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## CABINET (Special Meeting)

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**Wednesday, 29th January, 2025**

**Present:** Councillor Munsif Dad BEM JP (in the Chair), Councillors Vanessa Alexander, Noordad Aziz, Scott Brerton, Stewart Eaves, Melissa Fisher and Kate Walsh

**Apologies:** Councillor Kimberley Whitehead

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The Leader of the Council, Councillor Munsif Dad BEM JP, apologised for the lateness of circulation of the Agenda and main report. This matter needed to be determined before the end of the month, but it had been necessary to consider carefully all of the relevant information prior to recommending an appropriate course of action. The grant proposed to Hyndburn Leisure was a large sum of money and the Cabinet would be accountable for this expenditure. The controlling administration wanted to ensure that this was the right decision for the people of Hyndburn.

**318 Apologies for Absence**

Apologies for absence were submitted on behalf of Councillor Kimberley Whitehead and from standing invitees from the Opposition, Councillors Kath Pratt and Zak Khan.

**319 Declarations of Interest and Dispensations**

Councillor Noordad Aziz declared a personal interest in Agenda Item 3 - Hyndburn Leisure, in view of his position on the board of the Leisure Trust and in the light of the leisure facilities membership of a close family member. Councillor Walsh declared a personal interest in Agenda Item 3 on the basis that close family members were participating in a swimming programme operated by Hyndburn Leisure.

There were no reported declarations of dispensations granted.

**320 Payment of Grant Funding to Hyndburn Leisure and Conclusion of the Leisure Review**

*In accordance with Regulation 11 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, approval had been given by Councillor Steve Button, Chair of the Resources Overview and Scrutiny Committee, to the following decision being made by Cabinet on 29<sup>th</sup> January 2025, under the special urgency provisions for key decisions, on the grounds that the decision was urgent and could not reasonably be deferred.*

*Approval had also been received from the Mayor to the disapplication of the call-in procedure on the grounds of urgency, in accordance with Overview and Scrutiny Procedure Rule C14.*

The Cabinet considered a report of Councillor Noordad Aziz, Deputy Leader and Portfolio Holder for Transformation, Education and Skills, seeking approval to pay a grant of £1,000,000.00 to Hyndburn Leisure in respect of the period 1<sup>st</sup> April 2024 to 31<sup>st</sup> March

2025. The report also presented the outcome of the recent leisure review and made a recommendation regarding the next steps.

Councillor Aziz provided a short introduction to the report. He reported that the withdrawal of the item from the previous meeting had enabled further discussions to take place with Hyndburn Leisure and about the steps to be taken to secure the future of community leisure services in the Borough.

He confirmed that the Cabinet would be invited to support the decision to provide a grant of £1m to Hyndburn Leisure for the period 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2025. This investment would support vital community leisure services. However, the funding would not be made available without appropriate scrutiny measures being in place. The grant would be subject to a review that would set the direction on how it was to be delivered, ensuring transparency, accountability and best value for taxpayers' money.

The Cabinet had noted the findings of the Leisure Management Option Reports, which provided crucial insights into the state of local leisure provision and outlined potential improvements. The Council would discuss these with Hyndburn Leisure to refresh a long term strategy that would deliver sustainable and efficient services to Hyndburn residents.

The Council would explore ways and work with stakeholders to review Hyndburn Leisure's structure, operations and reporting lines and Cabinet would receive a further report on this in due course. It was noted that the previous political administration had only budgeted for 15% of the funding required. The intention now was to work with stakeholders to deliver a service which was fit for purpose. The wellbeing of residents remained a priority.

The forthcoming Council Budget would recognise any likely pressures and address them appropriately. The Cabinet was committed to responsible governance, transparency and sound financial management.

Councillor Aziz acknowledged that residents had some wider concerns about leisure provision and gave a commitment that these, including the future of the Wilson Sports Hub, would be addressed at the appropriate time.

Councillors Alexander, Fisher, Breerton, Walsh, Eaves and Dad all spoke in favour of the proposals, although concerns were expressed by some about how the need for additional funding had arisen and the need to ensure that early warning mechanisms were included in any future monitoring arrangements.

Approval of the report was deemed a key decision.

#### *Reasons for Decision*

#### Proposed Grant - General Background

From its inception until 2021/22 the Council had 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 had received £1.2 million in grant funding from the Council. However, as part of its response to the Government's austerity measures, the Council had encouraged HL to become financially self-sufficient and, by 2021/22 the subsidy had reduced to nil. Since then, HL had faced significant financial pressures in common with leisure providers nationally. These cost pressures included:

- Significantly increased energy costs;
- increased staffing costs;

- inflation rate increases leading to higher supplier, maintenance and repair costs;
- increases in irrecoverable VAT; and
- lost income as a result of the partial closure of Mercer Hall Leisure Centre.

These cost pressures had 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 had 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 was considered that this would 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

The proposed grant to HL would qualify as a subsidy for the purpose of the Subsidy Control Act 2022 ("SCA") as it met the definition of a subsidy, namely:

- The payment would be given directly or indirectly from public resources by a public authority;
- It would confer an economic advantage on one or more enterprises, namely HL;
- Benefit would be gained by the enterprise receiving the grant over one or more other enterprises with respect to the provision of goods or services; and
- The grant would or was capable of having an effect on competition or investment within the UK.

