

**POLICY & RESOURCES COMMITTEE****Tuesday 21 November 2023**

<b>REPORT TITLE:</b>	<b>COMMUNITY ASSET TRANSFER BRACKENWOOD GOLF COURSE WOODCHURCH LEISURE CENTRE</b>
<b>REPORT OF:</b>	<b>DIRECTOR OF FINANCE</b>

**REPORT SUMMARY**

This report seeks:

- (1) A variation of the Heads of Terms for the transfer of Brackenwood Golf Course to Brackenwood Community Golf Limited to enable the transfer to progress and
- (2) A decision on the transfer of Woodchurch Leisure Centre

This report meets the following priorities in the Wirral Plan 2021-26

- Safe, vibrant communities where people want to live and raise their families.
- A prosperous inclusive economy where local people can get good jobs and achieve their aspirations.

This matter has the potential to affect all wards.

This is a Key Decision

The Business Plan submitted by Woodchurch Wellbeing, referred to in this report, was submitted confidentially for commercial reasons. Therefore, Appendix 1 of this report is exempt from publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972

**RECOMMENDATION/S**

The Policy & Resources Committee is recommended to resolve that:

1. the Heads of Terms for transferring Brackenwood Golf Course to Brackenwood Community Golf Limited are varied to two full-sized playing pitches (11-a-side), rather than four full-sized pitches to enable the transfer to progress.
2. Woodchurch Leisure Centre is not transferred to Woodchurch Wellbeing.

3. The Director of Finance be authorised to procure the demolition of Woodchurch Leisure Centre and to accept the most economically advantageous tender provided he is satisfied that the cost can be met within the Council's budget.

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 In relation to Brackenwood Golf Course to enable the transfer to progress.
- 1.2 In relation to Woodchurch Leisure Centre to enable a decision to be made on the community asset transfer.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 There are no other options to progress the transfer of Brackenwood Golf Course as the Heads of Terms must be varied to enable the transfer to progress for the reasons set out in this report.
- 2.2 This report requires a decision on the business plan submitted by Woodchurch Wellbeing before any other options are considered as Members have put this asset into a Community Asset Transfer process which needs to be concluded.

### **3.0 BACKGROUND INFORMATION**

#### **Brackenwood Golf Course**

- 3.1 This Committee on 27 July 2023 unanimously agreed a Heads of Terms document for the transfer of Brackenwood Golf Course to Brackenwood Community Golf Limited. Amongst other things, this included four full-size playing pitches with changing facilities and car parking. Members may recall that the Heads of Terms in the published report was for two full-size playing pitches, but this was increased to four, as Brackenwood Community Golf Limited advised that they could provide space for these two additional pitches alongside operating an 18-hole golf course.
- 3.2 Brackenwood Community Golf Limited have now done more work on this and advise that they can only provide two full-size pitches, changing facilities and car parking without impacting significantly on the operation of the 18-hole golf course. They will still provide the 2 mini-5-a-side pitches. Council officers concur with this view. Space for the other two full-sized pitches can be accommodated on other sites and therefore, this will not impact on the Council's Brown Field First Strategy set out in the Local Plan.
- 3.3 It is therefore recommended that the Heads of Terms is varied from four full-size playing pitches to two full-sized playing pitches (11-a-side). This will enable the transfer to progress.

#### **Woodchurch Leisure Centre**

- 3.4 Woodchurch Leisure Centre was built in the 1960's and has now operated for over 60 years. It is a building with a swimming pool, a theatre space, community rooms and spaces that can be used for offices. It is constructed using the methods of the time and has lacked significant investment over the years. It is a costly building to operate because of its construction, layout and condition.

