

**WEST DUNBARTONSHIRE COUNCIL****Report by Chief Officer for Citizen, Culture, and Facilities****Corporate Services Committee: 24 November 2021**

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**Subject: Agreements with West Dunbartonshire Leisure Trust 2022-2027****1. Purpose**

- 1.1** The purpose of this report is to propose the extension of the Council's existing partnership with West Dunbartonshire Leisure Trust for the delivery of leisure services for a five-year period.

**2. Recommendations**

- 2.1** It is recommended that Committee:
- note the contents of the report; and
  - agrees that officers can conclude the extension of the Services Agreement, Support Services Agreement, Licence to Occupy and Lease Agreement for the period 2022-2027 to West Dunbartonshire Leisure Trust.

**3. Background**

- 3.1** West Dunbartonshire Leisure Trust (the Trust) is a company limited by guarantee with charitable status. In addition to being regulated by the Companies Act (2006), the company is also subject to the charities regulator in Scotland, OSCR (Office of the Scottish Charity Regulator).
- 3.2** West Dunbartonshire Leisure Trust was incorporated as a company in December 2011 and started trading on 5th April 2012.
- 3.3** There are nine directors of the company who additionally serve as charity trustees comprising of three (3) West Dunbartonshire Councillors (Partner Directors), an Employee Representative Director and five (5) Independent directors. The board of Directors (who are also Trustees of West Dunbartonshire Leisure Trust) has control of the company subject to providing and operating the services in accordance with the Services Agreement reached with West Dunbartonshire Council. The Board also provides strategic direction to the General Manager and his Management Team.
- 3.4** West Dunbartonshire Leisure Trust is currently responsible for the strategic and operational management of West Dunbartonshire Council's Sport and Leisure Facilities, Community Facilities, Sports Development, Active Schools, for operation of Outdoor Recreation facilities, and for event delivery on behalf of the Council.

- 3.5** In order to ensure that the Council meets its obligations to provide adequate provision of facilities for the residents of the area for recreational, sporting, cultural and social activities in terms of Section 14 of the Local Government and Planning (Scotland) Act 1982, there is a Services Agreement in place between the Council and the Leisure Trust. The Trust is paid a management fee for delivery of the services through an annual funding commitment.
- 3.6** The Services Agreement states that the Leisure Trust should bring a draft Business Plan forward in advance of every financial year that illustrates the resources which the Trust intends to use to deliver its services. It should also include information on the expected expenditure required to provide those services, and the amount of funding required from the Council in the form of the management fee. This plan will also set the performance indicator targets that will be used to measure Trust performance in the coming financial year.
- 3.7** In addition the Council and the Trust has a Support Services Agreement that outlines the assistance Council services such as HR, ICT, Finance, Payroll, Communications and Assets will provide to the Trust to ensure its successful delivery of services.
- 3.8** The existing Services Agreement and Support Services Agreement require to be renewed, and officers would seek to do this on a five-year period – mirroring the previous duration.
- 3.9** This report is presented to Committee by the Chief Officer for Citizen, Culture, and Facilities (CCF) who is the senior officer responsible for monitoring the Trust activity on behalf of the Council.

#### **4. Main Issues**

- 4.1** Officers from across the Council and the Trust have been in discussions regarding these agreements for a number of months to reach an updated and finalised position. Legal representatives on behalf of both parties have been significantly involved to ensure appropriate arrangements are in place.
- 4.2** The Trust has delivered a well received service to the Council since 2012. The original services which transferred across to the Trust had recorded a 28% increase in usage prior to the COVID pandemic, and Outdoor Recreation services had delivered a 19% increase in usage in the three years since it's transfer again up to the COVID pandemic. Furthermore the Trust has demonstrated a good ongoing financial management of the services and has overseen a reduction in the management fee per user visit from £4.30 in 2012/13 to £2.49 in 2019/20, as illustrated in the table below:

Financial Year	Management Fee	Total Visits	Cost/Visit
2012/13	£3,970,000	953,140	£4.17
2019/20	£3,873,790	1,554,502	£2.49

The above illustrates that the WDLT has significantly increased user visits over the period whilst seeing a reduction in the management fee from the Council. Based on this strong performance in increasing usage of the service and financial management, it is recommended that Committee agrees to continue the partnership between the Council and the Trust for a further five year period.

