

NOTICE OF MEETING

Meeting: COMMUNITY & LEISURE OVERVIEW AND SCRUTINY
PANEL

Date and Time: TUESDAY, 9 FEBRUARY 2021, AT 6.00 PM*

Place: MICROSOFT TEAMS - ONLINE

Enquiries to: Email: andy.rogers@nfdc.gov.uk
Tel: 023 8028 5070

PUBLIC PARTICIPATION:

*Members of the public may speak in accordance with the Council's public participation scheme:

- (a) immediately before the meeting starts, on items within the Panel's terms of reference which are not on the public agenda; and/or
- (b) on individual items on the public agenda, when the Chairman calls that item. Speeches may not exceed three minutes.

Anyone wishing to speak should contact the name and number shown above no later than 12.00 noon on FRIDAY 5 FEBRUARY 2021. This will allow the Council to provide public speakers with the necessary joining instructions for the Microsoft Teams Meeting.

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Chief Executive

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This Agenda is also available on audio tape, in Braille, large print and digital format

AGENDA

Apologies

1. DECLARATIONS OF INTEREST

To note any declarations of interest made by members in connection with an agenda item. The nature of the interest must also be specified.

Members are asked to discuss any possible interests with Democratic Services prior to the meeting.

2. PUBLIC PARTICIPATION

To note any issues raised during the public participation period.

3. HEALTH AND LEISURE REVIEW - PREFERRED BIDDER (Pages 5 - 40)

To consider proposals to award a contract to operate and maintain the District Council's five Leisure Centres, with effect from 1 July 2021, including related issues, and to make a recommendation to the Cabinet.

4. EXCLUSION OF THE PRESS AND PUBLIC

The report at item 3 (Appendix 5) of the agenda contains exempt information by virtue of Paragraph 3 in Part 1 of Schedule 12A of the Local Government Act 1972. If required, the Chairman of the Panel will move the following resolution to exclude the press and public:-

"That, under Section 100(A)(4) of the Local Government Act 1972, the public and the press be excluded from the meeting on the grounds that it involves the likely disclosure of exempt information as defined in paragraph 3 of Part I of Schedule 12A of the Act and the public interest in withholding the information outweighs the public interest in disclosing it."

Description of exempt information – Paragraph 3 – Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Part II - Private Session

Members are reminded that reports and information relating to this session are not for publication and should be treated as **strictly confidential**.

NEW FOREST DISTRICT COUNCIL – VIRTUAL MEETINGS

Background

This meeting is being held virtually with all participants accessing via Microsoft Teams.

A live stream will be available on YouTube to allow the press and public to view meetings in real time and can also be found at the relevant meeting page on the Council's website, with this published agenda.

Principles for all meetings

The Chairman will read out Ground Rules at the start of the meeting for the benefit of all participants. All normal procedures for meetings apply as far as practicable, as the Government Regulations do not amend any of the Council's existing Standing Orders.

The Ground Rules for all virtual meetings will include, but are not limited to, the following:-

- All participants are reminded that virtual public meetings are being broadcast live on YouTube and will be available for repeated viewing. Please be mindful of your camera and microphone setup and the images and sounds that will be broadcast on public record.
- All participants are asked to mute their microphones when not speaking to reduce feedback and background noise. Please only unmute your microphone and speak when invited to do so by the Chairman.

- Councillors in attendance that have not indicated their wish to speak in advance of the meeting can make a request to speak during the meeting by using the “raise hand” feature in Microsoft Teams. Requests will be managed by the Chairman with support from Democratic Services. Please remember to “lower hand” when you have finished speaking.
- The chat facility should not be used unless raising a point of order or providing the wording for a motion.
- All participants are asked to refer to the report number and page number within the agenda and reports pack so that there is a clear understanding of what is being discussed at all times.

Voting

When voting is required on a particular item, each councillor on the committee will be called to vote in turn by name, expressing their vote verbally. The outcome will be announced to the meeting. A recorded vote will not be reflected in the minutes of the meeting unless this is requested in accordance with the Council’s Standing Orders.

By casting their vote, councillors do so in the acknowledgement that they were present for the duration of the item in question.

Technology

If individuals experience technical issues, the meeting will continue providing that it is quorate and it is still practical to do so. The Chairman will adjourn the meeting if technical issues cause the meeting to be inquorate, the live stream technology fails, or continuing is not practical.

Public Participation

Contact details to register to speak in accordance with the Council’s Public Participation Procedures are on the front page of this agenda.

In order to speak at a virtual meeting, you must have the facility to join a Microsoft Teams Meeting. Joining instructions will be sent to registered speakers in advance of the meeting.

The Council will accept a written copy of a statement from registered speakers that do not wish to join a Microsoft Teams Meeting, or are unable to. The statement will be read out at the meeting and should not exceed three minutes. Please use the contact details on the agenda front sheet for further information.

