

My name is Martin Wilson, I am a resident of Winchester and member of the electorate.

I would like to report what may amount to potential maladministration at Winchester City Council in relation to River Park Leisure Centre.

In making this report I would like to request that the Overview and Scrutiny Committee undertakes a full investigation of the issues raised, as is the duty provided by your mandate.

I first wrote to Cllr Pines to report serious concerns relating specifically to River Park Leisure Centre on 21 October 2013. His response was to ask for "chapter and verse".

The seriousness and significance of the matters that we have uncovered, and continue to uncover, I believe have the potential to warrant specific investigation under the considerations of regularity, propriety and use of resources.

As I have suggested, there are real concerns of serious maladministration.

The activities complained of are highly irregular and could be considered negligent. In relation to River Park Leisure Centre, these concerns go back to at least 2005 and possibly earlier. For instance:

- Why was a 12 year contract with significant penal clauses entered into when it was general knowledge that the building was falling down?
- Why was there inappropriate correspondence between DC Leisure and Council Officers prior to the award of the contract, suggesting how to avoid a tender?
- Why was that contract not put out for tender when the terms are materially different to anything that existed before?
- Why was an additional 3.25 year extension agreed in 2005 to compensate for 3 months of building disruption when the council was not obliged to provide any compensation?

It appears that a number of officers may have materially failed in their duties and that they may have acted in a way that falls short of their positions as directors. The arrangements that been put in place are believed to have: potentially defrauded the Winchester City Council and therefore Winchester taxpayers of significant amounts of money - running into several millions of pounds; or knowingly committed WCC to a position that is to the benefit of individual organisations but to the detriment of the taxpayer in that it severely impacts on the Council's ability to use resources effectively in the future. This would likely make them contrary to law.

As I am sure that you will understand there is a significant wider public interest in this matter. I therefore believe that it is firmly in the public interest to have this matter investigated under your specific powers as is required under the terms of your mandate.

Such is the potential seriousness that this matter has also been referred to the District Auditor for review.

My question in making this report of maladministration is therefore: **is this Committee prepared to act in accordance with the duty imposed on it by its mandate by undertaking a full investigation of the issues raised?**

- END -

If you receive this e-mail by mistake, we trust you to delete it.



Please don't print this e-mail unless you really need to

## Overview and Scrutiny Committee

Meeting date: 17<sup>th</sup> February 2014

### **Introduction**

In regard to the report (OS95) from Mr Eden that this Committee will be reviewing as agenda item 12, it is not accepted that the Committee should await the outcome of an investigation by the District Auditor, or the Council's Internal Auditor, before instigating an investigation into the issue of the contract(s) with DC Leisure ('DCL'). The auditors will be enquiring into financial irregularities: the issue for this Committee is wider, in that officers' compliance with the law, their competence and the proper performance of their duties, as well as the information provided to Councillors, is called into question.

This document highlights just a few areas where there are significant questions to answer. There are many more.

These are serious questions about the conduct of Officers over a period of time. These questions also bring into serious doubt the nature of the information that has been provided to Councillors and Committees to advise decision-making, a good example being the Report CAB 2553 on River Park Leisure Centre being presented by Mr Tilbury today which contains inaccurate and misleading information.

It is also worth noting that the City Council is falling short of its legal obligation to provide information under the Freedom of Information Act 2000. The Information Commissioner's Office has written to Mr Eden to make him aware of his obligations. It is still unclear why information that is in the public interest to disclose is being withheld.

This Committee is mandated to investigate any report of potential maladministration. When the conduct of Officers is at question it is not accepted that they play any role in the process except a reactionary one, i.e. to provide the investigation with the information that they require. At the last meeting I spoke of

my willingness to support this Committee in highlighting the areas for investigation: that offer remains.

**Examples of areas in question:**

**1. Re Capita Symonds report**

In May 2009 the commissioning of a report was approved by the Cabinet (CAB 1801) 'for the appointment of a leisure consultant to provide an independent assessment of the relative merits of either tendering the management contract for River Park (*and, for the first time, Meadowside*) for ten years from April 2011 or extending the current contract with DC Leisure Management'.

*Cabinet minutes: 09<sup>th</sup> May 2009 (CAB 1801)*

*RESOLVED:* 'That a report be brought to Cabinet in July detailing the findings of the above study and recommending the option offering best value for money for consideration.'

- Why wasn't the report given to Cabinet in July 2009, as was promised in May 2009?
- Why wasn't there any Cabinet meeting between May and December 2009 (CAB 1861) at which RPLC was discussed?
- Has Cabinet ever been provided with the full Capita Symonds Report, and if not why not?
- How many reports have been commissioned in the past 5 years into the state of RPLC, into proposals for procurement of contractors, or the sporting requirements of the District? Has the Cabinet or any other Committee been provided with all of these reports? What is the

cost to the taxpayer of all these reports?

- On what basis can the officers say at the December 2009 Cabinet meeting (CAB 1861 para 5.1) that they 'believe that the offer proposed by DCL is financially advantageous, beneficial to the continued service levels at both River Park and Meadowside, and legally acceptable'? Counsel's advice was that any extension of the existing contract for a period of more than five years would require to be put out to tender (and it was extended for 12 years); also that if the nature of the contract meant that it was materially different from the original contract, and in effect a new contract, a procurement exercise was necessary. Moreover, the terms of the extended contract were untested in the open market so how can it be said that the offer was financially advantageous or legally acceptable?
2. In the Capita Symonds report a figure of £100k is cited as the cost of putting the contract out to tender, but surely the tenderer is supposed to cover the cost associated with the tender?
  3. The overwhelming conclusion of the Capita Symonds report (from para 4.3.5) is that the 'facility is unique in terms of its performance', that 'the operator (DCL) appears to enjoy a good return' and that 'the Council should be able to negotiate a significantly better deal going forward'. Also see para 5.1.2: 'However, Capita Symonds has stressed the unique nature of the River Park facility in terms of its competitive situation and the consistent levels of profitability generated by the facility, which the Council should use as leverage during negotiations'. Why then is a 'solo negotiation' with DCL recommended rather than an open market tender?
  4. Capita Symonds opined in para 3.2.1 that 'in our opinion, there would be significant interest in Winchester's contract from the private sector operators

and larger trusts provided that the Council:

- Conducts an open and well managed procurement exercise
- Chooses a procurement exercise that helps to restrict bidders' costs (which can be significant).

Why did such an exercise not take place?

#### **5. Re Meadowside and the 'extended' contract**

CAB 2553 includes Mr Tilbury's overview of the RPLC Management Contract Arrangements: '3.1 The River Park Leisure Centre is managed for the Council by DC Leisure Management. In 2009, the Council agreed to extend its existing contract with DC Leisure (which had been due to expire in 2011) until 2023. As part of the agreement DC Leisure took over responsibility for managing the Meadowside Leisure Centre in Whiteley (which had previously been operated at a cost directly by the Council) in 2010 and the total management fee for both facilities was set at £nil. There was therefore a considerable cost saving to the Council as a result of these arrangements. The Council took advice from external leisure consultants and external legal advice before entering into these arrangements'.

- The original contract with DCL in 1997 did not include the management of Meadowside Leisure Centre. The inclusion of a new facility cannot be regarded as a mere extension of the original contract, but should surely have triggered a wholly new contract – and should therefore have attracted the procurement provisions under the Public Contract Regulations 2006 and EU procurement directives?
- The original contract did not provide for a 'Not for Profit' Organisation or Leisure Community Partnership ('LCP') to be involved in the

management of River Park Leisure Centre, let alone Meadowside. The Deeds of Novation and Variation in 2009 purported to allow for this, in order that DCL and the Council could benefit from advantageous tax reliefs technically available – although of questionable legitimacy in terms of legality. Again, by incorporating this into the ‘extended’ contract in 2011, is it not arguable that it renders the contract liable to be regarded as a wholly new agreement and that therefore a requirement to tender arises?

- Letters from a director of DCL (CAB 1801 Exempt Appendix 1) make it clear that DCL is only too well aware of the procurement regulations, but seeks to persuade the Council to circumvent them by granting an extended contract to DCL. The letter of 27 October 2008 to Ms Ford mentions that ‘your legal department have suggested that the contract should not be further extended but re-procured’. Exempt Appendix 1 to CAB 1861 makes it clear that the Officers have accepted the proposals offered, despite the caveats mentioned by legal advisors: ‘The risk of any kind of challenge is low’. Exempt Appendix 2 to CAB 1861 is a letter to Mr Tilbury confirming the formal offer and terms of the extended contract: these terms effectively constitute a new contract, thereby ignoring the legal advice provided to the Council. Did Mr Tilbury negotiate these terms, and accept them? If so, was he both competent and correct to act as he did?
- For the first time, the management fee payable by the Council to DCL in respect of RPLC (as well as Meadowside) is reduced to £nil. Is this a cynical attempt to take the extended contract outside Part A of the Public Contracts Regulations and therefore attempt to avoid the necessity to embark on a procurement exercise? I quote from an East Hampshire District Council report to Cabinet dated 24<sup>th</sup> February 2011, considering an extension to DCL’s management contract for

leisure services: "3.6 Officers have sought advice from Leading Counsel. Leading Counsel advised that:

- *An extension of the current contract for anything approaching as long as 5 years and/or significant changes to the terms of the current contract would for procurement purposes constitute a fresh contract award;*
- *Normally that would require advertisement and opening up the market to competition;*
- *However, that is not necessary if the services are Part B, rather than Part A services, and if there is no realistic prospect that the new contract would be of cross-border interest; and*
- *It is very likely that the services are to be regarded as Part B services".*

6. Under the 1997 contract, which was a full repair and maintenance contract, with initial planned capital investment of at least £160,000, why didn't DCL keep RPLC under proper repair?
7. Why was an extended contract entered into in 2011, with potential exposure of the Council to 'loss of income' claims by DCL, when it was envisaged that an extensive programme of refurbishment had apparently become necessary?
8. In paragraph 3.1 of CAB 2553, Mr Tilbury states: 'In 2009 the Council had no plans to replace the leisure centre'. This is an inaccurate statement. The letter from DCL to Ms Ford of 27 October 2008 states: 'We understand that an outline timetable may include a new build opening in 2016 so we would assume the tender process for the long term would commence around 2014 to start in 2016':



9. In paragraph 3.1 of CAB 2553, Mr Tilbury states: 'It has been agreed with DC Leisure that in the event that the Council wishes to replace the current facility, it will seek to negotiate with DC Leisure for the management of the new facility (to the extent this is legally permissible). If satisfactory terms cannot be reached, the management contract would then be tendered. If DC Leisure does not manage the new facility, it has been agreed that the Council will only be liable to meet depreciation charges on DC Leisure owned equipment, and maintenance contract charges (until these maintenance contracts expire or can be terminated). In this way, the Council's liability is limited significantly, and this can be taken into account when budgeting for any new facility'. It would appear that an agreement has been entered into with DCL (by Mr Tilbury?) for a DBOM contract in respect of a replacement leisure centre. Is this what underlies the current reluctance of the Council to continue with the planned refurbishment of RPLC? Why is the proposal not to proceed immediately to tender for the contract?
10. What is the level of the compensation payments (or 'loss of income' claims) due under the extended contract to DCL if a) RPLC is inoperable due to closure for refurbishment, or if b) the terms of the extended contract are breached by the Council by a decision to build a new leisure centre using a contractor other than DCL and its LCP, and if c) DCL and its LCP are not selected as the DBOM contractors for the new facility?
11. What is the anticipated level of profit due to be made under the extended contract from the management of RPLC by DCL/LCP? What is the anticipated level of profit (or income above threshold) share due to the Council under the terms of the extended contract with DCL?
12. In respect of the extended contract and any other contract with DCL/LCP, are the Council – and therefore the council taxpayers – getting best value?

### 13. Deed of Extension, Variation and Deed of Novation

In the interim between the signing of the contract on 31 December 1997 and September 2009 two Deeds of Variation and a Deed of Novation were signed.

(i) On 4<sup>th</sup> July 2006, a Deed of Variation provided for an extension of the 1997 contract for 3.25 years to March 2011. **NB** In the 1997 Contract (Clause 49, Volume 1), Clause 49.7 provides: "Where the Centre is closed (wholly or partially) for any such reason as is mentioned in clause 49.1 the Council shall not be liable to compensate the Contractor for any loss of profit, staff or redundancy, or other costs or expenses of any kind arising in connection in connection with such closure".

- Why was this Deed of Variation entered into and on whose guidance?
- A 3.25-year contract extension was provided to compensate DCL for loss of income for a partial 12-week closure. Why was this decided and by whom? Who determined this period?

(ii) On 11<sup>th</sup> September 2009, a Deed of Novation, with a further Deed of Variation, were entered into which released and discharged DC Solent (contractor) and transferred all liabilities to DCLM and provided a licence to Leisure Community Partnership (LCP) to manage the RPLC. This agreement was backdated to 19 November 2008.

