

To: City Executive Board
Date: 22 May 2018
Report of: Head of Financial Services
 Head of Community Services
Title of Report: Loan Guarantee re Oxford Harlequins Rugby Football Club

Summary and recommendations	
Purpose of report:	To consider a loan guarantee to Rugby Football Union in respect of a £100k loan to Oxford Harlequins Rugby Football Club
Key decision:	No
Executive Board Member:	Councillor Ed Turner, Finance and Corporate Assets Councillor Linda Smith, Leisure Parks and Sport
Corporate Priority:	Strong and Active Communities
Policy Framework:	Council's Corporate plan
Recommendations: That the City Executive Board resolves :	
<p>1. To make a recommendation to Council to provide a loan guarantee to the Rugby Football Union in respect of a loan of up to £100k to Oxford Harlequins Rugby Football Club for funding improvements to changing room facilities at Horspath Athletic Grounds, on terms agreed in advance by both the Council's Head of Financial Services and the Executive Director for Sustainable City.</p>	

Appendices	
Appendix 1	Risk Matrix

1.0 Background

- 1.1 In August 2017 Oxford City Council was approached by the Rugby Football Union (“RFU”) and Oxford Harlequins Rugby Club (“the Rugby Club”) with a proposal to invest in a brand new artificial pitch at Horspath Road as part of a wider scheme to secure a long term home base for the Rugby Club. This proposal represents a significant investment of around £1.6m from the RFU to develop the artificial pitch.
- 1.2 The wider proposal was part of a joint venture between the Rugby Club and Oxford City Athletics Club (“the Athletics Club”) to take on the management and operation of the entire Horspath Sports Ground including investment from both the Rugby Club and the Athletics Club to redevelop the existing facilities.
- 1.3 The existing buildings at the site include the current clubhouse which is leased by the Council to the Rugby Club and the main building which currently comprises changing rooms, toilets, storage and a meeting room/kitchen. The proposal from the Rugby Club addresses the changing rooms in the main building with the remainder of the building being part of a separate project with the Athletics Club.
- 1.4 The current building has a backlog of required maintenance in excess of £200,000 and is currently managed by Oxford City Council’s parks team.
- 1.5 The proposal for the artificial pitch and the redevelopment of the changing rooms go hand in hand as the club will need to be based from the site to manage the artificial pitch effectively and further develop the club in a sustainable way.
- 1.6 A 30 year lease from the Council to the Rugby Club has been completed, together with a licence for alterations covering the proposed works the specification of which has been agreed. The agreement also includes the Rugby Club bringing the premises up to the required Energy Performance Certificate (EPC) standard to meet the Council’s statutory requirements together with provision for ongoing monitoring of the works.
- 1.7 Planning consent for the All Weather Pitch has been granted by South Oxfordshire District Council and a release of a restrictive covenant (preventing development) by Oxford Preservation Trust has been completed to allow the construction of the all weather pitch to proceed. The RFU has entered an Agreement for Lease with the Rugby Club and are planning to start on site in May/June 2018 with completion by the beginning of September 2018.

2.0 The proposal for the works

- 2.1 The Rugby Club have identified that the works to refurbish the changing rooms to conform to Sport England and RFU standards will cost around £120,000. The Rugby Club have sourced local builders to undertake the works to the appropriate standard. The facility will therefore be improved at no cost to the Council although rights enjoyed by the Rugby Club as tenant and RFU as sub-tenant mean that the tenants have a right a new their leases at the end of the 30 year term under the Landlord and Tenant Act 1954.
- 2.2 The Rugby Club has already secured £10,000 external funding towards the project. In addition the Rugby Club have made a first stage application to the RFU for an interest free loan of £100k repayable over 15 years which has been provisionally agreed. The RFU require the loan to be guaranteed although this has proven difficult for the Rugby Club to confirm especially given the planned

imminent start on site which is needed to tie into the start of the 2018 playing season. The Rugby Club have therefore approached the Council to ascertain whether the Council can provide the guarantee.

- 2.3 Latest indications suggest that it would be reasonable to expect that the Rugby Club may be able to raise at least half of the guarantee from amongst its members.

