

DECISION-MAKER:	CABINET		
SUBJECT:	ST MARY'S LEISURE CENTRE MANAGEMENT ARRANGEMENTS – SERVICE CONCESSION 2014 TO 2018		
DATE OF DECISION:	TUESDAY 20 AUGUST 2013		
REPORT OF:	CABINET MEMBER FOR ECONOMIC DEVELOPMENT AND LEISURE		
<u>CONTACT DETAILS</u>			
AUTHOR:	Name:	Nigel Greene	Tel: 023 8083 3419
	E-mail:	Nigel.Greene@southampton.gov.uk	
Director	Name:	John Tunney	Tel: 023 8091 7713
	E-mail:	john.tunney@southampton.gov.uk	

STATEMENT OF CONFIDENTIALITY

None

BRIEF SUMMARY

Southampton Solent University (SSU) has managed St Mary's Leisure Centre (SMLC) under a Service Concession since 1st August 2010. The current agreement is for an initial 3 years to 1st August 2013 with an option to extend by agreement for a further 12 months to 1st August 2014.

Following consultation with the Cabinet Member for Economic Development and Leisure, the current agreement was extended to 1st August 2014 using delegated authority contained in the 15 March 2010 Cabinet Decision.

Approval is sought from Cabinet to delegate authority to officers, following appropriate consultation to proceed with the granting of a 2nd Service Concession to Southampton Solent University for the management and operation of St Mary's Leisure Centre for a further 3 years from 1st August 2014 to 1st August 2017 with an option to extend by a further 12 months by agreement to 1st August 2018.

RECOMMENDATIONS:

- (i) To delegate authority to the Director of Environment and Economy, following consultation with the Cabinet Member for Economic Development and Leisure and the Head of Legal, HR and Democratic Services, to grant a 2nd Service Concession to Southampton Solent University for the management and operation of St Mary's Leisure Centre as a publicly accessible facility from 1st August 2014 to 1st August 2017 with an option to extend for a further 12 months by agreement to 1st August 2018.
- (ii) To authorise the Head of Legal, HR and Democratic Services, following consultation with the Director of Environment and Economy, to do anything necessary to give effect to the proposals contained within this report.

REASONS FOR REPORT RECOMMENDATIONS

1. Authority for a second Service Concession is being sought now, rather than in December 2013 because SSU has devised a £200k capital scheme for SMLC which needs to be spent in SSU current financial year ending 31 March 2014. SSU would like to offer at least three years public and academic use of the upgraded facility, hence the formal request now.
2. A new-build SSU Sports Centre is scheduled for phase 2 or phase 3 of the East Park Terrace Capital Scheme, which could result in SMLC being required as a sports facility by SSU until the end of 2017.
3. To retain the provision of important community facilities in the City Centre at no cost to the Council until at least August 2017.

ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

4. Do nothing - Allow the current lease and Service Concession to expire on 1st August 2014. Under this option, the building would close, SSU would vacate and there would be no academic or sports provision. There will be unbudgeted costs to the Council to secure the building (circa £5k) and on-going asset management costs. These costs have yet to be explored but based on the empty Oaklands Swimming Pool, costs to secure and maintain SMLC could be circa £15k per annum, excluding rates.
5. Do not agree to SSU Request for a 2nd Service Concession - Seek to re-let or tender the opportunity to use the facility as a sports facility or for some other use.

DETAIL (Including consultation carried out)

6. The £200k capital scheme will be entirely funded by SSU, for new fitness equipment and a new sports physiotherapy and sports massage suite for academic use for SSU sports physiotherapy curriculum and courses. In the process, the capital works will refresh the fitness suites and changing areas. This investment is subject to the grant of the 2nd service concession with the Council to 2018, and SSU funding for the scheme being made available.
7. SSU is currently setting benchmark figures for customer satisfaction to confirm that both public and academic users of the facility are happy with the high standard of operational management.
8. A Service Concession is a type of contractual arrangement. Under a Service Concession, the provider takes the risks of operating the facility and obtains payment in the form of the right to exploit the facility by charging users. Lease terms can specify permitted use but there is no direct control over pricing or programming.
9. Cabinet is asked to consider a formal request from SSU for a 2nd Service Concession, on existing terms and conditions which will have the effect of extending the agreement for a further 3 years from August 2014 to August 2017, with an option to extend by agreement, for a further 12 months to August 2018. Approval will allow SSU to undertake a £200k capital upgrade of SMLC, keep continuity of service for customers and academic courses, and provide a sports provision in the city centre until a new sports hall is completed on campus which is due to be completed late 2017. There will be

public and community access to SMLC and the new facility.

10. **March 2010 Exemption from Public Procurement**

On 15 March 2010, Cabinet approved the award of a Service Concession to SSU (**CAB 09/10 2691**). The award of a Service Concession without a public procurement was granted an exemption to procurement for the reasons set out in paragraphs 19 and 20 of the **15 March 2010** Cabinet Report.