To:	Councillors	Councillors
	Geoffrey Blunden (Chairman)	Barry Dunning
	Neville Penman (Vice- Chairman)	David Hawkins
	Steve Clarke	Caroline Rackham
	Keith Craze	David Russell
	Arthur Davis	Alex Wade

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**COMMUNITY AND LEISURE OVERVIEW & SCRUTINY PANEL – 9 FEBRUARY 2021
CABINET – 17 FEBRUARY 2021
COUNCIL – 25 FEBRUARY 2021**

HEALTH AND LEISURE REVIEW – PREFERRED BIDDER

1. INTRODUCTION

- 1.1 This report deals with the fundamental review that has been carried out in respect of the operation of the Council's 5 Health and Leisure Centres and recommends a 'preferred bidder' to partner with the Council to run the Leisure Centres.
- 1.2 Over the last 3 years, there has been extensive work undertaken by a member Task and Finish Group set up by the Council (the 'Health and Leisure Task and Finish Group') to explore different options for the operation of the Council's 5 Health and Leisure Centres. There has been significant public engagement over the issue.

2. BACKGROUND

- 2.1 The Council's Health & Leisure Service consists of 5 Leisure Centres in the following locations: Totton, Ringwood, Applemore, New Milton and Lymington. The first of the Leisure Centres were built in the 1970s and they are discretionary services. Over the years, they have required significant on-going investment and subsidy from the Council so that they continue to provide modern leisure services in an ever-changing leisure climate.
- 2.2 It was considered that with the changing leisure market, including the emergence of low-cost gyms and private leisure centres as much wider 'go to destinations', a fundamental review of the Service was required to ensure its future sustainability.
- 2.3 In March 2018, the Community and Leisure Overview and Scrutiny Panel established the Health and Leisure Task and Finish Group (made up of cross-party councillors) to consider the most efficient and effective way of delivering the Council's Health and Leisure provision.
- 2.4 The Task and Finish Group's Terms of Reference were as follows:
 - *"To achieve an outcome that will significantly reduce the cost of the Council's five health and leisure centres;*
 - *To objectively assess the management options, based upon an assessment of value, judged against a range of criteria of importance to this Council's objectives, to include an understanding of the risks associated with different operating models; and*
 - *To make recommendations on future management options based upon the outcome of the assessment process."*
- 2.5 An important context of the work of the Task and Finish Group was to protect the provision of 5 leisure centres across the district over the medium-to-long term period, whilst making a significant impact to the Council's budget. An internally led management review and the Task and Finish led delivery review targeted at identifying savings totalling £1M per annum. This £1M was to assist in realigning the use of Council Tax to corporate plan priorities and contribute towards the impending increases in costs due to the age of the 5 Leisure Centres. Whilst members of the group commended the quality of the existing service, they recognised the Council's

limited opportunities for investment and development, alongside the constraints on capacity to meet future demand.

- 2.6 The above factors, combined with the changing leisure market, including the emergence of low-cost gyms and leisure centres as much wider 'destinations', required an appropriate response to ensure the future sustainability of the service.
- 2.7 In support of the financial target, officers, working with the Portfolio Holder set an operational plan in place to deliver £600,000 of the £1 million target by 2020/21 (leaving £400,000 as the delivery model review target). The plan included activities to reduce costs and increase income as follows:
- A review of management and operation staffing;
 - Introduction of kiosks in centre to develop self-service options and enhance online bookings and payments;
 - A review of fees and charges against market; and
 - A focus on core leisure activities and a more streamlined programme of activities.

3. THE COUNCIL'S CURRENT LEISURE SERVICE PROVISION

Service Delivery

- 3.1 The Council's current Health and Leisure provision includes 5 Health and Leisure Centres across the District, offering a broad range of wet and dry facilities including pools, sports halls, studios and modern gyms. The Centres share sites with local secondary schools and colleges and offer a mix of community use, club use and educational use under management agreements.
- 3.2 The first Centre to be built was Applemore in 1972 followed by New Milton, Ringwood and finally, Lymington and Totton in 1989. Since their inception, they have all been maintained to a very high standard and significant investment has been required to maintain the quality of the facilities to keep up with changing leisure demands and to respond to opportunities to sustain the business in the face of increasing fierce competition. Appendix 1 provides details of each centre, their locations and facilities.
- 3.3 All 5 Centres have modern bright pools and up to date village changing facilities. In recent years, the gyms and studios at all Centres have been refurbished. Recent projects include a major refurbishment and development of fitness facilities at Ringwood and the development of a free weights room at New Milton. Members can also enjoy additional activities including spinning, soft play and steam and sauna suites.
- 3.4 The Service was relatively unaffected by 'competition' for a lengthy period in the early days, however, in recent times, the Leisure sector and the local market has grown significantly with a number of new private facilities, as well as a broader range of leisure opportunities providing more choice for people. A particular issue has been the insurgence of low-cost gyms who are able to offer a dry side only facility at a price that larger leisure centres, such as the Council's, are unable to compete with.
- 3.5 In some respects, the Council's Leisure Centres fall into a category whereby they are not large enough to compete with facilities like Fleming Park in Eastleigh or Littledown near Bournemouth. Whilst having similar facilities, the others benefit from significantly larger catchment areas and are destinations in their own right that attract all ages, families and visitors alike.

