

Agenda item:

Title of meeting: Cabinet Meeting

Date of meeting: 3 December 2015

Subject: Sports and Leisure Centres Strategic Contract Review

Report by: Director of Culture and City Development

Report Author: David Evans, Project Director

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

- 1.1 To advise Members that officers from Finance, Legal, Procurement, Contract Management, Recreation, Property Services and Public Health undertook an extensive and systematic review of its major strategic contracts in response to austerity funding pressures but also as general good practice. As part of this review and as a result of the contractual benchmark process for the Mountbatten Centre (MBC) contract instigated by the current operator, the council has conducted a detailed delivery option appraisal in respect of the management contracts for the MBC and other associated sports and leisure sites.
- 1.2 To advise Members of the future options for the MBC and other sports and leisure facilities and seek authority for the Director of Culture and City Development to implement the agreed outcome in consultation with the Cabinet Member for Culture, Leisure and Sport and the Director of Finance & Information Services (S151 Officer)

2. Recommendations

- 2.1 That the Cabinet approve the re-procurement option for the Mountbatten Centre Contract and other Leisure Management Contracts for the provision of these facilities.**
- 2.2 That the City Solicitor, the Director of Finance and Information Services (Section 151 Officer) in consultation with the Cabinet Member for Culture, Leisure and Sport have delegated authority to conclude all necessary actions to implement the decision.**

3.0 Background

- 3.1 The MBC redevelopment scheme was a long term aspiration for Portsmouth and was delivered on time and within budget.

The partnership with Broadwater Leisure Limited (BLL) was innovative in that it provided a mix of quality facilities to enable the delivery of key outcomes in line with council priorities particularly around health and sustaining and increasing participation in sport and physical activity.

- 3.2 The Mountbatten Centre redevelopment included the management of the Gymnastics Centre and new Indoor Tennis Centre.
- 3.3 It is part of a design, build, operate and maintain (DBOM) contract with a 25 year term from full service commencement (July 2009). The contract was awarded to BLL, a Special Purpose Vehicle (SPV) made up of Parkwood Consultancy Services, Saunders Architects, Kier Construction and Parkwood Leisure Limited (PLL).
- 3.4 The capital cost was £20.1m and was funded by a £5.49m grant from Sport England with the balance funded from PCC.
- 3.5 As part of the current contract BLL has the responsibility for the full maintenance and lifecycle responsibility except where PCC has retained landlord maintenance responsibility for the MBC grandstand and the new Tennis Centre.
- 3.6 There is also a separate 10 year leisure management contract for Eastney Pool, Charter Community Sports Centre and Wimbledon Park Sports Centre which started in January 2008.

4. Contract Performance Review

- 4.1 There have been monthly performance reviews that show the contract is being managed in accordance to the original specification and the following is a summary of the review
- 4.2 Utilisation at MBC – 2014 1,025,216, 66% increase in 5 years
- 4.3 PCC Monitoring
- No financial deductions in past 18 months
 - Monthly (Customer Feedback) / Quarterly / Annual Reports
 - Maintenance & Health and Safety Audits Satisfactory
 - Site Visits (Cleanliness & Availability)
- 4.3 MBC achieved Quest (Sport England's Quality Assurance Accreditation)
- Identified Good Management Systems

4.4 Sport England's National Benchmarking Service

- Customer Satisfaction Acceptable
- Good use by target groups

4.5 **Sports Development** (Annual plans for Swimming, Gymnastics, Tennis, Target Groups)

- Good relationship with governing bodies

4.6 **Health Developments**

- GP Referral Scheme
- Cancer / Stroke Support / Mental Health initiatives developed

4.7 **Financial**

- Current Unitary Charge was considered good value at the time of the contract award.
- Parkwood is considered to have good controls on expenditure

4.8 Customer Satisfaction levels with Health & Fitness via Survey Monkey (Independent survey of gym members – June 2014)

- 85% would recommend fitness membership
- 74% very satisfied / satisfied
- 18% neutral

4.9 Officers have undertaken a comprehensive review of the Mountbatten Centre's performance the details of which are included in Exempt Appendix 3

5. **Benchmarking**

5.1 The MBC contract has a benchmarking process which enables BLL to revisit their Unitary Charge (Management Fee) based on the latest market position every 5 years. Thus, if because of market changes the revenues or costs change significantly then either party are able to undertake a benchmarking process.

5.2 When benchmarking takes place, BLL has to present their new Unitary Charge based on the current market position for the council to either agree with them or seek to gain an independent review, negotiate and if necessary undertake a market test.

5.3 In 2013 PCL formally made the council aware that the centre was not performing in line with their tender and that an additional sum of £440k pa in the Unitary Charge may be requested and this is when the benchmarking clause was instigated.

5.4 There were a number of discussions and financial offers made to reduce the financial uplift but none of them were acceptable to either party.

