



## DECISION ITEM

REPORT OF	MEETING	DATE	ITEM NO
DEVELOPMENT SERVICES DIRECTORATE	COUNCIL	25 APRIL 2022	12
<b>LOWTHER GARDENS TRUST – RENEWAL OF SERVICE LEVEL AGREEMENTS INCLUDING NEW SUBSIDY REQUEST</b>			

### PUBLIC ITEM

This item is for consideration in the public part of the meeting.

### SUMMARY

The Council currently has a five-year Service Level Agreement with the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd, to provide a range of theatrical and cultural services at Lowther Pavilion. As part of this Agreement, the Trust must provide a performance report to the Tourism and Leisure Committee annually.

The current Service Level Agreement expires 31 March 2022, and Members are requested to consider the proposed terms and continuation of this Agreement, including an increase to the existing subsidy of £31,668 by an additional £12,000 per annum, to provide a total annual subsidy of £43,668 over a 3-year term commencing 1 April 2022. The reasons for this proposed increase are detailed in the report.

In addition to the above, there is a supplementary Service Level Agreement between Fylde Council and Lowther Gardens Trust, to cover several ancillary services to be delivered by Fylde Council within Lowther Gardens, including parks management, grounds maintenance, public conveniences, building maintenance, engineering service and leisure services. This Agreement also expires 31 March 2022, and Members are requested to consider the terms and continuation of this Agreement, as detailed in the report.

This report presented to Full Council on 25 April 2022 includes additional information provided in response to enquiries that were raised at the Tourism and Leisure Committee on 10 March 2022, in particular to provide clarification that the additional subsidy amount is not just to cover the cost of VAT relevant to the community groups using the facility.

### RECOMMENDATIONS

Council is requested to approve:

1. An annual unfunded revenue budget increase of £12,000 to Lowther Gardens Trust in the years 2022/23, 2023/24, 2024/25. This would create a total annual subsidy of £43,668 per annum for the next 3 years.
2. To approve the continuation of the Service Level Agreement (Appendix 1) regarding the provision of theatre services at Lowther Pavilion by the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd.
3. To approve the terms and continuation of the Supplementary Service Level Agreement between Fylde Council and the Lowther Gardens Trust (Appendix 2) as summarised in this report.

## SUMMARY OF PREVIOUS DECISIONS

### Tourism and Leisure Committee - 10 March 2022

Following detailed consideration of this matter it was RESOLVED:

1. To recommend to Full Council an annual unfunded revenue budget increase of £12,000 to Lowther Gardens Trust in the years 2022/23, 2023/24, 2024/25. This would create a total annual subsidy of £43,668 per annum for the next 3 years.
2. That subject to the approval of Full Council of the additional funding in recommendation 1 above, to approve the continuation of the Service Level Agreement as set out in Appendix 1 of the report regarding the provision of theatre services at Lowther Pavilion by the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd.
3. To approve the terms and continuation of the Supplementary Service Level Agreement between Fylde Council and the Lowther Gardens Trust as set out in Appendix 2 of the report and summarised in the report.

### Tourism and Leisure Committee - 3 November 2016

Following detailed consideration of this matter it was RESOLVED:

1. To recommend to Council an annual unfunded revenue budget increase of £31,668 to provide an annual subsidy to Lowther Gardens Trust in the years 2017/18, 2018/19, 2019/20, 2020/21 and 2021/22.
2. To recommend to Council the continuation of the Service Level Agreement as detailed in Appendix 2 of the report regarding the provision of services at Lowther Pavilion by the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd.
3. To agree the terms and continuation of the supplementary Service Level Agreement between Fylde Council and the Lowther Gardens Trust as set out in Appendix 3 of the report.

## CORPORATE PRIORITIES

Economy – To create a vibrant and healthy economy	√
Environment – To deliver services customers expect	
Efficiency – By spending money in the most efficient way	√
Tourism – To create a great place to live and visit	√

## BACKGROUND

1. Lowther Gardens was registered as a charitable trust in 2006, with the Council as sole trustee. Since 2006 several independent trustees have been appointed, with a total of 8 trustees currently in post. The Council remains as a trustee and is represented at trust meetings by Councillor Susan Fazackerley.
2. The Head of Cultural Services and the Head of Governance also attend the trust meetings, to support the delivery of the Council's strategic ambitions within the Corporate Plan 2020–2024 regarding services delivered at Lowther Pavilion.
3. Lowther Gardens (Lytham) Management Ltd was set up in February 2011 as the operating company of Lowther Gardens Trust, to deliver the day-to-day operation of Lowther Pavilion.
4. The previous service level agreement between Fylde Council and Lowther Gardens (Lytham) Management Ltd. was agreed by the Tourism and Leisure Committee on 3 November 2016, for a 5-year period commencing 1 April 2017. In the agreement, the Council agreed to pay a subsidy over the five-year period as follows:

