

Report to	Cabinet
Date of meeting	17th December 2019
Lead Member / Officer	Julian Thompson Hill / Graham Boase/Gerald Thomas
Report author	Graham Boase Corporate Director: Economy and Public Realm
Title	Implementation of an Alternative Delivery Model (ADM) for various leisure related activities/functions: Lease of property

1. What is the report about?

1.1 In May 2019 Cabinet agreed the establishment of Denbighshire Leisure Ltd (DLL), which is a wholly Council owned Local Authority Trading Company, limited by guarantee. Cabinet agreed DLL would lease the sixteen properties listed within Appendix 1 on a Ten year lease at a peppercorn rent.

1.2 The 16 sites are outlined in red and attached to this report (Appendix 2 a – p).

2. What is the reason for making this report?

2.1 Approval is required for the grant of 16 leases, each for a term of 10 years and contracted out of Section 24-28 of the Landlord and Tenant Act 1954 at a peppercorn rent, to Denbighshire Leisure Limited.

3. What are the Recommendations?

3.1 That Cabinet approve the grant of 10 year leases to Denbighshire Leisure Ltd for each of the sites at a peppercorn rent. The leases will be on the basis of the standard lease attached, (Appendix 3). Site specific adjustments will be included within each of the leases to incorporate; annual shared user agreements, grant funder obligations, Charity

Commission requirements, advice from DCC tax advisors, third party occupation as well as any other localised site arrangements; delegated authority to be given to the Head of Finance and Property Services to agree, in consultation with the Lead Member for Finance and Efficiency and the Head of Legal, HR and Democratic Services.

3.2 That Cabinet confirms that it has read, understood and taken account of the Well-being Impact Assessment (Appendix 4) as part of its consideration.

4. Report details

4.1 In May 2019, Council reviewed the Business Case and approved the establishment of the Local Authority Trading Company known as Denbighshire Leisure Ltd. In July Cabinet approved the associated implementation cost and the net savings to be realised in 2020/21, and at subsequent Council meetings in July and October respectively, the draft Articles of Association and Members Agreement were approved, as was the composition of the Board of the Company and the appointment of a number of Directors.

4.2 To realise the benefit from the financial savings associated with changes to legislation in respect of relief on business rates, (NNDR), and exemptions from value added tax, (VAT), on leisure related income that were outlined in the Business Case, there is a requirement for Denbighshire Leisure Ltd to lease the properties listed within Appendix 1 from the Council.

4.3 The extent of these leases are shown for identification purposes only on the attached plans. The lease will be based on a generic lease which is attached to this report. This lease will be amended to suit individual sites and will include appropriate rights reserved to the Council, exclusive use by services users, alienation, etc. The notable terms are provided below.

4.4 DLL will be responsible for the internal maintenance of these sites, the Council will retain responsibility for the structure and external parts of the buildings, the mechanical and electrical installations and commissioning any associated safety checks required. A photographic schedule will be carried out at the commencement of the lease to record the condition of each of these properties, DLL will be required to keep and leave the properties in no worse condition as evidenced by these schedules, fair wear and tear excepted. DLL will also be responsible for day to day maintenance of landscapes and hard surfaced areas included within the lease.

4.5 Where properties are separately metered or have their own utility supply DLL will be responsible for payment of all utilities. Where a supply is shared and can only be apportioned, Denbighshire will be responsible for these costs (VAT cannot be claimed back on apportioned costs, only costs direct to the supplier).

4.6 There will be no rights for the Tenant to assign the lease (whole), however there will rights to sub-let parts of the property subject to Landlord's consent.

4.7 Denbighshire will undertake periodic inspections of the properties to ensure that the terms of the lease are being complied with and there are no substantial breaches of the terms of the lease.

4.8 Some of the Leisure Centre's which are located within Schools sites that will be leased to DLL are subject to Charitable Education Trusts. Legal Services are working to ensure that all aspects of the Charities Act are complied with in respect of these sites and any other consents that may be required.

4.9 Recent legal advice has confirmed that Land Transaction Tax is payable, and this is based on the value of the lease. Given that the Council provides a subsidy to support the operation of these facilities it is anticipated that there will be no value as such. The District Valuer will be asked to value the portfolio of sites, rather than on an individual basis to provide a balanced view of the cumulative value of the leases; this will determine whether Land Transaction Tax is payable and at what rate, and will also provide assurance for DCC if there is any future challenge from the Welsh Revenue Authority in this respect.

4.10 Llangollen Pavilion is unique in that it is not a site owned by Denbighshire County Council. The site is leased from Llangollen International Music Eisteddfod (LIME) under a 99 year lease from 3rd July 1991. DLL will take a sub-lease, rather than a lease of the whole of this site discussions are ongoing with LIME.

