



<b>Meeting</b>	Cabinet
<b>Date and Time</b>	Wednesday, 22nd July, 2020 at 9.30 am.
<b>Venue</b>	This meeting will be held virtually and a live audio stream can be listened to via <a href="http://www.winchester.gov.uk">www.winchester.gov.uk</a> .

**Note:** Owing to the ongoing Covid-19 pandemic and government guidance, it will not be possible to hold this meeting in person. The Council has therefore made arrangements under the Coronavirus Act 2020, and subsequent Regulations permitting remote meetings, to hold the meeting virtually. If you are a member of the public and would like to listen to the audio stream of the meeting you may do so via [www.winchester.gov.uk](http://www.winchester.gov.uk)

## AGENDA

### PROCEDURAL ITEMS

- 1. Apologies**  
To record the names of apologies given.
- 2. Membership of Cabinet bodies etc.**  
To give consideration to the approval of alternative arrangements for appointments to bodies set up by Cabinet or external bodies, or the making or terminating of such appointments.
- 3. Disclosure of Interests**  
To receive any disclosure of interests from Members and Officers in matters to be discussed.  
*Note: Councillors are reminded of their obligations to declare disclosable pecuniary interests, personal and/or prejudicial interests in accordance with legislation and the Council's Code of Conduct.*
- 4. To note any request from Councillors to make representations on an agenda item.**  
*Note: Councillors wishing to speak about a particular agenda item are required to register with Democratic Services three clear working days before the meeting (contact: [democracy@winchester.gov.uk](mailto:democracy@winchester.gov.uk) or 01962 848 264). Councillors will normally be invited by the Chairperson to speak during the appropriate item (after the Cabinet Member's introduction and questions from other Cabinet Members).*



## BUSINESS ITEMS

5. **Minutes of the previous meeting held on 24 June 2020, less exempt minute.** (Pages 5 - 14)
6. **Public Participation**  
– to note the names of members of the public wishing to speak on general matters affecting the District or on agenda items  
*NB members of the public are required to register with Democratic Services three clear working days before the meeting (contact: [democracy@winchester.gov.uk](mailto:democracy@winchester.gov.uk) or 01962 848 264).*

Members of the public and visiting councillors may speak at Cabinet, provided they have registered to speak three working days in advance. Please contact Democratic Services **by 5pm on Thursday 16 July 2020** via [democracy@winchester.gov.uk](mailto:democracy@winchester.gov.uk) or (01962) 848 264 to register to speak and for further details.

7. **Leader and Cabinet Members' Announcements**
8. Nitrate Neutrality - Update (Pages 15 - 28)  
**Key Decision** ( )
9. Waste Contract extension (Pages 29 - 36)  
**Key Decision** ( )
10. Leisure Centre update - impact of Covid-19 (less exempt appendices) (Pages 37 - 52)  
**Key Decision** ( )
11. EXEMPT BUSINESS:  
To consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.  
  - (i) To pass a resolution that the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100 (I) and Schedule 12A to the Local Government Act 1972.
12. Exempt minute of the previous meeting held on 24 June 2020 (Pages 53 - 54)

13. Leisure Centre update - impact of Covid-19 (exempt appendices) (Pages 55 - 138)

**Key Decision**

(CAB3249)

**Lisa Kirkman**  
**Strategic Director: Resources and Monitoring Officer**

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14 July 2020

Agenda Contact: Nancy Graham, Senior Democratic Services Officer  
Tel: 01962 848 235, Email: [ngraham@winchester.gov.uk](mailto:ngraham@winchester.gov.uk)

*\*With the exception of exempt items, Agenda, reports and previous minutes are available on the Council's Website [www.winchester.gov.uk](http://www.winchester.gov.uk)*

## **CABINET – Membership 2020/21**

Chairperson: Councillor Thompson (Leader and Cabinet Member for Communications)

Councillor Cutler (Deputy Leader and Cabinet Member for Finance and Risk)

<b>Councillor</b>	<b>- Cabinet Member</b>
Ferguson	- Cabinet Member for Local Economy and Climate Emergency
Learney	- Cabinet Member for Housing and Asset Management
Porter	- Cabinet Member for Built Environment and Wellbeing
Prince	- Cabinet Member for Sport, Leisure and Communities
Tod	- Cabinet Member for Service Quality and Transformation

**Quorum** = 3 Members

### **Corporate Priorities:**

As Cabinet is responsible for most operational decisions of the Council, its work embraces virtually all elements of the Council Strategy.

### **Public Participation at virtual meetings**

Representations will be limited to a maximum of 3 minutes, subject to a maximum 15 minutes set aside for all questions and answers.

To reserve your place to speak, you are asked to **register with Democratic Services three clear working days prior to the meeting** – please see public participation agenda item below for further details. People will be invited to speak in the order that they have registered, subject to the maximum time period allowed for speaking not being exceeded. Public Participation is at the Chairperson's discretion.

### **Filming and Broadcast Notification**

This meeting may be recorded and broadcast live on the Council's website. The meeting may also be recorded and broadcast by the press and members of the public – please see the Access to Information Procedure Rules within the Council's Constitution for further information, which is available to view on the [Council's website](#).

### **Terms Of Reference**

Included within the Council's Constitution (Part 3, Section 2) which is available [here](#)

## CABINET

Wednesday, 24 June 2020

Attendance:

Councillor Thompson (Chairperson)	– Leader and Cabinet Member for Communications
Councillor Cutler (Vice-Chair)	– Deputy Leader and Cabinet Member for Finance and Risk
Councillor Ferguson	– Cabinet Member for Local Economy and Climate Emergency
Councillor Learney	– Cabinet Member for Housing and Asset Management
Councillor Porter	– Cabinet Member for Built Environment and Wellbeing
Councillor Prince	– Cabinet Member for Sport, Leisure and Communities
Councillor Tod	– Cabinet Member for Service Quality and Transformation

Others in attendance who addressed the meeting:

Councillors Godfrey, Horrill, Lumby, Pearson and Read

Others in attendance who did not address the meeting:

Councillor Brook

Audio recording of the meeting

A full audio recording of this meeting is available via this link:

[Full audio recording](#)

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### 1. **MEMBERSHIP OF CABINET BODIES ETC.**

Cabinet agreed to the following for the reasons set out on the agenda.

RESOLVED:

1. That the membership of the Community Infrastructure Levy (CIL) Allocations Advisory Panel (CAAP) be confirmed as follows:

Councillors Porter and Prince together with the Strategic Director (Services); Strategic Director (Resources); Strategic Director (Place) and may also include, but not necessarily, a representative from Hampshire County Council.

2. That Councillor Rutter be included in the membership of the Local Plan Advisory Group, the full membership confirmed as follows:

Councillors Porter (Chairperson), Brook, Evans, Ferguson, Horrill, Rutter and Thompson.

2. **DISCLOSURE OF INTERESTS**

Councillors Tod and Porter declared personal (but not prejudicial) interests in respect of various agenda items due to their roles as County Councillors.

3. **MINUTES OF THE PREVIOUS MEETING HELD ON 21 MAY 2020.**

RESOLVED:

That the minutes of the previous meeting held on 21 May 2020 be approved and adopted.

4. **PUBLIC PARTICIPATION**

There were no questions asked or statements made.

5. **LEADER AND CABINET MEMBERS' ANNOUNCEMENTS**

The Leader and Cabinet members made a number of announcements as summarised briefly below.

Councillor Thompson

As announced at the Business and Housing Policy Committee on 22 June 2020, a Depot Insight Group had been established to further understanding the future options regarding the Bar End depot site, including the aspirations of local residents. The Group would be chaired by Councillor Prince and its membership would include Councillors Gottlieb, Lumby, Mather and Williams together with representatives from local residents.

Councillor Tod

With effect from 30 July 2020, the waste collection service provided by Biffa would be extended to enable the small percentage of households previously within difficult access routes to use the full range of waste collection services.

Two bins for collecting recycling laminated cardboard (including Tetrapaks) had been installed as a trial at Worthy Lane, Winchester.

To deal with the increase in the volume of glass being recycled, additional bins would be installed at some bring sites around the district.

Thanks to Biffa and Council officers involved in maintaining the waste collection service during the Covid-19 pandemic, together with offering these service improvements.

6. **RIVER PARK LEISURE CENTRE DECOMMISSIONING**  
(CAB3242)

Councillor Learney introduced the report which outlined options for securing and decommissioning the RPLC site and recommended a preferred approach in advance of site redevelopment. The matter had been considered by the Business and Housing Policy Committee at its meeting on 22 June 2020 where Members were generally content with the recommendations but requested that Cabinet progress a resolution on the longer term future of the site as soon as possible.

At the invitation of the Leader, Councillors Lumby, Miller and Read addressed Cabinet as summarised briefly below.

Councillor Lumby

Appreciated the intention to adopt a cautious approach due to the current condition of the property market. However, believed that the existing legal covenant could offer a wider range of future options than suggested at the previous Cabinet. He asked that the Council prioritise finishing the research into possible options and mitigation of risks.

Councillor Miller

Agreed with Councillor Lumby that decisions on the future use of the site should be prioritised, emphasising that the RPLC site was an important asset for the whole district.

Councillor Read

Queries regarding the extent and exact location of asbestos in the building. Queried whether the Winchester Town Forum would be responsible for the provision of temporary public conveniences in the area (as this would be the responsibility of a parish council in a parished area of the district).

The Strategic Director: Place explained the reasons for the proposed delay to decisions on future options for the site, as outlined in the report.

Councillor Learney also responded to comments made including highlighting that the ongoing work on the Vision for Winchester which would link in to future proposals. With regard to the legal covenant, she emphasised that examining differing interpretations was a long, complicated process. Funding for the temporary public conveniences would be met from the general budget but the Winchester Town Forum would be required to make financial provision for a long term solution.

Cabinet agreed the following for the reasons set out above and outlined in the report.

RESOLVED:

1. That RPLC ceases to provide sports and leisure facilities and is closed to the public following the opening of the WS&LP at Bar End in the early part of 2021.

2. That RPLC be decommissioned by way of an internal soft strip and part demolition, with the timetable to be linked with the build schedule on the Winchester Sport and Leisure Park.

3. That capital expenditure in 2020/21 of up to £410,000 is approved to:

- a) decommission the River Park Leisure Centre building by soft stripping and securing;
- b) undertake works to ensure continued utility and services supplies to clubs remaining on site; and
- c) provide temporary toilet facilities until a future use for the site is determined or other facilities become available.

4. That an annual revenue budget from 2021/22 of £40,000 be approved for CCTV hire and monitoring, building inspections, and cleaning the temporary toilets.

