

Report Title:	RBWM Leisure Management Contract re-procurement
Contains Confidential or Exempt Information	Part I: Main Report  Part II: Other appendices/previous reports which is Part II 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:	24 April 2024
Responsible Officer(s):	Andrew Durrant Executive Director of Place Services & Alysse Strachan Head of Neighbourhood Services
Wards affected:	All

## **REPORT SUMMARY**

*This report requests that Cabinet note the report and agree to proceed with re-tendering of the Borough's Leisure Management Contract, which will seek to appoint the operator for the next contract period, to commence with effect from 1 April 2025.*

*These proposals will support the Council Plan (2024-2028) objectives to put the council on a strong financial footing to serve the borough effectively and that people live healthy and independent lives in supportive communities.*

*The proposals will also support the aim of increasing access and opportunities for residents to be physically active as part of daily life, including sport, leisure, active travel, and participation within community clubs, supported by newly published strategies and plans.*

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

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

- i. Delegates authority to the Executive Director of Place Services in consultation with the Cabinet Member for Communities and Leisure for the procurement and contract award of a leisure operator for the contract period from 1 April 2025**
- ii. Cabinet agrees the Lawn Tennis Association (LTA) tennis scheme (as outlined in the background documents) can be implemented, with the final operational model being determined in consultation with the wider leisure procurement process, with future decisions being delegated to the**

**Executive Director for Place, in consultation with the Cabinet Member for Communities and Leisure.**

**2. BACKGROUND**

- 2.1 In June 2020 Cabinet agreed to award Leisure Focus Trust (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 was established to work with local communities; supporting clubs, organisations and individuals to achieve their sporting and lifestyle goals. As a charity, LFT reinvest a proportion of surplus funds generated back into RBWM's facilities.
- 2.2 The Project Team for a 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.
- 2.3 The project team included support from external consultants The Sports Consultancy and legal support from Browne Jacobson.
- 2.4 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 detailed that local authorities can now apply the non-business treatment to leisure services they provide to members of the public. This presented a potential financial opportunity to the Council requiring further investigation. The financial and operational opportunities and implications are discussed within the options appraisal (Appendix B).
- 2.5 Officers consulted with Browne Jacobson to provide advice on our available options and the procurement was put on hold whilst the implications of these changes were investigated.
- 2.6 Officers also spoke 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.
- 2.7 At Cabinet on 11 July 2023, it was agreed to terminate the Procurement, allowing the consideration of the council's options following the change in VAT legislation regarding Local Authority leisure provision, via continued research, and allowing for a commencement of a new procurement process if necessary. This supported opportunity and innovation within the borough.

- 2.8 In order to provide a continuation of service after the contract expired on 31 July 2023, a 20-month interim agreement to 31 March 2025 was agreed with LFT to allow for a continuation of operation leisure centre services.
- 2.9 Max Associates were commissioned to provide an options appraisal for consideration by RBWM (Appendix B) incorporating likely implications following the VAT legislation change. Table 1 provides a summary of the options, with section 2.11.1 of Appendix B providing additional detail regarding the financial and quality advantages and disadvantages, and risks and other considerations, associated with each operational model.

**Table 1: Summary options table**

Option	Finance	Quality	Risks
In-house	<ul style="list-style-type: none"> <li>• Most expensive option – due to NNDR costs, alignment of staff terms, conditions and pensions to Council employees and no economies of scale / leisure specialism.</li> </ul>	<ul style="list-style-type: none"> <li>• Council fully in control of service delivery.</li> <li>• Staff will TUPE across from LFT, but senior team (with service specific experience), may leave due to having less autonomy on managing the business.</li> </ul>	<ul style="list-style-type: none"> <li>• All trading risk remains with the council.</li> <li>• Senior team who TUPE transfer, leave and council must recruit a new team of leisure centre specialists.</li> </ul>
Local Authority Trading Company (LATC)	<ul style="list-style-type: none"> <li>• Likely to be similar cost to LFT as a single operating organisation.</li> <li>• Can't extend outside the Council area by more than 20% of core business activities.</li> <li>• Could use an agency approach to maintain comparable VAT position to in-house model.</li> </ul>	<ul style="list-style-type: none"> <li>• The Council will have to set up a new organisation, with new branding, procedures, governance etc.</li> <li>• Staff will transfer from LFT, but senior team and staff may leave due to less autonomy.</li> </ul>	<ul style="list-style-type: none"> <li>• The Council must control all the shares in the LATC and must also exercise effective day-to-day control over its affairs; in other words, the same as the relationship between the Council and one of its internal directorates.</li> <li>• Senior team who transfers from LFT leave and LATC must recruit a new team of leisure centre specialists.</li> </ul>
Re-procure	<ul style="list-style-type: none"> <li>• Will be the most cost-effective model with NNDR, and performance efficiencies. New agency arrangement may improve financial position further.</li> </ul>	<ul style="list-style-type: none"> <li>• Council can set out its strategic outcomes in updated specification.</li> <li>• Contract will require performance monitoring.</li> </ul>	<ul style="list-style-type: none"> <li>• Suppliers are put off, due to no contract award in previous procurement.</li> <li>• Council will retain tariff / pandemic / LGPS contribution uplift risk</li> <li>• Timing to undertake a further procurement before the end of the LFT</li> </ul>

