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|---|---|
| Report Title:                               | Leisure Services Update and award of interim contract   |
| Contains Confidential or Exempt Information | Part I: Main Report<br>Part II: Appendix B - Financial impact of report's recommendation. Appendix C – Risk mitigation and Appendix D – Legal implications. Not for publication by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 |
| Cabinet Member:                             | Councillor Reynolds Cabinet Member for Communities and Leisure  |
| Meeting and Date:                           | 11 July 2023  |
| Responsible Officer(s):                     | Andrew Durrant Executive Director of Place Services & Alysse Strachan Head of Neighbourhood Services  |
| Wards affected:                             | All   |



## **REPORT SUMMARY**

*Termination of the current leisure contract procurement process to enable consideration of a change in HMRC VAT legislation for the provision of local authority leisure service provision.*

*Award an interim Leisure Services Contract to Leisure Focus Trust (LFT) for a period of 20 months to enable the Council to consider leisure delivery options in light of HMRC VAT ruling change.*

*These proposals will support the council's corporate plan of creating a sustainable borough of opportunity and innovation, through the provision of inspiring places to take part in physical activity and support the growth of thriving communities as detailed in the Corporate Plan (2021-26).*

## **1. DETAILS OF RECOMMENDATION(S)**

### **RECOMMENDATION: That Cabinet notes the report and:**

- i. Terminate the current Leisure Contract procurement process.
- ii. Agree to a new 20-month interim contract to the incumbent leisure operator to ensure continuity of service allowing time for the consideration below to be made.
- iii. Request officers conduct research to consider leisure delivery options in light of HMRC VAT ruling change and bring back to cabinet for decision on delivery option and if necessary, authority to run a new procurement process at the end of the interim contract.
- iv. Note the risks and opportunities of taking the actions above.

## **2. BACKGROUND**

- 2.1 In June 2020 Cabinet agreed to award LFT a two (2) year contract with an option for one (1) further year. The contract included Braywick, Windsor, Furze Platt, Cox Green and Charters Leisure Centres. LFT is a not-for-profit charitable incorporated organisation (CIO). It has been established to work with local communities; supporting clubs, organisations and individuals to achieve their sporting and lifestyle goals. As a charity, LFT will reinvest a proportion of surplus funds generated back into RBWM's facilities.

### **Contract Re-procurement**

- 2.2 The current three-year contract with LFT expires 31st July 2023 and there are no extension options.
- 2.3 The Project Team for the new procurement formed in early 2022. Approval to seek proposals (Go out to tender) was obtained in May 2022. The proposed contract was for 12 years, with an option to extend by a single period of five years.
- 2.4 An open procurement procedure was selected, and a File a Tender Notice (2022/S 000-024984) was placed 6th September 2022 with the initial return date 16th November 2022, extended to 30th November 2022 at the suppliers' request.
- 2.5 The Council engaged external legal support, who produced the Contract Terms & Conditions based on the Sports England model. External sector consultancy – were engaged and produced the Specification and provided market sector knowledge and advice on evaluation criteria and weightings.
- 2.6 Sites included in the procurement were the Leisure Centres in the current contract and additionally Larchfield Community Centre, Dedworth Community Centre and the Tennis sites to be renovated by the Lawn Tennis Association (LTA) funding at Kidwells Park, Alexandra Gardens and Desborough Park.
- 2.7 The proposed contract was for 12 years, with an option to extend by a single period of five years. An open procurement procedure was selected, and a File a Tender Notice (2022/S 000-024984) was placed 6th September 2022 with the initial return date 16th November 2022, extended to 30th November 2022 at the suppliers' request.
- 2.8 Extensive clarifications were asked during the tender phase and three clarification meetings were held with four bidders. The following table 1 shows the criteria and weightings for each method statement question. The split for Price/Technical was 60/40.

Table 1: Tender Evaluation Model

| TECHNICAL CRITERIA  | Weighting   |
|---|-------------|
| 1. Programming and Pricing                                    | 8%          |
| 2. Asset Management and Cleaning                              | 8%          |
| 3. Staffing   | 7%          |
| 4. Environmental Sustainability                               | 5%          |
| 5. Marketing & Customer Relationship Management               | 4%          |
| 6. Demonstrating Social Value                                 | 3%          |
| 7. Catering   | 3%          |
| 8. Contract Mobilisation                                      | 2%          |
| Technical weighting   | 40%         |
| COMMERCIAL CRITERIA   | Weighting   |
| 1. Proposed Management Fee (annual average over 12-year term) | 60%         |
| Commercial weighting  | 60%         |
| <b>Total weighting</b>  | <b>100%</b> |

2.9 Three bids were submitted by the closing time/date. One bidder declined to bid citing lack of certainty relating to NNDR Relief.