- 3.6 The Council has always strived to provide a Service with a ‘balanced’ leisure programme with emphasis on community well-being for all age groups and sectors. One example is the Council’s Active Lifestyles Programme which works closely with local health professionals to provide an affordable and accessible 12 week activity programme and classes to the elderly and those with a range of health conditions, whether physical or mental, which encourages participants to become more active., In 2019/20, around 1000 people completed an Active Lifestyles Programme and the majority continued to use the Centres and lead more active lives.
- 3.7 A turning point for the Council’s Leisure Service occurred when a number of a low-cost dry gyms opened in the locality which saw the Council lose significant memberships. The up-rise in these new gyms, with their extensive national and local marketing campaigns, have had a significant impact on the Council’s market share. Whilst demand for gym membership is generally growing, it is becoming harder for the Council to compete in what has become a complex and fast changing leisure industry.
- 3.8 In the last 2 years, the Council has seen its membership levels decline by 10%. Even with implementing lower prices, the decline has continued despite the fact that the Council’s Leisure Centres are high quality centres providing good services (as evidenced through Sport England Benchmarking). The changing competitive and diverse leisure market means that the Service is facing considerable threats and challenges which will be extremely difficult to meet without significant further investment and taxpayer subsidy.

Baseline Financial Position

- 3.9 The bottom-line Leisure Centre deficit (requiring Council Tax subsidy) has ranged from £1.967M (2015/16) to £1.037M (originally budgeted position for 2020/21). This bottom-line position breaks down into:
- costs which would be retained under any alternative delivery model (i.e. some support and corporate costs would be re-directed to other services);
 - costs to be retained under certain delivery models (i.e. Landlord Maintenance Responsibilities would remain with the Council in most models); and
 - operating incomes and expenditures which would be transferred to a third-party operator.
- 3.10 The average operating position to transfer to a third-party provider is a surplus of £101,000 (i.e. incomes of £7M and Expenditures of £6.9M). This operating position has been calculated by taking 2017/18 – 2019/20 outturns (adjusted to allow for a VAT advantage reclaimed in 2018/19 and to remove the impact of the COVID-19 closure in March 2020), and the original budget for 2020/21.
- 3.11 This average in-house operating position can be readily compared to the contractual income position being sought from the procurement exercise.
- 3.12 Any new in-house costs as a result of the revised arrangements then need to be considered, these will include for example a dedicated contract officer and enhanced property services personnel to deliver the Landlord Maintenance programme.
- 3.13 Non-transferring support service areas will also need to be reviewed. Areas such as HR/Payroll, ICT and the Design Room have significant costs associated with supporting leisure, but not the extent on an individual officer basis that result in their inclusion on the TUPE transfer list. In some instances, time will be redeployed offering an enhanced service to remaining Council run services, but in other

instances, reductions in staffing and costs will occur resulting in savings to be taken into account in the overall financial assessment.

- 3.14 The overall financial position in comparison to the preferred bidder is explored in the Financial Implication section of this report.

4. WORK OF THE HEALTH AND LEISURE TASK AND FINISH GROUP

- 4.1 During 2018, the Task and Finish Group undertook a number of key tasks including:

- Considering and articulating the vision and desired outcomes for the Service based on an understanding of the community need and the local authority's wider outcomes;
- Visiting all five Health and Leisure Centres;
- Agreeing key assessment criteria for delivery models based on Sport England guidance;
- Identifying alternative delivery model reference sites and based on the key assessment criteria, establishing a key set of questions for these reference sites;
- Making a number of visits/calls to reference sites;
- Evaluating delivery options; and
- Undertaking an early market engagement exercise to help inform the potential interest in the opportunity and any subsequent approach to procurement.

- 4.2 In order to determine the best approach for future delivery of the Service, the Task and Finish Group considered:

- The deliverability/viability of the Council's strategic vision under each option;
- The wider outcomes that the management option must deliver;
- Level of cost reduction and revenue savings required and within what timescales;
- The condition of the current facility stock and the opportunities to invest;
- Attitude to risk and the level of risk transfer being sought through the process;
- The amount of control that the Council wishes to retain; and
- The sustainability for the Service.

- 4.3 In the context of the above, the Task and Finish Group agreed and adopted a vision for the service of ***“Working with partners to create active communities by providing affordable, accessible leisure facilities, dedicated to improving physical and mental wellbeing and establishing a sustainable healthy lifestyle legacy for future generations.”***

The vision is supported by the desired outcomes of:

- Reduced cost to the taxpayer
- Improved physical wellbeing
- Improved mental wellbeing
- Supporting individual and family developments and learning
- Social and community benefits
- Economic benefits

- 4.4 The Task and Finish Group was supported by an officer team, as well as external support from FMG Leisure Consultancy who had worked with other councils with undertaking and delivering similar reviews.

Evaluation of Delivery Options

4.5 The Task and Finish Group undertook an evaluation of each delivery option (listed below) against the key assessment criteria (based on Sport England guidance) to provide an initial assessment to enable an informed decision on the preferred solution to meet future needs:-

- Asset Transfer (freehold, long lease, shorter lease or licence to occupy)
- NFDC Trust
- NFDC Wholly Owned Trading Company
- Partnership
- Public Sector Mutual

4.6 The evaluation adopted a traffic light system in order to rank the models in terms of greatest potential advantages from the Council's perspective. The evaluation grid is attached at Appendix 2, with the evaluation including the Sporting Services VAT exemption changes.

