

Report for: ACTION
Item Number: 3i



Contains Confidential or Exempt Information	NO – Part I
Title	Windsor Leisure Centre – Land Lease
Responsible Officer(s)	Kevin Mist, Head of Leisure Services - 01628 796443 Mark Shephard, Development & Property Manager - 01628 796082
Contact officer, job title and phone number	Kevin Mist, Head of Leisure Services - 01628 796443 Mark Shephard, Development & Property Manager - 01628 796082
Member reporting	Cllr E. Quick, Lead Member for Leisure and Libraries Cllr Saunders, Cabinet Member - Planning and Property
For Consideration By	Cabinet - sitting as Trustees of the RBWM Recreation Trust
Date to be Considered	26 June 2014
Implementation Date if Not Called In	1 July 2014
Affected Wards	All Windsor
Keywords/Index	Windsor, Leisure, Trust, Land

<p>Report Summary</p> <ol style="list-style-type: none"> 1. This report deals with the land on which Windsor Leisure Centre (WLC) is located. 2. It recommends to Trustees that they should lease this land from the Council and enter into a management agreement that enables the Council to operate its leisure centre operation, thereby promoting the objects of the Trust. 3. These recommendations are being made to ensure the land is used for the purposes of the Trust for the length of the lease, and to ensure the tax efficiency of the provision of these leisure services. 4. If adopted the key financial implication for the Council will be the savings of £25k per month arising from the Trust's status as being exempt from business rates (NNDR) with no net impact on the Trust's finances.

If recommendations are adopted, how will residents benefit?	
Benefits to residents and reasons why they will benefit	Dates by which residents can expect to notice a difference
1. The site of the Windsor Leisure Centre will be used in accordance with the objects of the RBWM Recreational Trust for the provision of leisure services for the length of the lease.	1 July 2014
2. Savings generated from the NNDR exempt status of the Trust will contribute towards the improvement of RBWM leisure facilities	1 July 2014

1. Details of Recommendations

RECOMMENDATION: That the RBWM Recreational Trust Trustees:

- 1.1 Enter into a short term lease with the Royal Borough of Windsor & Maidenhead for the land on which the Windsor Leisure Centre is located, for a period of 7 years with the option to terminate at an earlier date.**
- 1.2 Enter into a management agreement with the Royal Borough of Windsor and Maidenhead for the operation of leisure services on the site of the Windsor Leisure Centre.**
- 1.3 Delegate the authority to finalise the details of the lease and the management agreement to the Lead Member for Leisure & Libraries and the Strategic Director for Adult and Community services**

2. Reason for Recommendation(s) and Options Considered

Windsor Leisure Centre is an extremely popular attraction and provides a significant focal point for residents looking for sport and leisure activities. The centre sits on land beside the Thames and has its own access road.

The transfer is being considered for achieve two aims; firstly to safeguard the provision of recreation facilities for residents on this site and secondly to benefit from the exemption from NNDR that the Recreation Trust is entitled to.

This arrangement will continue until the Council puts in place its longer term strategy to safeguard the provision of leisure activity throughout the Borough by means of a tender process aimed at securing quality leisure services at reduced cost to the local taxpayer.

At today's meeting of the Council's Cabinet it will be asked to agree the following recommendations which mirror those Trustees are being asked to approve in this report:

RECOMMENDATION: that Cabinet

- 1.1 lease the land on which the Windsor Leisure Centre is located, to the Royal Borough of Windsor & Maidenhead Recreation Trust for a period of 7 years with the option to terminate at an earlier date.***
- 1.2 enter into a management agreement with Royal Borough of Windsor & Maidenhead Recreation Trust for the operation of leisure services on the site of the Windsor Leisure Centre.***

1.3 delegate the authority to finalise the details of the lease and the management agreement to the Lead Member for Planning & Property and the Managing Director.