- Why was this Deed of Novation entered into and on whose guidance?
- Why was this LCP arrangement referred to in correspondence from DCL with Ms Ford on 27<sup>th</sup> October 2008 and in correspondence from DCL with Mr Eden on 26<sup>th</sup> March 2009 as a

reason for extending the contract when the LCP did not then exist?

- Why is the LCP referred to in the Capital Symonds report in July 2009 – “DC-Leisure uses a hybrid Trust model to operate River Park and therefore also benefits from a 80% rate relief” – when it did not exist?
- In the same correspondence to Mr Eden on the 26<sup>th</sup> March 2009 from DCL, it is stated: “By including Meadowside Leisure Centre in the contract, improved financial performance under our management and inclusion in the Leisure Community Partnership (LCP) would result in savings in rates and overall management fees”. How can this be stated when the LCP did not exist?
- Was this LCP arrangement brought before the Cabinet and any other Committee? Who else in the council knew about this new arrangement with DCL and who sanctioned it?
- Why was this Agreement entered into just weeks before a decision was due to be made by Cabinet and other Committees regarding the process to retender the Contract?

17.02.2014

*Created by Martin Wilson*

CAB1801 - APPENDIX 1

~~NOT FOR PUBLICATION by virtue of Paragraph 3 of Part 1 of Schedule 12A of the  
Local Government Act 1972~~

**Mr S Eden**

Chief Executive  
Winchester City Council  
City Offices  
Colebrook Street  
Winchester  
SO23 9LJ

26 March 2009

Dear Mr. Eden

**Re: River Park Leisure Centre**

Following a meeting with Mandy Ford last Friday, we are aware of the Council's current thinking on future contract arrangements at River Park Leisure Centre bearing in mind that the current contract expires at the end of March 2011.

We believe that there is a wish to retender the contract and I wanted to take this opportunity as the incumbent operator to highlight the benefits of the alternative of negotiating a contract extension with us now.

I attach a copy of a letter sent to Mandy in October 2008 which highlighted current procurement issues in our industry and I believe this provides the council with a good background and 'case' for extending a contract. A key point in the letter is that in the last four years, DC Leisure with twelve Local Authority partners have either extended contracts or agreed new contracts without tender. The latest of these was with Waverley Borough Council in 2008 involving significant investment. A more local example was at Fleming Park Leisure Centre in Eastleigh in 2000, where a twenty year contract was negotiated involving [REDACTED] investment, reduced management fee and most importantly improved services and participation for residents.

Other than Mandy, we have not had an opportunity to meet with officers or Elected Members either formally or informally to put our case that a negotiated extension would have significant benefits for Winchester residents and provide savings for the council and therefore its council tax payers. I list below the benefits of a contract extension rather than a retender process:

1. Set up costs of an alternative provider would be avoided e.g. fitness equipment, IT systems etc.

2. Procurement costs and officer time would be avoided.
3. By including Meadowside Leisure Centre in the contract, improved financial performance under our management and inclusion in the Leisure Community Partnership (LCP) would result in savings in rates and overall reduced management fees. [REDACTED]
4. The provision of capital by DC Leisure to link with WCC's proposed works during a closure could be secured, planned for and implemented if agreed now which would provide a quicker return on investment, certainty that this capital would be available which it might not be from any contractor in 2011 in uncertain financial circumstances. We have discussed with Mandy a provisional menu of projects and talked provisionally of investment by us of [REDACTED]
5. We would be particularly keen to extend our environmental plan to further reduce consumption of utilities and costs to the benefit of the partnership.
6. Agreement now on future management arrangements would avoid a 'limbo' situation which can be very unsettling for all partners. An example of this is that in the eventuality DC Leisure lost a tender we would redeploy senior staff at the earliest opportunity whilst fulfilling our contractual obligations.
7. We believe that a new specification which is optimized between both parties could provide savings based on our unique knowledge of the Contract.
8. We could work together to ensure the proposed closure period minimizes withdrawal of facilities to our customers thereby significantly reducing the loss of income associated with such a closure which would ultimately be a cost that would have to be picked up by the council. Current turnover for the six month total closure period being proposed is [REDACTED] which is a significant and real cost that needs careful consideration. Thought also needs to be given to the time it would take to rebuild usage of the centre after such a long closure period. We believe with our unique experience of managing through refurbishment programmes at River Park and at Fleming Park, we can minimize the cost of closure in a way that no new contractor could do. For example, we are in the unique position where we could redeploy some staff during this period at sites we have with neighbouring authorities again reducing overall costs of the project.
9. By working together now, we would seek to attract 'external funding' to the project e.g. PCT funding or Football Foundation funding which we believe with our track record of delivery in the industry and our longstanding partnership we could achieve. Contract uncertainty would put off potential funders.
10. By agreeing future management arrangements now, we can together ensure that the impact of a reopening for our customers is maximized and that they see real benefits following the closure. Again, we are uniquely experienced as an operator in managing these situations.

11. We believe by agreement now, we can work on mutual sports and health development projects which will have a longer term benefit for the community. Examples of this are enhanced youth programmes that might include climbing wall facilities.
12. Given a contract extension, we would also be prepared to reduce our margins on an open book negotiated basis.

In summary, we would very much like to meet to discuss ways in which we can work together to provide future services, savings to the council, investment in the Winchester contract, security for our staff and most importantly improved services for the residents. We believe our partnership has provided excellent results for the community and as your incumbent provider we are very keen to continue this. We have not fully costed all of the above opportunities but believe annual revenue savings to the Council in excess of [REDACTED] would be achieved if the opportunity remains to extend or renew the contract. These of course, would be applicable in 09/10 and 10/11 financial years which would not be the case if the council pursues the tender process. We would welcome the opportunity to put forward our case to cabinet members in the near future and to provide more details regarding the financial benefits of this proposal.

I have been keen to ensure that we no leave no stone unturned hence this letter direct to you at this time. My personal belief is that we should all be focusing more on the service and value for money than the process at this time. However, if the council do intend to pursue a tender process, please be assured that we would continue to work diligently until its natural conclusion.

Yours sincerely

**Richard Millard**  
**Client Relations Director**

Encl: Letter - 27 October 2008

Cc Eloise Appleby - Head of Economic and Cultural Services  
Mandy Ford - Sport and Recreation Manager  
Peter Leamore - Contract Manager (DCL)

# **CAPITA SYMONDS**

---

**Winchester City Council**  
**Leisure Management Contract**  
**Procurement Advice**

**ReportWinchesterCC 06July09**

## DOCUMENT CONTROL

### Amendment History

| Version No. | Date      | File Reference                       | Author | Remarks/Changes |
|-------------|-----------|--------------------------------------|--------|-----------------|
| 1.0         | 6 July 09 | ReportWinchesterC<br>C 06July09Final | CM     |                 |

### Sign-off List

| Name                  | Position | Date           | Remarks  |
|-----------------------|----------|----------------|----------|
| Duncan Wood-<br>Allum | Director | 8 July<br>2009 | Approved |

### Distribution List

| Name        | Position                             | Date           | Hard copy / Electronic copy |
|-------------|--------------------------------------|----------------|-----------------------------|
| Amanda Ford | Sport & Physical<br>Activity Manager | 8 July<br>2009 | Electronic                  |



## CONTENTS

|          |  |           |
|----------|--|-----------|
| <b>1</b> | <b>INTRODUCTION.....</b>   | <b>1</b>  |
| 1.1      | Background.....  | 1         |
| 1.2      | Our Terms of Reference.....  | 1         |
| <b>2</b> | <b>REVIEW OF THE LOCAL AUTHORITY LEISURE MARKET.....</b>                 | <b>2</b>  |
| 2.1      | Introduction.....  | 2         |
| 2.2      | In house.....  | 2         |
| 2.3      | Trust (created from an in house operation).....                          | 2         |
| 2.4      | External service provider.....   | 2         |
| 2.5      | Refurbishments and rebuilds.....   | 2         |
| 2.6      | The main operators.....  | 4         |
| <b>3</b> | <b>RECENT TRENDS IN THE MANAGEMENT OF PUBLIC LEISURE FACILITIES.....</b> | <b>7</b>  |
| 3.1      | Introduction.....  | 7         |
| 3.2      | Would there be interest in the Winchester contract?.....                 | 7         |
| <b>4</b> | <b>MANAGEMENT FEE.....</b>   | <b>9</b>  |
| 4.1      | Introduction.....  | 9         |
| 4.2      | Likely future savings achievable.....                                    | 9         |
| 4.3      | Merits of comparing management fee with other contracts.....             | 10        |
| <b>5</b> | <b>CONTRACT EXTENSIONS AGREED WITH LOCAL AUTHORITIES.....</b>            | <b>12</b> |
| 5.1      | Introduction.....  | 12        |
| <b>6</b> | <b>APPRAISAL OF SOLO-NEGOTIATION VERSUS OPEN MARKET TENDERING.....</b>   | <b>13</b> |
| 6.1      | Introduction.....  | 13        |
| 6.2      | Next steps.....  | 14        |

## 1 INTRODUCTION

### 1.1 Background

- 1.1.1 DC Leisure currently manages the River Park Leisure Centre ('the Centre') on behalf of the Winchester City Council ('the Council') in return for an annual management fee.
- 1.1.2 The management contract expires on 31 March 2011. The Council has therefore reviewed the options for how the Centre should be managed from April 2011 allowing sufficient time for tendering or other legal processes to be completed.
- 1.1.3 On 21 May 2009 Cabinet approved the commissioning of an external independent assessment of the relative benefits of either:
- tendering a new ten year management contract; or
  - the extension by a further ten years of the existing management contract with DC Leisure Management, under a process referred to as "solo negotiation".
- 1.1.4 Under both options, as agreed by Cabinet, responsibility for the management of Meadowside Leisure Centre (currently operated directly by the Council) will be included within the contract.

### 1.2 Our Terms of Reference

- 1.2.1 Capita Symonds Consulting was subsequently appointed to conduct a focused review based on the brief contained in Appendix A. In summary, the key elements of the brief were as follows:
- A review of the overall state of the local authority leisure operator market, including an assessment of:
    - the likely level of competition for the contract
    - the type of the companies currently actively bidding
    - the relative market penetration of each one.
  - A review of the opportunities for cost savings that the Council could realistically expect through a re-tendering process.
  - Identification of examples of other local authority contracts that have been extended or let through solo negotiation, including:
    - the justification for using this approach
    - the benefits gained from it.
  - Analysis of whether DC Leisure's proposal is likely to be advantageous to the Council in financial and customer service terms compared to the alternatives.
- 1.2.2 This report presents the outcome of this evaluation to enable a final decision on which procurement route to pursue.

## **2 REVIEW OF THE LOCAL AUTHORITY LEISURE MARKET**

### **2.1 Introduction**

2.1.1 The local authority leisure management market is already a mixed economy in terms of the range of service providers operating in the sector. Each type of service provider has its own strengths and weaknesses depending on the needs to be met, outcomes to be achieved, resources available and the solution required locally. These are broadly summarised below.

### **2.2 In house**

2.2.1 Directly employed and managed by a council and funded through a council's revenue budget – as is currently the case at Meadowside Leisure Centre.

### **2.3 Trust (created from an in house operation)**

2.3.1 This new organisation would be created from an existing in-house team by transferring to an externalised Trust ('Not for Profit' Organisation). This requires new governance, legal agreements, support services and management arrangements. Normally, staff pensions, benefits and previous terms and conditions are transferred over to the new organisation, but these may not be always applied to new staff joining the Trust.

### **2.4 External service provider**

2.4.1 Alongside DC Leisure, the current operator of River Park Leisure Centre, there is a good supply of external service providers operating in the culture and sport sector or in another field of public service that could be contracted to operate Winchester's leisure facilities. These include Trusts, Private Sector service providers and a wide range of specialist organisations that have developed out of the Community and Voluntary Sector.

2.4.2 In the future, many councils will increasingly use a combination of service providers to deliver their desired outcomes. There will increasingly be a shift to engage with voluntary and community organisations with niche specialist expertise in service delivery to be commissioned for specific interventions.

2.4.3 The financial benefits of contracting with a Trust to operate leisure facilities are derived from their ability to gain National Non Domestic Rates (NDR) non discretionary relief. DC Leisure uses a hybrid Trust model to operate River Park and therefore also benefits from 80% rate relief.

2.4.4 The Council has approved the recommendation to retain the existing arrangement whereby the River Park Leisure Centre is managed by an external leisure operator, and incorporating the Meadowside Leisure Centre.

### **2.5 Refurbishments and rebuilds**

2.5.1 For the development or refurbishment of local authority leisure facilities there are a range of capabilities within operators linked to construction procurement.

2.5.2 Many operators have a supply chain of design and build capability through forming consortia. This enables them to join up development and operations, through approaches such as design and build or traditional build.

