

# Cheltenham Borough Council

Cabinet 7 March 2017

Council 27 March 2017

## Financing arrangements for improvements to Leisure-at-Cheltenham

<b>Accountable member</b>	<b>Cllr. Flo Clucas; Cabinet Member Healthy Lifestyles</b>
<b>Accountable officer</b>	<b>Richard Gibson, Strategy and Engagement Manager</b>
<b>Ward(s) affected</b>	<b>All</b>
<b>Key/Significant Decision</b>	<b>Yes</b>
<b>Executive summary</b>	<p>The Cheltenham Trust has asked Cheltenham Borough Council for assistance with funding a range of improvements to the facilities within Leisure-at-Cheltenham, which is owned by Cheltenham Borough Council and currently leased to the Trust on a 15 year term. The proposed improvements are as follows:</p> <ul style="list-style-type: none"><li>• Convert two existing squash courts into new studios to enable an increase in the number of class and activity programmes.</li><li>• Upgrade the existing dry-side changing spaces to reflect the quality of offer that customers expect and that competes well with the local market.</li><li>• The provision of a new sauna and steam room suite adjacent to the new changing rooms, strengthening the link with health and fitness and replacing the outdated existing health suite facilities.</li><li>• Extend the existing fitness suite on the ground floor into the current dance studio enabling an increased capacity to meet demand and enable improved functional training space and health support related activities.</li><li>• Conversion of the existing health suite into an aquatics play space, developing and extending the aquatics opportunities for families with young children and also the commercial hires for children's birthday parties</li></ul> <p>The improvement scheme will deliver much needed investment into Leisure-at-Cheltenham to keep it competitive and to enable a growth in income and footfall. Although gym equipment was refurbished in 2013, there has been no significant investment into the fabric of the building since the post-flood refurbishment in 2007.</p> <p>The council plans to support this request via a loan of up to £1.5m which will be repaid by the Trust at an interest rate of 3% per annum.</p>

