

SPORT NORTHERN IRELAND

MINUTES

CONFIDENTIAL

Special Meeting

Held on Friday 20 February 2009 in the Wellington Park Hotel, 21 Malone Road, Belfast BT9 6RU

PRESENT

In the Chair: D Walsh

Members:
O Brown
M Cowan
U Duncan
B Macaulay
A Money Penny
B McCargo
D O'Connor
J Rodgers
P Turnbull

In Attendance: P Curran, Arthur Cox Solicitors
L Mallon, Arthur Cox, Solicitors

Chief Executive: E McCartan

Staff in Attendance: N Harkness
S Ogle
A Sloan
A Campbell
J Poots
E Bailey

1 **APOLOGIES**

Apologies were received from Mr J D'Arcy, Ms M Muldoon, Mr H McCaughey, Mr A Strong.

2 **CHAIRMAN'S BUSINESS**

The Chairman welcomed everyone to the meeting including Mr P Curran and Ms L Mallon of Arthur Cox Solicitors.

He informed Members that the Agenda item 4.2 would be taken first.

3 **MINUTES**

The Chairman informed Members that the Minutes of the meeting held on 3 February would be brought to the next scheduled meeting of Council on 7

April.

4 **DECLARATION OF INTERESTS**

The Chairman asked everyone individually if they had any interest to declare. The following Members declared.

Mr D O'Connor – Belfast City Council
Cllr J Rodgers - Belfast City Council
Mr A Moneypenny – North Down Borough Council

Two members, Dr O Brown and Mr P Turnbull, had agreed that they would form the Appeals panel in the event of an appeal in relation to the Elite Facilities Programme applications and consequently they would not take part in any discussions or decisions regarding applications to this programme. They would leave the room during discussions on this programme.

5 **PARTICIPATION UNIT**

Mr A Moneypenny left the room.

5.1 Design Team Fees for North Down Borough Council 50m Pool

Members considered Paper SNI/09/32 and noted the time involved in obtaining approval for the Outline Business Case and that the claim is currently being assessed by SNI staff and Central Procurement Directorate.

The original SNI Council Paper had been prepared on estimates and had sought approval, subject to conditions which had been met to facilitate payment. This Paper (50m Swimming Pool – Release of Development Cost Support to North Down Borough Council - SNI/08/07) was attached as an Appendix.

Council was informed that the pool is affordable in our budgets and approval for payment was now sought against North Down Borough Council's recent claim which notes expenditure of £637,692.61 and grant claim for £380,969.78 calculated at 59.74%. Members also noted that the procurement of services had been approved by the Department of Finance and Personnel, Central Procurement Directorate and are currently completing all the necessary first checks to calculate allowable expenditure and actual claim amount, which will not exceed the £380,969.78.

Members sought a number of clarifications:

- What were the funding implications for the project during the period of change with the Review of Public Administration?
Officers noted that in terms of RPA, the security restrictions and other specific and standard terms and conditions of award would protect the SNI exchequer investment.
- What would be the situation when District Council elections took place in May 2011? Is SNI covered if any future local authority reported a significant shortfall in their funding for the project and would SNI not be responsible for it?
Officers reported that there was a deed of dedication on the facilities and this was covered in the conditions of award and that SNI would not be responsible for a Council shortfall in funding. In advance of any full letter

of offer and 'permission to proceed' with construction, SNI require evidence of partnership funding. Indeed at earlier stages, SNI requires commitment of budgets to ensure that this risk is mitigated.

- What are the programme risks and in particular high risk areas? Officers informed members that the programme level risk areas were governance, budget and timescale risks. Although considerable work has been undertaken to manage the first risk with DCAL, there remains a budget risk for the programme. SNI is awaiting budget confirmation under the next CSR period. There is also the accepted risk of releasing staged capital grants in advance of capital constructions; the risk being that if the asset is not realised then the grants may have to be deemed revenue expenditure or clawed back. The capital exchequer budgets are also restricted by annuality and there is considerable pressure to deliver the majority of elite projects by 2012.

After lengthy discussion Members approved the recommendation to release up to £380,969.78 to North Down Borough Council, in support of their development costs, subject to normal payment checks, which may be capitalised as part of any capital award, upon realisation of the capital asset, but is subject to claw back conditions (informed by Arthur Cox Solicitors).

