



## EXECUTIVE

### 18<sup>th</sup> April 2024

<b>Report Title</b>	<b>The Future of Kettering Leisure Village - Options Review</b>
<b>Lead Member</b>	Cllr Helen Howell, Executive Member for Sport, Leisure, Culture and Tourism
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<b>Key Decision</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Is the decision eligible for call-in by Scrutiny?</b>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<b>Are there public sector equality duty implications?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Does the report contain confidential or exempt information (whether in appendices or not)?</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<b>Applicable paragraph number/s for exemption from publication under Schedule 12A Local Government Act 1972</b>	N/A
<b>Which Corporate Plan priority does the report most closely align with?</b>	Active, fulfilled lives

### List of Appendices

**Appendix A** - Kettering Leisure Village Options Review

**Appendix B** – Climate Change Impact Assessment tool

#### **1. Purpose of Report**

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- 1.1. On 22<sup>nd</sup> June 2023 Council considered a motion concerning the future of Kettering Leisure Village (“KLV”). Following consideration of the motion, it was resolved:

*“This council values all the opportunities provided, directly or indirectly, for the benefit of residents’ health and well-being across North Northamptonshire. In particular this council welcomes the economic benefits for Kettering and the wider regional area of having a premier national conference centre, combined with public sporting and theatrical venues (commonly known as the Kettering Leisure Village, the KLV).*”

*The KLV's continued public and private availability on a long-term, sustainable, basis is critical to the well-being of all residents along with the wider economic prosperity of North Northamptonshire.*

*A business and legal case which considers the viability of stepping in needs to be urgently created and scrutinised through the formal scrutiny process before being considered by the Executive. Following which (if required) a budget should be agreed by the 3<sup>rd</sup> of July 2023.”*

- 1.2. A report was approved at the Council's Executive on 3<sup>rd</sup> August 2023 which set out the position with respect to the decision of Compass Contracts Services UK Ltd (CCS) to close KLV by 3<sup>rd</sup> July 2023, subsequent actions taken by the Council, Executive and Officers, through liaison with CCS and the leaseholder of the site, Phoenix Leisure Management (PLMS), to broker an interim solution to support the site to remain open, and the considerations required to develop an options appraisal for the longer-term operation of the site. Specifically, the recommendations which were approved stated:
  - i) Note the motion approved by Council on 22<sup>nd</sup> June 2023;
  - ii) Agree to receive a comprehensive business case, including associated options appraisal and details of any agreement between North Northamptonshire Council and Phoenix Leisure Management
  - iii) Endorse the agreement in principle to agree revisions to the provisions of the lease to support the site to remain open.
- 1.3. This report details the current position in relation to Kettering Leisure Village, introduces a business case, including associated options appraisal, and sets out details of the agreements between North Northamptonshire Council and PLMS.
- 1.4. The report confirms and clarifies the legal ownership of the site and confirms that the Council's options are limited in terms of exercising control over it.
- 1.5. Finally, the report considers what, if any, potential management options are available to the Council in respect of the site, if it came back into full control of the Council.

## **2. Executive Summary**

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- 2.1. The key findings from the Options Review are:
  - The leasehold relationships confirm the Council's ability to control the site is limited to a covenant on the lease stating that the land is to be used for leisure purposes and subject to the management provisions contained at schedule 3, which include step-in rights if the Sports Area is closed for 48 hours or more, and the services subject to the grant funding agreement relating to Arena Sports and the theatre.

- The legal relationship between the Freeholder, Leaseholder(s) and operator, as set out in section 4.2. of this report, directly affects the Options Review.
- As a result of the legal relationship between the parties (the manner in which their respective legal interests arise) the Council currently has no control over the KLV site and has limited management step-in rights. The Council does not have power to direct the provider in how and what services are delivered at the site, with the exception of the covenant on the lease that the land is to be used for leisure purposes and the services subject to the grant funding agreement relating to Arena Sports and the theatre.
- The Council can only gain control over the site, if PLMS voluntarily relinquish their lease and walk away. In this circumstance the Council could negotiate a surrender of the lease however, this would be at a cost to the Council. The cost of this is currently unknown as it is dependent on a condition survey of the building and business growth and profitability at the point of sale.
- The current arrangement with PLMS, as set out in section 5.10. of this report, is a short-term solution and was entered into in August 2023. However, the indications from PLMS are that they are committed to the site and to growing the business to make it sustainable for the future.
- PLMS are not currently operating all of the site. The children's soft play and the conferencing facilities remain closed; PLMS are exploring all opportunities to bring these back into use which demonstrates their commitment to the site.
- There are no management options open to the Council under the site's current ownership, however if the Council does come into control of the site (e.g. a voluntary or negotiated surrender), then there are three management delivery options it could consider in the short term, as well as the 'Do Nothing' option
  - In-house
  - Local Authority Trading Company
  - External Contractor
- Should an option to manage the site arise (not presently available as an option) management options should be considered on a short-term basis to tie into the wider leisure portfolio and contract end dates and with the adoption of the new Leisure Facilities Strategy. KLV could, if an option to manage the site arises, be incorporated into the management options appraisal being completed in early 2025 for implementation when the current leisure contracts end in 2027/2028. For completeness these options are not available at the present time for the reasons set out in this report.

