

ANGUS COUNCIL – 23 DECEMBER 2022

CARNOUSTIE GOLF PROVISION – FUTURE ARRANGEMENTS – UPDATE

REPORT BY THE DIRECTOR OF LEGAL & DEMOCRATIC SERVICES AND THE DIRECTOR OF FINANCE

ABSTRACT

This report informs Members of a proposal put forward by CGLMC Ltd. (“CGLMC”) for future golf provision at Carnoustie Links (“the Proposal”) and asks elected members to determine what the next steps are in relation to the Proposal. The Council is being asked to consider this report and the accompanying confidential (exempt) report number 427/22 (“the Exempt Report”) which provides restricted content.

1. RECOMMENDATIONS

1.1 It is recommended that the Council: -

- (i) notes the background to this matter and in particular the timeline of events and activity since summer 2022, set out in Appendix 1 to this report and in more detail in the Exempt Report;
- (ii) notes the full content of the accompanying Exempt Report;
- (iii) notes the time constraints which CGLMC have advised the Council of, as detailed in the Exempt Report;
- (iv) considers the Proposal as detailed in paragraph 4.4 of this report and in more detail in the Exempt Report;
- (v) considers the advice of the Council’s officers and external advisers as set out in this report and the Exempt Report;
- (vi) notes that the CGLMC Proposal is not yet sufficiently acceptable or developed to enable a public consultation at this time for the reasons outlined in paragraph 5.4 of this report and therefore determines not to go out to public consultation on the Proposal at this point; and
- (vii) delegates authority to the Director of Finance to inform CGLMC of the decision made by Council.

2. ALIGNMENT TO THE COUNCIL PLAN

2.1 This report contributes as a whole to the Council Plan.

3. BACKGROUND

3.1 At a special meeting of Angus Council on 20 January 2022 the Council considered and approved the recommendations in [Report 8/2022](#) and Report 9/2022 (exempt) regarding Carnoustie Golf Provision – Future Arrangements. Amongst other things Council:-

- confirmed its strategic intent regarding the future of the golf courses at Carnoustie as set out in Section 6 of the Report, and agreed that working with partners to secure the return of The Open Golf Championship to Carnoustie on a regular basis was something to be pursued as a high priority objective over the next few months;
- agreed that 4 recommended options be taken forward and developed to inform and enable Council to make a decision on a final option for implementation. Those options were:-
 - Option 2 - New Governance Arrangements with External Investment – CGLMC Ltd, (“CGLMC”) Proposals
 - Option 3 - New Delivery Model Led and Funded by Angus Council
 - Option 4 - CGLMC Proposals but on Different Terms

- Option 5 - Seek a Shorter-Term Solution
 - agreed that a public consultation be planned for as part of the process of informing the Council's final decision on which Option to implement with the detail and timing of that consultation and the proposed consultation content to be subject to a further report to Council prior to being launched.
- 3.2 An update was provided at full Council on 30 June 2022 (report 183/22 refers) which advised Members of progress with the detailed investigation of options; sought authority to increase the funding for specialist advisors to support this work following a tendering process; and highlighted important information concerning a potential planning application which CGLMC were considering submitting to the Council which would involve separate and distinct pre-application public consultation/engagement in line with planning legislation.
- 3.3 As part of the options investigation work previously agreed Council officers have continued to work with CGLMC in order for their proposals to be further developed and better understood. A timeline is provided in Appendix 1 which sets out how the Council has worked with CGLMC (and the proposed investor) and has consistently set out our requirements for any proposal to be consulted on publicly.
- 3.4 A further report was considered by Council on 3 November 2022 (Report No 365/22) updating Members on progress with the investigation of options which the Council agreed be undertaken at the Special Council meeting of 20 January 2022. Members were advised that the Council's specialist advisers had intimated to CGLMC what they might want to include within their Option 4 proposal to explain the plans and timescales for the redevelopment and operation of Carnoustie Links. Following this, it was anticipated that the Council's specialist advisers would provide an assessment of the Option 4 proposal and, if considered sufficiently comprehensive (either in its original form or with supplements/amendments made by CGLMC after further discussion) the Option 4 proposal would be put to Council with a view to being publicly consulted upon. Due to the lack of viability of Option 2 as detailed in the Report, it was not proposed that the Council would consult on this Option. Members were advised that Option 3 and Option 5 in the Report required further time to be fully worked up therefore it was proposed that a final decision would be taken on which Options to consult on by the Council when the specialist advisers assessed they were ready to be considered.
- 3.5 On 4 November 2022, officers met with CGLMC and their advisors and the proposed Investor and their advisors at Carnoustie Golf Links. On 14 December 2022 details of the Proposal were put forward by CGLMC and supporting documentation was made available to the Council's advisors on 16 December 2022.