5. That authority be delegated to the Strategic Director: Place to determine and undertake the procurement process, appoint the relevant contractors to enable the decommissioning of RPLC (including security and continuity of utility services) and the provision of temporary toilets; and to negotiate and agree contractual heads of terms with the appointed contractors.

6. That authority be delegated to Service Lead Legal to enter in to contracts to carry out works to enable decommissioning of the RPLC and provision of temporary toilets.

7. That work to determine options for the future use of the site is delayed until the current budget position relating to the COVID-19 emergency is finalised and the emerging development market is better understood and to bring a report back to cabinet in Q2/Q3 2021.

7. **VAULTEX PARK & RIDE EXTENSION**  
(CAB3239)

Councillor Tod introduced the report and announced that the EM3 Local Enterprise Partnership (LEP) Board had supported the Council's bid for approximately £5.6m towards delivery of a decked park and ride area at Vaultex. The decked area would include electric vehicle charging points and the feasibility of introducing these sooner, together with electric bike charging, was being investigated.

At the invitation of the Leader, Councillor Horrill and Miller addressed Cabinet as summarised briefly below.



Councillor Horrill

Generally welcomed the proposals but queried why there was a delay in progressing plans for the decked area, emphasising the wider benefits it would bring. Requested assurance that cabling would be installed for Electric Vehicle charging. Queried whether the South Park and Ride was now the preferred solution (including with coach drivers) for a coach park to be located.

Councillor Miller

Supported Councillor Horrill's comments regarding the importance of the site in terms of wider benefits for the area and the need to progress the decked car park without delay.

Councillor Tod responded to the comments made. He emphasised that a pragmatic approach would be taken to the timing of the decked project to tie in with the expected timing of release of LEP monies, whilst enabling council officers to focus on more urgent priorities in relation to parking and the COVID-19 response. The cabling for electric vehicle charging points would be installed at an early stage. A coach park had operated from the South park and ride over the Christmas period and feedback from coach drivers had been positive.

Cabinet agreed the following for the reasons set out above and outlined in the report.

## RESOLVED:

1. That a supplementary capital estimate and expenditure of £230,000 for the surface car park be approved.
2. That Cabinet approve the advertisement of the Parking Places Order, consider responses and make the Order for the management and enforcement required for the car park.
3. That the Vaultex car park will be run as part of the overall park and ride provision, ie users will pay to park and use the bus, but with encouragement of walking and cycling into the City for those who are able to do so.
4. That authority is delegated to the Head of Programme in consultation with the Cabinet Member for Service Quality and Transformation to negotiate and agree parking arrangements within the car park for residents of 67 to 89 Bar End Road.
5. That authority is delegated to the Head of Programme to enter into and award the works contract for the surface car park.
6. That authority is delegated to the Strategic Director of Place to prepare and enter into the EM3 Local Enterprise Partnership (LEP) funding agreement pending award of Government funding for a grant from the LEP and to further progress that project, subject to funding and detailed approval.

7. That expenditure of £35,000 be approved for signing and lining for the Coach Park at the appropriate time.

*NB Councillor Tod left the meeting at the conclusion of this item and returned for consideration of the exempt appendix at agenda item 15 and the remainder of the meeting.*

8. **FIRE SAFETY IN COUNCIL HOUSING**  
(CAB3211)

Councillor Learney introduced the report and thanked all those involved in preparing the new Fire Safety policy, including TACT, officers and the Fire Safety Project Group. She emphasised that most of the Council's housing stock consisted of three story buildings or lower and that no buildings had the type of cladding used in the Grenfell tragedy. An additional £1m had been included in the 2020/21 budget for fire safety works.

At the invitation of the Leader, Councillor Horrill addressed Cabinet as summarised briefly below.

Welcomed the proposals and thanked all those involved for their work. Believed that the door replacement policy should be actioned more quickly than the proposed four years. Queries around how the policy would be applied to leaseholders and whether improved technology was required for the Property Services team to undertake monitoring. Aside from the fire door programme, asked what other works would be carried out as a result of the new Policy.

Councillor Learney, the Housing Policy and Projects Manager and the Property Services Manager responded to comments made. Members were advised that a new legal requirement regarding leaseholders and duty to cooperate was being brought in. With regard to new fire rated front doors, it was not considered that any of the existing doors were high risk, but the work programme would be scheduled to prioritise replacing doors within the first year where there were any doubts regarding performance.

Cabinet agreed the following for the reasons set out above and outlined in the report.

**RESOLVED:**

1. That the updated Fire Safety Policy be approved.
2. That, subject to obtaining any necessary building regulation and listed building consent, fire safety works recommended with the Fire Safety policy be implemented which includes the fitting of fire rated front doors.

3. That it be noted that provision has been made within the HRA budget for £2m for expenditure on capital fire related works (£1m 2019/20 and £1m 2020/21).

4. That delegated authority be given to the Corporate Head of Housing to make minor amendments to the Policy in consultation with Cabinet Member for Housing and Asset Management.

9. **ENERGY SUPPLY CONTRACTS**  
(CAB3238)

Councillor Learney introduced the report which sought approval to enter into a new energy contract for four years under a LASER framework agreement. The new contract would enable the continued use of the Renewable Energy Guarantees Origin (REGO) backed renewal energy tariff.

At the invitation of the Leader, Councillor Pearson addressed Cabinet as summarise briefly below.

Generally welcomed the proposals, including participating in the LASER Energy Framework Agreement. However, believed that the proposed energy supply (Npower) overly relied on carbon offsetting rather than sources of renewal energy supplies from within the district.

Councillor Learney and the Corporate Head of Asset Management (Interim) responded to comments made. It was emphasised that focus should not be on the company supplying (which might change over time) provided the specific product procured matched the required REGO certificate. The different options had been thoroughly investigated and there were no producers of green energy from local sources currently available.

Cabinet agreed the following for the reasons set out above and outlined in the report.

**RESOLVED:**

1. That procurement of electricity and gas via Hampshire County Council and the LASER framework be approved.

2. That authority is delegated to the Strategic Director - Place and Service Lead - Legal to negotiate terms and to enter into and to execute third party deeds of agreements with supplier terms and conditions under the LASER framework providers for gas and electricity for the period 01 October 2020 – 30 September 2024.

3. That energy is purchased in a flexible manner through the method known as "Purchase In Advance".

4. That authority be delegated to the Strategic Director – Place the option to procure water in addition to gas and electricity through the same framework and enter into relevant contractual arrangements.

10. **DEVELOPMENT APPROACH - NEW DOCTORS' SURGERY (LESS EXEMPT APPENDIX)**  
(CAB3247)

Councillor Learney introduced the report which proposed a development approach to the provision of a replacement for the existing St Clement's surgery. Soft market testing had demonstrated interest in the scheme and also emphasised the levels of risk involved in the Council undertaking the development itself.

At the invitation of the Leader, Councillors Lumby and Godfrey addressed Cabinet, as summarised briefly below.

Councillor Lumby

Understood why the proposed approach was being considered but believed it would result in risks for the Council primarily relating to a lack of control over the future development. Freehold disposal was particularly risky but although leasehold disposal offered more control to the Council, it still could not guarantee that the development would proceed. All options should be kept under review and the option of freehold disposal should be discounted.

Councillor Godfrey

Believed that the Council should have regard to the overall risks, including the risk that a new GP surgery would not proceed. The option to dispose of the freehold should not be pursued. Leasehold disposal offered slightly more control but ultimately, provision of a new GP surgery was not a commercially attractive option for a private developer and the Council should continue to be directly involved.

Cabinet then moved into exempt session to discuss the information contained in the exempt appendix before returning to the open session as detailed below.

Cabinet Members noted the comments regarding favouring leasehold over freehold disposal, but believed that it was appropriate given the levels of uncertainty at the current time that neither option were ruled out.

Cabinet agreed the following for the reasons set out above and outlined in the report.

RESOLVED:

1. That the freehold or long leasehold disposal of the Upper Brook Street car park to a specialist primary healthcare developer be approved to enable delivery of a new doctors surgery, instead of direct development by the Council.
2. That the arrangements detailed in report CAB3247 for the marketing and selection process for disposal of the Upper Brook Street car park site be approved.

3. That the Strategic Director – Place be authorised to undertake marketing and the selection process for disposal of the Upper Brook Street car park site, in consultation with the Cabinet Member for Housing and Asset Management, based on the disposal methodology set out in the report, involving a shortlist of specialist primary healthcare developers.

11. **FUTURE ITEMS FOR CONSIDERATION**

RESOLVED:

That the list of future items, as set out in the Forward Plan for July 2020, be noted.

12. **EXEMPT BUSINESS:**

RESOLVED:

1. That in all the circumstances, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

2. That the public be excluded from the meeting during the consideration of the following items of business because it is likely that, if members of the public were present, there would be disclosure to them of 'exempt information' as defined by Section 100I and Schedule 12A to the Local Government Act 1972.

<u>Minute Number</u>	<u>Item</u>	<u>Description of Exempt Information</u>
15	Development Approach – new Doctor's Surgery (exempt appendix)	) Information relating to the financial or business affairs of any particular person (including the authority holding that information). (Para 3 Schedule 12A refers)

13. **DEVELOPMENT APPROACH - NEW DOCTORS' SURGERY (EXEMPT APPENDIX)**

(CAB3447 Appendix)

Cabinet considered the exempt appendix which contained a financial appraisal (detail in exempt minute) before returning to the open session of the meeting to consider the report's recommendations, as set out in the minute above.

The meeting commenced at 9.30 am and concluded at 11.20 am

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CAB3250  
CABINET

REPORT TITLE: NITRATE NEUTRALITY UPDATE

22 JULY 2020

REPORT OF CABINET MEMBER: CLLR JACKIE PORTER, CABINET MEMBER FOR BUILT ENVIRONMENT & WELLBEING

Contact Officer: Julie Pinnock, Service Lead Built Environment

Tel No: 01962 848 439 Email [jpinnock@winchester.gov.uk](mailto:jpinnock@winchester.gov.uk)

WARD(S): ALL WARDS

PURPOSE

Cabinet received a report in January 2020 about 'Nitrate Neutrality' (CAB3219) and the issues this was causing in terms of permitting housing developments. The requirements of the Habitats Regulations and recent European case law regarding their interpretation meant that housing development could not be permitted within the catchment of the Solent unless it would avoid an increase in the discharge of nutrients to the Solent. As a result it was not possible at that time for the Council to grant new planning consents across the district, for housing or other development involving overnight stays. Cabinet agreed a 'Position Statement' on the issue and asked for an update in 6 months time, which is the purpose of this report.

