

MEETING:	CABINET
MEETING DATE:	23 JANUARY 2014
TITLE OF REPORT:	PROGRAMME FOR INVESTMENT AT HEREFORDSHIRE COUNCIL LEISURE FACILITIES
REPORT BY:	CULTURAL SERVICES MANAGER

1. Classification

Open

2. Key Decision

This is a key decision because it is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates.

NOTICE has been served in accordance with Part 3, Section 9 (Publicity in connection with key decisions) of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

3. Wards Affected

County wide

4. Purpose

To approve in principle the investment of £9m capital, funded by Prudential borrowing for improvements at Herefordshire Council leisure facilities. This is part of a package of changes to the contractual arrangements between the council and Halo Leisure to support the delivery of financial savings whilst enhancing service quality by increasing income levels.

5. Recommendation(s)

THAT:

- (a) subject to Council approval of the Capital Programme in February, up to £9m of capital funding for investment in improvement programmes at the following leisure facilities across the county: Hereford Leisure Centre, Hereford Leisure Pool, Leominster Leisure Centre, Ledbury Swimming Pool and Ross-on-Wye**

Swimming Pool be approved;

- (b) the investment to be funded via prudential borrowing and repaid by the leisure operator, currently Halo Leisure, via a rental charge over 25 years using increased income;**
- (c) authority be delegated to the Director for Economy, Communities and Corporate, in consultation with the Chief Finance Officer and Cabinet Member Contracts and Assets to approve fully costed business cases and implementation arrangements for individual schemes within the programme prior to any draw down of capital;**
- (d) authority be delegated to the Solicitor to the Council, in consultation with the Director for Economy, Communities and Corporate to conclude and execute revised legal agreements between the council and Halo Leisure to reflect the complete package of revised arrangements between the parties;**
- (e) subject to the completion of a Sports Facilities Strategy application is made to the Sport England facilities funding programme for up to £2m for larger schemes and £0.5m for smaller schemes; and**
- (f) that further investigation is continued regarding funding through a planning application for the redevelopment of Ledbury swimming pool to assist with mitigation of the total amount of borrowing.**

6. Alternative Options

6.1 *Not allocating Prudential Borrowing monies*

If the investment programme is not approved Halo's financial recovery model enabling them to become sustainable on the reduction of the management fee will not be achievable.

The investment will also attend to long term maintenance and energy efficiency issues at the facilities which remain in the council ownership. Failure to invest in the council owned assets could put some of the facilities at risk of closure for health and safety risks in the future.

6.2 *Allowing the current contractual arrangements to continue*

There are currently leases in place for Halo occupied sites which are not on a full repairing basis, leaving liability for repairs to the Council which to date have not been carried out. There is also still in place a management agreement obliging Halo to carry out management duties in relation to the sites in return for a management fee of over £1.5m per year. This obligation has been amended by agreement in principle only to reduce this spend. No legal variation of the full payment obligation has been agreed or effected to date. If the current contractual arrangements are not amended Halo could at any time call upon the Council to honour these contractual obligations leaving the Council with arrears of management fees to pay and repair liability to carry out. Provided the advancement of borrowing is subject to variation of all current contractual arrangements the proposed expenditure could ensure essential

repair works are carried out and the sites improved at the cost of Halo with reduction in contractual liability of the Council to these sites and this provider.

7. Reasons for Recommendations

- 7.1 Up until 2013-14 Halo received a service fee totalling £1.5 million to manage the council's leisure facilities.
- 7.2 To support the Corporate Savings Plan this was reduced to £840k in 2013-14, £676k in 2014-15, £386k in 2015-16, reducing to zero in 2016-17.
- 7.3 To date Halo have reduced staff pay by 5% and restructured terms and conditions. Many of their business processes have also been stream-lined to further increase efficiency to manage the effect of the reduced payments.
- 7.4 Halo have won additional contracts in Bridgend and Shropshire spreading their management costs and proving their competitiveness in the market
- 7.5 The capital investment in council owned facilities will facilitate increased income, the third segment of their financial strategy to meet the zero subsidy target.
- 7.6 The investment will help to ensure the long term structural viability of the facilities and attend to a number of long standing and outstanding maintenance issues affecting the buildings.

8. Key Considerations

8.1 There is currently a 25 year Management Agreement with Halo Leisure which commenced in 2002. The existing contract will need to be varied to reflect the changes as a result of this investment including the new rental charges falling due post investment up to 31 March 2027.

8.2 *Repair and maintenance*

- The stock of council leisure facilities managed by Halo is between 12 and 30 years of age and requires ongoing repair and maintenance to secure the future of the asset.
- A condition survey with costs was undertaken by property services to cover the period 2010-15.
- The condition survey indicated an indicative investment cost requirement of £2.8m for the remaining twelve year term of the Lease. See Appendix A.

