

CAB3037
CABINET

REPORT TITLE: RIVER PARK LEISURE CENTRE – CONTRACT DEED OF VARIATION

6 JUNE 2018

REPORT OF PORTFOLIO HOLDER: Cllr Lisa Griffiths Portfolio Holder for Health and Wellbeing

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WARD(S): ALL

PURPOSE

It is anticipated that the construction of the Winchester Sport and Leisure Centre will be completed in early 2021. The existing Management Agreement which covers both the Riverpark Leisure Centre and the Meadowside Leisure Centre is not due to expire until 31 March 2023. Accordingly the City Council has sought to put into place an Agreement, with the consent of the current operator Places for People Leisure Management Limited. This Agreement will include a clause to allow for an early termination of the whole contract, if required. This report considers such a variation to the current contract with Places for People and sets out initial options for the possible future management of Meadowside Leisure Centre.

RECOMMENDATIONS:

1. That the Corporate Head of Resources be authorised to agree terms and enter into a Deed of Variation of the existing Contract with Places for People in consultation with the Portfolio Holder for Health and Wellbeing to allow for any early termination of the existing management agreement.
2. That the Head of Programme in consultation with Portfolio Holder for Health and Wellbeing be authorised to explore options for the future management of Meadowside Leisure Centre at Whiteley and to report this back to Cabinet in due course.

IMPLICATIONS:

1 COUNCIL STRATEGY OUTCOME

- 1.1 The Winchester Sport and Leisure Park project supports the Health and Happiness outcome of Council Strategy through the provision of new facilities to meet the needs of a broad cross section of our communities for now and in the future.

2 FINANCIAL IMPLICATIONS

- 2.1 If at a point where it becomes necessary to terminate the existing contract with Places for People Leisure Management Ltd it will be necessary to carry out an assessment of the residual value of equipment and any supplier contracts that Places for People Leisure Management Ltd have procured in order to provide the services under the current contract up until its current termination date in 2023. The Council will be required to recompense Places for People for these costs. A preliminary assessment of such costs based on the formula included within the Deed of Variation is estimated at £152,000 assuming a termination date of 31 January 2021.. The formula for assessing the current value of equipment/ supplier contracts is based on age and market value and makes an allowance for this depreciating year on year until the termination date. This gives an estimation of residual value at that point. If the termination date were later, the cost would reduce.

3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 These have been carefully considered in relation to the implications of an early termination and in drawing up the terms of the Deed of Variation. PfP have agreed to the wording in the termination agreement and the calculation of residual costs. Such a payment is completely routine should an early termination of a contract occur. The agreement of a formula to calculate the residual value of equipment and contracts protects both parties' interests should early termination be required. Without the agreement of this draft Deed of Variation with PfP, The City Council would need to consider not just their loss of income and profit but also any payments they may be required to make to third parties as a result of such early termination together with their legal and other costs and expenses, and loss of capital depreciation on their assets.
- 3.2 The basic principle is that damages will be awarded to place the innocent party in the same position as if the contract had been performed. Whilst it is not possible to quantify this accurately based on the data the Council holds, it can be estimated that compensation for terminating the contract 2 years early would be in excess of a million pounds.
- 3.3 Moving forwards careful consideration of the future management of Meadowside Leisure Centre which is included in the Places for People contract; but will not be included in the new contract for the new leisure centre, is required.

4 WORKFORCE IMPLICATIONS

- 5 There are no immediate staff implications of this report but at a time when the contract is terminated then full TUPE regulations will apply. As part of the Deed of Variation the new TUPE regulations have been included in order to protect all parties interests. Workforce implications in relation to procurement of an operator for the new Winchester Sport and Leisure Centre are being considered in a separate report elsewhere on this agenda.