- 3.5 It was closed during Covid and became a vaccine centre. It then permanently closed as part of the 2022/23 Budget process due to very high operational costs and deficits. Since its closure the building has remained vacant and secure. However, in the past few months there has been wanton vandalism of the building by local gangs. Despite the building being secure at ground level they accessed the building through one of the skylights using mechanical tools. The Council has resecured the building on several occasions and is working with Merseyside Police on this matter. The internal damage that has been done to the building from this vandalism is considerable. It will inevitably increase the costs of bringing the building back into use, adding to the reopening costs already identified.
- 3.6 Following closure, Members decided to put this asset into the Community Asset Transfer (CAT) process. Two expressions of interest were received, and Members decided to progress with both of these (Helen Diamond Swimming Limited and Woodchurch Wellbeing) to the detailed business planning stage. From the outset of this process, the Council made it clear that there is a maximum capital sum of £330,000 allocated to support any transfer of this asset and that this sum alone would not be sufficient, in the opinion of Officers, to reopen the whole of the centre because of the construction, layout and condition of the building. Therefore, if submitted business plans for the asset were to be viable, secured additional capital funding would be required alongside secured start-up revenue costs.
- 3.7 The original business plans that were submitted were not viable and considerable detailed work was undertaken by Officers with both parties to seek clarifications, explore options, to enable a transfer to be considered. Several versions of the business plans have been submitted by both groups over the last 12 to 18 months. The Tourism, Communities, Culture and Leisure Committee on 22 June 2023, concerned by the length of time being required for this process, asked the Director of Finance to review both business plans and to report to the Policy and Resources Committee so that a decision could be made on this transfer. Helen Diamond Swimming Limited withdrew their interest on 4 July 2023 because of a commitment they had taken on with another venue and other projects.
- 3.8 This Committee on 27 July considered the report from the Director of Finance and agreed the following recommendation in relation to Woodchurch Leisure Centre; Resolved (unanimously) That (1) Committee notes and concurs with the key objectives set out in the business plan. (2) Committee is minded to support the Community Asset Transfer of Woodchurch Leisure Centre to Woodchurch Wellbeing with capital funding up to a maximum of £330,000 and to that effect will issue a letter of intent accordingly. (3) Such a letter is subject to [a] receipt of additional grant funding by Woodchurch Wellbeing to match Council capital contribution of £330,000 plus 20% revenue costs by 27 October 2023, [b] receipt of a revised business plan for consideration by Policy and Resources Committee on 8 November 2023. (Minute 38 refers)
- 3.9 The revised business plan was submitted on 27 October 2023 and is in the exempt Appendix to this report. Woodchurch Wellbeing's revised business plan is improved on previous versions in terms of the organisations and personnel involved (several of these organisations use space in Council or other venues so there would be some displacement of activity which would impact on Council income), the range of potential community activities identified and more detailed financial projections. In

doing this work, the Plan advises that a different approach is now required to this asset because of costs and funding availability. Initially, it was proposed to open the pool and then the other spaces within the building on a phased basis. However, due to the costs associated with the pool reopening and the additional costs caused by recent vandalism, it is now proposed to open up some of the spaces for offices and community use in the first three months using the Council's capital funding of £330,000 and then generating income from these spaces to fund the on-going revenue costs. The business plan identifies that Woodchurch Wellbeing have been able to secure revenue funding for the first three months of operation and then will be entirely dependent on income, in-kind support or other grant sources (for which they are applying) for their revenue costs. This represents a significant risk to the business plan.

- 3.10 Woodchurch Wellbeing have not be able to meet the Council's requirements in securing match funding of £330,000 by 27 October 2023. They are applying for funding from a variety of sources set out in the exempt appendix to this report. The major funding sources have a decision period of around 3 to 4 months and there is no guarantee of funding being granted. (The funding source identified as "imminent" in the exempt appendix has decided not to invest in this project and the Council has received written confirmation of this from both the organisation and Woodchurch Wellbeing). Therefore, in their business plan, the opening of the pool, they estimate will be delayed by 3 to 6 months (because of the cost and vandalism) and this will be dependent on securing this grant funding. They aim to have the centre fully open in 12 months, but this is totally dependent on grant funding and they will have to allow time for procurement processes and for the works to be undertaken, which may make 12 months ambitious. If grant funding is not secured, then only part of the building (office and community spaces) will be open using the Council's capital funding and this would not be viable. Without additional grant funding the pool will not be able to reopen. In these circumstances, the Leisure Centre would be returned to the Council resulting in the loss of the £330,000 and the added cost of demolition.
- 3.11 Due to the increased costs to the pool area and as a result of the wanton vandalism, Woodchurch Wellbeing have also asked if the Council can consider providing "some additional capital or resource contribution to expedite the building remediation and improvement works". In discussion with them, they are not able at the time of writing this report to advise what additional capital they may request but have advised that if the Council could assist with clearing the broken glass and support repairs it would be very much welcomed by the Board.
- 3.12 Woodchurch Wellbeing's business plan identifies the lack of secured capital and revenue funding as a weakness and identifies energy and utility costs, construction costs and the cost-of-living crises (impact on income generation) as key risks.
- 3.13 The Director of Finance has assessed the revised business plan. The purpose of making the Council's capital funding available was to secure the reopening of the pool for the community. However, the revised business plan is not supported by match funding by Woodchurch Wellbeing and therefore the pool will not be able to reopen without this. He recognises the work that has been done by Woodchurch Wellbeing in revising the business plan. However, in its present form, he advises that the business plan is not viable and that transferring this asset on the basis of it would be a very high risk for the Council. The Council would be tied down to a long lease to

an organisation which did not have a viable business plan and which might struggle to find the resources to keep the premises safe for public use over the duration of the lease.