Since the Position Statement was agreed the Council has been granting planning consents, where appropriate, subject to a 'Grampian' condition. This limits occupancy of the dwelling/overnight accommodation until it is demonstrated that the development will either not result in a nitrates increase, or will mitigate it. This report sets out the scale of development affected and updates other matters relating to the nitrates issue, including initiatives to enable development to proceed.

It is recommended that Cabinet supports the proposal to start collecting off-site financial contributions towards mitigation solutions which will be delivered either by the City Council or in partnership with another agency.

It is also recommended that Cabinet confirms its support for proposals by the Partnership for South Hampshire for a strategic mitigation scheme and project officer.

RECOMMENDATIONS:

1. That the current position in relation to nitrates is noted and that Cabinet agree to the proposal to collect off-site financial contributions (by S106 obligation) towards mitigation solutions which will be delivered either by the City Council or in partnership with another agency (to start with immediate effect).
2. That Cabinet confirms its support for proposals by the Partnership for South Hampshire to address nitrates issues (see paragraphs 11.11-11.12).
3. That a further report be brought to Cabinet in twelve months up-dating progress made on the nitrate neutrality issue.
4. That Winchester City Council pursues the issuing of EA permit limits on Southern Water Treatment sites in the district.



## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 This report sets out the position with regard to nitrate neutrality, which raises a number of issues relevant to the new Council Plan. In relation to the aim of 'housing for all', housing development is being delayed by the nitrates issue which is harmful to this objective and to maintaining a 'vibrant local economy'. Measures that could be taken to address the issue may include the creation of habitats and green infrastructure, which could be beneficial in terms of tackling the climate emergency, creating a greener district and living well.

### 2 FINANCIAL IMPLICATIONS

- 2.1 Some of the measures mentioned in this report may have financial implications if taken forward but it is not possible to properly quantify them at this point. Consideration of the detail of these would be undertaken as part of the process of determining whether to proceed with those measures; for example the acquisition of land by the Council or through the Partnership for South Hampshire to create a nitrate credit scheme which developers could access. In the case of land acquisition for mitigation, or creation of mitigation schemes, the costs would be potentially recoverable from developers through payments for the purchase of nitrates 'credits' which could be managed by way of a S106 legal agreement. It is estimated that 1kg nitrate mitigation will cost the Council in the region of £3,500. Each single dwelling in a development may require around 2.5kg nitrate off-set to ensure the development is nitrate neutral, although this will vary based on the nitrate budget calculated in each case. The contribution would be made by the applicant under a S106 legal agreement to ensure their scheme is nitrate neutral.
- 2.2 The nitrate issue also applies to schemes brought forward by the City Council in its role of delivering new housing as these will be required to demonstrate nitrate neutrality, which could have financial implications for such schemes.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 Under the Conservation of Habitats and Species Regulations 2017 ('the Habitat Regulations'), there are significant responsibilities conferred on the Council as a 'competent authority'. Primarily, it requires the Council to only approve plans or projects (such as planning applications or a Local Plan) if there is no likelihood of a significant effect on internationally protected ecological sites.
- 3.2 A significant effect could be caused by a number of potential impacts including direct or indirect habitat loss, air pollution, water pollution, or an increase in recreation. In order to assess whether there is a 'likely significant effect' a Habitats Regulations Assessment (HRA) is carried out. This generally includes an Appropriate Assessment (AA), which is the second more detailed stage 4 of an HRA. Natural England must be consulted on the findings of an

HRA and there is a duty to consider their response. An established principle under law is that appropriate assessments must use the 'precautionary principle'. This means that evidence must demonstrably show that there *would not* be a likely significant effect on the protected sites before planning permission could be granted or a local plan approved. If there is uncertainty or a lack of information, the planning application or plan should be refused. It is also necessary to consider not only the impact of a single plan or project in isolation but where there is any likelihood of a significant effect in combination with other plans and projects.

- 3.3 It is also important to note that this is a legal requirement as opposed to a material planning consideration. Material planning considerations form part of a planning balance and permission can potentially be granted for something which causes harm if the benefits outweigh that harm. This is not the case here and it must be shown that there would not be a likely significant effect in order for the Council to lawfully grant planning permission or approve a local plan. Failure to do this could result in the permission being subject to legal challenge.
- 3.4 The Habitats Regulations transpose two EU Directives: The Habitats Directive and The Birds Directive. As such, the processes and legal requirements effectively cannot be changed at this time. Government has proposed that once the UK exits the EU, the regulations would remain effectively as they are now, so no change in approach is envisaged as a result of Brexit.
- 3.5 The European Court of Justice recently determined a case related to considering water quality in Appropriate Assessments. This is generally referred to as 'The Dutch Case' and the judgement refines the definition of plans and projects and effectively includes significantly more operations within the definition which have an impact on water quality, most notably runoff from agriculture. It is this case in particular which is relevant to the issue of nitrates in the Solent.
- 3.6 There are no immediate procurement implications as a direct result of this report. If land is to be procured it will be subject to seeking separate approval by Cabinet.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The proposals in this report will be implemented initially within existing staff resources. Identifying appropriate land that could be used for mitigation will impact on a number of teams across the Council and there is potential that additional resources may be required, subject to progress with this matter. The Partnership for South Hampshire is considering the appointment of a project manager to develop a strategic mitigation scheme, which will supplement the work of the council's team.

## 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The Council could make changes to its own housing stock and potentially other assets which would then contribute towards schemes being able to demonstrate nitrate neutrality, including the Council's own development schemes. These options are discussed at section 11 below.

## 6 CONSULTATION AND COMMUNICATION

- 6.1 Officers have engaged with Natural England as the statutory consultee and with adjoining authorities, both individually and through the Partnership for South Hampshire.
- 6.2 The matter is discussed at the regular Winchester Agents' Forum.

## 7 ENVIRONMENTAL CONSIDERATIONS

This issue affects the Solent European Sites which are protected as Special Protection Areas. This report looks at potential options for developments in the District to achieve nitrate neutrality and would not therefore itself result in any adverse environmental impact.

## 8 EQUALITY IMPACT ASSESSEMENT

- 8.1 None

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 None required.

## 10 RISK MANAGEMENT

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Property</i>	N/A	N/A
<i>Community Support</i>	N/A	N/A
<i>Timescales While planning consents are being issued, many developments are still being held up in the absence of a widely available mitigation scheme.</i>	This report refers to various potential measures.	Some mitigation measures may have wider benefits, such as for nature conservation, recreation and health.
<i>Project capacity</i>	N/A	N/A
<i>Financial / VfM Nitrate neutrality issues could increase the cost of Council led schemes and providing mitigation that</i>	Identify appropriate initiatives and resources, including recovering costs from private developers.	Opportunities to retrofit existing Council housing stock and enhance other assets.

<i>private developers could access will have financial implications.</i>		
<i>Legal Risk that applicants will not be able to demonstrate nitrate neutrality or implement appropriate mitigation measures and are therefore unable to fulfil the Grampian condition or Section 106 Agreement obligations. Risk of Council accepting financial contributions with no mitigation scheme available to allow expenditure to ensure mitigation.</i>	Various mitigation measures are being considered but ultimately it is for the applicant to demonstrate nitrate neutrality. This is usually likely to be an off-site solution as it will rarely be feasible for developers to resolve the issue solely by measures incorporated into their schemes	To work pro-actively with other authorities, applicants and agents.
<i>Innovation</i>	N/A	N/A
<i>Reputation Ongoing failure to resolve nitrates issues will impact on housing delivery and could attract criticism from developers, agents and other parties involved in the building industry.</i>	Continue to seek practical solutions.	Work with Natural England and other partners to secure future opportunities for nitrate neutrality.
<i>Other Housing Land Supply/Delivery test – delays to residential schemes may start to impact on the Council's land supply and Housing Delivery Test results, possibly leading to pressure for un-planned development, Government intervention, and fewer new homes available.</i>	Continue to seek practical solutions.	N/A

## 11 SUPPORTING INFORMATION:

### Background

- 11.1 Cabinet received a report in January 2020 about 'Nitrate Neutrality' (CAB3219) and the issues this was causing in terms of permitting housing developments. Section 11 of CAB3219 explains the issue in detail, but

essentially the requirements of the Habitats Regulations and recent European case law regarding their interpretation mean that development cannot be permitted within the catchments of the Solent European Sites unless the Council can be satisfied that it will avoid an increase in the discharge of nutrients to the Solent. Given the catchment area of the Solent, this impacts on development within the whole of Winchester district as well as many other authorities in southern and central Hampshire.

- 11.2 As a result of this issue it was not possible at that time for the Council to grant new planning consents for housing or other development involving overnight stays. Cabinet agreed the recommendations of the report, including the endorsement of a 'Position Statement' on the issue. Cabinet also agreed there should be an update in 6 months time, which is the purpose of this report.

#### Legal Matters / Natural England and Environment Agency Positions

- 11.3 There have been no changes to the Habitats Regulations or case law around them that affects the local situation since the last report. Natural England updated their advice note on achieving nutrient neutrality in March and June 2020 along with the accompanying nitrogen budget calculator. The advice note continues to take a 'precautionary' approach, stating that housing development across the Solent region has the potential to exacerbate impacts on protected sites and that nutrient neutrality is a means of providing the certainty required to ensure schemes can be delivered in line with the requirements of the Habitats Regulations.
- 11.4 CAB3219 appended a Joint Position Statement by Natural England and the Environment Agency (Appendix D to CAB3219) explaining the apparent inconsistency between the approaches taken by the agencies, whereby NE sought to prevent further nutrient discharges but EA were not reviewing the permits on discharges from wastewater treatment works draining to the Solent. This clarified that the two organisations were implementing different protection regimes and that they considered that there was not a conflict between them.
- 11.5 The agencies have continued to work together to consider whether there is evidence to justify a permit review of treatment works and they agree there are areas of uncertainty that need investigation before a decision on a permit review can be taken. Unfortunately this work has been delayed as staff have been involved with Covid-19 matters. In the mean time, Southern Water has voluntarily started to monitor nitrates at those treatment works that do not currently have permit restrictions for nitrogen. There has also been political interest in this issue, and the matter has been raised with the Government by MPs in the Solent area, but there is seemingly no imminent national solution to this constraint on development so the Council needs to push ahead with potential local solutions.
- 11.6 Pending a national solution the Council will continue to lobby the Environment Agency to review limits at each treatment works.