- 2.5.3 Both private sector operators and large trusts have developed this capability. Given the refurbishment work required at River Park Leisure Centre at the commencement of the new contract post April 2011, this capability will be an important factor in selecting the right partner. However, as at Waverley Borough Council, the Council may choose to procure a main contractor and design team as a separate exercise.
- 2.5.4 The Council will have a number of service requirements to consider when selecting a provider of facilities and or services. Each of these types of provider offer advantages and disadvantages and as we have mentioned previously, there is often a fair degree of variation in terms of service quality, cost and technical capability within a particular provider type and between operators.
- 2.5.5 Appendix B shows that each of the management operator types outlined in this section has a range of advantages and disadvantages associated with them. The descriptions should only be used as a general guide and further scrutiny of the options and organisations is strongly recommended as part of the next stage of procurement.

## 2.6 The main operators

2.6.1 The following list of operators (Table 1) provides a summary of the leading operators in the UK market detailing size, market penetration and regional presence.

**Table 1 Operators – Market Summary**

| Operator              | Type           | No. Contracts  | Regional penetration in South of England  | Actively exploring new contracts?  | Notes  |
|-----------------------|----------------|----------------|---|--|--|
| DC Leisure Management | Private Sector | 30 (118 sites) | Horsham District Council<br>Portsmouth City Council<br>East Hampshire District Council<br>Royal Borough of Kingston<br>Surrey Heath Borough Council<br>Wandsworth Council<br>Waverley Borough Council<br>West Wiltshire District Council<br>Winchester City Council<br>Wyre Forest District Council | Yes – focus on extending existing contracts and bidding selectively in open competition. | Incumbent Operator at the Council. It employs over 7,000 people with an annual turnover of more than £73m.<br><br>Strong track record of delivering public private partnerships (PPPs).<br><br>Trust hybrid model available. |
| CLS                   | Trust          | 5 (8 sites)    | Vale of White Horse<br>Aldershot  | Yes  | CLS was the first of a very small number of Registered Charities to engage nationally in Contract Leisure Management.  |
| Freedom Leisure       | Trust          | 4 (15 sites)   | Wealden District Council<br>Hastings District Council<br>Rother District Council,<br>Hassocks & Crawley District Council.   | Yes, with support from Greenwich Leisure as a Strategic Partner                          | Recently took control of K2 at Crawley District Council from DC Leisure.   |

| Operator                  | Type           | No. Contracts | Regional penetration in South of England  | Actively exploring new contracts? | Notes  |
|---------------------------|----------------|---------------|---|-----------------------------------|--|
| Fusion Lifestyle          | Trust          | 9 (38 sites)  | Brockwell Lido, London<br>The National Badminton Centre<br>LB Hillingdon<br>Leatherhead<br>LB Croydon<br>LB Hounslow<br>Oxford City Council<br>LB Southwark<br>Tunbridge Wells<br>Watford | Yes                               | Recently won the Hounslow contract after the original trust operator CIP failed.   |
| Greenwich Leisure Limited | Trust          | 19 (65 sites) | 12 London Boroughs<br>Epsom and Ewell Borough Council<br>Reading Borough Council  | Yes                               | The largest Leisure Trust in the UK.   |
| Leisure Connection        | Private Sector | 30 (80 sites) | Wokingham District Council<br>Sport England – Bisham Abbey National Sports Centre<br>St Albans<br>Milton Keynes<br>LB Lewisham<br>LB Brent<br>LB Harrow                                   | Yes                               | 4,500 employees.<br>Hybrid model available.<br>Strong PFI / PPP track record.  |
| Parkwood                  | Private Sector | 25 (70 sites) | Cherwell DC<br>Dartford BC<br>London Borough of Bexley<br>London Borough of Lewisham<br>Portsmouth City Council<br>Wycombe District Council   | Yes                               | Turnover in excess of £42 million and employs over 4000 people.<br>Hybrid model available.<br>Strong PFI / PPP track record. |

| Operator                      | Type           | No. Contracts | Regional penetration in South of England   | Actively exploring new contracts? | Notes   |
|-------------------------------|----------------|---------------|--|-----------------------------------|---|
| Serco Leisure                 | Private Sector | 18 (64 sites) | <p>Aylesbury Vale District Council</p> <p>South Northamptonshire Leisure Trust</p> <p>Basingstoke and Deane Community Leisure Trust</p> <p>Eastbourne Leisure Trust.</p> <p>The Maidstone Leisure Trust</p> <p>States of Jersey</p> <p>Swale Community Leisure Limited</p> | Yes                               | <p>Serco has over 18 years experience in the operation of leisure centres and now manage 64 facilities on behalf of 18 Local Authorities and Community Leisure Trusts.</p> <p>Hybrid model available.</p> |
| Sports and Leisure Management | Private Sector | 18 (59 sites) | <p>East Herts Council</p> <p>LB Havering</p> <p>Weymouth and Portland Borough Council</p> <p>Borough of Poole</p> <p>Fareham Borough Council</p> <p>Bristol City Council</p> <p>Spelthorne Borough Council</p>   | Yes                               | Hybrid model available.   |

## 3 RECENT TRENDS IN THE MANAGEMENT OF PUBLIC LEISURE FACILITIES

### 3.1 Introduction

- 3.1.1 The Public Sports and Recreation Service's 'Making Them Fit for the Future' report, published by the Audit Commission in 2006, showed that 47% of publicly accessible leisure facilities are managed in-house by Local Authorities. Of the remaining 53% of facilities, 16% are managed by schools, 15% by trusts and 10% by private contractors with a further 12% made up of community organisations / clubs, other private sector and other.
- 3.1.2 The trend away from in-house management and towards private leisure operators trusts has been significant during the last ten years. The number of trusts that run public leisure services has doubled during this period from approximately 40 in 1997 to over 90 in 2006 (Sport and Recreation Trusts Association (SPORTA)). More recent research from SPORTA shows the number of affiliated trusts at 111.
- 3.1.3 Recently, there have been a number of high profile contract wins by Leisure trusts in major contracts at London Borough of Hounslow, where Fusion began to develop and manage 14 sports, leisure and community centres including 7 leisure centres, in October 2008. Fusion also won a 15-year partnership in November 2008 with Mole Valley District Council to develop and manage the Leatherhead Leisure Centre.
- 3.1.4 In Crawley the K2 Leisure Centre contract was lost by DC Leisure Ltd to a bid by Freedom Leisure in 2008.
- 3.1.5 In 2008 LB Hackney recently let a 15-year contract to the incumbent operator Greenwich Leisure Limited – the largest leisure trust in the UK. They specifically did not invite private sector operators to bid – contravening best practice guidelines.
- 3.1.6 Major contract wins by the private sector are becoming less common, with Parkwood Community Leisure taking over management of Wycombe Sports Centre, Court Garden Leisure Complex and Risborough Springs Swim & Fitness Centre on behalf of Wycombe District Council from the previous operator Nexus Community (under the trading name of Wycombe Leisure Limited).
- 3.1.7 Sports and Leisure Management (SLM) Ltd secured preferred partner status on a 10-year partnership agreement with East Herts Council to manage five leisure facilities in November 2011 following an open market tendering exercise.
- 3.1.8 There is ongoing debate regarding the long term sustainability the smaller Trusts given their relatively weak financial covenants, their reliance on a limited number of contracts, and their willingness to accept onerous commercial terms to secure new contracts.

### 3.2 Would there be interest in the Winchester contract?

- 3.2.1 In our opinion, there would be significant interest in Winchester's contract from the private sector operators and larger trusts provided that the Council:
- conducts an open and well managed procurement exercise
  - chooses a procurement exercise that helps to restrict bidders' costs (which can be significant).
- 3.2.2 The appetite of the market may be impacted by DC Leisure's longstanding and apparently successful relationship with the Council as incumbent operators.



- 3.2.3 Whilst there is also likely to be strong interest from the smaller trusts, there are continuing doubts over the sustainability of the model, exacerbated by the tendency of some to accept unsustainable commercial terms. This has been evidenced over the past few years by the financial problems suffered by many of the smaller UK leisure trusts. Typically, a Trust managing at least 15 - 20 facilities should be able to demonstrate financial and operational stability. This is proving to be the case with larger trust operations which are operating multiple sites, such as Fusion and Greenwich Leisure which are good examples of successful trusts.
- 3.2.4 Statistics from the National Benchmarking Service (NBS) and the Chartered Institute of Public Finance and Accountancy (CIPFA) suggest that the cost of providing sports and recreation facilities and services is significantly lower with privately contracted services than with trusts or in-house management.
- 3.2.5 However this data is based on historical information and recent outcomes of tendering exercises is demonstrating that in terms of management fees proposed, many Trusts are prepared to compete aggressively on price.

## 4 MANAGEMENT FEE

### 4.1 Introduction

4.1.1 Under the terms of the existing contract, the Council currently pays DC Leisure an annual management fee. In return, DC Leisure assumes the operating risks, and retains any net profits generated. The net management fee payable to DC for the 2008/09 financial year was circa £92,000.

4.1.2

4.1.3 Capita Symonds maintains operating performance records of a large number of community leisure centres in the UK. A review of the benchmarking data confirms that River Park Leisure Centre is one of the highest revenue generating facilities of its type in the country. This is due to a number of factors, including:

- catchment area
- the demographics of the resident population
- the favourable competitive position it continues to enjoy (given the absence of competing leisure centres in the area)
- the continuing high quality of DC Leisure's management of the facility.

### 4.2 Likely future savings achievable

4.2.1 DC Leisure appears to have recognised that the financial terms of operating the facility are beneficial to them and have proposed (in a letter to the Council dated 26 March 2009) to renegotiate the contract terms. Assuming they also take responsibility for operating Meadowside, as well as fund [REDACTED] of investment in River Park, they indicate a renegotiated contract could deliver annual net savings to the Council of [REDACTED]. Over a 10-year period this amounts to a total saving of [REDACTED].

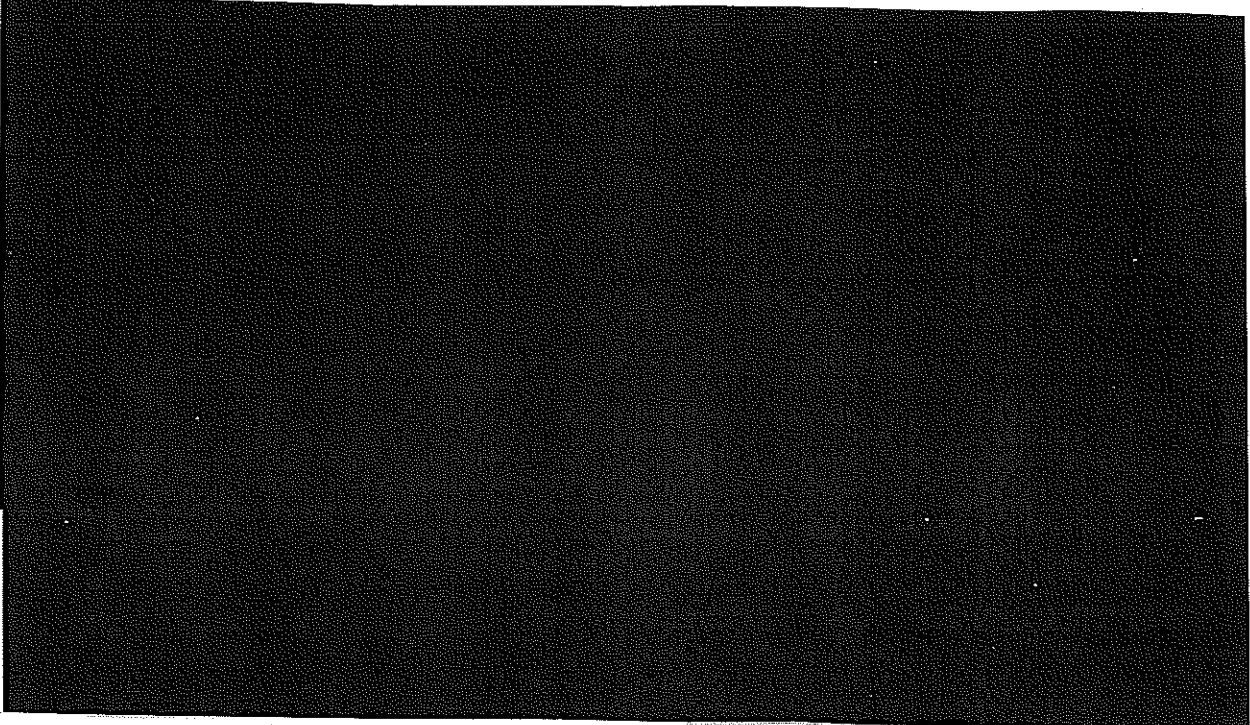
4.2.2 It should be recognised that this is an early estimate provided by DC Leisure and is likely to be their starting point for negotiation. During a detailed negotiation, the Council will be fully interrogating the assumptions behind current cost apportionment and likely changes in the income generation of the facility post-refurbishment. Should it decide to pursue this route, the opportunities to optimise the contract in terms of net savings will be explored fully.