Recommendations	<ol style="list-style-type: none"> <li><b>1 Cabinet approves the proposed improvements to Leisure-at-Cheltenham as set out in this report and recommends that Council;</b></li> <li><b>2 Subject to the conditions set out in section 6 being met to the satisfaction of the Section 151 Officer in consultation with the Cabinet Member Finance authorises:</b></li> <li><b>3 The Authority to offer a loan of up to £1.5million at an interest rate of 3% per annum to the Cheltenham Trust for onward funding of the improvements to Leisure-at-Cheltenham as detailed in Section 3 of this report;</b></li> <li><b>4 The Authority entering into a loan agreement with The Cheltenham Trust for the sum of up to £1.5m at an interest rate of 3% per annum for onward funding of the improvements to Leisure-at-Cheltenham as detailed in Section 3 of this report.</b></li> </ol>
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Financial implications	<p>The proposed loan will be a 3% annuity loan for 10 years with twice yearly repayment of capital and interest.</p> <p>The loan will be unsecured because the Trust does not itself own any land or buildings. It should be noted that the remaining 8 year period of the current management agreement is less than the 10 year period of the proposed loan, as detailed in the key risks section below. However, the council could, if both parties were willing, extend the management agreement to cover the remaining term of the loan.</p> <p>The business case submitted by the Trust (Appendix 2) has been reviewed in terms of the proposed capital costs of the scheme, affordability and expected rate of return. This is based on a proposed capital cost of £1.43m. However for the basis of this report to Cabinet / Council we have based our workings on the maximum loan of £1.5m.</p> <p>The revenue forecast at 4.3 shows that the proposed improvements will generate a cumulative net surplus of £675k at the end of the 10 year loan period, with an average return on investment over the 10 year period of 4.22%. This is slightly below the CBC target of 5% but this can be off-set by the social and health benefits of the proposed scheme.</p> <p>The preliminary costs of £81k will be funded by the Trust from their cash-flow. The projected net cash outflows in the first three years of the capital scheme, as detailed in paragraph 4.3, will also need to be absorbed within the Trust's revenue budgets.</p> <p><b>Contact officer:</b>  <b>Sarah Didcote</b>  <b>GO Business Partner Manager (West)</b>  <b><u><a href="mailto:Sarah.Didcote@cheltenham.gov.uk">Sarah.Didcote@cheltenham.gov.uk</a></u></b>  <b>01242 264125</b></p>
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<p><b>Legal implications</b></p>	<p>The Authority has power under Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 to provide the loan to the Cheltenham Trust (the Trust).</p> <p>If approved by full Council, the Authority will be providing a loan at a lower interest rate than offered by financial institutions and advice has been given to officers about state aid. It is considered that the assistance is not state aid because the assistance will not affect trade between member states because the activities carried on at Leisure-at-Cheltenham are of a local nature. On 19 July 2016 the European Commission published <i>“Notice on the notion of State aid as referred to in Article 107(1) of the Treaty on the Functioning of the European Union”</i> which stated the following;</p> <p>“The Commission has in a number of decisions considered, in view of the specific circumstances of the cases, that the measure had a purely local impact and consequently had no effect on trade between Member States. In those cases the Commission ascertained in particular that the beneficiary supplied goods or services to a limited area within a Member State and was unlikely to attract customers from other Member States, and that it could not be foreseen that the measure would have more than a marginal effect on the conditions of cross- border investments or establishment.” The Notice referred to a number of examples which included “sports and leisure facilities serving predominantly a local audience and unlikely to attract customers or investment from other Member States”</p> <p>The Trust occupy Leisure-at-Cheltenham under a lease granted for a term of 15 years which commenced on 1<sup>st</sup> October 2014. The Lease will automatically end before the expiry of the 15 years should the management agreement be terminated earlier or is not extended at the end of year 10. The Lease requires the prior written consent of the Authority as freeholder of the building before any works can be carried out. The consent will be documented by both the Authority and the Trust entering into a Licence for Alterations.</p> <p>It is intended that the Trust employs the building contractors, design team and other professionals and contractors. The Council will not be party to these contracts so in order to protect the Authority’s position as freeholder, the Authority will need to be supplied with collateral warranties from each professional and contractor in a form approved by the Authority.</p> <p>The Lease and the Management Agreement contain provisions about the ownership and maintenance of equipment. It may be that variations to are required depending on the agreement reached regarding the new equipment and facilities being provided.</p> <p>The terms of the loan and repayments will be documented in a loan agreement.</p> <p><b>Contact officer:</b>  <b>Donna Ruck, Solicitor, One Legal</b>  <b>Tel: 01684 272696</b>  <b>Donna.ruck@tewkesbury.gov.uk</b></p>
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<b>HR implications (including learning and organisational development)</b>	No HR implications identified with this report
<b>Property/Asset Implications</b>	<p>Leisure@ Cheltenham is currently leased to the Trust on a 15 year term starting on October 2014.</p> <p>To undertake the Phase 1 there will be a requirement for 'A Licence for Alterations'. This is also subject to the works occurring within the term of the lease. There will be two elements to this:</p> <ul style="list-style-type: none"> <li>• Works to the structure and fabric of the building</li> <li>• Works that change and alter fixtures and fittings and maintenance and repairing liabilities</li> </ul> <p>As part of the licence to alteration, consideration will need to be given to</p> <ul style="list-style-type: none"> <li>• Ownership of the 'Assets' (depreciation)</li> <li>• How changes effect repair and maintenance responsibilities</li> <li>• Exit strategies (for the Council or the Trust)</li> </ul> <p>These elements will require negotiation between the two parties.</p> <p>In addition, as there are other capital works being undertaken in the next year or so (such as replacing the air conditioning units in the gym, the installation of a changing places toilet and potential improvement works funded by Sport England's Swim Local programme), consideration should be given to coordinating these works as a whole which may help reduce the costs of those works and minimise disruption to customers.</p> <p><b>Contact officer:</b>  <b>Abigail Marshall</b>  <b>Estates Surveyor</b>  <b><u><a href="mailto:Abigail.Marshall@cheltenham.gov.uk">Abigail.Marshall@cheltenham.gov.uk</a></u> - 01242 775166</b></p>