### Planning Applications and Development

- 11.7 At the time of the last report all planning decisions on applications for housing or overnight accommodation were effectively 'on hold'. This meant that in Winchester district some 729 dwellings (including student or visitor scheme bedspaces) were significantly or principally backlogged because of nutrient issues, with 409 of these solely due to nutrients (in the Partnership for South Hampshire area as a whole the equivalent figures were 4,448 / 2,797 – PfSH Joint Committee report February 2020). The Position Statement approved by Cabinet appended a proposed 'European Sites Checklist' for planning applicants to complete. This gave applicants the option of confirming that the development would be nitrogen neutral, or accepting a 'Grampian' condition which would require nitrate avoidance and mitigation measures to be implemented before a development could be occupied. If neither applied permission could not lawfully be granted.
- 11.8 Following adoption of the Position Statement most applicants have either sought to demonstrate that their developments are nutrient neutral or have accepted Grampian conditions. As a result all planning applications are being determined in accordance with the Council's adopted Position Statement, but there are now a large number of schemes that cannot be occupied until nutrient avoidance or mitigation measures can be implemented, as required by the Grampian conditions. At the end of May 2020 these amounted to 362 dwellings and 151 student or visitor bedspaces which would require nitrates mitigation estimated at over 500kg per year. The vast majority of schemes are unable to provide mitigation themselves. A similar estimate has been made for the district's future 'housing trajectory' (2019-2031) which estimates that a further 2,173 dwellings and 148 bedspaces could be affected in the future, requiring over 5,700kg per year of nutrients mitigation.
- 11.9 Some developers are in a position to reduce the nutrient 'budget' of their schemes or to mitigate it. Various methods of doing this are being proposed, most commonly taking agricultural land out of production and/or converting it to wetland, woodland or other uses that reduce nutrient output, either on or off site. Few of these have been implemented yet as issues around the legal agreements required to secure the changes and their ongoing maintenance in perpetuity need to be resolved, and may involve the availability of suitable land, including in other local authority areas. Some landowners are now also coming forward with proposals to change land in their control so as to create 'nutrient credits' that housing developers can buy in order to mitigate their schemes. Again, few of these are operational yet.
- 11.10 Some local authorities are developing their own initiatives, particularly for their council home-building programmes, which include acquiring mitigation land, using land already in their ownership and retrofitting the council housing stock to reduce water consumption. While these initiatives may help some authorities and developers, where they control suitable land, have a relationship with landowners, or can create/purchase credits, this type of

solution may not be available for all applicants, even when up and running, especially smaller housebuilders.

- 11.11 The Partnership for South Hampshire (PfSH) is developing a proposal for a Solent Nutrient Fund which could fund strategic mitigation solutions to address nutrient neutrality which would involve the Council in cross-boundary monitoring and enforcement arrangements with other Councils. It is also considering a temporary project manager post to develop a PfSH-wide environmental strategy and take forward work on a strategic mitigation scheme. These initiatives could provide an effective way forward in developing strategic mitigation solutions and a nutrient fund to bring them forward, with the advantage that credits can be prioritised for schemes which accord with local plan policies and priorities and for developers who may not otherwise be able to implement developments.
- 11.12 At the time of writing, the Chief Executives of the PfSH authorities had given their 'in principle' support to these proposals, subject to the need for further work on the financial details. A report seeking the buy-in of the PfSH authorities to these proposals was considered by the PfSH Joint Committee on 7 July.
- 11.13 WCC Actions
- 11.14 Report CAB3219 referred to a number of actions that were being undertaken or were proposed:
- 11.15 **Position Statement:** The Position Statement was published on the Council's web site once endorsed by Cabinet and has proved useful in setting out the Council's position. Planning applications are no longer being held back, as a Grampian condition is now generally used, although development itself is generally still constrained for the reasons described in para 11.8 above.
- 11.16 **Water Reduction Measures in Council Stock:** such measures could generate nutrient 'credits' for use by the Council for its housing programme, or to sell to developers. Consultants have been appointed to assess the scope for this – see 'Assess the Scope to Use Council Land/Premises' section at paragraph 11.18 below. However, the water saving is only available where the waste water treatment works that are served by properties where the saving takes place has a permit limit. For Winchester, most of the HRA stock is served by works without a limit with only a few exceptions including Bishops Waltham.
- 11.17 **Agricultural Land Decommissioning:** the report suggested working with partners to identify opportunities to decommission land with a view to generating nutrient 'credits'. The PfSH initiatives mentioned above are being developed and the Hampshire and Isle of Wight Wildlife Trust has developed a proposal to acquire agricultural land and manage it for nature conservation so as to generate nutrient credits. The Trust has acquired its first site on the Isle of Wight, although the credits from this are fully subscribed, and are exploring a further site which may be available in the next 2-3 months. This

initiative is similar to the PfSH proposals and there is potential for them to work together.

- 11.18 Several landowners in the District and wider South Hampshire area are coming forward with proposals to decommission agricultural land and convert it to less nutrient-intensive use so as to generate credits. These are also similar to the Wildlife Trust scheme but on an individual private site/owner basis.
- 11.19 **Assess the Scope to Use Council Land/Premises:** CAB2319 suggested commissioning consultants to assess whether Council land or premises could be changed/used so as to generate nutrient credits. Consultants have been commissioned to develop a nutrients budget for the Council's housing programme and to review the scope to generate credits through water savings in the Council's housing stock. This is only applicable to schemes where the relevant wastewater treatments works has a nitrates permit limit, which in this district is only at Bishops Waltham. This initiative therefore has limited potential to generate credits. The potential to manage land in the Council's ownership in a way that could assist, or to acquire additional land to support Council led development, is also being investigated.
- 11.20 In the case of land acquisition for mitigation, provided there is sufficient certainty of delivery, the Council could start collecting off-site financial contributions from developers (by S106 legal agreement) to deliver the mitigation needed for its own development, either independently or as part of a wider Council scheme based on the acquisition and management of suitable land creating 'nutrient credits'. Alternatively the Council could act as an intermediary and purchase credits from a partner which manages such land (such as PfSH or Hampshire and Isle of Wight Wildlife Trust).
- 11.21 It is estimated that 1kg nitrate mitigation will cost in the region of £3,500. Each single dwelling in a development may require around 2.5kg nitrate off-set to ensure the development is nitrate neutral, although this will vary based on the nitrate budget calculated in each case. The Council can pool the contributions to enable delivery of a larger scheme. All fixed contributions would be subject to an indexation clause in any S106 legal agreement.
- 11.22 Cabinet is asked to support the proposal to collect an off-site financial contributions capped at £3,500 per 1kg nitrate mitigation (by S106 obligation) towards mitigation solutions which will be delivered either by the City Council or in partnership with another agency or party. The scheme would start with immediate effect and be secured by S106 obligation. The progress of the scheme should be reviewed in twelve months.

A recent appeal decision regarding a proposed residential development in Fareham was dismissed by the Planning Inspectorate based on lack of certainty regarding nitrate neutrality. Having carefully reviewed that decision, it is considered that the appeal dealt specifically with the merits of the case, which involved a unilateral undertaking which did not provide sufficient certainty on securing nitrate mitigation. This appeal decision is timely, and will



help in ensuring that any S106 obligation completed by the Council is sufficiently robust in its terms to address the issues raised in this appeal.

- 11.23 **Cabinet Member to Pursue Issue with Government:** Appendix B of CAB3219 was a letter from the Cabinet Member for Built Environment and Wellbeing to the Secretary of State for Housing, Communities and Local Government of 18 November 2020. Similar letters were also sent by PfSH and other South Hampshire authorities. Appendix A reproduces a reply from Rebecca Pow MP, Parliamentary Under Secretary of State at DEFRA, welcoming the work being done by PfSH and referring to the Environment Agency and Natural England work on permit reviews and strategic mitigation. There is reference to a funding bid that has been submitted by DEFRA and MHCLG to the Treasury to help with evidence base development and developing a strategic approach, but the result of this bid has apparently been delayed by Covid-19.
- 11.24 It appears that this funding could not be used for mitigation measures or a project manager but there is reference to exploring other funding options. Therefore, there seems little prospect of a 'solution' at national level, at least in the short term, making it important to press on with local initiatives.
- 11.25 A Nitrates briefing on the issue was given to our Winchester MP in March 2020.
- 11.26 **Work with Natural England on Acceptable Measures:** Various planning applicants are putting proposals forward for nutrient avoidance or mitigation schemes, sometimes involving land in another local authority area. As the City Council is the 'competent authority' for its own area in relation to the Habitats Regulations it is important that it can be satisfied that such measures are acceptable, effective, deliverable over the long term, and avoid 'double counting' of land / credits. Applicants or officers consult Natural England (NE) on these matters as proposals are developed or applications made, as NE is the statutory nature conservation advisor and consultee on appropriate assessments.
- 11.27 This advice is very valuable and NE are putting significant resources into providing advice to developers and local authorities across the Solent Area. NE is also working with the Environment Agency on evidence for a review of emissions permits and updates its 'Non-Technical Summary' guidance note and Nitrogen Budget Calculator on a regular basis.
- 11.28 **Other Measures:** Planning permissions are now monitored to establish the 'nutrients budget' of individual applications and the cumulative total. In addition, an estimate has been made of the nutrients budget for the housing trajectory looking forward. These are set out above and involve estimates in some cases because a precise budget cannot be calculated until the details of a scheme are known (existing/proposed land areas, number of units, drainage method, etc). As the new Local Plan is developed a nitrates budget will need to be produced and there is likely to be a need to allocate mitigation land as well as development sites.

11.29 The Council is contributing to several studies being undertaken by PfSH or groups of Solent authorities to clarify the scale and impact of the nitrates issue. Consultants have been appointed to update the inputs used by the PfSH Integrated Water Management Study 2018 to calculate the expected scale of nitrates arising from future development. It is expected that this may result in reduced nutrient projections, particularly from some treatment works areas, although there is expected to remain an issue overall. Similarly, a specific piece of work has been commissioned to investigate in more detail the scale and impact of emissions from the Budds Farm treatment works, which serves the south-eastern part of the District.

11.30 The Government's Planning Practice Guidance on appropriate assessment is being updated and DEFRA has apparently fed the Solent experience into this work. While this will not change the law or the requirements of the Habitats Regulations, it may be useful.

### Conclusion

11.31 It is recommended that the various initiatives and areas of work mentioned above are pursued as set out with a view to developing mitigation or avoidance measures that will enable development to continue in accordance with adopted plans.

### OTHER OPTIONS CONSIDERED AND REJECTED

11.32 The Council could choose not to investigate or take forward the initiatives mentioned above, or not to support the PfSH proposals. This would lead to continued uncertainty over how the nitrates issue will be resolved, and delay to development if applicants cannot demonstrate nitrate neutrality or a deliverable mitigation scheme. This is an unsatisfactory situation for all the reasons explained above, including the longer term implications for housing land supply, the Council's housing programme, and the Housing Delivery Test.

