

REPORT TO:		CABINET	
DATE:		29th January 2025	
PORTFOLIO:		Councillor Noordad Aziz - Deputy Leader of the Council (Transformation, Education and Skills) & Councillor Vanessa Alexander (Resources and Council Operations)	
REPORT AUTHOR:		Jane Ellis Executive Director (Legal & Democratic Services) Jody Spencer-Anforth – Head of Finance (Acting Section 151 Officer)	
TITLE OF REPORT:		Payment of grant funding to Hyndburn Leisure and conclusion of the leisure review	
EXEMPT REPORT (Local Government Act 1972, Schedule 12A)	No	Not applicable	
KEY DECISION:	Yes	If yes, date of publication:	20 th December 2024

1. Purpose of Report

- 1.1 To seek approval to pay a grant of £1,000,000.00 to Hyndburn Leisure in respect of the period 1st April 2024 to 31st March 2025.
- 1.2 To present the outcome of the recent leisure review and make a recommendation re next steps.

2. Recommendations

- 2.1 That Cabinet agrees to pay Hyndburn Leisure the sum of £1,000,000.00 by way of grant to support the provision of community leisure services in the Borough in respect of the period 1st April 2024 to 31st March 2025 subject to completion of a grant funding agreement in accordance with paragraph 3.6 of this report; and
- 2.2 That Cabinet note the “Leisure Management Options Report” prepared by Max Associates Ltd and attached as Appendix 2 to this report; and

- 2.3 That Cabinet note that discussions will now take place between Hyndburn Leisure and the portfolio holder to agree a strategy for leisure provision in the Borough going forward and that such discussions will include proposals for a review of Hyndburn Leisure's structure and operations, together with ways of improving reporting arrangements to the Council in respect of Hyndburn Leisure's performance and budgetary position. A further report will be brought to Cabinet in due course once such discussions have concluded.

3. Reasons for Recommendations and Background

Proposed Grant - General Background

- 3.1 From its inception until 2021/22 the Council paid an annual grant to Hyndburn Leisure ("HL") to support its operating costs and the provision of pay and play sport and recreational facilities in the Borough. In 2008/09 HL received £1.2 million in grant funding from the Council. However, as part of its response to the Government's austerity measures, the Council encouraged HL to become financially self-sufficient and, by 2021/22 the subsidy had reduced to nil. Since then, HL has faced significant financial pressures in common with leisure providers nationally. These cost pressures include:
- Significantly increased energy costs
 - increased staffing costs
 - inflation rate increases leading to higher supplier, maintenance and repair costs
 - increases in irrecoverable VAT
 - lost income as a result of the partial closure of Mercer Hall Leisure Centre.
- 3.2 These cost pressures have resulted in a need for subsidy, with £235k being paid to HL by the Council in 2022/23 (before the Subsidy Control Act 2022 came into force) and £490k being paid in 2023/24. A further subsidy has now been requested by HL in respect of the current financial year to enable pricing levels, opening hours and service provision to be maintained at the current level. It is considered that this will support the Council's objective of supporting affordable and locally accessible health and wellbeing provision to help address the health inequalities in the Borough.

Proposed Grant - Subsidy Control

- 3.3 The proposed grant to HL will qualify as a subsidy for the purpose of the Subsidy Control Act 2022 ("SCA") as it meets the definition of a subsidy, namely:
- The payment will be given directly or indirectly from public resources by a public authority
 - It will confer an economic advantage on one or more enterprises, namely HL
 - Benefit will be gained by the enterprise receiving the grant over one or more other enterprises with respect to the provision of goods or services
 - The grant will or is capable of having an effect on competition or investment within the UK.

3.4 Furthermore, as the provision of community leisure activity is typically viewed as an important health and wellbeing benefit for the community, HL can be considered to provide “services of public economic interest” (“SPEI”) pursuant to section 38 SCA as its services are:

- provided for the benefit of the public; and
- would not be provided, or would not be provided on the terms required, under normal market conditions.

