

REPORT TITLE: LEISURE CENTRE VAT TREATMENT AND PROPOSED  
TRANSITION TO AGENCY OPERATING ARRANGEMENTS

17 JUNE 2026

REPORT OF CABINET MEMBER: Councillor Becker, Cabinet Member for Healthy  
Communities

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WARD(S): ALL

PURPOSE

This report seeks Cabinet approval in principle to progress an Agency Variation to the council's Leisure Management Contract with Sports and Leisure Management Limited (SLM) who will be the agent with Everyone Active Charitable Trust as authorised sub-agent (define in this report as Everyone Active). The proposal is intended to strengthen the long-term sustainability and resilience of the council's leisure offer, provide greater financial certainty through a guaranteed annual return alongside the council's existing contractual arrangements, and support the continued delivery of high-quality leisure services for residents.

The proposal does not alter the range, accessibility or standard of services provided at the council's leisure centres and will not result in changes to the customer experience or day to day operation of services save that the leisure services will be provided on behalf of the council by Everyone Active as agent. Leisure centres will continue to operate as they do currently, with residents continuing to access facilities, programmes and services in the same way. The proposal instead represents an evolution of the contractual and operational arrangements underpinning an established and well-performing service, ensuring the contract remains fit for the future and continues to support the council's wider strategic ambitions.

**RECOMMENDATIONS:**

That Cabinet:

1. **Approves**, in principle, the progression to an Agency Variation to the existing Leisure Management Contract with Sports and Leisure Management Limited (SLM) who will be the agent with Everyone Active Charitable Trust as authorised sub-agent (define in this report as Everyone Active).
2. **Delegates** authority to the Strategic Director – Place, in consultation with the Director of Legal, Section 151 Officer, to finalise Heads of Terms and enter into a Deed of Variation and any other necessary and appropriate agreements, including agreement of the detailed financial and operational arrangements.
3. **Notes** the estimated financial benefits arising from the proposal, including the introduction of a guaranteed uplift in annual income to the council.

## IMPLICATIONS:

### 1 COUNCIL PLAN OUTCOME

- 1.1 This proposal is fully in line with Council Plan values that we will adapt, innovate, and collaborate in the way we deliver services to our residents.
- 1.2 Healthy Communities
- 1.3 The provision of a varied and accessible range of health and fitness services, provided via our contract with Everyone Active, ensures we are increasing participation in physical activity for all ages and abilities. Further by considering these new arrangements we are securing strong health and community infrastructure across the district. The two key objectives lead to improved health and wellbeing of our communities.
- 1.4 Efficient and Effective
- 1.5 We aim to provide our residents with high quality, easy to access, good value services that are continually improving. This approach will support our objectives to provide good value services and to ensure we have stable council finances.

### 2 FINANCIAL IMPLICATIONS

- 2.1 In March 2023, HMRC issued updated guidance following the Chelmsford City Council VAT tribunal, confirming that local authority leisure services may, in certain circumstances, be treated as non-business activities for VAT purposes. This represented a significant change from the previous position, where such services were generally treated as exempt business activities.
- 2.2 Under the council's current contractual arrangements, VAT associated with the delivery of leisure services is not recoverable in full, resulting in an ongoing financial cost within the existing model. The proposed Agency Variation seeks to address this by restructuring the delivery arrangements to align with the updated HMRC position and enable the council to recover VAT currently treated as irrecoverable expenditure. This represents the principal financial change and creates a more efficient and sustainable financial model for the council over the remaining contract term.
- 2.3 To enable this, outsourced operators such as Everyone Active are required to act as managing agent on behalf of the council rather than as principal supplier. This change is contractual and operational in nature and does not alter the services residents receive or the customer experience at leisure facilities save that the leisure services will be provided on behalf of the council by Everyone Active as agent.
- 2.4 The proposal does not require additional subsidy from the council and supports the longer-term sustainability of leisure provision, creating a stronger platform for future investment opportunities. Further detail on the proposal,

including the estimated financial benefits to the council are included in exempt Appendix 1.

- 2.5 In the event that HMRC raise a general challenge about leisure agency arrangements, and no local authority can continue to use these agreements, then the agreement will revert to the current arrangement.

### 3 LEGAL AND PROCUREMENT IMPLICATIONS

- 3.1 The council's existing Leisure Operating Contract for Winchester Sport & Leisure Park was procured in 2019 through open tender in compliance with the council contract procurement rules and the Public Contracts Regulations 2015. The contract was varied in February 2021 to extend arrangements between the parties to include the provision of leisure and related services at the council's Meadowside Leisure Centre in Whiteley.

