

26<sup>th</sup> MARCH 2013**REPORT OF THE PORTFOLIO HOLDER ECONOMIC DEVELOPMENT AND ENTERPRISE****TAMWORTH GOLF COURSE****EXEMPT INFORMATION**

n/a

**PURPOSE**

To advise Members of the current situation, and for Members to select their preferred option for the future of Tamworth Golf Course.

**RECOMMENDATIONS**

**That Members select their preferred option -**

- 1. Close Tamworth golf course and consider the longer term sustainability options.**
  - a. Authorise the release £91k revenue from contingency budgets and £20k from capital contingency budgets
  - b. Authorise the Director for Assets and Environment to secure and maintain the Golf Course
  - c. Authorise the Director Communities Planning and Partnership in consultation with the Portfolio Holder Economic Development to assess the longer term sustainability options.
  
- 2. Tamworth Borough Council operates Tamworth Golf Course for an interim period. While considering the longer term sustainability of the course.**
  - a. Authorise the release £116k revenue budget from contingency budget and £100k capital from contingency budget
  - b. Authorise the Director Communities Planning and Partnerships in consultation with the Portfolio holder Economic Development to implement interim management arrangements as described in the draft business plan
  - c. Authorise the waiver of financial regulations in respect of the procurement of a grounds work contractor
  - d. Authorise the Director Communities Planning and Partnerships and Director Assets and Environment in consultation with the Portfolio holder Economic Development to enter into a licence agreement for an external bar and catering service at the golf course subject to an appropriate business case
  - e. Authorise the Director Communities Planning and Partnerships in consultation with the Portfolio Holder Economic Development to undertake a project to review the long term sustainability of the Golf Course including the potential redevelopment of some of the course for future re-investment in golf and other services/projects
  
- 3. Appoint an interim management company to operate the Golf Course for a 12 month period. Whilst in parallel tender a new lease agreement and consider the longer term sustainability issues of the course.**
  - a. Authorise the release of £136k revenue from contingency budget and £100k from capital contingency budget
  - b. Authorise the Director or Communities Planning and Partnerships and Director Assets and Environment in consultation with the Portfolio Holder Economic Development to appoint an interim management company for

- 12months to operate the Golf Course
- c. Authorise the waiver of financial regulations in respect of the procurement of a grounds work contractor
  - d. Authorise the Director Communities Planning and Partnerships in consultation with the Portfolio Holder Economic Development to undertake a project to review the long term sustainability of the Golf Course including the potential redevelopment of some of the course for future re-investment in golf and other services/projects

## **EXECUTIVE SUMMARY**

Following the Council's Leisure Futures Review a full tender process was undertaken *inter alia* in respect of a lease for a tenant/operator at Tamworth Golf Course in 2006. Following the tender process and due diligence Tamworth Golf Centre (Jack Barker Golf) was appointed the lease and an operating agreement in 2007. The lease required the tenant to pay a rental payment to the Council, operate it as a golf course and to invest in the facilities.

The Council was advised by the tenant in 2011 that Tamworth Golf Centre was seeking to enter into a Company Voluntary Agreement (CVA) due to solvency issues and wished to re-negotiate its rental payments to the Council. A Company Voluntary Agreement was approved by the company's creditors including the Council and the Council agreed to temporarily reduce the rental charge.

Following the Cabinet decision in September 2012 the Council extended its temporary rental agreement with Tamworth Golf Centre until March 2013 and proceeded with drafting a variation to the existing lease. This variation included a permanently downward revised rental payment of £36k pa (plus 10% of turnover above £350k) to support the continued viability of Tamworth Golf Centre. This was accompanied by an agreement for the Council to invest post completion in the construction of a driving range. Tamworth Golf Centre via a successful planning application extended the time available for it to complete the mounding of the course through the tipping of inert material. The amount of material approved to tip was greatly reduced from the original planning application in 2007. The purpose of the aforesaid actions was to support the viability of Tamworth Golf Centre, complete the mounding in an expedient manner and re-focus the business on the provision of golf.

During the Christmas period of 2012 Tamworth Golf Course began to fall behind in its new reduced rental payments to the Council and also in its National Non Domestic Rate payments (collected by the Council for central government). The Council challenged the company to bring up to date its rental and NNDR arrears.

