

LEISURE CENTRE MANAGEMENT COMMISSIONING

EXEMPTIONS

Appendix D of this report contains information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the Authority or a Minister of the Crown and employees of, or office holders under, the Authority which is a category of exempt information under Schedule 12A of the Local Government Act 1972, Paragraph 4 which the Committee has the power to exclude the press and public if it so wishes. It also contains information (as set out in Paragraph 3 of the Schedule) relating to the financial or business affairs of any particular person (including the authority holding the information).

RECOMMENDED that under Section 100(A) of the Local Government Act 1972, the press and public be excluded from the meeting during any discussion of Appendix D of the report on the grounds that it involves the likely disclosure of exempt information as defined in Paragraphs 3 and 4 of Schedule 12A of the Act and that the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The core report, which covers all the key proposals and issues and Appendices A, B and C are not covered by this recommendation and it is proposed that they are considered in the open part of the report.

PUBLIC INTEREST TEST

It is the opinion of the authors that in applying the public interest test the exemptions above should be applied to Appendix D. Appendix D is the detailed business plan relating to the setting up of a not for profit, Teckal compliant company wholly owned by the Council to run its leisure services. This Appendix contains information whereby individual staff members could be identified, as could their future terms and conditions within the new company. In addition it contains issues relating to TUPE and pension strain and ongoing consultations involving the unions on these matters. Lastly it contains financial information relating to the new company which, if disclosed, could prejudice, or significantly weaken the Council's (and the new company's) position in a competitive leisure market revealing market sensitive information or information of potential usefulness to competitors.

1.0 Purpose of Report

- 1.1 The purpose of this report is to give Members the opportunity to comment on the report and the report's recommendations before it is presented to the Policy and Finance Committee for decision on 29th January 2015. It should be noted that the items referred to in the appendices are working documents and as such will be subject to some revisions. With this fact in mind, Policy & Finance Committee have asked that an invite be extended to members of the Leisure and Environment Committee to attend Policy & Finance Committee meeting on 29th January, when the documents will be at a more advanced stage.
- 1.2 The report to Policy and Finance Committee will seek approval to move forward to the final stage and implementation of the arrangements for the establishment of a wholly owned

Council company for the management of the Authority's leisure centres and the Sports Development Service. This includes the three leisure centres currently operated by the Council (i.e. Blidworth, Dukeries and Grove) and the new leisure centre.

2.0 Background Information

- 2.1 At its meeting on 3rd July 2014, the Policy Committee agreed that the Council should proceed with a transfer of its leisure services to a "not for profit" company, wholly owned by the Council. It was noted that, once detail had been developed further on all the issues relating to this proposal, a more detailed report would be brought back to the Leisure & Environment Committee for comment, and the Policy and Finance Committee for approval to move forward to the final stage and implementation of the arrangements for the establishment of the company.
- 2.2 A key and crucial driver for this approach is to achieve the predicted VAT and NNDR savings which would initially equate to approximately £250k in a full financial year. It is planned that the new company could be established and commence achieving savings by 1 June 2015. To achieve this, final approval on the way forward is required during this committee cycle.
- 2.3 It should be noted that whilst the new leisure company will be wholly owned by the Council, the company must meet the requirements relating to independence as set by HMRC in order to achieve the VAT savings identified and to meet the NNDR relief tests. At the same time the company must also remain 'Teckal' compliant in that the Council must be able to exercise a similar level of control over the company's activities as it does over its 'in-house' functions and activities. For clarification 'Teckal' is a term derived from a European precedent that enables a public body to set up a company for which at least 90% of its activities are on behalf of that public body. This enables the Authority to set up the company and award it a contract to provide council services without undertaking the normal procurement process. Whilst there is clearly a tension between securing the requirement for control (Teckal compliance) on the one hand, and demonstrating sufficient independence (for HMRC's requirement) on the other, there are precedents where other authorities have achieved leisure companies which meet these requirements.

3.0 Scope

- 3.1 The original scope for the project included all leisure centre provision, namely; The Grove Leisure Centre, Dukeries Leisure Centre, Blidworth Leisure Centre, the new leisure centre and the relationship with Southwell Leisure Trust.
- 3.2 The current scope has now been revised and includes the Sports Development Service. It has become apparent within the project that: for the development of a sustainable and accessible leisure provision within the district; the input of sports development would be vital. It will allow a more aspirational set of outcomes to be set and there is logical and logistical connectivity between the provision of leisure and sports development.
- 3.3 A review of the Sports and Arts Development Business Unit has been undertaken by the Director – Customers, and a report was presented to the Leisure and Environment Committee on 18th November 2014.

4.0 Key Documents

4.1 The creation of the company is complex, involving a series of related and detailed structure documents that will ensure that the company delivers in the way the Council wishes it to. This section summarises each document and its purpose.