Year	Amount of Subsidy
2017/18	£31,668
2018/19	£31,668
2019/20	£31,668
2020/21	£31,668
2021/22	£31,668

5. In 2017/18, the Council agreed to provide a loan of £50,000 to Lowther Trust, to assist with the replacement of the roof on the Pavilion, to ensure the venue would be energy efficient and therefore achieve financial savings to the running costs of the theatre. Lowther Trust pay an annual loan repayment of £5,000 to Fylde Council, which is deducted from the annual subsidy listed in the table above. This arrangement commenced in 2017/18 and expires in 2026/27. The loan agreement does not form part of this Service Level Agreement.
6. The previous Service Level Agreement 2017 to 2022 specified that Lowther Gardens (Lytham) Management Ltd ("the Provider") as the operating company of Lowther Gardens Trust would deliver the services in accordance with identified performance measures:
  - The maintenance and development of Lowther Pavilion as a cultural community facility, for the benefit of residents of and visitors to the Borough.
  - The provision of a balanced and diverse programme of performing arts and entertainment, including dance, drama, music, musical theatre, variety, and comedy; encouraging innovation using new technology and the support of new writing and performing talent.
  - The development of new audiences and encouragement of existing audiences to visit more frequently, building participation in the arts locally, accessible to all sectors of the community through programming, marketing, and community engagement work.
  - The promotion of the performing arts in Fylde, supporting and developing local amateur groups, volunteers, and the wider community. The pavilion shall be available for hire by local amateur performance groups for a minimum of 120 sessions per year. The definition of an 'amateur performance group' is one that is based in Fylde Borough or has active participation from residents who live in the Borough. The 'amateur performance group' must be hiring the theatre for cultural or community endeavours (Dance, Drama, Music, Art, or community support events e.g., dementia support groups). The groups must primarily be not for profit.
  - The free use by the Council of Lowther Pavilion and its facilities for up to 10 Council meetings per year and the annual Mayor making ceremony on dates to be provided to the Provider in advance by the Council as soon as reasonably practicable.
  - The Provider shall make best endeavours to make available the Pavilion for use in the event of a civil emergency as a rest centre or similar facility.
  - The development of service provision may change over time to reflect the current nature of standard business practice in the entertainment industry. All development will encompass the core values as presented in the Trust's artistic policy.
  - Quarterly meetings will be held between representatives of the Provider and the Council, where the information required by this agreement will be reviewed.
  - If requested to do so, the Provider will make an annual presentation to the Tourism and Leisure Committee (or other such appropriate elected member group) at the conclusion (or as near to as possible) of each year of the operation of the Service Level Agreement summarising its performance and service during the year, including financial performance – annual outturn against the budget.

- The Services to be provided within the operating budget, provided in accordance with clause 18<sup>1</sup>.
  - A breakdown of the number of complaints received from service users and how they have been resolved.
  - Number of sessions utilised by local amateur groups, volunteers, and the wider community.
  - Number and percentage of self-promoted shows which breakeven and/or make a profit
  - The Trust will provide evidence that it is meeting art council and theatre management association industry standards in relation to customer satisfaction, audience profiling and quality of opportunity both for the visitor, local population and visiting companies. Income generation to develop the service offered and development work to encourage greater community use of the facilities. The Trust and the Council will work together to develop a greater understanding of all creative activities across the Borough.
7. In November 2016, the Tourism and Leisure Committee agreed to continue to provide several ancillary services to Lowther Trust under a supplementary Service Level Agreement relating to the maintenance of Lowther Gardens. Services included parks management, grounds maintenance, public conveniences, car parking, building maintenance (excluding Lowther Pavilion), engineering service and leisure Services. The budget for the delivery of these services is retained by the Council and delivered at no charge to the Trust. This Agreement also expires 31 March 2022.
  8. The costs of delivering these services are included in existing approved revenue budgets. There have been no additional costs to Fylde Council arising from the delivery of this supplementary Service Level Agreement.