Option	Comments
RBWM and RBWM Recreation Trust agree to a lease of the land and management agreement for services on this land This option is recommended.	This option will ensure the residents of Windsor will continue to enjoy leisure and recreation facilities at this location, and NNDR will not be payable as the land will be considered as being of charitable status..
RBWM and RBWM Recreation Trust do not agree to a lease of the land and management agreement for services on this land.	

3. Key Implications

Defined Outcomes	Unmet	Met	Exceeded	Significantly Exceeded	Date they should be delivered by
Lease of Land and Management Agreement between RBWM and RBWM Recreational Trust completed	Transfer not completed	July 2014	n/a	n/a	1 July 2014
Generate 2014/15 NNDR savings of:	< £225k	£225k	n/a	n/a	1 July 2014

4. Financial Details

a) Financial impact

The recommendation for a lease of the land and a management agreement will not give rise to additional cost for the Trust.

The lease of the land to a Trust and the operation of leisure services on the land in accordance with the objects of the Trust will enable service to be exempt from business rates (NNDR) which will result in an annual saving to the Council of £300k planned to commence in July 2014.

	2014-15	2015-16	2016-17
	Revenue £000	Revenue £000	Revenue £000
Addition	0	0	0
Reduction	0	0	0

Under the management agreement between RBWM and RBWM Recreational trust it is proposed that any annual financial surplus or deficit arising from the operation of Windsor Leisure Centre will be payable to or by the RBWM Recreational trust. Under the Lease between RBWM and RBWM Recreational trust it is proposed that any annual surplus received or deficit met by RBWM Recreational trust under the

Management agreement will be payable to or by RBWM. This latter transfer will be inclusive of the annual rent payable by the Trust to RBWM.

5. Legal Implications

In relation to the Trust

The objects of the RBWM Recreation Trust encompass a wide variety of leisure and open space facilities including “to provide, or assist in providing facilities for recreation or other leisure time occupation”. The land on which Windsor Leisure Centre is built being leased to the RBWM Recreation Trust is an appropriate acquisition for the Trust and is in accordance with its aims and objectives.

The Cabinet in acting as trustees for the Trust must consider whether the proposed lease and management agreement is in its best interests when considering the objects of the Trust. Likewise, the Trust must consider whether it is in its interest when considering that this is a temporary measure pending a tender process.

In relation to the Council

Power of Disposal

Under s123 of the Local Government Act 1972 a Council can only dispose of land (including letting) at best value unless the value of any undervalue is less than £2million. On the assumption that the undervalue was greater this would mean rental at a commercial rate.

A Council can dispose at less than best value if it is by a short tenancy (being a term of less than 7 years) and that the tenancy secures the promotion or improvement of the economic, social or environmental well-being of its area.

The Council will need to ensure using the lease terms that the asset can be secured for the further tendering exercise and any contractual arrangements will need to enable the assets to be transferred out from the Trust or terminate the arrangement.

1. If approved, a tenancy and management will be drawn up by RBWM Property Services for a right to occupy the land, therefore confirming the future of WLC.

State Aid & Procurement

Any arrangement that includes a disposal or rental at best consideration provides a subsidy to a private organisation even though the obvious relationship between the Council and the Trust. Any subsidiary over the de minimis level €200,000 would distort competition or provide a selective advantage.

However, the intention is that the management agreement between the Trust and the Council will ensure that there is no aid and that any perceived enrichment at less than best rent would be factored into the management agreement.

The management agreement will permit the Trust ‘the right to exploit the service or in this right together with payment’ which would amount to a Public Service Concession under the Public Contract Regulations 2006. Public Service Concessions are not formally regulated under the procurement regulations but the Council will need to consider if there is cross border interest in the contract.

If there is, the Council should still abide by the treaty principles of proportionality, transparency, non-discrimination etc. However, it is recognised that this is a Part B

service and only an 'interim' measure pending a fuller tendering exercise. Accordingly, it is considered to be a low risk of challenge in that any interested party would simply bid at the further tender process.

6. Value For Money

The achieving of a saving on the revenue budget provides value for money for the residents of the borough.

