

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO CABINET

18 DECEMBER 2018

REPORT OF THE CORPORATE DIRECTOR COMMUNITIES

KENFIG NATIONAL NATURE RESERVE MANAGEMENT

1. Purpose of report

1.1 The purpose of this report is to seek Cabinet authorisation that Bridgend County Borough Council (the Council) will not be renewing its Lease dated 25th January 2001 of Kenfig National Nature Reserve when it expires on 31st December 2019 and to serve the appropriate notice on Kenfig Corporation Trust. The Management Agreement dated 25th January 2001 entered into with the Countryside Council for Wales will also come to an end on 31st December 2019 and this report is to seek Cabinet authorisation to contact Natural Resources Wales (as successor to the Countryside Council for Wales) to inform them that the Council will be vacating Kenfig National Nature Reserve on 31st December 2019.

2. Connection to corporate improvement objectives/other corporate priorities

2.1 This report assists in the achievement of the following corporate priority/priorities:

- Supporting a successful economy – taking steps to make the county a good place to do business, for people to live, work, study and visit, and to ensure that our schools are focused on raising the skills, qualifications and ambitions of all people in the county.
- Helping people to be more self-reliant – taking early steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services.
- Smarter use of resources – ensuring that all its resources (financial, physical, human and technological) are used as effectively and efficiently as possible and support the development of resources throughout the community that can help deliver the Council's priorities.

3. Background

3.1 Kenfig National Nature Reserve (KNNR) comprises approximately 1300 acres of managed coastal sand dunes and wetlands on coastline between Porthcawl and Port Talbot and is regarded as one of the finest examples of a sand dune habitat in Europe.

3.2 Kenfig Pool and Dunes was designated a Site of Special Scientific Interest in 1953, a Local Nature Reserve in 1978 and a National Nature Reserve in 1989. Furthermore, in 2006 Kenfig was designated a Special Area of Conservation, under the EC Habitats Directive (Directive 92/43/EEC on the Conservation of Natural

Habitats and of Wild Flora and Fauna), giving the site both national and international protection.

- 3.3 Cabinet at its meeting of the 14 December 2010 authorised officers to work with Kenfig Corporation Trust (KCT) to develop alternative options for the management of KNNR. This was in order to provide sufficient flexibility to develop alternative management arrangements. The purpose of this was to enhance the quality of the visitor experience, and to secure the KNNR's future sustainability, in both financial and environmental terms.
- 3.4 Cabinet at its meeting of 16 October 2012 agreed changes to the way in which the reserve was being managed due to a lack of response from the KCT to the Council's requests to grant permission to allow a suitably experienced and qualified organisation to manage the reserve and maximise its potential as a visitor attraction.
- 3.5 Between the Cabinet meeting of 14 December 2010 and the Cabinet meeting of 11 November 2014 officers carried out a range of actions, as laid out in the November report, to support the KCT to identify a new management agent well in advance of the Council leaving the site. Unfortunately no decision from the KCT was forthcoming.
- 3.6 Cabinet at its meeting of the 11 November 2014 authorised the Head of Regeneration and Development to cease the process of investigating alternative options for the management of KNNR and to operate the KNNR in line with current agreements, prioritising the Council's statutory obligations to protect KNNR's ecological features.
- 3.7 A 5 year Management Plan was developed and submitted to the KCT in January 2015. It is based on widely researched and accepted best practice in nature conservation. It is a plan that provides detail of where human and financial resources will be deployed over the 5 year period. Throughout the term of delivering the current Management Plan and during its occupation of the site, the Council has provided 6 monthly reports on activity to the Kenfig Consultative Committee and annual reports to KCT through the Annual Liaison Meetings.
- 3.8 Since February 2015 officers from the Communities Directorate have developed and delivered a number of externally funded projects to add value to the prioritised activities within the Management Plan. At the beginning of 2015 the Council was successful in securing funding from the competitive grant of Natural Resources Wales (NRW) for a 3 year project at KNNR. Following approval of the Bridgend Local Development Strategy, the Bridgend Local Action Group also agreed that Rural Development Programme (RDP) resources could be used as match funding for the NRW grant. KNNR was included in a successful bid for funding to the Sustainable Management Scheme (SMS) which was approved in August 2018.