2.10 Evaluators were selected from across the Council to cover all the elements of the criteria. They were Andrew Durrant (Executive Director of Place Services), Michael Shepherd (Sports & Leisure Service Manager), Chris Pearce (Head of Capital Projects), Kevin Taylor (Pensions Service Manager), Claire Lowman (Service Lead - Public Health Strategies), James Thorpe (Service Lead – Sustainability & Climate Change), Johannes Den-Heijer (Finance Business Partner - Place) and Louise Page (Community Engagement Officer).

2.11 The Sports Consultancy (TSC) reviewed the technical and financial submissions and offered advice on clarification questions and produced reports.

2.12 Clarification questions were asked of all the bidders and evaluation concluded on 2<sup>nd</sup> March 2023. The Cabinet report recommending the preferred bidder was scheduled to be taken to 30 March Cabinet.

## **Government Policy Change on Tax Treatment of Leisure Services**

- 2.13 On 3 March 2023, HM Revenue & Customs (HMRC) published a policy paper (Revenue and Customs Brief 3 (2023): changes to VAT treatment of local authority leisure services) which set out a change to the VAT treatment of leisure services provided by local authorities. It details that local authorities can now apply the non-business treatment to leisure services they provide to members of the public.
- 2.14 Meaning, “Local authorities that provide in-house leisure services to members of the public currently treat these supplies as business activities for VAT purposes and either: charge their customers VAT at the standard rate or apply the exemption.” “Local authorities can now revisit this position and apply the non-business treatment to their supplies of leisure services. They can also submit claims to HMRC.”
- 2.15 All three Bidders were asked (through clarifications process) how the new policy might impact on the current procurement and any award of contracts. Two bidders presented a list of factors that needed to be considered as part of our research. This included business rates/NNDR, insurances, VAT, capital investments, financial risks, employee rights (TUPE), and the balance of risk. They both indicated that the changes could not be incorporated into the current procurement as the changes were too substantive. Another bidder presented a new (more favourable) Pricing Schedule but made no reference to the impact on the procurement.
- 2.16 Browne Jacobson were consulted to provide advice on our available options and the procurement was put on hold whilst we investigated the implications of these changes.
- 2.17 Officers have spoken with sport and leisure consultants Max Associates and TSC, internal finance colleagues, RBWM Tax advisors, RBWM legal advisors Browne Jacobson, and attended a Webinar with Trowers & Hamlin and KPMG. All advice received specified that it was a complex situation and needed to be assessed on a case-by-case basis. Max Associates have provided a cost plan for some of this work indicating an absolute minimum of six weeks required to conduct an options appraisal for consideration by RBWM
- 2.18 Officers also felt it pertinent to discuss the latest advice, situation and longer-term view with the new Cabinet Member and wider Cabinet as appropriate.

### **3. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED**

- 3.1 Three options have been considered in terms of risk impact and detailed below in Table 2. It is important to note that following careful review and consultation with Members, progressing with option A is the recommendation, as this provides the opportunity to investigate the opportunities available as a result of the change to VAT treatment on Local Authority leisure income, which would not be possible if option B is agreed. Option C holds the greatest risk because

of the uncertainty and impact on service provision, council finances and reputational damage that would be caused.

Table 2: Options arising from this report

| <b>Option</b>   | <b>Comments</b>   |
|---|---|
| <p><b><u>Option A</u></b></p> <p><b>Terminate the Procurement, consider options, continue research regarding VAT policy and commence new procurement process if necessary.</b></p> <p><b>This is the recommended option</b></p> | <p>This will enable officers to fully explore all options available following the new policy on VAT treatment.</p> <p>An interim contract is necessary in order to ensure the continuation of Leisure Services across the borough.</p>  |
| <p><b><u>Option B</u></b></p> <p><b>Continue with Current Procurement, award to Preferred Bidder.</b></p>   | <p>The contract would be awarded to the preferred bidder.</p> <p>Further negotiations would need to be made with the bidder as the submitted bid as part of the tender response was time limited, has expired and there is significant likelihood of a worse financial position being offered.</p> <p>This would still require an interim contract with LFT and this may not be viable and therefore Leisure Centres could close.</p> |
| <p><b><u>Option C</u></b></p> <p><b>Do Nothing</b></p>  | <p>This would result in closure of the leisure facilities for an extended period of time and reputational damage for the authority, leading to a significant financial risk over the long term, and in excess of either option A and B.</p>   |

3.2 Option A: Terminate the Procurement, allows the consideration of the council's options following the change in VAT legislation regarding Local Authority leisure provision, via continued research, and allows for a commencement of a new procurement process if necessary. This supports opportunity and innovation within the borough.