- There are advantages and disadvantages to all management options should they arise relating to cost and risk to the Council, which are set out in the Options Review. The findings of the options review confirm all operating models would create a deficit funding position in the order of £255k-£484k per annum, requiring the Council to reprioritise discretionary funding. Councillors should bear in mind that these figures are correct at the time of presenting this report. As an option to manage is not presently available these costs would need to be revised if such an option became available.
- In response to the original Council motion, following assessment of options it is not viable for the Council to take on operational control of KLV at this time due to the nature of the legal ownership of the site. Furthermore, if that were to change and the Council was in control of the site the assessment of options also confirms that it would not be financially viable as there is significant cost detriment to the Council.
- Notwithstanding the above, it remains vital the Council continues to proactively undertake its duties as landlord for an important local facility via the existing lease obligations and continues to engage proactively with the existing tenant over their future plans.

### **3. Recommendations**

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#### 3.1. It is recommended that the Executive:

- i) Notes the position set out in this report regarding the legal ownership of the KLV site arising from the nature of the Council's and PLMS's leasehold interest;
- ii) Notes the Options Review produced by Max Associates, and that these options are predicated on the Council having full control of the site which it currently does not have;
- iii) Notes the Council is not able to take control of the site and take on the day to day running of KLV under any of the options laid out in the Options Review due to the nature of its legal interest;
- iv) Notes the recommendation in the Options Review that, should the site come back into the full control of the Council, in the short term, an external contractor would be the most sustainable solution, but also notes the subsequent budgetary pressure this would create, whilst the wider management model for the Council's entire leisure portfolio is considered.
- v) Endorses the current proactive approach of the Leisure and Asset Management teams in working with PLMS to support the ongoing business growth and development of future plans.

### 3.2. Reasons for Recommendations:

- The Council is not in control of the KLV site and legally has limited step-in rights to manage the facility and the obligations within the sub-underlease that require the sports facilities to remain open. Courts do not support keep open clauses and the only recourse they would consider if a breach occurred, is compensation to the landlord of any loss of income etc. This would not resolve the issue and it is not likely that any compensation awarded would fully compensate any loss, nor does it guarantee PLMS could pay such costs. PLMS has confirmed its commitment to the site and has made recent capital investment into it.
- The Council is engaging with PLMS in its capacity as Landlord to explore ways it can continue to support the sustainability of the centre, without financial detriment to the Council.
- The Council is in the process of developing a Leisure Facilities Strategy and a review of Future Management Options for the whole of its leisure estate which will report in early 2025. Any future decision regarding KLV needs to be considered in this wider strategic context.
- There are no management options as a result of the legal interests in the site. It is therefore not an option for the Council to take on the running of KLV.

### 3.3 Alternative Options Considered:

- The Council could approach PLMS and ask that they voluntarily relinquish their lease and all rights to the site, at no cost to the Council. Alternatively, the Council could open negotiations with PLMS to surrender their lease at a premium to the Council. Either of these two options could give the Council control of the site. These options are not recommended as the options appraisal confirms that the Council operating the site is not financially viable.
- PLMS have not shown any indication that they would wish to relinquish the lease without payment. The cost of a negotiated surrender is currently unknown as it would be dependent on PMLS bringing this option forward, a condition survey of the building and on business growth and profitability at the point of sale. For KLV, this is continuously changing and currently improving, from almost a restart position, following the threat of closure in the summer of 2023. Market value does not reflect worth to the Council, nor necessarily does the price Phoenix would accept to surrender the lease.
- Notwithstanding that the option to negotiate a surrender of the lease is a matter for PMLS to bring forward, to do so at any cost to the Council, is not recommended at this stage. However, dialogue will continue to be held with PLMS on their future plans for the site, in particular how the tenant will ensure investment in the asset is secured to safeguard any financial risk to the Council of dilapidations and ensure the preservation of the asset.

Whilst both of the above represent the conditions under which the Council could have control of the site, neither are viable options for the Council.