The mitigation and management of these costs will be supported by:

- Out of the current fees paid to Halo there is an £85k provision for maintenance which amounts to £1m over the twelve year period.
- Any out performance of the Halo sites against the targets set for income would contribute towards the maintenance costs.
- Through application for Section 106 funding to replace existing facilities in

need of renewal e.g. the all-weather pitch at Bridge Street Sports Centre.

- The development of a new swimming pool in Ledbury funded through developing the current site would reduce the demand on borrowing and reduce maintenance costs.
- Further consolidation of the service would reduce the profile of maintenance costs e.g. Ledbury Leisure Centre = £444k.

8.3 All the projects include solutions to improve DDA access including a platform lift at Ross Pool to access the first floor viewing area, gym and spectator seating in the pool Hall. Ledbury Pool will have a platform lift to access the gym. The new spa facility at Leominster Leisure Centre will have a DDA compliant ramp to access the thermal pool. All of the schemes will have DDA compliant receptions including hearing loops.

8.4 Carbon emissions will be reduced significantly by increased insulation and cladding to the building fabric and also replacing old plant with more efficient plant such as condensing boilers and heat pumps.

8.5 The total amount of borrowing being requested is up to £9m.

Below is the current set of estimated costs for the capital works.

See below a summary of the investment projects

Project	Estimated cost £m
Hereford Leisure Centre Refurbishment	3.0
Ross swimming pool refurbishment	2.3
Leominster Soft play, spa and fitness suite	1.2
Hereford Leisure Pool diving Pool	0.2
Ledbury Swimming Pool Refurbishment	2.0
Total	8.7

8.6 The borrowing will be repaid over 25 years at an assumed annual interest rate of 3.6%, the annual cost of financing this borrowing is £511k pa.

8.7 In liaison with Sport England Herefordshire Council will commission a Sports Facilities Strategy to be written by an approved consultant which will place the

Further information on the subject of this Report is available from
Mick Ligema, Cultural Services Manager on Tel (01432) 260631

authority in the position to apply for Sport England grants from two programmes supporting facility development for up to £0.5m for smaller schemes and £2m for larger schemes.

- 8.8 If we were successful in obtaining grant funding this would reduce the borrowing amount and the rental payment due from Halo.

9. Community Impact

- 9.1 The investment and improvement in Leisure facilities will strengthen the alignment of the business of Halo towards the council's core strategies and priorities through supporting Vulnerable People, Supporting Economic Growth and by developing the infrastructure for Stronger Communities.

9.2 Supporting vulnerable people

- Halo has a strong track record of providing health and well-being based activities that support vulnerable people in their communities.
- Further development of smoking cessation, weight management and obesity management programmes.
- Further development of the Health Check programme in liaison with Public Health.
- Further development of exercise referral programmes, cardiac rehabilitation and programmes for people with special health needs.

All the above programmes and activities make a long-term contribution to prevention and early intervention health programmes and thus reduce the long costs of latter stage health care.

9.3 Supporting Economic Growth

- Halo provides opportunities for employment for local people in Hereford and across the Market Towns. These will be enhanced through the investment and by the growth of their business.
- Halo sources local business to support its core activities, helping to support the local economy.
- The increased footfall will result in greater local spend in the communities.

The investment in improved facilities will enable services to continue across the county and to be run at no cost to the council.

9.4 Stronger Communities

The leisure facilities provide a county-wide infrastructure of safe and sustainable accessible buildings and services open for long hours with improved Disabled access which is available to the whole community for the joint benefits of health and well-being, social interaction, community integration and community welfare.

10. Equality and Human Rights

- 10.1 This report pays due regard to the Human Rights Act, Equality Act 2010 including section 149, the 'General Duty' on public authorities.

The recommendations and actions if implemented will have a significant positive effect on disabled people. These improvements will enable disabled people greater choice and control over local services and provision, and;

1. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
2. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

- 10.2 The investment will heighten the capacity of Halo to support the community toilet scheme across Herefordshire by providing free access to toilet and changing facilities for people with disabilities. This will further be supported by trained staff.

- 10.3 Issues of Disability access to the leisure facilities will be addressed through the investment, additionally an improvement in the quality of the facilities will enhance the quality of life for Herefordshire residents and make a positive contribution towards the health and wellbeing of residents.

11. Financial Implications

- 11.1 The capital investment programme of £9m will be funded via Prudential borrowing, the cost of which will be financed from increased income which will finance rental charges to be included in the new management agreement. The business cases setting out the affordability of the borrowing and the reduction of the management fee have been prepared by Halo. Due diligence has been carried out on the business plans by an independent leisure consultancy, Leisure Republic, to provide independent reassurance that the income projections are sufficiently robust, include suitable contingencies and review the sufficiency of latent demand in support of the higher membership base projections.