### 3. Contract Re-procurement

- 3.1 The current 20-month contract with LFT expires 31st March 2025 and there are no extension options.
- 3.2 Max Associates, who have provided a number of industry updates regarding the VAT implications, have been engaged to support the procurement process.
- 3.3 The Project Team for the new procurement will contain most of the officers involved in the procurement process terminated in July 2023, reducing risk and supporting efficient project delivery.
- 3.4 It is expected an open procurement procedure will be selected, with a File a Tender Notice placed according to the timelines outlined in Tables 3 and 4.
- 3.5 The Council expect to use external legal support from Browne Jacobson as per the previous procurement process.
- 3.6 Sites included in the previous 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 LTA funding at Kidwells Park, Alexandra Gardens and Desborough Park. This will be reviewed as part of the wider procurement process.
- 3.7 The services specification will receive input from the current administration and will also include updated information that has become available such as the changes in VAT guidance and updated strategy information meaning better alignment with the Council Plan. Relevant information from previous clarification questions will also be included to assist potential bidders and improve efficiency of the procurement process.
- 3.8 The Contract length is still to be determined but is likely to be similar to the previous procurement exercise which was for 12 years with an option to extend by a single period of five years.
- 3.9 The criteria and weightings for each method statement question will be revised and include input from the current administration and link to the Council Plan and updated priorities.
- 3.10 Final submissions will be evaluated by a range of officers with their roles likely to cover (but not be limited to) the following areas: Sport and Leisure, Public Health, Property, Sustainability and Climate Change, Marketing, and Finance. This will be supported by our Leisure Consultants.

#### 4. REASON(S) FOR RECOMMENDATION(S) AND OPTIONS CONSIDERED

- 4.1 Two options have been considered in terms of risk impact and are detailed in Table 1. 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 deliver both the greatest financial benefit to the Local Authority and health and physical activity benefits for residents. Option B holds the greatest risk because of the uncertainty and impact on service provision, council finances and reputational damage that would be caused.

**Table 1: Options arising from this report**

<b>Option</b>	<b>Comments</b>
<p><u>Option A</u></p> <p>Agree to delegate responsibility for the procurement of a leisure operator(s) for the contract period from 1 April 2025 to Executive Director for Place in consultation with the Cabinet Member for Communities and Leisure.</p> <p><b>This is the recommended option</b></p>	<p>This will enable officers to procure a leisure operator(s) encompassing updated council objectives including financial sustainability and providing access and opportunities for residents to be physically active.</p>
<p><u>Option B</u></p> <p>Do Nothing</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 short, medium and long term financial risk, in addition to a reduction in resident health benefits facilitated by leisure provision.</p>

- 4.2 Option A allows for a commencement of a new procurement process to deliver boroughwide leisure services, supporting financial and health benefits for the Borough and its residents.
- 4.3 The procurement timeline is condensed with limited contingency time, an indicative timeline is shown in Table 3 below.

**Table 2: Indicative Timeline**

<b>Date</b>	<b>Action</b>
24 April 2024	Cabinet decision
April & May 2024	Tender documentation produced
3 May 2024	Call in period ends
31 May 2024	Tender launched by
June to mid-July 2024	Tender process open, including clarifications and site visits, further documentation updates.
Mid to end July 2024	Post tender clarification process
August 2024	Limited progression – tender document review

September 2024	Evaluation and Moderation
October 2024	Conclusion of evaluation and report writing
November 2024	Contingency or process required to submit paper to 4 December 2024 Cabinet (which would result in a short mobilisation of 12 weeks). N.B. There will not be enough time to complete the procurement activities and subsequent reports to attend 23 October 2024 Cabinet and attending 18 December 2024 Cabinet would not leave sufficient time to mobilise a new contractor if required.
December 2024	Decision notices sent
January to March 2025	3 months mobilisation
31 March 2025	Current contract ends
1 April 2025	New contract commences
April 2025 onwards	Management of new contract

4.4 Additional details of the report's recommendations are 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.

## 5. KEY IMPLICATIONS

5.1 Option A will support the Council Plan (2024-2028) objectives to put the council on a strong financial footing to serve the borough effectively and that people live healthy and independent lives in supportive communities.

