

**Linford Christie Outdoor Sports Stadium – Outcome of public consultation and next steps**

**Report to Wormwood Scrubs Charitable Trust Committee**

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**1. EXECUTIVE SUMMARY**

- 1.1. This report summarises the outcome of the public consultation on the options available to the Trust for the future of Linford Christie Outdoor Sports Stadium (LCOSS). It sets out the recommended next steps for the Trust, ahead of a future decision on a preferred option.
- 1.2. This report sets out the next steps in developing an outline business case, which will allow the Trust to select its preferred option. It also sets out the considerations, including legal and Charity Commission requirements in relation to the Trust's decision making, before the Trust Committee makes a decision on a way forward.

**2. RECOMMENDATIONS**

The Wormwood Scrubs Charitable Trust Committee:

- 2.1. Notes the results of the public consultation.
- 2.2. Approves the Procurement Strategy in Appendix 2 for the appointment of multi-disciplinary advisors for the Trust, to consider the consultation responses in more detail, to develop a business case, and to complete any necessary surveys, technical and planning work that may be required.
- 2.3. Delegates the award of contracts for multi-disciplinary advisors as set out in the Procurement Strategy in Appendix 2 to the Council's Assistant Director of Growth acting on behalf of the Trust in consultation with the Chair of the Wormwood Scrubs Charitable Trust Committee subject to the Council's agreement to provide sufficient funding to the Trust.
- 2.4. Delegates authority to the Council's Assistant Director of Growth acting on behalf of the Trust to develop an outline business case for the different options, on the basis that regular updates and reports are provided to the Trust Committee.
- 2.5. Notes the requirements in relation to conflict of interests and decision-making procedures set out in this report.
- 2.6. Delegates authority to the Council's Assistant Director of Growth acting on behalf of the Trust to consult with the Charity Commission in relation to the Trust's decision making process in connection with the future of the LCOSS

and for ongoing dialogue with the Charity Commission and to provide a report to the Trust following the discussions with the Charity Commission.

### **3. REASONS FOR DECISIONS**

- 3.1. The decisions above establish the process for the Trust to decide upon a preferred option for development at LCOSS, following the completion of the public consultation. They will enable the Trust to tender and enter into contracts for the appointment of multi-disciplinary consultants to complete an outline business case and provide the Trust with the necessary advice and information to evaluate the options in detail, as part of a future decision-making process.
- 3.2. The decisions above will allow the Trust to engage with the Charity Commission, to confirm that an appropriate conflict of interest process has been followed in relation to the Council's role as corporate trustee, and to continue discussions with the Charity Commission as the process moves forward.

### **4. BACKGROUND AND NEXT STEPS**

- 4.1. On the 19<sup>th</sup> December 2018, the Trust Committee received a report setting out the financial and strategic context for the Trust in relation to the LCOSS. That report set out that the Council is subsidising the operation of the stadium, and therefore the Trust, by around £250,000 a year in revenue terms, while continuing to provide capital investment in the facilities. In the light of the Council's own funding position it has confirmed that it may not be able to continue providing this subsidy in the future.
- 4.2. Without the Council's subsidy, the Trust would have to rely on its own income and reserves to maintain and operate the facilities. At the same time, the site needs major investment to bring it up to modern standards and it will be challenging for the Trust to continue to provide a stadium and athletics and other sporting facilities of sufficient quality without an injection of capital and ongoing revenue resources.
- 4.3. The December report set out three main options that the Trust could consider and the work that had been completed to date to evaluate these options. The options presented were:
  - 1) Do nothing
  - 2) Enhance the current facilities
  - 3) Redevelop the site to create a larger venue as well athletics facilities
- 4.4. Within option 3, there were also further variations to consider ranging from a 45,000 multi-functional venue (that could accommodate sports and entertainment) to a smaller entertainment venue.
- 4.5. The Trust agreed in principle that a joint public consultation with the Council should be completed, subject to agreeing the final form of consultation.