The Director of Tamworth Golf Centre announced that his company was entering into a process of liquidation on the 6<sup>th</sup> February 2013. Tamworth Golf Centre made its staff redundant on the 6<sup>th</sup> of February and instructed FRP Advisory LLP to progress the liquidation. A creditors meeting was held on the 21<sup>st</sup> March 2013. The Creditors meeting confirmed the appointment of William Turner and Michael William from FRP Advisory LLP as the joint liquidators to the company. Attendees at the creditors meeting were advised that the company had a deficit of £508,677.68 as identified in the Statement of Affairs report. Creditors were also advised that the company had very limited assets and that further asset recovery was limited, It is therefore very unlikely that creditors will receive any payments from the company in respect of their claims. The Liquidators re-numeration was approved at the meeting and the Liquidator will now finalise the winding up of the company.

The Council will seek for the lease to be surrendered via a deed of surrender or through the operation of law and is discussing this with the Liquidator with a view to finalising same in the near future.

In selecting the preferred option for the future Tamworth Borough Council must consider the strategic implications arising from the liquidation process and assess if investing in the

provision of a golf course is the best use of public funds. Given the pressures on public sector spending and ever increasing demands for public services and when considering the Corporate Priorities it is not immediately evident that providing a subsidy for golfing should be an automatic choice. Especially if this increases the chances that other potentially more important services are threatened in future budgets.

The golf market has declined significantly since 2007 and it is therefore less likely that any course operated by even the most commercially astute business could make a profit. Given the situation at Tamworth golf course it is likely that an operating loss is almost inevitable at least in the short term. The options presented have been developed so as to minimise the cost to taxpayers, and to protect other essential front line services especially in the longer term.

The Council has considered the strategic context of the situation at the golf course and has identified the following three options.

**Option 1**

**Close Tamworth golf course and consider the longer term sustainability options.**

**Option 2**

**Tamworth Borough Council operates Tamworth Golf Course for an interim period. While considering the longer term sustainability of the course.**

**Option 3**

**Appoint an interim management company to operate the Golf Course for a 12month period. Whilst in parallel tender a new lease agreement and consider the longer term sustainability issues of the course.**

See Appendix 1 for a headline options appraisal

**RESOURCE IMPLICATIONS**

The adverse cost pressures which led to the Council leasing the golf course have deteriorated further since the Council first leased the Golf Course in 2007. The Council has since 2007 coped with significant budget cuts (circa 40% of its government grant) and is facing further significant cuts going forward. The Councils capital budget has also diminished in that time and is significantly over subscribed. The scarcity of a capital budget inhibits the Councils ability to invest in regeneration and infrastructure schemes elsewhere.

The Council is assessing its longer term financial strategy to address the loss of the income from the golf course. Each of the options have short term negative budget implications in particular options 2 and 3. The Council will seek to offset these costs in part by achieving the maximum income possible from the course and associated income streams and potentially from re development options which would allow for capital and revenue re-investment, in golf and other public services. Longer term it is not sustainable for the Council to sustain a significant on going revenue cost to subsidise the golf course. The Council has identified sufficient funding in contingency budgets within the Medium Term Financial Strategy (MTFS) to provide funding for two years. Therefore under options two and three there is a requirement for a parallel project to review the longer term sustainability options for the golf course. This will require funding and should option 2 or 3 be selected a separate Cabinet paper will be brought forward to outline the nature and cost of this work.

One of the less immediately obvious resource issues but one of significant concern is the amount of existing officer time that has already been taken up to manage the current situation and the potential for officer time to be diverted from other projects and services to the management of the golf course and associated projects in the future.

Table 1 Estimated Revenue and Capital implications

	<b>Option 1</b>	<b>Option 2</b>	<b>Option 3</b>
<b>Annual revenue cost</b>	£36k rent income reduction £20k maintenance and security £35k re-development budget	£36k rent income reduction £80k subsidy	£36k rent income reduction £100k subsidy (based on a short term contract)
<b>Capital investment year 1</b>	£20k (Fencing and club house remedial works)	£100k (Course and club house remedial works)	£100k (Course and club house remedial works)

It should be noted that estimating costs has been difficult due to a lack of baseline data and the number of assumptions required to calculate costs and income.