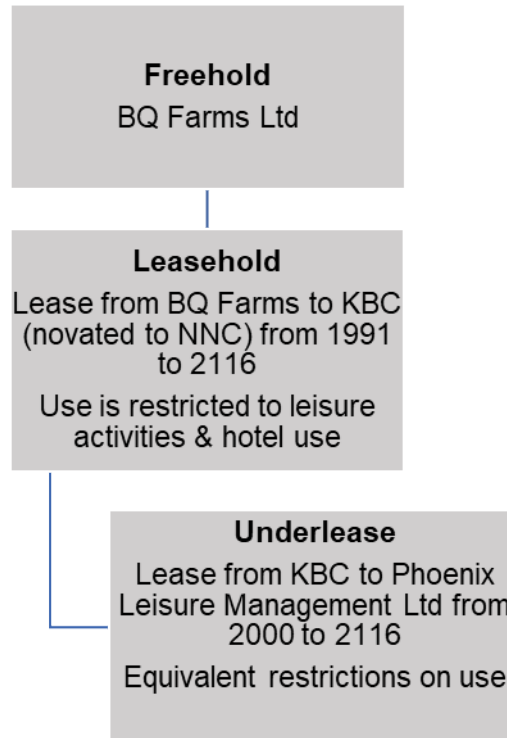
#### **4. Report Background**

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- 4.1. Leisure is a discretionary service for the Council, and whilst in passing the motion councillors signalled strong support for KLV and the benefits it derives for the community, the options can only be considered in terms of the legal ownership documents that underpin the site. Furthermore, the financial position of North Northamptonshire Council has moved on since the motion was passed. Alongside the legal ownership constraints there are a number of cost considerations for the Council associated with any additional involvement with KLV. Therefore, the viability of such a proposal must be fully assessed in order that the impact on the Council, where it fits with the overall leisure strategy the cost to residents of North Northamptonshire as Council Taxpayers, can be understood.
- 4.2. KLV was built in 1991/92 replacing an ageing leisure centre provision in the town, intended to be a regional venue for events, and provide leisure opportunities. It originally contained a leisure pool and a skating rink (replaced with a gym area and a creche) and contains sports halls, conference facilities, meeting rooms, three bars, and the ability to provide a concert venue in the main hall. One of the sports halls was converted into a 500-seat theatre in 2006. Outdoors, there is a beach volleyball facility which replaced an earlier tennis bubble. The leisure space includes 12 badminton courts and 4 squash courts, but these are multi-functional spaces usable for other sports. England Volleyball have their national training centre located at KLV.
- 4.3. As part of the above development, in 1991 Kettering Borough Council was granted a lease for the KLV site by BQ farms Limited, (the Freeholder), for a term of 125 years at a peppercorn rent. This lease expires in 2116 and restricts use of the site to various leisure activities, conference facility, hotel and theatre. The lease from BQ Farms required the Council to construct a leisure complex on the site within 5 years of the lease completion date, and thereafter to repair and maintain and renew in good and substantial condition. The Council is required to return possession of the site to BQ farms in the state in which the lease requires it to be kept.
- 4.4. In 2000 Kettering Borough Council granted an underlease of KLV to PLMS by way of a co-terminus lease expiring in 2116, at a peppercorn rent. This lease mirrors the permitted use of the Council's headlease, and repair obligations to keep the site in good and substantial repair and the requirement to return possession of the site to BQ farms in the state in which the lease requires it to be kept. Whilst this cascading of responsibilities to the PLMS mitigates the Council from direct repair obligations to their landlord it does not reduce the Council's liability for their repair obligations. The law surrounding dilapidations is complex, and so it is vital the Council continues to proactively engage with PLMS on its obligations. The lease to PLMS also provides positive obligations on the tenant to operate and manage the sports facilities (including the theatre), including the provision to keep the facilities open to the public. These obligations

do not include other elements of the building, such as the gym and conferencing facilities.

4.5. The ownership arrangements of the site are detailed below:



- 4.6. Ownership of the whole site and buildings, by way of the 2000 lease, currently sits with PLMS until 2116, at which point the responsibility reverts to the Council as leaseholder, and subsequently to the freeholder BQ Farms. The Council does not have control of the site as a result of the 2000 lease but given the obligations placed on NNC by their covenants within the 1991 lease, the Council must work proactively with PLMS to mitigate any repair obligations and other lease covenants, thereby avoiding a breach of the Council's covenants.
- 4.7. There is a management performance arrangement for parts of the site, (sports hall and theatre) which provides grant funding from the Council in return for PLMS undertaking certain services. Consequently, the use is regulated by the lease, planning policy and the Council's monitoring of the management schedule. The services monitored only applies to the sports hall and theatre. They do not include other elements of the building, such as the Balance Health Club/gym, conferencing facilities and soft play area, which the Council has no involvement in.
- 4.8. Due to the requirement in the lease to keep the sports facilities open, the Council provides an annual grant to support the sports facilities as well as a smaller grant for the theatre, in 2023/24 the grant totals £357k. The grant increases annually in accordance with the Retail Price Index.

- 4.9. PLMS granted a sub-underlease of KLV to CCS in 2017 for a term of 15 years, paying a commercial rent, as reflected in the diagram at 4.5. above.
- 4.10. In April 2023, North Northamptonshire Council was made aware that CCS intended to close the KLV site at the end of May 2023, stating that it was no longer financially viable to operate.
- 4.11. The Council values KLV as one of the area's premier leisure venues and is committed to supporting the operator and considering any options to support the ongoing delivery of sport, physical activity, theatre and health services.
- 4.12. Following proactive intervention by the Council's Executive, CCS agreed to continue to manage the site until September 2023, in order to give the Council and PLMS time to find a solution to keep the venue open after September 2023.
- 4.13. As set out in the August 2023 Executive report, legally, the Council has limited management 'step-in' rights to the sports arena, and these only arise if the venue closes for a minimum of two days and does not give the Council control of the premises. However, should the leaseholder then decide to step back in and manage the site again, the Council, if it had stepped in, would have no option but to remove itself from the centre. Therefore, the Council stepping in is not an option.
- 4.14. There are obligations within the sub-underlease that require the sports facilities to remain open, but these are difficult to enforce due to the length of the lease. Consequently, with CCS withdrawing from the sub-lease, PLMS take ultimate responsibility to ensure that the sports facilities remain open.
- 4.15. Since September 2023, PLMS has operated the centre directly with existing staff transferring under TUPE. This was following a two-year concession agreed by the Council to relax the stay open obligations for the sports arena. It is understood PLMS intend to keep the conference facilities closed but will keep this under review. This concession is due to end in September 2025, at which point the lease terms revert to the original obligations. Discussions with PLMS continue to progress in relation to the impact of the lease terms reverting and what if any further requests may be sought from the Council.
- 4.16. It is therefore important for the Council to understand if there are any potential management options for the site. Presently as set out in this report there are no management options available to the Council. Options only arise **if the site comes back into Council control**.
- 4.17. In August 2023 the Executive agreed to receive a comprehensive options appraisal which would set out:
- Current use of the site and draft profit and loss operating figures.
  - The different operating models available, including in-house delivery, procuring alternative leisure providers and community led models, and their relative merits.
  - Opportunities to link the facility with the wider public services need, including public service partners.