- 4.6. The Council's cabinet on the 5<sup>th</sup> February approved a report summarising the information presented to the Trust and agreed to hold a joint public consultation.
- 4.7. A draft consultation questionnaire was presented to the Trust at the 13<sup>th</sup> March Committee meeting and it was agreed, subject to further amendments being made. These amendments were approved by the Chair of the Committee, and the consultation was launched on the 22<sup>nd</sup> March.
- 4.8. The Council promoted the consultation widely, through social media and its website, and through letters sent to residents who live in the four wards north of Goldhawk Road. Residents on Old Oak Estate, near to East Acton tube, specifically requested hard copies of the consultation document, which were sent out.
- 4.9. The Council and the Trust held the joint public consultation, opening on 22<sup>nd</sup> March and closing on the 12<sup>th</sup> June.
- 4.10. Over 8,782 completed questionnaires were received and 13 responses not using the online or paper forms, with over 80% of respondents supporting the Trust or the Council completing a major redevelopment as their preferred option. The consultation responses also showed majority support for the Trust or the Council to consider making provision for professional and community sports, and as a venue for major entertainments. However, it will be for the Trust to commission an Outline Business Case (OBC) which makes a recommendation on the preferred option, from the Trust's perspective, taking into account the issues and factors which are in line with the Trust's objects and the resources available to it.
- 4.11. A summary of the public consultation results is included in Appendix 1.

#### **Making a decision on a preferred option - developing an Outline Business Case**

- 4.12. For the Trust to make a decision on a preferred option, it will have to take into account the Charity Commission's guidance on decision making. Further details on this is set out in the legal section of this report.
- 4.13. A key part of this, is making sure that the Trust is sufficiently informed and that relevant factors have been considered in the decision making. This report recommends that the Trust commissions an outline business case (OBC) from professional advisors to enable the Trust to make a decision.
- 4.14. The OBC will allow the Trust to consider the options and the alternatives, and the risks and benefits of a preferred option. The OBC will:
  - Consider the public consultation responses
  - Complete the options appraisal process to enable the Trust to agree a recommended way forward
  - Complete economic appraisals on the options

- Undertake a benefits appraisal
  - Undertake a risk appraisal
  - Complete sensitivity analysis
  - Determine procurement, contractual and accountancy issues and options
  - Assess the legal position of each option in relation to the Trust
  - Complete financial models for the financial appraisal
  - Identify next steps and a plan for delivery
- 4.15. In order to develop the OBC, additional technical work and surveys may be required and the consultants be asked to provide advice on the need for:
- Transport modelling
  - Any environmental and other surveys that may be required
  - Further design work
  - Cost consultancy
  - Planning advice
- 4.16. The OBC and the future report to the Trust will also consider the legal powers available to the Trust, the objects of the Trust, and the impact that any decision will have on the ability of the Trust to carry out its objects.
- 4.17. The OBC would conclude with a recommended option for the Trust to consider. The Trust would then be able to decide whether it wants to recommend this option to Cabinet. Any agreed preferred option would then be subject to the normal procurement, planning and public consultation requirements before it could move into a delivery stage.
- 4.18. A procurement strategy for these services is included in Appendix 1 to this report.
- 4.19. The Council's Cabinet will also receive a report on the 1<sup>st</sup> July setting out the above and recommending that the Council provide the funding for the completion of the OBC (subject to the Trust Committee approving this report).

### **Engagement with the Charity Commission**

- 4.20. As the Council is the sole corporate trustee of the Trust, it and the Trust Committee must ensure that there is appropriate separation between Council functions and its role as Trustee, and that conflicts of interests have been dealt with appropriately in compliance with Charity law. When making the final decision once the OBC is completed, the Council will need to consider whether it has complied with its Charity law obligations in its capacity as trustee of the Trust at the time.
- 4.21. Early engagement with the Charity Commission is recommended to obtain their approval that the decision-making process that is being followed continues to be compliant and that the Trust has the powers to carry out the development under the current governing documents. In addition, should there

be a requirement for the granting of any leases, then Charity Commission consent is likely to be required.

