

Officer Decision Making

Wednesday, 30th June 2010
at 5.00 pm

PLEASE NOTE TIME OF MEETING

The Office of Director of Neighbourhoods

This meeting is not open to the public

Members

Executive Director of Neighbourhoods

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AGENDA

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1 EXCLUSION OF PRESS AND PUBLIC FOR THE NEXT ITEM

In accordance with the Council's Constitution, specifically the Access to Information procedure Rules contained within the Constitution, the press and public be excluded from the meeting in respect of any consideration of the confidential appendix to Item No: 2

Appendix 1 is not for publication by virtue of Categories 3 and 4 of Paragraph 10.4 of the Council's Access to Information Procedure Rules as contained in the Council's Constitution. It is not in the public interest to disclose this information because the appendix contains confidential and commercially sensitive information which impacts on the integrity of a commercial procurement process and the Council's ability to achieve 'Best Value' in line with its statutory duties.

2 SERVICE CONCESSION TO MANAGE AND OPERATE ST MARY'S LEISURE CENTRE

Report of the Head of Leisure and Culture seeking approval to grant a service concession to Southampton Solent University to manage and operate St Mary's Leisure Centre, attached.

Tuesday, 22 June 2010

SOLICITOR TO THE COUNCIL

Agenda Item 2

DECISION-MAKER:	EXECUTIVE DIRECTOR OF NEIGHBOURHOODS		
SUBJECT:	SERVICE CONCESSION TO MANAGE AND OPERATE ST MARY'S LEISURE CENTRE		
DATE OF DECISION:	30 JUNE 2010		
REPORT OF:	HEAD OF LEISURE AND CULTURE		
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STATEMENT OF CONFIDENTIALITY

Appendix 1 is not for publication by virtue of Categories 3 and 4 of paragraph 10.4 of the Council's Access to Information Procedure Rules as contained in the Council's Constitution. It is not considered to be in the public interest to disclose this information because the Appendix contains confidential and commercially sensitive information which would impact on the integrity of a commercial procurement process and the Council's ability to achieve 'Best Value' in line with its statutory duties.

SUMMARY

Approval was given by Cabinet on 15 March 2010 to delegate authority to the Executive Director of Neighbourhoods, in consultation with the Executive Director of Resources and the Solicitor to Council, following consultation with the Cabinet Member for Leisure, Culture and Heritage; to grant a service concession to Southampton Solent University for the management and operation of St Marys Leisure Centre.

This paper updates Officers on the progress of the Council's proposed service concession for St Marys Leisure Centre and recommends that a service concession is entered into. The period of the concession will be 3 years with an option to extend (at the discretion of the Council) for a further period of up to 12 months.

The Council's Sport and Recreation Partnership progressed with a significant milestone in February 2010, with the appointment of a preferred bidder for the main contract. St Mary's Leisure Centre was not part of that package, given the potential for alternative developments to provide a long term solution for provision in the locality. In the short term, Southampton Solent University have expressed an interest in pursuing a role in managing and operating the facility.

Since the approval given by Cabinet in March, officers have undertaken detailed and final discussions with Southampton Solent University and agreed the contract documentation required.

RECOMMENDATIONS:

- (i) Following consultation with the Executive Director of Neighbourhoods, the Executive Director of Resources, the Solicitor to the Council and Cabinet Member for Leisure, Culture and Heritage; to grant a service concession to Southampton Solent University for the management and operation of St Marys Leisure Centre as a publically accessible facility for a period of 3 years from 2 August 2010, with an option to extend for a further period of up to 12 months.

REASONS FOR REPORT RECOMMENDATIONS

1. To retain the provision of important community facilities in the City Centre.
2. To provide a solution to meet the Council's budgetary targets in relation to St Mary's Leisure Centre.

CONSULTATION

Unions

3. Trade Unions were consulted on 3rd March 2010 and have been advised of the decision timetable. Ongoing meetings have taken place with the broader Sport and Recreation Partnership to advise Unions / staff of progress.