#### **CURRENT PERFORMANCE**

9. There are regular meetings between the Trust and council officers to review performance. A representative of the Trust has provided and presented a performance report annually to the Tourism and Leisure Committee, including a post pandemic review.
10. Members of the Tourism and Leisure Committee were invited to a 'guided tour' of Lowther Pavilion in January 2022, to gain a better understanding of the day-to-day management of the theatre.
11. Delivery of most services during the pandemic have proved to be very challenging, with the arts and cultural sector being one of the most significantly impacted. Lowther Trust have managed the service efficiently throughout the pandemic and are confident that the service is in a financially sustainable position if the continuation of the proposed Service Level Agreements is supported by Elected Members.
12. In addition to the delivery of theatrical and cultural services, the Trust are committed to the delivery of several exciting developments to the theatre and grounds including a new studio theatre and education centre and a new Padel tennis facility within the Gardens. These initiatives will bring greater self-sufficiency to the Trust reducing the requirement for subsidy support.
13. Representatives of Lowther Trust attended the Tourism and Leisure Committee meeting on the 10 March 2022 and provided service updates as well as answers to questions and enquiries raised by elected members. This included discussion on the range of factors that have led to a request for an additional subsidy over the next three years during which the development works will be taking place at the pavilion.

#### **FINANCIAL SUBSIDY FROM FYLDE COUNCIL**

14. In December 2021, representatives of Lowther Gardens Trust made a formal request to the Council for a continuation of both Service Level Agreements and the annual subsidy of £31,668, to be paid to the operating company of Lowther Gardens Trust, Lowther Gardens (Lytham) Management Ltd, to ensure the sustainable management of Lowther Pavilion.
15. A request was also made for an additional subsidy of £12,000 per annum for a three-year period because of several factors which include:
  - a. New VAT implications that need to be recharged to community groups
  - b. Post COVID recovery requirements for re-opening the venue
  - c. Unforeseen increased cost across multiple goods and services
  - d. Support whilst events and attendances return to pre COVID capacity
  - e. Disruption during the current development work at the pavilion.

16. Discussion at the Tourism and Leisure committee on 10 March 2022 focused on the VAT implications that would potentially fall on community groups using the facility which is the primary reason for the additional subsidy request of £12,000 per annum for a three-year period but it was not the only factor that had increased operational and post COVID recovery costs.
17. The main reason for the additional subsidy request was because Lowther Trust have been advised by a VAT specialist of recent changes by HMRC relating to VAT charges on room hire. The VAT specialist advised that VAT exemption on room hire will no longer apply when other supplies and services are included for example, where room hire includes lighting, sound systems, apparatus, sound technicians etc. which is almost always the case at Lowther. The Trust were advised to 'opt to tax' which would allow the Trust to recover any VAT incurred from room bookings and other activities including expenditure against the ongoing capital development works at Lowther. 'Opting to tax' also means that the Trust will need to charge VAT on room hire to all users, even if the customer hires the room without supplies or services, at a rate of 20%.
18. The Service Level Agreement requires the Trust to permit a minimum of 120 amateur community performance group sessions per year. The Trust have provided an average room hire charge rate of £500 per session to all users including community groups. The new VAT charge would be passed on to the community groups. The Trust enquired whether Fylde Council would support community groups by providing an additional subsidy, most of which would allow the Trust to provide a discounted room hire rate, to support local amateur performance groups, this was estimated to be more than £10,000 based on the requirement to provide hire to at least 120 community groups.
19. The proposal supported by the Tourism and Leisure Committee is to increase the existing annual subsidy of £31,668 by £12,000 for a three-year period to contribute towards discounted room hire rate to community based amateur performance groups as well as other increased operational, goods and services cost and mitigation towards the significant impact of the COVID pandemic on theatre and live entertainment. The annual subsidy would be £43,668 for a three-year period during which the major redevelopment is delivered. The provision and allocation of the discounted room hire allowance would be the responsibility of the Trust. The Trust will be responsible for providing detailed information to ensure that the required minimum number of community group sessions are permitted as described in the Agreement (Appendix 1).
20. The discounted Amateur Performance Group Sessions may not be used for any purpose except to remit such proportion as the Trustees may determine of the hire rate for a community based Amateur Performance Group that has been approved for the purposes of this schedule by the Trustees (whether before or after the use has taken place) and which is carried out by a Local Group.
21. The Trustees have the discretion to decide which Amateur Performance Group use to approve, and the proportion of the hire rate that is to be remitted.
22. The latest medium term financial strategy shows the existing annual subsidy of £31,668. If Elected Members support the provision of further financial support for Lowther of £12,000 per annum, it will be an annual unfunded revenue budget growth item.
23. The Budget Working Group has considered this request and recommends that the existing subsidy of £31,668 is increased by £12,000 per annum supporting discounted room hire to community based amateur performance groups, to mitigate the increased costs of goods and services and to contribute to the post pandemic recovery. This will be part of a new 3-year Service Level Agreement (Appendix 1). A shorter three-year agreement is proposed because the proposed capital project works to the theatre should be completed in this time which will increase the self-sufficiency of the Trust.
24. A 3-year financial forecast has been supplied by Lowther Trust relating to the management of Lowther Pavilion and is included as Appendix 3, showing the new proposed subsidy from Fylde Council of £43,668.
25. Any agreement after the three-year arrangement would need to be formally requested by the Trust and subject to consideration by the Tourism and Leisure committee and Full Council. It is hoped the ambition for the expanded and improved facilities will have been realised and the Trust will have secured a stronger financial position.
26. Officers have reviewed the current Service Level Agreement for consideration and the proposed Agreement is included as Appendix 1, including the annual subsidy of £43,668.