### BACKGROUND DOCUMENTS:-

#### Previous Committee Reports:-

CAB3219 – Nitrate Neutrality, 22 January 2020

#### Other Background Documents:-

None

### APPENDICES:

A. Reply dated 20 April 2020 from Rebecca Pow MP, Parliamentary Under Secretary of State at DEFRA to Caroline Dinenage MP



Department  
for Environment  
Food & Rural Affairs

**Rebecca Pow MP**  
Parliamentary Under Secretary of State

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Caroline Dinenage MP  
House of Commons  
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Our ref: MC2020/07007/AJ

20 April 2020

Dear Caroline,

Thank you for your email of 20 March on behalf of Cllr Allan Glass of New Forest District Council, Appletree Court, Beaulieu Road, Lyndhurst, about the impact of nutrient discharge on house building across South Hampshire. I am replying as the Minister responsible for this policy area.

I am very much aware of this issue and the concern it is causing across the Solent catchment. The Government is keen to help developers achieve 'neutrality', recognising that this may be especially challenging for small builders and urban sites.

I welcome all the work that the Partnership for South Hampshire (PFSH) has carried out to develop short and medium term solutions to this issue. Below I have set out how the Government is supporting the PFSH's work regarding the matters you raise in your letter.

The Environment Agency (EA) and Natural England (NE) have been working together to establish whether there is sufficient evidence available to justify a Permit Review of Solent wastewater treatment works. It is not for the Government to commission the review, but for the EA to determine if one is necessary based on environmental evidence it receives and in line with the Environmental Permitting Regulations.

Defra is continuing to work with the Ministry of Housing, Communities and Local Government (MHCLG), the EA and NE to map out the practical mitigation options available and to consider how we can assist stakeholders in the development of a strategic mitigation approach. It is Local Planning Authorities' (LPAs) responsibility to lead and secure funding for strategic mitigation solutions, such as by identifying suitable agricultural sites that could be used to offset the impact of additional nutrients from new housing developments. To support this, Defra and MHCLG are exploring funding options to pilot a nutrient credit scheme in the Solent.

We welcome Cllr Glass's proposal of a dedicated officer to provide strategic oversight and management of the nitrates issue across the Solent catchment. We recommend that LPAs work together to explore funding opportunities. Whilst it is not the Government's role to fund such local posts, Defra and MHCLG are looking into other potential funding sources that could support this.

Water efficiency measures may form a helpful part of an overall approach to tackling this issue. The Government does not directly fund water efficiency measures in local authority properties. However, there are other potential funding options that may be considered. Local authorities could approach water companies operating in their areas to see if they can provide support for improving domestic water efficiency. Alternatively, funding could be secured for this form of mitigation via developer contributions.

In addition to the support outlined above, Defra, MHCLG, the EA and NE have provided a joint position statement clarifying EA and NE's respective roles in managing impacts on habitats through the planning and permitting regime. NE has also published its revised Nitrate Neutrality Methodology. Both are available on the PfSH website. A summary version of the Nitrate Neutrality Methodology with a calculator tool to help smaller developers assess and calculate nitrate mitigation needs for their development will also be available soon.

We will continue to be responsive to further requests for guidance, information and support. We are confident that with the support of NE and the EA, local authorities will be able to find a pragmatic way forward in the short term, while work continues on wider solutions.

Thank you once again for taking the time to contact us about this important issue.



**REBECCA POW MP**

CAB3251  
CABINET

REPORT TITLE: WASTE CONTRACT EXTENSION

22 JULY 2020

REPORT OF CABINET MEMBER: Councillor Martin Tod, Cabinet Member for Service Quality and Transformation

Contact Officer: Campbell Williams Tel No: 01962 848476 Email cawilliams@winchester.gov.uk

WARD(S): ALL

PURPOSE

Following a competitive tendering process, the Council has awarded the waste collection services to BIFFA under a new contract which is due to commence 1 October 2020. Mobilisation plans had been progressing well. However, as a result of the impact Covid 19 has had on many areas of the economy, the delivery of new vehicles required for the new contract has been delayed. This report therefore recommends an extension to the current waste contract and a revised start date for the new contract of 1<sup>st</sup> February 2021, the same day that the charged for garden waste is due to commence.

RECOMMENDATIONS:

That Cabinet:

1. That an exemption to CPR be approved in accordance with paragraph 41 of the contract procedure rules in the council's constitution.
2. Approve extension of the existing waste contract with BIFFA until 31<sup>st</sup> January 2021 due to supply chain delays in provision of new vehicles due to Covid 19.
3. Delegate to the Strategic Director (Services), in consultation with the Cabinet Member for Service Quality and Transformation and the Service Lead – Legal, authority to negotiate, prepare and enter into final documentation to complete the extension and later commencement date of the new contract.
4. Agree that £150,000 of the savings resulting from this decision be used to further support the implementation of the improved Garden Waste service.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 Tackling the Climate Emergency and Creating a Greener District - The new waste contract delivers significant improvements to vehicle emissions and a positive impact on recycling tonnages through the implementation of communal glass collection, and waste electrical equipment. The unavoidable late start of the contract will unfortunately defer this benefit by a further 4 months.
- 1.2 Your Services, Your Voice – Delaying the commencement of the new contract in February 2021 will not impact on existing services, which are currently performing well. The new contract will introduce an improved reporting system and direct digital link with freighters providing an opportunity for additional performance improvements.

### 2 FINANCIAL IMPLICATIONS

- 2.1 The council faces a significant in year financial deficit and a delayed start date of the new contract provides some financial benefit. The current waste contract costs approximately £3.4m per annum compared to c£4.2m for the new contract. Delaying the commencement of the new contract will result in a reduced operating costs for 2020/21 estimated at £267,000 (subject to the overall costs of vehicle maintenance).
- 2.2 It is proposed to retain £150,000 of this reduced spend and allocate it to fund the promotion and implementation of the improved Garden Waste service, including marketing and promotion and digital improvements to facilitate on line payments, direct debits and integration with the BIFFA ICT systems. All residual savings will contribute towards meeting the projected deficit resulting from reduced income across council services in 2020/21.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 This will require the extension of the current contract by a further 4 months until 31st January 2021, leaving the new 8 year contract to start on 1st February 2021, until 31st January 2029.
- 3.2 The vehicles necessary to perform the services under the new contract have been delayed as a result of supply chain shortages due to Covid 19. It is therefore recommended that a short extension to the existing contract of four months duration be agreed with Biffa to allow sufficient time for delivery of the vehicles. The new contract to be completed on the expiry of the current contract with a delayed commencement date to accord with the expiry of the short extension.

- 3.3 The council's Contract Procedure Rules at paragraph 41 of the constitution provide that Cabinet may approve an exception to the rules where it can be demonstrated that by extending the term (either by exercising an option within the contract or otherwise), or varying and/or extending the scope of an existing contract, it is not practical to seek competitive tenders or quotations and is in the best interests of the council. Additionally, it would not be possible to obtain genuine competition under the Contract Procedure Rules for the requested contract extension due to the short time period. This request to approve the exception to the Contract Procurement Rules is because under the constitution the monetary value means that approval must be authorised by Cabinet.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The work associated with this change can be incorporated within existing resources.

#### 4.2 PROPERTY AND ASSET IMPLICATIONS

- 4.3 The new contract is subject to an amended lease for the depot in Barfield Rd, Winchester. This revised lease commencement will also be delayed by 4 months.

#### 5 CONSULTATION AND COMMUNICATION

- 5.1 A communication strategy is being developed in relation to the October start. This will be revised and combined with the Communication strategy for the new Garden Waste service.

#### 6 ENVIRONMENTAL CONSIDERATIONS

- 6.1 The new contract will result in very significant reductions to carbon emissions as a result of the Council's activities. Whilst technology is not sufficiently developed to support electric freighters for this service, the Council will continue to work with BIFFA to test opportunities as technological developments come forward. The delay in the start date will mean these benefits are also slightly delayed as set out in section 1 above.

#### 7 EQUALITY IMPACT ASSESSEMENT

- 7.1 None

#### 8 DATA PROTECTION IMPACT ASSESSMENT

- 8.1 None required

## 9 RISK MANAGEMENT

- 9.1 The main risk relates to the vehicles not being delivered on time, and the extension having to be extended a further time, which we can manage through the wording in the legal documents which will follow.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Property</i>	none	None
<i>Community Support</i>	None	None
<i>Timescales</i>	None	None
<i>Project capacity – Combining start of new contract and green waste may increase risk of failure due to capacity</i>	Clear project governance arrangements in place along with appropriate capacity identified in a range of council teams	None
<i>Financial / VfM</i>	none	Potential saving to WCC as a result of delay to contract start date.
<i>Legal – Risk of formal challenge to the decision</i>	External legal advice sought on preferred route and approval of the exemption under the CPR therefore minimising the risk of a challenge.	Robust process is followed to approve the contract extension.
<i>Innovation</i>	None	None
<i>Reputation- Delayed start in new services to residents may impact on public confidence</i>	Considered low risk due to the main services (general waste, recycling, glass and garden waste) not affected by the change	None
<i>Other</i>	None	None

## 10 SUPPORTING INFORMATION:

### 10.1 New contract

In October 2019 BIFFA began a one year contract extension, following the split of responsibilities from the shared approach under the contract with East Hampshire District Council.

A new 8 year contract was tendered, leading to the successful company, BIFFA, being awarded the new 8 year contract with a scheduled September 2020 commencement date.



As a result of BIFFA's appointment, and the method of operation BIFFA are proposing, there is no intention to change any of the collection days, or any of the main types of collections. There were however a number of improvements to the new contract.

- a) A new set of vehicles would be provided which would support a more effective and environmentally efficient way of collecting household waste.
- b) A new waste electrical and electronic equipment collection would begin, from each household, to be collected in a cage on the underside of new vehicles.
- c) A new collection of glass from communal properties on a monthly basis would begin.
- d) A new tracking software and hardware to link the customer service centre, the contract monitoring operatives, and the BIFFA crews and staff would be installed into the new vehicles
- e) The new vehicles would have a new livery and this would kick start an ongoing communications approach to increase recycling, and reduce the overall amount of waste produced.

## 10.2 COVID 19

Whilst the effect of COVID 19 on the day to day collection of waste during the period of the pandemic has been managed without any change to the collections that the city council offers, it has had a significant impact on the implementation of the new contract.

The new vehicles which are due to arrive, have new technology installed, and be the basis of the new collections, are now not scheduled to arrive until around November.

This is due to the manufacturer (Dennis Eagle) having their manufacturing and supply lines closed during the pandemic. These are now open again, and BIFFA are confident that the vehicles have been ordered and will be with us by late November ready for testing, fit out and deployment.

Because of the significant growth in waste during December and January, and the need to leave some contingency for further delay, it is recommended that any delay to the new contract last until February 2021.