3.3 The 20-month interim agreement would allow for the indicative timescales outlined in Table 33 below but would be subject to change depending on the outcome of the investigation work. There is some limited flexibility in the early-stage timeline up to the end of September 2024 but not after that. The timeline in the table below also avoids contract transfer during the peak January membership sales period and aligns the contract with financial years.

Table 3: Indicative Timeline

| Date                          | Action   |
|-------------------------------|--|
| August to October 2023        | 3 months investigation (N.B. Includes the summer holidays).  |
| November 2023 to January 2024 | 3 months to plan procurement (N.B. Includes Christmas period).   |
| February to October 2024      | 9 months procurement   |
| October to November 2024      | 2 months for report authorisation<br><br>November 2023 cabinet to get decision before end of 2024 due to call in etc. The Cabinet report would need to be sent to internal consultees in mid-October 2024. |
| January to March 2025         | 3 months mobilisation  |
| 1 April 2025                  | New contract commences   |
| April 2025 onwards            | Management of new contract   |

- 3.4 Additional details of the report's recommendations are commercially sensitive and is therefore included in Appendix C which is Part II by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

#### 4. KEY IMPLICATIONS

- 4.1 Option A will support the council's corporate plan of creating a sustainable borough of opportunity and innovation, through the provision of inspiring places to take part in physical activity and support the growth of thriving communities as detailed in the Corporate Plan (2021-26). Primarily this is monitored via leisure centre attendance in the corporate objectives, but the service also provides wide social value across the borough and wider region, whilst bringing an income into the council.

Table 4: Key Implications

| Outcome  | Unmet   | Met  | Exceeded                                       | Significantly Exceeded       | Date of delivery                   |
|--|---|--|--|------------------------------|------------------------------------|
| Leisure options considered in light of VAT policy change | Options not considered  | Options considered   | N/A  | N/A                          | 31/01/2024                         |
| Leisure Service delivery                                 | Leisure Centres closed from 01 August 2023 Resulting in attendances below | Leisure Centres remain open and attendance targets met (+2.5% from | Attendance is above the +2.5% corporate target | 10% above attendance targets | 31/03/2024 and annually thereafter |

| <b>Outcome</b>                 | <b>Unmet</b>   | <b>Met</b>                                    | <b>Exceeded</b>   | <b>Significantly Exceeded</b> | <b>Date of delivery</b> |
|--------------------------------|--|---|---|-------------------------------|-------------------------|
|                                | corporate target.  | baseline annually)                            |   |                               |                         |
| Income provided to the council | No (or significantly lower than forecast) management fee received. | Management fee received in line with forecast | Management fee receipts in excess of budget projections | N/A                           | 31/03/2024              |

## **5. FINANCIAL DETAILS / VALUE FOR MONEY**

5.1 The financial impact of this report's recommendations is commercially sensitive and is therefore included in Appendix B, which is Part II by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

## **6. LEGAL IMPLICATIONS**

6.1 The discussions of the legal implications in this report's recommendations are contractually sensitive and therefore additional information is included in Appendix D which is Part II by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

## **7. RISK MANAGEMENT**

7.1 To mitigate risk, Officers have spoken with sport and leisure consultants Max Associates and TSC, internal finance colleagues, RBWM Tax advisors, RBWM legal advisors Browne Jacobson and attended a webinar with Trowers & Hamlin and KPMG.

7.2 Further information regarding the risk management in this report recommendations are contractually sensitive and therefore additional information is included in Appendix C which is Part II by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

## **8. POTENTIAL IMPACTS**

8.1 An Equality Impact Assessment is available as Appendix A.

8.2 Climate change/sustainability. There will be no change to the current position. Following the review and any subsequent re-procurement, climate change and sustainability measures can be incorporated into the new contract.

8.3 Data Protection/GDPR. Choosing option A maintains the current situation and limits any data transfer and the associated Data Protection / GDPR risks, as a result no Data Protection Impact Assessment (DPIA) has been completed.

8.4 Choosing options other than A would result in more uncertainty for the Leisure Centre's workforce than is already the case.

## 9. CONSULTATION

9.1 Officers have consulted with external leisure consultants, tax advisors, legal advisors and internal officers regarding the impact of the options available (or otherwise).

