



APPENDICES A TO E NOT FOR PUBLICATION

Exempt/Confidential under Rule 10.4 (3)

Report of the Director of Resources

Executive Board

Date: 14th January 2009

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

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 transactions pursuant to the ongoing development of the cricket ground, including the development of a new pavilion in partnership with the Leeds Metropolitan University (Leeds Met). Also, in order to assist with financing of the development, the club has asked the Council to reschedule its existing loan. After assessing the impact of the proposed transactions 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, and that the Council's existing loan is rescheduled within the repayment period of the original loan.

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. Executive Board at its meeting on the 14th May 2008 agreed to provide consents and variations under the loan agreement to enable YCCC to refinance and extend its existing bank loan and to demolish the Winter shed stand and to erect a temporary stand. The report noted that these transactions were pursuant to the ongoing development of the cricket ground, and in particular the development of the Carnegie Pavilion in partnership with Leeds Met. At the time of the previous report the club was not in a position to seek the necessary consents and approvals from the Council, and as such the Council's position on this matter was reserved.
- 1.3. This report provides an update on the transactions that were the subject of the previous report. In addition, the club has now approached the Council to enable it to progress the Carnegie Pavilion development, but is also asking the Council to consider rescheduling the Council's loan. This paper provides information as to the club's proposals 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 and to reschedule its loan to the club.
- 1.4. The attached appendices A to E 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 to E 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. In December 2005 the Council provided a £9M loan to YCCC 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 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.

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

2.4. 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. YCCC have been working with the Leeds Met on the development of a teaching facility/pavilion and media centre at the Headingley Cricket Ground, which will require the Council to grant a series of consents and to agree to a number of variations under the loan agreement. A report was submitted to the meeting of the board on the 14th May 2008 which sought a number of consents relating to property and finances. The proposed Carnegie Pavilion is on the site of the Winter Shed at the Headingley Cricket Ground which the Leeds Cricket Football and Athletic Company (LCFA) retain an interest in. When YCCC purchased the cricket ground in 2005 from LCFA, LCFA retained an interest in the ground which provides for further payments to be made to them as follows:-

- * £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. At its meeting on the 14th May 2008, the Executive Board agreed to grant the necessary consents and variations under the Council's loan agreement to enable YCCC to refinance and extend their bank debt and overdraft facility. It was the club's proposal that the loan would be used to replace their current loan from the club's current bank and to buy out LCFAs remaining interest in the cricket ground. Through these transactions the club would be able to get complete ownership and control of the ground and to minimise a future cost. In addition, the transaction relating to the Winter Shed is critical to the proposed pavilion development which is discussed in more detail below. The demolition of the Winter Shed and the erection of a temporary stand were also approved in the report to the Executive Board. At that time it was noted that the club were not yet in a position to seek the Council's consents in respect to the development of the pavilion, and as such the Council's position on matters relating to the development was reserved.
- 3.3. The club has reached a Heads of Terms agreement with the Leeds Met for the development of a teaching facility/pavilion and media centre at the Headingley Cricket Ground. The scheme would be undertaken and managed by the Leeds Met, and planning permission has been granted. The 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.
- 3.4. The development would involve the club leasing the required land to Leeds Met at nil cost for 125 years and the club leasing back the pavilion facility. The club's contribution to the development would be 33.3% based on the club's use of the facilities, shared and exclusive. The club has received a grant towards their contribution to the development from Yorkshire Forward. The remaining contribution would be met partly by a capital contribution from the club over four years from 2009 with the balance converted into a 20 year annualized rental. In addition, the club would make an annual contribution to the Carnegie Pavilion's servicing costs. As part of the agreement between the club and Leeds Met, Leeds Met would take a full voting seat on the board of YCCC.

Further details of the pavilion development and its funding are included in the confidential appendix A.

- 3.5. It was the club's anticipation that following the Council's approvals, the new loan would progress and that the Winter Shed stand would be demolished and a temporary stand erected at the end of May 2008. This would then enable the Carnegie Pavilion development in partnership with Leeds Met to be progressed, with the club seeking the necessary consents and agreements from the Council, under the loan agreement, at the appropriate time. In the event, on going consideration by the bank of the new loan continued and in July 2008 the club was informed that the loan offer was withdrawn.

