

# REPORT TO COUNCIL

REPORT OF: PORTFOLIO HOLDERS HEALTHY ENVIRONMENT AND FINANCE AND ASSETS

REPORT NO.: CHFR96

DATE: 17<sup>th</sup> April 2008

<b>TITLE:</b>	LEISURE TRUST	
<b>FORWARD PLAN ITEM:</b>	YES	
<b>DATE WHEN FIRST APPEARED IN FORWARD PLAN:</b>	1 <sup>st</sup> JANUARY 2008	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	POLICY FRAMEWORK PROPOSAL	
<b>COUNCIL AIMS/ PORTFOLIO HOLDER NAME AND DESIGNATION:</b>	HEALTHY ENVIRONMENT PORTFOLIO HOLDER COUNCILLOR JOHN SMITH FINANCE AND ASSETS PORTFOLIO HOLDER COUNCILLOR MAUREEN SPENCER-GREGSON OBE	
<b>CORPORATE PRIORITY:</b>	USE OF RESOURCES	
<b>CRIME AND DISORDER IMPLICATIONS:</b>	NONE	
<b>FREEDOM OF INFORMATION ACT IMPLICATIONS:</b>	This report is publicly available via the Local Democracy link on the Council's website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>RISK ASSESSMENT</b>	CARRIED OUT AND INCLUDED IN REPORT	
<b>INITIAL EQUALITY IMPACT ASSESSMENT</b>	<b>Carried out and appended to report?</b>  <b>Not Applicable</b>	<b>Full impact assessment required?</b>  <b>No</b>
<b>BACKGROUND PAPERS:</b>	LAC146, LAC147, LAC148, LAC149, LAC150, AFM0040, AFM0050, AFM 0051	

## **1. INTRODUCTION**

1.1 The Cabinet agreed to tender the Leisure Management Contract at its meeting on 7<sup>th</sup> August 2006. As part of the tender process, at the "invitation to submit detailed solutions stage" prospective bidders were invited to submit their solution on the basis of a straightforward Leisure Management Contract or a through a Charitable Trust. The bidders all submitted tenders on the basis of a Leisure Trust. The evaluation of the bids has been undertaken and a preferred bidder selected. This report requests Council approval for the transfer of the Council's Leisure Facilities by lease to a Leisure Trust for the period of the leisure agreement.

## **2. RECOMMENDATION**

2.1 It is recommended that Council:

- a) approve the transfer of the Council's Leisure Facilities for a period of 15 years or for the period of the leisure agreement which ever is the shorter.
- b) Subject to a) above, delegate the negotiations on the terms of the transfer, for the venues set out below, to the Service Manager –Assets and Facilities Management in agreement with the Portfolio holder for Finance and Assets in consultation with the Portfolio holder Healthy Environment and to the satisfaction of the Council's Statutory Officers. The following venues will be transferred by lease:
  - o Grantham Meres Leisure Complex (incorporating the Grantham Meres Leisure Centre and the South Kesteven Sports Stadium)
  - o Stamford Leisure Centre
  - o Bourne Leisure Centre; and
  - o the Deepings Leisure Centre will be transferred by Licence

## **3. DETAILS OF REPORT**

### **Background**

On 15<sup>th</sup> May 2007 a notice was published in the Supplement to the Official Journal of the European Union seeking expressions of interest from private sector bidders. An information Memorandum and Pre-Qualification Questionnaire were forwarded to interested parties.

Seven bidders completed the initial Pre Qualification Questionnaire and from this, five bidders were selected to progress to the Invitation to Submit Documents Stage (ISDS). Of the five bidders, four submitted solutions which were evaluated to select a final two bidders to progress to the final tender stage.

Officers and external advisors entered into detailed competitive dialogue on behalf of the Council with the final two bidders. The competitive dialogue with these remaining bidders was closed on 5<sup>th</sup> March 2008 and at this stage Final tender submissions were requested by 7<sup>th</sup> March 2008. The final tenders from both bidders were submitted on the basis of a Leisure Management Contract through a Leisure Trust only.