- 3.2 The council has already received legal advice which confirms that the proposed contractual variation and associated delivery arrangements can be structured and implemented in a lawful and procurement-compliant manner. Specialist legal support from Browne Jacobson is being provided to ensure robust compliance with all relevant public procurement, contractual and property requirements as the proposal progresses.

- 3.3 Specialist advice has been obtained from external legal and public sector tax advisers, confirming that the proposed variation can be structured in a lawful and compliant manner and does not represent a substantial contract modification requiring re-procurement.

- 3.4 The proposal does not represent a new or untested approach. Everyone Active has successfully implemented similar arrangements with 16 other local authorities, providing a well-established precedent for this model of delivery. In developing the proposal, the council has also considered specialist advice from PSTAX and relevant HMRC guidance to ensure the approach reflects established practice and aligns with the applicable legislative and taxation framework.

- 3.5 A formal Deed of Variation will be required to implement the changes, setting out:

- a) The appointment and role of Everyone Active as the council's agent
- b) The division of responsibilities
- c) Financial arrangements and reporting requirements
- d) Treatment of different income streams

#### 4 WORKFORCE IMPLICATIONS

- 4.1 It is recognised that implementation requires operational changes, including updates to customer-facing materials and internal processes, to ensure the agency model is properly and consistently applied. EA will lead on the changes as affect their business and will resource this at no additional cost to the council.
- 4.2 Council estates, contract and financial support work will be undertaken within existing staff resources. Should additional resources be needed, this will be funded from the agency income and will be approved through normal council procedures.
- 4.3 No other council staff or workforce implications have been identified for the continued management of the contract.

#### 5 PROPERTY AND ASSET IMPLICATIONS

- 5.1 The council's leisure estate represents a significant portfolio of community and financial assets. Ensuring these assets remain viable, well maintained and capable of adapting to changing demand requires both ongoing investment and periodic review of contractual arrangements. The proposal supports this by strengthening the financial model that underpins the estate.
- 5.2 As a consequence of adopting an agency model approach, existing lease arrangements will be changed to an occupational licence structure, ensuring alignment with the legal requirements of the model.
- 5.3 This approach is intended to maintain clear operational responsibilities, including repairs, maintenance and day-to-day operational control, whilst supporting the proposed delivery model and associated VAT position. Specialist legal advice will inform the detailed structure of the arrangements to ensure that the council's interests and existing protections are maintained, including consideration of property and contractual matters associated with any transition from a Lease to a Licence arrangement.

#### 6 CONSULTATION AND COMMUNICATION

- 6.1 The proposal has been developed in partnership with the council's leisure operator. Conversations have also taken place with other authorities who have completed this change to deepen our understanding and to benefit from lessons learned. Officers attended a briefing event for local authorities where technical sessions were held on legal, procurement, finance and operations with relevant practitioners.
- 6.2 The Cabinet Member for Healthy Communities has been briefed along with the Cabinet Member for Finance and Transformation.

## 7 ENVIRONMENTAL CONSIDERATIONS

- 7.1 The proposal is for a change to the contractual relationship between the council and Everyone Active (SML) and does not change any operational arrangements so has no direct implications for environmental impact. As a council facility we continue to seek ways to invest in measures that improve the environmental performance of the building for example through rooftop solar PV installation and EV charging points and secure cycling.
- 7.2 Under our annual Carbon Footprint report, which provides breakdown of the council's direct (scope 1&2) and indirect (scope 3) carbon emission, the leisure centres are reported as indirect. This proposed arrangement does not affect where the leisure centres' emissions are reported, they will continue to be reported under scope 3 emissions. This is because as we do not have direct control over the operations / energy / fuel use at the sites so these emissions would fall under scope 3.
- 7.3 This position is supported by the GHG protocol guidelines Corporate-Value-Chain-Accounting-Reporting-Standard\_041613\_2.pdf (pg 126 & 127)

## 8 PUBLIC SECTOR EQUALITY DUTY

- 8.1 This is a contractual change and there are no material implications for service delivery to users. Therefore, there are no matters to consider under the Public Sector Equality Duty.

## 9 DATA PROTECTION IMPACT ASSESSMENT

- 9.1 All data relating to users is collected by Everyone Active and is collected, managed and stored in compliance with GDPR. This proposal does not require any change in how user information is handled as per the terms of the current contract.
- 9.2 All data provide to the council will be managed and stored in compliance with our GDPR policies.

