



Neath Port Talbot Leisure Procurement

Report for UNISON

This report has been prepared by Andy Mudd in June 2021

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1. Introduction

- 1.1 Neath Port Talbot County Borough Council (NPT) is in the process of tendering a 20 year contract for leisure services. This will replace the current contract with Celtic Leisure which, were it to run its course, would run until 2025.
- 1.2 Celtic Leisure is the successor body to Neath Port Talbot Leisure Limited, an independent charity set up as an Industrial and Provident Society to take over the management of buildings based sport and leisure facilities from the council in 2003.
- 1.3 The Society, which traded as Celtic Community Leisure, converted to a charitable company limited by guarantee in 2015 and adopted the name Celtic Leisure. Its objectives remained the same and all elements of the business transferred intact to the newly incorporated company.
- 1.4 Celtic Leisure is an example of what is often called a leisure trust. Many UK local authorities established these locally run but independent organisations as a way of accessing the relief on national non-domestic rates that is available to not for profit providers of sport and leisure services. Whilst such arrangements do not reduce the overall cost of leisure to the public purse, they shift a portion of it to central government, which picks up most of the cost of NNDR relief.
- 1.5 It is important to be clear that NNDR relief goes to the provider organisation, not to the local authority. Whether or not, and the extent to which, the local authority benefits from it depends on whether the provider passes the saving on in the form of reduced charges. In fact, leisure trusts can have comparatively high management costs and do not always operate as efficiently as expected, meaning that the expected savings do not always materialise. As in all outsourcing arrangements, some costs are duplicated because of the need for a client side to manage the contract for the council. A leisure trust usually has its own Chief Executive and senior management team for example, mirrored by a Head of Leisure Services or similar within the council. Although it is often argued that the typical governance arrangements of a leisure trust allow for a light touch approach to contract management, it is nonetheless likely that the overall costs of management will be higher than for a directly provided service.
- 1.6 Celtic Leisure does not appear to have delivered savings on the cost of leisure provision, indeed there is a strongly held view that the trust provides poor value for money. This is despite a presumably compelling business case supporting its establishment in 2003 and the award of a new 10 year contract to it in 2015.

2. The decision to go to tender

- 2.1 The decision to go to tender was made in March 2020. This was before the impact of the pandemic was fully apparent. The report underpinning this decision includes little detail, has no background papers associated with it and was agreed under urgency provisions. It would be usual for a decision of this nature to be supported by an outline business case, incorporating a comparative appraisal of all potential delivery options. Such an appraisal should assess the options in relation to all corporate objectives, including non-financial ones. It might also be expected that a decision of this significance would be subject to consultation with a range of stakeholders but there is no indication that any such consultation took place.
- 2.2 Although an analysis of all the options was completed, this was not until May 2020, some two months after the (urgent) decision to go to tender was made. The option analysis, completed by an external consultant, was not considered by and has not been reported to elected members. It has however been provided to UNISON following a request to have sight of it.
- 2.3 The Options Analysis report does little to connect the decision to go out to tender to any corporate objectives beyond the purely financial. For example, the council's Corporate Plan includes a number of references to the importance of '..sustainable, local, quality employment' but the Options Analysis does not assess the options in terms of how they might be expected to support this objective. The Corporate Plan also commits the council to supporting local business through its procurement practices but this is ignored in arriving at the preferred option of contracting out, which is highly likely to lead to the award of a contract to a provider that is neither local nor even Welsh.

3. The impact of the pandemic

- 3.1 The coronavirus pandemic has had a huge impact on leisure services. For many councils this has led to a conclusion that it is a service area that benefits from a high degree of direct control and that the inflexibility of contractual arrangements hinders the ability to tailor provision to changing needs and circumstances. As has been the experience of NPT, NNDR relief does not always translate into reduced costs for local authority customers and a growing number have decided to insource the management of leisure from both local trusts and commercial providers. Examples include Wigan, South Ribble, Chorley, Exeter, Shropshire and Barrow Councils.
- 3.2 NPT did not revisit the decision of March 2020, despite the commencement of the procurement process being delayed until December 2020, when the impact of the pandemic was a known and material factor, that could and should have been considered. At the time of writing the future of leisure services is very difficult to predict. In the short run it is likely that services will fully reopen but it is impossible

to know whether and if so when, there will be further waves of the coronavirus, with further adverse consequences for leisure.