4. PROGRESS WITH OPTIONS INVESTIGATION & CGLMC PROPOSAL

- 4.1 As was highlighted in Report 365/22 the original Option 2 proposal has now been accepted by CGLMC as not being viable in the current circumstances and in the short term. This means that Option 4 - CGLMC Proposals but on Different Terms is the only remaining option involving CGLMC which exists at present. The Proposal described in this report and the accompanying Exempt Report is Option 4.
- 4.2 Option 3 which was a New Delivery Model Led and Funded by Angus Council has been assessed in broad terms by the Council's advisors. The conclusion reached by officers and advisors is that this Option should be regarded as a fallback option for the Council. Further detail on this is provided in the Exempt Report (427/22).
- 4.3 Option 5 which was to Seek a Shorter-Term Solution has been further assessed and is considered to be too high risk to deliver the Council's previously agreed strategic intent for the future of Carnoustie Links. Further detail on this is provided in the Exempt Report (427/22).
- 4.4 In relation to Option 4 the Proposal outlines the requirements that CGLMC and the Investor require the Council to enter into prior to 31 March 2023, as follows:-
- (i) the consent of the Council to the assignation of existing leases to a newly formed company, nominated by CGLMC (**Newco**)

- (ii) the consent of the Council to the transfer of the Golfing Business from CGLMC to Newco (including, amongst other things, transfer of the employees of CGLMC to Newco)
- (iii) amending the existing management agreement between the Council and CGLMC for the golf course operations so that the current end date for that agreement (31 March 2033) is extended:
 - to 31 March 2073 **or**
 - in terms of an option, exercisable, by CGLMC to extend for four consecutive 10-year periods, the first 10-year period starting on 31 March 2033 (i.e. to a maximum of 31 March 2073)
- (iv) agreement on the terms of a sub-licence agreement between CGLMC and Newco to allow Newco to operate the golf course on the same or similar terms to the existing management agreement (with the same extended term or extension option referred to above, being available to Newco)
- (v) agreement in terms of a Memorandum of Understanding (the **MoU**) amongst CGLMC, the Council and Newco on the key terms of a 125-year lease of the golf course in terms of either
 - a direct lease by the Council to Newco **or**
 - a head lease by the Council to CGLMC and a sublease by CGLMC to Newco

This leasing arrangement would be conditional upon a number of factors and events (not yet specified) but including, for example, the grant of planning permission for the project.

4.5 CGLMC has advised Council officers of specific time constraints they are working within to try to deliver their Proposal. These time constraints were not set by Angus Council and have arisen from commercial decisions made by CGLMC. These time constraints have necessitated this report and the Exempt Report being brought forward at short notice to a special meeting of the Council so that elected members can determine whether the CGLMC Proposal:-

- a) Is, in principle, acceptable as a potential future option for Carnoustie Links;
- b) Is sufficiently developed, clear in terms of outcomes and capable of delivering the Council's previously agreed priorities for Carnoustie Links; and
- c) Should now be included in the previously agreed public consultation on future options for Carnoustie Links.

4.6 Although the time constraints which CGLMC are working to are self-imposed and specific information on the Proposal was only received last week Council officers and our external advisors have prioritised the work required to bring this matter to elected members for a decision given the importance of the future of Carnoustie Links.

5. PUBLIC CONSULTATION ON OPTIONS & FUTURE ARRANGEMENTS

5.1 Report 8/2022 highlighted that Options 2 and 4 would constitute a disposal of open space by the Council and as such would be subject to the requirements of section 27 of the Town and Country Planning (Scotland) Act 1959. This requires the Council to publish a notice on the proposals and consider any objections raised. The report also noted that some of the options would, if implemented, be a significant change to how a major public asset would be run and managed in the future and that if the final proposals included other land not currently leased to CGLMC, both of these issues would be matters of public interest and for those further reasons, a public consultation should be carried out.

5.2 The Council consequently agreed in January that a public consultation be planned for as part of the process of informing the Council's final decision (which Option to implement) with the detail and timing of that consultation and the proposed consultation content to be subject to a further report to Council prior to being launched.

5.3 The CGLMC Proposal set out in paragraph 4.4 would represent a significant change in how a strategically important public asset of the Council would be operated and controlled over the long term and as such would require to be the subject of a public consultation process prior to being considered for implementation. Undertaking such a consultation would take a minimum of 4-5 months to complete from start to finish allowing for the preparation of the consultation information, agreement of the consultation content by elected members, the consultation period with the public, evaluation of the consultation results and reporting of those results and reaching a decision by elected members. Development and negotiation of a number of legal agreements would also require to take place assuming elected members agreed to implement the Proposal or a variation thereof.