4.7 On the basis that all Centres are in joint use (with schools and colleges), Asset Transfer was not seen as a feasible option nor did it meet the Council's strategic objectives. Similarly, the Public Sector Mutual was ruled out on the basis that it does not offer a sustainable future solution. A Council Trust Model was also explored but scored less well than a Wholly Owned Trading Company on its influence over strategic decision making due to the necessary independent nature of a charitable trust. The potential time and cost complexities were also considered as a factor.

4.8 In September 2018 the Community Overview and Scrutiny Panel was advised that the Partnership Option was evaluated as having the greatest potential benefits, followed by the Local Authority Trading Company:

Partnering

- ✓ Financial savings through tax advantages
- ✓ TUPE transfer of staff on broadly similar terms, including pensions
- ✓ Some operational risk transfer
- ✓ Protection from local authority funding cuts
- ✓ Greater access to external funding and experience in the market

NFDC New Company

- ✓ Financial savings through tax advantages
- ✓ TUPE transfer of staff on broadly similar terms, including pensions
- ✓ Some operational risk transfer
- ✓ Strategic control fully retained by LA

4.9 At this stage, the establishment of a Local Authority-controlled Trading Company was still seen as a viable option, although the Task and Finish Group recognised the strengths of an external partner in terms of economies of scale, access to funding, and commercial skills and expertise.

Market Engagement Exercise

- 4.10 In order to further evaluate the Partnership Model as the preferred approach, the Community Overview and Scrutiny Panel agreed that additional information would need to be obtained to ascertain the market interest in operating the Council's Health and Leisure Centres and a market engagement exercise was approved by Panel to enable this.
- 4.11 A market engagement document was produced setting out the context and current operating position for the Council's five Health and Leisure Centres and posted a number of questions to leisure operators to help inform any future approach.
- 4.12 Three leisure providers operating in or around the local area were asked to take part in the exercise, respond to the questions in the market engagement document and meet with the Council to further discuss what the market could offer, over and above the Council's current in-house service provision.
- 4.13 The response to this exercise was positive and concluded that the opportunity, if formally advertised, would be of interest to the market confirming that savings - over and above those already identified internally - of £4 million over the life of a 10 year contract could be achievable under this option. The exercise was successful in understanding the market view on the key issues to inform the approach to management and procurement options. In summary, the conclusions from the questionnaire and the discussions with each of the operators were as follows: -
- All leisure operators would be interested in the opportunity;
 - Consensus on a 10-year operating contract plus optional 5-year extension, with the operation of all Centres being tendered together as one "lot";
 - Consensus that the Council should use Sport England's standard contract documents as a basis, with amendments to protect the Council's interests;
 - Condition surveys would need to be undertaken for the sites;
 - The preferred procurement approach was "Competitive Procedure with Negotiation" (dialogue).
- 4.14 On the 5th December 2018, Cabinet considered and approved the recommendation from the Task and Finish Group *'that a formal tendering process be undertaken to identify a preferred partner for the future operation of the Council's five health and leisure centres.'*

Strategic Priorities and Partnership Approach

- 4.15 In order to deliver the Health and Leisure vision (outlined in para 4.3), key Strategic Priorities were agreed by the Task and Finish Group which are to be delivered by any Operator:
- Affordable and self-funding leisure facilities;
 - Accessible ill-health prevention and healthy living schemes;
 - More people undertaking physical activity (including those in hard to reach groups such as deprived communities, women and girls and young people aged 12 - 19);
 - Reducing obesity;
 - Reducing social isolation;
 - Enhanced community facilities that meet local needs;
 - Accessible and affordable opportunities to learn and develop new skills; and,
 - Supporting those in ill health to return to work.

- 4.16 The Council were seeking to establish a partnership philosophy with an Operator who:
- will help the Council achieve its strategic objectives;
 - will contribute to the improvement of the health and well-being of the District;
 - can operate and maintain the leisure facilities and services efficiently and effectively;
 - can increase participation and reduce inactivity; and
 - recognises the importance of customer service.
- 4.17 Any Operator needs to commit to this philosophy and recognise the importance of working collaboratively with the Council in delivering the services.
- 4.18 The true 'Partnership' relationship would be achieved through the establishment of a Partnership Board, consisting of representatives from the Council and the operator which would meet regularly.
- 4.19 The Task and Finish Group role has continued throughout the entire procurement process, which has ensured that the process was fully aligned to the vision and priorities as agreed from the outset.

5. ENGAGEMENT OF STAKEHOLDERS

- 5.1 Members of the Evaluation Panel and the Portfolio Holder have met with key stakeholders during the review.