5.2 The proposals will also support the aim of increasing access and opportunities for residents to be physically active as part of daily life, including sport, leisure, active travel, and participation within community clubs, supported by newly published strategies and plans.

5.3 Primarily this is monitored via leisure centre attendance in the Council Plan but the service also provides wide social value across the borough and wider region, whilst bringing an income into the council.

**Table 3: Key Implications**

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
Leisure Service delivery	Leisure Centres closed from 01 April 2025 Resulting in attendances below corporate target.	Leisure Centres remain open and attendance targets met (+2.5% from baseline annually)	Attendance is above the +2.5% corporate target	10% above attendance targets	01/04/2025 and annually thereafter
Income provided to the council	No (or significantly lower than forecast)	Management fee received in line with forecast	Management fee receipts in excess of budget projections	N/A	Monthly from 01/04/2025

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
	management fee received.				

## 6. FINANCIAL DETAILS / VALUE FOR MONEY

- 6.1 The RBWM leisure contract currently generates revenue to the council in excess of £2m per annum and was host to around 2.5m customer visits in 2023/24. Due to the size and importance of the contract, both financially, and from a health and wellbeing perspective, ensuring the optimum leisure operation model is chosen, is an important part of the overall council budget and supports the Council Plan.
- 6.2 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.

## 7. LEGAL IMPLICATIONS

- 7.1 The discussions of the legal implications in this report's recommendations are contractually sensitive and therefore additional information is 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.

## 8. RISK MANAGEMENT

- 8.1 To mitigate risk, Officers have engaged with sport and leisure consultants Max Associates, and RBWM legal advisors Browne Jacobson.
- 8.2 The appointed leisure consultants and in house procurement teams will work together to ensure compliance with procurement regulations.
- 8.3 It should be noted that not delegating authority will increase the procurement timeline by 6-8 weeks, a decision at the latest would need to be made on 4 December 2024 Cabinet, with reports and outcomes needed by late September 2024, reducing contingency.
- 8.4 Further information regarding the risk management in this report recommendations are contractually sensitive and therefore additional information is included in Appendix B & C which are Part II by virtue of paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972.

## 9. POTENTIAL IMPACTS

- 9.1 An Equality Impact Assessment is available as Appendix A.
- 9.2 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.

- 9.3 Data Protection/GDPR. Subject to option A being approved, part of the final procurement process will ensure Data Protection / GDPR risks are included within the contract with advice sought at the appropriate time, any operator chosen would be required to adhere to the current legislation at the time. Similarly, any transfer of membership and staff data required during the procurement process will occur in accordance with current legislation.
- 9.4 Choosing options other than A would result in more uncertainty for the Leisure Centre's workforce than is already the case.

## 10. CONSULTATION

- 10.1 Officers have consulted with external leisure consultants, tax advisors, legal advisors and internal officers regarding the impact of the options available.

## 11. TIMETABLE FOR IMPLEMENTATION

- 11.1 Implementation date if not called in is 4 May 2024. The full indicative implementation stages if requiring a return to Cabinet for final approval is set out in Table 5 below.

**Table 5: Implementation timetable**

Date	Details
24/04/2024	Agreement at Cabinet
26/04/2024	Minutes published
03/05/2024	Call in period ends
04/05/2024	Procurement process officially begins
31/05/2024	Tender launched (aiming for earlier)
31/07/2024	Tender bids close (earlier if above is earlier)
13/09/2024	Post bid clarification complete
01/10/2024	Approved bidder decision reached following conclusion of tender evaluation
30/10/2024	Draft report to ELT
13/11/2024	Report reviewed at Cabinet briefing
22/11/2024	Final report to Democratic Services
04/12/2024	Cabinet
06/12/2024	Meeting minutes published
13/12/2024	Call in ends
02/01/2025	Standstill period ends
03/01/2025	Award decision announced
06/01/2025	Mobilisation period begins
31/03/2025	20-month contract ends
01/04/2025	New contract begins

## 12. APPENDICES

This report is supported by 3 appendices:



- Appendix A – Equality Impact Assessment
- Appendix B – RBWM Options Appraisal Report 040324 (Part II)
- Appendix C – Risk mitigation (Part II)

### 13. BACKGROUND DOCUMENTS

This report is supported by 8 background documents:

- PART II Cabinet sitting as trustees for Kidwells – 27 March 2024
- Part I – Leisure Services update and award of interim contract – Cabinet 11 July 2023
- PART II - Leisure Services update and award of interim contract – Cabinet 11 July 2023
- RBWM Sport and Leisure Strategy - Update and Refresh 2023 - 2033 - 27 April 2023
- Policy Paper on Changes to vat treatment of local authority leisure services
- Tennis participation and facility improvement for identified RBWM park tennis courts – 25 Aug 2022
- Leisure Contract Re-procurement update Cabinet report from 23 June 2022
- PART II - Leisure Services Cabinet report – 25 June 2020