- 3.3 Entering in to a new contract in such uncertain times creates risks that could be avoided. Bringing the service in-house would offer maximum flexibility, particularly in relation to the use of staff – many councils with direct provision have been able to reallocate staff to other service areas to avoid furlough and the additional costs and demoralisation this creates. As the Options Analysis identified, all other options for external provision create funding pressures for the council or threaten the viability of the contract because of the pandemic.
- 3.4 The Council is obliged by law, as well as its own constitution to take all relevant information into account when reaching decisions. In this case the decision made in March 2020 took no account of the factors set out above. This was compounded by the failure to reopen discussion with elected members between that decision being made and the eventual commencement of the procurement process.
- 3.5 The significance of the pandemic cannot be over stated. In so far as leisure is concerned it has prompted a UK wide re-evaluation of the part leisure provision plays in health and well-being. It is increasingly recognised as a major plank of social policy and many are questioning the narrow, almost exclusive focus on cost that has driven choices about how best to provide it over the last decade or so. New models are emerging that emphasise the role that buildings based provision can play in an integrated approach to well-being that includes parks and open spaces, as well as provision for cycling, walking and other activities. These models move away from pure cost considerations to recognise the wider value of such activities and also the potential for value adding synergies arising from their integration. Having buildings based leisure facilities off, purely for reasons of tax efficiency, weakens the ability of authorities to plan and deliver integrated well-being focussed services and therefore, to meet the emerging needs of a post pandemic world.
- 3.6 One amongst a number of recent examples is Wigan Leisure. The service has been provided through a leisure and culture trust since 2003 but in January 2021 a decision was taken to return it to direct management. The decision reflects a careful assessment of how best to deliver a range of objectives, including the protection of services for local communities and the well-being of leisure staff. The impact of the pandemic was a major factor in persuading elected members that only direct management could allow the necessary level of control needed to ‘protect staff and services’. In marked contrast to the process being followed in NPT, the decision followed a consultation process with current staff who, whilst not directly employed by the council, were recognised as key stakeholders and in part, the responsibility of the council.
- 3.7 This sort of thinking is taking hold across the UK but councils will continue to make their own judgements. Some will no doubt continue to pursue lowest cost options for buildings based leisure and seek to outsource to organisations that are able to

access NNDR relief. This is entirely legitimate provided that the decision to do so is fully informed and takes account of the impact of the pandemic and other emerging priorities. One such is the need for buildings based leisure to move to carbon neutral over the coming period. New energy efficient facilities will be needed quickly and organisations, including APSE, are actively working on proposals to attract the necessary funding needed to support this. These proposals are likely to emphasise the wider social well-being significance of building based leisure and the value they add as an integrated element of wider provision.

4. The National Policy Context

- 4.1 The policy framework created by Welsh government reflects and embraces the wider approach to leisure considered above, as does the Well Being Plan published by the Neath Port Talbot Public Services Board. The policy framework is underpinned by the requirements of the Well-Being of Future Generation Act (Wales) 2015 which, alongside a duty to set out a compliant policy, also specifically requires that relevant decisions are made by reference to it.
- 4.2 There is no evidence that the decision to go to tender in the current case was considered in terms of the general requirements of the 2015 Act or the specific policies set out in the Well Being Plan. It is not suggested that the contracting out of leisure could never be compliant but it is a legal requirement to establish whether and how a specific decision of this nature is compatible with the seven statutory well-being goals at the core of the legislation. A decision based solely on cost considerations that ignores wider well-being and local socio-economic factors is therefore potentially one that could be challenged. Moreover, Local Authorities are also now subject to a Socio Economic Duty, created under the Equality Act 2010. Whilst this was not in force when the decision to go to tender was made, it will apply to any future decision to award a contract.
- 4.3 The newly elected Welsh Government has clearly prioritised Fair Work, as defined by the Fair Work Commission, as a key area to progress during the next Senedd term. The Welsh Government has completed the first stage of the consultation on a Social Partnership and Public Procurement Bill, which seeks to use legislative levers available to meet the wellbeing and fair work goals outlined in the 2015 Act. The policy intention is clear, to embed socially responsible procurement as a duty on public bodies.
- 4.4 The recently updated Wales Procurement Policy Statement (WPPS) sets out the strategic vision for procurement to better reflect the well-being goals and address the perceived or real tension between lowest costs and achieving wider outcomes. The emphasis throughout the statement clearly places fair work and social value at the centre of procurement practices rather than being solely focused on financial savings. Whilst these developments are not currently legislated on, they will be during this Senedd term and the legislation has the potential to overhaul

procurement processes. This broader policy context should be considered when awarding contracts.