### **LEGAL/RISK IMPLICATIONS BACKGROUND**

Liquidation is the process of winding up a company; it is different from administration in that the company is not considered to be salvageable and is to be wound up. A Liquidator is appointed and manages the process of liquidation, which includes realising the company's assets if any. In this case the Council has been frustrated by the slow pace of the liquidation process.

The Council owns the freehold to the Golf Course. It is/was leased to Tamworth Golf Centre. The Liquidator can decide if the lease holds value and seek to transfer the lease. However given the position taken by the Council as landlord and by the terms of the lease it is almost certain that it will be surrendered or disclaimed during the liquidation process.

The Council has taken legal advice on the issue of TUPE. The view from two independent employment legal advisors is that TUPE disappplies. This is because Tamworth Golf Centre has entered into liquidation which under regulation 8.7 of TUPE means that the provisions for staff transfer and continuous service do not apply (regulations 4 and 7).

Consequently should the Council re-open the course it is not obliged to transfer the ex Tamworth Golf Centre staff into the Council. However ex employees of Tamworth Golf Centre could apply for new positions created through the interim arrangements.

It should be noted that if the Council were to contract out or lease the golf course in the future to an alternative provider it is likely that TUPE could apply in that scenario. This would create a financial liability which can not be quantified at this stage, but would influence future contract costs and arrangements in particular a potential impact on pension liabilities.

Should the Council decide to re-open the Course it will need to act swiftly in order to complete the remedial works to the course and club house. It is proposed that financial regulations are waived in respect of securing a ground work contractor to complete the landscaping works required. The existing contractor has submitted a quote which based on professional opinion from our Street Scene and Asset Officers is good value for money. Given the existing contractors knowledge of the site and ability to start quickly it is recommended that they are appointed to complete the works. These works will be managed by existing staff and this will reduce capacity for any other additional work.

Under option three the Council would need to appoint an external management company on a short term contract. This would be achieved through a tender exercise. A specification is drafted but needs further development; The tender exercise would likely miss the European thresholds in terms of value therefore the process is estimated at taking a minimum of 10 weeks, from the issue of the tender to the appointment of a contractor.

### **SUSTAINABILITY IMPLICATIONS**

There are significant financial and operational sustainability issues arising from options 2 and 3 and these will need to be resolved in the period of interim management. A specific project to consider the options will be established.

With regards to the operation of the course any future management and or contract arrangements the Council will require to have due regard to environmental sustainability and impacts.

## **BACKGROUND INFORMATION**

### **Public and stakeholder consultation**

The Council has met with the Golf Club and with the staff from Tamworth Golf Centre. It has also taken feedback from blog comments and directly from letters and emails. Responses to the correspondence received has been provided individually and via public statements made in the press and on the blog. While the majority of comments have focused on historical issues relating to the tender process in 2006/7. There has also been a large number of golfers responding who have promoted the continuation of the golf course. A significant number of those feeding back have requested the Council to take on the management and invest in the club. A smaller number of responses have suggested that the Council should consider limited forms of re-development in order to support the sustainability of the course. While a few have called for the Council to look at wider re-development of the site to support economic growth or other leisure provision.

It is interesting to note that following the closure of the Course there has been an increase in people commenting that the course is not in such bad condition as previously reported in the press via letters and editorial.

### **Golf Driving Range**

The Council remains committed to a Golf Driving Range. Having assessed the investment needs of the course and club house and taking into account the feedback from the Golf Club Members the initial priority for investment will be the course. The Council will also need to consider capital investment into the club house to ensure it is fit for purpose. The potential to invest in the driving range remains and this will be part of the Council's plans and a driving range will be delivered at the earliest point possible,

### **Lead in period**

Should Members select option two the Council will seek to open the course using existing staff while recruiting for new staff. The Council could subject to approval and operational issues re-open the course on Saturday the 30<sup>th</sup> of March. The situation under option three is more complicated as a tender process would be required even for an interim 12month external operator. This will take a minimum of 10 weeks to complete. The Council could open the course using existing staff and tender at the same time but that would create unmanageable pressure on existing staff, who would be required to; do their day job, open the course and tender for the new operator.