<b>Key risks</b>	<p>As set out above in the financial implications, there are two areas of risk for the council:</p> <p>The Council is proposing to grant a loan to the Trust which will be unsecured because the Trust does not itself own any land or buildings. This is a risk to the council because in the event of default on the loan, there will be no property that CBC can repossess. This is a risk that CBC has taken at least once before other external organisations operating from within council owned buildings. The Council owes a fiduciary duty to its council tax payers to ensure that the business case is sound so that it can be sure that the repayments will be made.</p> <p>Secondly, the term of the loan is 10 years, and there is less than 8 years of the certain term of the management agreement with the Trust remaining. If the Council were not to extend the management agreement and as a result if the Trust needed to wind itself up, it must clear all its debts. If it cannot repay the remainder of the loan, the council would need to seize any assets of value (assuming CBC takes a floating charge over its assets under the loan agreement) and potentially write off any remaining repayments.</p> <p>In mitigation against these two risks, as CBC owns the building, the loan will be spent on improving its asset and the works may add value to it and to CBC's financial position.</p>
<b>Corporate and community plan Implications</b>	<p>Successful delivery of the project by the Cheltenham Trust will help the council deliver its corporate strategy outcome:</p> <ul style="list-style-type: none"> <li>• People live in strong, safe and healthy communities</li> </ul>
<b>Environmental and climate change implications</b>	<p>The range of improvements to Leisure-at-Cheltenham will be built in accordance with the environmental specifications set out in the latest building regulations.</p>

## 1. Background

- 1.1 The Cheltenham Trust were established as a consequence of a commissioning review into how best the Council could continue to support the delivery of its leisure and cultural services, and the management of five properties (The Wilson, Town Hall, Pittville Pump Room, Leisure at Cheltenham, Prince of Wales Stadium) whilst delivering best value to the taxpayer.
- 1.2 The Trust went live in October 2014 and are in receipt of a declining management fee from the Council:

Year	2014 15	2015 16	2016 17	2017 18	2018 19	Total
Management Fee	£1,666k	£968k	£764k	£648k	£641k	
Net reduction	£0	-£698	-£204	-£116	-£7	-£1,025

- 1.3 The Council has encouraged the Trust to develop a vision for the Leisure Centre and Prince of Wales stadium.
- 1.4 The Trust has subsequently come back with an initial vision. This is:
- To develop a hub within the town that encourages public participation in diverse experiences that touch and inspire people be it through sport, culture, play, competition, heritage, learning, health and wellbeing. The ambition is to put Cheltenham at the forefront nationally, creating a unique place that contributes to the social, cultural and economic value of the town and enriching the lives of residents and visitors.*
- 1.5 In March 2016 the Cheltenham Trust commissioned an initial feasibility study and developed a two-phase approach to creating a hub at Leisure-at-Cheltenham. The proposals were presented to the Council in the autumn of 2016 and the first phase element (described in section 3) was endorsed as a robust first step to delivering the broader vision. The second phase included works to re-orientate the entrance and reception along with the provision of a large adventure play facility and outdoor trampoline park and it was agreed not to progress these at this point.
- 1.6 In summary, the phase 1 project is to update and upgrade the wellbeing facilities at the leisure centre and develop a new aquatic play space. It is planned to obtain funding through a loan from Cheltenham Borough Council and for the new facilities open to be open to the public for January 2018.

## 2. Current arrangements

- 2.1 Leisure-at-Cheltenham is currently leased to the Trust on a 15 year term that started on October 2014. It hosts over 570,000 visits per year and welcomes visitors from cradle to grave. Customers come to the facilities from Cheltenham and surrounding areas and its regional and national competition events attract people from all over the UK.
- 2.2 Many services are delivered in partnership with 19 other providers across health, education, social services and sport. The proposal aims to ensure that the facilities remain attractive to these partners.
- 2.3 In terms of its wider operations, the Trust remains very successful at delivering a range of outcomes for local residents. Performance is assessed at a quarterly review meeting chaired by the Cabinet Member Healthy Lifestyles.
- 2.4 To support the council's understanding of the performance of the Trust, a value for money study is to be undertaken this year which will assess the Trust's contribution to social, cultural and economic outcomes against a picture of how much it costs to support the Trust.