- 4.5 Working with Sheffield Hallam University and Data Hub, Celtic Leisure has carried out an evaluation of the economic benefit it creates for the community. This was stated to be £11.2m in the 2018/19 financial year. This figure could have been used as a baseline for comparing the economic benefit of alternative delivery options but is not referred to in the committee report or the Options Analysis report.
- 4.6 It is recognised that the ITT documents include a specific reference to the Future Generations Act and a requirement for bidders 'to demonstrate how their solution complies with these legislative requirements in their Method Statement responses'. It must be pointed out however that the obligations created by the Act fall upon the council rather than its contractors and that whilst it is right to ask bidders to relate their proposed solutions to meeting them, this does not in itself satisfy the duty.

5. Income Generation and Commercialisation

- 5.1 The Welsh government has created an environment that encourages and enables local authorities to act in the economic interest of their area. This includes direct involvement as a provider in local economies, which brings with it opportunities to generate much needed additional income to support services. The Local Government and Elections (Wales) Act 2021 provides a much sought after general power that will open up new potential for traded services, such as leisure, to create new and innovative offers.
- 5.2 Key to the development of a successful commercial offer is the unique ability of local authorities to provide a package of services that together can be unique in the market place. NPT has previously discussed the potential for new visitor attractions, e.g. at Margam Park, to boost tourism to the benefit of the local economy whilst also creating new income streams for the council. In the course of these discussions it was explicitly recognised that stand-alone visitor attractions are of less benefit to the local economy as a whole than would be a joined up approach with a range of activities and venues which might include leisure, sport and cultural venues. This approach is more likely to attract visitors to stay (and spend) in the area rather than making a day trip to Margam Park.
- 5.3 A widely defined leisure and culture offer has a significant part to play in drawing people into the area. Buildings based leisure facilities, particularly swimming pools, can be an integral element of such an offer and the commercial income generated can contribute to meeting well-being objectives. Fragmenting the management and strategic leadership of the leisure and culture offer by outsourcing elements of it has an inevitable impact on both the ability to generate commercial income and the ability to achieve synergy between the different service offers. Moreover, it may

be difficult for NPT residents to understand why, having made considerable investment in new and improved facilities, the council intends to share the income from them with a third party whose primary interests are outside the area.

- 5.4 The committee report of March 2020 makes no reference to how buildings based leisure is expected to relate to other service areas or how it will play a part in the development of the offer to visitors. The benefits of joined up services are neither acknowledged nor discussed.

6. Contract Term

- 6.1 Neither the options report ,nor the report to cabinet include an assessment of the optimum length of contract, nor any justification for it being of any particular duration. The procurement Contract Notice states that it is to run for 15 years, with an option to extend for a further five years. The estimated value of the contract is given as £25m. This, along with the £1.15m per annum affordability limit referred to in the ITT documents, suggests the council is planning for a 20 year plus contract term.
- 6.2 Confusingly, the ITT documentation requires initial bids to be based on a contract term of 10 years with an option to extend for a further five years. It does also suggest that the term may be longer if this will provide better value for money but there is a clear discrepancy between this and the Contract Notice.
- 6.3 The expectation of a long contract was confirmed In response to a question from UNISON. The officer leading the procurement process stated, 'The tender exercise has been framed on the basis that it will be a 20 year arrangement as that is the timescale that is typical for arrangements such as these to ensure it remains of sufficient interest to bidders and to ensure appropriate competition from the market. A determination was made by officers in light of the delegation to determine the appropriateness of a timescale. The final report to members will then to determine whether to proceed with a 20 year contractual arrangement.' This confirms that members were not involved in the decision to opt for a long-term arrangement and that officers have no intention of involving them prior to the final report. At this point it will be too late to revert to a shorter term. The choice members will have will be to either let a contract of 15 years, plus the possible extension period, or, to not let a contract at all.
- 6.4 No evidence has been provided to support the assertion that a 20 year term is typical for leisure contracts and no market consultation has been carried out to test the assertion that such a lengthy term is necessary to maintain the interest of potential suppliers. Elected members have been unable to weigh the risks of not maintaining the interest of suppliers against those associated with tying the council into an arrangement that is likely to prove difficult and expensive to extricate itself from, should the relationship fail in the way that the contract with Celtic Leisure has. There

is no evidence that officers carried out such an assessment either, suggesting that the (assumed) preference of suppliers was the sole factor taken into account.