## **5. EQUALITY IMPLICATIONS**

- 5.1. Any proposals that come forward in due course will need to be assessed in compliance with the Trust's equality duties. Further consultation will be needed at that stage.

## **6. LEGAL IMPLICATIONS**

- 6.1. In order to ensure that conflicts of interest are managed, the consultation feedback will need to be considered by separate individuals via the Council and the Trust Committee in line with the arrangements that have been put in place pursuant to Charity Commission guidance and previous Charity Commission recommendations made to the Trust.
- 6.2. When making any decision, the Trust Committee should take into account the Charity Commission's guidance on decision making (It's your decision: charity trustees and decision making (May 2013)). This guidance provides that when making decisions trustees must:
- act within their powers;
  - act in good faith and only in the interests of the charity;
  - make sure that they are sufficiently informed;
  - ignore any irrelevant factors;
  - manage conflicts of interest; and
  - make decisions that are within the range of decisions that a reasonable trustee body would make.
- 6.3. The Trust Committee members are not trustees, but they are making decisions for the Council in its capacity as corporate trustee of the Trust. The Trust Committee members should therefore follow and comply with Charity Commission guidance and charity law when carrying out actions or making decisions collectively as the Trust Committee.
- 6.4. As the Trust's main function is to hold the Wormwood Scrubs, it doesn't have any employees to carry out work on its behalf. One of the advantages of having the Council as corporate trustee is that the Trust is able to delegate authority via a scheme of delegation to Council officers to carry out work on its behalf. This should ensure that the Council officers don't exceed their delegated authority (and the Trust's powers) and that the decision-making power of the Trust continues to rest with the Trust Committee on behalf of the Council as corporate trustee.
- 6.5. The Council is currently in the process of seeking Charity Commission comment on the proposed options to ensure that any development is compliant with Charity law. The Trust Committee will also be required to follow any specific Charity Commission recommendations or conditions that are imposed on the Trust as a result of the proposed LCOSS development.

6.6. The fact that the Council is the corporate trustee of the Trust does not automatically mean that the Trust is subject to procurement rules, but depending on a number of other factors may be subject to them. However, given that the nature of any contracts to be entered into at this stage in relation to the future (re-development of and/or business operations at LCOSS) is unknown, it is reasonable for the Trust Committee to follow the Council's internal procedure for procurement and award of contracts for external advisers. In terms of compliance with the Trust's charity law obligations, this requires the Trust Committee to consider a number of issues when entering into contracts with third parties on behalf of the Trust including:

- 1) that the contract (and associated expenditure is in the best interests of the Trust);
- 2) that the contract represents value for money to the Trust;
- 3) the contract and its terms are clearly set out in writing; and
- 4) that the terms of the contract are not detrimental to or place the Trust's assets at risk in any way.

On the basis that the Council's procedure is focused on value, fairness and ensuring that the Council gets the best value for money from third party contracts, the Trust should still be complying with its charity law obligations by following this procedure. However, the Trust Committee or those persons acting with delegated authority on the Committee's behalf should record the deliberations and the reasons for entering into any contract in writing to evidence that it/they took the relevant considerations on board and discharged the Council's role as corporate trustee appropriately.

## **7. FINANCIAL IMPLICATIONS**

7.1. The recommendations in this report includes the delegation of the award of contracts for multi-disciplinary advisors to prepare an Outline Business Case (OBC) for LCOSS options subject to the Council's agreement to provide sufficient funding to the Trust.

7.2. The costs of preparing the OBC are estimated to be £397,500, which includes a £40,000 (10%) contingency. The Trust does not have sufficient liquid funds to commit to the total estimated costs and the Council have committed to funding this work.

7.3. The Cabinet on 1 July 2018 will consider a recommendation to provide funding to the Trust for these purposes. The Trust should therefore ensure that it does not commit itself to any expenditure before the Council has approved the provision of funding.

7.4. Financial Implications completed by Emily Hill (as Trust officer).

## **8. BACKGROUND PAPERS USED IN PREPARING THIS REPORT**

*Appendix 1 – Public Consultation Summary*  
*Exempt Appendix 2 – Procurement Strategy*