

TONBRIDGE & MALLING BOROUGH COUNCIL
COMMUNITIES and HOUSING ADVISORY BOARD

27 February 2018

Report of the Director of Street Scene, Leisure & Technical Services

Part 1- Public

Matters for Recommendation to Cabinet - Non-Key Decision (Decision may be taken by the Cabinet Member)

1 LEYBOURNE LAKES COUNTRY PARK – DEVELOPMENT OPPORTUNITIES

Summary

This report updates Members on proposals for the potential external management of Leybourne Lakes Country Park. The report brings forward Heads of Terms for Member consideration and approval and advises on the procurement route, timeframe and evaluation criteria.

1.1 Background

- 1.1.1 A List C project for evaluation is currently in the Council's Capital Plan for improved facility provision at Leybourne Lakes Country Park. The scheme identifies potential improvements to include the provision of an education room/facility, general improvements to the water sports facilities/area and the provision of a café. Developer contributions of just over £700,000 are currently held by this Council specifically to support onsite developments.
- 1.1.2 Highlighted within the Council's Savings and Transformation Strategy, is the theme of 'Income Generation and Cost Recovery'. With Leybourne Lakes Country Park being a discretionary service, this theme needs careful consideration in relation to the facility, with a long-term ambition for the Country Park to be financially more self-sufficient. Any such considerations need to be balanced with the nature of the Park and its core objectives, as reflected in the Park's recently approved Management Plan.
- 1.1.3 Initial advice on the business case for facility development at the site was sought from a leading leisure and sport business consultant, Oaks Consultancy. The Oaks report supported the Council's initial view that facility development is required and viable, and Members agreed that Oaks be appointed to assist the Council in the business/financial appraisal of options linked to capital investment. The Oaks report also clearly recognised that direct delivery by the Council in the future might not offer the best outcomes in terms of improvements, investment and financial return. Oaks strongly recommended that the Council should consider the external management of Park in accordance with a clearly defined

Management Agreement. Oaks believe this will be the best option to deliver an enhanced customer offer and financial saving to the Council.

1.1.4 At the meeting of this Board on the 13 November 2017 Members agreed to further explore the external management of the Park through a formal procurement process. This report brings forward details of this process for Members consideration and approval specifically focusing on the following:

- Procurement
- Heads of Terms
- Evaluation Criteria
- Timeframe

1.2 Procurement

1.2.1 The Council's Contract Procedure Rules and any EU rules must be observed. Legal Services confirm that this opportunity would be tendered as a 'Service Concession'. Procurement rules for tendering are set out in the Concessions Contracts Regulations 2016 which require advertisement and notification of award of contract but are not as restrictive as a full EU tender process and we will retain greater control over the timetable.

1.2.2 It is a requirement of the procurement process that TMBC must formally consider and approve the appropriate length of duration of the concession if it is to be greater than five years. The maximum duration of a concession should not exceed the time a concessionaire could reasonably be expected to take to recoup its investment and obtain a return. Investments both at the outset of the concession and throughout its duration should be included in this consideration.

1.2.3 Indications from the Heads of Terms produced by Oaks suggest that a 20/25 year term would be commercially attractive to prospective partners. Our own financial findings suggest that any less than this length of term could result in overall financial losses for that third party.

1.2.4 Progressing with a procurement exercise will not commit this authority to a new way of managing and developing LLCP, but it will enable Members to consider a fully costed proposal from a prospective partner, and compare it to other options.

1.3 Heads of Terms

1.3.1 As highlighted at sub-section 1.1.3 it is proposed that any external management would be agreed and undertaken in accordance with a formal Management Agreement, similar to the approach already adopted for the Council's Indoor Leisure Facilities. The Management Agreement would form a key part of the

tender pack and will be guided by approved Heads of Terms. In order to inform the Heads of Terms, consultation has been undertaken with key stakeholders.

1.3.2 All Borough Members representing Snodland and Larkfield and representatives from both Snodland Town Council and East Malling and Larkfield Parish Council were invited to attend a meeting on the 1 December 2017 chaired by the Cabinet Member for Communities. The meeting explored the parameters for external management and a copy of the summary from the meeting can be found at **Annex 1**. Following this meeting a letter has also been received from East Malling and Larkfield Parish Council outlining its comments on the proposal. A copy of this letter can be found at **Annex 2**.

1.3.3 Discussions have also taken place with members of the Leybourne Lakes User Panel at its meeting on the 9 November 2017. Key issues from the discussions are summarised below:

- A balance needs to continue to be struck between uses of the site, including wildlife.
- Future activities/events should be appropriate to the setting and environment of the Park and no motorised water sports should be permitted.
- Green Flag status should be retained at the site.
- Community engagement at the site should continue including volunteering opportunities and the User Panel.
- Community activities at the site should be retained, including Parkrun, health walks, scouting activities and the small local fishing clubs.
- Any proposed built facilities will need to be sympathetic to the environment and reflect the needs of the Park and its users.