Mr A Money Penny returned to the room.

5.2 Elite Facilities Programme – Stage Two Applications from Belfast City Council

The following Members left the room: Dr O Brown, Mr D O'Connor, Cllr J Rodgers and Mr P Turnbull.

The Chief Executive, acting on legal advice, asked Members to firstly review the factual background to the two Belfast City Council applications and make a factual determination as to whether the Belfast City Council applications were received at the House of Sport reception before 4pm on Friday 28 November 2008.

It was recalled that the Members were provided with a set of papers on 3rd February 2009, these were: various correspondence from Belfast City Council and FGS Mc Clure Watters; documentation relating to the application process; first legal opinion from Counsel, dated 30th January 2009. The supplementary legal opinion from Counsel, dated 9th February 2009 and a paper SNI/09/25 had also been provided to Members. A note was also circulated of the conference call on 19th February 2009, attended by the legal team and various members of SNI staff. This note contained legally privileged advice.

The Chief Executive asked Members to advise if there was any further information they required to enable their consideration of this matter and if they had any doubt they should ask for clarification.

Members confirmed that they had all the information they required for their consideration.

The Chief Executive advised Members if they were of the view that the applications were not late or if there was any significant doubt that they were not late they should state this and accept the applications. If they concluded that they were late, it was confirmed that Council has and should consider whether or not to use a discretion to have the bids considered. Should they

decide to exercise discretion this discretion should be rational and based on the relevant factors to be determined by the Council. Council Members were asked to note the previous papers including detailed provisions of factual evidence and related information, including Counsel's legal opinions.

The Chief Executive explained that when exercising any discretion, Members would be required to consider all relevant and material factors and consider if or why some factors were more relevant than others. Factors to be considered might include inter alia: compliance with programme requirements; possible de-minimis breach; any exceptional circumstances prevailing; public interest; and potential hardship to other applicants.

The Elite Facilities Programme Manager tabled paper SNI/09/25 and took members through it. Members discussed the paper in considerable detail and raised a number of questions including points of clarification. It was noted that this was not the first meeting at which discussion of this matter had taken place. Council noted that the discussions on these issues had commenced in December; and Members were asked to bear in mind those discussions.

The Chairman had it confirmed by Members that they had had sufficient time to consider properly the detail of all of the Papers received. He reminded Members that they had a duty to ensure fairness in the promotion and governance of sport and with all persons involved in the process. The Chairman informed Members that Counsel had given advice on the possibility of a challenge from an excluded applicant but advised that the information regarding Belfast City Council should be considered as it stands, on its own merit, and Council's decision should be based on the information placed before them. The Members noted that the prospects of success in defending challenges from different entities ought not to have any bearing on the consideration of the Belfast City Council applications

A Member noted that a memo had been circulated to Members, regarding a telephone conversation with another applicant and he did not consider this to be helpful or useful and he suggested that it ought to be ignored. The Chairman reiterated that the decision should be based on the facts available and that the comments by the other applicant should be excluded from the decision making process.

Mr P Curran from Arthur Cox Solicitors confirmed to Members that that note had been issued as a point of information only and the merits of any other potential claim should not be considered.

Lateness

The Chairman asked if Members had any doubt about the timing of the two applications from Belfast City Council. Members noted that having considered the representations made by Belfast City Council and FGS McClure Watters, they were satisfied that there was no evidence to indicate that these documents were received before 4 pm on Friday 28 November 2008, as required by the programme documentation.

The Director of Participation commented that there may be a query in relation to the chronology of receipts and invited the Elite Facilities Programme Manager to explain this. The Elite Facilities Programme Manager explained that as staff were aware that FGS Mc Clure Watters were running late (with three

applications, including two Belfast City Council applications), the receipt book was written in readiness and preparation for their arrival, with the time to be inserted on arrival. This was to expedite the process of issuing receipts. The Coleraine Institute applications were delivered by FGS Mc Clure Watters seconds before the deadline and that receipt was issued, which affected the chronology of receipt numbers. The two Belfast City Council applications came after the deadline and receipts were issued for each of the athletics and velodrome applications. The Elite Facilities Programme Manager noted that she had observed that the two applications consisted of mostly unbound and some bound documents, seemingly unmarked, with some in boxes and some comprising a bundle of loose papers.