4.2 Memorandum and Articles of Association

This is essentially the governance document for the company and sets out its objects and powers. It clearly states that the company is: philanthropic; non-profit making; and is set up to provide leisure, sports and cultural services to the district. This document also clearly identifies the roles and responsibilities of the directors of the company. Further detail is included within section 5 of this report.

4.3 Contract

This document includes normal terms and conditions and a detailed service specification on what the company will be expected to deliver. This will include outcomes and financial targets.

4.4 Lease

The company will lease the buildings from the Authority. The Council will retain ownership of the buildings. The leasehold arrangements have been developed to achieve the most efficient VAT structure.

NB the main terms included within the Memorandum and Articles of Association; Contract and lease are detailed in Appendices A, B and C.

4.5 Business Plan

Each year the company will be required to produce an annual report detailing its progress of the previous year and to provide a business plan for the following year. Attached as Appendix D (exempt) is the draft business plan which contains detailed projections for the year ahead, and an overview business plan for the next 5 years. This document will need to be submitted to the Council by the board of directors for the new company and presented to the Leisure and Environment Committee annually for approval.

4.6 It should be noted that all documents and recommendations have been formulated with the assistance of the Council's external experts, V4 Services Ltd. In addition meetings have been held with the Council's external auditors KPMG and their senior tax expert along with the Council's VAT advisor to validate and give assurance to the approach adopted with the creation of the new company.

5.0 Governance and Board Structure

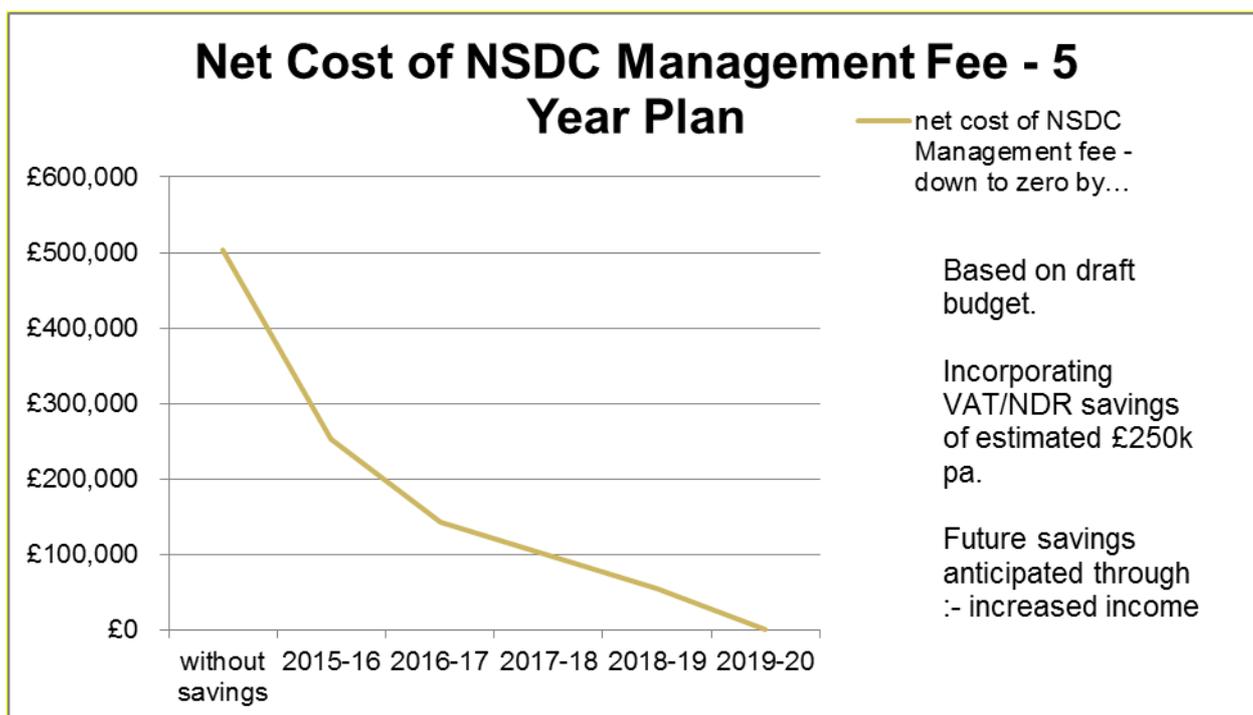
5.1 V4 Services Ltd have recommended that it would be prudent not to appoint any elected member to the board if to do so would preclude them from properly carrying out their responsibilities as part of any relevant council committees.

5.2 The Council has therefore reviewed the remits of the Policy & Finance and Leisure & Environment Committees to clarify the Council's strategic management, overview and scrutiny role in respect of its company and to reduce the number of members who would be conflicted from being appointed to the company's board.