The Council has already deemed HL to provide “SPEI” services and has provided SPEI subsidy to Hyndburn Leisure up to the £725,000.00 SPEI subsidy threshold (below which subsidy can be provided without a compliance assessment), having already paid subsidy to Hyndburn Leisure as follows:

2022/23 – the sum of £235,000.00 (prior to the SCA coming into force; and
2023/24 – the sum of £490,000.00.

As the SPEI subsidy paid to HL in the last 3 years is currently at the SPEI subsidy threshold, no further subsidy can be paid to HL without the same being assessed against the statutory subsidy control principles (see paragraph 3.6 below)

3.5 The SCA imposes requirements on local authorities when they are considering providing a third party with a subsidy. If these requirements are not complied with then the subsidy will be unlawful and can be challenged in the Competition Appeal Tribunal. In particular, the Council must assess the funding request against the subsidy control principles in Schedule 1 to the SCA and satisfy itself that the proposed grant is consistent with these principles. The subsidy control principles are as follows:

- Does the subsidy support a policy objective of the Council
- Is the proposed method of subsidy the most appropriate way to address the policy objective?
- What would happen if the subsidy were not provided?
- Will the subsidy change the economic behaviour of the beneficiary and achieve something which would not have occurred without it?
- Is the subsidy proportionate and designed to minimise any negative impact on competition?
- Are any negative effects outweighed by the positive impact of providing the subsidy?

In this regard a compliance assessment has been carried out and is attached at Appendix 1 to this report. This indicates that the proposed subsidy appears to be consistent with the subsidy control principles, especially given HL’s status as a provider of SPEI services.

3.6 In accordance with section 29 of the SCA the Council will need to do the following in order to pay further subsidy to HL:

- Satisfy itself that the amount of the grant is limited to what is necessary for HL to deliver the SPEI services, having regard to its income and costs plus no more than a reasonable profit or surplus. Reasonable profits can be assessed through a benchmarking exercise comparing the profits achieved by similar

public service contracts which have been awarded under competitive conditions.

- Ensure that the funding is given in a transparent manner pursuant to a written contract or grant funding agreement which clearly sets out the terms of the subsidy, including:
 - o Details of the SPEI services in respect of which the subsidy is given
 - o Details of HL as the enterprise which is tasked with providing the services
 - o The period for which the services are to be provided
 - o Details of how the amount of subsidy has been calculated
 - o The arrangements in respect of reviews and steps which may be taken to recover the grant (for example if the funding is found to be more generous than permitted and part or all of it has to be clawed back).

3.7 Under Section 33 of the SCA the Council will be required to publish details of the grant on the UK's Subsidy Database within three months of a formal decision to provide it, and to maintain this record for six years. Under Section 70 of the SCA, any interested party who is aggrieved by the making of a subsidy decision may apply to the Competition Appeal Tribunal for a review of the decision. The challenge can be in relation to the Council not complying with the subsidy control requirements in the SCA, or on more general public law grounds, for example that the Council did not behave reasonably or rationally when deciding to provide the grant. If such a challenge was successful the Competition Appeal Tribunal could impose remedies under usual judicial review principles, including an order for the recovery of the unlawful subsidy with interest. The period in which a challenge can be made in relation to the provision of a subsidy is typically one month from the publication on the UK Subsidy Database.

Proposed Grant - General Public Law Considerations

3.8 The Council has power under section 19(3)(i) of the Local Government (Miscellaneous Provisions) Act 1976 (LGMPA) to contribute, by way of grant or loan, towards the expenses incurred or to be incurred by any voluntary organisation in providing recreational facilities which the Council has power to provide under section 19(1) of the LGMPA (which gives the Council power to provide, amongst other things, indoor facilities consisting of sports centres and swimming pools). "Voluntary Organisation" is defined at section 19(3) of the LGMPA as being "any person carrying on or proposing to carry on an undertaking otherwise than for profit". On the basis that HL is a charitable company limited by guarantee, it is a "not for profit" company. The Council therefore has statutory power to make the proposed grant to HL.

3.9 In exercising this statutory power the Council must act for proper purposes and in good faith. In other words, the Council must act for proper motives, take into account all relevant considerations, and ignore irrelevant matters. It must not act irrationally

and must balance the risks against the potential rewards. Of particular importance in this instance is the Council's fiduciary duty to ensure that the proposed grant is an appropriate use of Council funds and provides genuine and tangible benefits for the community.