Members agreed that they were happy to record that the two Belfast City Council applications were received after the deadline and that the Council attached high weight to timekeeping.

Members noted the lengths that SNI staff had gone to organise the receipt of applications and commended staff in this regard.

Exercise of discretion

Having determined that the two applications were late, the Chairman invited members to consider whether they should nevertheless exercise a discretion to admit the applications. Members were invited to discuss what factors they felt were relevant to the exercise of their discretion.

Public interest

The Chairman invited members to firstly consider the issue of the public interest.

Members were referred to Counsel's opinion and to paper SNI/09/25 in particular.

Members noted that it was their duty to consider the public interest for all of Northern Ireland, including Belfast, Co. Down, Newry etc. Members noted that they had received applications for similar facilities across Northern Ireland.

Members considered whether the public interest could be served if the applications were rejected and Members agreed that it could still be served by the remaining applications.

Members went on to consider the public interest argument made by Belfast City Council who claimed it was wasteful to reject the applications. Members considered that an argument might be made that Belfast City Council was the biggest Council in Northern Ireland and therefore most people would be disadvantaged if they were not considered. Members agreed, however, that as a public body SNI distributes public funds and must be seen to be fair to Northern Ireland as a whole. Members stated that all applicants should be treated equally. Members noted that under the rules of the competition, the cost of applications to the programme were to be borne by the applicants at their own risk.

Members noted that it was SNI's responsibility to develop sport in Northern Ireland for all the people in Northern Ireland. Members agreed to record this

aspect of public interest.

Members noted that Belfast City Council would be applying funding for an athletics facility and Antrim Borough Council had also made a bid for an athletics facility. Belfast City Council would also be applying for table tennis, volleyball and track cycling within the velodrome application. A velodrome application had been received from Down DC and Adfinch Merchants and a volleyball application from Lisburn CC. There would still be a possibility that facilities could be provided and that the public interest could still be served even if the Belfast City Council applications were excluded. Members noted that only table tennis was not covered by any other applications and the view was that this was an issue that could be easily resolved, as table tennis could be easily accommodated in an existing building with minimal works.

Compliance with programme requirements

Members were referred to Counsel's opinion and paper SNI/09/25.

After some discussion, all Members agreed that it was most important for applicants to comply with the timing requirements of the process and it was noted that applicants had been reminded on numerous occasions of the importance of adhering to the precise deadline.

It was noted that this was a competitive process with only limited funds available and this reinforced the need to have rules and to adhere to them.

Members agreed the fact that significant funds were being sought and that this was a very competitive programme and that these factors ought to have added to the incentive to submit the applications on time. Members noted that all applicants to this programme were asked to meet the deadline (and were given five months to prepare their stage two applications) and Belfast City Council was the only applicant not to meet the stage two deadline. Members considered the five months application period, extensive briefings and clear reminders and considered that it was reasonable for SNI to expect submission on time.

It was noted by the Director of Participation that documentation from a number of applicants had been eliminated at stage one of the process because they missed the deadline, some only by a couple of minutes. Members also noted that late applications had been excluded in the past by SNI and in the absence of special or exceptional circumstances, there was a strong argument for continuing to apply this general rule.

Members considered and agreed that the rules governing the competition were fair and appropriate and should be applied fairly and equitably to all applicants and at all stages of the programme.

Members considered that one of the purposes of having the deadline was to show inter alia management skills, organisational skills and the ability to deliver on time, thereby generating confidence in the relationship going forward. Members noted that the applications were delivered late and in a disorganised state.

De Minimis/Proportionality

Members then moved on to discuss at length the claim that the lateness of the applications was de minimis. Counsel's opinion was again considered as was Paper SNI/09/25.

It was noted that Belfast City Council had expressed the view that the two or three minute delay was not substantial or material and would not cause the other applicants any hardship, and that Belfast City Council did not gain an advantage by being late.

Members considered at what point a breach becomes material (if not at the time the deadline is missed). All members agreed that there may be difficulty in establishing this. Members agreed that it is normal practice in the business world to apply a deadline for a range of issues, i.e. applications for jobs and for tenders. This type of competition gives each applicant a fair and equal opportunity to apply and to demonstrate its ability to put together a bid in accordance with rules and regulations and to demonstrate they have the management skills to put these things in place and therefore to build trust and confidence in the applicant.