- 5.3 Changes to the Constitution, approved by Full Council on 16th December 2014, will allow for the key council relationship with the new leisure company to sit within the Leisure and Environment Committee. This will include the approval of the company's annual business plan and budgetary elements. Members of this committee would however be conflicted if they sat on the board of the new company. The changes approved by Full Council, will however allow, should they so wish, members of Policy & Finance Committee to be appointed to the board of the new company.
- 5.4 The board of the company will have accountability for delivering the business plan of the company and take part in the negotiations between the company and the Council. Day to day operational management will continue in the same format as currently, with the Managing Director of the company running the leisure services.
- 5.5 Control of the company will be achieved through the key documents (memorandum and articles, contract, lease and annual business plan). The annual business plan will cover key elements the Council wishes the company to consider and would be subject to approval by the Council through its Leisure and Environment Committee. Any proposals for key changes would be presented by the company to the Leisure and Environment Committee on an annual basis.
- 5.6 It is recommended that the initial contract between the Council and the company should be for a 15 year period, as this would assist in demonstrating a viable and independent company to HMRC. There would be break clauses at 5 yearly intervals, which link directly to the achievement of the financial objectives to be set for the company.
- 5.7 The approach to client side support for the Council is being considered. In essence this is the Council's officer support involved in the monitoring, scrutiny and contract management of the company. This support would assist the Leisure and Environment Committee in the negotiation of the management fee and outcomes each year. It will also consider opportunities and issues arising throughout the year, future business planning and relationship management.
- 5.8 Should the Policy and Finance Committee approve the recommendations in this report there will be a requirement to appoint an 'interim board' for the period between the establishment of the new company and the 1st June 2015, (the date it is proposed the services be 'transferred' to it) to provide a mechanism by which the Council can 'negotiate' the first business plan with the company. Once the services are formally transferred to it, as of the 1st June, 2015, a 'permanent' board would be appointed for a 4 year period to ensure levels of continuity and experience gained is fully utilised and to fall in line with the period of the new administration following the elections in May 2015.
- 5.9 The interim board will enable the arrangements for the company to be put in place.
- 5.10 It is proposed that the board of the company will be made up of 3 members, 2 Council officers and the Managing Director of the new company. The Managing Director of the company will become a board member once the appointment to this role is made by the Company.

6.0 Financial Projections

- 6.1 There will be some additional ongoing operational costs including insurance, bank charges, and software licences (Selima and efinancials). These are estimated to be £32,000 and are included in the business plan and financial projections.
- 6.2 The equivalent annual estimated cost of the level of support for the leisure services to be provided by the new company is estimated to be £506,000 for the first year (pro rata from 1 June 2015). Aspirations to reduce the management fee for Leisure Centre provision to £0 by 2020 are reflected within the business plan. It should be noted that the current aspiration does not include reducing the Sports Development element to £0. However, there will be a savings element attributed to this.



- 6.3 It is recommended that overachievement of income or savings accrued by the new company will be incentivised on a 50:50 split basis between the Council and the new company. This will be subject to annual review/discussion with the Leisure and Environment Committee. The company, as a not for profit organisation, will only be permitted to use any additional funds achieved through over performance on providing services linked to its objects, aims and outcomes.
- 6.4 The **2015-16 budget figures** shown in the graph above are based fully on 'draft revenue budgets' and are set as if the service provision is unchanged (without savings). These figures are currently being reported to Policy and Finance Committee and Leisure and Environment Committee as part of the regular budget setting procedure.
- 6.5 Support Service Budgets have been reduced year on year from 2016-17 by an estimated percentage reduction. (Details of the percentages and reasons can be seen in the table contained in the business plan). This has been applied to reflect changes in the working practices and proposed new, more cost effective, office location of the Council as it evolves

and develops. The percentage reductions can only be estimated at this point in time whilst the full impact of budget saving proposals and opportunities for the Council are considered.

- 6.6 The management fee to be paid to the new company for the leisure centres reduces to zero by 2019-20. This figure has been estimated as part of the 5 year revenue support plan and will become more refined and accurate as the business plan for the new company is developed.
- 6.7 The Sports Development budget is identified separately in the business plan because the zero subsidy only applies to the leisure centres at the present time. Further considerations will be made around support for Sports Development as the new company becomes fully operational and the business plan is developed further.