### **Re- development options**

The Council has not yet identified a specific plan for the re-development of the course but has been investigating land values and high level options. The potential for re-development is considerable and could provide a number of strategic benefits to the town such as additional housing, employment and leisure opportunities. The potential capital receipt from the development could be used to support town centre and economic growth such as proposals for the Cultural Quarter, a new leisure centre in the town centre or the development of a Staffordshire Hoard gallery at Tamworth Castle. It could also provide the opportunity to develop further capital receipts through property and other investment and to support future revenue and capital spending on front line services.

No matter which option Cabinet choose the Council will need to actively consider the potential for re-development on the golf course site. Any project established to investigate future sustainability will need to establish to what extent this might occur.

## **REPORT AUTHOR**

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**LIST OF BACKGROUND PAPERS**

Cabinet Report 26/09/2012

**APPENDICES**

1 Options appraisal matrix

## Appendix 1

### Options Appraisal

	Option 1	Option 2	Option 3
<b>Title</b>	<b>Close Tamworth golf course and consider the longer term sustainability options.</b>	<b>Tamworth Borough Council operates Tamworth Golf Course for an interim period. While considering the longer term sustainability of the course.</b>	<b>Appoint an interim management company to operate the Golf Course for a 12month period. While in parallel tendering a new lease agreement and considering the longer term sustainability issues of the course.</b>
<b>Description/overview</b>	Option 1 would require the course to remain closed and secured. Re-development options would be considered. This could provide capital and revenue receipts to invest in projects such as the Cultural Quarter, Mercian Trail display at the Castle and leisure facilities at Gungate. The revenues generated would also contribute to the longer term financial stability of the Council and protect public services	Option 2 would see the Council take on interim management of the course for a period between 12m and 2yrs. The Council can during this time consider the longer term options including re-development of some of the course and or other management arrangements for the Course. The interim period can also be used to calibrate the longer term financial implications.	Option 3 would require the Council to tender a short term mgt' contract for the operation of the Golf Course. The Course might be required to remain closed during this period with only basic course maintenance undertaken. The Council would also need to consider a longer term lease arrangement should it decide to keep the course open past the initial 12m period. This could be considered in parallel to the re-development options. The 12m mgt' contract will also help to calibrate the longer term financial implications.

<b>Golfing implications</b>	This option would mean the closure of the Golf Course. There are other private golf clubs in the area but no other pay and play facilities in Tamworth.	The Course would be re-opened as soon as is practicable following a decision by Cabinet. The Course would be run in an optimum fashion to minimise the burden on the tax payer. The lead in time for a basic council operated facility is likely to be circa 1 week.	The Course would be re-opened however there could be a delay until the tender process is completed. The nature of the operation would be specified to a degree in the tender process. Learning from the lease with Tamworth Golf Centre will be applied and safeguards built in for example it would remain pay and play. However the companies responding to the tender will have different approaches to the operation of the course.
<b>Club facilities</b>	Closed – future facilities might include a restaurant bar, driving range etc...which could be re-established as part of a re-development package. The Council could progress with a driving range as an interim option.	The Course would be 18holes with limited club house facilities. Investment would be made into the course specifically the landscaping of the outstanding mounds. Limited investment would also be made to the Club house to ensure it is weather proof and key areas such as the pro shop and toilets are operational. A draft business plan has been developed which outlines in more detail current proposals for the operation of the course under the Councils management.	The Course would be 18holes with limited club house facilities. Investment would be made into the course specifically the landscaping of the outstanding mounds. Limited investment would also be made to the Club house to ensure it is weather proof and key areas such as the pro shop and toilets are operational.
<b>Club/customer and stakeholder engagement</b>	<p>Golf Club Members and players have urged the Council to re-open the course and local residents have raised concerns about housing or other development on the course. Some suggestions have been made in support of limited re-development especially if this was used to support golf in the long term</p> <p>Should the Council take this option a fully considered approach to public engagement and consultation would be required as part of the re development options appraisal</p>	<p>Golf Club Members and players have urged the Council to re-open the course and local residents have raised concerns about housing or other development on the course. Some suggestions have been made in support of limited re-development especially if this was used to support golf in the long term</p> <p>The Council has engaged with the Golf Club and would continue to do so in its general approach to mgt of the course. Customer surveys will also be implemented.</p> <p>In regards to the sustainability options the Council will work with the club, customers and other stakeholders.</p>	<p>Golf Club Members and players have urged the Council to re-open the course and local residents have raised concerns about housing or other development on the course. Some suggestions have been made in support of limited re-development especially if this was used to support golf in the long term</p> <p>The Council would seek to include the Golf Club Committee in the specification and tender process should it look for an external mgt company. The tender specification would require an operator to engage meaningfully with the club.</p> <p>In regards to the sustainability options the Council will work with the club, customers and other stakeholders.</p>