4. Current situation/proposal

- 4.1 The Lease dated 25th January 2001 for the management of KNNR is for a term of 21 years from 1 January 1999 and expires on 31st December 2019. It was made between (1) The Official Custodian for Charities, (2) The Trustees of Kenfig

Corporation Trust and (3) Bridgend County Borough Council and is a protected lease under the Landlord and Tenant Act 1954.

- 4.2 The Council must comply with all the lease terms and tenant covenants set out in the Lease and the Management Agreement until the date of expiry of the Lease. Therefore, the Council will have to manage and be responsible for the site until the KCT agree the handover of the keys before or on 31st December 2019.
- 4.3 Upon expiry of the Lease the Council must ensure that the site is in the state of repair and condition required by the Lease and that the Council properly vacates the site by removing all its equipment, machinery and any signage.
- 4.4 If the KCT decides there have been breaches to the repair covenants in the Lease, then they are entitled to prepare and serve on the Council, either before or after the expiry of the Lease term, a schedule of dilapidations which will set out the repairs required on the site. The Council will be obliged to carry out these repairs and pay KCT's costs in preparing and serving the schedule of dilapidations during or after the expiry of the Lease term. If a schedule of dilapidations is received from KCT, then a further report to Cabinet may be required.
- 4.5 The Lease states the Council is to remove any additional buildings, additions, alterations or improvements made to the site at the expiration of the term if so requested by the KCT and to make good any damage caused by such removal. The KCT could therefore require the Council to demolish the visitor centre building prior to the expiry of the Lease. However, the Council has had several meetings with KCT's agent and this has not been raised. Normal practice is for a landlord to give a tenant at least 6 months notice to remove any additions or alterations before the termination date. If a request is made, then an assessment of the cost will be undertaken and a further report to Cabinet if required.
- 4.6 Prior to exiting the site, agreement will be reached with the KCT as to whether they wish all service contracts, such as electricity, water, waste collection, to be passed over or cancelled. If the service contracts are not passed over they will be cancelled and all services will cease.
- 4.7 An asset register will be completed of all machinery, equipment, fixtures and fittings. Where evidence exists that items were purchased exclusively for KNNR and such conditions still apply these will be passed to KCT. Where no such evidence exists or items were purchased with Council resources consideration will be given to all machinery, equipment, fixtures and fittings being redeployed to other Council departments.
- 4.8 The Council holds monies received from public donations and it is intended that this sum will be spent at KNNR during the remainder of the Lease term. If any monies remain, a further report to Cabinet may be required.
- 4.9 Cornelly Community Council currently contributes financially towards the Council's cleaning costs of the visitor toilets at KNNR. When the Council exits the site it will no longer retain any responsibility or provide any service in relation to the visitor toilets. Any future function in this regard will be for the KCT and/or their appointed representatives or management agent to negotiate and deliver as they consider appropriate.

- 4.10 With regard to Public Rights of Way and public access generally, the Council's current Rights of Way Improvement Plan (ROWIP) (adopted 2008) promotes and supports public access at KNNR. There are a number of existing public footpaths and public bridleways at KNNR, including a section of the Wales Coast Path, as well as some routes which pedestrians and equestrians are requested to use and could be classed as permissive paths. Expiry of the Lease of KNNR will not affect the public's use of the existing public footpaths and bridleways but may mean that the permissive rights of way across KNNR may be closed and stopped up by the KCT on the termination date of the Lease even though these routes have been provided and managed by the Council.
- 4.11 Provided the Council ceases to occupy the property by the expiry date, then the Lease will terminate at the end of the contractual term. Therefore, the Council is not required to notify the KCT that it is vacating the property.
- 4.12 The Council can, however, serve a section 27(1) notice under the Landlord and Tenant Act 1954 on the KCT at least 3 months prior to the end of the contractual term to confirm that the Council will be vacating the property on the expiry date. Due to the nature of the property, it is proposed that the Council serves this notice on the KCT approximately 6 months prior to the end of the contractual term to ensure any statutory rights under the Landlord and Tenant Act 1954 come to an end.
- 4.13 The Council entered into a Management Agreement dated 25th January 2001 with the Countryside Council for Wales for a term of 21 years from 1st January 1999. This will therefore terminate on 31st December 2019, however, the Council will contact NRW (as successor) to inform them that the Management Agreement will come to an end.
- 4.14 In exiting the site the Council will contact NRW relating to the possible requirement to de-designate the Local Nature Reserve status.
- 4.15 The Council's Human Resources Department have written to KCT and informed them that the Council employs two employees who are based at KNNR, a Centre Manager and a Cleaner. Both employees spend their full working hours in relation to tasks in support of KNNR. It is therefore the view of the Human Resources Department at this time that these two employees would be entitled to continued employment with the new management services provider under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE). However, if the TUPE process does not proceed, it is likely that the Council will have to undertake a redundancy consultation and incur redundancy costs.
- 4.16 When the Council no longer occupies the site or has responsibility for it then the Council will have no further responsibility under the Occupiers Liability Act and all associated insurances will cease. At the point where the Council no longer employs staff for the site then Employers' Liability will also cease. The Council will therefore retain no responsibility or liability for the site or any use of it by any commercial undertaking, group, organisation or member of the public, except in relation to designated rights of way.