Sport and Recreation Staff

4. Staff at the venue have been regularly updated and consulted on the overall Sport and Recreation Partnership project and been advised that alternative options are being explored for St Mary's Leisure Centre. They have also been advised of the Council's budget decisions. Staff consultation took place on 8th March 2010 and 22nd April 2010 to provide information direct to staff. A further communication briefing for staff is being prepared.

Customers

5. The principle of alternative management arrangements was contained in the Administration's budget proposals and subsequently part of a broader consultation exercise. No questions or comments were received from the public. Following the meeting with staff, customers were advised by information sheets about the proposals contained within this report.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

6. To continue managing in house. This has been rejected, given the need to meet the overall Council budget requirements and despite improvements in the financial performance of the Centre, they are unable to meet the targets set.
7. Closure. Rejected given the impact on the local community and the opportunities to explore and pursue alternative management options that could meet the Administration's objectives.
8. Include in the broader procurement package. Rejected given that the long term sustainable option to provide sport and recreation services in the locality is some form of joint project with Solent University. Inclusion in the broader package would complicate and probably prejudice this aim.
9. Progress alternative partnership arrangements. Meetings have been held with another organisation who expressed interest in establishing a Social Enterprise to operate the facility and to subsequently support their role in supporting vulnerable young people. They were seeking a long term commitment to the building and a phased reduction in the revenue support the Council provides. These two factors in particular do not support the current thinking and strategy for the building or revenue commitments.

DETAIL

10. St Mary's Leisure Centre was subject to significant repair work and reopened in early 2007. The work provided the Centre with approximately 5 years life before other substantial investment may be required (not withstanding any catastrophic events). The long term future of provision in the local area has been tied in with proposals for a joint development with Southampton Solent University (SSU) for some time. These proposals have stalled over difficulties with land purchase issues for Solent University. These issues appear to have progressed recently, but the development and ultimately provision, of a scheme that may involve the Council is still a number of years away.
11. In the meantime, it is appropriate to consider the short to medium term provision of a sports facility in the area in the context of the Council's budgetary position; therefore approval was given on the 15 March 2010 by Cabinet to pursue a service concession with SSU. In undertaking this approach, it would enable the long term development to be progressed, continue to offer community use and meet the approved Council budget for 2010/11, which was to remove the current costs associated with subsidising the facility to achieve a Council saving.
12. The Authority believes that the Transfer of Undertakings, (Protection of Employment) Regulations 2006 (TUPE) will apply. Where TUPE applies, SSU is required to protect the terms and conditions of transferred staff including pensions. SSU will take full risk on pension contributions for transferring staff. The agreement expressly provides that the Parties do not expect TUPE to apply on termination. It will however apply if the Council (whether itself or through another contractor) does, after all, retain the Leisure Centre on termination of the agreement with SSU.
13. SSU is already part of the Local Government Pension Scheme and as such, will be seeking to transfer TUPE staff to be part of their existing scheme. If this is refused / impractical SSU must provide a broadly comparable scheme as approved by the Government Actuary's Department (GAD).
14. SSU is required to employ new joiners on terms that are overall no less favourable than those of transferred employees.
15. The Council recognises the Best Value Code of Practice on Workforce matters and has communicated to SSU their requirement to avoid two-tier working.
16. There is still the need to develop and deliver the replacement facility in an appropriate timescale. In considering this risk, the Council is proposing the 3 year service concession with the option to extend for a further period up to 12 months. The service concession is a step forward but, if for whatever reason the new build did not materialise, this would leave the Council facing a number of challenging issues, including whether to invest further in the building and equipment to secure a longer lifespan and subsequently service delivery.