## 10. TIMETABLE FOR IMPLEMENTATION

10.1 Implementation date if not called in: 20/07/2023 The full implementation stages are set out in table 5.

**Table 5: Implementation timetable**

| Date       | Details  |
|------------|--|
| 11/07/2023 | Agreement at Cabinet                                     |
| 12/07/2023 | Minutes published  |
| 19/07/2023 | Call in period ends                                      |
| 20/07/2023 | Procurement Termination notice sent to bidders           |
| 01/08/2023 | 20-month contract begins                                 |
|            | Further investigation regarding leisure delivery options |
|            | Agreed leisure delivery option progressed                |
| 31/03/2023 | 20-month contract ends                                   |

## 11. APPENDICES

11.1 This report is supported by 4 appendices:

- Appendix A – Equality Impact Assessment
- Appendix B – Financial impact of report's recommendation (Part II)
- Appendix C – Risk mitigation (Part II)
- Appendix D – Legal Implications (Part II)

## 12. BACKGROUND DOCUMENTS

12.1 This report is supported by 2 background documents:

- [Policy Paper on Changes to vat treatment of local authority leisure services](#)
- Leisure Contract Re-procurement update [Cabinet report from 25 June 2022](#) Leisure Contract Re-procurement update Cabinet report from 25 June 2022



### 13. CONSULTATION

| <b>Name of consultee</b>                 | <b>Post held</b>                                      | <b>Date sent</b>   | <b>Date returned</b> |
|--|---|--|----------------------|
| <i>Mandatory:</i>                        |   | <i>Statutory Officer (or deputy)</i>   |                      |
| Andrew Vallance                          | Head of Finance/ interim S151 Officer                 | <b>03/07/2023</b>  | <b>05/07/23</b>      |
| Elaine Browne                            | Head of Law & Governance/ Interim Monitoring Officer  | <b>03/07/2023</b>  | <b>05/07/23</b>      |
| <i>Deputies:</i>                         |   |  |                      |
|  |   |  |                      |
| <i>Mandatory:</i>                        |   | <i>Procurement Manager (or deputy) - if report requests approval to go to tender or award a contract</i>               |                      |
| Lyn Hitchinson                           | Procurement Manager                                   | <b>03/07/2023</b>  | <b>03/07/2023</b>    |
| <i>Mandatory:</i>                        |   | <i>Data Protection Officer (or deputy) - if decision will result in processing of personal data; to advise on DPIA</i> |                      |
| Samantha Wootton                         | Data Protection Officer                               | 03/07/2023   | 03/07/2023           |
| <i>Mandatory:</i>                        |   | <i>Equalities Officer – to advise on EQiA, or agree an EQiA is not required</i>  |                      |
| Ellen McManus-Fry                        | Equalities & Engagement Officer                       | 03/07/2023   | 03/07/2023           |
| <i>Other consultees:</i>                 |   |  |                      |
| <i>Directors (where relevant)</i>        |   |  |                      |
| Stephen Evans                            | Chief Executive                                       | <b>03/07/2023</b>  | <b>05/07/2023</b>    |
| Andrew Durrant                           | Executive Director of Place                           | <b>03/07/2023</b>  | <b>04/07/2023</b>    |
| Kevin McDaniel                           | Executive Director of Adult Social Care & Health      |  |                      |
| Lin Ferguson                             | Executive Director of Children's Services & Education |  |                      |
| <i>Heads of Service (where relevant)</i> |   |  |                      |
| Alysse Strachan                          | Head of Neighbourhood Services                        | <b>03/07/2023</b>  | <b>03/07/2023</b>    |
|  |   |  |                      |
| <i>External (where relevant)</i>         |   |  |                      |
| N/A                                      |   |  |                      |

|   |  |  |
|---|--|--|
| Confirmation relevant Cabinet Member(s) consulted |  |  |
|---|--|--|

|               |   |     |
|---------------|---|-----|
| Cllr Reynolds | Cabinet Member for<br>Communities and Leisure | Yes |
| Cllr Werner   | Leader of the Council                         | Yes |

### REPORT HISTORY

| <b>Decision type:</b>   | <b>Urgency item?</b>   | <b>To follow item?</b>   |
|---|--|--|
| Key decision<br><br>First entered into the<br>Cabinet Forward Plan:<br>21/12/2022 | Yes<br><br>Brought forward to 11 July<br>Cabinet from 27 July 2023<br>Cabinet to meet end of<br>contract deadline of 31 July<br>2023 | Yes<br><br>Report amended to<br>enable some part one<br>discussion for<br>transparency |

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| Report Author: Michael Shepherd, Sport and Leisure Service Manager, 01628<br>683800 |
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# Equality Impact Assessment

For support in completing this EQIA, please consult the EQIA Guidance Document or contact [equality@rbwm.gov.uk](mailto:equality@rbwm.gov.uk)

## 1. Background Information

|                                |   |
|--------------------------------|---|
| Title of policy/strategy/plan: | Leisure Services Update and award of interim contract |
| Service area:                  | Neighbourhood Services - Leisure                      |
| Directorate:                   | Place   |

### **Provide a brief explanation of the proposal:**

- What are its intended outcomes?
- Who will deliver it?
- Is it a new proposal or a change to an existing one?