- 3.14 The considerations are as follows. (1) Woodchurch Wellbeing have had more than 18 months to develop their proposals for the Leisure Centre but in this time they have only secured revenue funding for the first three months of operation of part of the building. They have not secured any external large funders to match the Council's capital contribution. Although they have funding applications on-going, decisions on these will not be known for 3 to 4 months and there is no guarantee of these being successful. This presents a very high risk to any transfer of this asset failing and the asset being returned to the Council with a loss of the £330,000 and then the demolition costs required for the building (2) The Council has allowed significant time for the business plans to be developed over the last 12 to 18 months and Members recognise that there is a need to decide on this transfer given the significant holding costs of this asset. The recent vandalism is resulting in additional money being spent on the security and monitoring of the building. The holding costs set out in the financial section of this report are very likely to increase significantly the longer this asset remains without a decision.

#### **4.0 FINANCIAL IMPLICATIONS**

- 4.1 There is a maximum capital sum of £330,000 allocated to support the transfer of this asset. If this transfer fails then the £330,000 will be lost
- 4.2 Holding cost expenditure between April 2023 and September 2023 is £133,087. This equates to approximately £22,181 per month. If this is projected for a 12 month period, the cost would be £266,172. These holding costs are expected to increase given the recent vandalism and the need for additional security measures to secure the building.
- 4.3 The financial implications of the Woodchurch Wellbeing business plan are outlined above and detailed in the exempt appendix of this report. They only have three months revenue funding secured. The full reopening of the centre is dependent on grant funding decisions which are expected in the next three to four months. There are no guarantees of these applications being successful.
- 4.4 The cost of demolition will be dependent upon the tenders received for the works but is likely to increase the longer a decision is delayed because of continuing inflation.

#### **5.0 LEGAL IMPLICATIONS**

- 5.1 The terms of reference for the Policy and Resources Committee include to, amongst other matters, consider disposals of assets above £500,000 in value.
- 5.2 In general the Committee in reaching a decision must consider all relevant considerations and disregard irrelevant considerations and come to a reasonable conclusion. Not to consider alternative uses would expose any decision to legal challenge.

- 5.3 A relevant consideration is the Council's fiduciary duty to the Council Taxpayer to take account of its interests in maximising income or savings and obtaining the best price reasonably obtainable for the disposal of any asset. The Committee should therefore consider any income or capital receipt forgone because of transferring an asset for community use. Any financial loss would have to be clearly outweighed by the strength of the community benefits. The Council's current financial position is a relevant factor.
- 5.4 In this regard it is important to ensure that the terms of a community asset transfer do not significantly reduce the savings made, or increased income achieved as a result of the measures already taken by the full Council to fulfil its legal duty to balance its budget.
- 5.5 If the community benefits are unlikely to be realised by a CAT transfer because, for example, of a lack of financial viability or necessary expertise, then they should be given little or no weight in the decision-making process.
- 5.6 The Council is under an additional duty under section 123 of the Local Government Act 1972 to obtain the best price reasonably obtainable for the disposal of any interest in its land unless the disposal is for a lease for less than seven years. If the proposed lease is for a longer term, then a less than market rent would be lawful if the value of the community benefits outweighed any loss of income.
- 5.7 A further consideration is the Subsidy Control Act 2022 which prohibits subsidies by public bodies to an enterprise (even if not for profit) that offers goods or services on a market. If the financial assistance (e.g. charging a below market rent in a lease) conferred an economic advantage on the selected enterprise that might distort competition with other providers, it would be unlawful unless the advantage were below the "de minimis" level of £315,000 (measured over the length of the proposed lease) or the rigorous requirements for a lawful subsidy under the Act were satisfied. The figure of £315,000 includes any previous financial assistance provided to the recipient by a public body during the past three financial years. Financial assistance would include any future discretionary business rates relief which is not given to its competitors.
- 5.8 Any proposed disposal by the Council of an interest in land that is public open space (i.e. land held for the purpose of public recreation such as public parks or golf courses that are open to the public and not restricted to a private membership) must be advertised in local newspapers for two successive weeks. Any objections received would have to be considered by the Committee before any decision were made on the disposal.
- 5.9 The grant of a lease to a CAT transferee would confer exclusive possession of the land to the organisation. The Council could impose covenants on the lessee e.g. to keep the property in good repair or not to use it for any purposes other than those specified. Those covenants would be enforceable but any decision by the Council to forfeit the lease for non-compliance could be overturned by the Court in its discretion if the lessee sought relief from forfeiture. The Council would in effect lose control of the land for the duration of the lease (and the lessee would have the right to a renewal of the lease on its expiry unless its right were excluded pursuant to the Landlord and Tenant Act 1954).