Members agreed that all the evidence suggested Belfast City Council had not taken adequate precautions and measures to present their bid by the deadline.

Members noted that deadlines were consistent with best practice and noted that even the Belfast City Council website states that they will not take a bid even if one minute late.

Members further noted that FGS McClure Watters is a large firm of professional advisers, which was charged with delivering the applications on time and ought to have been capable and competent of managing the task. Members noted that FGS McClure Watters website refers to "delivery on time every time".

It was agreed by Members that it was important that in a competitive process such as this, the timing rules should be adhered to, save in special or exceptional circumstances.

Other circumstances

Counsel's opinion and SNI Paper 09/25 were again referred to.

It was noted that FGS McClure Watters contacted SNI and claimed that Belfast City Council's applications had been delayed because of printer/server problems at FGS McClure Watters and that several calls had been made to SNI advising of these difficulties. Members also noted the claim that a major rewrite of the tender document had been required because of the provision of additional information in relation to volleyball.

As regards the computer/printer problems, members agreed that this was something competent applicants should be prepared to deal with and was not acceptable as an excuse for lateness. It was confirmed to members that it had not been suggested by SNI staff to Belfast City Council or FGS McClure Watters on the day of 28th November 2008 (in phone calls or otherwise) that late applications would be accepted. The importance of the deadline was made clear on a number of occasions including on the phone that day. It was also confirmed to members that no formal written request for an extension to the deadline was received.

Members were aware that there had been verbal requests for an extension and on each occasion the SNI staff had simply reminded the caller of the deadline.

As regards the additional information given in relation to volleyball, reference was made to appendices VI and IIX. Members were asked to consider whether in their opinion the additional volleyball information requested by Belfast City Council was material and could have caused Belfast City Council to extensively rewrite the application.

Following discussion and consideration of the papers, it was noted that the vast majority of the information had been made available to the applicant for some considerable time and/or was already in the public domain. It was agreed that the small amount of new information provided should not have had a material bearing on the preparation of the application or caused a major or significant rewrite.

Potential hardship regarding the timing requirements

Members were again referred to Counsel's opinion and paper SNI 09/25.

It was considered whether the timing requirement might have caused hardship for other applicants. Members noted that this was difficult to determine but even if it did they noted that all other applicants for this stage of the programme submitted their applications on time.

Other matters

Members were invited to raise any other matters that they felt were of relevance.

One member noted that the Council has spent an enormous amount of time considering the Belfast City Council applications and he could not recall any other applicant for any other programme being given this level of consideration. He added that he was satisfied that the Council has gone out of its way to consider the Belfast City Council application but that in his view the position was clear and the applications should be refused.

Members were invited to discuss any other matters but none arose.

Conclusion

The Chairman invited members to consider all of the factors and information made available to them and weigh these against each other. Members agreed that the integrity of the programme and compliance with the timing requirements was, in the context of the Elite Facilities Programme, the principal consideration which outweighed any contrary arguments, including de minimis or public interest arguments. It was further agreed that there were not special or exceptional circumstances that merited the admission of the late applications from Belfast City Council and that the rejection of the applications was proportionate in all the circumstances.

It was noted that this decision was taken on this particular set of circumstances and it is not transferable nor does it set a precedent for the future of this programme or any other programme.

A Member said that having received further legal advice he was happy with the decision to reject the application. He highlighted that this was a competitive programme; the rules were set out well in advance; Belfast City Council had been informed of the deadline; and they did not have their application in on time. They didn't meet the deadline and did not comply with the rules of the competition, nor had they identified any factors that justified Council using its discretion.

The Chairman asked members if they could now take all of the information that had been made available and which had been provided by the executive team and the legal team, and agree that they had given it full consideration.

Members agreed that they could.

Members unanimously agreed that on the basis of the considerable debate at both this and the previous Council meeting the late applications from Belfast City Council would not be admitted.

The Chairman thanked all Council Members for the time and consideration they had put into this matter. He also commended the high calibre of the Board Members and the executive team.

Dr O Brown, Mr D O'Connor, Cllr J Rodgers and Mr P Turnbull returned to the room.