3.0 Evaluation of the Request

- 3.1 Although the details of the request are currently not fully understood the principle can nonetheless be evaluated and summarised below:

Pros

- The Council's asset would be improved at no cost to the Council and should be at least equivalent to the value of the works/loan.
- The works undertaken will reduce the potential backlog in maintenance liability
- The proposal would give responsibility for better facilities at the site to the Clubs and ensure the long term sustainability of the Rugby Club and enable them to further develop their sports and associated community works
- The Rugby Club would draw down the loan on the basis of invoices provided to the RFU up to the maximum of £100k.
- The remaining Council owned pavilion currently in poor condition would be improved

Cons

- Risk of non payment of the loan by the Rugby Club and hence a call on the Council as guarantor. This would have the same effect as if the Council had given a loan in the first place. Given the financial standing of the Rugby Club it is possible that the guarantee would be unsecured although the Council will seek whatever indemnity can be reasonably obtained.
- As guarantor the Council is relatively powerless to do anything even if something is observed to be going wrong. However the conditions of granting the licence for alterations provide for the Council as landlord to monitor the works
- The Rugby Club wish to start on site by May/June 2018 and Council will be asked to approve any recommendation from the CEB which could delay the Rugby Club from securing the loan.
- The Council would need to be satisfied that the loan is being applied properly and would therefore have a mechanism for monitoring that payment was being made on time to the RFU. It is suggested that the Council require that the guarantee is reduced annually by the amount of loan repaid i.e. £6,600 per annum.
- It is unclear where the balance of £10k is to be found for the project and although there is no contingency in the Rugby Club's budgeted costs of £120k it is understood that the Rugby Club could provide for a limited

amount of unforeseen works from its own resources or alternatively make savings during the project.

- This provision of a guarantee may encourage more organisations to request Council guarantees, which would be costly to process and if agreed would have an impact on the Council's risk profile. However, the fact that the Council remains the owner of this site distinguishes this application from those of many other organisations that might make such requests.

3.2 The overall project will support the Council priorities, in particular developing Strong and Active Communities through the development plans of the Rugby Club as well as an Effective and Efficient Council by reducing maintenance obligation costs to the Council whilst maintaining the delivery of services on the site.

4.0 Financial Implications

4.1 Financial due diligence has been undertaken by Council officers on the financial statements provided by the Club and this indicates at least on paper the ability of the Club to repay £6,600 per annum to the RFU and

- a satisfactory level of gross and net profit both current and in future years.
- An adequate level of reserves

4.2 Subject to the details of the loan guarantee from the RFU the Council could in principle agree the loan guarantee. The Rugby Club also continues to canvass members of the Club to act as guarantor and should this be secured then the £100k guarantee requested from the Council may be reduced.

4.3 In order to cushion any adverse impact to the General Fund Revenue Account in the event of default by the Rugby Club and the invoking of the guarantee the Council should ensure that it has adequate cover in a specific earmarked reserve. The Council does have an earmarked reserve already which could serve this purpose.

5.0 Legal Implications

5.1 The Council is legally able to act as a guarantor of a third party loan (under the Localism Act, and other enabling legislation), although to do so the Council will clearly need to comply with its own internal authorisation process. The Council will be asked to enter into a formal guarantor agreement with the Rugby Football Union, and it would then clearly be prudent for the Council to enter into an indemnity agreement with the Rugby Club. The matter of security to protect the Council's position under this indemnity will need to be considered.

In addition the Council should consider whether the provision of the guarantee to the Rugby Club could amount to unlawful state aid.

Article 107(1) of the Treaty on the Functioning of the European Union provides that:

"Save as otherwise provided in this Treaty, any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring certain undertakings or the production of certain goods shall, in so far as it affects trade between Member States, be incompatible with the common market"

There is a possibility that such a guarantee would be considered state aid, if it was considered that the Rugby Club was an undertaking and there was a market to distort.

"Undertakings", for these purposes, are entities engaged in economic activity, which essentially means that they operate in a market where there either is, or could practically be, competition. From the information supplied in respect of the Rugby Club it is not considered that they would constitute an undertaking in state aid terms as they are not engaged in economic activity in a market where there is competition.

In regard to this matter, therefore, the Council can be confident that the proposed loan guarantee in favour of the Rugby Club should not constitute unlawful State Aid.

6.0 Risk

6.1 The risks of agreeing to this loan extension are detailed in Appendix 1

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Background Papers: None

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