

To: Corporate Policy and Resource Committee

Sport and Leisure Facilities in Dungiven – Deed of Dedication

16th August 2016

For Decision

1.0 Reporting to Council

Linkage to Corporate Plan	
Strategic Priority	Health & Wellbeing
Objective	Healthy and Cohesive Community
Lead Officer	Wendy McCullough – Head of Sport and Wellbeing
Cost: (If applicable)	£2.5m Capital Grant

1.1 Background

In January 2016 Council approved the Dungiven Sports Centre Tender Report including acceptance of the Sport NI Letter of Offer for £2.5m of capital grant for construction of the facilities.

1.2 Detail

As with most other public grant funding, it is a condition of the Letter of Offer for the £2.5m of capital grant for construction of the facilities that Council provide a legal commitment to operate the constructed facilities in accordance with the purpose for which the capital grant was provided; in this instance the legal commitment is provided by way of a Deed of Dedication. A copy of the Deed of Dedication is attached in Appendix A. Under the terms of the Deed, Council must maintain and operate the facility and must not sell or transfer it without the agreement of Sport NI (or its successor) for a period of ten years. The consequence of not complying with the Deed is claw-back of one tenth of the grant for each year of the ten year period remaining at the time of any breach. However, given that Council has a statutory duty to provide sport and leisure services in any case, it is very unlikely that such circumstances would ever occur.

1.3 Recommendation

It is recommended that Members approve and authorise the execution of the Deed of Dedication.

DATED

2016

- 1. CAUSEWAY COAST AND GLENS BOROUGH COUNCIL**

- 2. THE SPORTS COUNCIL FOR NORTHERN IRELAND T/A
SPORT NORTHERN IRELAND**

DEED OF DEDICATION

ARTHUR COX

BELFAST

LAND REGISTRY OF NORTHERN IRELAND

Folio 23588

County Londonderry

Registered Owner: CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

DEED OF DEDICATION

DATED the _____ day of _____ 2016

BETWEEN

- (1) **CAUSEWAY COAST AND GLENS BOROUGH COUNCIL** of Cloonavin, 66 Portstewart Road, Coleraine, BT52 1EY (“**Council**”)
- (2) **THE SPORTS COUNCIL FOR NORTHERN IRELAND t/a SPORT NORTHERN IRELAND** of House of Sport, 2a Upper Malone Road, Belfast, BT9 5LA (“**Sport NI**”)

BACKGROUND

- (A) The Council has applied to Sport NI for a grant for the Grant Purpose, which it intends to implement on the Land or on some part or parts of the Land.
- (B) Sport NI has agreed to make a grant available to the Council subject to the Council entering into this deed.

1. DEFINITIONS

1.1 In this Deed the following words and phrases shall have the following meanings save where the context otherwise requires:

- | | |
|-----------------|---|
| “Disposal” | a sale, gift, exchange, transfer, grant, declaration of trust, lease or agreement for lease and every other assurance of the Land or any interest in it by any instrument whether or not for valuable consideration |
| “Grant” | all sums provided or to be provided to the Council by Sport NI subject to the Standard Conditions and the Specific Conditions for the Grant Purpose |
| “Grant Assets” | the buildings, fixtures and fittings, services and/or service media set out in Schedule 3 |
| “Grant Period” | the period of ten years from and including the date of this Deed |
| “Grant Purpose” | all those purposes for which the Grant has been awarded to the Council as set out in the Council’s: <ol style="list-style-type: none">(i) Application to Sport NI for the Grant.(ii) Outline Business Case submitted to Sport NI in support of such application. |

- (iii) Full Business Case submitted to Sport NI in support of such application.
- (iv) Sports development plan (including key performance indicators) submitted to Sport NI in support of such application

and in Sport NI's Letter of Offer

“Land”	all that land and buildings described in Schedule 1 hereto and shown edged red on the Plan
“Letter of Offer”	means a letter dated 25 January 2016, as revised by letter dated 21 March 2016, issued by Sport NI to the Council as the same may from time to time be further varied or amended
“Plan”	the plan of the Land annexed to this Deed in Schedule 2
“Specific Conditions”	the conditions (other than the Standard Conditions) subject to which the Grant has been awarded to the Council and which are set out in Annex 2 to the Letter of Offer
“Standard Conditions”	Sport NI's Standard Terms and Conditions, as set out in Annex 1 to the Letter of Offer