- Any other projected associated costs to the Council
- 4.18. It is not possible to review these options as being currently available to the Council as set out in this report. However, this report has considered the Options Review in the context of any key risks and implications the Council would be exposed to, and of the Council's statutory and fiduciary responsibilities, should KLV come back into the control of the Council. It is important to note however that these options are reflective of current market conditions, and these would need to be reviewed based on conditions and factors relevant at that time should there be a change in circumstances.
- 4.19. The report does not propose that the Council takes proactive steps, at this time, to take control of the site nor to take on the day to day running of the site, as it is not possible to do so for the reasons set out herein.

## 5. Issues and Choices

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- 5.1. Following the Council motion, Max Associates were appointed to undertake the Options Review. The review must be considered in the context of the options not being available at this time for the reasons set out herein. The methodology for completing the review, and the resultant report at **Appendix A**, comprises:
- Background and current context, including current use of the site;
  - Strategic review of national and local priorities, aligned to the work on the Active Communities Framework and how KLV can contribute to it;
  - Overview of the Council's leisure provision and how KLV fits into this;
  - Current performance review of KLV, benchmarking against industry standards and the current leisure market;
  - How KLV could fit into the wider, longer term management options appraisal being undertaken for all of the Council's leisure provision due to be completed in early 2025;
  - Shorter term considerations for KLV in the context of the longer-term view;
  - The potential management solutions for KLV in the medium term and the advantages and disadvantages and risks associated with each;
  - Estimated financial impact for each management option, against the current operations including potential costs to the Council;
  - An overview of the likely service delivery each option will offer;
  - Potential implementation timescales and set up costs.
- 5.2. The options review is based on the Council being in control of the site which at the present time it is not. The options set out within the review are therefore not applicable or available to the Council at this time.
- 5.3. The Options Review has been considered within the wider strategic context and the development of a wider Leisure Strategic Framework. The Council is currently developing its vision, commitment, and priorities for the future of Leisure Services for North Northamptonshire and has undertaken a series of engagement workshops with the community, national governing bodies for sport, local sports clubs, schools, facility users, stakeholders and the wider

community to ensure that everyone has been able to contribute to this important piece of work.

- 5.4. A robust supply and demand report is being undertaken to identify the facilities currently available for community use, whether there is any shortfall or overprovision and investigating future opportunities there are to improve and invest in leisure across North Northamptonshire.
- 5.5. This work will help inform the development of the Council's Active Communities Framework which will have Leisure facilities and Playing Pitch Strategies forming key elements to this work. This work is anticipated to be completed by March 2025. The proposed business case regarding KLV will inform the Active Communities Framework.
- 5.6. As part of the Active Communities Framework, Max Associates will be completing a management options appraisal for the whole of the Council's leisure centre portfolio. This piece of work will report in the early part of 2025.
- 5.7. Following the Council being informed on 27<sup>th</sup> April 2023 of the intention to close KLV and, given the importance of finding a solution that avoided the closure, the Executive and Council Officers at that time, worked proactively with both CCS and PLMS, along with other stakeholders, to broker a temporary solution. Between the date of the Council motion being passed on 22<sup>nd</sup> June 2023, and the report being brought to Executive in August 2023, an in-principal solution between all parties was agreed.
- 5.8. That solution saw CCS surrender their sub-underlease to PLMS at the end of August 2023, after a two-month handover period. PLMS have since then been operating KLV, in accordance with the terms of their lease with the Council.
- 5.9. To enable the above transfer and to support PLMS stepping in to operate KLV and reduce the likelihood of its closure, the Council agreed to a two-year temporary amendment of the obligation on PLMS to use best endeavours to stay open, requiring PLMS to use reasonable endeavours to keep the sporting facilities open.
- 5.10. In practice this change means PLMS need to take all reasonable steps available to it to keep the sporting facilities open but would not be expected to sacrifice its commercial interests in doing so. This is a standard that is agreed in most commercial leases in respect of the obligations on our tenants, and a typical expectation of a Court. The concession is personal to the PLMS (i.e. it cannot be assigned to another party) and so is satisfactory in terms of best value obligations on the Council. As the concession has revised existing terms, it was agreed under a delegated decision in August 2023. The agreement is binding between the parties, and any further change would require agreement from both parties.
- 5.11. Councillors should note that, despite this obligation being in place, the tenant could choose to close the centre if it is unviable. As set out in paragraph 4.13. above legally, the Council has limited management 'step-in' rights, in this scenario, unless the venue closes for a minimum of two days. However, even

in this situation, should the leaseholder then decide to step back in and manage the site again, the Council, if it had stepped in, would have no option but to remove itself from the centre. Therefore, the Council stepping in is not an option under the current lease arrangements.

