



APPENDICES A AND B NOT FOR PUBLICATION

Exempt/Confidential under Rule 10.4 (3)

Report of the Director of Resources

Executive Board

Date: 14th May 2008

Subject: Loan Agreement with Yorkshire County Cricket Club: Granting of Consents and Variations

Electoral Wards Affected:

Ward Members consulted
(referred to in report)

Specific Implications For:

Equality and Diversity

Community Cohesion

Narrowing the Gap

Eligible for Call In

Not Eligible for Call In

(Details contained in the report)

EXECUTIVE SUMMARY

The Council provided a loan to the Yorkshire County Cricket Club (YCCC) in December 2005 to enable them to purchase the Headingley cricket ground. Under the loan agreement, the club is required in a variety of circumstances to seek the Council's consent or agreement to vary the contract. YCCC have approached the Council seeking consent to enable them to enter into financial and property transactions pursuant to the ongoing development of the cricket ground. The club will be seeking further consents in the near future relating to the development of a new pavilion in partnership with the Leeds Metropolitan University (Leeds Met). After assessing the impact of the proposed refinancing and related aspects upon the Council's security and the club's on-going financial ability to repay the Council's loan, it is proposed that the necessary consents and variations to the loan agreement are agreed, but the Council's position with regard to the proposed new pavilion is reserved.

1.0 Purpose Of This Report

- 1.1. The City Council provided a £9M loan to Yorkshire County Cricket Club (YCCC) at the end of December 2005. The loan agreement places a number of restrictions upon the club which require them to seek the consent of the Council in a number of matters.
- 1.2. The club has approached the Council seeking consent to enable them to enter into a number of transactions pursuant to the ongoing development of the cricket ground.
- 1.3. This paper provides information as to the club's proposed transactions and sets out issues that the Council will need to consider in deciding whether to grant the necessary consents and variations to the loan agreement with YCCC. The paper also makes proposals for the future governance of the loan agreement.
- 1.4. The attached appendices A and B contain information relating to the financial or business affairs of third parties, and of the Council, and the release of such information would be likely to prejudice the interests of all the parties concerned. Whilst there may be a public interest in disclosure, in all the circumstances of the case maintaining the exemption is considered to outweigh the public interest in disclosing this information at this time. It is therefore considered that Appendices A and B of this report should be treated as exempt under Rule 10.4 (3) of the Access to Information Procedure Rules.

2.0 Background Information

- 2.1. Following significant deliberation, the Council provided a £9M loan to YCCC at the end of December 2005. This was to enable the club to purchase the freehold of the Headingley Cricket Ground (subject to a number of ongoing conditions) from the Leeds Cricket Football and Athletic Co Ltd (LCFA). Through the loan and purchase of the ground, the club was able to meet one of the requirements of their staging agreement with the ECB which provides for test match cricket to be played at Headingley up to and including 2019.
- 2.2. The loan is to be repaid by YCCC with a fixed interest rate of 4.5% in accordance with a cash flow schedule agreed with the club and their bankers over the same period as the staging agreement. All repayments to the City Council have been made in accordance with the agreement. The outstanding principal currently stands at £8.355M.
- 2.3. The agreement provides the Council with various forms of security including a first charge over the ground and a shortfall personal guarantee. In addition, the agreement, based on best commercial practice, places a number of restrictions upon the club which either require them to seek the Council's consent or agreement to vary the contract in a variety of circumstances. These include:
 - create or agree or attempt to create a mortgage, charge or other security;
 - sell, transfer, lease or otherwise dispose of, or cease to exercise direct control over the whole or any part of any property charged to the Council;
 - erect any buildings or structures on any property owned by the Club or in which it has an interest;
 - demolish any property or any part of any property owned by the Club or in which it has an interest;
 - make any material additions to any property owned by the Club or in which it has an interest;

- make any structural or other material alterations to any property owned by the Club or in which it has an interest;
- change the use of any property owned by the Club or in which it has an interest, or any part of it;
- carry out any development (as defined by section 55 of the Town and Country Planning Act 1990);
- contract to purchase any estate or interest in any property (in addition, any estate or interest that the Club might acquire must be charged to the Council);
- make any application for planning permission;
- grant any leases, tenancies or contractual licences or give any person a right to occupy the Club's property;
- alter or vary, or agree to alter or vary the terms of any lease, or surrender or dispose of any lease or allow it to be forfeited (this applies to the Club both as landlord and tenant);
- charge any book or other debts and any other rights and claims already charged to the Council (in addition, if the Club are moving their Collection Account to another bank, the bank must provide the Council with a letter about the conduct of the account);
- enter into any financial liabilities or give any guarantees for any financial liabilities;
- incur capital expenditure in excess of 110% of the amount proposed in the agreed annual budget;
- enter into any joint venture or other arrangement whereby the Club lends or gives a guarantee or transfers assets or otherwise funds or incurs any liability whatsoever;
- amend the terms of the Catering Agreement or the Staging Agreement;
- amend the repayment terms or the pricing of the HSBC Term Debt; and
- vary the "Cash Sweep" provisions of the Facility Agreement with the Council.