- 3.6. Buying out LCFAs option on the Winter Shed is critical to the Carnegie Pavilion development. In addition, the club has incurred significant costs relating to the aborted loan and is forecasting further costs to be incurred to progress the proposed transactions, including the Council's own costs which the club are responsible for in accordance with the agreement. The position is complex with a variety of parties being involved. The programme assumes a start on the main construction commencing in late January 2009 with completion expected by April 2010. In order to protect the main construction program it was agreed in October 2008 to grant a number of property and financial consents under the loan agreement to allow the early demolition of the Winter Shed. The club has subsequently completed the buyout of the LCFA Winter shed lease and the demolition of the stand is underway. The cost of this is met by two loans to the club from the ECB, however, one of these loans is temporary and has to be repaid to the ECB during 2009, and as such has to be refinanced. The other loan is to be repaid over the four years from 2010 from additional TV revenues. In order to bridge the funding gap YCCC have requested that the Council consider rescheduling repayment of the original £9m loan, over the remaining life of the loan. This would mean the Council reimbursing the club the principal payments of £1.1m that it has made up to the 31st December 2008 and thus the full amount of the original loan being repaid over the period 2009 to 2020, in accordance with the profile of the original loan. This would then be used to refinance the ECB loan that is due to be repaid during 2009, and enable the club to meet the costs associated with the transactions. These transactions are further detailed in the attached confidential Appendix B.
- 3.7. As mentioned above, through exercising its buyout of the LCFA option on the Winter Shed, the club has been able to progress the demolition of the Winter Shed in preparation for the construction of the new Carnegie Pavilion. However, within the original sale agreement between YCCC and LCFA, LCFA are able to require the terminal payment to be made should the Winter Shed site be used for any other purpose than cricket, which arguably it is being a media centre and teaching facility. Through negotiations, between YCCC and LCFA, an agreement has been proposed whereby the end date upon which YCCC has the option to make the terminal payment is brought forward from 2019 to September 2013, and in addition YCCC will make interest payments on the outstanding sum over the period to that date; previously interest was being rolled up. Also, should YCCC not make the terminal payment in 2013, LCFA will have then have the option to repurchase the ground for a lower price than that provided for in the original sale agreement. This option would also be apply should the club become insolvent at any time prior to September 2013. Further details are provided in the confidential appendix D.

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 2.2. 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 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.
- 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.

The proposed transactions would certainly close the first risk, and contribute to reducing the second risk. It is quite clear that without development, the likelihood of Headingley retaining test match cricket beyond the current staging agreement cannot be regarded as good.

- 4.2. In terms of assessing any impact that the transactions have upon the value of the security that the Council obtained, and upon the club's on-going financial ability to repay the Council's loan, the Council has obtained external legal and financial advice.
- 4.3. The Council's main security is its first charge on the ground. This position will not be affected by these transactions. However, under the proposed lease for the pavilion development, Leeds Met would be granted a 125 year lease from YCCC. In essence, in the event that the Council had to realize its first charge on the ground, the Council would be faced with a "sitting tenant". The latest valuation undertaken on the alternative use basis does confirm that the value of the Council's security in these circumstances would be affected. Further details are included in the confidential appendix C. The shortfall personal guarantee that the Council obtained at the time of the original loan would not be affected.
- 4.4. Rescheduling of the Council's loan as requested by the club will clearly increase the amount of the loan outstanding to the full amount at the commencement of 2009; although the proposal is that it is still fully repaid within the original loan period.
- 4.5. The proposed agreement between YCCC and LCFA in respect to bringing forward the end date for the terminal payment option does require the Council's consent. In one sense, bringing forward the end date for the terminal payment to 2013 is just advancing an issue that would always have had to be dealt with if YCCC are to maintain their ownership of the Headingley Cricket Ground beyond 2019, but it does have implications for the Council, in that loss the loss of ownership of the ground would have implications for the Council's security and the club's ability to repay its loan. The Council has obtained assurances that the terminal payment will be made, and these are further discussed in the confidential Appendix D.
- 4.6. Given the above, and especially the impact upon the value of the Council's first charge, it is all the more 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. The club's repayments of the Council loan are up to date, and for the last two years the club has recorded surpluses: £276k in 2006 and £336k after taxation in 2007.
- 4.7. Looking forward, the club has produced a cash flow forecast covering the period 2008 - 2020 which includes:
 - forecasts of income and expenditure

