

Public Document Pack

Officer Decision Making

Friday, 25th July, 2014

At 10:00 am

PLEASE NOTE TIME OF MEETING

Office of the Director Place

This meeting is not open to the public

Decision Maker

Director, Place

Contacts

Democratic Support Officer

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AGENDA

Agendas and papers are available via the Council's website

1 LEASE FOR OAKLANDS SWIMMING POOL

Report of the Head of Leisure and Culture seeking approval for the signing of the lease on the terms, attached.

Thursday, 17 July 2014

HEAD OF LEGAL AND DEMOCRATIC SERVICES

DECISION-MAKER:	DIRECTOR OF PLACE		
SUBJECT:	LEASE FOR OAKLANDS SWIMMING POOL		
DATE OF DECISION:	25 JULY 2014		
REPORT OF:	HEAD OF LEISURE AND CULTURE		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Mike Harris	Tel: 023 8083 2882
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Director	Name:	Stuart Love	Tel: 023 8091 7713
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STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

Following the Cabinet and Council decisions in October and November 2013, which delegated authority to the Director of Place to sign a lease with the Community Group, negotiations over the details have now been finalised, alongside further development of the groups business plan and organisational structure. . Completion of the lease will enable the group to take possession when appropriate and prepare the pool for opening

RECOMMENDATIONS:

- (i) To approve the signing of the lease on the terms as set out in this paper

REASONS FOR REPORT RECOMMENDATIONS

1. To enable the Oaklands Pool Group to take possession of the pool once the construction project is completed and make final preparations for opening to the public.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

2. Not to award the lease – rejected on the basis that a comprehensive pool refurbishment has been carried out to enable the swimming pool to reopen. The agreement provides a sustainable opportunity to secure public swimming in the locality.

DETAIL (Including consultation carried out)

3. The Cabinet and Council reports of October and November 2013 noted the need to further develop the group’s governance structure. The Council have provided ongoing consultancy support to the group to refine the business plan and organisation. The Consultant reports that “The Board in anticipation of becoming a Charitable Not for Profit organisation has extended its membership to six. The six members of the Board are now called Trustees. The Trustees have been given roles and responsibilities.
4. The business plan has been refined and shows no substantial deviation from

that which provided assurance to the council in October / November 2013. The loan approved at the same time has been agreed and payments made available to the group to enable preparatory work for the pool opening.

5. The lease has been subject to a comprehensive negotiation process. The key terms of which are set out below:
 - 24 year term term, inside the Landlord and Tenant Act
 - Peppercorn rent, with full repairing and insuring responsibilities save that for the first 3 years the Council will be responsible for repairs to the roof.

Appendix one provides the heads of terms as agreed with the group.

RESOURCE IMPLICATIONS

Capital/Revenue

6. One issue during negotiations was the responsibility of the roof. Following the survey at the beginning of the refurbishment process, all works identified by the surveyor were carried out, in addition to rectification of some issues that were identified during the implementation of those works. The Pool Group remained concerned about the liability of the roof, and in particular their ability to carry out major repairs in the early years of their tenure, without reserves. Consequently, the Council have agreed to take responsibility for any repairs required to the roof for the first three years of the lease. Thus there remains a risk for the Council, albeit a low risk, given that all repairs proposed have been carried out. Should any repairs be required, this will present a pressure on the Council's budgets a no allowance is made within any current budgets. The lease will remain the responsibility of the Leisure Portfolio

Property/Other

7. The unrestricted value (value if offered to the market with vacant possession) and restricted value (value subject to the proposed lease) of the premises are £100,000 and £39,000 respectively. The undervalue arising on the basis that the lease is granted is therefore £61,000.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

8. Section 1(1) of the Localism Act 2011 gives local authorities the 'power to do anything that individuals may generally do' as long as there exists no prohibition or restriction on the proposal contained in any other legislation. Section 123 of the Local Government Act 1972 states that a local authority may not dispose of land otherwise than for best consideration unless the consent of the Secretary of State is obtained. Disposals at an undervalue are permitted if it can be demonstrated that the disposal is for the 'well being' of the area and the consent of the Secretary of State is not needed where the undervalue is £2m or less.