- 6.5 Long contracts are often justified by a requirement for the successful company to invest their own money in assets associated with delivery of the contract. The tender documentation in this case indicates that whilst significant capital investments are envisaged, the council is not expecting the successful bidder to fund this themselves. The long contract term is not therefore linked to allowing time for an incoming provider to recoup a major upfront investment in the facilities. This no doubt reflects the fact that councils are currently much better placed than private companies to access capital, both in terms of relative liquidity and interest rates.
- 6.6 The days of long contracts being the only way of accessing capital are in fact long gone. Given the real risk of contract failure and the difficulties this creates in terms of service continuity, cost and distraction from core activity, any decision to let a contract of long duration would have to be supported by clear evidence that the risk is worth taking. In the current case the unevicenced assertion that a long term is the only way to 'maintain sufficient interest from bidders' seems an inadequate justification, which relates more to the state of the supply side than to the wider interest of the council and the residents of NPT. In any case, the taking of such a significant risk should be the subject of proper consideration by elected members and not treated as a minor technicality under an officer delegation.

7. The procurement procedure

- 7.1 Public contracts are subject to strict requirements derived from the fundamental principles of the Treaties of the European Union. These are codified in Welsh and English legislation via the Public Contracts Regulations 2015. The Regulations are intended to ensure openness, transparency and non-discrimination. To this end they are prescriptive in relation to the procedure to be followed when public bodies contract for goods and services. There are two default procedures to choose from; open where any provider is able to tender for an opportunity and restricted where interested parties are able to provide initial information to allow for a restricted number to be invited to submit a tender. In both cases contracting authorities must provide clarity from the outset in terms of what their requirements are and the basis on which they will evaluate bids.
- 7.2 In certain circumstances contracting authorities are able to depart from the requirement for clarity over exactly what is required and incorporate an element of

negotiation in to the procedure. The competitive procedure with negotiation can be followed where one or more of the following criteria applies¹:

- the needs of the contracting authority cannot be met without adaptation of readily available solutions;
- they include design or innovative solutions
- the contract cannot be awarded without prior negotiation because of specific circumstances related to the nature, the complexity or the legal and financial make-up or because of risks attaching to them;
- the technical specifications cannot be established with sufficient precision by the contracting authority with reference to a standard, European Technical Assessment, common technical specification or technical reference;
- with regard to works, supplies or services where, in response to an open or a restricted procedure, only irregular or unacceptable tenders are submitted

7.3 The NPT procurement is following the competitive procedure with negotiation but it is not clear which of the specified criteria is believed to apply, nor when or by whom the decision to use it was made. Given the exceptional nature of the procedure it is essential to evidence the justification for its use as a precaution against legal challenge from any would be bidder who perceives it to be discriminatory but also to guard against the potential for an emergent contract to be tailored more to the needs of the successful bidder than to the council.

7.4 The use of the competitive procedure with negotiation is subject to an explicit requirement to ensure that information provided to the market at the outset of the procurement is 'sufficiently precise to enable economic operators to identify the nature and scope of the procurement and decide whether to request to participate in the procedure'. Whilst this does not specifically include the length of the contract term, this can reasonably be seen as a fundamental element of 'the nature and scope of the procurement'² that could have a major bearing on whether a potential bidder decides to submit a bid. The discrepancy referred to above between the Contract Notice and the ITT document is therefore of concern in terms of procedural compliance which, though it may be unlikely to happen, could leave the council vulnerable to a legal challenge.

