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Date: 14 April 2022
Our ref: Overview and Scrutiny Panel/Supplementary Agenda
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OVERVIEW & SCRUTINY PANEL

19 APRIL 2022

A meeting of the Overview & Scrutiny Panel will be held at **7.00 pm on Tuesday, 19 April 2022** in the Council Chamber, Council Offices, Cecil Street, Margate, Kent.

Membership:

Councillor Rev. S Piper (Chair); Councillors: Fellows (Vice-Chair), Austin, Boyd, Currie, Coleman-Cooke, Huxley, Keen, Leys, Pat Moore, Paul Moore, L Piper, Rattigan and Tomlinson

SUPPLEMENTARY AGENDA

Item
No

Subject

9. **WINTER GARDENS LEASE - CALL IN OF AN INDIVIDUAL CABINET MEMBER DECISION** (Pages 3 - 10)



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Winter Gardens Lease - Call In of an Individual Cabinet Member Decision

Overview & Scrutiny Panel 19 April 2022

Report Author	Senior Democratic Services Officer
Portfolio Holder	Councillor Pugh, Deputy Leader and Cabinet Member for Economic Development
Status	For Recommendation
Classification:	Unrestricted
Key Decision	No
Ward:	Margate Central

Executive Summary:

The Panel has called in an individual Cabinet Member decision made by the Deputy Leader and Cabinet Member for Economic Development regarding the Winter Gardens Lease. This decision is attached as Annex 1 to this covering report. Members are being asked to review the decision and agree whether to make recommendations or take no further action.

Recommendation(s):

The Panel is being asked to consider the Cabinet Member decision and related report and decide whether there is or there isn't any further action that is required on this matter.

Corporate Implications

Financial and Value for Money

The financial implications of the original decision are set out in the attached report, as Annex 2 to the committee report.

Legal

The legal implications of the original decision are set out in the attached report. Any alternative courses of action would need to have the legal implications considered and presented to Cabinet for their consideration.

The Overview and Scrutiny Procedure Rules in the Constitution state that call-in should only be used in exceptional circumstances, for example, where members of the Overview & Scrutiny Panel have evidence which suggests that the Deputy Leader and Cabinet Member for Economic Development did not take the decision in accordance with the principles set out in Article 13 of the Constitution (Decision Making).

Risk Management

The risks relating to the original decision are set out in the attached report, as Annex 2 to the committee report.

Corporate

The corporate implications of the original decision are set out in the attached report. Any alternative courses of action would need to have the corporate implications considered and presented to the Deputy Leader and Cabinet Member for Economic Development for their consideration.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

This report relates to the following aim of the equality duty: -
(Delete as appropriate)

- To eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act.
- To advance equality of opportunity between people who share a protected characteristic and people who do not share it
- To foster good relations between people who share a protected characteristic and people who do not share it.

The equalities implications of the original decision are set out in the attached report. Any alternative courses of action would need to have the equalities implications considered and presented to the Deputy Leader and Cabinet Member for Economic Development for their consideration.

Corporate Priorities

This report relates to the following corporate priorities: -

- Growth
- Environment
- Communities

1.0 Introduction and Background

- 1.1 The Deputy Leader and Cabinet Member for Economic Development made a decision regarding the Winter Gardens Lease on 9 March 2022 which was subsequently published on 31 March 2022.
- 1.2 The Individual Cabinet Member decision was called in by four members of the Overview and Scrutiny Panel on 6 April 2022 and later confirmed as a valid call-in on 13 April 2022.

2.0 The Current Situation

2.1 In calling in an Executive decision made by either Cabinet or an Individual Cabinet Member the Panel ought to provide the reasons for the call-in. The call-in request ought to cite one or more of the seven principles of decision making which are in Article 13 Part 2 of the Council Constitution.

2.2 The seven principles are as follows:

- (a) the presumption in favour of openness and transparency;(b) the need for due consultation;
- (c) the need to take account of relevant professional advice from appropriate staff;
- (d) the need for clarity of aims and desired outcomes;
- (e) the need to identify the range of options considered;
- (f) the need to give reasons and explanations for a decision;
- (g) the need to ensure that all necessary requirements of legality and confidence are observed.

2.3 The request cited that the following grounds:

- (a) The presumption in favour of openness and transparency;
- (f) The need to give reasons and explanations for a decision.

2.4 The call-in request further explained that there is no evidence that TDC has considered the additional costs Your Leisure will incur as a result of the surrender of the lease for the Winter Gardens or what attempts have been made to quantify them. Therefore, the report did not give any opportunity for members to judge whether this request is reasonable or appropriate.

3.0 Options

- 3.1 After considering the material before the Panel and the views arising from the discussion, Members could opt to make recommendations for consideration by the Deputy Leader and Cabinet Member for Economic Development, or;
- 3.2 Members could opt to take no further action, in which case the original decision takes immediate effect.
- 3.3 If referred back to the Deputy Leader and Cabinet Member for Economic Development, he will reconsider within a further 15 working days from the date of the meeting, and may amend the decision or not, before adopting a final decision.