5. Effect upon policy framework and procedure rules

None

6. Equality Impact Assessment

- 6.1 The decision to seek alternative management agents and to exit the site was previously considered in the Cabinet report of the 14 December 2010. The Council's Equalities Impact Assessment Toolkit was used to identify that the delivery of these proposals will have no impact on equalities.

7. Well-being of Future Generations (Wales) Act 2015 implications

- 7.1 The Well-being of Future Generations (Wales) Act 2015 Assessment Template has been completed. A summary of the implications from the assessment relating to the five ways of working is below:

- o Long-term: As outlined in previous reports to Cabinet, the opportunity to identify a new management agent to take forward the site and access resources not available to the Council was first agreed in 2010 as part of a long term transition proposal. Any action to now appoint such an agent and/or manage the site for the long term will be the responsibility of the KCT.
- o Prevention: The decision of the KCT selecting and appointing any new management agent offers the opportunity to manage the ecology of the site and to diversify its appeal to a wider range of visitor target markets and thereby support the economic resilience of the visitor economy of the area. The pressures placed on Council budgets are such that limited resources exist to manage the site in any other way than that which currently occurs.
- o Integration: A new management agent offers the opportunity to support economic, social, environmental and cultural outcomes through boosting the local economy, raising the profile of the area through media coverage, increasing tourism, support to local groups, fundraising, volunteering opportunities and overall event conservation management experience.
- o Collaboration: The process of exiting the site will be undertaken in close collaboration with the KCT, their appointed representatives and NRW.
- o Involvement: Updates on progress will be provided to the Kenfig Consultative Committee and stakeholders involved through the SMS project steering group. Updates will also be provided to local elected members as considered appropriate.

8. Financial implications

- 8.1 The decision to not renew the Lease will result in a saving of £40,400 per annum. This has been included in the draft Medium Term Financial Strategy (MTFS) as £10,000 in 2019/20 and £30,000 in 2020/21.
- 8.2 If Cabinet decides not to renew the Lease, then the Council may incur repairing costs under a schedule of dilapidations and KCT's costs 'in contemplation of or in connection with the preparation and service of a schedule of dilapidations during or

after the expiry of the term.’ At this time, no communication has been received in relation to this, however, KCT could serve a schedule of dilapidations upon the Council after the expiry of the Lease. Any consideration of financial implications can only take place in response to any communication received in relation to this matter. The Council may also be required to demolish the Visitor Centre building and be responsible for the costs of making good any damage caused to the site as a result of the removal.

8.3 If there are any resulting redundancy costs, an application will be made for these to be covered corporately as this proposal links to a MTFS proposal.

9. Recommendation

9.1 That Cabinet decide Bridgend County Borough Council will not be renewing its Lease dated 25th January 2001 of Kenfig National Nature Reserve when it expires on 31st December 2019 and that the Council will serve a Section 27(1) Notice under the Landlord and Tenant Act 1954 on Kenfig Corporation Trust.

9.2 That Cabinet note the Management Agreement dated 25th January 2001 will expire on 31st December 2019 and authorise the Council to inform Natural Resources Wales that it will be vacating Kenfig National Nature Reserve on this date.

Mark Shephard
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30th November 2018

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Background documents:

- Cabinet report, Kenfig National Nature Reserve, 14th December 2010
- Cabinet report, Kenfig National Nature Reserve, 16th October 2012
- Cabinet report, Kenfig National Nature Reserve, 11th November 2014