¹ Public Contracts Regulations 2015, reg. 26(4)

² Public Contracts Regulations 2015, Reg 29(3)

8. Contract specifications

- 8.1 The committee report states that the contract is to be let on the same specification as the current contract. Given the apparent failure of the current contract this is surprising. In the experience of APSE Solutions contract failure is often linked to poor specifications and/or poor contract management on the part of the council client. This is not to say that this is a factor in the failure of the contract with Celtic Leisure but it would be reasonable to expect an assessment of client side performance and a review of the fitness for purpose of the specification to feed into a considered judgement of whether or not changes were required.
- 8.2 The statement in the committee report that 'There is no overall impact on any valley community as a result of this proposal as it is proposed to retender the provision of leisure services with the same specification to that which Celtic Leisure currently undertake' ignores the fact that the council envisages a significant reduction in cost to itself. The ITT documents refer to an affordability ceiling of £1.15m but the 2019 accounts of Celtic Leisure report a management fee of £1.74m, in a year when it made a loss of more than £500,000. The management fee shown in the 2020 accounts is £1.59 but the loss increased to a little over £1m.
- 8.3 As discussed, the Options Analysis report assumes that a new contractor will be able to increase income by 5% and reduce costs by the same percentage. Income for the 2018/19 trading year was a little under £4.5m. A 5% increase would take this to £4.725m but a reduction in management fee from £1.74m to £1.15m would result in a reduction in overall income of £365,000. Even with a 5% reduction in cost, this would result in a loss of £463,000. Addressing this would require a significant further reduction in cost or a significant further increase in income.
- 8.4 The options for achieving this would almost certainly have an impact on either staff or users or both. Staff costs make up more than 50% of total cost. This makes it highly unlikely that an overall reduction in cost could be achieved without impacting on staff terms and conditions. An increase in income – beyond the 5% already built in to the assumption – would almost certainly require price increases. The potential for this is in fact included as an area for negotiation in the ITT documents.
- 8.5 The financial equation suggests that the statement that 'there is no overall impact on any valley community..' is questionable. Price rises and/or changes to the terms and conditions of the workforce will impact on members of the community and as such, it might be argued should be subject to consultation and open discussion rather than coming about as a result of (effectively secret) negotiation with the bidders.
- 8.6 Celtic Leisure manages The Gwyn Hall but not the other two theatres in the Neath Port Talbot area. Although it is not unusual for leisure trusts to have a remit that goes beyond sport and leisure, some of the more widely focussed examples have failed to

deliver expected benefits and have seen elements of their portfolio being returned to council management.

- 8.7 Given that there has been no conscious revision of the specification in NPT, no case has been made or considered for the continued inclusion of the Gwyn Hall in the contract or indeed for the continued exclusion of other cultural venues. Elected members were not appraised of the original rationale for this and have had no opportunity to consider alternative options.

9. Value for money

- 9.1 The Options Appraisal report purports to demonstrate that the contracted-out option offers better value than all other options. This position is arrived at by assuming that it is capable of driving more income than the other options and that its costs will be lower than the other options. The former assumption is based on an unevidenced assertion that a large operator will, as a matter of course, be better at marketing than a locally based organisation and that this will generate higher footfall and more income. This may or may not be true but it is at least arguable that an organisation with multiple contracts will make strategic decisions about where it focusses its resources, based on its own interest, not those of Neath Port Talbot or any other individual area where it has interests. Essentially a national organisation is likely to target those interests that generate the highest return which, on the evidence of current performance, is unlikely to be Neath Port Talbot.
- 9.2 A service provided directly by the council would not need to compete with other leisure facilities for marketing or any other resources, allowing local members to determine priorities to properly reflect the interests of the people they serve.
- 9.3 The report assumes that a national organisation will have 5% lower cost than a local one or indeed the council itself, because it will achieve economies of scale in terms of senior management costs. This assumption is questionable for a number of reasons:
- Under the hybrid model envisaged, the parent company generates its profits from the fees it charges for head office services. These services are not provided at cost but are marked up to create a margin. Thus, any savings of the sort discussed in the report are likely to be to the benefit of the parent company, rather than the local authority customer.
 - Senior managers of the company are likely to have higher salaries than senior managers of the council off-setting any economies of scale derived from them overseeing multiple contracts.
 - The primary goal of corporate managers on the for-profit side of the hybrid trust arrangement will be to generate revenue for the company as a whole.