7.0 Management Structure and Staffing

- 7.1 Current staff, where the 'majority' of their duties are going to be undertaken by the new company, will be eligible for TUPE transfer to the new company. This means that they will transfer to the new company on the same terms and conditions under which they are currently employed by the Council. The company will be required to address the management structure in their annual business plan to determine a fit for purpose management structure with appropriate skills and duties contained within the job descriptions. In this interim period the management structure of the Company will remain in the format of the current Business Unit. This will equally apply to the Sports Development Section which will have transferred into the Leisure Business Unit prior to the application of TUPE. The total TUPE transfer equates to 57.05 FTE (head count 162).
- 7.2 Consultation has been ongoing with staff throughout the process and will continue. At the point of transfer all staff will remain on their current terms and conditions and the new company will be required to detail proposed changes to the staffing structure within the annual business plan.
- 7.3 However, subject to the approval of the annual business plan, the company will as a separate legal entity, have the power to set its own staffing structure and review its terms and conditions. This fact assists in demonstrating to demonstrate its independence in relation to the HMRC's requirements. As indicated above, the business plan will be subject to approval of the Leisure and Environment Committee.

8.0 Pensions

- 8.1 The Council enjoys full membership of the Local Government Pension Scheme (LGPS). The pension arrangements for the eligible employees transferring to the new company are covered by the TUPE regulations; the pension benefits that members have already built up will be protected by the TUPE regulations and whilst the new company will not have to offer the same terms and conditions for its new pension scheme, it does have to offer a "broadly comparable" in accordance with HM Treasury's New Fair Deal Guidance that was issued in October 2013.
- 8.2 Nottinghamshire County Council, the administering body of the Nottinghamshire County Council Pension Fund, have commissioned Barnett Waddingham (Public Sector

Consultants) to provide pensions information in respect of employees transferring to the new company. The report considers the impact of the new company offering a closed or open scheme.

- 8.3 The report highlights that the required employers' contribution rate for a closed scheme is 14% compared to 12% for an open scheme.
- 8.4 A closed scheme means that only those existing employees who transfer to the new company will remain in the local government pension scheme. The new company will be required to operate and offer an alternative scheme for any new employees appointed to the company.
- 8.5 There are many variables, but over a five year term and with staff turnover at around 7%, the gross saving by operating a closed scheme might be in the region of £10k per annum. It should be noted that costs would be incurred to establish and administer a new scheme and this cost would reduce the estimated saving.
- 8.6 The low savings potential is attributable to many variables, but mainly the fact that in a closed scheme the actuary forecasts the need for the 2% premium because the TUPE transferring cohort will become more aged in profile - and not be replaced by new younger staff.
- 8.7 The premium of 2% applied to the employers contribution significantly negates the potential saving from having a closed scheme in which new staff would benefit from a company scheme with an employer's contribution of 8%
- 8.8 It is therefore recommended that an open scheme is adopted due to the minimal level of savings that may be achievable over a five year period. It should be noted however that it will be possible to review this position in the future.

9.0 Support Services

- 9.1 Within the contract between the Council and the new company there is a requirement that for a period of two years the new company would use the Council's support services. This strategically fits with the Council's own review of its support and back office functions, and at the conclusion of those 2 years future arrangements would be reviewed.
- 9.2 Within the period that the Council would continue to provide support services, any requirements to ensure that independent advice is provided separately to the Council and to the new company would be observed in order to ensure probity of advice.
- 9.3 The new company will be required to provide any information reasonably requested by the council in full and in a format that is required by the council. A list of support services which would be provided by the council to the new company is contained within the contract documentation.

10.0 Relationship with Southwell Leisure Trust (SLT)

- 10.1 Discussions with SLT are ongoing and include the need to formalise the current arrangements between the Council and the Trust. SLT has indicated its willingness to

participate and are currently being consulted on the leisure outcomes which are likely to be required.

- 10.2 The new company will continue to work with SLT and a service level agreement will be considered and, if agreed upon, will be signed by all parties, (SLT, NSDC and New co) to reflect arrangements for support and delivery of outcomes. This will be subject to an annual review in line with the annual budget review for NSDC. Within the first year there are no planned changes to the level of support given to SLT.

11.0 Company Set-up

- 11.1 A number of key set up activities have been identified by V4 and appropriate timelines are being constructed. Currently HMRC are taking around 12-16 weeks to consider formal registration documents including VAT exemption.
- 11.2 There will be some additional one off costs associated with the company set-up, primarily associated with software systems. In addition, activities around branding, name and web provision for the new company are being developed. It is anticipated that an underspend in this year's Leisure Centre budget could be utilised to cover these costs which are estimated not to exceed £30k.

12.0 Dukeries Leisure Centre

- 12.1 There continues to be ongoing dialogue with the Dukeries Academy about their aspirations to set up a Community Interest Company. A conditions survey has been undertaken on the building to facilitate the Academy's ability to put together a business case proposition. As agreed at Policy Committee on 3rd July 2014, if and when any proposal has been received by the Council this will be put before the Policy and Finance Committee for decision.
- 12.2 Current progress towards the new leisure company does not preclude consideration of any proposal by the Dukeries Academy and all legal documentation including contract and lease will contain suitable provision for the new leisure company to cease contracted operational management at the Dukeries and vacate the building, terminating the lease at the Dukeries site.