Proposed Grant - Financial Position

3.10 In March 2024, HL set a budget with a forecast deficit of £1.065million. This deficit has arisen as a result of several factors impacting on HL:

- Energy costs and supplier costs at Hyndburn Leisure Centre have increased substantially and will require an estimated £400,000 to cover current unit cost increases and supplier increases,
- Employee costs across the organisation have risen in recent years, in line with the NJC terms and conditions, resulting in £200,000 of additional employee costs across Hyndburn Leisure Centre, Accrington Town Hall and Head Office employees,
- The closure of the pool at Mercer Hall has resulted in lower membership and participation levels at the site, leading to a subsidy of £160,000 being required to maintain current operations,
- Whilst the operating model at Accrington Town Hall has improved compared to previous years, the model continues to require an annual subsidy of around £60,000, and
- Head Office costs, particularly irrecoverable VAT and supplier costs, have increased and facility profits are no longer available to cover central costs, resulting in a subsidy of £245,000 being required to maintain the overall operation of the organisation.

3.11 The 2024/25 budget set by HL included a number of savings, of which £94,249 is forecast to be achieved in the current financial year.

3.12 HL has also taken steps during the year to try to reduce the deficit; which have included:

- Energy efficiency works, funded by Sport England, are to be undertaken at Hyndburn Leisure Centre by 31 March 2025.
- HL has worked with the Council to apply for a 'change of tenancy', which has enabled them to procure energy rates for Hyndburn Leisure Centre and Mercer Hall Leisure Centre instead of HBC. This came into effect from December 2024 and is expected to result in savings for the remainder of the financial year.
- Over the past decade, HL has already reduced established hours and administration capacity, meaning there are few options remaining to reduce employee expenditure. However, team reviews have continued to take place in 2024/25 to improve efficiency where possible.

- HL is also in the process of renegotiating contracts and identifying best value with ITS suppliers.

- 3.13 These measures have meant that the 2024/25 revised forecast subsidy requirement for HL is £1million rather than the original budgeted deficit of £1.065million.
- 3.14 The net trading debt due to the Council from HL at 31st December 2024 was £2.083million. The financial support provided to HL will be used to make repayments against this debt. This subsidy payment is expected to enable HL to reduce the overall debt due to the Council to a similar level to that outstanding at the 31st March 2024, by the end of the 2024/25 financial year.
- 3.15 Rather than making a physical payment to HL for £1million, the subsidy amount will be offset against the outstanding trading debt due to the Council.
- 3.16 A number of other Local Authorities in Lancashire operate their leisure services under similar outsourced models and are also providing financial support to their leisure trust or leisure subsidiary companies. The level of financial support being provided by other Councils around Lancashire for 2024/25 ranges from £0.77million to £2million.
- 3.17 HL is currently in the process of developing its budget for 2025/26, and whilst it is still forecasting financial support will be required from the Council, this is expected to reduce from the current year subsidy requirement.

Leisure Review

- 3.18 In April 2024 the Council appointed Max Associates Ltd to review the Council's service delivery model for the provision of leisure services in the Borough and to consider the options available to the Council for such provision in the future. It was over twenty years since the current delivery arrangements were set up, and both the Council and HL recognised that a lot had changed in that time. The Council and HL agreed that it was sensible to review the current operating model to ensure that it was still the best way to deliver community leisure services in the Borough and represented best value for the Council and its residents, particularly in view of the following:
- The approaching expiry of the current leases of Hyndburn Sports Centre, Mercer Hall Leisure Centre and Accrington Town Hall;
 - The recent closure to the public of Mercer Hall Leisure Centre swimming pool and the ongoing work to identify ways to redevelop and repurpose the same as a community facility;
 - The construction by the Council (with the assistance of grant funding from Sport England) of a new sports and leisure facility at Wilsons Playing Fields, and the need to determine how this will be managed;

- The hope that the new, energy efficient facilities at Wilson’s Playing Fields and the repurposed Mercer Hall facility will operate with reduced running costs;
- A reduction in VAT benefits that were once available to HL and the recent increased costs associated with leisure provision in the Borough.