- 5.10 Any disposal of the land for a different use than the one formerly established by the Council would have to be compliant with any legally enforceable covenants imposed by previous owners or current landlords and with any requirements for planning permission.
- 5.11 If the Committee decided not to proceed with a CAT transfer, decisions on the next steps would then be required.

## **6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS**

- 6.1 The Council has existing resources in place to progress the decisions of this Committee with regard to these assets.

## **7.0 RELEVANT RISKS**

- 7.1 Transferring any asset carries a risk that it may not be successful. The submitted business plan identifies capital and revenue funding as a weakness. The business plan is dependent on external grant funding which is not secured or guaranteed. There is no mitigation to cover a situation where grant applications are unsuccessful. Therefore, transferring the asset in these circumstances is very high risk and not recommended.
- 7.2 The business plan requires the Council's capital funding of £330,000 to be spent before the outcome of other funding applications is known and this carries the high risk that if these grant applications are unsuccessful the Council will have committed its resources which will not be recoverable.
- 7.3 The business plan identifies that the cost-of-living crises will have an impact on the potential of generating income from the users of the centre. It is difficult to mitigate this as it is unclear how long this situation will continue for and the full implications it will have. However, spending on Leisure activities does reduce in times of economic constraint and rising prices, as people focus on the essentials.
- 7.4 Given the age, condition and construction of the building, the reopening costs will be significant as well as the on-going energy costs (even if costs reduce. It has been suggested that parts of the building could be operated without heating but this has issues for the structure of the building). As the building is nearing the end of its life, the ongoing planned maintenance costs will increase year on year. It is a risk that the cost of these will have a significant impact on future years of the business plan. There is limited mitigation regarding this risk given the building's age, condition and construction.
- 7.5 Under the CAT proposals the Council would be leasing the assets to the relevant organisation and if any transfer failed the asset would return to the Council but only after possible litigation and the Court or the lessee agreeing to the forfeiture of the Lease. Consideration could then be given to the options for the future of the site.
- 7.6 A communications strategy is in place to manage any reputational risks associated with the CAT project.



- 7.7 Any post transfer risks (e.g. ensuring compliance with the lease, maintaining the property etc) will be dealt with by lease provisions and regular annual monitoring of these matters.
- 7.8 A register of all assets transferred will be kept by the Asset Management Team. The annual report to members on the Asset Strategy 2022-27 will report progress on CAT.

## **8.0 ENGAGEMENT/CONSULTATION**

- 8.1 Extensive engagement has taken place with Brackenwood Community Golf Ltd regarding the playing pitch issues and with Woodchurch Wellbeing in the revision of their business plan and funding profiles.

## **9.0 EQUALITY IMPLICATIONS**

- 9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. An Equality Impact Assessment is a tool to help council services identify steps they can take to ensure equality for anyone who might be affected by a particular policy, decision or activity.
- 9.2 It is not considered that the proposed transfer or its alternative will adversely affect any section of the community having protected characteristics.

## **10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS**

- 10.1 Woodchurch Leisure Centre was built in the 1960's and is now over 60 years old. It is a building of its time in terms of construction, and it is difficult to meet modern environmental requirements. Pool covers will be used to reduce energy costs but the efficiency of the other spaces in the building will be difficult and costly to address. This may have an effect on the operational costs of the building in terms of energy and other utilities. The business plan submitted identifies these as areas of "risk".

## **11.0 COMMUNITY WEALTH IMPLICATIONS**

- 11.1 Transferring both assets has community benefits. This will provide new opportunities within those communities for community wealth building. The local focus of activity within those communities has the potential to complement existing facilities and create new economic opportunities for local groups.

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## **APPENDICES**

Appendix 1 - Woodchurch Wellbeing Business Plan – 27 October 2023 - EXEMPT

## **BACKGROUND PAPERS**

## 1. Community Asset Transfer Policy 2022

### TERMS OF REFERENCE

This report is being considered by Policy and Resources Committee in accordance with section (iv) of its Terms of Reference:

iv) regarding land and property including major acquisition and disposals, which includes reserved decision making concerning any purchase, sale or transfer of a value in excess of, or likely to exceed, £500,000, unless the Committee has delegated this function in relation to a specified area or business plan as the Committee may determine.

### SUBJECT HISTORY (last 3 years)

<b>Council Meeting</b>	<b>Date</b>
Tourism Communities Culture and Tourism Committee	16 June 2022
Report on CAT (stage 1)	
Report on CAT	25 October 2022
Report on CAT	2 February 2023
Report on CAT	9 March 2023
Report on CAT	22 June 2023
Policy and Resources Committee	27 July 2023