

DECISION-MAKER:	Cabinet		
SUBJECT:	COVID-19: Leisure Contracts: Financial and Commercial Impact		
DATE OF DECISION:	14 July 2020		
REPORT OF:	Cabinet Member for Finance and Income Generation, Cllr Barnes-Andrews		
<u>CONTACT DETAILS</u>			
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STATEMENT OF CONFIDENTIALITY			
<p>Appendix 1 of this report is not for publication by virtue of category 7A (obligation of Confidentiality) of paragraph 10.4 of the Council's Access to Information Procedure Rules, as contained in the Council's Constitution.</p> <p>It is not in the public interest to disclose this information as Appendix 1 contains confidential and commercially sensitive information. It would prejudice the Council's ability to operate in a commercial environment, obtain best value in contract negotiations and prejudice the Council's commercial relationships with third parties if they believed the Council would not honour obligations of confidentiality.</p>			
BRIEF SUMMARY			
<p>This report concerns the financial impact to the Council relating to its main leisure contract as a result of the closure of leisure facilities following Her Majesty's Government ("Government")'s legislation and instructions relating to the COVID-19 pandemic.</p>			
<p>The report also concerns a proposed contract with Solent University to operate the building known as St Mary's Leisure Centre until the end of December 2021 to aid Southampton's and the Council's recovery plan following the COVID-19 pandemic.</p>			
RECOMMENDATIONS:			
	(i)	<p>Delegate authority to the Executive Director Finance and Commercialisation, following consultation with the Cabinet Member for Finance and Income Generation, to reach financial settlement of claims from Places for People Leisure Management Ltd within the parameters detailed in the confidential Appendix 1 of this report and to finalise, following consultation with the Service Director Legal and Governance, the associated deed of variation relating to the service in the future.</p>	

	(ii)	Delegate authority to the Head of Supplier Management to agree and finalise, following consultation with the Service Director, Legal and Governance a contract with Solent University (“SU”) to operate the building currently known St Mary’s Leisure Centre (“the Centre”) as a community hub until 31 December 2021.
REASONS FOR REPORT RECOMMENDATIONS		
1.		Service delivery contracts allocate risk between the Council and its suppliers and the recommendation (i) of this report ensures that the Council honours its contractual commitments in relation to its main leisure contract.
2.		The contract with SU will ensure that the Centre can re-open as a “community hub” facility in a speedy and safe manner to support the local community and residents as the easing of the COVID-19-related restrictions allow.
ALTERNATIVE OPTIONS CONSIDERED AND REJECTED		
3.		Not following recommendation (i) would put the Council in breach of its financial obligations contained in the leisure contract. This would almost certainly mean a lengthy delay to the re-opening of leisure facilities with the attendant impact on affordable leisure opportunities in the City and the associated impacts on the physical and mental health of users of these facilities. Furthermore, it is likely that legal proceedings against the Council would ultimately result.
4.		The Council could seek to sell the freehold for the Centre, seek to procure an alternative operator or “mothball” the building. All of these options are likely to lead to lengthy delays in the Centre re-opening and would not result in the community-related outcomes sought by the Council.
DETAIL (Including consultation carried out)		
Leisure Contract		
5.		<p>The Council commissions sport and leisure activities through three arrangements:-</p> <ol style="list-style-type: none"> a. The main Leisure Contract (“the Leisure Contract”) with Places for People Leisure Management Ltd (“PfP”), who sub-contract operations to Active Nation (“AN”). b. St Mary’s Leisure Centre (“SMLC”) with Solent University (“SU”). c. Southampton Golf Course with MyTime Active (“MTA”). <p>This paper concerns the first two of these arrangements only.</p>
6.		The Leisure Contract concerns the operation of leisure facilities with an overarching objective to increase participation in leisure activities across the city.
7.		The scope of the Leisure Contract includes indoor centres and outdoor facilities: The Quays, Bitterne Leisure Centre, Chamberlayne Leisure Centre,

	Southampton Water Activities Centre, Woodmill, Outdoor Sports Centre, Alpine Snowboard Centre, Lordshill recreation ground, Mayfield recreation ground, Green Park, Millbrook recreation ground, the Veracity ground, Riverside Park and Hoglands Park.
8.	The Leisure Contract commenced in 2010 and is due to expire in 2025.
9.	In response to Government instructions, all leisure facilities provided via the Leisure Contract closed from 20 th March 2020.
10.	The Council has acted to date in accordance with the Government's Procurement Policy Note 02/20. In summary, this advises local authorities to take actions to ensure that suppliers who are "at risk" of non-performance, insolvency or significant financial difficulties as a result of the COVID-19 outbreak are in a position to continue to provide such services as far as is possible and resume full contract delivery once the outbreak is over.
11.	The Council is now adopting the latest Policy Procurement Note 04/20, which is effective from 1 July 2020.
12.	It is anticipated that the operational, and therefore financial impact, of the measures and legislation introduced as a result of the COVID-19 pandemic will continue well beyond the initial period during which facilities have been closed. Appendix 1 reflects this anticipation.
13.	The Council has worked closely with the organisations providing services under the its leisure contracts ("the Service Providers") throughout the period of the pandemic with the aim of safeguarding services, supporting the Service Providers and safeguarding the Council and its customers' interests.
14.	This paper focuses on the financial implications of the COVID-19 pandemic period rather than service delivery matters.
15.	In common with most contractual arrangements, the Leisure Contract contains a risk profile and allocation which places obligations and risks on both parties in particular circumstances. The Service Provider's prices for delivering its contractual obligations – and therefore the price the Council pays, known as the "Management Fee" – are based on this risk profile.
16.	Confidential Appendix 1 contains a contractual, commercial and financial assessment of the position. This information is commercially sensitive.
17.	Appendix 1 also describes the parameters within which it is recommended authority is delegated to the Executive Director for Finance and Commercialisation to agree final financial settlement(s) following consultation with the Cabinet Member for Finance and Income Generation.
St Mary's Community Hub	
18.	Cabinet approved a report on 15 October 2019 to commence a competitive process to seek to create a community hub in the building known as St Mary's Leisure Centre ("the Centre") following the completion of an operating