- 9.4 The financial assessment set out in the consultancy report hinges entirely on marginal assumed advantages on cost and revenue. Without these assumptions the case for outsourcing, even on the narrow terms of the report, is less compelling than that for direct delivery. If significant value factors not considered in the report are taken into account the case for outsourcing, particularly on the basis of a 20 year contract, is far from compelling. These include the risk of expensive contract failure, as discussed above, but the most significant issue is the value to the wider economy that is lost through:
- The leakage of NPT funds in the form of payments and profit to a company that is highly unlikely to be based in the area or even the country.
 - The multiplier effect of retaining money expended by the council within the local economy. The wider economic benefit to the community of the service provided by Celtic Leisure was evaluated as £11.2m.
 - The value arising from the integration of buildings and non-buildings based services that is reduced, if not negated by hiring the former off to an external provider.
 - The ability to pursue policies focussed on the pay and conditions of the leisure services workforce that go directly to the meeting of more than one key council priority.

10. Conclusions and Recommendations

- 10.1 The decision to turn to the market to find a replacement for Celtic Leisure was made on the basis of a short report, with no background papers, before the impact of the pandemic was apparent. Whilst a narrowly focussed Options Analysis was subsequently carried out, this was not considered by elected members but in any case was also completed before the full impact of the coronavirus was understood.
- 10.2 No case has been set out for the continued inclusion of the Gwyn Hall in the portfolio of externally managed facilities. It is difficult to understand why this venue was included in the first place when two other theatres were not and given the failure of other wider leisure and culture trusts it would be reasonable to expect at least some discussion about its future management to have taken place.
- 10.3 The inclusion of the Gwyn Hall is one element of a specification which, according to the committee report, is substantially the same as that of the current contract. Given the failure of this contract it is surprising that it has not been thought necessary to review the specification. The assumption that what is needed is a change of contractor rather than a change of contract, or indeed, delivery mechanism, is neither evidenced, nor on the face of it, credible.
- 10.4 The decision to go to tender took no account of how the likely outcome of doing so would contribute to any of the stated strategic priorities of the council. Nor was it

assessed in terms of the seven statutory well-being goals created by the Well-Being of Future Generations Act (Wales) 2015.

- 10.5 This report suggests that the reduced management fee envisaged by the affordability ceiling set out in the ITT documents will lead to either an increase in prices to users of facilities and/or an attempt to reduce staffing costs. There has been no acknowledgement of or discussion about this despite the provisions of the Well-Being of Future Generations Act or the impending socio-economic duty under the Equalities Act. A statement in the committee report to the effect that the contract is to be let on the same specifications as apply to Celtic Leisure and that therefore there will be no impact on valley communities is questionable given the invitation in the ITT documents for bidders to bring forward proposals around customer pricing.
- 10.6 The decision that a 20 year contract term would be appropriate was made by officers without further recourse to elected members. The sole reason given for this is that the long term was thought necessary to interest potential suppliers. No evidence to support this has been provided and no assessment of the potential disbenefits of such a lengthy arrangement was carried out.
- 10.7 As has been pointed out, the council has not technically made a decision to outsource and will not do so until the procurement has run its course. It should however be pointed out that a decision not to proceed to contract award at this stage would be highly unusual and very unlikely to be the recommendation of officers, unless there has been a failure of the procurement process itself, e.g. there have been no suitable or compliant bids.
- 10.8 The extraordinary circumstance and impact of the pandemic are reasons in themselves why the council should revisit the decision to go to tender, but even without them, the evidence suggests that the decision was made without any appraisal of alternative options and with no reference to any criteria other than cost. Leisure and cultural facilities are increasingly being recognised for the important part they play in the delivery of wider well-being strategies and councils throughout the UK are reconsidering the way they are provided. Many are coming to the conclusion that the narrow issue of whether they attract NNDR relief is secondary to maximising the value they can add as part of a directly provided suite of related services.
- 10.9 Given the strength of the case for reconsidering the options, it is recommended that UNISON should seek a pause in the procurement process to allow the issues identified in this report to be considered by elected members. Whilst the way forward is clearly a matter for them, there is a compelling argument for taking the service in-house, at least temporarily, to allow time for the full impact of the epidemic to be understood and for the development of a revised strategy for meeting the wider well-being needs of the area. This would incorporate a plan for buildings based leisure services and the Gwyn Hall that genuinely reflects corporate

priorities and assesses the value of these services on a basis that goes beyond the narrow assessment of cost set out in the Options Analysis report.

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