4.2.3 A leisure operator's return from operating a local authority leisure centre under contract is typically derived from applying a percentage of turnover to cover the "central support" required to run the facility and "operator profit". If the leisure centre is not expected to generate an adequate net profit to cover central support and operator profit, the local authority will pay the operator a management fee out of their budget. However, if there is likely to be a surplus remaining after the operator has been paid its central support costs and achieved its profit, then a surplus is typically paid to the Council.

4.2.4

**Table 2 River Park Management Fee – Potential Scenario**

4.2.5



4.2.6 The actual savings achieved cannot be guaranteed at this stage and will be dependent on a number of factors. These include the strength of the operator market, the expertise of the Council during the negotiations, as well as the forecast repairs and maintenance liabilities of the Council for the structure of the building.

4.2.7 DC Leisure has confirmed that it will be prepared to negotiate the contract extension on an open-book basis, meaning that the Council is provided with a fully transparent suite of information relating to income and costs. Capita Symonds advise that if the Council decides to undertake a fully competitive tendering process it is unlikely that this information will be made available by DC to share with the Council (and therefore other bidders), as they are not contractually obliged to do so.

4.2.8 During this initial review, the Capita Symonds team has been comforted by the level of information DC Leisure has already shared.

### **4.3 Merits of comparing management fee with other contracts**

4.3.1 In terms of the management fees relating to other leisure contracts, the details of these will remain confidential between the Council and the contractor. In order to access this information we would need the permission of both the Council and the contractor, which we strongly doubt would be forthcoming given its commercial sensitivity.

4.3.2 The Capita Symonds team has advised on a number of procurement exercises. However, to use these as comparables would be misleading. For example, we have recently completed a procurement exercise with another authority in the South East which will significantly increase the value of the contract to the Council (from zero to £1.1m over 5 years – the majority of which is guaranteed). Whilst this does highlight that the financial situation for a Council can be significantly enhanced through retendering/extension it is difficult to make any kind of relevant comparison with the Winchester contract.

- 4.3.3 Likewise, even if the contract prices of the other contracts were made available, the value of this information to the Council would be compromised by the fact that each contract differs in terms of, for example:
- responsibilities for Repairs & Maintenance
  - capital investment
  - the structure and fairness of the existing contract
  - energy price benchmarking.
- 4.3.4 Whether the winning bids are higher or lower would doubtless be interesting but does it would not provide the complete picture. For example, the Crawley contract (referred to in 3.1.4 above) may well have been awarded to operator offering the best price, but it is more likely that it was evaluated on the basis of a range of criteria to award it to the best value for money bidder (rather than the cheapest). This makes it very difficult to recognise any kind of discernable trend in contract prices. What is clear is that it is a competitive market and operators are aware that their prices need to be competitive to win contracts.
- 4.3.5 We should stress that the River Park facility is unique in terms of its performance and its current (and likely future) competitive position. Having not been involved in the previous negotiations, we cannot comment on the rationale for the current commercial terms - whereby the operator appears to enjoy a good return - but we are confident that the Council should be able to negotiate a significantly better deal going forward.
- 4.3.6 Provided the Council enters into the negotiations well-prepared with an appropriately qualified team and the Winchester market does not fundamentally change (and this applies whether it is under an extension or an open tendering exercise) we cannot foresee see any material risk of the cost of the contract increasing. The profitability of the contract just appears to be too great to justify agreeing to the same terms.

## 5 CONTRACT EXTENSIONS AGREED WITH LOCAL AUTHORITIES

### 5.1 Introduction

5.1.1 There are a number of examples where local authorities have decided to negotiate contract extensions with their incumbent leisure operator rather than procure a new contract via the open market tendering process. Table 3 sets out some recent examples of where DC Leisure has negotiated (or is in the process of negotiating) extended contracts with its clients.

5.1.2 We note that there appear to be few examples of negotiations leading to reduced management fees paid by the councils. However, Capita Symonds has stressed the unique nature of the River Park facility in terms of its competitive situation and the consistent levels of profitability generated by the facility, which the Council should use as leverage during negotiations.

**Table 3 Contract extensions – DC Leisure**

| Client                          | original contract | Expiry of extension | Period of extension                                     | Change in contract terms   | Change in management fee                                    | Capital Investment     |
|---------------------------------|-------------------|---------------------|---|--|---|------------------------|
| 1. [REDACTED] Council           | Dec-91            | Mar-20              | 20 years  | -  | -   | £2m+ (part funded by)  |
| 2. [REDACTED] Council           | Jan-96            | Jul-23              | 15 years  | Energy benchmarking and updated specification                          | To be reduced following Council funded investment programme | £3.5m (council funded) |
| 3. [REDACTED] Council           | Jan-97            | Mar-12              | 10 years  | -  | -   | £912k                  |
| 4. [REDACTED] Council           | Apr-03            | Mar-13              | 10 years. Under negotiation                             | To be determined   | Expected to increase  | To be determined       |
| 5. [REDACTED] Council           | Feb-02            | Jan-19              | 9 years. Under negotiation                              | -  | Increased   | To be determined       |
| 6. [REDACTED]                   | Apr-04            | Mar-12              | Possible extension for 5 years. Under negotiation       | Reduced opening hours and increased fees and charges                   | To be reduced   | £220k                  |
| 7. [REDACTED] Council           | Apr-97            | Sep-10              | 3.5 years   | Amended to cap repairs and maintenance and include energy benchmarking | Increased to reflect ageing buildings                       | -                      |
| 8. [REDACTED] Council           | Apr-99            | Mar-11              | 3 years   | -  | -   | -                      |
| 9. [REDACTED] Borough Council   | Jan-96            | Mar-10              | 3 years. Under negotiation                              | Capped R & M and energy benchmarking                                   | To be reduced   | £70k                   |
| 10. [REDACTED] District Council | Feb-07            | Mar-11              | 2 years   | -  | -   | -                      |
| 11. [REDACTED] Council          | Apr-04            | Mar-11              | 2 years   | -  | -   | -                      |
| 12. [REDACTED] Council          | Apr-99            | Mar-12              | 2 years. Under negotiation                              |  |   |                        |
| 13. [REDACTED] City Council     | Apr-95            | Mar-10              | 1 year (following numerous other short term extensions) | Capped R & M and energy costs  | Increased to meet energy cost and reduced income            | £45k                   |

## 6 APPRAISAL OF SOLO-NEGOTIATION VERSUS OPEN MARKET TENDERING

### 6.1 Introduction

- 6.1.1 The most recent (and relevant) example of where solo-negotiation has been used in preference to the open market tendering route is provided by Waverley Borough Council. Waverley negotiated a 15-year extension to their leisure management contract rather than go out to the market. Crucially, whilst they decided to pursue this route they also reserved the right to change their approach at any point during the process if they considered that negotiations with their incumbent leisure operator (in this case, also DC Leisure) would be unlikely to help them achieve best value for money.
- 6.1.2 By reserving the right to switch to the open market tendering route, this allowed them to enjoy the benefits of both approaches. The threat of going to the market to benefit from the greater level of competition effectively encouraged DC Leisure to agree to terms as competitive as those they would have offered under a "competitive" process.
- 6.1.3 There are a number of strengths associated with the Council pursuing a solo-negotiation route with their incumbent operators. These include:
- enabling the Council to negotiate with DC Leisure on an open book basis
  - lower risk of disruption of service caused by the (potential) transfer of service to another operator
  - levels of customer service (at the very least in the short term) are more likely to be maintained by retaining DC
  - facilities within River Park Leisure Centre will partially close during the 6-month refurbishment programme. During this period, the current users of River Park are likely to use alternative leisure centres in the area. The most likely candidate to accommodate displaced users is Fleming Park, which is also operated by DC Leisure. On the basis of this reasonable assumption, the Council will be in a better position to mitigate lost operational income (incurred during the closure period) through an agreement with DC Leisure
  - DC Leisure has also indicated that they could redeploy staff during the refurbishment period to neighbouring facilities they operate, thereby helping to reduce costs
  - it will be significantly cheaper to procure (in terms of legal and advisor costs). A full tendering exercise is likely to cost the Council up to £100,000 excluding officer time. Solo-negotiation is expected to require a far lower investment of £40,000.
  - it will be procured within a shorter timeframe (6 months versus 12-15 months).
- 6.1.4 We should also stress that the Council has a good relationship with DC Leisure, with whom it has been in partnership since 1992. We are also comforted by the number of local authorities who have already pursued a similar route and achieved value for money. Notwithstanding this, to protect the Council's negotiating position and ensure that it is best placed to achieve value for money, we would recommend that it reserves the right to pursue the open market route at any time.
- 6.1.5 The Council will enjoy a stronger negotiating position through first exploring the extension route as it confers the benefit of the full open-book approach of current performance offered by DC Leisure, which, under an open market tendering exercise, it is not obliged to do so. This will allow the Council valuable opportunities to interrogate the assumptions behind the historic accounts for the leisure centre as well as the assumptions on which the future business plans are to be based. Crucially, if the Council does not reach an acceptable contractual position, in terms of management fee with DC Leisure (and an acceptable level of management fee will be informed by the expertise of its specialist leisure advisors) then it can

launch into a open market tendering exercise from a fully informed position with the benefit of its interrogation of DC Leisure during the extension negotiations.

- 6.1.6 Capita Symonds considers the prospect of achieving significantly more advantageous commercial terms through competitive tendering to be neutral compared with solo-negotiation, provided that sufficiently qualified expertise and resource is dedicated to the negotiation process by the Council.

## **6.2 Next steps**

- 6.2.1 Assuming negotiations with DC Leisure commence in July/August 2009, the contract extension could be agreed by January/February 2010. In the event that discussions with DC prove fruitless, the Council could still procure a contract through the competitive route by March 2011, allowing 12 months to achieve completion.

- 6.2.2 It is recommended that the Council appoints a specialist leisure advisor to lead the commercial negotiations on behalf of the Council. If this individual cannot be sourced from within the Council, we recommend that additional resource be procured externally.

**APPENDICES**

---



**APPENDIX A: CONSULTANT BRIEF**

---

## Consultants Brief

### **River Park Leisure Centre/Meadowside Leisure Centre, Winchester District - Contract Options**

The current management contract for River Park Leisure Centre (RPLC) in Winchester comes to an end in March 2011.

Although the Council is satisfied with the existing contractor, DC Leisure Management Ltd, the Council would normally expect to re-tender the management contract for a period expected to be of ten or twelve years to demonstrate that value for money has been achieved from the operation of the facility. The Council has no interest in an in-house operation.

The Council has a second and much smaller leisure facility managed in-house (Meadowside Leisure Centre) which it proposes to include within a single management contract for both facilities.

At some point in the early stages of a new management contract it will be necessary to close RPLC for a period of approximately six months so that essential maintenance and refurbishment can take place.

After discussions about its plans the Council has received a proposal from DC Leisure in which the company sets out the benefits to the Council of agreeing a negotiated continuation of the existing contract rather than re-tendering. DC Leisure's case is that this will provide better value for money at lower risk to the Council with some investment from the contractor and easier management of the closure period.

The initial legal advice received by the Council is that it might be possible to award a new or extended contract direct to DC Leisure and not be in breach of EU or UK procurement rules.

The Council therefore wishes to commission an independent assessment of the proposal from DC Leisure to assist in its determination of which option to pursue.

The advice should take the form of a report which uses relevant research and evidence specifically compiled for this purpose to advise on the following:

1. The overall state of the market for the tendering of local authority leisure management contracts including an assessment of the likely level of competition, nature of the companies currently bidding and the relative market penetration of each.
2. The opportunities for cost saving that the City Council might expect through re-tendering alone based on tender processes recently completed for comparable local authority facilities and any particular characteristics of the Winchester situation, particularly the likely closure period.
3. Whether there are examples of other local authority contracts that have recently been extended or let through negotiation with the incumbent contractor rather than tendering including an assessment of the reasoning and likely benefits.

4. Whether the option proposed by DC Leisure is more or less likely to be advantageous both in financial and customer service terms to the Council than alternatives.

The successful consultant will be provided with:

- Details of the proposal from DC Leisure for an extended contract
- Full financial information regarding the current arrangements with DC Leisure for River Park Leisure Centre
- Full financial information regarding the in-house operation at Meadowside Leisure Centre
- An opportunity to meet with DC Leisure and Officers of the Council

The Council will be seeking separate further advice on the legal position related to procurement and this is not required as part of this commission.

You are invited to submit a fee bid and proposal for this work which must be received by 23 April 2009.

The successful consultant will be notified after a cabinet report has been considered on 21 May. Please give an indication of your availability and timescales for this work after this date.

**APPENDIX B: LEISURE OPERATOR MODELS**

---

## In-house DSO

In-house DSOs still manage over 40% of the local authority leisure facilities in England. Table A identifies some of the key advantages and disadvantages of this management type.

