

TONBRIDGE & MALLING BOROUGH COUNCIL

LEISURE and ARTS ADVISORY BOARD

21 May 2013

Report of the Director of Street Scene & Leisure (Designate)

Part 1- Public

Matters for Recommendation to Cabinet - Key Decision

1 LEISURE FACILITIES – ESTABLISHMENT OF NEW TRUST

Summary

This report updates Members on the establishment of a new Leisure Trust to manage the Council's main leisure facilities, and brings forward draft Heads of Terms for Member consideration/approval.

1.1 Background

1.1.1 At the last meeting of this Board in February, Members approved the timetable for the earliest transfer to a new Leisure Trust, and agreed that it be called the Tonbridge & Malling Leisure Trust.

1.1.2 Since that meeting significant progress has been made by the project team overseeing the work programme, supported by the approved leisure management and legal consultants.

1.2 Progress to Date

1.2.1 Establishment of a New Trust – the new Leisure Trust was incorporated on 15 March 2013 and a copy of its Memorandum and Articles of Association are attached at [Annex 1]. Charitable registration of the new company will follow the appointment of Trustees.

1.2.2 Documentation – draft Heads of Terms have been prepared and a copy is attached at [Annex 2] for Member consideration/approval. The four principal agreements within the Heads of Terms are:

- Management and Funding Agreement
- Leases
- Transfer Agreement
- Support Services Agreement

Each of the above agreements will be drafted in detail upon approval of the Heads of Terms, and will need final approval by both the Council and the Trustees of the new Leisure Trust. The leases will be reported to a future meeting of the Finance & Property Advisory Board.

- 1.2.3 Trustee Recruitment- In order to meet the timescale for the transfer, the recruitment of Trustees has commenced. Interviews will be held in early June 2013, with induction/training taking place in late June/early July. The new Trust will have 11 Trustees, two of which will be nominated Members of the Council. At Council on 14 May 2013 Members will have considered the Council Member nominees. The interview panel for the appointment of Trustees will include the Council's two advisers, the Cabinet Member for Leisure, Youth and Arts, the Director of Street Scene and Leisure (Designate) and the Leisure Contracts Manager. Following consultation with the Group Leaders and the Chairman of Overview and Scrutiny authority has been delegated to the panel to make the appointments.
- 1.2.4 Leisure Trust Business Plan – The Leisure Contracts Manager has commenced work on the preparation of the new Trust's Business Plan, which will cover a five year period. The Plan will incorporate the Trust's vision/objectives, structure, marketing plan, financial plan and performance monitoring. Similarly to the Heads of Terms, the Business Plan will require the final approval of both the Council and the Trustees of the new Leisure Trust.
- 1.2.5 Financial Issues – With regard to the pensions of staff transferring to the new Trust, the County Council's Superannuations Fund Committee has confirmed that the Council can stand as guarantor for the Trust, subject to Admitted Body Status being granted. All the required paperwork associated with Admitted Body Status has been submitted, and this Council's application will be considered by the Superannuations Fund Committee on 28 June 2013. Meetings have taken place with the Council's insurers and bank regarding arrangements for the new Trust, and specialist advice has been sought on Value Added Tax.
- 1.2.6 Other Issues – A range of other more specific issues are being addressed by members of the project team. These include inventories of equipment/suppliers, agreement of maintenance responsibilities, building condition surveys and the novation of sub-contracts.

Further progress will be the subject of a verbal update to the Board at the meeting.

1.3 Trading Name

- 1.3.1 Whilst the name of the new Trust will formally be the Tonbridge & Malling Leisure Trust, it is commonplace to adopt a more customer friendly trading name. Using Sport England's vision of "more people, more active, more often" it is proposed to adopt a trading name of "tmactive". This will be used to guide the Trust's

marketing strategy and supports the Council's objectives of providing leisure facilities to improve the health and wellbeing of all its residents.

1.4 Staff Liaison

- 1.4.1 Staff have continued to be kept regularly informed of progress through both staff forums and specific update meetings held by the Leisure Contracts Manager.

1.5 Legal Implications

- 1.5.1 The legal implications related to the establishment of a new Trust were considered in the report to the December 2012 meeting of this Board.
- 1.5.2 In order to assist the Council in the establishment of a new Trust and any associated legal issues (eg staffing, property, asset transfer) specialist legal advice has been procured.
- 1.5.3 Members may be aware that the Council currently has a lease with East Malling & Larkfield Parish Council for the land occupied by Larkfield Leisure Centre. The Parish Council has been informed of the decision and the Council will continue to liaise regarding the sub-leasing of Larkfield Leisure Centre.

1.6 Financial and Value for Money Considerations

- 1.6.1 The financial and value for money considerations related to the establishment of a new Trust were considered in the report to the December 2012 meeting of this Board. As advised at paragraph 1.2.5, the Council will act as guarantor in respect of the Trust's application to be admitted to the Pension Scheme. In a worst case scenario, if the Trust defaulted or failed to meet its liabilities the Council would have to cover the cost. The financial position of the Trust will, of course, be monitored very carefully.
- 1.6.2 The specialist external advice referred to earlier within this report is funded from a consultancy budget of £75,000 identified in the 'Invest to Save' Earmarked Reserve.

1.7 Risk Assessment

- 1.7.1 Risk assessment issues related to the establishment of a new Trust were considered in the report to the December 2012 meeting of this Board.
- 1.7.2 The project timetable has been developed to ensure that the management of the project is delivered in a robust and timely fashion. The project team will utilise the timetable to ensure that all key issues are addressed prior to transfer. The proposed transfer date for the new Trust is 1 November 2013.

1.8 Equality Impact Assessment

1.8.1 A full Equality Impact Assessment (EqIA) has been undertaken with the assistance of the West Kent Equalities Officer and was approved at the December 2012 meeting of this Board. The EqIA will remain under review by the project team.

1.9 Policy Considerations

1.9.1 Asset Management, Business Continuity/Resilience, Community, Healthy Lifestyles, Human Resources, Procurement and Young People.

1.10 Recommendations

1.10.1 It is **RECOMMENDED** that:

- 1) The Memorandum & Articles of Association for the new Trust be noted;
- 2) subject to Member comment at the meeting the draft Heads of Terms outlined in **[Annex 2]** to the report be approved;
- 3) the formal agreements between the Council and the Trust outlined at sub-section 1.2.2 of the report be reported to the next meeting of this Board;
- 4) the Leisure Trust Business Plan be reported to the next meeting of this Board;
- 5) the authority delegated to the Interview Panel to appoint Trustees be noted;
- 6) the leases relating to the leisure facilities being managed by the Trust on behalf of the Council be reported to a future meeting of the Finance & Property Advisory Board; and
- 7) the Trust's proposed trading name of "tmactive" be approved.

Background papers:

contact: Robert Styles

Nil

Robert Styles

Director of Street Scene & Leisure (Designate)

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	A full Equality Impact Assessment has been undertaken and reported to the December 2012 meeting of this Board
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	As above.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		

In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.