13.0 Equalities Implications

- 13.1 Equalities impact on staff has been reviewed by the Human Resources Manager and all relevant equalities factors are provided for under the legal requirements of TUPE.
- 13.2 Attached to the report to Policy Committee on 3rd July 2014 was an Equalities Impact Assessment which determined that this proposal would have no major impact on equalities and would be likely to have a positive impact on the additional category of 'socio-economic'. The Equalities Impact Assessment is regularly reviewed and should the position change this will be brought to the attention of the relevant committee.

14.0 Impact on Budget/Policy Framework

- 14.1 At the meeting of Policy Committee held on 3rd July 2014, Members considered the Council's strategic approach to the budget. This report set out the trend of reducing

Government grant and the resultant impact on the Council's Medium Term Financial Plan. It identified that savings in excess of £3m are likely to be needed over the next three financial years

14.2 The report stressed the need to take a strategic approach to delivering this level of savings, and the following strategic aims were agreed:

- Deliver savings through collaboration with other authorities
- Deliver savings through devolution to town and parish councils
- Deliver savings through alternative management arrangements, such as trusts and local authority companies
- Deliver savings through a more efficient asset base (primarily by relocating to more efficient offices)

14.3 This report sets out the proposal to deliver significant savings through alternative management arrangements for leisure services. The potential savings identified in this report represent a significant element of the budget savings required over the next three years as well as maintaining and improving the services provided by the Council to the public.

15.0 RECOMMENDATION(S)

That the Leisure and Environment Committee consider the report and make any comments and/or recommendations to the Policy and Finance Committee for it to take into account at its meeting on 29 January 2015

Reason for Recommendation(s)

To ensure that the Leisure and Environment Committee has an opportunity to consider the proposals concerning the establishment of the new leisure company.

Background Papers

V4 options appraisal report

For further information please contact Deborah Johnson on ext. 5800 or Phil Ward on ext. 5347

David Dickinson
Director of Resources

NEW LEISURE COMPANY — MAIN PROVISIONS WITHIN THE MEMORANDUM AND ARTICLES OF ASSOCIATION

1. The new company is proposed to be one that is limited by guarantee, with the Council as the sole shareholder.
2. The Council's liability is stated within the Memorandum to be limited to £1, which is the amount that as the sole Member, it undertakes to contribute to the assets of the company in the event of its being wound up.
3. The income and property of the company is to be applied solely towards the promotion of its objects, there is no provision for any dividend to be payable to the Council as the shareholder.
4. The main 'Objects' (purposes) of the company are to:
 - provide leisure, sports, and cultural facilities and services;
 - liaise and co-operate with all interested groups within the community to develop and deliver this service;
 - promote and enter into partnerships or arrangements of all kinds to improve or extend the facilities and services offered;
 - explore all avenues of funding and finance for such services;
 - improve health and well-being through a range of outcomes, including reduced obesity, reduced anti-social behaviour and narrowing the health inequality gap; and
 - increase jobs, strengthening the local economy, and enable children, young people and adults to learn and be ready for work.
5. The company's Powers are linked to it being able to achieve its 'Objects' stipulated above, and it is proposed that they include the following:
 - the ability to raise funds;
 - to buy, acquire, and sell property and equipment;
 - to borrow money and to charge the whole or any part of the property belonging to the company as security for repayment of the money borrowed or as security for a grant or the discharge of an obligation (see below that the Directors' power in this regard is to be subject to Council's prior written consent);
 - to co-operate with other organisations, charities, and voluntary bodies etc.;
 - to establish or support any charitable or not-for-profit trusts, associations or institutions formed for any aspect of the primary purpose;
 - to acquire, merge with or to enter into any partnership or joint venture arrangement with any charitable or not-for-profit trusts, associations or institutions formed for any aspect of the primary purpose or (provided that the directors shall consider this to be in furtherance of the objects and provided that appropriate safeguards are in place to ensure the not-for-profit character of the company's participation) any community interest company, wholly or mainly philanthropic or commercial body (see below that the Directors' powers in this regard are to be subject to Council's