- 5.12. Whilst the solution outlined in 5.9 and 5.10. above does not permanently secure the future of KLV or prevent its closure, it prevented the immediate closure of the building, and has provided time for the Council's tenant to consider other operators it may wish to work with, and for the Council to undertake the Options Review which is the subject of this report.
- 5.13. The Council is not currently in a position of direct control, such that it can take on the long-term management of KLV, with the site being in control of the Council's tenant PLMS.
- 5.14. The KLV site is run independently as a commercial operation. Taking on the responsibility for running such an enterprise would risk setting a precedent for the Council and would not be financially prudent.
- 5.15. Whilst the Council has limited control over Phoenix assigning the lease in its entirety, it has some control on subletting to another third party. These controls are found in the lease and regulated by landlord and tenant laws. At this time PLMS has not given any indication to the Council that it is considering a sub-let of all or part of the site. Should it do so then the lease allows for assignment to another party and that the Council's consent cannot be unreasonably withheld.
- 5.16. Should the Council obtain control of the site in the short term e.g. through a voluntary surrender of the Phoenix lease, then, as set out in the Options Review, it has the following options for delivery of services in the short term:
  - **Do nothing**
  - **Manage the site and its services in-house:** the services are delivered through direct management of facilities through Council employed frontline staff.
  - **Procure an external contractor** (with management contract and services specification, similar to existing arrangements with Freedom Leisure and Places Leisure): the Council would retain strategic control of the service and outcomes via its service specification. The responsibilities of each of the parties are defined within a contract. Specifications are output based, with the contractor providing method statements which form part of the contract, detailing their approach to achieving the specification requirements and performance outcomes.
  - **Establish a Local Authority-Controlled Company (LATC)** to manage the site: The Council would establish an 'arm's length' organisation to run the facilities and services on its behalf.

5.17. It is important to recognise that the options set out above are only possible if the Council is in control of the site which presently it is not. It is also possible that the current leaseholder could implement one of the following options, which are outside of the Council's control:

- PLMS decides to continue operating the site beyond the interim agreement and the terms of the lease are re-negotiated. Under this option the Council could look to remove the current management schedule and implement a new Service Level Agreement, which could work in a similar way to existing leisure management contracts it has for other sites it owns. The Council would need to vary the lease to ensure that if there was a breach of the SLA and it was terminated, the lease would also end, otherwise the Council would be in a similar situation with no control over the premises other than enforcing the SLA.
- PLMS walks away from the lease (i.e. goes into administration). It is possible that administrators would surrender the lease to North Northamptonshire Council, however they would be in control of the premises during the period of administration and could decide to assign the lease. The consent of NNC would be required in this situation however this cannot be unreasonably withheld. The Council would also inherit the building in its current condition, which is a risk that the Council would need to manage
- The lease could be sold on by PMLS (assign the lease to another person/company), this cannot be done without the Council's permission, although this is fully qualified, and the Council cannot unreasonably withhold consent.
- The leaseholder could bring in an established leisure operator to run the venue for a rental income (similar to the previous agreement with CCS).

5.18 The Council's other leisure management contracts end in 2027/28 and a management options appraisal for these contracts will be completed in the Autumn of 2024. If KLV were to come back into the Council's full control prior to this date, then it would need to be considered alongside the other contracts as part of the wider appraisal.

5.19. Consequently, the solutions outlined above in paragraph 5.18. and evaluated in the Options Review, are only available **if the site came back into Council control.**

5.20. Should the site come into the Council's control, for each of the options, in-house management, external contractor commissioned by the Council and Local Authority Trading Company an assessment is made in the Options Review against the following criteria:

- Delivery model description and characteristics assessed against ability to deliver local strategic outcomes; quality of service and customer

satisfaction; facility management and operational risks; staffing implications and the Council's influence and control;

- advantages and disadvantages of each model
- risks associated with each model;
- revenue impact of each model;
- timescales and set-up costs for each management model

- 5.21 All three options would result in additional projected operating costs up to £484,000 to the Council, over and above the current £357,362 grant provided. The option that would incur the least additional cost is the procurement of an external contractor, at an estimated £254,857. Councillors should not that these are the projected costs at this time and the actual costs may differ at the time the circumstance arises.
- 5.22. These financial projections are based on the financial information relating to the trading position of Compass (for the current facility mix) and the fact that the site was operating at a trading loss. Financial performance information from PLMS is not yet available given the trading company has only been operating the site since 1<sup>st</sup> September 2023.
- 5.23. In addition to these extra operating costs the Options Review provides estimated mobilisation costs for each option. An LATC could cost the Council £476,000 to set up. Procurement of an external provider and transferring to in-house delivery will incur internal staff, project and management costs but are likely to be subsumed within existing corporate resources, other than any requirement for additional condition surveys.
- 5.24. None of these additional costs have been budgeted for in 2024-25 given that the Council does not have control of the site. If control was handed to the Council i.e. it had absolutely no choice, even the option to procure an external provider is not financially viable for the Council at this time.
- 5.25. The highest risk would rest with the Council with the option of an in-house delivery model, largely due to higher staffing costs and the least risk with the procurement of an external contractor.
- 5.26. Both procurement of an external contractor and setting up of an LATC will take at least 12 months lead in time. Transferring the site to in-house delivery has the least lead in time at circa 6 months.
- 5.27. The projected costs are based on assumptions made and relevant at the time of presenting this report and are subject to fluctuation. The projected costs also assume continuation of the current facilities in their current form. It is expected that all of the management options above would look to develop the facility and there are opportunities to improve the financial position as a result. However, different operators have varied experience and therefore may recommend a number of different solutions that are not possible to predict at this stage. Consequently, the forecast for the management options is seen as a 'base' position. There are opportunities to grow the conferencing and events

side of the business again and, for example, to improve and re-open the children's soft play facility.