6 **PERFORMANCE UNIT**

6.1 Investing in Performance Sport

The Chief Executive advised Members that they would now consider three applications to the Investing in Performance Sport Programme, from the bodies representing Tennis, Camogie and Fencing, that would appear to have been submitted after the deadline. It was noted by Members that the objectives and programme characteristics of the Investing in Performance Sport Programme are significantly different to the Elite Facilities Programme.

The Chief Executive advised Members, based on legal advice, that they should firstly review the factual background of each governing bodies' application and make a factual determination as to whether or not its application was late. If an application was determined to be late, they should consider whether to exercise a discretion to include it nonetheless. Mr P. Curran of Arthur Cox reminded Members that the Council has a discretion. This discretion emanated from the fact that SNI is a public body established by law, charged with exercising public functions.

The Chief Executive reminded members that in exercising discretion they must show that they have given due consideration and due weight to relevant factors and exercise their discretion in a rational way.

Lateness

It was initially discussed and agreed by all members present that the three applications in question, tennis, camogie and fencing, were all submitted after the deadline. Tennis was received at 4.03pm, camogie at 4.20pm and fencing at 4.15pm on the relevant closing date.

Exercise of discretion

The Chief Executive reported that all applications to the Investing in Sport Programme had been dealt with at this stage but that there remained funds for this programme which Council could yet use at its discretion.

Members received tabled paper number SNI/09/33, updating them on matters relating to the three applications. The Director of Performance took members through the paper. Members were invited to take into account certain programme characteristics as well as certain specific factors relevant to each application, in considering whether or not to use discretion to allow the assessment of three late applications to the Investing in Performance Sport programme.

Members were given background information on the programme assessment process. Members heard how the method of assessing applications to the Investing in Performance Sport Programme is unique to that programme. Members were reminded of six distinguishing programme characteristics as set out in paper SNI/09/33.

It was agreed by all Members that these characteristics were relevant and ought to be taken into account when considering the applications in question.

Members noted that following the assessment of the applications for this programme, a budget remained which could be used by the three late applicants should the Council consider using its discretion to do so (provided they met the required quality thresholds which are also applicable to all on time applications). This would have no detriment on other sports which have applied for funding to the programme. Members were assured that sufficient funding existed within the programme which would not affect the other awards made by Council. These would all remain intact whichever decision was made in relation to the three late applications.

Members considered therefore that this was not a competitive programme in the sense of governing bodies competing for a limited budget. Awards had been made based on the merits of the applications and had not been reduced in any way by the scale of competition and even considering this, there was budget remaining.

Issues specific to each of the three applications were then considered.

Ulster Branch Tennis Ireland

It was noted that the Council at an earlier meeting had considered recommendations from the Appeals Panel established to hear an appeal by Ulster Branch Tennis Ireland (UBTI) in relation to its late application, and on the basis of the information provided at that meeting had initially supported the Appeals Panel decision.

Since that meeting however further information has come to light which needed to be brought to Members attention. It was explained that the Appeals Panel had taken its decision based on the information available to it at that time.

The Appeal Panel had focused on two elements in making its decision ie (1) the

application was late at 4.03 pm and (2) the application was incomplete ie insufficient information had been submitted at 4.03pm. The Appeals Panel had been advised that complete documentation was presented only at 4.30 pm and not at 4.03 pm.

Members heard that following the Appeals Panel and Council decisions regarding the lateness of the UBTI application and on legal advice, staff undertook further scrutiny of the process and evidence and reported to Members that there existed a doubt in determining that there was incomplete information submitted by the applicant at 4.03pm. In fact, the application submitted at 4.03pm was complete in all material respects and the Appeals Panel was not aware of this at the time that it made its decision.

The Chief Executive said that it was his view that all concerned had acted at all times in good faith and the fact that the Appeals Panel was misinformed in this respect was a matter of human error. This was accepted by all Members.

A Member emphasised that the Appeals Panel should be given all relevant information; otherwise the integrity of the process would be in doubt. This was accepted by all Members. It was also accepted that where honest mistakes were made it was important that these should be admitted and corrected.

Some Members expressed their regret with what had happened. The Director of Performance shared those regrets and said that it showed the integrity of the process that this matter was brought to light and was not being hidden. In doing so he sought to demonstrate to Council that this was an open, honest and transparent process. It was agreed that in future measures would be put in place to ensure that information given to the Appeals Panel was comprehensive and accurate.