- 4.3** Amongst other commitments, the 2022-27 Services Agreement ensures that the Trust agrees to provide leisure services in an efficient, effective and safe manner to the reasonable satisfaction of the Council and in accordance with Performance Standards and any policies and guidance related to the Services issued by the Council. As mentioned at 3.6 the actual detail on these will be provided on an annual basis in the Business Plan presented to Committee.
- 4.4** The Trust will provide its services in such a manner that will promote and enhance the image and reputation of the Council and West Dunbartonshire in respect of cultural, leisure, recreational and sporting activities.
- 4.5** The Trust will provide an Annual Report detailing its performance in the previous financial year prior to the commencement of the subsequent financial year. The Council and the Trust will also agree applicable service standards on an annual basis as part of the Business Plan process.
- 4.6** The Business Plan will be prepared by the Trust for each forthcoming Financial Year, and be approved by the Council typically in February. This Plan will identify the funding commitment for that Financial Year and what services will be delivered in return.
- 4.7** The Council and the Trust acknowledge that the Trust's Management Fee is part of the Council's annual revenue budget. If the Council's level of Scottish Government funding reduces and/or cost of provision of Council services increase, then the Trust may require to consider efficiencies that will assist through a reduced management fee. These would be developed as part of the annual Trust Business Plan. If those savings required an amendment to the terms of the Services Agreement then the proposals would come before Committee or Council for approval. Where they are matters delegated to the Trust and do not effect the level of service agreed between the Trust and Council they will go to the Trust Board for decision.
- 4.8** Termination from this Service Agreement will be possible before 2027 if the Trust fails to observe or perform any of its material obligations under the Agreement and such failure is not capable of being remedied. In general this would relate to the successful delivery of the strategic and operational management of West Dunbartonshire Council's Sport and Leisure Facilities, Community Facilities, Sports Development, Active Schools, the operation of Outdoor Recreation facilities and for event delivery on behalf of the Council. Monitoring of this would be undertaken by the relevant Chief Officer on a monthly basis, and by Committee when reviewing the Trust Annual Report. In

addition the Trust may terminate this agreement in accordance by giving not less than twelve months prior written notice to the Council.

- 4.9** The Support Services Agreement provides a framework for the provision of support services by the Council to the Trust. The Council commits to performing these services to a standard reasonably to be expected of an organisation with experience in providing services of a similar type. It also ensures that the performance of the services remains at satisfactory levels and is measured on an ongoing basis by key performance indicators.
- 4.10** Complementing the Services Agreement the Council also provides the Trust with a Licence to Occupy and Lease Agreement for the facilities that they manage on behalf of the Council. Should Committee agree to the further extension of the partnership between the Council and the Trust then the Licence to Occupy and Lease Agreement will be extended by a further five years.
- 4.11** Should Committee agree the recommendations of this report then officers will conclude the signing of the new Agreements and commit the Council and the Trust to an ongoing partnership lasting a further five years. This would be reviewed by officers and the Trust in 2025/26 ahead of any further extension of the partnership.

## **5. People Implications**

- 5.1** Should the recommendations not be agreed the current commercial arrangements will end. This would ultimately result in a transfer of employees of the Trust back to the Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ( as amended) ( known as a "TUPE" transfer).

## **6. Financial and Procurement Implications**

- 6.1** There are no direct financial implications linked to the recommendations of this report. The Council will consider future funding support to the Trust on an annual basis aligned to the Council's budgeting processes, and as part of the annual update of the Trust's Business Plan to Committee.
- 6.2** Should the recommendations not be agreed the current commercial arrangements will end. This would ultimately result in a transfer of services back to the Council. Given the Trust benefits from a range of exemptions such as business rates relief then there would be a significant additional cost to the Council which would either need to be funded from savings and additional income from within the leisure services, or from other means available to the Council.
- 6.3** Under the principle of what was known as the " Teckal Doctrine", the Service Agreements are exempt as an "in-house" provision and therefore the Procurement Legislation does not apply. This is backed up by the Council's

Procurement Financial Regulations and the Standing Orders both having provisions where Contracts that are exempt from the legislation, are also exempt from the Council's procurement and tendering requirements.

## **7. Risk Analysis**

- 7.1** There is a risk that if these agreements are not extended for a further period of time, then there is no agreement in place and the relationship with the Trust could end and services revert back to the Council. This would have financial implications for the Council in relation to Non-Domestic Rates and possibly other financial benefits of having a Leisure Trust in place.
- 7.2** There is a risk that External Auditors for the Trust may have concerns about the ongoing sustainability of the Trust if it does not have a Services, Support Services Agreement, Licence to Occupy and Lease Agreement in place with the Council.
- 7.3** There is a risk that failure to agree a new Services Agreement and Support Services Agreement could create uncertainty amongst the Trust employees over their long-term future – and ultimately lead to the transfer of employees of the Trust back to the Council under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ( as amended) ( known as a “TUPE” transfer).

## **8. Equalities Impact Assessment (EIA)**

- 8.1** An Equalities Impact Assessment (EIA) screening was undertaken on the recommendations outlined in this report. This found that there was no requirement for an EIA as the basis of the Agreement was an extension of existing arrangements.

## **9. Consultation**

- 9.1** Consultation on this report has taken place with West Dunbartonshire Leisure Trust management, Finance, Procurement, and Legal.

## **10. Strategic Assessment**

- 10.1** This report supports the following Strategic Plan objectives:
- Efficient and effective frontline services that improve the everyday lives of residents

**Malcolm Bennie**

Chief Officer – Citizen, Culture, and Facilities

Date: 12 November 2021

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**Appendices:** N/A

**Background Papers:** EIA Screening document

**Wards Affected:** All