- the proposed contribution of the club towards the pavilion development spread over four years, commencing 2009,
- the new pavilion's forecast income and expenditure,
- the repayment of LCC's loan in accordance with the proposed rescheduling, and
- the repayment of the club's existing bank loan

4.8. 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 E, together with sensitivity analysis. The club's forecasts are inevitably based on a series of assumptions. In the case of the club's core or on going income and expenditure forecasts without the pavilion development, these are based upon 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. In the case of the pavilion development, whilst the expenditure forecasts can be assessed with a degree of certainty, the income forecasts by their nature are somewhat more difficult to evaluate. The Council's external financial advisors have reviewed the club's income forecasts for the pavilion development. Whilst recognizing that there is perhaps not the market research available which demonstrates the level of local or regional demand for the facilities being provided, the club's forecast cash flows do provide a level of margin such as to not to require a level of sales from the new facility which would be considered clearly unreasonable in the short to medium term. In addition, the club has reduced their proposed pricing structure for the Pavilion from that initially developed to reflect the current economic outlook and benchmarked figures from other grounds. The club's income assumptions for the Pavilion include in 2009 the pre-sell of debenture and premium membership packages to commence for the 2010 season. They are looking to take a deposit from all subscribers in order to secure their seat, and the club has said that there has already been significant interest in the scheme and over 100 people have pre-registered so far. The sensitivity analysis looks at the new major revenue streams from the Pavilion and suggests that YCCC can operate within an overdraft even at between 40% and 50% drop in target sales of seats/packages.

5.0 Implications For Council Policy And Governance

5.1. There are no specific implications for Council policy and governance.

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. Although a Heads of Terms agreement has been agreed between Leeds Met and YCCC, it is understood that the final form has not yet been signed, and it is proposed that the Council's consent to this be delegated to the Director of Resources in consultation with the Director of City Development and the Assistant Chief Executive (Governance) subject to details being in accordance with those described in this report.

6.3. 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 the agreement 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. The pavilion development in partnership with Leeds Met does provide an important opportunity to the club to develop the Headingley Cricket Ground and to secure the continuance of test match cricket in Leeds beyond the current ECB staging agreement. The proposed funding from Yorkshire Forward also represents a significant opportunity to assist the club in their ambitions.
- 7.3. Whilst the pavilion development does have an impact upon the value of the Council's security, the Council will continue to have the benefit of a shortfall guarantee.
- 7.4. Clearly given the nature of the club's business, expanding the income base does potentially expose the club to some increase in risk. As such there can be no guarantee that the club's future income forecasts will be achieved. However, the club have demonstrated their ability to develop their income streams and their future forecasts, including those associated with the new pavilion appear to be reasonable, but in addition, certainly in the medium term, they do provide a margin to cope with potential fluctuations.
- 7.5 Overall, the Carnegie Pavilion development should improve the club's financial position, and thus their ability to repay the Council's loan. Whilst the transactions to which consent is sought at this time, do not impact upon the Council's security for its loan, nevertheless, bringing forward the terminal date does expose the Council to some additional risk. 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 term. 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:
- all necessary property consents and variations associated with Carnegie Pavilion development, including Leeds Met being given a seat on the board of YCCC,
 - the new agreement between LCFA and YCCC regarding the terminal payment,
 - receipt of grant aid from Yorkshire Forward,
 - rescheduling of the current Council loan as described above.

8.0 Recommendations

- 8.1. Members of the Executive Board are recommended to grant the necessary consents and agreements to vary the Council's loan agreement, including the rescheduling of the loan, so as to facilitate YCCC entering into the transactions referred to in this report pursuant to the Carnegie Pavilion development, with further delegations as outlined in para. 6.2.

Background Papers

- The Council's Loan Agreement with Yorkshire County Cricket Club
- Executive Board Report – 14th May 2008 – 'Loan Agreement with Yorkshire County Cricket Club: Granting of Consents and Variations'
- Executive Board Report – 23rd December 2005 – 'Headingley Cricket Ground'