- 11.2 The investment will impact on the Council's VAT partial exemption limit and which if breached would result in a repayment of £1m of VAT recovered to HMRC. To mitigate this risk investment will need to be phased over a number of financial years and some of the improved properties will be opted to tax securing VAT recovery. The phasing of each scheme will be based upon prioritising those sites which will result in the greatest return from income uplift expectations.

- 11.3 The impact of this mitigation is the rental charge to Halo on the opted to tax properties will be plus VAT and any phasing could delay the reduction of the management fee reduction to zero in 2016/17. This will be managed as each business case is reviewed.

- 11.4 The base case for investment is considered deliverable. Further options though will be considered on particular sites to strengthen these further before individual developments are approved. These include considering alternative sites or

Further information on the subject of this Report is available from
Mick Ligema, Cultural Services Manager on Tel (01432) 260631

accessing external funding contributions.

12. Legal Implications

- 12.1 Before any monies are advanced to Halo Leisure it is essential that a revised legal agreement is executed by the Council and Halo Leisure to reflect the complete package of revised arrangements between the parties. A revision to current contractual arrangements is currently being negotiated. It is essential that formal legal agreements are put in place to secure such revisions in the form of a deed of variation of the management agreement and of the leases. Those variations can effect the reduction of the management fee and revision to management obligations incumbent on Halo and the repair liability for the leases of the sites. It is also suggested by this report that the leases are varied to ensure that repayment of the borrowing is secured via increased rentals. This can form part of the deed of variation of the leases. It is strongly suggested however that consideration is also given to other means of securing the repayment via a charge over a legal asset owned by Halo. A commercial lender would not advance funds without adequate security and repayment via a lease is a contractual obligation only which would leave the Council vulnerable in the event of an adverse change in the economic stance of Halo. Without a charge to secure the borrowing over a suitable asset of Halo there is otherwise the risk that should Halo go into administration/receivership/liquidation the Council is left with irrecoverable financial loss.
- 12.2 In addition to the above, this matter poses other legal risks to the Council namely procurement challenge and State Aid rules. It is essential that revision to the current arrangements do not improve the position of Halo currently. That would include any extension of the current term of the leases or management agreement. If Halo is commercially advantaged by these variations a mandatory legal requirement to re-tender pursuant to procurement regulations would be triggered and failure to comply would render the Council open to legal challenge and financial penalties.
- 12.3 It is therefore essential that all elements of the Halo arrangements are viewed and dealt with as a whole to avoid such risks. Provided the overall effect of the changes to Halo is not to improve but to 'worsen' its position (in terms of increasing its liabilities) the Council's position is defensible.
- 12.4 It is suggested that as an alternative to loaning monies to Halo to undertake works to the existing buildings, those works are undertaken by the Council itself in return for Halo then taking on a full repairing liability.
- 12.5 Statutory powers are in place to allow borrowing and lending of money by local authorities and as follows
- The Local Government Act 2003 allows borrowing for expenditure on any purpose relevant to the authority's functions or for the prudent management of its affairs. Such borrowing must be in accordance with the Prudential

Borrowing Code.

- Section 111(1) of the Local Government Act 1972 allows an authority to both borrow and lend to facilitate the discharge of its functions or is conducive or incidental to them.
- Section 1(1) of the Localism Act 2011 provides the authority with a general power of competence i.e. the ability to do anything an individual might do, including the lending of money. To an extent this supersedes the powers contained in the preceding Local Government Acts as it is far more widely drawn.

12.6 In any event any loan must comply with the Prudential Borrowing Code.

13. Risk Management

13.1 The wider funding of leisure services is recorded in the Economy, Communities and Corporate (Economic, Environment and Cultural Services) Risk Register: (EEC 005).

13.2 The risk to the borrowing programme is the potential for Halo to be unable to maintain the repayment on the loan.

13.3 The mitigation for this has been the Council's acting with due diligence by requesting an independent expert consultant to assess and comment upon the Halo business model.

13.4 Further assurance is also provided by the Halo track record in achieving financial return from investment. The most recent example of this track record has been the refurbishment of Hereford Leisure Pool fitness and group exercise facilities in 2012 and which demonstrated a 19% increase in swimming activity and a 60% increase in gym and fitness use for a comparable period from the previous year.

14. Consultees

14.1 Halo Leisure Services Limited
Herefordshire Council Finance, Legal and Property Departments

15. Appendices

Appendix A – Condition Survey and Maintenance Costs

16. Background Papers

16.1 None identified.