4.11 Llangollen Leisure Centre stands partially on land owned by the Custodians for Charities. It may be necessary therefore that the Custodians for Charities will be party to the grant of lease.

4.12 Each of the leases will contracted out of Section 24-28 of the Landlord and Tenant Act 1954, the significance of this is that the Tenant will have no automatic right to renew at the end of the 10 year term. At the end of the lease Denbighshire will be able review the situation and decide whether to enter into new leases for a further term.

4.13 The draft lease will need to be adjusted to reflect specific individual circumstances for each site; including exclusive Educational use of the Leisure Centres during core hours in accordance with annual shared use agreements, complying with Arts Council requirements at The Ruthin Craft Centre, and the terms of the Head Lease at Llangollen International Pavilion.

4.14 Valuation and Estates will undertake annual inspections of each of the sites, the inspections will be undertaken to ensure that the Tenant is complying with the terms and obligations included within the leases.

4.15 The ADM will take a lease of Trem y Dyffryn in Denbigh, this office will provide their administrative base. This lease will be on the same terms as the standard lease. Given that this property will be used by the ADM at a peppercorn rent on terms different from the Commercial Estate leases, this property shall be appropriated out of the Commercial Portfolio into the Corporate portfolio.

5. How does the decision contribute to the Corporate Priorities?

The decision will enable Denbighshire Leisure Ltd to deliver the existing services from these assets, through a contract with the Council. The establishment of a Strategic Governance Board and a robust contract management process will ensure that the interests of the Council are protected over the term of the leases.

6. What will it cost and how will it affect other services?

6.1 The District Valuer needs to be commissioned to undertake a valuation of the leases in the portfolio of properties to be leased to DLL. This is for the purpose of calculating whether Land Transaction Tax is payable, and to satisfy a Charity Commission requirement relative to four sites. The estimated cost for the valuation is circa £16K.

6.2 There will be a requirement for Valuation and Estates to manage the leases and they have estimated that it will cost circa £4k per annum to carry out periodic inspections of the properties.

7. What are the main conclusions of the Well-being Impact Assessment?

7.1 The WIA was carried out by a multidisciplinary group of officers representing Leisure, HR, Finance, Business Support, Support Services, Community Wellbeing, Corporate Property, Strategic Planning & Performance and Project Management.

7.2 Overall the impact of the project was assessed as neutral, reflecting that at this stage the consideration is about an alternative way of delivering a defined set of activities/functions, it is not about delivering different or alternative activities/functions.

8. What consultations have been carried out with Scrutiny and others?

8.1 External Consultation

Discussion with legal and VAT experts who are providing expertise to the project.

Other local authorities who have established ADMC's for their lessons learnt.

Welsh Audit Office for advice.

'Local Partnerships' an external organisation who have provided guidance in respect of the process.

Rhyl Town Council in respect of their interest within SC2

Trade Unions in respect of the impacts on staff.

Arts Council for Wales in respect of grant funding

8.2 Internal Consultation

Cabinet Briefing, Cabinet, Members Budget Workshop where the Project has been shared informally, and a Member Workshop specifically about the ADM.

All MAGs

Reports to SLT in respect of the Project Brief, and the restructuring of services required should the project be approved.

Staff briefings which included face to face information sharing with all Managers within FAHS, a written staff briefing to all leisure related staff, and Middle Managers across the Council, face to face staff briefings with all leisure staff, and formal consultation with all staff affected by any restructuring of services.

9. Chief Finance Officer Statement

The report is supported in order to facilitate the successful implementation of the Leisure ADM project. A proposal has been proposed by the ADM Project Board with regard to the required funding for the Trem y Dyffryn site and further details can be given verbally during the meeting.

10. What risks are there and is there anything we can do to reduce them?

11.1 These are the key risks associated with the lease of the properties to Denbighshire Leisure Ltd. In respect of the first two these will be managed through the lease and the contract management process.

11.1.1. Denbighshire Leisure Ltd breach the terms of their lease

11.1.2 The expectation of Denbighshire Leisure Ltd in terms of the upkeep of the properties may exceed the limited resources and priorities of the Council.

11.1.3 There is a risk that Land Transaction Tax is payable.

11.1.4 The ADM is not as financially successful as hoped and any resultant additional costs fall back on the Council to fund and/or the Company is unable to make the adequate reinvestment into its day to day business activities due to lack of funds.

11. Power to make the decision

S123 of the Local Government Act 1972 gives power to dispose of land.

Council Constitution

S2 LSA 2000