### 3. Details of the proposal

3.1 The proposed improvements are as follows:

- Convert two existing squash courts into new studios to enable an increase in the number of class and activity programmes.
- Upgrade the existing dry-side changing spaces to reflect the quality of offer that customers expect and that competes well with the local market.
- The provision of a new sauna and steam room suite adjacent to the new changing rooms, strengthening the link with health and fitness and replacing the outdated existing health suite facilities.
- Extend the existing fitness suite on the ground floor into the current dance studio enabling an increased capacity to meet demand and enable improved functional training space and health support related activities.
- Conversion of the existing health suite into an aquatics play space, developing and extending the aquatics opportunities for families with young children and also the commercial hires for children's birthday parties

### 4. Business Plan Assessment

4.1 The estimated capital costs of the project are shown below:

Phase 1	
Preliminary costs	81,000
Build costs	666,000
Equipment	557,000
Contingency costs (8.1%)	106,000
Project Management & Delivery	90,000
<b>Total</b>	<b>1,500,000</b>

4.2 Based on a 3% loan over the 10 year term of the loan, the total interest payments equate to £247,372.

4.3 The revenue forecast is shown below – assuming a loan at £1.5m:

	Years									
SUMMARY	1	2	3	4	5	6	7	8	9	10
Income	273	344	389	418	434	429	425	421	417	412
Expenditure	127	131	135	137	139	139	139	139	139	139
Lost income	24	40	39	39	40					
Surplus	122	173	215	242	255	290	286	282	277	273
Loan repayment	174	174	174	174	174	174	174	174	174	174
Net Surplus	-52	-1	41	68	81	116	112	108	103	99
Cumulative Surplus	-52	-53	-12	56	137	253	365	473	576	675

- 4.4** The revenue forecast is based on the following assumptions:
- Income grows from years 1 to 5 and then shows a marginal decline from years 5 – 10
  - Squash retains 80% of income through fully utilising capacity in the remaining courts
  - Splash pad utilisation rates are based on term time v holiday time attendance levels
  - Attrition rate on membership based on 5% v actual of 4.8%
  - Capital loan repayments shown as full cost in year one
  - Food and beverage spend estimated at 10p per user on new attendances and 50p in café spend
  - Staff costs for new role based on UK Living wage at £8.45 from April 2017
  - Loss of squash income and health suite income are factored into the business plan up to year 5

## **5. Project governance**

- 5.1** The project will be co-sponsored project between The Cheltenham Trust and Cheltenham Borough Council with oversight being provided by the Joint Commissioning Group. The Joint Commissioning Group is the mechanism by which Cheltenham Borough Council and The Cheltenham Trust work together using a co-commissioning approach to deliver capital development projects relating to CBC owned and TCT managed venues.

- 5.2** Current membership of the Group is:

Jaki Meekings-Davis	Trustee, The Cheltenham Trust
Cllr Flo Clucas	Cabinet Member, Cheltenham Borough Council
Julie Finch	CEO, The Cheltenham Trust
Riah Pryor	Head of Content & Programmes, The Cheltenham Trust
Mark Sheldon	Director Corporate Resources & Projects, Cheltenham Borough Council
Richard Gibson	Lead Commissioner for the Trust, Cheltenham Borough Council
Jackie Rigby	Programme Manager, Cheltenham Borough Council

- 5.3** Scrutiny of the project will be via the Cheltenham Trust's Audit and Governance Committee and the Council's Overview and Scrutiny Committee
- 5.4** Delivery of the project will be through a development partner, which is a tried and tested formula model to ensure delivery on time and within budget. The Trust will manage the procurement of the development partner which will be achieved through national frameworks to ensure speed and compliance with procurement regulations.