## 10 RISK MANAGEMENT

- 10.1 This proposal is within the council's current overall risk appetite of moderate and as such open to innovative ways of working and will to pursue options that offer potentially substantial returns.
- 10.2 The risks associated with the proposal are considered to be low and manageable as there have been several authorities that have already made this change. Learnings and experience have been shared by a number of them via meetings with the officer team.
- 10.3 The introduction of an additional guaranteed income stream further reduces financial uncertainty, while ensuring the continuity of service. Legal and

commercial risks will be managed through the detailed drafting of the Deed of Variation and appropriate governance arrangements.

<b>Risk</b>	<b>Mitigation</b>	<b>Opportunities</b>
Financial Exposure Procurement or legal challenge to the proposed contractual variation could delay implementation or require amendments to the proposed structure.	The council has received initial legal advice confirming that the proposal can be structured and implemented in a lawful and procurement-compliant manner. Specialist advice from Browne Jacobson is supporting the detailed development of the arrangements.	Opportunity to establish a robust, legally compliant contractual structure that supports long-term service resilience and reflects established sector practice
Exposure to challenge	An independent legal advisor has been appointed to ensure sufficient review and correct processes are duly followed.  Experience of other local authorities has been sought and corroborates our advice.	
Future changes to HMRC guidance or interpretation may impact the anticipated financial position	The proposal has been developed with consideration of specialist advice from PSTAX and relevant HMRC guidance. Similar arrangements are already successfully operating across 16 local authority contracts with Everyone Active.  The risk that HMRC guidance changes cannot be mitigated. However,	Opportunity to adopt a well-established and sector-tested model that supports a stronger and more sustainable financial position.

	the council will revert to the current arrangements.	
Misunderstanding or perception that the proposal changes services or affects customers may create stakeholder concern.	Communications and reporting will clearly emphasise that the proposal is an operational and contractual refinement only and does not alter service delivery, facilities, programmes or the customer experience.	Opportunity to reinforce confidence in the council's commitment to protecting front-line services whilst strengthening the arrangements that support them.
Complexity associated with implementing revised contractual and property arrangements could require additional officer time and coordination.	Detailed implementation planning will be supported by legal, finance and property specialists, with changes delivered through a variation to an existing arrangement rather than a wholly new operating model.	Opportunity to strengthen contractual clarity and ensure arrangements remain fit for purpose over the remaining contract term.
Financial benefits may vary over time if external factors affect performance assumptions.	Existing contractual income arrangements remain protected and the proposal includes an additional guaranteed annual return, providing greater certainty and reducing financial exposure.	Opportunity to improve overall financial performance and strengthen medium and long-term financial planning certainty.
Innovation  Exploration and development are needed which delays the delivery of the proposals.	No innovation and development required. This model is already used by at least 16 other local authorities for whom EA deliver leisure services.  External technical (legal, procurement and finance) advice has been sought in advance to avoid any delay during the implementation phase.	
Achievement of outcome		

Expected benefits are not realised	This proposal results in a fixed fee with EA which is guaranteed	
Property  Changes impact upon maintenance and upkeep of the facilities.	The existing contractual responsibilities of EA and the council in terms of maintenance of the building remain unchanged under the new arrangements.	The improved financial performance for all parties increases potential for future investment in the site by the operator.
Community Support		
Timescales		
Project capacity  Lack of resources delays the implementation of the proposal, resulting in reduced efficiencies and reduced financial return to the council.	Officers from impacted teams have been engaged from initial discussions to ensure resource commitments are understood and can be accommodated.	
Other		

## 11 SUPPORTING INFORMATION:

### 11.1 Background

11.2 This proposal follows a change in HM Revenue and Customs (HMRC) policy in March 2023, which allows local authorities, in certain circumstances, to treat leisure services as non-business for VAT purposes. This creates an opportunity to adopt a more efficient financial and delivery model, whereby services are provided by an operator acting as agent on behalf of the council, rather than as principal supplier.

11.3 Under the proposed arrangement, Everyone Active would move from acting as principal to acting as managing agent, delivering leisure services in the council's name. This enables the council to benefit directly from the improved VAT treatment and the associated financial efficiencies, whilst maintaining the existing operational model.