**Table A: In-house DSO**

| Advantages – In-house DSO   |
|---|
| <ol style="list-style-type: none"> <li>1. The Council retains close control over the operation and strategic direction of its leisure portfolio.</li> <li>2. Strong links can be developed with other local authority departments and the sports development team to offer a comprehensive service.</li> <li>3. Councils are able to, and have experience of, accessing most sources of grant funding, some of which are not available to the private sector.</li> </ol>  |
| Disadvantages – In-house DSO  |
| <ol style="list-style-type: none"> <li>1. The in-house option has been shown to be more expensive in terms of annual revenue requirement than the other options.</li> <li>2. There is no potential for securing NNDR savings.</li> <li>3. Often an in-house DSO lacks the full range of management skills (e.g. marketing) that the private sector would be able to provide.</li> <li>4. Decision-making can be slow due to the need to go through Council approval processes. This means that the service cannot react to change quickly.</li> <li>5. Innovation that the private sector can bring to contracts of this type is lost.</li> </ol> |

**Private Sector Management**

The private sector operators emerged out of the opportunities presented by Compulsory Competitive Tendering in the early 1990s and, as outline above, the market has matured into one that is dominated by five companies.

- DC leisure
- Serco
- Leisure Connection
- Parkwood
- SLM.

**Table B: Private Sector Management**

| <b>Advantages – private sector management</b>   |
|---|
| <ol style="list-style-type: none"> <li>1. Private sector management contractors bring a commercial approach to the operation of leisure facilities. In recent years, the private sector has evolved considerably and offers local authorities an alternative to in-house service delivery, particularly where financial resources are scarce. The financial stability of these companies has been underpinned by the formation of strategic alliances with larger companies or merger and acquisition activity in the market.</li> <li>2. The contractors operate in a very competitive marketplace and, as a result, offer efficient business models. They bring a highly commercial approach to the operation of facilities that maximises income and return on investment.</li> <li>3. Private Sector Management contractors have access to development funding at commercial lending rates. They are willing to invest significant amounts of funding in return for long-term contracts, e.g. PPPs (see later). It is estimated that the private sector companies who run local authority facilities and sport facilities situated on educational sites have invested between £250,000 and £5 million pounds per centre for contracts between five and twenty-five years.</li> <li>4. A level of risk associated with the operation of facilities can be transferred from the local authority to the management contractor through longer-term contracts. This gives greater financial certainty in terms of revenue expenditure, which can aid longer term strategic planning.</li> <li>5. The main private sector management contractors operate a large number of facilities across the country. Management staff at individual centres are supported by regional and national teams comprising management, finance, HR, marketing, IT, training, health and safety, instructor and administration personnel. The back-office functions support delivery on a local level and provide significant economies of scale and efficiency savings not available to smaller companies or trusts.</li> <li>6. A strong partnership approach can be developed with a private sector management contractor through a detailed contract that sets out clear roles, responsibilities and outputs for both parties. This can be used as a medium for delivering sports development outputs, improving facilities through targeted investment and improving performance.</li> <li>7. The private sector can undertake leisure projects that involve the construction of new facilities more efficiently than Councils and much of the risk associated with it can be transferred to the contractor. The contractor is likely to have a proven track record in these projects, will have good project management skills and have a vested interest in delivering a good quality facility, on time and within budget.</li> </ol> |
| <b>Disadvantages – private sector management</b>  |
| <ol style="list-style-type: none"> <li>1. The outsourcing of management to a private sector contractor leads to the remaining Council's central overheads are spread over fewer services. This means that for the services that remain the central costs are a greater proportion of total costs unless the Council is able to reduce these costs accordingly.</li> <li>2. Procurement costs for the Council can be high for appointing private management contractors. This varies, depending on the procurement route selected, the length and value of the contract. Costs to the Local</li> </ol>   |

Authority can include professional fees in the form of legal, financial and other consultancy support through the complex tendering procedure.

3. Outsourcing management to private operators does not offer scope for savings based on VAT relief or National Non-Domestic Rates (NNDR) savings that can be achieved through other management vehicles such as trusts.
4. There is limited scope for investment by the private sector if the contract is for a relatively short period (e.g. less than five years). This is a consequence of the lack of time for an operator to benefit from a commercial return from the investment.
5. Inflexible contracts can be a disadvantage if there are unforeseen future issues. This is particularly the case where a long-term contract is developed. Contracts should include a degree of flexibility, which allows identified risks to be shared to the benefit of the client and operator.
6. There is often a perception that private sector contractors are focussed on generating revenue and reducing operating costs in order to maximise income. Elected members and the community may perceive this as being at the expense of social objectives. On the other hand, the in-house DSO and trust operators are regarded as being more focussed on social objectives. However, a properly structured contract that includes the Council's requirements and effective ongoing contract monitoring should avoid this to a large extent.

**Private Sector Trust (hybrid trust)**

The private sector operators have developed what they offer in this area significantly in the last 4-5 years as a competitive response to the maturing of the leisure trust market. As a result, they have developed a range of new innovative contract structures.

An example of a typical hybrid contract structure is outlined below. It should, however, be noted that all of the main five private sector operators offer slightly differing hybrid contract structures:

- Step 1 - the Council, with guidance from the private sector operator, participates in the establishment of a trust vehicle, with not for profit objectives
- Step 2 - this new trust organisation is granted a lease and beneficial occupation of a leisure building. Through this mechanism the trust receives mandatory 80% NNDR relief and also the potential to secure the additional 20% discretionary relief
- Step 3 - the trust then enters into a performance-based management contract with the private sector operator with the tax-based savings being passed back to the Council
- Step 4 - the private sector company manages the service as a 'management agent' to the trust company, which potentially allows additional VAT benefits to be secured.

Fifty nine percent of private sector contracts now involve hybrid trusts (Audit Commission, 2006) and this trend is likely to continue. The majority of new contracts awarded to private operators are now via their hybrid trusts. We understand that Winchester have now established this type of vehicle for their contract with DC Leisure, generating 90% NNDR savings.

Some local authorities have been concerned about the transparency of such arrangements and have sought legal advice. However, the hybrid trusts have evolved in recent years and their structures are now more simple, e.g. DC Leisure's LCP model. Although many of these arrangements are in existence, there is still a small risk (which is diminishing) that they will not be subject to legal challenge in the future.

**Table C: Private Sector Trust (hybrid trust)**

| <b>Advantages – Private Sector Trust (hybrid trust)</b>  |
|--|
| <p><i>The advantages of private sector management also apply here.</i></p> <ol style="list-style-type: none"> <li>1. The key difference of private sector trusts over private sector management contractors is the opportunity to achieve NNDR and potentially VAT savings. This can lead to a reduction in the level of subsidy paid by the local authority, which can then be secured for re-investment in facilities.</li> <li>2. Set up costs for a private sector trust are low as operators have models that can be adapted for each new contract. The cost is around £5,000-£10,000, compared to approximately £150,000 for a new trust.</li> <li>3. These new private sector trust organisations, by virtue of their not-for-profit status, are eligible to secure additional grant funding from external sources.</li> </ol>                        |
| <b>Disadvantages – Private Sector Trust (hybrid trust)</b>   |
| <p><i>The disadvantages of private sector management also apply here.</i></p> <ol style="list-style-type: none"> <li>1. The private sector hybrid contract structures are more complex than with a traditional contracting route and therefore the Council may incur higher initial legal costs to finalise the contract.</li> <li>2. These contract structures rely on the adoption of a longer contract chain with the appointment of a main contractor and a managing agent/sub-contractor. The Council therefore needs to ensure it has sufficient warranties and guarantees from both parties.</li> </ol> <p>Although these new hybrid contract structures are able to secure NNDR and VAT benefits, very few (if any) of the private sector operators will accept the risk of these benefits being reduced or lost as a result of a change in law.</p> |



**Stand-Alone Trusts (set up by local authority)**

Since the mid-1990s, there has been a growing trend for local authorities to set up not-for-profit trusts to manage their leisure centres. They are, in effect, social enterprise organisations, which have developed from local authority in-house DSOs.

In many areas, the impetus for the establishment of stand-alone trusts has been to secure NNDR and exclusive to trusts, VAT savings. However, they do also offer the opportunity to develop a more focused management structure for a Council's leisure service.

A number of these trusts have subsequently expanded (through contract acquisitions) to manage facilities in other local authority areas (see external trusts section below). However, the vast majority of them are still single-authority bodies.

Sporta is the representative body for leisure and cultural trusts in the UK. Its 111 member trusts, which have a combined annual turnover of more than £625 million, manage more than 920 sites on behalf of local authorities, attracting more than 210 million visitors and employing almost 26,000 full time equivalent staff.

**Table D: Stand-alone Trusts**

| <b>Advantages – stand-alone trusts</b>   |
|--|
| <ol style="list-style-type: none"> <li>1. Trusts are able to take advantage of 80% mandatory NNDR relief and, in many cases, are exempt from charging VAT on non-commercial activities including (following a recent change in guidelines from HMRC), in respect of the sale of all-inclusive membership cards for leisure facilities. These savings can then be secured for re-investment in facilities or can lead to a reduction in the level of subsidy by the Council.</li> <li>2. The trust organisation operates at 'arms-length' from the Council, giving it autonomy and freedom to take decisions that may not be possible by a DSO. In addition, the speed of decision making is usually significantly quicker.</li> <li>3. A level of risk associated with the operation of facilities can be transferred from the Council to the trust through longer-term contracts. This gives greater financial certainty in terms of revenue and can assist longer-term strategic planning.</li> <li>4. A trust, by virtue of its not-for-profit status, is eligible for funding from many external sources.</li> <li>5. Stand-alone trusts, by their nature, can enable a more specialised service for the needs of the local authority in question.</li> <li>6. Compared to a DSO, the decision-making process is significantly shortened.</li> </ol> |
| <b>Disadvantages – stand-alone trusts</b>  |
| <ol style="list-style-type: none"> <li>1. Amongst the staff that transfer to the stand-alone trust, there is often a lack of expertise in certain areas, such as marketing and business development.</li> <li>2. If the trust is to be set-up as a viable organisation in the long-term, it is necessary to ensure that adequate provision is made for the maintenance and lifecycle cost funding and this will often have to be taken from the NNDR and VAT savings. Therefore, the savings are not necessarily of the level that originally is anticipated, particularly in the early years.</li> <li>3. Given their scale and lack of track record, stand-alone trusts are rarely able to access development funding at commercial lending rates.</li> <li>4. Set up costs for a stand-alone trust are high.</li> <li>5. The outsourcing of management to a stand-alone trust leads to the remaining central services overheads being spread over fewer services. This means that for the services that remain, the central costs are a greater unless the Council is able to reduce these costs accordingly.</li> </ol>  |

6. Stand-alone trusts, unlike the majority of private sector contractors, do not have the benefits of major financial backers and, therefore, do not have the same level of financial stability.
7. Stand-alone trusts have more autonomy and with this comes a danger that they become disconnected from other services in the local authority. This can be mitigated through appropriate contract negotiations and effective ongoing contract monitoring.
8. In many cases, existing management are retained and there is limited scope for increasing the capacity and skills.
9. Where an external trust has an established board, there is limited scope for Council representation.