## **6. Suggested conditions for the offer of a loan**

- 6.1** If council are minded to offer a loan, it is suggested that it is offered with the following conditions:
- 6.2** The maximum loan that will be offered to The Cheltenham Trust will be £1.5m at an interest rate of 3% per annum.
- 6.3** The offer of the loan will remain open for 12 months from the date of the Council meeting.
- 6.4** The offer of the loan is only to be used in connection with the proposed improvement scheme as detailed in section 3.
- 6.5** The Trust will bring forward detailed costings for the improvement scheme and this work will be funded in the first instance by their own cash-flow though will be later refunded from the loan.
- 6.6** The Trust will agree to enter into a licence for alterations and associated collateral warranties as detailed in the property and legal implications.
- 6.7** Subject to the detailed costings for the scheme not being greater than £1.5m, the loan will then be



agreed by the s.151 officer, in consultation with the Cabinet Member Finance.

## **7. Reasons for recommendations**

**7.1** The proposed loan of £1.5m to fund the proposed improvement scheme is being recommended for the following reasons:

- The loan will be repaid by the Trust in full over a 10 year period.
- It will enable much needed investment into leisure-at-Cheltenham, which is owned by the council and leased to the Trust. This will ensure the building remains an attractive leisure destination for local residents within a competitive market.
- The investment will increase footfall and therefore income for the Trust.
- The improvement scheme will have direct benefits for local residents increasing their health and wellbeing
- The improvement scheme will support the work of 19 partners who deliver health and wellbeing related activities at leisure-at.

## **8. Alternative options considered**

**8.1** The Council and the Trust have explored two other options:

- 8.2** DO NOTHING: Continue to maintain the existing facility to ensure it is fit for purpose within resources, in the knowledge that Leisure – at will not be able to meet the demand for business and customer expectations, with reducing appeal and subsequent declining retention and reputation with increased wear and tear on kit and facilities. There will be a negative impact upon economic viability of the business and the Trust. This option has therefore been dismissed.
- 8.3** COMMERCIAL FUNDING: The Cheltenham Trust could fully fund the capital investment programme without contribution by CBC through seeking a commercial loan. Although on the face of it, this would minimise the risk to the Council in that the Trust business activities would fund the repayments, the Council would need to act as a guarantor for the loan. That would mean assigning an equivalent sum in our reserves to fund this in case the Trust failed. In addition, the cost of the loan would have been higher at an estimated 5%. On advice from the s.151 officer, this option has been dismissed.

## **9. Consultation and feedback**

**9.1** It is suggested that, prior to the loan being finally agreed by the s.151 officer and the Cabinet Member Finance, the works should be discussed by the Asset Management Working Group.

## **10. Performance management – monitoring and review**

**10.1** If a loan is entered into, this will be managed via the agreed terms and conditions as set out in the loan agreement.

<b>Report author</b>	<b>Contact officer:</b> Richard Gibson Strategy and Engagement Manager Richard.gibson@cheltenham.gov.uk 01242 235 354
<b>Appendices</b>	1. Risk Assessment 2. Business Plan 3. Project Assessment Tool
<b>Background information</b>	

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	If the Trust defaults on the loan, there will be no property that CBC can repossess. Therefore the Council owes a fiduciary duty to its council tax payers to ensure that the business case is sound.	s.151 officer	20.2.17	3	2	6	Accept	Ensure that the business case is sound so that it can be sure that the repayments will made.	Feb 2017	Sarah Didcote	
	As the term of the loan is 10 years, and there is less than 8 years of the certain term of the management agreement with the Trust remaining, if the Council were not to extend the management agreement and as a result if the Trust needed to wind itself up the loan repayment agreement would not be fulfilled.	s.151 officer	20.2.17	4	2	8	Reduce	The council would need to be in a position to seize any assets of value. This therefore suggests that CBC should take a floating charge over its assets under the loan agreement	Sept 2017	Donna Ruck	
<b>Explanatory notes</b> <b>Impact</b> – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical) <b>Likelihood</b> – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability) <b>Control</b> - Either: Reduce / Accept / Transfer to 3rd party / Close											