- prior written consent)
- to set aside income as a reserve against future expenditure but only in accordance with a written policy about reserves;
 - to employ and remunerate such staff as are necessary for carrying out the work of the company. (Consider whether to permit the company to employ or remunerate a director, and if so to what extent and subject to limitations); and
 - to provide indemnity insurance for the directors.
6. Board of Directors - It is proposed that the Board be a total of six, comprising three councillors, two Council officers and the managing director of the company. The managing director will be a non-voting director of the Board, in compliance with the Teckal requirements to demonstrate the Council's control of the company. The Directors will be appointed by the Council as the sole shareholder. It is proposed that they will not be entitled to be remunerated for their appointment. The Council will retain the power to appoint and remove the Directors to the Board.
7. The Directors of the company will be responsible for the management of the company's business and they will be able to exercise all the Powers of the company, but it is proposed that they will only be able to exercise the Powers listed below with the prior consent of the Council:
- To enter into any contractual arrangements, financial commitment or borrowing (whether secured or otherwise) with a value exceeding [£20,000];
 - To change the location of the registered office of the company;
 - To participate in any partnership, joint venture or undertaking (whether incorporated or not) or form any subsidiary;
 - To make any change in the company's banking arrangements (other than consequent on any agreed change of signatories or authorisations);
 - To give any credit or make any loan (other than in the normal course in the normal course of trading or banking); or
 - To institute, settle or compromise any legal proceedings (including mediation or arbitration) brought by or against the company (other than debt recovery proceedings or other matters in the normal course of business).
8. There is also provision within the Memorandum of Association to enable the Council, by special resolution, to direct the directors to take, or refrain from taking, specified action.
9. In addition there is provision for the directors to be indemnified (by the company) against liabilities incurred by them in connection with carrying out their duties as directors of the company.
10. The Memorandum of Association includes the typical company procedures for meetings, decision making and resolutions by the board of directors and the

Member (i.e. shareholder). The quorum for director's meetings is proposed to be three (of whom at least two must be councillors), the directors may appoint a chairman to chair their meetings, and where there are equal votes for and against a proposal, the director chairing the meeting will have a casting vote. A director will not be regarded as having an interest or a conflict of loyalties solely by reason of being an elected member or officer of the Council.

NEW LEISURE COMPANY - MAIN PROVISIONS WITHIN THE PROPOSED LEASE/LICENCES FOR THE COUNCIL'S LEISURE CENTRE PREMISES

Parties:	Council (landlord) and new leisure company (tenant)
Premises:	To include all of the Council's leisure centres to be managed by the company
Rent:	Peppercorn per year (if demanded)
Term:	15 years (lease includes 5 year breaks and a break clause for either party to determine the lease, or that part of it covering a particular premises, if the 'contract for leisure services' between them is terminated)
Use	<p>Company is only to use the premises for the permitted use i.e. for the primary purpose of a community leisure centre but including such ancillary fitness, social, recreational, health & wellbeing and sport purposes and catering and retail facilities. There are the usual prohibitions to prevent the tenant from doing anything or allowing any activity which would constitute a nuisance etc.</p> <p>N.B. The Council will be entitled to use any of the premises for elections and/or civil emergency purposes upon notice and payment for such use.</p>
1954 Act	Business tenancy rights under the 1954 Act (sections 24 to 28) are specifically excluded.
Repairs	Responsibilities for repairs are split between the parties, with the Council as landlord broadly retaining responsibility for the structure, main plant and equipment and exterior of the buildings, including the maintenance of the hard surfaces in good condition, and cultivation of the grassed and landscaped areas. In the event that a premise is required to be closed for public use to enable the Council to effect repairs, the tenant is not entitled to any compensation for loss of income, business or goodwill occasioned by the closure. The company as the tenant is to be responsible for the day to day internal repairs, maintenance and decoration. It will also be responsible for keeping the premises clean, hygienic, tidy and free from rubbish etc.
Alterations	The company is not permitted to make any alterations or additions to the premises without the Council's consent.

Assignment	The company is prevented from assigning, underletting or parting with possession with any part of the premises.
Access	The Council, and all persons authorised by the Council, has a right to access the premises at reasonable times and upon reasonable notice (except in emergency) to view, inspect or carry out any work pursuant to the Council's repairing obligations etc.
Services/ utilities	The company will be liable for all rates, taxes etc. on the premises – (need to consider the VAT position for Council and company before determine responsibility for direct payment of water, electricity, gas, telephone and other utilities/services consumed on the premises).
Advertisements	The company is not, without the Council's consent, permitted to display advertisements, bills or placards on the outside of the premises other than where they are of reasonable size and appearance at the entrance showing the company's trading name and business etc.
Insurance	The Council is to insure the buildings, and the company is to insure against public & occupiers liability, and also employer's liability.
Termination	There is provision for either party to serve notice to terminate if any of the premises become unfit for occupation and use for a period of 2 years.

NEW LEISURE COMPANY — MAIN PROVISIONS WITHIN THE CONTRACT BETWEEN THE COUNCIL AND THE NEW LEISURE COMPANY

The contract sets out the agreement between the Council and the Company for the provision of the services, so it is important that it contains everything that the Council intends by way of control measures, whilst still allowing the Company the flexibility to deliver the services in the most effective way.