### 14. CONSULTATION

Name of consultee	Post held	Date sent	Date returned
<i>Mandatory:</i>		<i>Statutory Officer (or deputy)</i>	
Elizabeth Griffiths	Executive Director of Resources & S151 Officer	21/03/2024	15/04/2024
Elaine Browne	Deputy Director of Law & Governance & Monitoring Officer	21/03/2024	02/04/2024
<i>Deputies:</i>			
Andrew Vallance	Deputy Director of Finance & Deputy S151 Officer	21/03/2024	
Jane Cryer	Principal Lawyer & Deputy Monitoring Officer		
Helena Stevenson	Principal Lawyer & Deputy Monitoring Officer		
<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	21/03/2024	16/04/24
<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	21/03/2024	
<i>Mandatory:</i>		<i>Equalities Officer – to advise on EQiA, or agree an EQiA is not required</i>	
Ellen McManus-Fry	Equalities & Engagement Officer	21/03/2024	26/03/2024
<i>Mandatory:</i>		<i>Assistant Director HR – to advise if report has potential staffing or workforce implications</i>	
Nikki Craig	Assistant Director of HR, Corporate Projects and IT	22/03/24	22/03/24
<i>Other consultees:</i>			
<i>Directors (where relevant)</i>			

Stephen Evans	Chief Executive	21/03/2024	
Andrew Durrant	Executive Director of Place	21/03/2024	21/03/2024
Kevin McDaniel	Executive Director of Adult Social Care & Health	21/03/2024	
Lin Ferguson	Executive Director of Children's Services & Education	21/03/2024	
<i>Assistant Directors (where relevant)</i>			
Alysse Strachan	Assistant Director of Neighbourhood Services	15/03/2024	21/03/2024
Louise Freeth	Assistant Director of Revenues Benefits Library and Resident Services	21/03/2024	25/03/2024
<i>External (where relevant)</i>			
N/A			

Confirmation relevant Cabinet Member(s) consulted		
Cllr Reynolds	Cabinet Member for Communities and Leisure	Yes
Cllr Werner	Leader of the Council	Yes
Cllr Jones	Cabinet Member for Finance	Yes

## REPORT HISTORY

<b>Decision type:</b>	<b>Urgency item?</b>	<b>To follow item?</b>
Key decision  First entered into the Cabinet Forward Plan: 28/02/2024	No	No

Report Author: Michael Shepherd, Sport and Leisure Service Manager, 01628 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)

www.rbwm.gov.uk



## 1. Background Information

Title of policy/strategy/plan:	RBWM Leisure Management Contract re-procurement
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?

Award Leisure Services Contract to enable the Council to continue leisure delivery within the Borough owned leisure facilities.

## 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 continued provision of leisure services and facilities will have potential positive impacts for all residents of the borough.

Depending on the outcome of the investigation work, an EQIA can 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

<p>Who will be affected by this proposal? For example, users of a particular service, residents of a geographical area, staff</p>
<p>Borough wide users</p>
<p>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?</p>
<p>No, one aim of the new contract will be to increase the participation of those in underrepresented groups.</p>
<p>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?</p>
<p>Outcomes from the previously conducted consultation as part of Leisure Strategy, Playing Pitch and Indoor Built Facilities strategies will form part of the requirement of the new contract.</p>
<p>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.</p>
<p>Information contained in the reports listed above and in the cabinet report – aim for improvements in all areas</p>

## 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	Consideration included within proposed tender documentation and monitoring	Yes	No
Disability	Consideration included within proposed tender documentation and monitoring	Yes	No
Sex	Consideration included within proposed tender documentation and monitoring	Yes	No
Race, ethnicity and religion	Consideration included within proposed tender documentation and monitoring	Yes	No
Sexual orientation and gender reassignment	Consideration included within proposed tender documentation and monitoring	Yes	No
Pregnancy and maternity	Consideration included within proposed tender documentation and monitoring	Yes	No
Marriage and civil partnership	Consideration included within proposed tender documentation and monitoring	Yes	No
Armed forces community	Consideration included within proposed tender documentation and monitoring	Yes	No
Socio-economic considerations e.g. low income, poverty	Consideration included within proposed tender documentation and monitoring	Yes	No
Children in care/Care leavers	Consideration included within proposed tender documentation and monitoring	Yes	No

## 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

Any consultation will be accessible and inclusive and aim to engage underrepresented groups.

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

Completed by: Michael Shepherd

Date: 15/03/2024

Approved by: Alysse Strachan

Date: 21/03/2024

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

Reviewed by: Ellen McManus-Fry

Date: 26/03/2024