2.4. In addition, the agreement provided for the City Council to appoint a Director to the board of YCCC.

2.5. The agreement requires the club to finance all costs associated with changes to the agreement or conditions to meet the terms of the agreement.

3.0 Main Issues

3.1. The club has approached the Council requesting agreement/consent in accordance with the loan documents to enable the club to enter into two significant, but related transactions.

3.2. Refinancing and extending their bank loan.

3.2.1. The club has a proposal from another bank for a loan and overdraft facility.

3.2.2. The loan would be used to replace their current loan from the club's current bank and to buy out Leeds Cricket Football and Athletic Company (LCFA) remaining interest in the cricket ground.

3.2.3. The agreement to purchase the ground provided for further payments to be made to LCFA. These are:-

- * £1M, plus RPI to buy out LCFA's interest in the ground floor of the Winter Shed within 5 years of the sale.

* £3M plus interest at base rate plus 2% to be paid by the end of the staging agreement, but should this terminal payment not be paid then LCFA would have the option to re-purchase the ground.

3.2.4. Further details of this transaction are included in the confidential appendix A.

3.2.5. The club is keen to get complete ownership and control of the ground and to minimise a future cost. In addition, this transaction is critical to the proposed pavilion development which is discussed further below.

3.3 Demolition of the Winter Shed and replacement within a temporary stand

3.3.1. The club is developing proposals with the Leeds Met for the development of a teaching facility/pavilion and media centre at the Headingley Cricket Ground on the site of the current Winter Shed. Under the loan agreement, for this development to proceed the club require the Council to grant a number of consents/variations. At this time, the club is not in a position to come forward to request the necessary consents/variations under the loan agreement with the Council for this development to proceed, and a number of matters still need to be resolved. It is anticipated that the club will be seeking the Council's consents/variations in the near future, and at that time, a report will be brought to Executive Board for the necessary approvals.

3.3.2. The proposed scheme would accommodate Leeds Met's School of Tourism, Hospitality and Events. The development will incorporate a full scale teaching kitchen as well as lecture theatres and faculty offices. The pavilion will replace the dilapidated Winter Shed and media centre. Obsolete spectator boxes and commentary boxes that no longer meet broadcaster requirements will be replaced with state of the art facilities, whilst changing rooms designed specifically for cricket will be provided for the first time. The new hospitality suites and media centre has been designed as lecture theatres and teaching spaces for use outside the major cricket matches. Offices for YCCC and Leeds Met will also be provided. A planning application for the development has been recently submitted to the Council.

3.3.3. The intention is however to take down the Winter Shed in order to reduce the construction period once planning permission is obtained, and to erect a temporary stand for a 40 day period from the end of May 2008 which will cover both the Test match and the one day international. The temporary stand will in fact provide uplift to the previous revenue forecasts by way of an additional 600 seats. They have also received positive support from the ECB for this proposal, who described the current Winter Shed as an "eyesore". This will require the club to pay the £1m (plus interest) in order to buyout LCFAs interest in the Winter Shed.

4.0 ISSUES FOR LCC

4.1. The loan agreement places obligations upon YCCC to seek the Council's consent in a variety of circumstances, as set out at para 2.3. above. In terms of considering whether to agree to any requested variations to, or any consents under, the loan agreement, then clearly a number of issues will need to be considered. Uppermost must be a consideration as to the impact that the proposed transactions might have upon the Council's loan being repaid. This is both in terms of any impact that the transactions have upon the value of the security that the Council obtained when

providing the loan, and upon the club's on-going financial ability to repay the Council's loan. However, some consideration must also be given to the need for the Club to continue to develop the ground, and to the longer term future of test match cricket at Headingley, beyond the current staging agreement. The report that members agreed in December 2005 for the original loan did identify a number of on-going risks, and these included:

- The ability of YCCC to meet the £1M (plus interest) option payment to buy out LCFA's lease on the ground floor of the Winter Shed within the required 5 year period to enable the Club to enjoy the full and unencumbered use of the cricket ground that they are seeking.
- The ability of YCCC to meet the final payment of £3M (plus interest) to retain the freehold beyond 15 years, which if not completed would allow LCFA to re purchase the cricket ground.

The proposed transactions would certainly close these two risks.