	contract with SU.
19.	This process resulted in the Council receiving four bids, none of which – based on a detailed evaluation - met the Council’s specified requirements and, as a result, the Council did not grant a lease or contract in respect of the Centre.
20.	As a result – and based on legal advice – the Council has entered into in-principle direct negotiations with SU for SU to continue to operate the Centre until December 2021.
21.	The Centre will be operated from such time as it can safely re-open until December 2021 as a Community Hub, broadly in accordance with the intentions and vision set out in the associated Cabinet Report of 15 October 2019.
22.	It is recommended that Cabinet delegates authority to the Head of Supplier Management to finalise and sign a contract with SU to operate the Centre as a community hub until 31 December 2021.
23.	During the period between the date of this report and December 2021, the Council intends to review its Corporate Asset Management Plan, the scope of which includes the Centre, and its overarching leisure strategy.
24.	It is anticipated that these reviews will inform the Council’s proposed approach to the future of the Centre.
RESOURCE IMPLICATIONS	
<u>Capital/Revenue</u>	
25.	No direct capital implications are anticipated, although Cabinet are asked to note that the Council’s existing liabilities relating to building and asset maintenance are unaltered. Condition surveys indicate that the St Mary’s Community Hub building has a number of maintenance requirements and will need significant investment in the short to medium term.
26.	The anticipated revenue implications in respect of the Leisure Contract are summarised in Appendix 1.
27.	The additional annual financial pressure associated with SU operating the Centre will be based on actual costs and is anticipated to be £90,576. This includes but is not limited to, staffing, routine maintenance and utility costs. This pressure is estimated on the basis of taking into account an assumed annual income of £60,000.
28.	Cabinet are asked to note that the Centre is currently closed and, therefore, the assumed annual income of £60,000 is an additional pressure until such time as the Centre can be re-opened; at this point the £60,000 pressure will be reduced proportionately and adjusted by the impact of any associated operating and social distancing measures.

<u>Property/Other</u>	
29.	The Council's existing liabilities relating to building and asset maintenance are unaltered.
LEGAL IMPLICATIONS	
<u>Statutory power to undertake proposals in the report:</u>	
30.	The powers undertake the proposals of this report are contained in Section 1 of the Localism Act 2011.
<u>Other Legal Implications:</u>	
31.	The assessment of the contractual and legal position relating to the leisure contracts included within the scope of this paper is contained at Appendix 1.
32.	The procurement process in respect of the Centre carried out in late 2019 failed to produce any suitable tenders and therefore as a result, the Council is entitled to make a direct award for materially the same requirement to Solent University. In any case, given the primary purpose of the proposed arrangement is to let the building to Solent to use as a community hub, with only insubstantial service obligations imposed by an ancillary contract, it is likely that the arrangement would not be caught by the Public Contracts Regulations 2015, it being a transaction primarily for the disposal of land.
RISK MANAGEMENT IMPLICATIONS	
33.	The leisure sector in general is facing significant financial challenges and those risks apply – and will continue – to apply to the Council's Service Providers. The Council will continue to work closely with its Service Providers to manage those risks but will also act decisively to safeguard its interests and those of its customers.
34.	It is likely that the coming months will result in significant challenges if, and when, the Government permits the re-opening of leisure facilities. At the point of drafting this report, no such announcements have been made in respect of indoor leisure facilities. It is anticipated that social distancing and other mitigating measures could result in reduced footfall and challenges to the viability of operating some facilities and activities. These will be managed – and the associated risks mitigated – on a case-by-case basis and through liaison and negotiation with the Council's Service Providers.
POLICY FRAMEWORK IMPLICATIONS	
35.	None
KEY DECISION?	No
WARDS/COMMUNITIES AFFECTED:	No direct on any wards from the financial settlement of claims. St Mary's Community Hub affects the Bevois Ward

SUPPORTING DOCUMENTATION

Appendices

1.	Contractual, Commercial and Financial Assessment
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Documents In Members' Rooms

1.	N/A
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Equality Impact Assessment

Do the implications/subject of the report require an Equality and Safety Impact Assessment (ESIA) to be carried out.	No
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Data Protection Impact Assessment

Do the implications/subject of the report require a Data Protection Impact Assessment (DPIA) to be carried out.	No
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Other Background Documents

Other Background documents available for inspection at: N/A

Title of Background Paper(s)	Relevant Paragraph of the Access to Information Procedure Rules / Schedule 12A allowing document to be Exempt/Confidential (if applicable)
1.	N/A