- 5.28. The timescales and set up costs outlined above are also based on the Council having sufficient notice to undertake standard procurement procedures for a short-term solution that would then tie into the end date of the other Council leisure contracts (2027/28).
- 5.29. The Options Review also details the solutions open to the Council should PLMS choose to surrender or sell the lease with a limited notice period and the Council therefore requires a quick management solution to avoid any site closures. These options are:
- **Do Nothing**
  - The Council **directly manages the service**
  - The Council makes a direct award to an **operator to manage the service** for a short-term period (2-3 years), whilst the Council assesses and agrees the long-term management solution and, if applicable, procures a new operator.
- 5.30. The strengths, weaknesses and risks of the in-house and external contractor options identified in sections 6 and 9 of the Options Review still apply under the emergency arrangement. However, with the external contractor taking the contract on at short notice, it is likely that the commercial terms and conditions would be on an open book basis with the fees including a 'management fee' and 'support service' cost in the region of 8% - 10% of turnover. Therefore, more risk would stay with the Council compared to the contract award goes through a full procurement process.
- 5.31. Informal, confidential, generic operator feedback on other contracts has indicated that there are organisations who have the capacity to take on a short-term contract at short notice.
- 5.32. If KLV were to come under Council control, then the longer-term management model should be reviewed alongside the Council's other leisure facilities. The reasons for this are:
- The Council can ensure the services are delivered across the whole portfolio to a set of minimum requirements;
  - Greater economies of scale can be achieved with a larger contract should the decision be for an out-sourced model;
  - Consistency in quality-of-service delivery across all leisure venues in the Council area, should an in-house model be chosen.
  - Programming can be developed that maximises capacity and use across all centres;
  - Pricing will be consistent across all centres, maximising accessibility;
  - The Council can ensure investment is consistent across all leisure venues.
- 5.33. This piece of work will also consider other longer term management solutions for KLV, such as Community Asset Transfer or long lease. This is a similar

arrangement to the current arrangement; however, any future lease would be structured differently and be coterminous with a service contract with greater influence on areas such as community outcomes.

- 5.34. It should also be noted that PLMS are determined and are working extremely hard to rebuild the business at KLV. This has resulted in over £250,000 of capital investment in the site over recent months which has included:
- Replacement of 30 fire doors and major repairs to existing doors;
  - Repaired and replaced all faulty smoke dampers;
  - New scoreboard installed for sports hall;
  - Investment in new gym equipment and refurbishment for the Balance Health Club

## **6. Next Steps**

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- 6.1. Officers will continue to work with PLMS to ensure KLV remains open and providing valuable services to local communities.

## **7. Implications (including financial implications)**

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### **7.1. Resources, Financial and Transformation**

7.1.1. The original underlease committed the Council to make an annual contribution towards the cost of operation, promotion and management of the sports facilities, at that time at a cost of £153,777, and has been adjusted each year to reflect inflation.

7.1.2. The Council currently pays in excess of £300,000 per annum (£328k forecast for 2023/24) towards the Sports Facilities and £30,000 towards the theatre.

7.1.3. In order to understand the financial impact of each management model set out in the Options Review, there are key areas where income/expenditure differs that can be assessed with confidence, these include:

- Each model needs further assessment in relation to the Medium-Term Financial Plan, the impact on revenue and capital budgets;
- VAT relief and irrecoverable VAT;
- Business rates (NNDR) relief;
- Staffing terms and conditions;
- Central cost allocations;
- Profit/surplus;
- Commerciality on fitness and swimming income.

7.1.4. The potential revenue position of each management model has been based on information provided by operators of the site in confidence. The assumptions made by Max Associates in projecting the potential operating costs for each management model against the current operations are included in Appendix 2 of the Options review.

7.1.5. It is expected that the external contractor will require the lowest Council subsidy., but even this results in additional cost to the Council of £255,000 which is not financially viable for the Council.

7.1.6. Projected Operating Costs for each Management Model are shown below:

	In-House	External Contractor	LATC
Balance (Health & Fitness)	£1,132,608	£1,132,608	£1,132,608
Arena	£316,780	£316,780	£316,780
Theatre	£422,225	£422,225	£422,225
Conference Centre	£680,787	£680,787	£680,787
<b>Total Income</b>	<b>£2,552,400</b>	<b>£2,552,400</b>	<b>£2,552,400</b>
Payroll	£1,276,200	£769,928	£769,928
Management/Admin/Overhead	£109,356	£109,356	£120,292
Cost of Sales	£260,733	£247,696	£260,733
Departmental Costs	£320,591	£320,591	£320,591
Utilities	£816,162	£816,162	£816,162
Business Rates	£169,984	£33,997	£33,997
Insurance	£52,904	£52,904	£52,904
Maintenance	£208,848	£208,848	£208,848
Other Costs - incl. Irrecoverable VAT	£439	£239,434	£239,434
<b>Operational Expenditure</b>	<b>£3,215,217</b>	<b>£2,798,916</b>	<b>£2,822,888</b>
Central Support Costs (HR, finance etc.)	£178,668	£127,620	£255,240
Surplus/Profit	£0	£102,096	£51,048
<b>Total Expenditure</b>	<b>£3,393,885</b>	<b>£3,028,632</b>	<b>£3,129,176</b>
<b>Deficit</b>	<b>£841,485</b>	<b>£476,232</b>	<b>£576,776</b>
NNDR Relief - Cost to Council	£0	£135,987	£135,987
<b>Total Cost to Council</b>	<b>£841,485</b>	<b>£612,219</b>	<b>£712,764</b>
Current Grant Payment	£357,362	£357,362	£357,362
<b>Increased cost to NCC</b>	<b>£484,123</b>	<b>£254,857</b>	<b>£355,402</b>