5.4 Assessment of the information provided by CGLMC in their Proposal has been undertaken by the Council's specialist external advisors and further detailed commentary in this regard is provided in the Exempt Report. The following summary comments based on the key questions posed in paragraph 4.5 are provided to assist elected members in considering the recommendations in this report:-

a) Is the Proposal, in principle, acceptable as a potential future option for Carnoustie Links?

While some aspects of the Proposal are potentially acceptable officers and advisors have concluded that as a package the terms are not acceptable and would require further discussion and negotiation to determine whether an acceptable package could be achieved.

b) Is the Proposal sufficiently developed, clear in terms of outcomes and capable of delivering the Council's previously agreed priorities for Carnoustie Links?

While significant work has been done there is not currently sufficient clarity and certainty to be confident the Council's agreed priorities can be achieved.

c) Should the Proposal now be included in the previously agreed public consultation on future options for Carnoustie Links?

Officers recommend that the Proposal should not be subject to a public consultation at this time on the basis of the position noted in points a) and b) above and the more detailed commentary in the Exempt Report. More detailed feedback based on the commentary provided in the Exempt Report will be provided to CGLMC to explain the basis for this recommendation.

6. UPDATE ON PLANNING PROPOSALS

6.1 Since the previous reports, CGLMC and their advisors have continued discussions with officers on their wider masterplan aspirations and potential planning applications they wish to bring forward. Council officers have provided advice on the proposed approach, technical and procedural requirements and key issues to be considered as part of the planning process. Internal consideration has also been given to how best Angus Council can input to the masterplan and the resource implications, liaising with Scottish Futures Trust on potential support.

6.2 Officers have been clear from the outset that the funding and delivery of any masterplan needs to be a fundamental element in its development and through engagement explore the wider benefits to the town as a whole. This will be integral to future discussions.

6.3 A draft approach to the masterplan and planning applications has been set out by CGLMC and officers have indicated general agreement to this. Progress on moving this forward in the last few months appears to have slowed, however a meeting is scheduled early in the New Year.

7. RISKS

The main risks for the Council to consider are as detailed in Exempt Report 427/22.

8. FINANCIAL IMPLICATIONS

- 8.1 There are no direct financial implications arising for the Council at this point. However, there are potentially significant direct and indirect financial implications arising from decisions made by the Council on the future provision of golf at Carnoustie Links. The Council has incurred costs in the form of specialist advisor input to continue the work with CGLMC to date and a substantial amount of officer time has also been spent on the project in recent months.

9. LEGAL IMPLICATIONS

- 9.1 Legal implications are detailed in the Exempt Report.

10. EQUALITY IMPACT ASSESMENT

- 10.1 An equality impact assessment is not required.

Report Author: Alison Watson, Service Leader – Legal and Ian Lorimer, Director of Finance
Email Details: LEGDEM@angus.gov.uk

Appendices

Appendix 1– Summary Timeline

SUMMARY TIMELINE

May 2022	Council appoints external legal advisors following mini-competition.
June 2022	Update report to full council
July 2022	Discussions between Council and CGLMC Legal advisors.
Mid-Aug 2022	All-party meeting in person
End Aug 2022	All-party Teams Meeting – request for Council external legal advisor to set down critical path and seek confirmation from Grant Thornton what they didn't have.
15 Sept 2022	Critical path document sent to CGLMC legal advisor by Council external legal advisor with deadline for response by 30 Sept 2022, given consultation timescales
22 Sept 2022	Discussions between Council and CGLMC Legal advisors
30 Sept 2022	Suggestion of subcontracting the existing Minute of Agreement is made by the Council's legal advisor as an alternative option CGLMC may wish to consider as an initial step
2 Oct 2022	Council external legal advisor advised in writing that the deadline for receipt of a proposal for going out to consult on was imminent.
13 Oct 2022	Teams Call with CGLMC and Investor with requirement that proposal had to get fleshed out prior to a face-to-face meeting
3 Nov 2022	Update report to Full Council
4 Nov 2022	All-party meeting in person
9 Nov 2022	Call between Council external legal advisor and Investor
12 Dec 2022	Email from Council external legal advisor to CGLMC's lawyer noting timeline of events to date; highlighting that on 2 October it was mentioned that it was, at that time, "the 11th hour of the 11th hour for consultation"; and asking for an update on CGLMC's proposal
14 Dec 2022	Updated proposal sent by CGLMC directly to Council external advisor.