**Not-for-Profit Trusts (external trusts)**

**Table E: External Trusts**

| <b>Advantages – External trusts</b>   |
|---|
| <ol style="list-style-type: none"> <li>1. Trusts are able to take advantage of 80% mandatory NNDR relief and, in many cases, are exempt from charging VAT on non-commercial activities including (following a recent change in guidelines from HMRC), in respect of the sale of all-inclusive membership cards for leisure facilities. These savings can then be secured for re-investment in facilities or can lead to a reduction in the level of subsidy by the Council.</li> <li>2. The trust organisation operates at 'arms-length' from the Council, giving it autonomy and freedom to take decisions that may not be possible by a DSO. In addition, the speed of decision making is usually significantly quicker.</li> <li>3. Only a few large established trusts have access to development funding at commercial lending rates. Where these funds can be accessed, they are willing to invest significant amounts of funding in return for long-term contacts between five and twenty five years.</li> <li>4. The larger trust operators, such as GLL, operate a wide range of facilities in specific areas of the country. Management staff at individual centres are supported by regional and national teams comprising management, finance, HR, marketing, IT, training, administration and instructor personnel. The back office functions support delivery on a local level. They provide significant economies of scale not available to smaller trusts.</li> <li>5. A level of risk associated with the operation of facilities can be transferred from the Council to the trust through longer-term contracts. This gives greater financial certainty in terms of revenue and can assist longer-term strategic planning.</li> <li>6. The trust operators, by virtue of their not-for-profit status, are eligible for additional funding from some external sources.</li> <li>7. The larger trust operators now bring a commercial approach to the management of facilities. The market is still evolving and some of the larger operators are maturing to offer local authorities an alternative to in-house service delivery, particularly where financial resources are scarce. There is room for further consolidation in the trust market.</li> </ol> |
| <b>Disadvantages – External Trusts</b>  |
| <ol style="list-style-type: none"> <li>1. The outsourcing of management to an external trust leads to the remaining central services overheads being spread over fewer services. This means that for the services that remain, the central costs are a greater unless the Council is able to reduce these costs accordingly.</li> <li>2. Procurement costs for the Council can be high when appointing an external trust. This varies, depending on the procurement route selected the length and value of the contract. Costs to the client can include professional fees in the form of legal, financial and other consultancy support through the complex tendering procedure.</li> <li>3. There is limited scope for investment by the trust sector. Many do not have access to large amounts of capital due to their limited track record or restrictions of their charitable trust status.</li> <li>4. Trust organisations, unlike the majority of private sector contractors, do not have the benefit of major financial backers and therefore do not offer the same level of financial stability to a Council.</li> <li>5. Independent trusts have more autonomy and with this comes a danger that they become disconnected from other services within the local authority. This can be mitigated through appropriate contract negotiations and effective ongoing contract monitoring.</li> <li>6. In many cases, the existing management are retained and there is limited scope for increased management capacity, although management will benefit from support from a regional management team.</li> <li>7. Where an external trust has an established board there can be limited scope for Council representation. However, a local consultation board can be formed which would provide the Council with some influence.</li> </ol>   |

**Legal  
Services**City Offices  
Colebrook Street  
Winchester  
Hampshire  
SO23 9LJ

tel 01962 840 222

fax 01962 848 555

telephone calls may be recorded

Mr R Millard  
DC Leisure  
Olium House  
2 Freemantle Road  
Bagshot  
Surrey  
GU19 5LL

email [legal@winchester.gov.uk](mailto:legal@winchester.gov.uk)  
website [www.winchester.gov.uk](http://www.winchester.gov.uk)  
DX 120400 WINCHESTER 5

Your Ref: RE/3/1/15  
Our Ref: WAL/PL1/3/153  
Enq to: Bill Lynds  
Direct Line: 01962 848112  
Email: [blynds@winchester.gov.uk](mailto:blynds@winchester.gov.uk)

25 February 2010

**Subject to Contract**

Dear Sir,

**River Park Leisure Centre- Contract Extension**

I am pleased to confirm that it is WCC's intention to seek to agree the terms of a contract extension relating to the provision of management services and capital investment in both River Park and Meadowside.

The details of the variation to the Contract insofar as Meadowside, and the appropriate specification for Meadowside remain to be agreed. Subject to the specification being completed it is anticipated that the parties will enter into the Deed of Variation during April 2010. By that variation DC Leisure will provide management services at Meadowside from 1 April 2010 to 31 March 2011.

Thereafter it is intended that the Contract (dated 31 December 1997 and subsequently extended by Deed dated 4 July 2006) ("the Contract") will be extended for a term of 12 years to 31 March 2023 for both River Park and Meadowside. However for the avoidance of doubt, we reserve the right not to extend the term of the said contract for whatever reason.

The terms of this letter relate to Meadowside and the works and costs which are anticipated in undertaking the provision of management services at that leisure centre.

Notwithstanding that all the terms of the Contract are not yet agreed, we authorise and instruct you to proceed with those works, purchases of equipment, activities and improvements which might be agreed from the date of this letter to ensure that DC Leisure will be able to undertake the management of Meadowside from 1 April 2010.



We confirm that the following works, purchase of equipment and activities are agreed subject only to sight of your written confirmation of the costs and expenses to be incurred:

1. IT package [REDACTED]
2. Storage facility [REDACTED]

In order that those requirements not listed above are agreed by the Council before implementation we have appointed Steve Tilbury to act as the Authorised Officer for the purposes of any such required approval. You must liaise with the Authorised Officer and comply with all instructions issued by him/her in relation to the intended work as if the Contract had been entered into.

You will obtain our written consent (such consent not to be unreasonably withheld or delayed) before placing any subcontracts or materials supply orders in connection with the works or services or equipment to be purchased in excess of £1000 (ONE THOUSAND POUNDS). In any event you will ensure that any orders placed by you contain a provision allowing the benefit of the order to be assigned to us (or to any replacement contractor appointed by us) in the event that we terminate this instruction for any reason.

You will keep us fully and promptly informed of the progress of the work carried out by you pursuant to this letter and shall report to us no less frequently than fortnightly with supporting documentary evidence of all costs and expenses which you incur pursuant to this instruction if requested by the Authorised Officer.

We will pay you all reasonable costs incurred by you and verified by an appropriately qualified officer or agent of the Council for any activities properly undertaken by you pursuant to the instruction contained in this letter in the event that the parties do not enter into the proposed Deed of Variation provided that our total liability under this letter shall not exceed [REDACTED] plus Value Added Tax. The Council's assessment of those reasonable costs shall be final. You must obtain our further authorisation and instruction before committing to any expenditure above the limit stated in this paragraph.

For the avoidance of doubt, we are not bound to enter into any contract with you and our commitment at this stage is strictly limited as set out in this letter.

Within 7 days of our written request you must provide us with certificates of verification of insurance cover confirming that all insurances which you are (or will be) required to maintain under the terms of the Contract (subject to the terms of the Deed of Variation) are in place upon the required terms and at the required levels. In particular (to the extent that they have not been provided to us to date) we will require evidence of your Professional Indemnity, Employer's Liability, Public Liability (or similar) insurances].

Until the Deed of Variation is completed you shall indemnify us in accordance with the terms of the Contract against claims for death or personal injury or damage to real or personal property arising out of or in connection with or by reason of carrying out the work or activities authorised by this letter.

The instruction contained in this letter will automatically terminate on completion of the Deed of Variation.

If the Deed of Variation of the Contract is concluded between us, the terms of the Contract as varied will supersede this letter which will cease to have any further effect. In that event, any work, purchase of equipment or activities carried out by you pursuant to the instruction contained in this letter will be deemed to have been carried out under the Contract and the cost of such works shall not be recoverable by DC Leisure save as provided for in the Contract as varied.

We may terminate this instruction at any time by giving you not less than 7 days' prior written notice. In that event we shall reimburse you for work carried out by yourselves in complying with the instruction contained in this letter up to the date of such notice and properly incurred by you all as agreed with our Authorised Officer save that our total liability shall not exceed [REDACTED] plus VAT.

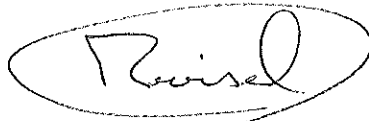
In the event of such termination we shall not be liable to compensate you for any other costs or losses arising from such termination including, without limitation, any claims, expenses, damages, loss and profit, loss of contracts or any other costs or losses.

All information which is capable of being regarded as confidential will be treated by the party receiving it on a strictly confidential basis and may not be disclosed to any third party without the written authority of the party who disclosed it, nor used for any purposes other than those envisaged by this letter, subject only to the Council's statutory duty insofar as the disclosure of information upon request.

This letter is not intended to constitute a contract either for the management services or any work, purchase of equipment or activities, save as detailed above.

Yours faithfully,

Steve Tilbury  
Corporate Director(Operations)



**Exempt Appendix 2: Formal offer and terms of proposed contract extension from DC Leisure**

Mr S. Tilbury  
Director of Operations,  
Winchester City Council,  
City Offices,  
Colebrook Street,  
Winchester,  
SO23 9LJ

Dear Steve

9 October 2009

**River Park Leisure Centre – Contract Extension**

Further to my letters of 27th October 2008 to Mandy Ford and 26<sup>th</sup> March 2009 to Simon Eden, we met recently to explore further the issues raised. You made clear at the meeting that the Council would wish to have a more advantageous position than we outlined and to this end we have been exploring how we can achieve this through -

Investment in capital schemes to retain current business and drive more participation and income.  
DC Leisure running Meadowside Leisure Centre more cost effectively and through our Leisure Community Partnership (LCP).  
Economies of scale through joint site operation and procurement  
[REDACTED]

**We believe we can run facilities on the following annual management fees**

**River Park Leisure Centre - Nil (from April 2011)**  
**Meadowside Leisure Centre Nil (from April 2010)**

This is a significant movement from our position on letter of 26<sup>th</sup> March 2009.

This position is based on the following assumptions and suggested variations – forgive the long list but I thought it would assist in clarification!

1. The contract extension terms will take effect from 1<sup>st</sup> April 2010
2. The contract extension period will be for 12 years from 1<sup>st</sup> April 2011 to 31st March 2023
3. Both sites will be run under a single LCP with your agreement, reflecting current benefits

4. Both Winchester City Council (WCC) and DC Leisure will work together to minimise the net costs of closure from the 2011 Refurbishment Programme but this final net cost, including reasonable business build up costs, will be reimbursed to DCL. As your incumbent operator we are uniquely placed to minimise these costs to WCC and more importantly improve the services at RPLC upon reopening for the benefit of the community. We would minimise costs whenever possible by keeping facilities as open as possible, redeploying staff costs and extending membership use at neighbouring DC Leisure sites. As the Refurbishment Programme becomes clearer we are happy to assist in estimating this figure, with final calculation on an open book basis.
5. We will work in partnership with WCC to relaunch River Park Leisure Centre after the Refurbishment Programme.
6. [REDACTED]
7. As part of the extension DC Leisure will embark on their own customer focussed improvements and will work with WCC officers and your nominated Architects, Studio Four, to coordinate any developments at the same time and attract third party funding (eg DCMS, Football Foundation, Carbon Trust, PCT) whenever possible. Our schemes are currently being worked up.
8. Meadowside Leisure Centre Opening Hours would need to be reviewed and amended with your agreement
9. Meadowside specification is based on current RPLC contract [REDACTED]
10. [REDACTED]
11. [REDACTED]
12. Current Pricing policy will continue
13. [REDACTED]
14. Redundancies at end of contract - we require protection from any situation whereby there is no employer to transfer the contract to in the event of the contract coming to its natural expiry or if the current facility has to permanently close for any reason.
15. LGPS - no allowance has been made for this ie any pension Bond requirements or increase in employers' contributions. All transferring employees on the day of transfer will retain their rights to enter the LGPS as long as they are employed at Meadowside. All other staff we employ on or after the date of transfer will not be eligible to join the LGPS but will be offered a stakeholder pension in accordance with the Code of Work Force Matters.
16. DC Leisure will ensure that both sites will operate to an agreed Environmental Management Policy
17. DC Leisure will continue to work in partnership and develop a more coordinated approaches / outreach between both sites, and other



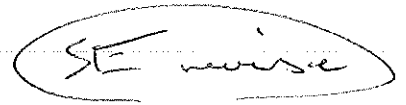
facilities such as Swanmore and the Athletics Stadium, particularly during the Refurbishment Programme .

We have been delighted and proud to work in partnership and look forward to the opportunity of this continuing. Please don't hesitate to contact me if there are any immediate queries and suggest we meet to discuss the above at your convenience

Yours sincerely

Richard Millard

Client Relations Director



CAB1801 - APPENDIX 1

**Mr S Eden**

Chief Executive  
Winchester City Council  
City Offices  
Colebrook Street  
Winchester  
SO23 9LJ

26 March 2009

Dear Mr. Eden

**Re: River Park Leisure Centre**

Following a meeting with Mandy Ford last Friday, we are aware of the Council's current thinking on future contract arrangements at River Park Leisure Centre bearing in mind that the current contract expires at the end of March 2011.

We believe that there is a wish to retender the contract and I wanted to take this opportunity as the incumbent operator to highlight the benefits of the alternative of negotiating a contract extension with us now.

I attach a copy of a letter sent to Mandy in October 2008 which highlighted current procurement issues in our industry and I believe this provides the council with a good background and 'case' for extending a contract. A key point in the letter is that in the last four years, DC Leisure with twelve Local Authority partners have either extended contracts or agreed new contracts without tender. The latest of these was with Waverley Borough Council in 2008 involving significant investment. A more local example was at Fleming Park Leisure Centre in Eastleigh in 2000, where a twenty year contract was negotiated involving [REDACTED] investment, reduced management fee and most importantly improved services and participation for residents.