11. **2010 Cabinet Report - Paragraph 19**

'The reasoning for this is 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 in place 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.'

12. **2010 Cabinet Report - Paragraph 20**

'The University is a robust organisation. It employs over 1,500 people and in 2007-08 had turnover in excess of £82m. 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."

13. **Exemption to Procurement granted for 2nd Service Concession**

On 4th July 2013, the Head Property, Procurement, and Project Management approved an Exemption to Procurement under paragraph 19.3.1 of the Contract Procedure Rules: The nature of the market for the works to be carried out or the supplies or services to be provided has been investigated and is demonstrated to be such that a departure from the requirement of the Rules is justified.

14. The reasons for granting the Exemption are; "This ensures a council venue is maintained and used. No external spend or revenue will be generated but the building will be put to use and will be upgraded through an investment of £200k by SSU".

15. **Best Value Consideration**
SSU have provided the SMLC service to a high standard since August 2010, and the reasons for approving the concession in March 2010 have not altered. Leisure partner Active Nation has confirmed that it is currently not interested in operating SMLC without a subsidy.
16. Since operating the venue SSU have:-
- Supported and encouraged public use.
 - Kept admission price increases broadly in line with inflation year on year.
 - Offered a range of concessions
 - Promoted and encouraged community use from within the local area.
17. If granted a 2nd Service Concession to 2018, SSU will continue to pay; rates, all building repairs and maintenance costs, term-servicing of plant and machinery costs and to operate SMLC at no cost to the Council.

RESOURCE IMPLICATIONS

Capital/Revenue

18. The Council neither receives, nor makes any payments in respect of this service concession. Council asset management costs are negligible, limited to clearing out the guttering as SSU pick up all the term-servicing and repair costs.

Property/Other

Building Condition risks now and until 2018

19. The Council retains responsibility for the main building structure under paragraph 5.2 of the Service Concession. If there is a catastrophic failure, the Council would need to pick up these costs.
20. Service Concession agreement paragraph 17.4 provides a termination option for the Council should repairs prove too expensive (beyond economic repair) or there is major disruption to business as a result of failure. Specification Paragraph 4.1.8 provides that SSU shall maintain the buildings so as to protect the building structure, fabric, fixtures and fittings, mechanical and electrical plant, and equipment.
21. The current premises condition survey undertaken in 2012 shows the building is sound and only the Main Roof as a potential premises risk to the Council of circa £77k. This is given as a priority 3 low risk which may require expenditure within the next 3 to 5 years or may not be required at all. The only noted area of any concern is the metal profile roof. This is starting to show signs of wear and the external elevations require repair and decoration to be funded by SSU.
22. The building internal fabric is in a good condition having been the subject of £245k capital refurbishment in 2006.
23. Specification Clause 4.3.1 provides that the Council will not be liable for any compensation payments due to an emergency or closure of SMLC or its activities.

LEGAL IMPLICATIONS

Statutory power to undertake proposals in the report:

24. 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 its functions are exercised, having regard to a combination of economy, efficiency and effectiveness." [Local Government Act 1999 – Section 3]

Other Legal Implications:

Procurement Issues

25. SSU are requesting a 2nd Service Concession on exactly the same terms. It is proposed that a 2nd Service Concession is entered into with SSU, rather than via procurement or public advertisement.
26. A services concession contract is not governed by the Public Contracts Regulations, however EU Treaty principles apply and consequently if the contract is likely to be of interest to providers in other member states then the opportunity to bid for it must be given to them and advertised widely enough to bring it to their attention. In this instance, it has been decided that the contract is very unlikely to be of interest to any service providers in other EU member states and accordingly the risk of challenge resulting from not offering the contract more widely are low.
27. A break clause by either party will be inserted after 18 months into the new service agreement. This provides flexibility and comfort to both parties in the event of a change of priorities.
28. The current lease is excluded from security of tenure under the Landlord and Tenant Act, so to protect the Council's position, if a 2nd Concession for a further 3 + 1 years is agreed, it will be necessary to ensure that all documentation is issued promptly before 1st February 2014.

POLICY FRAMEWORK IMPLICATIONS

29. The proposals are consistent with the Policy Framework.

KEY DECISION? YES

WARDS/COMMUNITIES AFFECTED:	ALL
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SUPPORTING DOCUMENTATION

Appendices

1.	None
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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

Other Background documents available for inspection at:

Nigel Greene, Contract Manager, Leisure and Culture
 Environment and Economy Directorate, **Southampton City Council**
 4th Floor, One Guildhall Square, Above Bar, Southampton, SO14 7FP

<http://www.southampton.gov.uk/modernGov/documents/s1715/Report.pdf>

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.	CABINET REPORT 15 MARCH 2010 - St. MARY'S LEISURE CENTRE MANAGEMENT ARRANGEMENTS	(CAB 09/10 2691)
2.	CABINET REPORT 15 MARCH 2010 - St. MARY'S LEISURE CENTRE MANAGEMENT ARRANGEMENTS – Record of Executive Decision	(CAB 09/10 2691)