<p><b>Re-development options and re-investment</b></p>	<p>The Council would subject to planning and other legal considerations be able to develop all 18 holes or part thereof. This could support additional housing and employment uses and provide leisure opportunities such as a country park, leisure centre and investment in other existing schemes.</p>	<p>The Council will need to consider the potential re-development options which could include re-aligning the course (but maintaining 18 holes) to make space for re-development and consideration of moving to a 9 hole course in the future. These re-development options could provide capital and revenue income to support longer term subsidy and other investments in golf and public services.</p>	<p>The Council will need to consider the potential re-development options which could include re-aligning the course (but maintaining 18 holes) to make space for –re-development and consideration of moving to a 9 hole course in the future. These re-development options could provide capital and revenue income to support longer terms subsidy and other investments in golf and public services.</p>
<p><b>Legal implications</b></p>	<p>The lease will be surrendered or disclaimed through the liquidation process</p> <p>TUPE does not apply as Tamworth Golf Centre has gone into liquidation.</p> <p>The Council would need to undertake a number of studies to identify if re-development was appropriate.</p>	<p>The lease will be surrendered or disclaimed through the liquidation process</p> <p>TUPE does not apply as Tamworth Golf Centre has gone into liquidation.</p> <p>The Council would need to undertake a number of studies to identify if re-development was appropriate.</p>	<p>The lease will be surrendered or disclaimed through the liquidation process</p> <p>TUPE does not apply as Tamworth Golf Centre has gone into liquidation.</p> <p>The Council would need to undertake a number of studies to identify if re-development was appropriate.</p>

<b>Procurement</b>	At this stage there are no procurement issues. Consultants would be required to support technical studies as the options were considered.	The Council would need to immediately secure a ground works contractor to implement remedial works to the mounds and complete the landscaping. This would require a waiver of financial regulations  The Council may also subject to the business case wish to offer a licence to a bar/catering company to manage the bar/kitchen and function room. This would be delivered through a commercial license via normal Council property procedures.	A tender process would be needed to secure a mgt' company even on a short term arrangement. This would take an estimated minimum 10 weeks from the date of decision. It is possible that TBC staff could operate the course in the interim during the minimum 10 week tender. However this could cause capacity issues as it would involve some of the same staff.  The Council would need to immediately secure a ground works contractor to implement remedial works to the mounds and complete the landscaping. This would require a waiver of financial regulations  The Council would also need to tender a longer term lease of the course if it intends for the course to remain open past the 12m interim mgt contract.
<b>Capital investment year 1</b>	£20k (Fencing and club house remedial works)	£100k (Course and club house remedial works)	£100k (Course and club house remedial works)
<b>Revenue costs</b>	£36k rent income reduction £20k maintenance and security costs £35k re-development budget	£36k rent income reduction £80k subsidy	£36k rent income reduction £100k subsidy
<b>Summary</b>	Closure of pay and play golf. Limited revenue costs and liabilities going forward. Potential for capital and revenue income for re-investment into. Opposition to re-development plans from local residents is likely to be significant.	Maintains pay and play golf. Significant initial revenue and capital cost which is non-sustainable  Revenue costs and income are only estimated. Allows greater direct control over the service delivery and is quicker to establish  An in house operation may create future TUPE liabilities greater than those arising from an external provider Provides a limited period of time to consider in detail the future management and re-development options	Maintains pay and play golf. Significant initial revenue and capital cost which is non-sustainable  Is likely to be more costly for a interim mgt company than in house  The operator would likely need to be indemnified re income and costs could escalate  Provides a limited period of time to consider in detail the future management and re-development options



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