Other than Mandy, we have not had an opportunity to meet with officers or Elected Members either formally or informally to put our case that a negotiated extension would have significant benefits for Winchester residents and provide savings for the council and therefore its council tax payers. I list below the benefits of a contract extension rather than a retender process:

1. Set up costs of an alternative provider would be avoided e.g. fitness equipment, IT systems etc.

2. Procurement costs and officer time would be avoided.
3. By including Meadowside Leisure Centre in the contract, improved financial performance under our management and inclusion in the Leisure Community Partnership (LCP) would result in savings in rates and overall reduced management fees. [REDACTED]
4. The provision of capital by DC Leisure to link with WCC's proposed works during a closure could be secured, planned for and implemented if agreed now which would provide a quicker return on investment, certainty that this capital would be available which it might not be from any contractor in 2011 in uncertain financial circumstances. We have discussed with Mandy a provisional menu of projects and talked provisionally of investment by us of [REDACTED]
5. We would be particularly keen to extend our environmental plan to further reduce consumption of utilities and costs to the benefit of the partnership.
6. Agreement now on future management arrangements would avoid a 'limbo' situation which can be very unsettling for all partners. An example of this is that in the eventuality DC Leisure lost a tender we would redeploy senior staff at the earliest opportunity whilst fulfilling our contractual obligations.
7. We believe that a new specification which is optimized between both parties could provide savings based on our unique knowledge of the Contract.
8. We could work together to ensure the proposed closure period minimizes withdrawal of facilities to our customers thereby significantly reducing the loss of income associated with such a closure which would ultimately be a cost that would have to be picked up by the council. Current turnover for the six month total closure period being proposed is [REDACTED] which is a significant and real cost that needs careful consideration. Thought also needs to be given to the time it would take to rebuild usage of the centre after such a long closure period. We believe with our unique experience of managing through refurbishment programmes at River Park and at Fleming Park, we can minimize the cost of closure in a way that no new contractor could do. For example, we are in the unique position where we could redeploy some staff during this period at sites we have with neighbouring authorities again reducing overall costs of the project.
9. By working together now, we would seek to attract 'external funding' to the project e.g. PCT funding or Football Foundation funding which we believe with our track record of delivery in the industry and our longstanding partnership we could achieve. Contract uncertainty would put off potential funders.
10. By agreeing future management arrangements now, we can together ensure that the impact of a reopening for our customers is maximized and that they see real benefits following the closure. Again, we are uniquely experienced as an operator in managing these situations.

11. We believe by agreement now, we can work on mutual sports and health development projects which will have a longer term benefit for the community. Examples of this are enhanced youth programmes that might include climbing wall facilities.
12. Given a contract extension, we would also be prepared to reduce our margins on an open book negotiated basis.

In summary, we would very much like to meet to discuss ways in which we can work together to provide future services, savings to the council, investment in the Winchester contract, security for our staff and most importantly improved services for the residents. We believe our partnership has provided excellent results for the community and as your incumbent provider we are very keen to continue this. We have not fully costed all of the above opportunities but believe annual revenue savings to the Council in excess of [REDACTED] would be achieved if the opportunity remains to extend or renew the contract. These of course, would be applicable in 09/10 and 10/11 financial years which would not be the case if the council pursues the tender process. We would welcome the opportunity to put forward our case to cabinet members in the near future and to provide more details regarding the financial benefits of this proposal.

I have been keen to ensure that we no leave no stone unturned hence this letter direct to you at this time. My personal belief is that we should all be focusing more on the service and value for money than the process at this time. However, if the council do intend to pursue a tender process, please be assured that we would continue to work diligently until its natural conclusion.

Yours sincerely

**Richard Millard**  
**Client Relations Director**

Encl: Letter - 27 October 2008

Cc Eloise Appleby - Head of Economic and Cultural Services  
Mandy Ford - Sport and Recreation Manager  
Peter Leamore - Contract Manager (DCL)

Ms A. Ford,  
Sport and Recreation Manager,  
Winchester City Council,  
City Offices,  
Colebrook Street,  
Winchester,  
Hants,  
SO23 9LJ

27 October 2008

Dear Mandy

**River Park Leisure Centre**

I write in relation to recent discussions regarding the possibility of extending our contract to supply leisure services to Winchester City Council and to attempt to address any concerns that the Council may have regarding procurement issues. We understand that your legal department have suggested that the contract should not be further extended but re-procured. There appear to be two main procurement issues, firstly if the Council is required to procure through the OJEU and if not whether it is required to advertise more locally.

We are aware that in certain circumstances authorities can extend contracts to allow for the extension to an existing contract and indeed over the last 4 years DC Leisure with 12 local authority partners have either extended contracts or agreed new contracts without tender. The latest of these was with Waverley Borough Council and I have provided you with contact details of Peter Maudsley, the Director of Community Services, who is also happy to attend any meeting between ourselves. For the reasons set out below, we consider that an OJEU process is not applicable and secondly that the Council should consider whether advertising a short term contract will provide the same value for money benefits as an extension to the existing contract. We fully appreciate and understand that any decision on vires must be made by the Council and we are not seeking to fetter that right in any way. However, due to the long-term relationship we have with you, we feel it is only fair and reasonable to set out what we believe to be a relatively low risk, and perhaps as importantly, a value for money approach to the contract extension.

You will be aware that the Public Contract Regulations 2006 set out the circumstances and procedures for an authority to procure services or works. However, the regulations do not apply to all public contracts. Some contracts, including the provision of recreational, cultural and sporting services are only partially covered or not covered at all by the regulations. These services do not have to be advertised in the Official Journal of the European Union. Local authorities have, historically, followed their own processes as set out in their standing orders to obtain value for money when procuring these types of services.

The EC Treaty principles of non-discrimination and equal treatment, transparency and the freedom to provide services apply to all public procurement contracts. However, the standards derived from the EC Treaty apply only to contract awards which have a sufficient connection with the functioning of the internal market. In this regard, the ECJ has considered that in individual cases, *'because of special circumstances, such as a very*

*modest economic interest at stake*, a contract award would be of no interest to economic operators located in other member states. In addition, European case law indicates that the relevance of a specific contract to the market should be the key factor in determining the nature of advertising and other procedures to be followed. Other factors to be considered include the subject matter of the contract, its estimated value, the specifics of the sector concerned and the geographical location of the place of performance. OGC guidance states that local authorities should make decisions relating to advertising and other procedures on a case by case basis.

DC Leisure has provided leisure services to the Council under the current tendered contract since 1997. Despite the existing contract not providing for an extension, the contract was extended by mutual agreement (and without tender) by 3.25 years to March 2011. The reasons for this extension were due to the extenuating circumstances surrounding a major closure of the facilities and the ensuing loss of income claim by DC Leisure to the Council was avoided. Therefore the Council extended for financial reasons thus demonstrating better value than going out to tender at the natural expiry of the contract.

We are very keen to continue our partnership with you for a period likely to be 5 years, particularly to provide services pending the option of a joint authority procurement process. We understand that an outline timetable may include a new build opening in 2016 so we would assume the tender process for the long term would commence around 2014 to start in 2016. Whilst other leisure operators may be interested in tendering for a short term leisure contract, our view is that, as we have an existing relationship with the Council, other leisure operators are unlikely to want to incur bid and set up costs for such a short contract. Lack of return on investment is another reason for 5 year tender exercises being unattractive in Leisure Management. As well as extensions being common within DC Leisure in circumstances similar to your own, I am also aware of arrangements with other contractors and their partnerships being extended and as an example a Committee Report from South Holland is appended which deals with similar circumstances. A final factor is that by not tendering, the Council will not need to devote officer time and incur possible consultants costs.

We believe that given the above factors, and the practical point that other leisure operators may not find a short term contract attractive, there will be little risk of procurement challenge. We believe that an extension will provide value for money for the Council to continue to use us for the supply of services and not to undertake a further tendering procedure to provide for what in effect will be a short-term solution. The value for money case for extending the current contract on similar terms is that many costs ( eg Staff, energy, insurance ) have risen significantly and above RPI since 1997 and Councils have found that avoiding a re-tender removes this cost realignment process. It will also allow us to continue to invest between now and 2011, allowing us time to get a return on our investment Once we have agreed the principle of an extension we would finally agree "optimised" specification and management fee arrangements. Another reason for an extension is that as your current provider we can provide continuity of service, flexibility and you can benefit from our unique experience of the Design, Build, Operate and Maintain process whilst you determine your longer term strategy. To date we have been involved in PPPs and PFIs in excess of £100million.

Finally we would be prepared to include Meadowside Leisure Centre within this Contract and are confident this would result in a financial betterment to the Council, and we would also be able to add this to the LCP if appropriate thus releasing any NNDR benefit.

We appreciate the Council may still perceive an element of risk in extending our current contract, however we hope and trust that you will consider these issues in the context of the guidance referred to above.

We would welcome the opportunity to discuss the contractual arrangements with you further.  
Please do not hesitate to contact me to discuss this further.

Yours sincerely

**Richard Millard**  
**Client Relations Director**

## Costs to WCC for the management and operation of A) River Park Leisure Centre and b) Meadowside Leisure Centre

| a) River Park Leisure Centre                                | 1997/98        | 1998/99        | 1999/2000      | 2000/01          | 2001/02          | 2002/03 | 2003/04        | 2004/05        | 2005/06        | 2006/07        | 2007/08        | 2008/09        | 2009/10        | 2010/11        | 2011/12        | 2012/13        | 2013/14        |                |
|---|----------------|----------------|----------------|------------------|------------------|---------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
|   | £              | £              | £              | £                | £                | £       | £              | £              | £              | £              | £              | £              | £              | £              | £              | £              | £              |                |
| Employees / Repairs & Maint of Buildings / Support Services | 71,660         | 74,101         | 112,305        | 105,704          | 75,842           |         | 67,084         | 79,941         | 78,431         | 120,377        | 118,026        | 112,829        | 164,239        | 156,656        | 144,355        | 143,950        | 128,532        | 155,011        |
| Rents   | 378,000        | 378,000        | 378,000        | 0                |                  |         |                | 265            | 156            |                |                |                |                | 378,000        |                |                |                | 259            |
| Rates   | 151,140        | 156,420        | 161,370        | 159,066          | 162,970          |         | -350,470       | -90,616        | 106,020        | 114,362        | 117,343        | 120,324        | 87,325         |                |                |                |                |                |
| Water services  |                |                |                |                  |                  |         | 1,729          | 1,474          | 124            |                |                |                |                |                |                |                |                |                |
| Fixtures & fittings   |                |                |                |                  |                  |         |                |                | 1,590          | 6,464          |                | 383            |                |                |                |                |                |                |
| Grounds Maintenance Costs                                   |                |                |                |                  | 5,425            |         | 5,399          | 6,163          | 7,130          | 7,244          | 893            | 239            | 217            | 277            | 231            | 947            | 184            | 281            |
| Cleaning & domestic   |                |                |                | 350              |                  |         |                |                |                |                |                |                |                |                |                |                |                |                |
| Premises Insurance  | 13,617         | 5,453          | 5,050          | 5,996            | 7,458            |         | 10,382         | 14,233         | 13,526         | 13,802         | 14,243         | 16,853         | 10,650         | 13,900         | 15,569         | 17,347         | 17,499         | 18,519         |
| Transport   |                |                | 66             | 302              | 3,295            |         | 4,554          |                | 59             | 275            |                | 436            | 343            | 1,392          |                |                |                |                |
| Equipment furniture & material                              |                |                | 7,238          | 425              | 387              |         | 409            |                | 480            |                | 2,271          |                |                |                |                |                |                |                |
| Payment for Services  |                |                | 1,371          |                  | 15,000           |         | 15,000         | 20,054         | 21,000         | 0              | 6,000          |                | 7,769          | 164            | 1,140          | 90             |                |                |
| Communication & computing                                   |                |                | 1              |                  |                  |         | 135            | 136            | 136            | 136            | 179            | 11             |                |                |                |                |                |                |
| Grants & subscriptions                                      | 12,258         |                |                |                  |                  |         |                | 0              | 2,000          |                |                |                |                |                |                |                |                | 12,258         |
| Miscellaneous   | 7              | 2,919          |                | 48,016           | 2,334            |         | 213            | 91             | 216            | 6,202          |                | 2,959          | -259           | 7              |                |                |                | 100            |
| Private contractors   | 135,159        | 91,400         | 98,268         | 97,791           | 98,946           |         | 98,100         | 82,138         | 84,135         | 77,079         | 72,352         | 88,658         | 116,326        | 235,604        | 140,027        | 43,304         | 45,372         | 35,408         |
| Health authorities  |                |                |                |                  |                  |         |                |                | 15,539         | 7,140          | 15,000         |                |                |                |                |                |                |                |
| Depreciation & Impairment Losses                            | 27,828         | 70,411         | 92,834         | 729,880          | 676,047          |         | 680,239        | 577,405        | 576,660        | 558,091        | 379,455        | 406,815        | 192,462        | 191,114        | 296,977        | 410,743        | 414,701        | 414,648        |
| <b>TOTAL</b>  | <b>789,669</b> | <b>778,704</b> | <b>856,503</b> | <b>1,147,530</b> | <b>1,047,704</b> |         | <b>532,774</b> | <b>690,928</b> | <b>891,588</b> | <b>913,525</b> | <b>724,379</b> | <b>761,112</b> | <b>574,614</b> | <b>605,404</b> | <b>988,980</b> | <b>617,431</b> | <b>606,378</b> | <b>624,226</b> |