Customers

- 5.2 In June 2019, customer forums were set up at each of the Health and Leisure Centres, updates were provided on the procurement process, including details of the draft specification. 170 customers attended over 10 sessions. Q&A's were published on the Council's website and based on customer feedback a Customer Focus Group was established, with two volunteers from each Centre. The first meeting of the Focus Group took place in September 2019 and the Group met monthly until March 2020. Following a pause during COVID-19, virtual meetings re-commenced in September 2020. The Group also attended the Stakeholder Panel meeting in November 2019 and March 2020.
- 5.3 In December 2019, once the formal procurement process commenced, 10 further customer forums took place with approximately 250 customers attending. Customers were provided with an update on the bids including examples of added value, plus the customer protections within the contract. Again, a set of Q&A's were published along with the contract specification.
- 5.4 The general queries and issues raised were as follows:
- Will Price for Life be protected
 - Concerns over ACTIVE Lifestyles programme
 - Concerns that a new provider will come in and change clubs and programming
 - Concerns around increase in pricing
 - Very happy with current service and staffing – did not understand why the current arrangements had to be reviewed and changed.
- 5.5 The specification and contract reflected the feedback that had been received from customers and the Customer Focus Group and a number of protections were added into the contract and specification. These include:

- 5.5.1 Membership prices cannot be raised more than CPI without the Council's consent.
- 5.5.2 Current clubs and bookings are guaranteed for 12 months after date of transfer.
- 5.5.3 The active lifestyles programme and pricing is protected and can only be changed with the Council's consent.
- 5.5.4 Price for Life is protected.
- 5.6 The Customer Focus Group provided valuable input throughout the review process, which included their research into areas of concern with potential bidders, which the Evaluation Team were able to respond on some elements, other elements fed into the meetings with potential bidders. After the October 2020 meeting, the Customer Focus Group made the decision to withdraw from future meetings.
- 5.7 Customer Briefings took place from the 27th January. Customers could also email their questions to Leisure.Review@nfdc.gov.uk. Customers have welcomed the briefings and the presentations and also have been able to raise questions relating to improving the current service. Some of the general questions asked at the first 3 briefings are as follows:

- Will the Les Mills product still stay in place?
- Are you planning to offer digital exercise classes?
- Will you continue with the booking system?
- Currently, it can be busy in some of the classes. If you plan to increase memberships, will we still be able to access classes or will it become more difficult?
- Do your investment plans include extending the current centres?
- Will we be able to continue with our football bookings?

Appendix 3A (Customer Q&A's) will be issued shortly after the final customer briefing on 3rd February. This will detail the questions asked at the customer briefings and the answers given.

Staff

- 5.8 Staff forums were held in November 2018, May 2019 and November 2020. A Staff Focus Group was also established in September 2019, which met monthly. Further, at key points in the project, there have been regular updates via email and also staff had an opportunity to raise questions to a dedicated Leisure review email, where questions could be answered directly.

The general queries and issues raised by staff were as follows:

- What is TUPE Transfer and how long are staff Terms and Conditions protected?
- Will staff receive a cost of living rise?
- What happens if staff are made redundant after TUPE Transfer?
- Will staff be forced to take on different roles?
- Will staff pay be reduced after TUPE Transfer?
- Will staff pension be protected?

Further information is provided in the Staff Implications section.

- 5.9 Staff Briefings took place from the 26th January. Staff could also email their questions to Leisure.Review@nfdc.gov.uk. Staff welcomed the opportunity to ask questions

directly to Freedom and appreciated the reassurance Freedom were able to provide. Some of the general questions asked were:

- We are currently based at Appletree Court - where will we work from in the future?
- Do you have an organisation structure/template that you come in and apply to new contracts?
- Do you have a swim specialist at each site?
- What is your approach to managing staff with disabilities?
- I am a staff member on a casual contract - will I TUPE transfer?
- Do you have admin staff at your leisure centres?

Appendix 3B (Staff Q&A's) will be issued shortly after the last staff briefing on 3rd February. This will detail the questions asked at the staff briefings and the answers given.

Trade Unions

- 5.10 Formal updates on the Review have been provided to Employee Side Liaison Panel and a separate Health and Leisure Review union meeting has also taken place on an at least monthly basis. Input from Employee Side has been incorporated into the Organisation and Resources section of the Evaluation process. The Employee Side Liaison Panel had an opportunity to meet the preferred bidder and ask any questions on the 26th January.

Other Key Stakeholders

- 5.11 Regular meetings have been taking place with landowners – Hampshire County Council and Schools (Priestlands, Arnewood, Ringwood, Oak Lodge, Applemore and Totton College). These meetings provided an opportunity to update on the Health and Leisure review and discuss any outstanding issues relating to management agreements.
- 5.12 A Stakeholder Panel was created which allowed all stakeholders to come together to receive an update at key stages of the review. The Stakeholder Panel consisted of the Portfolio Holder for Leisure and Wellbeing; Health and Leisure Task and Finish Group; Trade Union representative and Advisor from the Employee Side Liaison Panel; Staff representatives from the Staff focus group; Customer representatives from the Customer Focus Group; and representatives from our partnership schools and Hampshire County Council. The stakeholder panel met in November 2019 and March 2020. Individual stakeholder meetings continued in Autumn 2020 and a stakeholder panel preferred bidder briefing took place on the 25 January 2021.
- 5.13 The feedback gathered from all the stakeholders has been considered when drafting the contract and specification and incorporated within the evaluation questions where appropriate.

6. PROCUREMENT PROCESS

- 6.1 The procurement process has been designed to explore the commercial opportunity open to the Council for the selection of an Operator to run its five Health & Leisure Centres under a service contract made up of a transition year commencing 1st July 2021, followed by a 10-year term (with the option to extend by a further 4 years).
- 6.2 The Council used the Competitive Procedure with Negotiation in accordance with Regulation 29 of the Public Contracts Regulations 2015 to select the most suitable supplier.