7. Sustainability Impact Appraisal

n/a

8. Risk Management

Risks	Uncontrolled Risk	Controls	Controlled Risk
1. Change in charity laws/rules resulting in difficulty in returning the land asset to the Council	Loss of the land and the WLC. Council unable to secure land for future tender.	Adequate tenancy and management arrangements that ensures return of occupancy	Occupation by the Trust only continues during such period as Council agrees.

9. Equalities, Human Rights and Community Cohesion

9.1 n/a

10. Staffing/Workforce and Accommodation implications:

10.1 There is not impact on staffing or accommodation

11. Property and Assets

11.1 The lease for the land will be drawn up by RBWM Property Services in conjunction with Shared Legal Services.

11.2 It is recommended that the exact terms of the lease should be delegated to the Lead Member for Planning & Property and the Managing Director. It is proposed that the main terms would be:

- 11.2.1 Term: 7 years
- 11.2.2 Rent : to be agreed
- 11.2.3 Insurance / Repair : Council repairs and insures
- 11.2.3 Termination : 30 days notice from either party to the other.

11.3 Windsor Leisure Centre is valued at £21.9m on a Depreciated Replacement Cost (DRC) basis – this is the cost to rebuild / re-provide the facility if it was destroyed.

11.4 Management Agreement: this will be the agreement where the Council will manage and provide leisure services at the leisure centre to the specification provided by the Trust and in accordance with the objects of the Trust. The agreement will be on terms that enable the income collection, expenditure and

service provision that ensures that the continued use of the centre is maintained and that the Trusts charitable objects are achieved.

12. Any other implications:

n/a

13. Consultation

None

14. Timetable for Implementation

Cabinet approval to accept transfer	June 2014
Transfer is completed to the Trust	July 2014

15. Appendices

15.1 Appendix A – aims and objectives of the Trust

15.2 Appendix B – Map of the land being considered (from Property Services)

16. Background Information

None

17. Consultation

Name of consultee	Post held and Department	Date sent	Date received	See comments in paragraph:
Internal				
Cllr Burbage	Leader of the Council			
Andrew Brooker	Head of Finance	6/6/2014	6/6/2014	
Alan Abrahamson	Finance partner	6/6/2014	6/6/2014	
Sean O'Connor	Legal Partner	23/5/14	27/5/14	
Mark Shephard	Development & Property Manager	23/5/14	28/5/14	
External				

Report History

Decision type:	Urgency item?
Key decision	No

Full name of main report author	Job title	Full contact no:
Kevin Mist	Head of Leisure Services	01628 796443

REGISTERED CHARITY DETAILS

308246 -

THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD RECREATIONAL TRUST

Governing document

TRUST DEED DATED 1 NOVEMBER 1971 AS VARIED BY A SCHEME DATED 19 SEPTEMBER 1975 AND SUPPLEMENTAL DEED MADE 15 APRIL 1991

Area of benefit

THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD

Organisation type

STANDARD REGISTRATION

Where it operates

Windsor and Maidenhead

Registration history

06 July 1973 Registered

Charitable objects

TO PROVIDE OR TO ASSIST IN PROVIDING FACILITIES FOR RECREATION OR OTHER LEISURE TIME OCCUPATION IN THE INTERESTS OF SOCIAL WELFARE FOR THE BENEFIT OF THE INHABITANTS OF THE ROYAL BOROUGH OF WINDSOR AND MAIDENHEAD.