1.3.4 Taking all comments into consideration Oaks has prepared a draft Heads of Terms as shown at **Annex 3** for Members consideration and approval. It is proposed that the Heads of Terms will form the basis of the development of a Management Agreement.

1.4 Evaluation Criteria

1.4.1 A key document within the tender pack will be the Evaluation Criteria. This document will allow the Council to advise tenderers of its priority areas of focus when considering proposals. During the consultation with local Members and Parish/Town Councils, this issue was discussed and it was suggested that priority needed to be given to the quality of each proposal over price. It is, therefore, suggested that when evaluating submissions weighting should be 40% Price and 60% Quality.

1.4.2 It is proposed that the full Evaluation Criteria be brought to Members at the next meeting of this Board for approval.

1.5 Timeframe

1.5.1 Following the next meeting of this Board in June it is proposed that the Tender documents be finalised and sent out in August. In the interim, adverts will be placed seeking expressions of interest.

1.5.2 In accordance with the tender process laid out in EU legislation, and following receipt and evaluation of the tenders, it is envisaged that a report be presented to the November meeting of this Board for Members to consider the outcome and discuss the way forward.

1.6 Legal Implications

1.6.1 It is recognised that a number of legal restrictions apply to the site and will need to be confirmed and collated prior to the procurement exercise. Many of these relate to site designations and utilities. Legal Services are currently developing a 'Report on Title' that will highlight all restrictions and will be circulated to tenderers as part of the tender pack. Initial investigations have highlighted two particular restrictions that are worthy of note, these being:

- Berkeley Homes – a covenant was in place to seek Berkeley Homes Permission for new development on site though this fell away after 10 years and, therefore, no longer applies.
- Kent County Council – following the transfer of a section of KCC land (access point off the Ham Hill Roundabout) to the Borough Council, the Borough Council will need to seek KCC's formal consent to proceed.

1.7 Financial and Value for Money Considerations

1.7.1 The potential Capital Plan Scheme for facility improvements at the Park represents a significant level of investment from developer contributions held by the Council. The consultant's previous study on potential income generation identifies opportunities at the site by working in partnership with an external provider. These opportunities relate to both external capital investment and a reduction in the ongoing revenue cost of the facility to the Council.

1.7.2 The current revenue cost to the Council of the Park is £113,650 (17/18 original estimate). It is expected that following the transfer of operations to the successful tenderer, the reduction in costs to the Council would contribute to the targets within the Savings and Transformation Strategy.

1.8 Risk Assessment

1.8.1 The delivery of projects within the Capital Plan is identified in relevant Operational Risk Registers within the Service. A number of existing controls are in place to

help deliver projects in accordance with the design brief, on timescale and within budgets. These controls include the preparation of design briefs, use of consultant teams where applicable, compliance with Contract and Financial Procedure Rules, an Officer Study Team approach and regular reports to Management Team and Members.

- 1.8.2 It is important in light of the Council's overall financial position that opportunities are carefully considered to reduce the cost of the facility to Council. To assist the Council in judging the potential financial risk associated with investment in the site, a leading leisure and sport business consultant (Oaks) has been appointed to work alongside the Council, which will assist the Council in making the best decision for the future.

1.9 Equality Impact Assessment

- 1.9.1 Equality will need to be taken into consideration within any new management arrangement and within the design of any new facilities being brought forward.

1.10 Policy Considerations

- 1.10.1 Asset Management, Biodiversity & Sustainability, Community, Procurement, Staffing and Healthy Lifestyles.

1.11 Recommendations

- 1.11.1 It is RECOMMENDED TO CABINET that:

- 1) the Heads of Terms as detailed in Annex 3 of the report be approved and form the basis of a Management Agreement for the procurement exercise;
- 2) a Price/Quality split as of 40% Price and 60% Quality for the evaluation of the tenders be approved;
- 3) the detailed Evaluation Criteria be brought to the next meeting of this Board for consideration and approval;
- 4) the procurement route and timeframe be noted and approved as outlined in the report; and
- 5) consideration and approval of the appropriate length of term of concession be given with a lease term of between 20 to 25 years.

The Director of Street Scene, Leisure & Technical Services confirms that the proposals contained in the recommendation(s), if approved, will fall within the Council's Budget and Policy Framework.

Background papers: Nil

contact: Darren Lanes

Robert Styles Director of Street Scene, Leisure & Technical Services