

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LEISURE and ARTS ADVISORY BOARD**

**16 September 2013**

**Report of the Director of Street Scene & Leisure**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Key Decision**

**1 LEISURE FACILITIES – ESTABLISHMENT OF NEW TRUST**

**Summary**

**This report brings forward for Member approval final draft documents relating to the transfer of the management of the Council's main leisure facilities to a new Leisure Trust. The draft documents include the Management Agreement, Business Transfer Agreement, Support Services Agreement and the Trust's Business Plan.**

**1.1 Background**

- 1.1.1 At the last meeting of this Board in May, Members received an update on the establishment of a new Leisure Trust and approved the Heads of Terms relating to the four principal agreements. It was agreed at the meeting that the formal agreements between the Council and the Trust would be reported to this meeting, with the exception of the leases, which would be reported to a future meeting of the Finance, Innovation and Property Advisory Board.
- 1.1.2 Members will be aware that the Council needs to achieve savings of £1.1m by April 2014. The transfer to the Leisure Trust will make a significant contribution to achieving this savings target.

**1.2 Draft Agreements**

- 1.2.1 The final draft Agreements have been circulated separately with these papers and will have been considered by the Tonbridge & Malling Leisure Trust's Board of Directors on 9 September 2013. Any key issues raised by the Trust will be shared with Members at the meeting. The Council's external advisers will be in attendance at the meeting to assist in answering any questions Members may have on the draft documentation. A brief summary of the draft Agreements is provided below:

- Management Agreement – This sets out the basis of how the Council will fund the Trust and the key outcomes the Trust will deliver in return. Members will note that the Agreement will be for a 20-year term, with a

review of funding every five years. The management fee for the five month period November 2013 to March 2014 is £335,750 and for the first full year April 2014 to March 2015 is £224,250 producing a management fee of £560,000 for the seventeen month period November 2013 to March 2015. For cash flow purposes, the sum of £560,000 is to be paid in advance after which the management fee is to be paid quarterly in advance. The annual management fee from April 2015 will be subject to both an inflationary increase and efficiency taper each year and Schedule 11 of the Management Agreement sets out the management fee for the period November 2013 to March 2018. Notwithstanding that the funding is fixed for five years, there will be an annual review of the services to ensure these continue to meet the Council's priorities for the next 12 month period. The Agreement includes minimum opening hours for each facility, protects key bookings and lists core prices which will be considered and agreed annually by the Council. The Trust will be responsible for the delivery of services, which will be monitored against specified outcomes, with performance monitored and reported quarterly.

The Trust will be responsible for health and safety and will provide health and safety policy and operating plans, which will be reviewed by the Council. The Agreement includes detailed repair and maintenance schedules against which the Trust and the Council will be required to repair and maintain the facilities. The Agreement also covers the process to be taken when the Angel Centre closes and the new Leisure and Community Centre is opened to the public at Bradford Street.

- Business Transfer Agreement – this sets out assets and transfer provisions which only apply at point of transfer. Assets to be transferred to the Trust include staff (TUPE), stock and contracts. With regard to staff pensions, the Trust has obtained admitted body status to the KCC Pension Scheme subject to execution of the Admission Agreement and the Council standing as guarantor for the Trust.
- Support Services Agreement – This sets out the basis on which the Council will continue to supply services to the Trust. Services relating to Financial Services (including accountancy, payroll, etc), Personnel, Legal Services, IT management and printing/courier services are set out in a specification with an initial two year term. At the end of the initial two year period both parties are at liberty to continue or terminate any or all of the services. In the event of termination six months notice on either side applies.
- Leisure Trust Business Plan – The Trust's five year Business Plan forms part of the Management Agreement. The Plan incorporates the Trust's vision/objectives, structure, marketing plan, financial plan and performance monitoring. Members will note that the Trust's vision is "More People, More Active, More Often" and it has the following Mission Statement: "Our mission is to provide a clean, safe and happy leisure experience on an

inclusive basis to residents and visitors to Tonbridge & Malling for the benefit of their health and social wellbeing. We will achieve this in a sustainable way through excellence in our people, policies and practice”.

### **1.3 Draft Leases**

- 1.3.1 The leases set out the buildings and property which are to be leased and the principal terms. The draft leases will be reported to the meeting of the Finance, Innovation and Property Advisory Board on 2 October 2013 by the Director of Central Services, and will identify any comments received by the Trust’s Board of Directors.

