely, generating a social and/ or financial return. Raise money in a fair but business like way.
2. Supporting the organisational priority to be responsible financial managers and explore new commercial ideas.
3. Support the medium term financial plan.

City Benefits:

1. Efficient and effective service delivery.

Consultation Details: n/a

Background Documents:

2019 Cabinet Decision [ModernGov - bristol.gov.uk](https://www.moderngov.com/d/4282467/p/12282467)
[Corporate Strategy \(bristol.gov.uk\)](https://www.bristol.gov.uk/corporate-strategy)

Revenue Cost	£15,000	Source of Revenue Funding	Taken from Yr 1 savings
Capital Cost		Source of Capital Funding	
One off cost <input type="checkbox"/>	Ongoing cost <input type="checkbox"/>	Saving Proposal <input type="checkbox"/>	Income generation proposal <input checked="" type="checkbox"/>

Required information to be completed by Financial/Legal/ICT/ HR partners:

1. Finance Advice: This report seeks approval to support Parkwood Leisure in the conclusion of the transfer from

Parkwood Community Leisure to Lex Leisure subject to the completion of financial and legal due diligence. The assumptions that informed the previous negotiations and Cabinet decision of 2019 have now been revisited. As set out in paragraph 11, the update proposal represents an improved benefit to the council (from £76,000 to £106,000 of income equating to c£1.4m over the remainder of the contract). There are, however, changes to the previous arrangement where the annual payment to the Authority may be suspended/partially suspended during any period where there are forced closures (such as those which took place during the Covid 19 period), so this income is no longer guaranteed. The proposal also differs from the previous agreement, in that it no longer requests the council to waive any income benchmarking exercise. National non-domestic rate relief (NNDR) assumptions have also changed since the previous Cabinet decision. Whilst 80% relief will still be awarded to the new provider, the 20% discretionary relief will cease from 1 April 2024 following a Cabinet decision. The increased annual payment of £106k will therefore offset the financial risk to the Council of these changes in NNDR costs, potentially being recharged back to the Council from April 2024.

Finance Business Partner: Denise Hunt 19 September 2023

2. Legal Advice: The financial implications are set out above, but amount, overall, to an improved positions compared to that reported in November 2019. The aim is to leave any payment mechanism under the current PFI unchanged, and to replace the Leisure Operator’s current sub-contractor with a more VAT efficient Community Interest Company (CIC) (Lex Leisure). Consequent on that, a revised commercial package is proposed. The risk profile and economic balance is generally unchanged as a result of the proposed changes and is arguably more in favour of the Council, even allowing for the proposed suspension of payments due to forced closures. According there does not appear to be any procurement issues raised by the proposal.

It is proposed that the arrangement is captured in an agreement between the council, Parkwood Leisure Limited. Minor changes – recording the change in operator - may need to be made to the Project Agreement but would not constitute a material / substantial change for the purposes of public procurement law.

It follows that the changes could be agreed without instigating the contractual change control mechanism (i.e. without bank approvals or certification etc), and without requiring a waiver of the council’s procurement procedures. All parties will wish to carry out legal and technical due diligence on the direct agreement and related documents, but the process should be simpler and less costly than with a formal Change.

While the proposed contractual structure does not raise any particular concerns a full review, together with negotiation of the relevant contractual provisions, will be required in due course.

Legal Team Leader: Eric Andrews; Legal Services, 17 August 2023

3. Implications on IT: I can see no implications on IT in regard to this activity.

IT Team Leader: Alex Simpson – Lead Enterprise Architect, 9 August 2023

4. HR Advice: The report is to inform cabinet of an updated proposal from Parkwood Leisure which involves the termination of the current leisure subcontract at Hengrove Park Leisure Centre with Parkwood Community Leisure and replacing it with a new leisure subcontract to Lex Leisure CIC. This will have an impact for all the employees who work at the leisure centre, their employment will transfer from Parkwood Community Leisure to Lex Leisure under TUPE (Transfer of Undertakings (Protection of Employment) Regulations). The employees will retain all of their current terms and conditions under the regulations, including Pension arrangements. Although the employee are not Bristol City Council employees we would offer HR support in respect of the TUPE if required.

HR Partner: Lorna Laing, 7 August 2023

EDM Sign-off	Hugh Evans, Executive Director Adults and Communities	23 August 2023
Cabinet Member sign-off	Cllr Craig Cheney, Deputy Mayor - City Economy, Finance and Performance/Mayor Marvin Rees	24 August 2023
For Key Decisions - Mayor’s Office sign-off	Mayor’s Office	4 September 2023

Appendix A – Further essential background / detail on the proposal	NO
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Appendix B – Details of consultation carried out - internal and external	NO
Appendix C – Summary of any engagement with scrutiny	NO
Appendix D – Risk assessment	NO
Appendix E – Equalities screening / impact assessment of proposal	YES
Appendix F – Eco-impact screening/ impact assessment of proposal	YES
Appendix G – Financial Advice	NO
Appendix H – Legal Advice	NO
Appendix I – Exempt Information	No
Appendix J – HR advice	NO
Appendix K – ICT	NO
Appendix L – Procurement	NO