## 10.3 Options

There are two main options in relation to a contract extension. Firstly to begin the new contract on the original start date, but not to roll out the new services

until the vehicles are ready, and secondly to set an extension period and to begin the new contract and the new services on that extension date.

To ensure we chose the right option we sought external legal advice and reviewed the financial implications of both.

#### 10.4 Finance

The current contract has a value of approximately £3.4 million per annum, whilst the new contract has a value of approximately £4.2 million per annum, subject to property escalator uplifts. Therefore the extension of the old contract by 4 months saves around one third of the difference in value between the two, equating to c£267,000.

The contract date was October, so there will be a need to index the price of the contract related to CPI, however with present and forecast CPI values this is likely to have a minimal impact.

Whilst there will be growth in houses which needs to be taken into account, this will impact on the cost of waste collection regardless of whether the existing or current contract is used, and so is immaterial to decision making.

The council would need to continue its threshold provision within the current contract for vehicle maintenance, where a rate of just over £2,000 for maintenance is built into the contract price for each month, totalling £25,000 per vehicle for the year, for ten vehicles. This means that there would be a maintenance value of just over £33,000 provided for within the contract, for each of the ten vehicles for the 12 months of the existing contract plus the 4 month extension. As long as the maintenance value falls within this existing and extended provision there is no further impact on the council's finances. At present the maintenance values are tracking the expected values, when averaged out across the fleet of 10 vehicles, but this will continue to be monitored.

Therefore the extension of the current contract by 4 months leaves a forecast benefit to the city council in financial year 20/21 of £267,000 on a one off basis, before any additional maintenance costs of the vehicles.

Alternatively, the new contract could commence at the higher rate of £4.2m but without additional services due to lack of vehicles. The increased cost to the council over this period would be £267,000

#### 10.5 Conclusion

The conclusion is therefore because of the legal advice of the impact of the delay in vehicle delivery from COVID 19, that it is better to move the service commencement date to the 1<sup>st</sup> February, with enough contingency in place to manage a further delay should this occur.

11 OTHER OPTIONS CONSIDERED AND REJECTED

- 11.1 Consideration has been given to commencing as planned at October 2019 utilising existing vehicles and deferring the introduction of the new vehicles and additional recycling services. This would result in the Council paying for services before they were introduced and did not offer reasonable value for money to the Council.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

Other Background Documents:-

None

APPENDICES:

None

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CAB3249  
CABINET

REPORT TITLE: LEISURE CENTRE UPDATE – IMPACT OF COVID-19

22 JULY 2020

REPORT OF CABINET MEMBER: Cllr Malcolm Prince

Contact Officer: Chas Bradfield Tel No: 01962 848308 Email  
[cbradfield@winchester.gov.uk](mailto:cbradfield@winchester.gov.uk)

WARD(S): ALL

## PURPOSE

The two leisure centres operated by Places Leisure on behalf of the council have been closed since the start of lockdown in March 2020. The COVID-19 crisis has significantly altered the economics of leisure centre operations in the short term by massively reducing the income they can generate whilst still incurring significant ongoing building, security, energy, maintenance and staffing costs. This means that the cost to the council will significantly increase, even if centres remain closed.

Access to sports and leisure facilities is crucial for the residents of the district to support health and wellbeing in these difficult times. This is a key priority in the Council Plan. This report details actions to enable continuity of leisure centre service provision as well as supporting the long term success of the new Winchester Sport and Leisure Park and Meadowside Leisure Centre in Whiteley.

The report recommends urgent short term changes to the leisure operator management arrangements for River Park Leisure Centre and Meadowside Leisure Centres. This will be informed by Government guidance and will ensure provision of service prior to the opening of new Winchester Sport & Leisure Park in spring 2021.

The severe financial implications of the COVID-19 pandemic on the leisure sector is a serious national issue that has been raised at government level by local government and private sector representatives. It has affected all public leisure centres in the UK, whether they are outsourced or still managed in-house. Despite the government announcement on 9 July that centres may open from the 25 July, at time of publication of the report there has been no specific financial support for this sector. Councils, leisure operators and trusts are suffering severe financial issues across the country.

The council has analysed a number of options, including keeping facilities closed until the new centre opens. Even this option would incur an additional in-year cost in

excess of £800,000. This is the “base case” financially when considering how best to ensure leisure centre services are made available, and considering the additional costs of re-opening the centres. .

The council’s aim is to ensure leisure centre provision is available to our community in a safe way, in accordance with Government guidance, in spite of the financial challenges that this presents as well as supporting the long term success of the new Winchester Sport and Leisure Park and Meadowside Leisure Centre in Whiteley. We will aim to re-open our centres from 1 September 2020.

RECOMMENDATIONS:

1. Approve the termination of the existing operator management contract with Places for People Leisure Management Ltd (Places Leisure) for River Park and Meadowside Leisure Centres due to circumstances related to the COVID-19 emergency from 31 August 2020 based on the heads of terms set out in exempt appendix 3.
2. Approve the budget of up to £345,000 expenditure associated with the leisure centre contract termination, which includes maintaining the River Park and Meadowside Leisure Centres during the closure period and up until 31 August 2020.
3. Delegate to the Strategic Director – Place in consultation with the Cabinet Member for Sport, Leisure and Communities and Deputy Leader and Cabinet Member for Finance and Risk, final negotiation of a settlement agreement based on the heads of terms in exempt appendix 3 and the Service Lead Legal to prepare, agree and enter into the relevant contractual arrangements to terminate the operator contract with Places for People Leisure Management Ltd and associated agreements such as any lease and/or licence or transfer or novation arrangements.
4. Approve the interim appointment of Sports and Leisure Management Ltd (Everyone Active) as operator of River Park and Meadowside Leisure Centres from 1 September 2020 based on the heads of terms in exempt appendix 2 until the procurement of a new operator in Meadowside Leisure Centre and the transition of operation from River Park Leisure Centre to the new Winchester Sport and Leisure Park.
5. Delegate to the Strategic Director – Place in consultation with the Cabinet Member for Sport, Leisure and Communities and Deputy Leader and Cabinet Member for Finance and Risk, the finalisation of interim contract terms with Sports and Leisure Management Ltd (Everyone Active) based on the draft

Heads of Term in exempt appendix 2 and the specification set out in exempt appendix 4 and the Service Lead Legal to prepare and enter into the relevant contractual arrangements for an interim operator contract with Sports and Leisure Management Ltd (Everyone Active) as necessary until permanent arrangements are put in place, inclusive of associated agreements such as temporary lease and/ or any licence or transfer or novation arrangements.

6. Approve a budget of up to £790,000 for the management and operational expenditure to enable the opening River Park and Meadowside Leisure Centres in September 2020 until the procurement of a new operator in the Meadowside Leisure Centre and the transition of operation from River Park Leisure Centre to the new Winchester Sport and Leisure Park.
7. Delegate to the Strategic Director Places and the Service Lead Legal authority to use the negotiated procedure without prior publication process under s32 (2) (c) of the Public Contract Regulations 2015 for the appointment a new operator until the procurement of an operator for Meadowside Leisure Centre and the transition of operation from River Park Leisure Centre to the new Winchester Sport and Leisure Park and to issue a VEAT notice notifying of a direct award of an interim contract on the basis of urgency.

IMPLICATIONS:1 COUNCIL PLAN OUTCOME

- 1.1 The global pandemic of coronavirus has resulted in unprecedented challenge to the nation on a scale not experienced since the outbreak of WWII. Families and communities have suffered heart breaking personal loss and financial crisis. The council responded to this outbreak by maintaining council services, providing support to local businesses, supporting the most vulnerable in our communities and delivering national funding packages. The themes of the Council Plan could not be more relevant as we look forward how to best support our district to recover over the coming months.
- 1.2 This report underpins the Living Well priority in the Council Plan as the Council's leisure centres encourage participation in physical activity and support our communities by extending the range of sporting facilities across the District enabling residents to enjoy a wide range of activities.

2 FINANCIAL IMPLICATIONS

- 2.1 This report sets out the potential financial impacts of COVID-19 on the provision of leisure facilities and their impact on the 2020/21 budget and medium term financial strategy. It should be noted that there are closure period costs which the Council has to meet in these circumstances regardless of whether the centres are reopened or who the operator is.
- 2.2 The financial impacts are made up of a number of components:
- a) Closure period costs
  - b) Interim operator forecast for re-opening of the leisure centres
  - c) Termination costs (including additional costs for equipment transfer above that currently budgeted).
- 2.3 The closure period costs are those incurred by Places Leisure for the period when the leisure centres were unable to open following the instruction from Government on 21 March 2020. For financial modelling purposes, it has been assumed that these continue until 31 August 2020. Under change in law provisions within the contract, Places was permitted to enter into discussions with the Council over a significant additional net cost of managing the centres given the temporary inability to generate income. The net monthly cost for this period averages £47,000. These relate to essential costs in key areas as set out below. It should be noted that these have been carefully scrutinised and verified by officers and supported by professional advice in leisure management provided by The Sports Consultancy. The cost include:
- essential staff costs where not covered by furlough payments from government;



- the ongoing maintenance and security of the building;
- energy costs which are vital in terms of ensuring that the condition of the water in pools is maintained thus allowing them to be usable once reopening happens;
- Undertaking their statutory obligations, e.g. swimming pool water testing; and
- ongoing unavoidable contract costs, such as pool treatment specialists, alarm contracts and payment / finance systems.

2.4 The interim operator cost forecast is based on detailed negotiations with Everyone Active as interim operator and covers two areas:

- b) A guaranteed monthly payment of £17,000 to cover their central and contract costs (these include amongst other things central office support for finance, administration, ICT infrastructure, training and support, human resources, membership, purchase ledger departments, sales and marketing, health and safety) and hardware (ICT) installation and support costs.
- c) The net operational cost of the centres, which has been estimated to be circa £79,000 per month.

In practice, the interim operational cost forecast would function on an open book basis. It is an estimate of the net cost of re-opening the centres during the period from 1 September 2020 (when it is likely that some social distancing restrictions will still be in place). As a consequence, the operator's ability to generate normal levels of income will still be constrained. At the end of each month, a review of actual performance would be undertaken on an open book basis and any necessary financial adjustments would be made to reflect variations from the estimates. The interim operator recognises the financial pressures that both parties face, so have agreed to a review of financial performance after a 3 month period with the potential to share the financial risk from that point on.

2.5 The costs relating to the termination of the existing contract with Places Leisure include costs which Places Leisure will incur in order to prepare for demobilisation of the contract and handing over to the new operator. Also included are costs relating to the asset value of equipment which won't have reached the end of its useful economic life at the end of the contract. In agreeing the contract for the new WSLP, the Council had already agreed to pay the existing centre operator the remaining book value of the assets; the termination costs assume the additional book value of the assets due to them transferring to council ownership sooner. Some of the gym equipment may still have a financial value if a suitable alternative use or a purchaser can be found for it, but there will be little value in other equipment and fixtures.