Classification

What

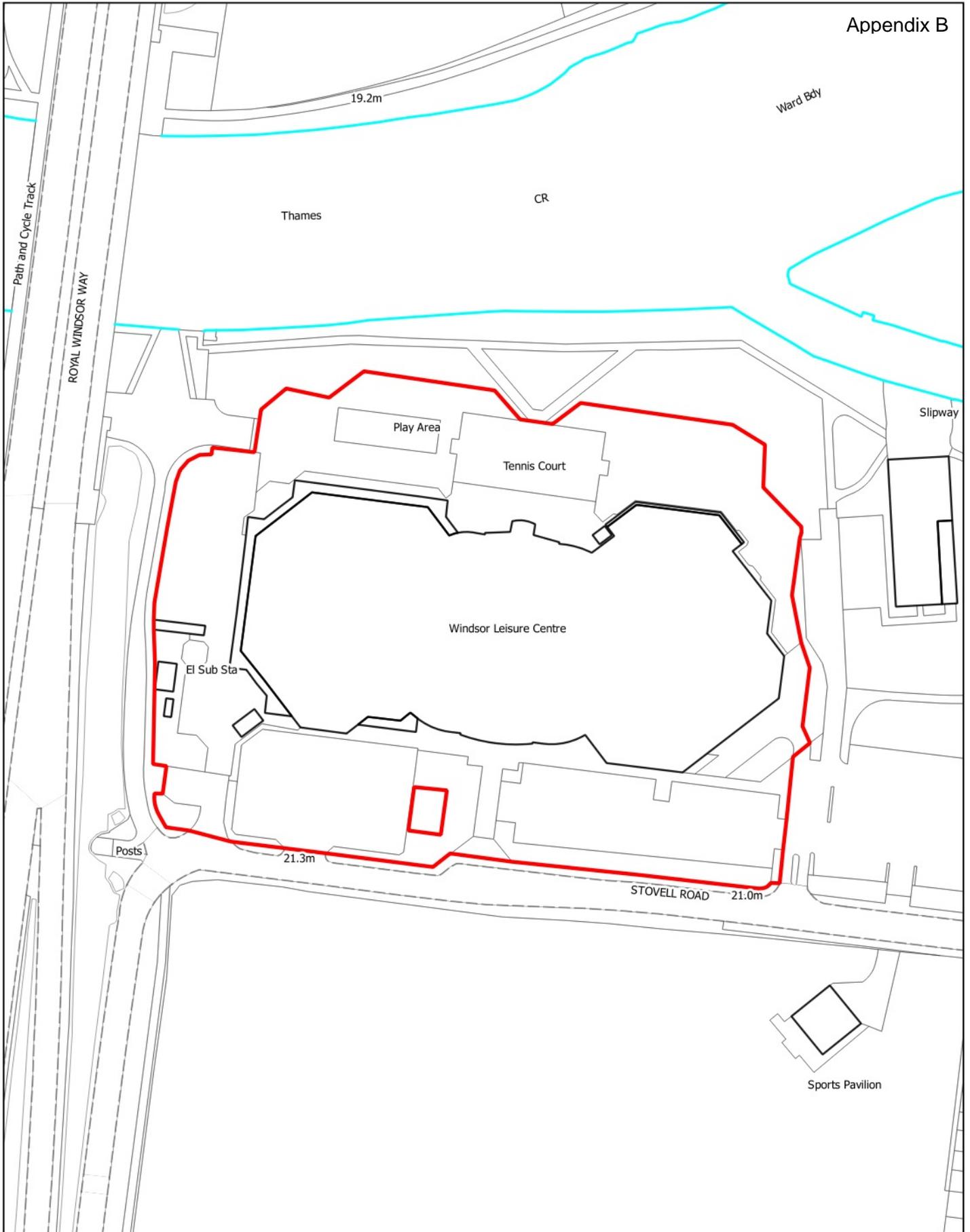
- AMATEUR SPORT

Who

- OTHER DEFINED GROUPS

How

- PROVIDES BUILDINGS / FACILITIES / OPEN SPACE



<p>Description:</p> <p>Windsor Leisure Centre Windsor Trust Lease Plan</p>	<p>Drawing No:</p> <p>EO2745</p> <p>10/06/2014</p>	<p>OS Ref:</p> <p>SU9577 se</p> <p>↑</p> <p>Scale: 1:1250</p>	<p>Royal Borough Of Windsor and Maidenhead</p> <p>© Crown copyright and database right 2012. Ordnance Survey 100018817</p>
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