27. If the recommended subsidy increase is supported, the Council would be requested to increase the revenue budget by £12,000 per annum, providing a total subsidy of £43,668 as per the table below, for 3 years as shown. The loan payment of £5,000 per annum relating to the theatre roof improvements will be taken from the subsidy before it is paid to the Trust.

Year	Amount of Subsidy
2022/23	£43,668
2023/24	£43,668
2024/25	£43,668

#### **SUPPLEMENTARY SERVICE LEVEL AGREEMENT**

28. In December 2021, Lowther Trust requested that the Supplementary Service Level Agreement which also expires on 31 March 2022, to also be extended. This Agreement provides the following services to Lowther Trust without direct separate charge: parks management, grounds maintenance, public conveniences, building maintenance (excluding Lowther Pavilion), engineering services and leisure services.
29. During the term of the Supplementary Service Level agreement the standard of maintenance relating to grounds and structures throughout the Gardens has remained high. The site has retained Green Flag accreditation and is part of the successful Lytham 'In Bloom' annual submission which has constantly reached gold standard.
30. The cost of delivering these public realm services in Lowther Gardens will be met from existing approved revenue budgets held by Fylde and delivered to the Trust without separate charge.
31. The car parking service is now managed directly by Lowther Trust.
32. The Budget Working Group and Tourism and Leisure Committee have considered this request and recommend that the existing Service Level Agreement relating to Ancillary Services be extended for a further 3 years (Appendix 2).

#### **FUTURE REVENUE BUDGET IMPACT**

33. Continuation of the Service Level Agreement between Fylde and Lowther Management Company including an increase of £12,000 per annum for the next three years, would require an unfunded revenue budget increase of £12,000 from 2022/23 to 2024/25.
34. Continuation of the Service Level Agreement for the delivery of Ancillary Services by Fylde Council to Lowther Gardens Trust will have no impact on existing revenue budgets for the services within this agreement.

IMPLICATIONS	
Finance	The Council's base revenue budget contains ongoing provision of £31,668 per annum as a subsidy to support the operation of Lowther Trust. The report recommends that Full Council approve an annual unfunded revenue budget increase in the sum of £12,000 in 2022/23, 2023/24 and 2024/25 to provide a total annual subsidy to Lowther Trust of £43,668 for the next 3 years. Further details are set out in the report.
Legal	All services including subsidies within this report form part of Service Level Agreements.
Community Safety	None arising directly from this report

Human Rights and Equalities	None arising directly from this report
Sustainability and Environmental Impact	None arising directly from this report
Health & Safety and Risk Management	None arising directly from this report

LEAD AUTHOR	CONTACT DETAILS	DATE
Mark Wilde	<a href="mailto:mark.wilde@fylde.gov.uk">mark.wilde@fylde.gov.uk</a> & Tel 01253 658475	March 2022

BACKGROUND PAPERS		
Name of document	Date	Where available for inspection
None		

#### Attached Documents

Appendix 1 – Lowther SLA Theatre Management

Appendix 2 – Lowther SLA Ancillary Services

Appendix 3 – Draft 3-year plan 2022-2025