6.3 Expressions of Interest (EOI) Phase

- 6.3.1 The Expressions of Interest (EOI) documentation set out the background and context in relation to the Council's Health and Leisure Service and provided potential bidders with an outline of the outcomes expected from the partnership. It was published on the 16th September 2019. On 3 October 2019 a 'Bidder Open Day' was held across the five Centres to allow bidders the opportunity to visit the Centres and to ask questions.
- 6.3.2 The Council received six Expressions of Interests from bidders by the closing date of 18 October 2019. Bidders were first marked against a number of "PASS/FAIL" statements, including financial position and business practices, before the evaluation of Service Quality criteria.
- 6.3.3 The Evaluation Panel (made up of officers) initially reviewed the responses from bidders individually, and then met to reach a combined score for each of the responses. A score was given for each of the main scoring categories within the Service Quality criteria: Organisation and Resources; Market Viewpoint and Outlook; Customer Experience and Continuous Improvement; and Experience, Track Record and References, and an overall score per bidder was agreed.
- 6.3.4 The Evaluation Panel presented their findings to the Stakeholder Panel on the 7th November 2019. This included a list of the scores against each of the agreed categories, and examples of what made a high or low scoring answer.

6.4 Invitation to Negotiate (ITN) Phase

- 6.4.1 The Council completed a detailed Tender Pack which contained all of the key information required by potential bidders. This included the Service Contract, Specification, financial information, condition survey output, property information for each site, details of existing maintenance contracts, HR information, and a set of questions to be responded to in detail by bidder.
- 6.4.2 The four bidders who progressed through the EOI phase were formally invited to tender on the 29th November 2019. This marked the formal commencement of 'The Invitation to Negotiate (ITN) – Initial Tenders' phase, at which time the ITN documents were published.
- 6.4.3 Bidders were given the opportunity to undertake further visits, with some taking place in December 2019 and others throughout January 2020. They were also invited to contact the Council with any queries and requests for further information. Across the course of this phase, over 100 requests were received from bidders which were responded to by the Council Project Team. The closing date for bids was the 31st January 2020.
- 6.4.4 The Community and Leisure Overview & Scrutiny Panel received a report on the 21st January 2020 which provided an update on the above progress.
- 6.4.5 Once the bids were received, bidders also delivered a face to face presentation of their bids and the evaluation period commenced. Bidders were scored on Cost (Financial Proposal via 10 Year Business Plan, Investment, and Achievability), and on Quality (Organisation and Resources, Market Viewpoint and Outlook, Customer Experience and Continual Improvement,

Contract Compliance, and Track Record & References). The Evaluation Panel followed the same scoring process as the EOI phase.

6.4.6 The Evaluation Panel presented their findings to the Stakeholder Panel on the 12th March 2020. Based on the evaluation, it was determined that three bidders would move to the next stage of the ITN Phase. Negotiation meetings were due to take place in late March 2020; however, the review was paused until the end of June due to COVID-19.

6.5 Invitation to Negotiate (ITN) phase – post-Covid impact

6.5.1 The three bidders who had progressed within the ITN phase were formally invited to re-tender on 1st September 2020.

6.5.2 As a result of the COVID-19 pandemic, a number of changes were made to the tender documents compared to the original tender pack. These were:

- Adjustments to the Contract Term

	Pre-Covid	Post-Covid
Transition Period Terms to Apply	N/A	Year 1 (one year)
Full Contract Terms to Apply	Years 1 – 10 (ten years)	Years 2 – 11 (ten years)
Possible Extension	Years 11 – 15 (five years)	Years 12 – 15 (four years)

- Provisions for Pandemics, and an additional clause to provide for use of the centres during any future emergency response (pandemic or otherwise).
- Updated information, including membership, pricing, TUPE list and the new Corporate Plan – “Community Matters”
- Bidders were instructed to review responses in light of Covid-19, and an adjustment to the weighting of the scoring to account for the Transition Period was made, including a new scoring category of “Financial Proposal (Transition Year – Business Plan)”
- Original reference sites included in responses were to remain; however, it was made clear that the Council reserved the right to contact or visit any other site that bidders hold contracts with, and were able to take this into account when scoring responses

6.5.3 Updated bids were received on the 22nd September 2020, and negotiations and evaluation took place over the following 6 weeks. Negotiation meetings took place with each bidder, virtual meetings were held with referees to support the reference surveys that had been undertaken, and members of the Evaluation Panel undertook site visits.

6.5.4 Based on the quality of the responses, it was determined that all three remaining bidders would progress to Best and Final Offer (BAFO) stage.

6.6 Best and Final Offer (BAFO) Phase

6.6.1 The Invitation to Negotiation period saw a number of changes being made to the contract and tender pack as a result of negotiation with bidders. These included:

- Introduction of a Change In Law clause – Pandemic provision within the contract
- Introduction of a Net Income Adjustment schedule within the contract
- Detailed schedule added outlining how the Transition Period would work.
- A small adjustment to the scoring criteria, where “Contract Compliance” was no longer scored, as all bidders were required to accept the full contract terms and conditions as part of their BAFO bid. The 5% from this section was added to the track record and references criteria, which was renamed “Experience/References Site Visits and Covid-19 Response”.