## 7.2. Legal and Governance

7.2.1. Whilst the lease granted to PLMS contains a step-in right for the Council to manage the facility, this is only a short-term provision, requiring the sports facility and theatre, to close first, and does not include the rest of the site and does not provide a long-term sustainable option. The Council would not have



control of the premises. To take control back PLMS would have to agree a surrender of the lease.

- 7.2.2. There is a legal framework governing the procedures and principles for the award of public contracts (for goods, works and/or services), which fall within the scope of the rules and exceed specified financial values. Accordingly, the public procurement regime needs to be considered in the options analysis for the future delivery of the facilities.
- 7.2.3. The Council has a duty of best value and therefore it must ensure that it receives this when considering management options for KLV, both in the short term if it were to obtain control of the site and in the longer term.
- 7.2.4. Decisions must be rational and reasonable considering all the facts in the case. If a decision is made that does not consider all facts and implications for the local authority, then it will be subject to challenge, legal and/or financial. It is clear from recent well publicised examples of poor governance in local authorities that just because a Council can do something does not mean that it should.
- 7.2.5 In making decisions Councillors must ensure that they consider the circumstances and relevant information presented to them as decision makers; this supports rational and reasonable decision-making having consideration of the facts in the case. Where a decision is made that does not consider all facts and implications for the local authority, that decision may be subject to challenge, legal and/or financial. Recent examples of poor governance have highlighted the importance of this in decision making.

### **7.3. Relevant Policies and Plans**

- 7.3.1. Working towards solutions that keep KLV open in the immediate and longer term support the Council's corporate plan priorities and key commitments:
- Active and Fulfilled Lives: improve the accessibility and use of leisure culture and sport;
  - Thriving Places: strengthen the cultural identity of towns. Villages and rural communities;
  - Connected Communities: respect, empower and engage our communities; listen to our communities and give them a greater say in the future of their areas.

### **7.4. Risk**

- 7.4.1 The risk matrix below highlights some of the key risks that the Council will need to consider in the future management model for KLV. Each risk has been given a red, amber or green rating, based on whether the risk will remain with NNC.

Red – All risk remains with the Council

Amber – Some risk can be transferred, NNC has reduced risk

Green – Risk can be transferred, least risk posed to NNC

<b>Risk to NNC</b>	<b>In-House</b>	<b>LATC</b>	<b>External Contractor</b>
<b>Achieving income projections</b>	All risk with Council	If it fails risk ultimately sits with the Council	Income risk transfers to operator, but in a major event e.g. Covid or energy price increases, operators will seek support from Council
<b>Managing operational expenditure</b>	All risk with Council	If expenditure exceeds projections and financially the LATC fails risk ultimately sits with the Council	Some expenditure risk transfers to operator
<b>Utility tariff</b>	All risk with Council	All risk with Council	All risk with Council – any leisure contract procured would need to have an energy benchmarking clause
<b>Utility consumption</b>	All risk with Council	LATC can take consumption risk although note above risk on expenditure	Operator will take consumption risk for the duration of the contract, if costs change as a result of increased consumption the operator would absorb this cost – this would all need to be covered within the energy benchmarking clause of any contract
<b>Repairs and Maintenance liability</b>	All risk with Council	Likely to take responsibility for day-to-day maintenance, replacement likely to be Council responsibility	Will take responsibility for day-to-day maintenance, but would not accept full-repairing lease on older buildings and any replacement would be the Council's responsibility
<b>Long term financial planning</b>	Budget set year on year and may be subject to reductions with changing priorities of council or central government	Typically funding agreed for short term 3-4 years	Whether payable to or from the Council the management fee is guaranteed for the contract period (subject to contract conditions)
<b>Services are delivered in line with</b>	Locally focused and ability to work better across departments,	Can set out requirements, outcomes and KPI's	Can set out requirements, outcomes and KPI's within services

<b>strategic priorities</b>	direct control of services	within services specification	specification but typically are more corporate in their approach. Any change in Council priority may have a cost if it significantly changes the original service specification
<b>Pandemic Risk</b>	All risk with Council	Will require specific clauses, with risk remaining with council	Will require specific clauses, with risk remaining with council
<b>Pensions</b>	All risk with Council. Currently no staff are in the LGPS, however any transferring staff would be eligible to transfer into the LGPS.	Will not accept risk associated with LGPS contributions, however no current staff are in the LGPS, therefore limited risk to the Council	Will not accept risk associated with LGPS contributions, however no current staff are in the LGPS, therefore limited risk to the Council
<b>NNDR</b>	Full NNDR payable, therefore no risk of losing relief	Risk on loss of NNDR likely to remain with Council	Risk on loss of NNDR likely to remain with Council
<b>VAT Relief on income</b>	Leisure income treated as 'non-business' – minimal risk of change	Risk on loss of VAT Relief likely to remain with Council	Risk on loss of VAT Relief likely to remain with Council
<b>Council reputation</b>	Council has full control of service and PR	If unsuccessful it could harm Council reputation	Council has control over service delivery through specification/contract. If they underperform it would cause issues for the council
<b>Staffing Costs</b>	All staff transfer to NNC terms and conditions which will be more expensive. Higher pension contribution rate for all staff.	Staff will remain on current terms and conditions. New staff terms and conditions will be comparable to current, can be more commercial than in-house management but need to be acceptable to the Council	More commercial approach, staff transfer on current terms and conditions, new staff terms and conditions will be comparable to current