6. Benchmark Consultant

6.1 The next stage in the contractual process was that an independent Benchmark Consultant was commissioned in May 2015 to review PCL's operations and accounts in the period up to the benchmark.

6.2 Following this exercise if a figure cannot be agreed there is the opportunity to go through a market test exercise for the leisure management service if the requested uplift is greater than £37,000.

6.3 A summary of the Benchmark Consultants report is Exempt Appendix 2 and was the basis for further discussions as to the level of the new Unitary Charge. The contract also provides that the parties must agree or concede a new unitary price and not impose one on the other party. Should a figure not be agreed and a market test exercise is undertaken, BLL is obliged to appoint a provider of the most economically advantageous tender as the operator of the centre. The council is obliged to accept that appointment although it can refer the matter to the Dispute Resolution Procedure (DRP) set out in the contract.

7. Options

7.1 The financial implications of the options listed below are set out in Exempt Appendices 1 (high level summary) and Exempt Appendix 1A (with more detail)

- **Option 1:** 'Do Nothing'
Negotiate a revised unitary charge based on the outcome of the Benchmark consultant's report
- **Option 2:** Negotiate with a contract extension
Negotiate a revised unitary charge but with a 3 year extension to the Leisure Management Contracts.
- **Option 3:** Terminate and Re-procure
The contract allows the council to terminate the contract by giving the current operator just 20 days' notice.

8. Issues for Consideration

8.1 There are quite a number of issues to be considered if the council is to pursue a voluntary termination option:

8.1 Compensation payments would be due to BLL and PCL which would be calculated in accordance with the provisions of the Project Agreement and are outlined in Exempt Appendix 1A although these will be subject to negotiation.

- 8.2 The current contract has a full repair and lease agreement whereby the operator is responsible for arranging and paying all of the costs for the maintenance of the building structure, services and equipment including:
- Routine building repairs
 - Replacement plant and equipment
 - Planned maintenance
 - Servicing
- 8.3 PCC and PCL share a 'Lifecycle fund' and if maintenance is retained by PCC, the fund needs to remain intact with ongoing contributions at the agreed level.
- 8.4 There are currently outstanding construction issues e.g. sports hall floor (c £180k).
- 8.5 There is an immediate known additional pressure of approximately £101k for electricity costs, which is part of the contractual arrangements that is currently absorbed by PCL. If a retendering exercise were to be carried out, this additional cost would need to be included and is taken into account in the financial appraisal.
- 8.6 The council may consider undertaking the process via the new Competitive Procedure with Negotiation introduced within the Public Contracts Regulations (2015). This procedure provides for additional flexibility over the standard Open and Restricted procedures but does not require the complexity and associated increases in timescales which would be required if a detailed Competitive Dialogue process was undertaken. However, there will be the cost associated with the revised provision. This is unknown and will be subject to market forces
- 8.7 There is a separate 10 years Leisure Management Contract (LMC) with PLL which ends in 2018; it includes Eastney Pool, Wimbledon Park and Charter Community Sports Centre. As part of this arrangement PCC has retained landlord responsibility for maintenance.
- 8.8 The estimated financial implications of these contracts have been included in Exempt Appendix 1 to enable members to see the full picture across the contracts in the overall Parkwood Group.
- 9. Legal Review**
- 9.1 A review of the key contractual legal issues as contained in Exempt Appendix 5.
- 10. Equality impact assessment (EIA)**
- 10.1 An equality impact assessment is not required as the recommendations do not have a negative impact on any of the protected characteristics as described in the Equality Act 2010.

11. Director of Finance's comments

11.1 A full financial appraisal setting out the costs and savings for each of the options outlined in this report is attached at Exempt Appendix 1 (high level) and Exempt Appendix 1A (more detailed).

11.2 Each option shows the effect of the estimated revised Unitary Charge against existing budget provision as well as any 'one off' investment required.

11.3 In financial terms, the Option 3 (Terminate and re-procure) presents a high degree of confidence that it will be the most financially advantageous option for the Council over the remaining 18 year life of the contract by a significant margin.

The evaluation has considered all contract breakage, disruption, management fees and maintenance costs and the likely income levels generated from a provider under a new contract. It is also anticipated that there would be strong demand for a new contract covering the Mountbatten Centre and other Leisure sites.

11.4 Any upfront 'one-off' costs can be funded from either the MTRS Reserve or Portfolio Reserves consistent with the rules around the application of those funds.

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Signed by: Stephen Baily:
Director Culture & City Development

Appendices:

- Exempt Appendix 1 Financial Options Appraisal (high level summary)
- Exempt Appendix 1A Financial Options Appraisal (more detail)
- Exempt Appendix 2 Benchmark Consultants Report
- Exempt Appendix 3 Internal Review and Options
- Exempt Appendix 4 Re Procurement
- Exempt Appendix 5 Legal Review

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of document	Location

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by the Cabinet on 3 December 2015

Signed

The Leader of Portsmouth City Council