The breakdown of this scoring criteria is shown below:

Criteria		Max. %
Cost (40%)	CO1: Financial Proposal (10-year Business Plan)	30%
	CO2: Financial Proposal (Investment Proposals)	5%
	CO3: Cost Basis & Achievability of Business Plan	2%
	CO4: Financial Proposal (Transition Year – Business Plan)	3%
Service Quality (60%)	SQ1: Organisation & Resources	15%
	SQ2: Market Viewpoint & Outlook	15%
	SQ3: Customer Experience and Continual Improvement	15%
	SQ4: Contract Compliance – <i>not applicable at BAFO</i>	(0%)
	SQ5: Experience/References, Site Visits and Covid-19 Response	15%

- Additional questions/points added to the “Organisation and Resources” criteria to reflect the information bidders were expected to provide
- Updated pricing, membership and staffing information, and a revised financial breakdown detailing our financial position.

6.6.2 The close date for BAFO bids was 9th December 2020, with evaluation commencing immediately. Three bids were received, and each bidder had the opportunity to present their bids to the Evaluation Panel and the Health & Leisure Task and Finish Group, and clarifications were sought. It was determined that two of the three bids were compliant and would meet the terms and conditions of the Tender. As with the previous phases, the Evaluation Panel reviewed the responses individually, before meeting virtually to agree final scores.

6.6.3 The outcome of the BAFO stage is outlined below in section 9.

7. PROPOSED SERVICE CONTRACT (LEISURE OPERATING CONTRACT)

- 7.1 The Leisure Operating Contract was drafted with a combination of internal and external support. The contract sets out the services to be delivered, and includes the Service Specification, information regarding the facilities, contract performance management provisions, change protocols, Council policies, draft underleases and payment mechanisms. The Contract will be signed by NFDC and the successful bidder.
- 7.2 The Leisure Operating Contract was originally based on the Sport England Leisure Operating Contract template but was amended to meet the Council's needs. The Contract reflects:
- Learning from other local authorities who have been through a similar process;
 - Ensuring the contract reflected our existing provision; and
 - Feedback from Customer Forums, which included concerns around the ability of the Council to step in and run services if operator was not performing to the required standard.
- 7.3 Partnership Board arrangements have been embedded in the contract in line with the agreed partnership philosophy.
- 7.4 In addition to the main body of the contract, there are a number of specific schedules. Schedules within the Service Contract include the Service Specification, Service Delivery Proposals (full BAFO bid submission from the preferred bidder), Facility Information and Site Plans, Payment and Performance Monitoring, Transferring Staff, Lease Agreements, Change Protocol, the "LOBTA" (Leisure Operating Base Trading Account", which sets out the preferred bidder's business plan for the full 11-year contract term), Transition Period, and Net Income Adjustment.
- 7.5 As part of the Contract, draft underleases have been drawn up for each of the sites. A list of property requirements has been agreed with landowners (schools and Hampshire) which will be incorporated into the final versions of the underleases. These have been included in the Tender Pack for Operators. This was reviewed, and updated information on the boundary changes at Ringwood Health and Leisure with Ringwood school was issued on 1st September 2020.

8. SERVICES SPECIFICATION

- 8.1 The Services Specification describes in detail the minimum standards of service required when delivering services. Each of these either meet or exceed the current "in house" standards, and are grouped under the following sections:
- Introduction, including background, measurement and reporting summaries;
 - Vision and Objectives, including managing performance against the Strategic Priorities
 - Partnership philosophy
 - Services Requirements
 - Maintenance Requirements
 - Performance Management and Reporting Requirements

- Appendices

8.2 The Performance Measurement System works at several levels.

8.2.1 **Performance Measures:** 6 measures per site, which represent the requirements and provisions in the Contract and specification, and these will be monitored monthly. If an Operator fails to meet the minimum standards in any of these areas in any month, they will incur an agreed additional fee which will be due the following month. Measures cover Customer Experience, Memberships, Staff and Asset Maintenance.

8.2.2 **Strategic Performance Indicators:** linked to the Council's Strategic Priorities established early in the procurement and will be used to track the delivery of our Leisure vision and outcomes in the District.

8.2.3 **Key Performance Indicators:** a set of Operational measures which will be reported regularly to the Council. They cover Sales, Customer Service and Quality, Asset Management, Activity Programming, Environment, Social Value, Active Lifestyles, Finance and People (staff).

8.3 In addition to the above, a formal performance monitoring system is set out in the Contract which would ensure that the preferred bidder is delivering the performance standards within the specification. Under this monitoring system (also referred to as a Dashboard Report), financial adjustments would apply for failure to achieve the required measures. The 6 high level measures which will be monitored in this way are: Customer Satisfaction Score (%), Staff Attrition/Turnover (%), delivery of the Planned Preventative Maintenance programme (yes/no), number of maintenance-related complaints, membership numbers (fitness) and Swim Academy membership numbers. Targets and buffers would be finalised during the transition period, when baseline information would be gathered.

8.4 A structured programme of meetings between the preferred partner and the Council would provide the Council with information on the achievement of its strategic outcomes quarterly and annually. Performance against the SPIs and KPIs (above) would be reviewed at the Contract Partnership Board meetings on a quarterly basis. More regular meetings would take place during the Transition Period.