4.0 Next Steps

- 4.1 If the Panel makes recommendations, these would be referred to the Deputy Leader and Cabinet Member for Economic Development, who would then consider them and either accept or reject the recommendations as set out in section 3.
- 4.2 If the Panel decides to take no further action, then the decision takes immediate effect.

Contact Officer: *(Charles Hungwe, Senior Democratic Services Officer)*
Reporting to: *(Nick Hughes, Committee Services Manager)*

Annex List

Annex 1: Winter Gardens Lease Decision Notice
Annex 2: Winter Gardens Lease Decision Notice supporting report

Background Papers

None

Corporate Consultation

Finance: *Chris Blundell (Director of Finance)*

Legal: *(Estelle Culligan, Director of Law and Democracy & Acting Monitoring Officer)*

Ref:	Called in	Yes/No
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THE THANET DISTRICT COUNCIL

DECISION OF INDIVIDUAL CABINET MEMBER

Name of Cabinet Member:

Relevant Portfolio:

Date of Decision:

Subject:

Key Decision In Forward Plan

Brief summary of matter:

Approval is being sought for the redistribution of the residual funding approved for the replacement and repair of the Winter Gardens boilers, up to £166,819 to meet the potential costs associated with early surrender of the lease. The release of payment is to be signed off by S151 Officer after review. In doing this we will be able to address the cost significance for YL in relation to the lease for the Winter Gardens not expiring until October 2024, but with an anticipated hand back from 14 August 2022.

Decision made:

Approval of the redistribution of funds previously agreed by Cabinet, to meet the potential cost implications of the early surrender of the Winter Gardens Lease, to be capped at £166,819.

Reasons for decision:

To help explore the longer term objectives for the Winter Gardens and to enable Your Leisure to formalise their decision making.

Alternatives considered and why rejected:

Details of any conflict of interest declared by any executive Member who has been consulted and of any dispensation granted by the Standards Committee:

Author of Officer report:

Background papers

Agenda Item 9

Annex 1

Statement if decision is an urgent one and therefore not subject to call-in:

None

Last date for call-in:

7 April 2022

Your Leisure - Winter Gardens

Report Author Chris Blundell, Director of Finance and Procurement and S151 Officer

Executive Summary:

This report seeks to address the cost significance for YL in relation to the lease for the Winter Gardens not expiring until October 2024, but with an anticipated hand back from 14 August 2022.

Recommendation(s):

That Cabinet agrees to the redistribution of the residual funding approved for the replacement and repair of the Winter Gardens boilers, up to £166,819 to meet the potential costs associated with early surrender of the lease. To be signed off by the S151 after review.

1.0 Background

1.1 This report is influenced by four key factors. These being:

- Financial implications of the coronavirus pandemic and future viability
- The lack of Local Authority funding to provide the required operational subsidy
- The ongoing and substantial maintenance, repair and refurbishment costs
- The opportunity for TDC to utilise money from the Margate Town Deal Fund

1.2 In view of the above it was agreed that programming should be paused at the Winter Gardens from the 14 August 2022. This was agreed to facilitate further consideration on the future of this venue and YL's involvement.

1.3 **Winter Gardens** - By agreeing early surrender of the lease YL will incur additional unplanned costs in excess of £156k. Early surrender of the lease is subject to approval of YL's board, which will convene on the 9 March 2022; it is anticipated this agreement will be reached subject to the support of TDC with regards to these estimated exit costs.

2.0 Key considerations:

2.1 TDC Cabinet agreed in January 2021 to fund the investment in the heating system at the WG at an estimated cost of £230k as well as the opportunity for a loan of between £0.700m and £1.5m. It was subsequently agreed to fund a temporary heating solution due to the ongoing discussions and to enable operation during Autumn 2021 and Winter 2021/22. This temporary solution has been funded at a cost to TDC of £63.5k, leaving £166.8k of the original allocation uncommitted.

2.7 Opportunity through Margate Town Deal funding to invest in this venue with consideration to the legal restrictions imposed through YL's tenant/operator status at the venues.

3.0 Outstanding issues/risks:

- 3.1 Delay in Decision Making / Change in Decision - With bookings now being paused at the Winter Gardens from 14 August 2022 a change of direction requiring Your Leisure to operate beyond this date will not be financially viable, without substantial extra funding, due to having to rebuild the programme.
- 3.3 Surrender of Lease for Winter Gardens - The existing lease covers four facilities owned by TDC and YL withdrawing from the Winter Gardens would legally breach the lease arrangements. The lease includes a dilapidations section and agreement will be required this will not be enforced by the landlord.

4.0 Options

- 4.1 Cabinet agrees to the redistribution of the residual Boiler monies, up to £166,819 to meet the potential costs associated with early surrender of the lease. To be signed off by the Acting S151 after review.
- 4.2 Cabinet agrees to a lower value of contribution, potentially placing pressure on YL's financial situation.

Contact Officer: *Chris Blundell, Director of Finance and Section 151 Officer*
Reporting to: Madeline Homer

Annex List

N/A

Background Papers

Cabinet report 28 January