| b) Meadowside Leisure Centre                                | 1997/98 | 1998/99 | 1999/2000    | 2000/01        | 2001/02        | 2002/03 | 2003/04        | 2004/05        | 2005/06        | 2006/07        | 2007/08        | 2008/09        | 2009/10        | 2010/11        | 2011/12        | 2012/13        | 2013/14        |                |
|---|---------|---------|--------------|----------------|----------------|---------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|----------------|
|   | £       | £       | £            | £              | £              | £       | £              | £              | £              | £              | £              | £              | £              | £              | £              | £              | £              |                |
| Employees / Repairs & Maint of Buildings / Support Services |         |         | 2,107        | 101,083        | 68,994         |         | 70,529         | 77,450         | 74,967         | 66,138         | 81,137         | 66,314         | 117,617        | 104,912        | 54,087         | 65,804         | 48,100         | 50,854         |
| Energy costs  |         |         | 150          | 5,351          | 6,493          |         | 8,320          | 7,851          | 7,444          | 9,575          | 9,322          | 21,599         | 3,600          | 12,895         | 895            | -447           |                | -54            |
| Rents   |         |         | 200          |                |                |         | 256            |                | 0              |                |                |                |                |                |                |                |                |                |
| Rates   |         |         |              | 13,523         | 22,575         |         | 22,943         | 23,310         | 23,940         | 22,599         | 23,815         | 24,420         | 25,410         | 26,675         | 4,483          | 0              | 10,358         | 5,475          |
| Water services  |         |         |              | 439            | 1,779          |         | 1,454          | 1,224          | 1,136          | 2,522          | 1,196          | 4,000          | 3,253          | 1,247          | 412            |                |                |                |
| Fixtures & fittings   |         |         |              |                | 882            |         | 3,249          | 823            | 3,717          | 4,174          | 4,976          |                |                |                |                |                |                |                |
| Grounds Maintenance Costs                                   |         |         |              |                |                |         | 884            |                | 340            |                |                |                |                |                |                |                |                |                |
| Cleaning & domestic   |         |         |              | 4,368          | 2,033          |         | 2,343          | 3,341          | 2,964          | 4,922          | 6,229          | 4,147          | 4,451          | 3,771          | 611            |                |                |                |
| Premises Insurance  |         |         |              | 6,534          | 743            |         | 1,388          | 2,062          | 1,607          | 2,080          | 2,021          | 2,426          | 1,711          | 2,185          | 1,653          | 1,417          | 1,445          | 1,525          |
| Transport   |         |         |              | 601            | 65             |         | 305            | 1704           | 2285           | 1867           | 1771           | 1113           | 2105           | 2416           | -7             |                |                |                |
| Equipment furniture & material                              |         |         |              | 13,283         | 18,571         |         | 21,134         | 22,550         | 25,950         | 13,748         | 4,457          | 4,646          | 13,828         | 17,043         | 3,343          |                |                |                |
| Catering  |         |         |              | 350            | 1,581          |         | 1,629          | 1,709          | 2,280          | 1,570          | 1,824          | 2,133          | 2,462          | 3,756          |                |                |                |                |
| Clothing uniforms & laundry                                 |         |         |              | 2,041          | 778            |         | 241            | 301            | 783            | 138            | 2,028          | 137            | 289            |                |                |                |                |                |
| Print stationery & general                                  |         |         |              | 1,591          | 4,117          |         | 1,118          | 1,339          | 1,401          | 1,357          | 1,907          | 1,755          | 1,569          | 816            | 50             |                |                |                |
| Payment for Services  |         |         |              | 2,563          | 125            |         | 1,705          | 3,157          | 7,552          | 12,241         | 4,763          | 4,282          | 7,061          | 10,070         | 749            | 90             | 90             |                |
| Communication & computing                                   |         |         | 78           | 1,625          | 4,253          |         | 3,296          | 4,322          | 7,552          | 4,746          | 1,685          | 1,668          | 2,876          | 2,778          | 356            |                |                |                |
| Grants & subscriptions                                      |         |         |              | 270            |                |         | 91             | 1,101          | 1,261          | 1,337          | 2,299          | 1,871          | 4,194          | 1,847          | 655            |                |                |                |
| Contrib to provisions                                       |         |         |              |                |                |         |                |                |                |                |                | 2,959          | -259           |                |                |                |                |                |
| Miscellaneous   |         |         |              | 2,744          | 2,007          |         | 5,285          | 6,762          | 9,240          | 9,163          | 8,326          | 7,844          | 8,624          | 8,799          | 61             |                |                | 100            |
| Private contractors   |         |         |              | 87             | 583            |         | 575            | 564            | 613            |                |                |                |                | 9,527          | 10,696         | 11,316         | 13,216         |                |
| Depreciation & Impairment Losses                            |         |         |              | 7,524          | 14,959         |         | 14,883         | 7,902          | 7,814          | 24,466         | 6,686          | 1,049          | -4,779         | 118,774        | -114,352       | 46,228         | 55,423         | 55,423         |
| <b>TOTAL</b>  |         |         | <b>2,535</b> | <b>163,977</b> | <b>150,538</b> |         | <b>160,744</b> | <b>168,356</b> | <b>174,954</b> | <b>182,983</b> | <b>164,442</b> | <b>149,404</b> | <b>197,230</b> | <b>317,725</b> | <b>-37,477</b> | <b>123,788</b> | <b>126,732</b> | <b>126,540</b> |





**Legal and  
Democratic  
Services**

City Offices  
Colebrook Street  
Winchester  
Hampshire  
SO23 9LJ

tel 01962 840 222

fax 01962 848 472

telephone calls may be recorded

email [legal@winchester.gov.uk](mailto:legal@winchester.gov.uk)  
website [www.winchester.gov.uk](http://www.winchester.gov.uk)  
DX 120400 WINCHESTER 5

Mr. Martin Wilson,  
3, The Square,  
WINCHESTER,  
Hants,  
SO23 9ES

Your Ref:  
Our Ref:FOI 1531/1638  
Enq to: Mr. Bone  
Direct Line: 01962 848552  
Email: [hbone@winchester.gov.uk](mailto:hbone@winchester.gov.uk)

12 September 2014

BY EMAIL ONLY [REDACTED]

Dear Mr. Wilson,

**FREEDOM OF INFORMATION REQUEST 1531/1638  
RIVER PARK LEISURE CENTRE.**

In your emails of 9 May and 11 June 2014, you asked for answers to the following questions. Your emails have been treated as freedom of information requests.

I apologise for the delay in being able to respond to you. I have now been able to review the information requested, and this letter sets out the Council's formal response.

You asked for the following information:-

- 1) *What is the gross annual amount of revenue generated by River Park Leisure Centre (RPLC) and Meadowside Leisure Centre (MLC) from 1997 to date?*
- 2) *What is the net amount, each year from 1997 to date, received by or owed to Winchester City Council (WCC) from DC Leisure (DCL) or its subsidiary(ies) or its holding company by way of income or profit share (expressly), during the currency of the 1997 contract (as extended, novated or varied) for the management of RPLC and latterly of MLC? (NB It should be made clear whether each annual amount was*



actually paid or whether it was due and is either still owed or has been offset in some way)

3) What is the financial liability of WCC, each year to date, for the management, operation, maintenance or repair of RPLC and latterly of MLC under the 1997 contract (as extended, novated or varied)? (NB The costs should be identified under headings)

4) What is the projected annual income/profit share to WCC from the operation of RPLC and/or of MLC to the termination in 2023 of the 1997 contract (as extended, novated or varied)? (NB It should be made clear whether the amount is a share of income or of profit, the threshold above which the amount becomes payable and the express percentage upon which the amount is calculated)

5) What is the potential financial liability to WCC of the termination of the 1997 contract (as extended, novated or varied) by reason of breach, closure of the facility or part of the facilities at RPLC and/or MLC for any period or permanently, or for some other reason such as breach of a promise to engage DCL or its subsidiary or holding company as a contracting partner to develop, build, operate or manage the existing facilities or any new facility?

6) Do any Council officers or Councillors hold shares, directorships or any other beneficial interest or financial expectation in or from DC Leisure or any of its associated companies?

Taking these in turn:-

1. Gross annual revenue generated by RPLC and MLC from 1997 to date.

This request has been taken to be a request for details of the income earned by the two centres. As you are aware, they are externally managed by Placed for People Limited (previously DC Leisure). Under the terms of the agreement with the contractor, income received from customers is retained by the contractor. Previously, a management fee was paid by the Council, but this was reduced to a nil fee when the contract was extended in 2011.

As this request is therefore for details of the income earned from the centres by the contractor, the Council has to consider whether any of the exemptions in the Freedom of Information Act 2000 apply, and if they do, apply a public interest test to determine whether or not the information can be released. This is considered in detail later in this letter, but in summary, it is considered that this information should not be disclosed.

2. Net amount received or owed to the Council from 1997 to date.

The enclosed spreadsheet shows (tab1) the income received by the Council in respect of the two centres. As noted on the spreadsheet, the 2009 figure also includes income from grants paid to the Council by Government in respect of free swimming for certain categories of user.

3. Financial Liability of the Council, each year, to date, for management and operation of RPLC and MLC.

Details of the expenditure as shown on tab 2 of the enclosed spreadsheet.

4. Projected annual income/profit share to termination in 2023.

No such projections have been made, and therefore this information is not available.

5. Potential financial liability to the Council of the termination of the 1997 by reason of closure etc.

Again, no such projections have been made, and therefore this information is not available.

6. Do any Council officers or Councillors hold shares, directorships or other beneficial interest or financial expectation?

No such interests are disclosed in the Register of Members' Interests maintained by the Council. I should point out that the Register only requires disclosure of shareholdings above certain limits, and it is therefore possible that some councillors may have shareholdings in DCL/PfPL below such values, but I can confirm that no such holdings have been disclosed to the Council.

The Council holds no information on shareholdings or directorships, etc., in respect of officers. I can however confirm that neither I nor the Chief Executive, Steve Tilbury, Stephen Whetnall, and Mandy Ford hold any such interests.

#### Withholding of Gross Revenue Figures.

I consider that the information held by the Council in respect of the gross revenue earned by the contractor falls within the exemption in Section 43(2) of the Freedom of Information Act 2000, "commercial interests". This exemption is qualified. In order to rely on the exemption, the Council must be satisfied that the information falls within the terms of the exemption, *and* in addition apply a public interest test to determine whether the balance of the public interest lies in maintaining the exemption or disclosing the information.

#### Commercial Interests Exemption

This information relates to the income which Places for People Limited (and previously DC Leisure) received from users of the centre. I consider that this information would inform their competitors on PfPL's performance, and would therefore adversely affect PfPL's commercial position vis-à-vis other contractors.

I therefore consider that the Section 43(2) exemption is engaged. The public interest test must therefore be applied to determine the extent (if any) to which the information.

### Public Interest Test

In summary, the arguments in favour of disclosure are considered to be:-

- Allowing the public to assess whether the Council is obtaining value for money from the operation of the centres.
- Allowing individuals and companies to understand decisions made affecting their lives, and assisting individuals in challenging those decisions.

The arguments against disclosure are considered to be:-

- The desirability of ensuring that contractors who work with the Council may disclose information to the Council, in the knowledge that such information will not be made public (to the detriment of the commercial interests of the contractor), so that the Council can secure the most economically advantageous arrangements with contractors, and thereby secure best value for the public.
- The Council's external auditors have access to the information, and can verify that the Council is obtaining value for money from the contract.

I am satisfied that disclosure of this financial information could prejudice PfPL's commercial position in respect of its operations, in Winchester and other locations, and may also prejudice the Council's ability to secure best value in future .

I also consider that disclosure of the information would be likely to prejudice the Council's position in dealing with contractors generally.

These factors which weigh against disclosure must be balanced against the factors in favour of disclosing the material.

### Conclusions on Public Interest Test

The information which is proposed should be withheld is considered to be, or be likely to be, prejudicial to the commercial interests of PfPL and the Council, because of the potential impact on PfPL's own commercial position, and the impact disclosure might have in future procurements undertaken by the Council for management services.

It is in interests of the Council, and the public as a whole, that the management contract continues to operate successfully, and that PfPL are successful as a provider of management services. This will ensure the long-term provision of the management services in accordance with the contract, and allow the Council to continue to provide leisure facilities to the public at the lowest possible cost.

It is also in the public interest to ensure that the Council's reputation with contractors is not harmed, and that contractors can continue to deal with the Council on a confidential basis where this is required. If contractors consider they cannot have such dealings, bids for work in the future may be higher than they need to be, or may not be forthcoming at all.

Although there is a clear public interest in ensuring that the Council obtains value for money from its leisure centres, this must be weighed against the public interest in continuing the successful operation of the Leisure Centre and the Council's reputation with contractors, and the fact that there are already external controls in place to ensure that value for money is obtained. It is considered that disclosure of the information could have a prejudicial effect on these objectives which outweighs the factors in favour of disclosure.


Decision

I therefore take the view that the balance of the public interest lies in refusing the request for gross revenue information.

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original letter and should be addressed to:

Chief Executive,  
Winchester City Council,  
City Offices,  
Colebrook Street,  
WINCHESTER,  
Hants,  
SO23 9LJ

Yours sincerely,

A solid black rectangular box redacting the signature of Howard Bone.

Howard Bone  
Head of Legal Services