Furthermore, as the provision of community leisure activity was typically viewed as an important health and wellbeing benefit for the community, HL could be considered to provide "services of public economic interest" ("SPEI") pursuant to section 38 SCA, as its services were:

- 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 had already deemed HL to provide "SPEI" services and had provided SPEI subsidy to Hyndburn Leisure up to the £725,000.00 SPEI subsidy threshold (below which subsidy could 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 was currently at the SPEI subsidy threshold, no further subsidy could be paid to HL without the same being assessed against the statutory subsidy control principles.

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

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

In this regard, a compliance assessment had been carried out and was included in the report at Appendix 1. This indicated that the proposed subsidy appeared to be consistent with the subsidy control principles, especially given HL's status as a provider of SPEI services.

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

- Satisfy itself that the amount of the grant was limited to what was 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 could be assessed through a benchmarking exercise comparing the profits achieved by similar public service contracts which had been awarded under competitive conditions.
- Ensure that the funding was given in a transparent manner pursuant to a written contract or grant funding agreement which clearly set out the terms of the subsidy, including:
  - Details of the SPEI services in respect of which the subsidy was given;
  - Details of HL as the enterprise which was tasked with providing the services;
  - The period for which the services were to be provided;
  - Details of how the amount of subsidy had been calculated; and
  - The arrangements in respect of reviews and steps which might be taken to recover the grant (for example if the funding was found to be more generous than permitted and part or all of it had to be clawed back).

Under Section 33 of the SCA the Council would 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 was aggrieved by the making of a subsidy decision might apply to the Competition Appeal Tribunal for a review of the decision. The challenge could 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 had not behaved 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 could be made in relation to the provision of a subsidy was typically one month from the publication on the UK Subsidy Database.

### Proposed Grant - General Public Law Considerations

The Council had 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 had power to provide under section 19(1) of the LGMPA (which gave the Council power to provide, amongst other things, indoor facilities consisting of sports centres and swimming pools). “Voluntary Organisation” was 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 was a charitable company limited by guarantee, it was a “not for profit” company. The Council therefore had statutory power to make the proposed grant to HL.

In exercising this statutory power the Council would have to act for proper purposes and in good faith. In other words, the Council would have to 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 was the Council’s fiduciary duty to ensure that the proposed grant was an appropriate use of Council funds and provided genuine and tangible benefits for the community.

### Proposed Grant - Financial Position

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

- Energy costs and supplier costs at Hyndburn Leisure Centre had increased substantially and would require an estimated £400,000 to cover current unit cost increases and supplier increases;
- Employee costs across the organisation had 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 had 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 had improved compared to previous years, the model continued to require an annual subsidy of around £60,000; and
- Head Office costs, particularly irrecoverable VAT and supplier costs, had increased and facility profits were no longer available to cover central costs, resulting in a subsidy of £245,000 being required to maintain the overall operation of the organisation.

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

HL had also taken steps during the year to try to reduce the deficit, which had included:

- Energy efficiency works, funded by Sport England, were to be undertaken at Hyndburn Leisure Centre by 31<sup>st</sup> March 2025;

- HL had worked with the Council to apply for a 'change of tenancy', which had enabled them to procure energy rates for Hyndburn Leisure Centre and Mercer Hall Leisure Centre instead of HBC. This had come into effect from December 2024 and was expected to result in savings for the remainder of the financial year.
- Over the past decade, HL had already reduced established hours and administration capacity, meaning there were few options remaining to reduce employee expenditure. However, team reviews had continued to take place in 2024/25 to improve efficiency where possible; and
- HL was also in the process of renegotiating contracts and identifying best value with ITS suppliers.

These measures had meant that the 2024/25 revised forecast subsidy requirement for HL was £1million rather than the original budgeted deficit of £1.065million.

The net trading debt due to the Council from HL at 31<sup>st</sup> December 2024 was £2.083million. The financial support provided to HL would be used to make repayments against this debt. This subsidy payment was expected to enable HL to reduce the overall debt due to the Council to a similar level to that outstanding at the 31<sup>st</sup> March 2024, by the end of the 2024/25 financial year.

Rather than making a physical payment to HL for £1million, the subsidy amount would be offset against the outstanding trading debt due to the Council.

A number of other Local Authorities in Lancashire operated their leisure services under similar outsourced models and were 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 ranged from £0.77million to £2million.

HL was currently in the process of developing its budget for 2025/26, and whilst it was still forecasting that financial support would be required from the Council, this was expected to reduce from the current year subsidy requirement.

### Leisure Review

In April 2024 the Council had 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 had been set up, and both the Council and HL recognised that a lot had changed in that time. The Council and HL had 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 Wilson Playing Fields, and the need to determine how this would be managed;

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

The report produced by Max Associates was included at Appendix 2 to the report. However, since the Max report had been finalised, the Government had announced plans to reorganise two tier local government within the next two to three years and the prospect of such reorganisation was not reflected in the findings in the Max report. In the circumstances, it was 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 would be presented to Cabinet once those discussions had concluded.

*Alternative Options considered and Reasons for Rejection*

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 might result in HL ceasing to operate and Cabinet was advised to seek further advice as to the likelihood and consequences of this occurring if it was minded not to pay the requested grant funding to HL or to pay a lesser amount.

**Resolved**

- (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 1<sup>st</sup> April 2024 to 31<sup>st</sup> March 2025, subject to completion of a grant funding agreement in accordance with Paragraph 3.6 of the report; and**
- (2) **That Cabinet note the “Leisure Management Options Report” prepared by Max Associates Ltd and attached as Appendix 2 to the report; and**
- (3) **That Cabinet notes that discussions will now take place between Hyndburn Leisure and the Cabinet 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.**

Signed:.....

Date: .....

Chair of the meeting  
At which the minutes were confirmed