The draft contract is some 115 pages in length and includes the common contract clauses that one would anticipate such as: set off rights; confidentiality; data protection; health & safety; equalities; FOI Act; compliance with the Council's statutory duties; use of Council property; logo and signage indemnity & insurance; notices; dispute resolution etc. But more particularly the main terms are as follows:

- 1. SERVICES:** The provision of cultural leisure services (including sports development leisure facilities) to the standards specified in the contract **and** to the reasonable satisfaction of the Council. A detailed specification of the services is included as a schedule (Schedule 3) to the contract. The Council and the Company may agree variations during the contract period, which may include the services being provided and/or closure of or any part of the premises/leisure centres. A reduction in the services to be provided will result in a reduced contract price, conversely an increase in the services could give rise to an increased contract price. There is specific mention within the contract of the fact that the Council is building a new leisure centre and that the contract will need to be varied to take account of the move from the existing Grove Leisure Centre to the new premises and the interim financial provisions that will be needed to take into account transitional costs related to this.

The contract also provides that the Company will be provided with various central support services from the Council for a period of at least two years. Thereafter either party may terminate this arrangement by giving not less than 6 months written notice.

- 2. ASSIGNMENT:** The Company is prohibited from assigning, delegating or sub-contracting any of its obligations under the contract. However, the Council CAN assign the contract in whole or part to a statutory or public body or to a successor authority of the Council.

N.B. The Company may allow third parties to provide services from the premises, (other than the services it is contracted to provide itself to the Council), subject to certain conditions and the Council's ability – acting reasonably – to prevent this.

3. **CONTRACT PERIOD:** 15 years, with five year breaks. The Council will have the right to terminate any part or the whole of the contract at any time upon giving at least six months' notice to the Company. The draft contract contains provisions dealing with the rights of the Council and the Company upon termination in terms of repossession of premises, smooth handover and continued running of the services and recovery of any losses etc.
4. **CONTROLLED COMPANY:** The new company warrants that it is controlled by the Council, within the meaning of the 1989 Act, and at least 80% of its activities are to be in carrying out the functions/tasks allocated to it by the Council.
5. **PERFORMANCE OF THE SERVICES, CONTRACT STANDARDS, REVIEW & MONITORING:**

These provisions are contained within Schedule 5 of the draft contract. There are 4 Parts to this Schedule, all covering different aspects of the area of performance etc. detailed as follows:

Part 1 – Performance of the Services

The Company is required to provide the services in accordance with specified contract standards. This Part contains the mechanisms for the reporting by the Company to the Council of any inability to comply with the contract standards to a material degree and for the Council to decide on the action to be taken in such circumstances. There is also provision for the Council's Authorised Officer to have access to the Company's workplaces, personnel, technology and any other information to enable the Council to satisfy itself regarding the proper performance of the contract. The Company is required to maintain a procedure (that has been approved by the Council) for dealing with any complaints received about the services – with the Council able to access the records of complaints received and dealt with, as part of the monitoring process.

Part 2 – Company's personnel and other persons engaged in delivering the services

The Company will be responsible for the recruitment and conditions of service of all of the staff engaged in the provision of the services and this Part requires the Company to ensure that they are sufficiently and appropriately trained, instructed and qualified with regard to the tasks they are employed to perform, for example lifeguards must be qualified to the Royal Life Saving Society's National Pool Lifeguarding Programme Standard. In addition, this Part requires the Company to ensure that its employees comply with certain specified Council policies and procedures, for instance – health & safety, equalities, safeguarding, criminal conviction and Disclosure and Barring Authority checks etc. The Company will be required to maintain up to date records of all persons in its employment and allow the Council full access to these records. The Council will have the power to require

the Company to remove any employee from the performance of the services under the contract.

Part 3 – Monitoring and contract standards

The Company is required to provide the Council with a copy of its audited accounts each year within a given period of the relevant accounting reference date. It is also required to provide the Council with the performance monitoring information as agreed and set out in the Specification (performance measures key indicators and targets included within the contract), on a monthly, quarterly and annual basis.

There is provision for officers of the Council and the Company to meet monthly to consider compliance with the contract standards and to discuss financial and other performance monitoring information. The draft contract also includes provision for there to be formal quarterly and annual meetings at Member level – see reference to the relevant Council committee, detailed below. It is intended that the Council will collect information and knowledge relating to the Company's performance in the following ways:

- via monthly, quarterly and annual performance reports produced by the Company;
- attendance, and involvement in monthly, quarterly and annual performance review meetings;
- customer feedback from customer satisfaction surveys;
- evidence provided by the Company to Quest and iIP standards;
- benchmarking with other similar facilities/services in other local authorities;
- mystery visits utilised by the Council;
- ongoing observation by Council staff via announced/unannounced visits;
- ongoing structured and unstructured dialogue with the Company; and
- the discussion at the Partnership Forum.