Members confirmed that they were content with the explanation given in relation to the afore-mentioned issues surrounding the application by UBTI.

Members agreed that the Appeals Panel may have been inadvertently misled as to the completeness of the UBTI application and that this may have affected the decision to refuse to allow the appeal.

Members were reminded that UBTI had also complained in recent correspondence about an intervention of the Director of Performance, just prior to the deadline for submitting the application. UBTI complained that a conversation between the Director of Performance and UBTI staff minutes prior to the submission of the application, led to the printing process of the tennis application being stopped for a short time and this subsequently led to the application arriving at reception after the closing deadline. In their consideration members raised a number of questions and sought clarification on a number of issues in this regard.

Members supported the Director of Performance's version of events on the day in question and accepted that he had acted at all times in good faith and tried to be helpful to UBTI. However, it was also agreed by all that there was a possibility that a misunderstanding may have arisen from this conversation which may have, or could be perceived to have contributed to the delay in submitting the application and this ought to be taken into account along with the other factors.

At this point the Chief Executive reminded members that legal advisers had considered the issue of the Director of Performance's intervention and they agreed that the effect of this intervention ought to be reconsidered by the Council.

Members heard that the legal advice was that the Council could exercise a discretion to admit the UBTI application notwithstanding the earlier decision of the Appeals Panel and the Council and without sending the matter back to the Appeals Panel for a new decision. In reconsidering the factors when exercising Council's discretion this in no way dilutes the integrity of the previous Appeals Panel and Council decision.

On hearing this information which may bring into doubt the weight given to the factors considered by the Appeals Panel and the Council in previously exercising its discretion, members resolved to reconsider all the relevant factors.

Members agreed that in all of the circumstances of this case it was appropriate to admit the late application from UBTI notwithstanding that it was three minutes late.

It was unanimously agreed that the application by Ulster Branch Tennis Ireland be accepted.

Ulster Camogie Council

Members then considered the application from the Ulster Camogie Council. The Ulster Camogie Council had confirmed to SNI that there was no allegation of any fault on the part of SNI in this case. However it was noted that the Ulster Camogie Council had lodged an appeal with SNI, which has still to be heard by the Appeals Panel.

The Director of Performance proposed that Members might consider the programme characteristics alluded to earlier when deciding how to exercise their discretion.

It was agreed that these were also relevant and such characteristics favoured admitting the application.

The Chairman referred to Council's duty to act in the public interest in delivering sport. Members also noted that the Ulster Camogie Council is not part of the GAA for purposes of grant applications. It is a female sport and the Strategy for Sport includes a commitment to women in sport. There is also an issue about building on investment already made in the sport to increase participation.

It was agreed that this was relevant to the consideration of the matter and Members favoured admitting the Ulster Camogie Council application. It was unanimously agreed that the Ulster Camogie Council be admitted and that officers should meet them to appraise them of this fact.

Northern Ireland Fencing Union

Members again confirmed the relevance of the programme characteristics referred to above but also considered other factors, such as the public interest in developing minority sports, geographical distribution of funding, and the fact the programme was not competitive.

Members also noted that a major fencing event is pending and that the sport would benefit from all the investment it can get. Fencing needs a performance system behind it and this programme is about building that performance system. If no funding is provided it makes it more difficult for talented fencers to emerge.

It was unanimously agreed that the Northern Ireland Fencing Union be admitted and that officers should meet them to appraise them of this fact.

The Chief Executive emphasised the need for improved competence and capacity in these three governing bodies through a modernisation process. Special measures would be put in place to ensure that this process was implemented.

The Chairman thanked everyone for their efforts and excellent input.

The Chief Executive reminded Members to leave their papers for collection by officers.

7

ANY OTHER BUSINESS

Dr O Brown informed Members of an attack on Mr and Mrs Ray Williams in their home when they were left shocked and injured. Mr Williams had been a well-known rugby player in his youth and best wishes were extended to them.

Members also heard of the recent death of Mrs Georgie Hart who had been a committed Council Member from 1993–1996. Mrs Hart had held senior positions in the ILGU and had held the position of Chair of the Ladies Golfing Union. The Chief Executive had written to her family. Members held a minute's silence in memory of Mrs Hart.

Signed: _____

Dated: _____

House of Sport
Upper Malone Road
Belfast
BT9 5LT