

## **NORTH SOMERSET COUNCIL DECISION**

**DECISION OF:** THE DIRECTOR OF PLACE

**IN CONSULTATION WITH:** SECTION 151 OFFICER & HEAD OF STRATEGIC PROCUREMENT



**WITH ADVICE FROM:** THE DIRECTOR OF PLACE & HEAD OF STRATEGIC PROCUREMENT

**DECISION NO:** 23/24 DP272

**SUBJECT:** TO EXTEND THE CURRENT LEISURE CONTRACT WITH LEGACY LEISURE FOR AN ADDITIONAL 5 YEARS TO END 31 MARCH 2032 VIA AN EXCEPTION TO CONTRACT STANDING ORDERS

**KEY DECISION:** YES

**REASON:** The value of the contract exceeds £500,000

### **BACKGROUND:**

The impact of Covid on the leisure centres has been significant. The numerous closures and then social distancing rules required since 20th March 2020 has played a major role in the reduction in usage and then income for the leisure centres. Since re-opening fully and the removal of restrictions, the recovery has been slower than expected for certain areas of the business which usually would experience high usage and income.

The water based activities such as casual swimming sessions and lessons are above pre-covid levels, however the fitness gym usage and associated memberships have reduced and not returned as expected (this is a national trend). There are still certain members of the population who have not fully returned to pre-covid activities.

During the lockdown periods the Council provided financial support, to the leisure contractors and also waived the management fees and delayed the prudential borrowing costs, to help support the contractors through the very challenging time and allow them to remain open going forward.

The Council was also successful in securing £503k from the Leisure Recovery Fund to cover losses between December 20 – March 21, which was paid to the contractors using an open book process against their losses.

The repayments of the management fees and prudential borrowing resumed in April 2022, however the profit share, has not yet been triggered.

As the leisure centres were starting to recover from the impacts of the pandemic, the doubling of the cost of utilities over the last 12 months and the uncertainty of costs going forward has again impacted on the finances of the centres. They have all reduced outgoings significantly and are lowering and monitoring their energy consumption where possible.

The Council has been working closely with the contractors to support them through this time, by providing additional funds to enable them to increase their revenue by providing alternative activities to attract existing and new users to the centres.

### Moving Forward

The current contract with Legacy Leisure covers three sites, Hutton Moor Leisure Centre in Weston-super-Mare, Scotch Horn Leisure Centre in Nailsea and Backwell Leisure Centre.

The contract has been in place since 1 April 2006 and in 2016 both contracts were extended beyond their initial terms to provide for a new end date of 2027 and an improved financial model for the council as part of the Council's budget reduction programme.

The extensions were supported by the publication of 2 VEAT Notices.

Due to the continued uncertainty of the utilities position going forward and the impact this is having on the contract and income potential for the Council. There is a desire to secure the future contractual position with the leisure providers to see through this challenging time.

The Council would like to extend the current contract it has with Legacy Leisure for additional 5 years, to end on 31 March 2032.

There are a number of benefits to extending the contract at this time:

- Continuation of payment of the management fee to the Council - £286,437.04 pa.
- Continued repayment of prudential borrowing sum - £186,000 pa
- Opportunity for investment from Legacy Leisure to improve facilities as a longer repayment term (see below)
- Management of facilities by Legacy Leisure is positive.
- No cost to the Council – continued income received as management fee and surplus share (once fully recovered)
- Partnership working is strong
- Financial security for the Council
- To provide a consistency of service and management whilst future leisure developments are being explored.
- Removes the additional pressure on resources required for a full tender process

It is worth noting that the majority of leisure contracts currently being let, now come with a management fee to the contractor, payable by the Council, which was not present in their previous contracts.

Additional terms such as utility benchmarking clauses are also being added in new contracts.

These would be avoided if the current contract is extended, as the agreement is to extend on the same terms.

Initial discussions have taken place with Legacy Leisure regarding the extension who are very keen to secure the additional contract and work with the Council to improve the facilities.

Legacy Leisure have agreed alongside the 5 year extension, to invest the following sums:

- £135,000 – to match fund the Council's s106 investment of the same value to improve the swimming pool changing rooms at Hutton Moor Leisure Centre. (separate decision sheet)
- £100,000 – to ensure the fitness equipment is kept up to date at Hutton Moor.
- £100,000 - to be invested in any items directed by the Council to support its objectives

### Sport and Leisure Facilities Strategy

The Council's Sport and Leisure Facilities Strategy vision is:

*To ensure that North Somerset has high quality, sustainable sport and leisure facilities offering a range of sports and physical activities in order to meet current and future levels of demand and provide wide opportunity for active participation and healthier lifestyles*

The Council is committed to improving the health of the local population and reducing health inequalities and the leisure centres play a role in this. The Council also aims to have 'high quality leisure services, accessible by all, that remain relevant to the changing needs of North Somerset'.

The strategy is supported by a Built Sport and Leisure Facilities Strategy and a Playing Pitch Strategy, which are both comprehensive documents, produced using Sport England Guidance.