### **1.4 Trustee Recruitment**

- 1.4.1 Since the last meeting of the Board, I am pleased to report that following interviews eight Trustees were recruited from members of the public expressing an interest. These Trustees have joined the two Council Member Trustees (Councillors Mark Rhodes and Anita Oakley) and the Staff Member Trustee. The Board of Trustees has undertaken a programme of training/induction and has met on a number of occasions. Members will have the opportunity to meet the Trustees prior to the meeting of the Board.

### **1.5 Timescale**

- 1.5.1 The timescale for the transfer to the new Trust is 1 November 2013. Whilst the workload associated with the transfer is significant for Officers in Services across the whole Council, the timescale remains realistic and is felt to be achievable. Members are advised, however, that some tasks need to be undertaken by external parties and, therefore, these are outside of the control of the Council.

### **1.6 Staff Liaison**

- 1.6.1 Staff have continued to be kept regularly informed of progress and will be formally consulted on the transfer.

### **1.7 Legal Implications**

- 1.7.1 The legal implications related to the establishment of a new Trust were considered in the report to the December 2013 meeting of this Board.
- 1.7.2 In order to assist the Council in the establishment of a new Trust and any associated legal issues, specialist advice has been procured.

### **1.8 Financial and Value for Money Considerations**

- 1.8.1 The decision to transfer the operation of the Council’s leisure facilities to a new Leisure Trust was based on an options review that investigated the ability of revised service delivery arrangements to meet corporate priorities, maintain the

quality of service, protect the Council's assets, be sustainable and provide financial savings.

- 1.8.2 A new Leisure Trust was considered to provide the best balance of these objectives. It is estimated that the new service delivery arrangements will generate a saving in year one of circa £405,000 rising to a mature saving over the initial five-year period of circa £430,000, with the potential for further savings in future years. This saving making a significant contribution towards meeting the Council's first savings tranche of £1.1 million.
- 1.8.3 The new Leisure Trust, at least in the short term, is to purchase certain services from the Council. This has dual benefits in that it affords the Trust time to establish itself and its future needs for such services; and gives the Council time to plan for its future service operation.
- 1.8.4 The Council has engaged specialist external advice to assist in establishing the new Leisure Trust. The costs of which, together with the associated set-up costs, will be met from the 'Invest to Save' earmarked reserve. The land and property assets will remain in the Council's ownership with all surpluses made by the Trust once they have achieved the agreed £500,000 revenue reserve ring-fenced for reinvestment in the buildings/services provided by the Council.
- 1.8.5 The Council is to act as guarantor in respect of the admission of the new Trust to the Kent County Council Local Government Pension Scheme. In a worst case scenario, if the new Trust defaulted or failed to meet its liabilities the Council would have to cover its liabilities.
- 1.8.6 The Council is also to meet increases in the cost of utilities over and above inflation, but only if the Trust does not achieve its annual operating surplus target; and the impact of an increase in the employer's pension contribution rate from that set at the date of transfer. It is, therefore, proposed that as part of the 2014/15 budget cycle we consider how we might fund the establishment of a specific earmarked reserve for such eventualities. A potential funding source could be the part-year saving achieved in 2012/13.

## **1.9 Risk Assessment.**

- 1.9.1 Risk assessment issues related to the establishment of a new Trust were considered in the report to the December 2012 meeting of this Board. The project timetable has been developed to ensure that the management of the project is delivered in a robust and timely fashion.
- 1.9.2 As mentioned at paragraph 1.5.1, the timescale of transfer on 1 November 2013 is felt to be achievable, but some tasks are outside of the control of the Council and, therefore, there is a risk (albeit slight) that the target date may not be achieved.

## 1.10 Equality Impact Assessment

1.10.1 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.

## 1.11 Policy Considerations

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

## 1.12 Recommendations

1.12.1 Subject to Member comment at the meeting, it is **RECOMMENDED TO CABINET** that:

- 1) the final draft Agreements relating to the transfer of the management of the Council's main leisure facilities to a new Trust, circulated with the papers, be approved;
- 2) authority be delegated to the Director of Street Scene and Leisure in liaison with the Council's external legal advisers to finalise the drafting of the agreements on the basis set out in the report; and
- 3) the transfer to the new Trust be progressed by 1 November 2013, in accordance with the agreed timescale.

Background papers:

contact: Robert Styles

Nil

Robert Styles

Director of Street Scene & Leisure

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	Refer to full EqIA approved at Leisure & Arts Advisory Board on 10 December 2012.

<b>Screening for equality impacts:</b>		
<b>Question</b>	<b>Answer</b>	<b>Explanation of impacts</b>
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.*