Other Legal Implications:

9. None

POLICY FRAMEWORK IMPLICATIONS

10. The proposal is consistent with the policy framework

KEY DECISION? Yes

WARDS/COMMUNITIES AFFECTED:	Coxford
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SUPPORTING DOCUMENTATION

Appendices

1.	Agreed Heads of Terms
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Documents In Members' Rooms

1.	None
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Equality Impact Assessment

Do the implications/subject of the report require an Equality Impact Assessment (EIA) to be carried out.	/No
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Other Background Documents

Equality Impact Assessment and Other Background documents available for inspection at:

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
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1.	None.	
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LETTING HEADS OF TERMS

Date: 11 July 2014

Property address	Oaklands Swimming Pool and car park as shown edged red on plan no. V3541 (The demise is to include the area between the pool building and the fence to Rownhams Road North.)
Landlord	Southampton City Council Civic Centre Southampton SO14 7LY
Tenant	Oaklands Community Pool (registered charity no.)
Type of lease	Head lease
Rent	Peppercorn
Landlord's initial works	Council to carry out replacement/refurbishment of the pool plant, repairs to the roof and ceilings and provision of new flooring. The Council will obtain an arboricultural report and carry out such clearance and maintenance of trees and shrubbery as is considered necessary and reasonable.
Tenant's initial works	It is understood that there are no proposals for any works to be carried out by the Tenant before the lease is granted
Lease length and start date	24 years from date of lease
Security of Tenure	The lease is to be contracted out of the security of tenure provisions of the Landlord & Tenant Act 1954 (Part II) as amended. The Council shall provide a side letter to the effect that, if called upon by the Tenant, it will consider a renewal of the lease but without any liability to agree to the grant of a new lease.
Rights granted	1. The Tenant shall have a right of access over the "community centre land" for the purpose of carrying out repairs that cannot be carried out from within the demised premises and in emergency. 2. The Tenant shall have a right of free passage of services through any conduits through the Council's retained land serving the demised premises. (provided that the Council shall be entitled to divert or alter the route of such conduits at any time). 3. Rights of support and protection from the adjoining "community centre"
Rights reserved	1. The Landlord reserves the right for itself and others authorised by it from time to time including the tenant and users of the "community centre" to share use of the car park for parking only at all times and without charge and (b) to pass and repass at all times and without charge over and along any connecting footpaths. 2. The Landlord reserves a right of access for the benefit of the "community centre land" for the purpose of carrying out repairs that cannot be carried out from within the "community centre"

	<p>land” and in emergency.</p> <p>3. The Landlord reserves the right of free passage of services to its retained land through any conduits running through the demised premises.</p> <p>4. Rights of support and protection from the Pool building</p> <p>Note: Utilities supplies to the adjoining nursery/proposed community centre are via the swimming pool; supplies are not independent but secondary meters will record consumption. The Tenant will therefore have to recover the cost of utilities consumed by the nursery/community centre from the community association. The Council will include a provision in the lease to the community association that it is to pay the cost of outgoings.</p> <p>5. The Landlord reserves a right of entry for the purpose of carrying out repairs to the shelter until such time as the shelter lease is granted to the Tenant.</p>
Assignment and subletting	<p>Assignment of the whole or part is not permitted.</p> <p>Subletting of the “dry-side” area (to be identified on plan) to be permitted with Landlord’s consent not to be unreasonably withheld. Any sub-letting to be outside the Landlord and Tenant Act 1954. No other subletting will be permitted.</p> <p>The Tenant may hire out the premises.</p> <p>The Tenant shall not be permitted to enter into a management agreement for the operation of the pool without the Landlord’s consent.</p>
Repairing obligations	<p>The Tenant is to be responsible for all repairs and shall keep the premises (including all plant, machinery and equipment) in good repair.</p> <p>Save that for the first 3 years of the term only, the Council shall be responsible for keeping the roof reasonably wind and water tight, For the avoidance of doubt, the Tenant shall thereafter have sole responsibility for repairs to the roof.</p>
Alterations	<p>Permitted with landlord’s consent not to be unreasonably withheld. In giving consent, the landlord may impose such conditions as it may think fit and may require reinstatement of the premises to their original state at the end of the term.</p>
Permitted use	<p>The premises are to be used only as a swimming pool and other aquatic activities (with associated changing rooms and other facilities associated with use as a swimming pool and other aquatic activities). Additional uses will be permitted with landlord’s consent only and the Landlord shall have the absolute right to refuse consent</p> <p>The premises are to be operated as a public swimming pool and other aquatic activities. They shall not be used for private use (save that they may be closed from time to time for private hire).</p> <p>Prices for use shall be in line with other publically accessible swimming pools within Southampton (or, if none, within 20 miles).</p> <p>The premises shall be made available for use by schools and community groups at a reasonable charge.</p>
Programme and reporting	<p>The Tenant shall submit an annual report to the Council for approval by the Council (consent not to be unreasonably withheld) setting out proposed opening hours and, charges and programme of usage together with details of the previous year’s). The report</p>