17. A service concession is a quick and efficient procurement route, but is more limited in the controls the Council can exert through a service specification in a conventional services contract. It is felt that the specification produced is the best and most appropriate mechanism within the limitations that apply with a service concession. However this said, the lease terms can specify permitted use for example but there would be no direct control over pricing or programming for instance. SSU has responded with a firm commitment to maintaining significant public access to the facility.
18. The award of a service concession is exempted from the Contract Procedure Rules unlike a services contract. The reasoning for this is that the Council will not be spending money on services nor will it be specifying exactly what the provider must do in operating the Centre. Although going to the market with this opportunity may assist the Council in ensuring it achieves best value, proceeding only with SSU on the basis of a service concession has the following advantages:-
- the University is the single largest user of the Centre – in any future management arrangements, it plays a critical role.
 - Our long term plans are for a joint project, with the possibility of some SCC investment in a University operated facility; this is the first step in that journey.
 - The proposal without a management fee is not attractive to the commercial sector, unless we are happy to have a partner that is not prepared to commit to continued public access at a reasonable level. The University are committed to continued public access.
 - The partner will need to TUPE staff and be able to provide an LGPS or GAD approved pension; SSU have the staffing and governance arrangements to meet this need.
 - The University can move quickly enough to meet the financial needs as established by the 2010/11 budget approved by Full Council in February 2010.
19. The University is a significant and robust organisation. It employs approximately 1,500 people and in 2007/08 had a turnover of £81,000,000. Its pension fund is managed through Hampshire County Council. Its mission is “The pursuit of inclusive and flexible forms of Higher Education which meet the needs of employers and prepare students to succeed in a fast-changing competitive world.” The University has a strong emphasis on building its role and profile in the local community.

FINANCIAL/RESOURCE IMPLICATIONS

Capital

20. N/A

Revenue

21. The Council’s budget for 2010/11, approved in February 2010, shows a reduction in relation to St Mary’s Leisure Centre subsidy. The details can be found in Appendix 1 but in summary, the proposals deliver savings of £34,000 in 2010/11 and £51,000 in 2011/12. The saving of £34,000 is £6,000 less than that included in the budget report and other savings have been identified in the Leisure, Culture and Heritage portfolio to compensate for the difference.

Property

22. The Council would be entering into a lease for the building. The Council will retain liability for the building structure and its latent defects. All other repairs and maintenance will be undertaken by SSU. On this basis there is no impact upon the Central R and M budget. SSU will be responsible for all expenditure relating to the management and operation of the service.

Other

23. In discussions with SSU, it is clear that the Smartcities scheme in its present format cannot be transferred across to SSU as the costs would be prohibitive. However, SSU have made a commitment to offer an alternative concession scheme to provide access to those users that access the venue via the 'Get Active' scheme.
24. In February 2010, Cabinet agreed a residual client structure which includes capacity to provide contract management.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

25. The power to provide leisure facilities derives from the Local Government (Miscellaneous Provisions) Act 1976. The Cabinet will need to make their decisions in accordance with the Council's normal statutory duties, e.g. the duty to achieve best value in the manner in which it discharges its functions under the Local Government Act 1999 which requires all best value authorities, such as Southampton to: "...make arrangements to secure continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness". [Local Government Act 1999 – Section 3]

Other Legal Implications:

26. The Solicitor to the Council is also the City Council's Monitoring Officer and therefore needs to ensure that at all times, the City Council is acting lawfully and within its powers.

POLICY FRAMEWORK IMPLICATIONS

27. The 2009/10 Corporate Improvement Plan includes the following key action: "To develop a long term strategy to address the future management of and secure sustainable investment in the City Council's sports and recreation facilities".

SUPPORTING DOCUMENTATION

Non-confidential appendices are in the Members' Rooms and can be accessed on-line

Appendices

1.	Confidential Appendix
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Documents In Members' Rooms

1.	None
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Background Documents

Title of Background Paper(s)

1.	None	
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Background documents available for inspection at: online

FORWARD PLAN No: N/A **KEY DECISION?** YES

WARDS/COMMUNITIES AFFECTED:	All
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Document is Confidential

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