The Council will carry out a formal Contract Review every financial year to evaluate performance and agree strengths and areas for improvement. This will inform the Council's consideration and approval of the Company's business plan and a Service Quality Improvement Plan for the subsequent financial year. Before the end of September each year the Council's Authorised Officer and the Company's Representative will meet to consider whether or not any variation, or closure of any of the premises is desirable and seek to agree the targets for the following year.

Part 4 – Relevant Council Committee overview

The draft contract envisages that the company will report to the relevant Council committee (Leisure and Environment) via the Managing Director and the Council's Authorised Officer attending the committee quarterly and producing quarterly performance reports. The Leisure and Environment Committee will have the role of setting the strategic direction for the Council's company, through consideration and

approval of the annual business plan and also will review the efficient and effective business management of the contract, and to ensure that the contract is being delivered effectively and in accordance with its terms. It will also review: whether the Company is meeting its financial and operational targets and the agreed strategic and other outcomes; whether the available financial and other resources are sufficient to deliver the contract; the development and review of the Service Quality Improvement Plan; and any proposed variations to the services.

6. **DEFAULT** – Within Schedule 6, there are provisions to deal with the situation if the Company fails to perform the services to the required contract standards. Essentially the Company will have a period of time within which to comply with agreed remedial action, and if there is a failure to do so the Council has the right to arrange for any part of the services to be carried out by itself or a third party. The Council will have the right to terminate the contract immediately where the Company commits a material breach, or where it is substantially or persistently in breach of any of its obligations under the contract. Similarly the Company has the right to terminate the contract, upon four months' notice, if the Council is substantially and persistently in breach of its obligations under the contract.
7. **APPROVED BUSINESS PLAN:** This will be a comprehensive business plan, in a format as required by the Council, that includes both financial information and a narrative to ensure that the profiled contract sum is achieved (i.e. Council's requirement that the services should be delivered within a reducing contract sum payable by the Company to the Council), and includes a comprehensive system of and format for the performance management for the services required to be provided under the contract, all of which is capable of being audited by the Council's internal and external auditors.
8. **FEES & CHARGES:** Schedule 7 sets out the process for the Council to agree the core fees and charges. The agreed fees and charges will be the maximum charges, in effect the Company may charge less than these, but not more. The Company will submit to the Council its proposed changes to fees and charges by 30 November each year. The Council must communicate to the Company whether it approves the proposed changes by 31 January, and any approved changes must be implemented by the Company by the following 1 April. If it proposes increases which are overall above CPI, the Company should also set out proposals for such increases to reduce the Contract sum.
9. **CONTRACT SUM [AND SHARING SURPLUSES]:** An Annual sum is payable by the Council to the Company for the services to be provided by it under the contract. The Company will pay the Council an agreed annual sum in respect of the services to be provided to it by the Council under service level agreements (i.e. for central support

services). Schedule 4 sets out in detail the relevant payment mechanisms in respect of these sums. In respect of the sum to be paid by the Council to the Company for the services provided, there will be a financial reconciliation in accordance with the assumptions in the Approved Financial/Business Plan and if there is an overall variance whereby the net income (after expenditure and costs are taken into account) exceeds the Business plan assumptions, the Council and the Company will meet to discuss whether some or all of such additional sum should be retained by the Company for provision of additional services or be repaid to the Council for the delivery of its corporate objectives. The decision relating to this is to be the Council's.

This Schedule also makes provision for how any operating surplus made by the Company is to be dealt with. Currently as drafted, it provides that the operating surplus be split equally and one half paid to the Council as an additional contract sum and the balance retained by the Company.

- 10. TRANSFER OF STAFF** - The contract contains provisions recognising the transfer of employees from the Council to the Company under the same terms and conditions as their current employment, as well as the pension arrangements for the transferring staff.
- 11. AUTHORISED OFFICERS:** The 'Authorised Officer' of the Council will act in the name of the Council for the purposes of issuing instructions to the Company. The Company's Managing Director will be the Company's contract representative.
- 12. COUNCIL MEMBERSHIP CARD:** The Company will honour and comply with the current Council's membership card and any discount and concessionary schemes unless and until the provision of any substitute schemes have been agreed with the Council
- 13. INTELLECTUAL PROPERTY RIGHTS:** The intellectual property in any data base created and any data base of information about persons will remain in the ownership of the Council, and the Council will grant a non-exclusive licence to the Company to use the data and any branding or other marketing material in connection with the Services during the Contract Period free of any charge as agreed.
- 14. HEALTH & SAFETY:** The Company is obliged to comply with all health and safety legislation and also to allow the Council access to inspect to ensure compliance. The Council may issue instructions for the Company to undertake works to secure compliance with H & S requirements, and it can instruct the Company to cease operations until compliance has been secured. The Company will indemnify the Council against any losses incurred as a result of any breach.