6 PROPERTY AND ASSET IMPLICATIONS

- 6.1 The existing River Park Leisure Centre (RPLC) needs to be maintained until such time as the Winchester Sport and Leisure Centre can be delivered and opened. Any delays to the timetable for the delivery of a new Centre may lead to increased maintenance costs. The Council's estates team is actively monitoring the condition of RPLC and undertaking and/ or requiring Places for People to carry out any required works/ actions in the intervening period in accordance with the contract

7 CONSULTATION AND COMMUNICATION

- 7.1 Discussions have taken place with Places for People management in order to agree the terms of the draft Deed of Variation.

8 ENVIRONMENTAL CONSIDERATIONS

- 8.1 None directly.

9 EQUALITY IMPACT ASSESSMENT

- 9.1 None directly.

10 RISK MANAGEMENT

- 10.1 The risks in relation to the procurement strategy for an operator to run the proposed new Sport and Leisure Centre at Bar End were considered in November 2017 when the procurement strategy was agreed. A further report is being considered by Cabinet elsewhere on this agenda. .
- 10.2 The Deed of Variation has been agreed in principle with Places for People in order to mitigate the financial risk to the council connected with the procurement of an operator for the new management contract for the new Leisure Centre,. The Deed of Variation also ensures that any associated costs of an early termination are assessed and agreed in a fair and consistent manner for both parties.
- 10.3 If an early termination is required this will also apply to the management of Meadowside Leisure Centre at Whiteley. As such alternative arrangements would need to be made for the management of that centre.

10.4 It should be remembered the Council has committed to provide a modern 4 court sports centre in the district and it may be that the Meadowside facility could be integrated into that development.

10.5 Other approached alternatives will have to be considered such as ;

- enhancing and adapting the Centre and letting a new management contract
- the City Council taking over management of Meadowside directly
- forming of a partnership with another organisation to manage Meadowside

11 SUPPORTING INFORMATION:

11.1 It is anticipated that The Winchester Sport and Leisure Centre project will be completed in early 2021. A full procurement process for appointment of an operator is planned. The existing Management Agreement which covers both the Riverpark Leisure Centre and the Meadowside Leisure Centre is not due to expire until 31 March 2023. Accordingly the City Council has sought an Agreement to vary, with the consent of the current operator, a clause to allow for a possible early termination of the whole contract.

11.2 Successful discussions have taken place with Places for People and a Draft Deed of Variation to the existing contract has been agreed and is set out in Appendix 1 of this report. The draft also includes additional provisions expanding on the Operator's current obligations with regard to TUPE in relation to the procurement of an Operator for the new Leisure Centre. These additional provisions are to bring requirements in line with the current TUPE regulations which have been amended since the original contract was agreed.

12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 The Council could progress with the procurement of an operator for the new Leisure Centre without agreeing the proposed Deed of Variation but it would leave the Council liable to costs estimated in excess of one million pounds.

12.2 Meadowside could remain within the proposed operator procurement process but this may well reduce interest in the procurement opportunity and may reduce the management fee due to the additional complexity of managing a second significantly smaller scale centre. .

12.3

12.4 BACKGROUND DOCUMENTS:-

Previous Committee Reports:-

CAB3030 (LC) WINCHESTER SPORT AND LEISURE PARK PROJECT UPDATE
26 MARCH 2018

CAB2983(LC) – 16th January 2018 - Outline Business Case and associated
Governance

CAB2970 – 13 November 2017 Sport and Leisure Park Project - Update on Facility
Mix

CAB2972 -13 November 2017 Sport and Leisure Park Project –Procurement

CAB2951(LC) - 17 JULY 2017 Update report

CABINET (LEISURE CENTRE) COMMITTEE - 12 June 2017

CAB2910 – 20 March 2017 Bar End Sport and Leisure Park Project Update

PHD Notice 710 September 16 Leisure Centre Replacement Project Management
Consultancy Support

CAB2820 – 5 July 2016 Leisure Centre Replacement Project

CAB2798 – 29 March 2016 Leisure Centre Replacement Project

CAB2708 – 9 September 2015 Options for River Park Leisure Centre

Other Background Documents:-

None

APPENDICES:

Exempt Appendix 1 - Draft Deed of Variation