These strategies identify priorities for leisure facilities within North Somerset until 2036, which include examining the water space in the Nailsea and Backwell area, which are both in the contract with Legacy Leisure.

Feasibility work is currently taking place regarding the leisure offer within the Nailsea/Backwell area to enable further discussions. An extension to the contract will also support this work and should any developments take place, will enable an 'operational' leisure facility to be tendered in 2032.

The two remaining leisure centres, Parish Wharf in Portishead and Strode in Clevedon are managed by Places Leisure Ltd, and similar discussions regarding a contract extension are taking place and a decision sheet on this will follow.

### **Use of Exception**

The following exception applies to this decision – 6.3.1

6.3.1 quantifiable and significant cost and efficiency savings can be achieved through seeking an alternative route;

The current contract finishes in 2027, however the leisure industry is in a challenging position with the slow recovery in some areas since Covid and now the significant increase in utilities.

The industry norm is now back to paying management fees which is not something the Council could afford, therefore, to continue the current arrangement for a longer period would ensure significant savings should a re-tender be carried out.

**DECISION:**

To agree to the extension of the leisure contract with Legacy Leisure for an additional 5 years to end on 31 March 2032.

**REASONS:**

The main reasons are to provide a continued quality service and financial sustainability for the Council until 2032; an explanation of these and additional reasons are stated within the background information above.

**OPTIONS CONSIDERED:**

Initial options considered were to extend the contract for an additional 2 years, however with the uncertainty in the market at present, it made better financial sense for the Council to extend for 5 years, and this would also allow for additional security and investment from the leisure contractor.

The remaining option is to do nothing.

This will require the contract to be re-let, to start in April 2027, with pre-tender work starting in 2024/25 and the likely outcome would be the leisure contractors requiring a management paid to them by the Council and the prudential borrowing may not be repaid. This would not be financially viable for the Council.

**FINANCIAL IMPLICATIONS:**

Estimated Contract Value – Legacy Leisure pay the authority £286,437.04 per annum, this is increased on an annual basis using the CPI. Legacy Leisure also repay the capital investment of £206,746 per annum.

Legacy Leisure has a profit threshold of £116,257 per year. Anything above this is shared 50/50 between both parties.

At present the Council is not receiving any surplus share, however it is hoped to be paid from next financial year.

There are no costs to the Council to extend the contract.

The extension will see an investment of £335,000 by Legacy Leisure over the term of the contract.

In addition the Council will invest £235,091 of s106 funds into Hutton Moor Leisure Centre.

**Costs**

No direct costs to extend, other than legal costs which will be covered within existing budgets.

**Funding**

S106 to be invested is covered in decision 23/24 DP 246. Approve the capital spend funded by S106 at Hutton Moor Leisure Centre poolside changing rooms.

## **LEGAL POWERS AND IMPLICATIONS**

Legal and Procurement advice was sought and the following information was provided, in relation to the extension:

The Leisure Management contracts would be covered under the Concession Contracts Regulations 2016, which provide for a modification of a contract during its terms under six provisions.

Under these provisions

43.—(1) **Concession contracts may be modified** without a new concession contract award procedure in accordance with these Regulations in **any** of the following cases— .....  
“43 (1) (e) where the modifications, irrespective of their value, **are not** substantial within the meaning of paragraph (9);”

## **CLIMATE CHANGE AND ENVIRONMENTAL IMPLICATIONS**

The Council is working with Legacy Leisure to reduce its energy consumption and exploring all options to decarbonise the facilities where possible. Applications have been made to PSDS and Sport England Swimming Pool Support Fund to support decarbonisation within Hutton Moor leisure centre.

## **CONSULTATION**

Consultation has taken place with the Council's Procurement and Legal Team. The Executive Member for Culture and Leisure and Scrutiny Panel for Transport, Climate and Communities (TCC) has been briefed and all support the extension.

## **RISK MANAGEMENT**

If the contract was not extended there is a high risk that when the contracts are re-tendered, there would be a requirement for the Council to pay a management fee to the incoming leisure contractor and also the prudential borrowing may not be repaid.

The extension reduces the financial risk to the Council.

## **EQUALITY IMPLICATIONS**

Have you undertaken an Equality Impact Assessment? No

## **CORPORATE IMPLICATIONS**

The Council also aims to have 'high quality leisure services, accessible by all, that remain relevant to the changing needs of North Somerset'.

The leisure centres provide residents venues to take part in physical activity, to improve both their physical and mental wellbeing.

## **APPENDICES**

None

## **BACKGROUND PAPERS**

Decision 23/24 DP 246. Approve the capital spend funded by S106 at Hutton Moor Leisure

Centre poolside changing rooms.

SIGNATORIES:

DECISION MAKER(S):

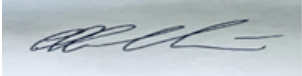
Signed:  Director of Place

Date: 14 November 2023

With advice from:

Signed:  S151 Officer

Date: 14 November 2023

Signed:  Head of Strategic Procurement

Date: 14 November 2023