7.4.2. The failure of leisure providers funded or commissioned by the Council due to rising costs, is already recorded in the Communities and Leisure risk register.

7.4.3. The reaction to the announcement by CCS of the proposed closure of KLV during 2023, from site users, stakeholders, businesses and the wider community demonstrated the importance of KLV. As such there is a risk to the reputation of the Council should the site be at renewed risk of closure.

7.4.5. The Council is not currently in a position of direct control of the site, such that it can take on the long-term management of KLV, with the site being in control of the Council's tenant PLMS.

## 7.5. **Consultation**

7.5.1. Whilst there has not been any formal public consultation into the recommendations in this report, as information remains commercially sensitive, there has been engagement with the KLV Support Group by Max Associates and along with discussions with PLMS strategic managers and site managers at KLV.

## 7.6. **Consideration by Executive Advisory Panel**

7.6.1. This issue has not been considered by an Executive Advisory Panel as it is not a policy or strategy.

## 7.7. **Consideration by Scrutiny**

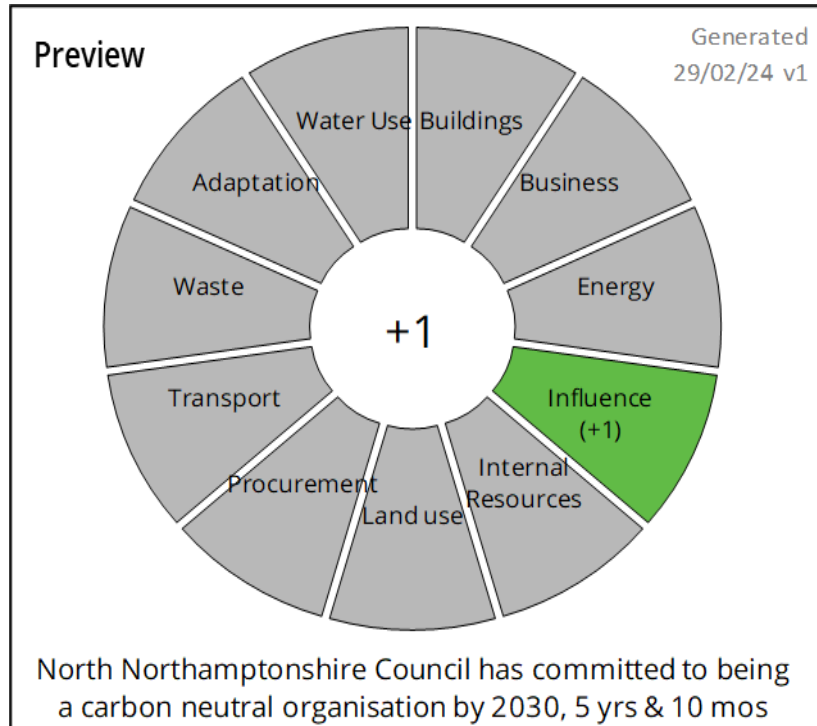
7.7.1 This issue was considered by the Place and Environment Scrutiny Committee on 25<sup>th</sup> March 2024. In addition to the recommendations set out under section 3 of this report, the Scrutiny Committee wished to emphasise the great importance of KLV to the local community, that PLMS should be encouraged to engage with their users, Ward Members, town and parish councillors and other local stakeholders and further recommends to the Executive that the viability of the Council being able to run the site be reviewed, at regular intervals, based on up-to-date financial and other relevant data from PLMS.

## 7.8. **Equality Implications**

7.8.1. No Equality Assessment has been undertaken as no change to the current lease and operational arrangements at KLV are being recommended at this stage.

## 7.9. **Climate and Environment Impact**

7.9.1. A climate change impact assessment has been undertaken (**Appendix B**) and a positive benefit from influence the Council has through communication and engagement with the current site operators / leaseholders influence on their energy and building efficiency can be brought to bear through routine grant monitoring arrangements.



## 7.10. Community Impact

7.10.1. The community support for KLV was evident in the volume of correspondence the Council received as a result of the threat of closure in 2023. Comments received highlighted the impact closure would have on physical health, mental health and wellbeing of users, and particularly residents who are less able, elderly and recovering from illness or injury; and on the local economy which benefits from visitors to the theatre and the wider site.

7.10.2. The agreed interim solution which has kept the site open has had a positive impact on these issues, and finding a longer-term solution would fully address them.

7.10.3. The site will only continue to grow as a viable business if it is well-used by local residents, visitors and the wider North Northamptonshire community.

## 7.11. Crime and Disorder Impact

7.11.1 None identified.

## 8. Background Papers

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8.1 Report to the Executive dated August 2023.