2.6 Overall, the estimated net cost for the period 21 March 2020 until 30 April 2021 is £1,141 million. This is made up as follows:

- |    |  |          |
|----|--|----------|
| a) | Interim operator forecast net cost:      | £765,000 |
| b) | Closure period net cost:                 | £280,000 |
| c) | Termination cost :                       | £64,000  |
| d) | COVID-measures (PPE and other equipment) | £19,000  |

2.7 These above estimated costs relate to an interim operation contract for River Park and Meadowside leisure centres up to the end of April 2021. For each additional month this would incur an estimated monthly cost of £90,000.

2.8 See Exempt appendix 1 for further breakdown of costs.

2.9 Financial impact of COVID on the leisure operation

2.10 Option analysis – financial summary

- a) A variety of scenarios have been modelled, outlined later in the report. If the Council were to choose to go ahead with options D or E, resulting in the continued closure of the leisure centre, it is probable that the impact of losing staff (option D) and centre membership numbers (options B, D and E) will cause the operator of the new centre to renegotiate the basis of the management fee for the WSLP. A real risk is that a significant number of existing centre members may be likely to join other centres rather than transfer to the new centre when it opens. Initial estimates suggest this could result in a cost to the Council of up to £900,000 over the first three years of the new contract. It is unlikely the impact of the early closure of RPLC would result in ongoing costs at the WSLP beyond the initial three year period. However, there is much uncertainty in the leisure operator sector resulting from COVID-19 and its impact on customer numbers; so the risk of renegotiation of the WSLP operator contract remains even if the Council ensures RPLC reopens to customers under a contract with either the existing or a potential new operator.
- b) The recommended option is the cheaper of the two options A and C which involve re-opening the leisure centres in September. It is important to consider the future running and financing of the new Sport and Leisure Park at Bar End. The smooth transfer of staff and customers from one operation to the other is a vital factor in the business case and hence the financing of the debt for the construction costs of the new facility. It is considered that having Everyone Active being in place to run RPLC when it reopens will assist this objective greatly. Everyone Active will also be well placed, financially and operationally, to run Meadowside until a new operator is procured as

they run other centres near by and therefore have a base for operation and suppliers already in place. .

- 2.11 The period leading up to the opening of the new Sport and Leisure Park is therefore very significant; if the process is not managed carefully and the Council's Leisure Centres do not reopen and are well managed in the interim period then the risk of significant longer-term financial implications is increased.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The council has wide ranging authority under the 'general competence' provision of s1 of the Localism Act 2011 which enables it to take actions to the benefit of its area which is commonly available to other private sector bodies. S19 of the Local Government (Miscellaneous Provisions) Act 1976 enables the Council to provide recreational facilities for the benefit of the community.
- 3.2 Due to the recent pandemic circumstances the Coronavirus Act 2020 and associated regulations and amendments established new ways of living and working, including social distancing, home working, school closures and protection of key workers and the vulnerable. The Health Protection (Coronavirus, Business Closure) (England) Regulations 2020 (SI 2020/327), set out the restrictions which applied from 2pm on 21 March requiring the closure of certain retail, hospitality and leisure businesses. As a consequence of this legislation, River Park and Meadowside Leisure centres were required to close with the operator maintaining the centres on behalf of the council to ensure health and safety compliance requirements were met.
- 3.3 The Council has responsibility to ensure compliance with all legal requirements in relation to these leisure centres which are managed on its behalf by the current operator. Compliance is monitored by the council's environmental health officers. Places Leisure has maintained the centres in accordance with the legislative requirements on behalf of the Council and should be compensated for their work to ensure that the Council met these obligations.
- 3.4 The options discussed in this report to enable ongoing management of the Council's leisure centres are based on a contractual sum above the procurement threshold in the Public Contract Regulations 2015 (PCRs).
- 3.5 An additional consideration is the cabinet decision which approved the deed of variation (dated 21 June 2018) and early termination of the operator contract of River Park due to the provision of the new leisure centre. This cabinet report considers an early termination of the operator contract due to the current Covid-19 circumstances as it is considered that continuation of the existing contract is no longer viable. The current contract includes a term which enables both parties to terminate on 28 days notice, where there is a reasonable belief that the Centre will not be fully open before the end of the 26 week period. The termination of this contract is for reasons not contractually foreseen and affects both River Park and Meadowside. The

serving of notice pursuant to this clause is not considered to gain any advantage above the agreed settlement which avoids a claim for compensation. Termination costs should and do include factors such as the operator acting to ensure that the Council's statutory obligations were and are met, and the financial termination requirements under the current contract such as asset depreciation. The financial liabilities negotiated in this settlement remain similar should the council effect termination through the contract.

- 3.6 A further consideration is the staff at the leisure centres, the majority of whom are currently on the central government furlough scheme. An early termination of the contract by way of mutual agreement and an emergency procurement with an interim operator must involve the correct TUPE transfer of all staff between operators. The procurement of the new Leisure centre operator contract included the transfer of staff under a TUPE arrangement. The council should ensure that the terms of any agreement do not alter the former procurement of the new leisure operator.
- 3.7 In respect of procurement, if the decision is made to terminate the current operator contract relating to River Park and Meadowside earlier than anticipated for the reasons in this report, then it is appropriate for the Council to consider using the negotiated procedure without prior publication process of under s32 (2) (c) of the Public Contract Regulations 2015 for the appointment a new operator.
- 3.8 A direct award is the most feasible option to enable the Council to put in place a temporary solution. This recommendation is based upon necessity in order to appoint an interim operator due to the unforeseeable event of the pandemic together with the urgency of the situation until the procurement of an operator for Meadowside Leisure Centre is concluded, to manage the closure of the River Park Leisure Centre appropriately and to enable transition of membership to the new leisure centre.
- 3.9 In order to provide transparency to operators in relation to this decision a notice for voluntary *ex ante* transparency, (VEAT Notice) which sets out as clearly as possible the grounds for this award should be published. A VEAT Notice provides an opportunity for any operators interested in the short-term contract to respond to the Notice and enables the Council to be seen to have regard to the general principles governing public procurement: equal treatment, non-discrimination, mutual recognition, proportionality and transparency.

#### 4 WORKFORCE IMPLICATIONS

- 4.1 The River Park Leisure Centre employs 58 full time equivalent personnel and Meadowside Leisure Centre employs 23. In terms of overall headcount this is much more significant involving around 700 part and full time staff in total across the two centres. The staff is an asset to the leisure centre operation, and are essential to the effective delivery of leisure centre services. The

operators and the council need to ensure that staff is kept informed, and appropriately consulted through this transfer process. The staff are also essential for the future running of both the new Leisure Centre currently under construction and Meadowside Leisure Centre at Whiteley

- 4.2 Existing staff have received regular communications with regards to the government guidance on the re-opening of leisure centres. At the time of writing the report no guidance was available on the date for this.
- 4.3 There are implications for the workforce at the leisure centres who are subject to TUPE regulations. Any option whereby the Council takes running of the leisure centres back in house but doesn't reopen them will necessitate either continuing to pay the staff once the furlough scheme ends or making them redundant. Neither of these options is recommended as they are both inefficient financially and they do not consider the longer term financial implications of running the centres in the future or the significant investment made in the Sport and Leisure Park. There is a need to have well motivated, trained and experienced staff to run the centres, thus providing an excellent new facility and service to the whole district and also, importantly, to make them work commercially.

## 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The combination of the physical configuration of River Park Leisure Centre and Meadowside Leisure Centre, and the social distancing restrictions, will impact on the ability to generate revenue from the leisure centres once they are allowed to open.
- 5.2 Currently the existing operator is responsible for the maintenance and repairs of both leisure centres up to a limit of around £11,000 (RPLC) and £1,250 (Meadowside).
- 5.3 The RPLC building has reached the end of its useful life and has in recent years continued to be maintained on an essential repairs only basis to reflect the fact that it is due to close shortly. However it has been maintained in good order to enable it to function properly and to provide a safe and clean facility for customers. It is recognised that with a building which is 40 years old it may not always look pristine and issues such as stained tiles in changing areas are impossible to address but the Council and the operator has made sure that they are cleaned regularly and inspected by Council staff on a monthly basis,
- 5.4 The interim arrangement recommended in this report will ensure that cleaning and maintenance of RPLC and Meadowside will continue in a similar way and will be closely monitored by Council staff in partnership with the new operator. It will be in Everyone Active's interest to keep customers happy so that they maintain membership and satisfaction levels moving to the new Centre at Bar End.

## 6 CONSULTATION AND COMMUNICATION

- 6.1 Consultation has taken place with the relevant leisure centre operators to produce the financial data required for this report.
- 6.2 Leisure centre staff received communications with regards to the latest government guidance.
- 6.3 Places Leisure has briefed existing staff on the proposals being considered by the council. They will also communicate with existing members and users.
- 6.4 An all-member briefing took place on 13<sup>th</sup> July to brief members on the proposals in advance of the cabinet meeting.
- 6.5 Media briefings will be held as appropriate.
- 6.6 Members of the Open Forum Panel were briefed on 14 July when the report was published.
- 6.7 It is extremely important that communications with existing users and future customers is maintained and this will be undertaken in a variety of ways and through all available mediums in partnership with the interim operator. This will be a key area of focus for the Council.

## 7 ENVIRONMENTAL CONSIDERATIONS

There are no new environmental issues as a result of continuing to run RPLC. If the centre remains closed then the lighting, power and heating energy consumption is considerably reduced. Any appropriate energy efficiency measures will be considered during the short re-opening period until the centre finally closes in 2021.

## 8 EQUALITY IMPACT ASSESSEMENT

- 8.1 One of the main principles adopted during the COVID-19 outbreak was to provide services for as long as possible at usual service levels. However, restrictions on social distancing did mean that some services, such as the provision of leisure facilities were required to stop. The government will now allow leisure facilities to re-open from 25 July 2020 with social distancing restrictions in place.
- 8.2 In terms of impact of the closure and re-opening, there is potentially disproportionate impact on those with protected characteristics. The council's approach is to try to get these services back into operation in a way that provides equality of access. However, this is restricted by the government order to close, and the re-opening process will be controlled by government guidance on when re-opening can be, and also the access restrictions there will be when that occurs.

- 8.3 The council is currently undertaking community impact assessments in relation to the impact of COVID-19 on the services we provide, and the output from that will be fed into action planning for the recovery period.