Cabinet at its special meeting on 26<sup>th</sup> March 2008 resolved:

- (1) *To award preferred bidder status for the provision of the leisure management contract to Leisure Connection and to confirm the named reserve bidder;*
- (2) *To grant delegated authority to the Assets & Facilities service manager, in consultation with the Healthy Environment portfolio holder, to conclude the negotiations and proposed transfer of the facilities to the Leisure Trust;*
- (3) *To recommend to Council that the transfer of the Council's facilities on a lease to the proposed Leisure Trust subject to the satisfactory conclusion of negotiations referred to in exempt report AFM0051.*

### **Transfer of Assets to Leisure Trust**

3.5 The Leisure Connection proposal is a Local Trust model, where the Council would contract directly with a newly created local charitable company (Trust) to provide the services. This model requires the Council to contract with the Trust to provide the service (Leisure Management Agreement) and grant a lease of the relevant Leisure Facilities and land to the Trust. The Trust will then enter into a contract, mirroring the Leisure Management Agreement, that passes on all obligation regarding the services to Leisure Connection to act as the Trust's agent. It is proposed the local trust can be established within the timescale required by the Council for the commencement of Leisure Management Agreement.

3.6 To facilitate the finalisation of the new Leisure Management Agreement, Cabinet are recommending to Council that the Council's Leisure Facilities and Land are transferred by way of a lease at a peppercorn value to the Trust. The arrangements for the Deepings facilities and part of the Bourne facilities will be by of a Licence to occupy the premises, as these are subject to a separate informal agreement with the County Council.

3.7 The facilities and land to be transferred on lease may be summarised as:

- Grantham Meres Leisure Complex (incorporating the Grantham Meres Leisure Centre and the South Kesteven Sports Stadium)
- Stamford Leisure Centre
- Bourne Leisure Centre (incorporating the playingfield in Council ownership and other leisure facilities in County Council ownership)
- Deepings Leisure Centre

3.8 The duration of the lease would be for a maximum period of fifteen years or for the duration of the Leisure Management Agreement whichever is the shorter.

### **4. OTHER OPTIONS CONSIDERED AND ASSESSED**

4.1 As the current contract has previously been extended and taking account of the Cabinet's decision on 10<sup>th</sup> March to negotiate a short term contract extension with the present incumbent for the period 1<sup>st</sup> April 2008 to 30<sup>th</sup>

June 2008, with a provision to extend by mutual consent on a monthly basis for a maximum of six months, it is inappropriate not to proceed with the finalisation of a new Leisure Management Agreement. Both of the final bids received only operated through a Leisure Trust and for this to proceed the assets will need to transfer to the Trust. It would therefore be inappropriate not to proceed with the negotiations on the transfer of assets if the new Leisure Agreement is to be entered into within this timescale.

## **5. COMMENTS OF SECTION 151 OFFICER**

- 5.1 The main benefits of a Leisure Trust for the Leisure provider (which have been reflected in the value of tenders received) is the fact that the Trust can apply for Non Domestic Rate relief (NDRR) and VAT exemptions.
- 5.2 In relation to the liability for Business Rates, the Leisure Trust would become the "liable party" upon the granting of a lease to the Trust and if their application for NDRR is successful the Trust would receive relief of 80% against the Business Rates.
- 5.3 There is a potential risk that the Trust structure may not permit the awarding of NDRR, however, this risk should be considered in the light of the comments of the Service Manager – Benefits and Revenues set out below. In addition, the bidder has identified that should there be a change in legislation that would impact on either the NDRR or VAT exemptions, these risks would be borne by the Council and reflected in a revised contract sum.
- 5.4 In the event of the Trust going into bankruptcy the assets would revert to SKDC and the Contract with Leisure Connection would be broken.
- 5.5 **Matters Arising out of the accounting treatment related to the transfer of facilities** – Due to the specialist nature of the proposals and the proposed introduction of the International Financial Reporting Standards in future years, external specialist advice has been sought in respect of the accounting treating of the proposed arrangements for the transfer of facilities to the Leisure Trust. Also an initial consultation with the Council's external auditors has been undertaken regarding the potential implications for accounting treatment, further discussions will be held with the auditors as the proposals are finalised.
- 5.6 When determining the Accounting Treatment of the lease I will have regard to (Statement of Standard Accounting Practice 21) SSAP21, an initial evaluation of the proposed lease has been undertaken and it is likely that the lease would be treated as an "Operating lease" within the Council's Balance Sheet. In 2010/11 the change to International Financial Reporting Standards (IFRS) will have substantial impact on local government and in particular accounting for leases.
- 5.7 The potential for substantial impact arises from the fact that International Accounting Standard 17 (IAS17) would require leases relating to land and buildings to be split and analysed separately with regard to the two elements, on the presumption that land retains its value. The land element