3.19 The report produced by Max Associates is attached at Appendix 2 to this report. However, since the Max report was finalised, the Government has announced plans to reorganise two tier local government within the next two to three years and the prospect of such reorganisation is not reflected in the findings in the Max report. In the circumstances, it is suggested that the Council take a pragmatic approach and that the Council and HL work together to agree a strategy for community leisure provision over the next few years. A further report will be presented to Cabinet once those discussions have concluded.

4. Alternative Options considered and Reasons for Rejection

4.1 The Council could decide not to make the grant payment. The Council could also decide to pay a lesser amount than that requested by HL. However, either approach could result in HL raising prices, reducing its opening hours and / or reducing its services. In a worst-case scenario it may result in HL ceasing to operate and Cabinet is advised to seek further advice as to the likelihood and consequences of this occurring if it is minded not to pay the requested grant funding to HL or to pay a lesser amount.

5. Consultations

5.1 Budgets of £150,000 were included for possible support required by HL in the original revenue budget for 2024/25, approved by Full Council on 27th February 2024.

5.2 The additional £850,000 required in excess of the amount included in the original revenue budget, was first included in the forecast outturn figures in the Quarter 2 Revenue Monitoring report, presented to Cabinet in October 2024. It is also included in the forecast outturn figures in the Quarter 3 Revenue Monitoring report, on the agenda for this meeting.

6. Implications

<p>Financial implications (including any future financial commitments for the Council)</p>	<p>Budgets of £150,000 were included for possible support required by Hyndburn Leisure in the original revenue budget for 2024/25, approved by Full Council on 27th February 2024.</p> <p>The additional £850,000 required in excess of the amount included in the original revenue budget, was first included in the forecast outturn figures in the Quarter 2 Revenue</p>
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	<p>Monitoring report, presented to Cabinet in October 2024. It is also included in the forecast outturn figures in the Quarter 3 Revenue Monitoring report, on the agenda for this meeting.</p> <p>The latest forecast outturn for the Council shows an overall underspend for the 2024/25 financial year, taking account of the additional £850,000 required, over and above the original revenue budgets, for the total subsidy payment to HL of £1,000,000.</p> <p>Therefore, the total subsidiary payment of £1,000,000 is able to be funded from existing budgets and in year savings on budgets in other areas.</p> <p>Rather than making a physical payment to HL for £1,000,000, this subsidy amount will be offset against the outstanding trading debt due to the Council.</p>
<p>Legal and human rights implications</p>	<p>These are set out in detail in paragraph 3 above.</p>
<p>Assessment of risk</p>	<p>Payment of the grant does not appear to pose any significant risks to the Council. There is a risk of legal challenge to the making of the payment, but this report sets out the steps taken to ensure compliance with the requirements of the SCA.</p> <p>There may be far greater risks attached to not making the proposed grant in terms of the impact upon the services provided by HL. If Cabinet is minded not to pay the proposed grant or to reduce the amount to be paid, it would be appropriate to seek a detailed assessment of those risks, and their cost implications for the Council, prior to the decision being made.</p>
<p>Equality and diversity implications <i>A Customer First Analysis should be completed in relation to policy decisions and should be attached as an appendix to the report.</i></p>	<p>The Council is subject to the public sector equality duty introduced by the Equality Act 2010. When making a decision in respect of the recommendations in this report, Cabinet must have regard to the need to: Eliminate unlawful discrimination, harassment</p>

	<p>and victimisation ; and Advance equality of opportunity between those who share a relevant protected characteristic and those who don't; and Foster good relations between those who share a relevant protected characteristic and those who don't. For these purposes, the relevant protected characteristics are: age, disability, gender, reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.</p>
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7. Local Government (Access to Information) Act 1985: List of Background Papers

7.1 Cabinet report dated 6th December 2023

8. Freedom of Information

8.1 The report does not contain exempt information under the Local Government Act 1972, Schedule 12A and all information can be disclosed under the Freedom of Information Act 2000.