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 The existing contract between the council and Places Leisure states that on termination of the contract, the contractor will supply the operational database to the council's Data Protection Officer. The Council will transfer to the interim contractor data related to members who have confirmed that they want their membership to continue with the interim contractor. Therefore the Council is responsible for communicating with existing members and regular bookings to inform them of this arrangement and will write to all members to provide an explanation in advance of the transfer.

## 10 RISK MANAGEMENT

- 10.1 The risks in dealing with the effects of the pandemic are far reaching and this report starts to set them out with regards to leisure centre provision from the council's perspective in the subsequent sections below. The aim of the Council's Gold Command provides the framework to mitigate and minimise risk for the district as a whole during the outbreak.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
<i>Reputational - The leisure centres do not re-open. Impact of health and wellbeing for residents, clubs and members is significant</i>	Agree a plan to reopen the centres which offers the best outcome in terms of health and wellbeing and the future transition to the new Sport and Leisure Park and for Meadowside	Bringing in Everyone Active earlier than envisaged will provide the basis for continuity longer term and enable earlier staff transfer to the new Centre.  Share the financial risk of reduced income levels with the interim leisure centre operator
<i>Property – Maintenance issues</i>	There are existing capital works and maintenance budgets for RPLC and MLC which will be utilised carefully.	Only health and safety repairs and maintenance to be considered at RPLC and this will be done in conjunction with the Interim operator.

<p><i>Energy Performance Certificate (EPC)</i> A change in occupation (operator) will require a new EPC to be commissioned</p>	<p>Continue to regularly inspect the building for repairs and structural integrity and for cleanliness and effective operation</p> <p>Investigate obligations and whether an exemption from the requirements is viable as such investment for such a short period of time will not be paid back.</p>	<p>Short term energy efficiency improvements may be achievable if cost effective. This is being explored.</p>
<p><i>Financial / The main financial issue is that Leisure Centres cost money to run and maintain and this is funded through income from paying users of the centre. If there is no or less income these costs fall, to differing degrees, to the Council.</i></p>	<p>During the lockdown costs have been kept to a minimum through prudent management of the centres and their equipment and by furloughing staff.</p>	<p>Re-opening of the centres will be the best way to generate usage and hence income to offset costs.</p> <p>On going staff costs will be accrued along with ongoing running costs whilst centres remain closed.</p>
<p><i>Legal – If statutory compliance is not met with requirements such as the Health and Safety legislation and staff do not TUPE across correctly to a new operator leaving the Council open to claims and staff left in an unknown position. Requirements under the procurement regulations are not met.</i></p>	<p>Re-open the leisure centres in a controlled manner ensuring compliance with all relevant statutory considerations and not leaving the council open to a judicial review or compensation claim.</p>	<p>Ensure continued employment for those working at the leisure centres and leisure centres re-open in accordance with the Coronavirus Act 2020 and associated regulations. The staff are a key asset to the Council and critical to the ongoing success of its Leisure Centre.</p>

## 11 SUPPORTING INFORMATION

On 20 March 2020, measures to close entertainment, hospitality and indoor leisure premises, as well as certain outdoor recreational facilities, were put in place, from the end of trading, to limit the spread of Coronavirus. Both River Park Leisure Centre and Meadowside Leisure Centre were closed on this date as a result of this Government advice. New Government advice is awaited in relation to reopening.



The pandemic is challenging the partnerships between local authorities and leisure centre operators, typically charitable trusts, which run gyms and swimming pools on their behalf. UK Active and Sport England, who represent this sector, are lobbying the government to encourage further financial support for this sector and to allow the re-opening of these facilities. The Department for Digital, Culture, Media & Sport are continuing to work with representatives from the gym and leisure centre sectors on plans for a safe, phased reopening with the ambition for this to happen soon, depending on public health guidance.

11.1 The new Winchester Sport & Leisure Park, currently under construction at Bar End, will be run by Everyone Active who were appointed following a competitive tendering process. It was planned that the Places Leisure contract to run both of the Council's leisure centres would be terminated when the new centre opens. The management of Meadowside Leisure Centre in Whiteley currently run by Places Leisure was to be subject to a competitive tendering process due to start in September.

11.2 In light of these unusual on-going circumstances it is considered prudent to review the situation and to consider options for leisure centre management once these centres are permitted to reopen.

11.3 A number of scenarios have been assessed in terms of how well they address both the financial and operational issues for the period of closure and the potential re-opening phase of the centres. The ongoing effect on the future operation of Winchester Sport & Leisure Park has also been considered.

11.4 The options are as follows:

A – Places Leisure continue to run both centres from when they are permitted to re-open until the new Winchester Sport & Leisure Park opens and a new Operator is appointed and takes over the management of Meadowside Leisure Centre.

B – Places Leisure's contract to continue (to oversee the buildings) but both centres to remain closed until the procurement of a new operator for Meadowside Leisure Centre and the opening of the Winchester Sport & Leisure Park. It is intended to start the procurement process for Meadowside in September.

C – A settlement be negotiated and agreed and Places Leisure's contract be terminated by 31 August 2020 and an interim contract with a new operator agreed for the intervening period between re-opening of both centres and the procurement of a new operator for the Meadowside Leisure Centre and the opening of the Winchester Sport & Leisure Park.

D – Places Leisure's contract to be terminated by 31 August 2020, the Council takes back responsibility for the centres but they remain closed until the

procurement of a new operator for Meadowside Leisure Centre and the opening of the Winchester Sport & Leisure Park.

E – Places Leisure’s contract to be terminated by 31 August 2020, the Council takes the service back in-house and maintains the staff on existing terms and conditions. The centres remain closed until the opening of Winchester Sport & Leisure Park.

- 11.5 Option C is considered to be the preferred and lowest risk option as it would:
- Enable the centres to re-open when government guidance permits in order to benefit the health and wellbeing of local residents.
  - Enable the interim operator to work with existing staff, customers and partners at both leisure centres for a significant period prior to the opening of Winchester Sport & Leisure Park.
  - Be the best net operational cost option to enable the centres to re-open.
  - Generate the least amount of reputational damage to the Council and the operators.
  - Benefit the future operation of Winchester Sport & Leisure Park.
- 11.6 It should be noted that the management of Meadowside Leisure Centre will be put out to competitive tender in September 2020 if market conditions are favourable, CAB 3192 decision in Dec 2019, and this new contract will commence when River Park Leisure Centre closes permanently.
- 11.7 The Government has recently announced that Leisure Centres in England can reopen from 25<sup>th</sup> July under certain conditions. The proposal in this report will allow the Council’s centres to reopen from the 1<sup>st</sup> September which is the earliest date achievable to allow for a change of operator and taking into account the requirements around completing the contractual paperwork, staff TUPE requirement in terms of consultation and notice periods, and preparing the centre for re-opening in COVID safe way. The Council will utilise this period to see if there is any learning from other centres which do reopen earlier.
- 11.8 The Government also announced on 2<sup>nd</sup> July a financial support package for local authorities. (<https://www.gov.uk/government/news/comprehensive-new-funding-package-for-councils-to-help-address-coronavirus-pressures-and-cover-lost-income-during-the-pandemic>)
- 11.9 Further details are awaited on how this funding will be provided and for which Local Authority services it can be applied to. It is, however, anticipated that in the case of Leisure that the funding will come to Local Authorities rather than to operators as the buildings are still owned by Local Authorities. It is hoped that this funding will help to offset the costs set out in this report. The council

will make it clear in the settlement agreements that any such funding will be used to offset council costs and not be passed to leisure operators.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

- 12.1 Option A is for the centres to re-open in September 2020 and for the Places Leisure contract to continue until the procurement of a new operator for Meadowside Leisure Centre and the permanent closure of the River Park Leisure Centre. This is the simplest option but is more costly than Option C and a settlement agreement has previously been negotiated with Places Leisure to terminate their contract early with WCC. Operational transition would occur when RPLC closes and WSLP opens which make this less viable for a new operator to deal with as contract transition and contract mobilisation occur simultaneously.
- 12.2 Option B considers keeping the leisure centres closed with the Places Leisure contract to continue until the procurement of a new operator for Meadowside Leisure Centre and the permanent closure of the River Park Leisure Centre. Although this is a simple option, and the cost is estimated to be less than Option C, there would be a negative impact on community health and wellbeing and the operation of the new leisure centre as well as potential reputational damage due to facilities remaining closed. Operational transition will occur when RPLC closes and WSLP opens which make this less viable for a new operator to deal with as contract transition and contract mobilisation occur simultaneously. The Council's leisure facilities will remain closed until the new centre opens which will have an impact on the start up of the WSLP as customers will move to leisure centres in neighbouring districts. Also, a settlement agreement has been negotiated with Places Leisure to terminate their contract early with WCC.
- 12.3 Option D proposes that the leisure centres remain closed until the Winchester Sport and Leisure Park opens in 2021, with the Council taking on their operation making existing centre staff redundant or continues furlough until the new centre opens. This is the option with the lowest cost for the council in the current financial year but it would have a negative impact on community health and wellbeing and the operation of the new leisure centre as well as risk of reputational damage to the Council for the potential loss of jobs. Making the staff redundant would involve additional costs for the Council. This could have implications for the WSLP contract as they will need to undertake full staff recruitment which would have knock on financial implications for the new contract. The council's leisure facilities will remain closed until the new centre opens which will have an impact on the start up of the WSLP as customers will move to leisure centres in neighbouring districts. The new operator at WSLP would have a legitimate claim that the Council have fundamentally changed the basis on which they bid for the new WSLP contract and on which their financial offer was predicated. As such this would undoubtedly trigger a benchmarking exercise under the agreed contract with EA to recalculate the management fee around change of staff availability and

loss of memberships. This would impact on the agreed business case and is therefore not considered a sensible option.

- 12.4 If the Council were to choose to go ahead with option D or E, resulting in the closure of the leisure centre, it is probable that the impact of losing staff and centre members could cause the operator of the new centre to renegotiate the basis of the management fee for the WSLP. There is much uncertainty in the whole leisure operator sector resulting from COVID-19 and its impact on customer numbers; so the risk of renegotiation of the WSLP operator contract remains even if the Council ensures RPLC reopens to customers under a contract with either the existing or a potential new operator.

BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3242 Decommissioning of RPLC - 24 June 2020

CAB3192 Southern Parishes Sports Facilities - 23 December 2019

CAB2914 RPLC Essential Repairs - 10 March 2017

Other Background Documents:-

None

EXEMPT APPENDICES:

Exempt Appendix 1 Financial Analysis

Exempt Appendix 2 Heads of Terms – Interim Contractor

Exempt Appendix 3 Heads of Terms – Places Leisure

Exempt Appendix 4 Interim Contract Specification

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