would be likely then to be an operating lease, increasing the potential for the building element to be a finance lease. Whilst IAS17 does not include the "90%" test that was previously taken to be definitive under SSAP21, it does retain the basic qualitative requirements that require a lessor to transfer substantially all risks and rewards incidental to ownership for a finance lease to exist. At this stage no firm proposals have been developed to define how IAS17 is to be adopted by Local Government, therefore, this will be kept under review.

- 5.8 The substantial influence of these changes for the Council is an increased potential for a finance lease to arise in relation to the buildings covered by the lease. If this is the case, then any amounts payable to the authority would fall to be treated as capital receipts. Where there is an operating lease, the usual position would be for rentals to be accounted for as they fall due. As the proposal is for a peppercorn rental, this should not be a material issue for the Council, however, further advice may be required on this aspect once the terms of the lease are defined.
- 5.9 If assets or liabilities are transferred to a charitable trust and goods and services are procured from such a trust, then these are accounted for in the same way as if the dealings had been with an independent business, no matter whether the authority is a trustee of the trust.
- 5.10 Any potential implications arising from the Council's requirement under the Prudential Code to comply with the Prudential Framework will be kept under review during the finalisation of the terms of lease.
- 5.11 Clearly, there are number of potentially complex financial and accounting treatment issues. However, on the basis of the proposals submitted and subject to the mitigation and reduction of the risks I have identified above, the transfer of the assets to the Leisure Trust for the duration of the Leisure Management Agreement, have the potential for providing substantial financial benefits for the Council, which have been reflected in the value of the tender received from the preferred bidder, namely as a result of VAT exemptions; NDR relief; the potential for the Trust to access external funding which may not be available to the Council

## **6. COMMENTS OF MONITORING OFFICER**

- 6.1 The proposals will require the grant of leases/licences of the premises involved to the local trust to be set up and agreement on the terms of any leases/licences.
- 6.2 It will be essential the trust is not permitted to assign, or sub-let the premises.
- 6.3 Any lease/licence of the premises will be excluded from the provisions of the Landlord and Tenant Act 1954 preventing the creation of business tenancies giving security of tenure. This will ensure that the leases will absolutely terminate on the termination of the contract with the trust with no automatic rights of renewal.

- 6.4 The lease/licences are proposed at a peppercorn rent. This is a disposal at less than best price. This is permitted in accordance with s. 123 of the Local Government Act 1972 and the General Disposal Consent 2003. It is understood the Secretary of States consent will be required in accordance with the General Disposal Consent.
- 6.5 Specialist advice has and will be sought on the contact documentation, the set up of the trust and the disposal of the premises.

## **7. COMMENTS OF OTHER SERVICE MANAGERS**

### **Comments of the Service Manager – Asset and Facilities Management**

- 7.1 Significant benefits are presented by the ability of the Leisure Trust to access grants not necessarily available direct to a management contractor or the local authority. These grants could provide local community initiatives and opportunities for development.
- 7.2 The local Trust model will also seek to include community members on the board.

### **Comments of the Service Manager – Benefits and Revenues**

- 7.3 In relation to liability for Business Rates, the Leisure Trust would become the "liable party" upon the granting of a lease to the Trust.
- 7.4 With regard to the award of Business Rate Relief I am satisfied that the route being considered gives me effective assurance of independent control for the trust. At this stage I am comfortable that there are no outstanding issues to be addressed. However, the determination of rate relief can only be considered once an application has been submitted by the Leisure Trust and on the basis of the legislation in place at the time of the application

## **8. CONTACT OFFICERS**

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