	<p>shall include (as a minimum):</p> <ul style="list-style-type: none"> • The programme for the year ahead • Prices • Usage: total numbers, breakdown in accordance with management information categories • User satisfaction – number of complaints, results of surveys etc. • Health and Safety – number of reported incidents • Financial performance – overall performance and performance to target • Governance; any changes to arrangements
Insurance	<p>The Landlord to insure the premises. The Tenant will reimburse the cost of insurance.</p> <p>The Tenant shall carry at all times such policies of insurance as may be necessary to insure the Tenant against all manner of risks which might arise in connection with its use of the premises.</p>
Landlord's option to determine	<p>The Landlord may determine the lease in the event that the premises are not operated for the permitted use for an aggregate period of more than 3 months in any period of 6 months. The maximum closure period may be extended to 6 months in the event of closure of the pool for reasons beyond the reasonable control of the Tenant (subject to the Tenant previously providing to the Council in writing such full details and verification of such reasons for closure as the Council may reasonably require) provided that the Tenant is not in breach of any of its covenants and has taken all reasonable precautions and measures to avoid closure.</p>
Rates and utilities	<p>The Tenant is responsible for all rates and outgoings.</p> <p>Note: Utilities supplies to the adjoining nursery/proposed community centre are via the swimming pool; supplies are not independent but secondary meters will record consumption. The Tenant will therefore have to recover the cost of utilities consumed by the nursery/community centre from the community association. The Council will include a provision in the lease to the community association that it is to pay the cost of outgoings.</p>
Compliance with statutory and other requirements	<p>The Tenant shall comply at all times with all statutes, regulations etc including all health and safety legislation and regulations.</p> <p>The Tenant shall also give due consideration to and use the premises in accordance with British and European Standards and industry guidance in sport & recreation relevant to swimming pool operation and design.</p> <p>The Tenant shall provide evidence of compliance as and when requested by the Landlord.</p>
Signs and advertisements	<p>The Tenant may display nameboards, timetables and notices of events with the Landlord's consent not to be unreasonably withheld.</p> <p>The Tenant may not display any advertisements visible from outside the premises.</p> <p>The Tenant shall not display any signs, notices or advertisements to which the Landlord reasonably objects to.</p>
Trees	<p>No trees shall be lopped or felled without the Landlord's consent.</p>

Forfeiture	The Landlord shall be entitled to forfeit the lease in the event of: <ol style="list-style-type: none"> 1. The Tenant is in breach of its covenants; or 2. Insolvency 3. Any sums due under the lease are in arrear for 21 days or more.
VAT	The property is to be elected for VAT.
Shelter	An agreement for lease shall be entered into simultaneous with the granting of the lease of the pool under which, on completion of works of repair to the shelter, the parties shall enter into a lease of the shelter on the terms broadly similar to the pool lease.
Security of SCC Loan	The Council's loan to the Tenant is to be secured by way of a charge against the Tenant's registered leasehold title. The Legal Charge is to be completed simultaneously with the grant of the lease.
Legal Costs	Each party to pay their own.
Landlord's solicitors	Southampton & Fareham Legal Services Partnership Southampton City Council Civic Centre Southampton SO14 7LY FAO: Paul Barber Email: paul.barber@southampton.gov.uk Tel: 023 8083 2594
Landlord's Agent	Capita One Guildhall Square Above Bar Street Southampton SO14 7PF FAO: Neville Payne Email: Neville.payne@capita.co.uk Tel: 023 8083 2594 Mobile: 07881 269331
Tenant's solicitors	Name tbc Address FAO: Email: Tel: Mobile:
Tenant's Agent	Stephanie Linham Address FAO: Email: Stephanielinham@yahoo.co.uk Tel: Mobile:
No contract	These Heads of Terms are subject to contract and subject to formal Council approval.