INTERPRETATION

- 1.2 Unless the context otherwise requires:
 - (a) The singular includes the plural and vice versa,
 - (b) References to persons include references to individuals, associations, institutions, firms, companies, corporations and vice versa, and
- 1.3 Unless the context otherwise requires the expressions ‘Council’ and Sport NI’ include their respective successors and assigns whether immediate or derivative.
- 1.4 All covenants, charges, agreements, undertakings, representations and warranties given or implied in this Deed by more than one person shall be deemed to have been given jointly and severally by those concerned.
- 1.5 The clause headings do not form part of this Deed and shall not be taken into account in its construction or interpretation.
- 1.6 Any reference to a clause or a paragraph or a schedule is to one in this Deed so numbered or named.
- 1.7 An obligation of the Council to do something shall include an obligation to procure that it is done and an obligation not to do something shall include an obligation not to permit, suffer or allow it.
- 1.8 Words importing one gender include all other genders including the neuter gender.

2. COUNCIL'S COVENANTS

The Council hereby covenants with Sport NI (to the intent that such covenants shall be annexed to and bind the Land and every part of it) to observe and perform the requirements of this Clause 2 throughout the Grant Period:-

- 2.1 The Council must not without the prior written consent of Sport NI, assign, transfer or charge the Land or make any Disposal, part with possession of the whole or any part of the Land or permit another to occupy the whole or any part of the land, SAVE that the Council may, subject to clauses 2.2 and 2.5, grant a lease or licence of the Land on terms approved by Sport NI to any community based sports organisation approved by Sport NI (such approval not to be unreasonably withheld or delayed in the case of an organisation which can demonstrate to the reasonable satisfaction of Sport NI that it is capable of utilising the Land in such a manner as to comply with the Standard Conditions and the Specific Conditions and fulfil and implement the Grant Purpose throughout the remainder of the Grant Period).
- 2.2 Sport NI shall be entitled:
 - (a) to withhold its consent in any of the circumstances set out in clause 2.4
 - (b) to impose all or any of the conditions set out in clause 2.5 as a condition of its consent
- 2.3 Clause 2.2 shall operate without prejudice to the right of Sport NI to withhold such consent on any other ground or grounds where such withholding of consent would be reasonable or to impose any further condition or conditions upon the grant of consent where the imposition of such condition or conditions would be reasonable.
- 2.4 The circumstances referred to in clause 2.2 are where in the reasonable opinion of the Landlord the proposed tenant or licensee is not of sufficient financial standing to enable it to comply with the Standard Conditions and/or the Specific Conditions and/or to fulfil and implement the Grant Purpose throughout the remainder of the Grant Period.
- 2.5 The conditions referred to in clause 2.2 are as follows:
 - (a) the execution and delivery to Sport NI prior to the lease or licence in question of a deed of guarantee in such form as Sport NI reasonably requires by a guarantor or guarantors in the United Kingdom approved in writing by Sport NI (such approval not to be unreasonably withheld or delayed)
 - (b) that Sport NI may require the Council to confirm in such manner as Sport NI may reasonably require that the provisions of this deed shall remain in full force and effect for the residue then remaining unexpired of the Grant Period.
- 2.6 Not, save with the prior written consent of Sport NI, to use the Land other than for the Grant Purpose;
- 2.7 Not damage or destroy any or any part of any Grant Assets
- 2.8 If the Grant Purpose ceases to be carried on at any time during the Grant Period in consequence of any act, omission or default on the part of the Council, including any breach of or non-compliance with the covenants on the part of the Council contained in this Deed, the Council shall on demand made by Sport NI repay to Sport NI a proportion of the Grant calculated in accordance with the following formula:

$$\frac{A}{B} \quad x \quad C$$

where:

A is the Grant

B is the Grant Period

C is the residue of the Grant Period remaining unexpired at the date on which Sport NI demands repayment from the Council. Any repayment due in respect of part of a year shall be calculated on a daily basis.

2.9 The Council must inspect, service, repair, maintain, amend, overhaul, replace and renew the Grant Assets and keep them in good order, repair and condition throughout the Grant Period.