Termination of leisure contract procurement process to enable consideration of a change in HMRC VAT legislation for the provision of Local Authority leisure service provision.

Award an interim Leisure Services Contract to Leisure Focus Trust via a Direct Award for a period of 20 months to enable the Council to consider leisure delivery options in light of HMRC VAT ruling change.

The above actions allow for continuity of service while the assessment of the ruling change takes place.

## 2. Relevance Check

### **Is this proposal likely to directly impact people, communities or RBWM employees?**

- If No, please explain why not, including how you've considered equality issues.
- Will this proposal need a EQIA at a later stage? (for example, for a forthcoming action plan)

No, the option proposed to members aims to ensure continuity of service, with service delivery remaining as it is now.

Depending on the outcome of the investigation work, an EQIA will be provided with subsequent decision report(s) as required.

If 'No', proceed to 'Sign off'. If unsure, please contact [equality@rbwm.gov.uk](mailto:equality@rbwm.gov.uk)

### 3. Evidence Gathering and Stakeholder Engagement

**Who will be affected by this proposal?**

For example, users of a particular service, residents of a geographical area, staff

**Among those affected by the proposal, are protected characteristics (age, sex, disability, race, religion, sexual orientation, gender reassignment, pregnancy/maternity, marriage/civil partnership) disproportionately represented?**

For example, compared to the general population do a higher proportion have disabilities?

**What engagement/consultation has been undertaken or planned?**

- How has/will equality considerations be taken into account?
- Where known, what were the outcomes of this engagement?

**What sources of data and evidence have been used in this assessment?**

Please consult the Equalities Evidence Grid for relevant data. Examples of other possible sources of information are in the Guidance document.

## 4. Equality Analysis

Please detail, **using supporting evidence**:

- How the protected characteristics below might influence the needs and experiences of individuals, in relation to this proposal.
- How these characteristics might affect the impact of this proposal.

Tick positive/negative impact as appropriate. If there is no impact, or a neutral impact, state 'Not Applicable'

More information on each protected characteristic is provided in the Guidance document.

|  | Details and supporting evidence | Potential positive impact | Potential negative impact |
|--|---------------------------------|---------------------------|---------------------------|
| Age  |                                 |                           |                           |
| Disability   |                                 |                           |                           |
| Sex  |                                 |                           |                           |
| Race, ethnicity and religion                           |                                 |                           |                           |
| Sexual orientation and gender reassignment             |                                 |                           |                           |
| Pregnancy and maternity                                |                                 |                           |                           |
| Marriage and civil partnership                         |                                 |                           |                           |
| Armed forces community                                 |                                 |                           |                           |
| Socio-economic considerations e.g. low income, poverty |                                 |                           |                           |
| Children in care/Care leavers                          |                                 |                           |                           |

## 5. Impact Assessment and Monitoring

*If you have not identified any disproportionate impacts and the questions below are not applicable, leave them blank and proceed to Sign Off.*

**What measures have been taken to ensure that groups with protected characteristics are able to benefit from this change, or are not disadvantaged by it?**

For example, adjustments needed to accommodate the needs of a particular group

**Where a potential negative impact cannot be avoided, what measures have been put in place to mitigate or minimise this?**

- For planned future actions, provide the name of the responsible individual and the target date for implementation.

**How will the equality impacts identified here be monitored and reviewed in the future?**

See guidance document for examples of appropriate stages to review an EQIA.

## 6. Sign Off

|                                       |                         |
|---------------------------------------|-------------------------|
| <b>Completed by:</b> Michael Shepherd | <b>Date:</b> 03/07/2023 |
| <b>Approved by:</b> Alysse Strachan   | <b>Date:</b> 03/07/2023 |

If this version of the EQIA has been reviewed and/or updated:

|                                       |                         |
|---------------------------------------|-------------------------|
| <b>Reviewed by:</b> Ellen McManus-Fry | <b>Date:</b> 03/07/2023 |
|---------------------------------------|-------------------------|