- 11.4 The council would retain its current contractual income position and, in addition, receive a guaranteed annual financial uplift reflecting the efficiencies generated through the revised model. The arrangement also improves the financial position of the operator, creating a balanced and mutually beneficial outcome.
- 11.5 The Proposal
- 11.6 The proposed Agency Variation introduces a revised contractual structure in which the council becomes the principal provider of leisure services, with Everyone Active acting as its agent. Under this model, leisure income is treated as income of the council and is recorded in the council's name, while Everyone Active remains responsible for the day-to-day operation of the facilities, including staffing, programming and customer service, ensuring continuity of delivery.
- 11.7 The proposal does not change the day-to-day operation of the leisure centres, the services provided, or the experience for residents. Instead, it represents a refinement of the contractual and financial structure underpinning an established and well-performing service. Specialist tax and legal advice has confirmed that the council has the necessary powers to implement this approach and that it is compliant with procurement and regulatory requirements, with a similar model having been successfully implemented by other local authorities.
- 11.8 Implementation will require a Deed of Variation to the existing contract, alongside associated operational and property adjustments to ensure that the agency arrangement is reflected properly and consistently in both contractual terms and day-to-day practice.
- 11.9 Financial Operation of the Model
- 11.10 Revenue generated at the leisure centres will be collected by Everyone Active acting as agent and held on behalf of the council. This revenue will include a mix of:
- a) Non-business income: e.g. general admission to sports facilities such as swimming pools & gyms
  - b) Standard rated income: e.g. shower & locker charges, general room lettings in Winchester Sport & Leisure Park (which is opted to tax)
  - c) Exempt income: e.g. general room lettings in Meadowside Leisure Centre (which is not opted to tax)
- 11.11 Full details are provided in exempt Appendix 1.

### 11.12 Operational and Contractual Adjustments

11.13 HMRC requires that the agency arrangement reflects the substance and reality of operations, not simply contractual wording. This includes ensuring that branding, customer terms, receipts, reporting and operational processes consistently reflect the council as the service provider.

11.14 Customers will be clearly informed when services are being provided by the council via Everyone Active acting as agent, and when services are provided directly by the operator. Customer service arrangements, including complaints handling, will continue to be managed by Everyone Active on behalf of the council.

11.15 Branding and communications will be updated where required to reflect the agency relationship, with associated costs met by the operator.

### 11.16 **Financial Benefits**

11.17 The proposed model is designed to strengthen the council's financial resilience and provide greater certainty through:

- Retention of the council's existing contractual income arrangements
- An additional guaranteed annual financial return
- Enhanced overall financial performance across the contract term
- Increased certainty to support sustainable financial planning and decision-making

11.18 The improved financial position also supports the council's ability to invest in its leisure estate and maintain a competitive, high-quality offer.

### 11.19 Conclusion

11.20 The proposed Agency Variation represents a financially beneficial, legally compliant and operationally deliverable enhancement to the council's existing leisure contract. It enables the council to benefit from a significant change in HMRC policy, improve financial performance and secure long-term sustainability, whilst maintaining service continuity. The proposal is supported by specialist advice, established sector practice and a robust governance framework.

11.21 Subject to approval, implementation will proceed through completion of the Deed of Variation and associated documents and operational arrangements, with a target commencement date to be agreed.

## 12 OTHER OPTIONS CONSIDERED AND REJECTED

12.1 The option of maintaining the existing contractual arrangements without change has been considered.

- 12.2 This option would avoid the need for contractual variation but would result in the continuation of the current level of financial performance. It would not address the gap between actual and anticipated income, nor would it provide additional certainty for the council's financial planning.
- 12.3 Over time, this would limit the council's ability to reinvest in its facilities and respond to changing demand, increasing the risk that the leisure estate becomes less competitive and financially sustainable.
- 12.4 On that basis, a proactive approach to improving the contract and benefitting from this opportunity has been considered the most appropriate course of action.

BACKGROUND DOCUMENTS:

Previous Committee Reports:

CAB3285; 11 FEBRUARY 2021; MEADOWSIDE LEISURE CENTRE – UPDATE ON OPERATOR TENDER

CAB3249; 22 JULY 2020; LEISURE CENTRE UPDATE – IMPACT OF COVID-19

CAB3082(LC); 11 FEBRUARY 2019; WINCHESTER SPORT AND LEISURE CENTRE – FULL BUSINESS CASE

Other Background Documents:

NONE

APPENDICES:

- 1. Exempt appendix 1 – Financial Implications
- 2. Exempt appendix 2 - PSTAX report