2.10 (a) The Council must insure the Grant Assets in their full reinstatement value with a reputable insurance office against fire, lightning, aircraft (including articles dropped from aircraft), earthquake, storm, tempest, flood, bursting and overflowing of water pipes, tanks and other apparatus, impact by road vehicles and such other risks as Sport NI may from time to time reasonably require and to produce to Sport NI the receipt for the current premium on request. In the event of any damage to or destruction of any of the Grant Assets caused by any of such risks the Council shall apply all money received in respect of such insurance in rebuilding, reinstating, replacing and repairing the Grant Assets so damaged or destroyed making good any shortfall out of the Council's own money.

(b) The Council must insure against public liability risks in a sum of at least £10,000,000 and produce to Sport NI the receipt for the current premium on request.

3. **ASSIGNMENT**

Sport NI may assign the benefit of this Deed to such other public body as may be appointed in place of Sport NI.

4. **AUTHORITY TO EXECUTE**

The Council represents that it has power to execute and deliver this Deed and the execution and performance of this Deed has been validly authorised and that this Deed will be valid and legally binding on the Council.

5. **DURATION**

Without prejudice to any right or remedy for breach of covenant occurring before the expiration of this Deed, this Deed shall cease to have effect on the expiration of the Grant Period but without prejudice to any rights of either party against the other in respect of any antecedent breach.

6. **ASSENT TO REGISTRATION**

6.1 (a) The Council hereby assents to the registration of this Deed as a burden on the Land Registry folio in which any part of the Land is registered

- (b) The address of Sport NI in Northern Ireland for the service of notices and its description are House of Sport, 2A Upper Malone Road, Belfast, BT9 5LA, a body corporate with perpetual succession

- 6.2 The Council hereby applies to the Registrar of the Land Registry of Northern Ireland for the registration against the title to the Land or any part of the Land which is now or at any time during the Grant Period registered at the Land Registry of a restriction in the following terms: -

“Except under an order of the Registrar, no disposition or dealing by the registered owner or a receiver of the registered owner or any mortgagee is to be registered unless there is first produced to the Registrar a certificate from the Sports Council for Northern Ireland or the solicitors to the Sports Council for Northern Ireland confirming that such disposition or dealing can be registered.”

7. NOTICES

- 7.1 Each communication to be made hereunder shall be made in writing but, unless otherwise stated, may be made by fax or letter.
- 7.2 Any communication or document to be made or delivered by one person (the “**Sender**”) to another (the “**Addressee**”) pursuant to this Agreement shall (unless the Addressee has by fifteen days’ prior written notice to the other specified another address) be made or delivered to the Addressee at the address hereinbefore specified) and shall be deemed to have been made or delivered when despatched (in the case of any communication made by fax or facsimile) or (in the case of any communication made by letter) when left at that address or (as the case may be) two days after being deposited in the post (postage prepaid) in an envelope addressed to the Addressee at that address.

8. GOVERNING LAW

- 8.1 This Deed shall be governed by, and construed in accordance with, the laws of Northern Ireland.
- 8.2 The parties hereby agree that any legal action or proceedings brought with respect to this Deed may be brought in the courts of Northern Ireland.

9. GENERAL

- 9.1 A waiver of any breach of any of the terms, provisions or conditions of this Deed or the acquiescence in any act (whether of commission or omission) which but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term provision or condition or of any subsequent act contrary thereto.
- 9.2 Each provision of this Deed is severable and distinct from the others and if at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.
- 9.3 This Deed may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

Executed as a Deed on the date specified at the beginning of this document.

PRESENT when the Seal of
CAUSEWAY COAST AND GLENS
BOROUGH COUNCIL was affixed
hereto:

Chief Executive

Mayor

PRESENT when the Common Seal of the
SPORTS COUNCIL OF NORTHERN IRELAND
trading as **SPORT NORTHERN IRELAND**
was affixed hereto:

SCHEDULE 1

THE LAND

All that land at Curragh Road, Dungiven, County Londonderry shown edged red on the Plan, being all the land comprised in Folio 23588 County Londonderry.

SCHEDULE 2

THE PLAN

SCHEDULE 3

GRANT ASSETS

One Third Generation synthetic playing surface with fencing and floodlighting and a sports complex and associated works