- 4.2. The Council' main security for its loan is a first charge on the ground, and this position will not be changed by either the new bank loan nor the demolition of the Winter Shed. However, it is important that the Council has confidence in the ability of the club to meet its financial obligations, including its repayments of the Council's loan. For the last two years the club has recorded surpluses: £276k in 2006 and £336k after taxation in 2007.
- 4.3. Looking forward, the club has produced a cash flow forecast covering the period 2008- 2020 which includes:
 - forecasts of income and expenditure
 - the repayment of LCC's loan in accordance with the agreement, and
 - the repayment of the new bank loan
- 4.4. The club's subsequent cash profile does show the club maintaining a positive cash flow position over the period. Further information as to the club's cash forecast is included in the attached confidential appendix B. The club's forecasts for income and expenditure are inevitably based on a series of assumptions, but in essence largely reflect current activity levels taking account of known developments, but also some on going development of existing income streams. Within these parameters these forecasts are considered reasonable.
- 4.5. The report to the meeting of the Executive Board on the 23rd December 2005 summarised the main risks at that time of providing a loan to YCCC. Those that continue to be relevant include:
 - The financial ability of YCCC to meet its loan repayments to the Council as well as meet its other financial commitments.
 - The vulnerability of YCCC income streams, which could be affected by a variety of factors over the life of the loan, for example the popularity of cricket, the weather, and the maintenance of commercial contracts at their current levels. The Club do have in place ticket refund insurance to cover the effect of lost ticket revenue due to weather.
 - That the Council may have to call in its charge on the cricket ground and/or personal guarantee should YCCC default on its loan repayments with the possibility that the Council may not be able to realise sufficient monies to cover the loan outstanding at that time, with the result that the Council would need to service any outstanding debt.

- The vulnerability of the staging agreement to termination by the ECB in the case of default by YCCC of its obligations under the agreement.
- Factors that could impact upon the operation of the cricket ground from either other parts of the stadium complex or external to the ground.
- Failure to attract funding for the necessary development of the ground, which could impact on the ability of the Club to maintain test match cricket beyond the term of the current staging agreement.

4.6. Additional risks that the proposed transactions bring include:

- The financial position of the club will be reliant upon the generation of higher levels of income
- The club's financial position will be vulnerable to changes in interest rates, although they are considering hedging options with their bankers.

5.0 Implications For Council Policy And Governance

5.1. As previously mentioned the loan agreement does place a number of obligations upon YCCC to seek the Council's consent in a variety of circumstances, as set out at para 2.3. above. Given the significance of the consents and variations associated with the club's proposed transactions, and particularly the potential impact upon the Council's security, it is appropriate for this matter to be dealt with by the Executive Board. However, given the range of potential consents, it is suggested that consents or variations to the loan which do not have any impact upon the Council's security or materially impact upon the club's on-going financial ability to meet the repayments of the Council's loan are delegated to officers. It is proposed that property matters are determined by the Director of City Development and financial matters by the Director of Resources, in both instances in consultation with each other.

6.0 Legal And Resource Implications

- 6.1. Subject to the agreement of the Executive Board to the recommendations of this report, the Council's loan agreement with YCCC will be amended to include a new deed of consent and a revised deed of priorities.
- 6.2. The Council's costs in considering and granting the necessary consents and variations to the loan agreement will be reimbursed by the club.

7.0 Conclusions

- 7.1. The Council in making its loan to YCCC in December 2005 obtained significant security for its loan through both securing a first charge on the grounds and also an agreement which places a number of restrictions upon the club. These restrictions require the club to obtain the Council's consent or agreement to vary over a range of matters. In both these matters, the first charge and restrictions are designed to provide the Council with a high degree of security to ensure that its loan is ultimately paid back by the club.
- 7.2. Replacing and extending their current bank debt will clearly add to the club's balance sheet debt position, but in a sense, it is in fact recognizing the outstanding liabilities from the club's purchase of the ground and does give the club total ownership of the ground. Moreover, buying out LCFA's Winter Shed option is crucial to the proposed ground development.

- 7.3. The transactions for which consent is sought at this time, do not impact upon the Council's security, and the Council will continue to have the benefit of first charge on the ground, a shortfall guarantee and the other forms of security that it obtained with the original loan.
- 7.4. Given the nature of the club's business, increasing the club's debt does expose the club to some increase in risk. There can be no guarantee that the club's future income forecasts will be achieved. However, the club has demonstrated their ability to develop their income streams and their future forecasts, appear to be reasonable, but in addition they do provide a margin to cope with potential fluctuations, as does the new overdraft facility.
- 7.5. Whilst the transactions to which consent is sought at this time, do not impact upon the Council's security for its loan, nevertheless, they do have a potential impact upon the club's financial position, and therefore do expose the Council to some additional risk in terms of the ability of the club to repay the Council. Nevertheless, it is considered that this additional risk is reasonable and is worth taking in order to assist the club to develop the Headingley cricket ground and to secure the future of test match cricket for Leeds in the longer run. Given this, it is the recommendation of this report that the Council grant the necessary consents and variations to the current loan agreement to enable the club to progress the following transactions.
- re-financing their current bank loan, and extending it to finance the outstanding payments to LCFA
 - exercising the right to buy out LCFAs lease and option over the ground
 - demolishing the Winter Shed
 - erecting of temporary seating on the Winter Shed land.

8.0 Recommendations

- 8.1. Members of the Executive Board are recommended to:
- a) grant the necessary consents and agreements to vary the Council's loan agreement to facilitate YCCC entering into the transactions referred to in this report.
 - b) agree the proposals in respect to dealing with future requests for consents or variations under the loan agreement with YCCC as detailed at para 5.1 above.