8.5 Appendix 4 outlines the reporting information that the preferred bidder would be providing to the Council, with key information also reported to the Health and Leisure member working group and annually to the Community and Leisure Overview & Scrutiny Panel.

9. OUTCOME OF BEST AND FINAL OFFER (BAFO)

9.1 Three bids were received on the 9th December 2020. Having received this information, it was determined that two bids were compliant, and one bid was non-compliant.

9.2 The Evaluation Panel fully evaluated the two compliant bids. The outcome of this evaluation showed that Freedom Leisure scored the highest on both Cost and Quality (see Appendix 5: Confidential – Exempt Information).

10. PREFERRED BIDDER

- 10.1 Wealden Leisure Ltd trading as Freedom Leisure are a not-for-profit Leisure Trust, where all surpluses are reinvested in support of shared objectives with their partners. Originally set up in 2002 to take on the 4 leisure centres in a rural East Sussex district (Wealden District Council), Freedom Leisure now runs 101 leisure facilities for 23 council partners, schools and academies. 41 of these sites are dual use. Their vision is to “improve lives through leisure”, and they set out to deliver “a locally focused service to the communities (they) work with.” Freedom Leisure has wide experience operating leisure facilities in rural settings, as well as managing the mobilisation of “first generation” contracts (where leisure services are being ran by an external operator for the first time).
- 10.2 The Contract terms are for a transition year and a further 10-year contract period, with the option of a further 4 years to be discussed.
- 10.3 Mobilisation would take place over 4 months from March – June 2021, with a transfer date of 1st July 2021. All affected employees are protected under TUPE regulations and would be transferred with current terms and conditions.
- 10.4 Freedom Leisure is committed to playing a pro-active, partnering role with the Council, after being appointed preferred bidder. They are extremely experienced in contract mobilisations and have been through 8 contract mobilisations in the last 2 years. Their Head Office and support team are based in East Sussex and so they are well located to provide high levels of central support to ensure that there is a seamless transfer of staff from the Council to Freedom Leisure.
- 10.5 To ensure a smooth, effective Mobilisation & TUPE transfer from the Council to Freedom Leisure, their standard operating process is to establish a joint Mobilisation Board as soon as appointed by the Council.
- 10.6 There will be a Strategic Mobilisation Plan to provide an overview with an identified critical path, tasks, roles and responsibilities. An Operational Delivery Document will enable Freedom Leisure to ensure they are completing against agreed deadlines.
- 10.7 The Mobilisation Board will agree an internal and external communications plan, including the joint approach to engagement with users, Clubs and Groups and communication with the public more broadly. This will have a clear and simple message to demonstrate a joined-up partnership approach.
- 10.8 **Market Insight:** Freedom Leisure believe in the leisure centre product, which attracts families, children and older people to the facilities. Having undertaken a significant amount of market research, including analysis of local demographics and customer segments, they have outlined a number of enhancements. They will look to increase family time, with an enhanced programme and soft play facilities in two sites. The pool and health suites are selling points, along with the sauna and steam. Throughout their bid, Freedom set out the types of competitors they expected (or that already existed) in the area, and how they would compete. They have already identified stakeholders with which to partner locally.
- 10.9 **Customer Experience:** Freedom Leisure bring a wealth of knowledge and experience with regards to customer insight and delivering services that meet the customers’ needs. They have a well-established Customer Insights Programme, a Customer Charter and a number of customer services pledges. Research methods include regular surveys, mystery shops, quantitative and qualitative data gathering, and insight into the behaviours and needs of both users and non-users. They have a

successful QMS system (Quality Management System) which supports the implementation of new ways of working which are developed on the back of customer insight. They have already undertaken initial customer segmentation research and have tailored their bid to the local demographics around each site.

10.10 Customer Engagement: Freedom Leisure would take a planned approach to customer engagement, employing a wide range of methods to keep customers informed and gather feedback. These would include satisfaction surveys, regular customer forums, staff surveys, customer newsletters, meeting with clubs, and customer surveys for hard to reach groups.

10.11 Investment: Freedom Leisure have committed to increased innovation and investment and would invest £2.2m over the course of the contract on innovation and improved facilities, as well a further £2.4m on equipment replacement. Each of the centres would benefit from this investment, including:

- **Applemore Health and Leisure Centre:** New reception area with combined café servery, grab and go, and seating; new softplay provision with seating; new control barriers on the ground and first floor; addition of a H.I.I.T. studio for an Elevate circuit; energy investment; replacement of gym and fitness equipment; interactive/water feature walls for young children at the pool; introduction of large/adventure inflatables; replacement of IT equipment and upgraded software; branding and signage.
- **Lymington Health and Leisure Centre:** Energy investment; replacement of gym and fitness equipment; interactive/water feature walls for young children at the pool; introduction of large/adventure inflatables; replacement of IT equipment and upgraded software; branding and signage
- **New Milton Health and Leisure Centre:** Energy investment; replacement of gym and fitness equipment; interactive/water feature walls for young children at the pool; introduction of large/adventure inflatables; replacement of IT equipment and upgraded software; branding and signage.
- **Ringwood Health and Leisure Centre:** Expanded soft play facility and café/servery on the first floor; changed layout to better accommodate school pupils; energy investment; replacement of gym and fitness equipment; interactive/water feature walls for young children at the pool; introduction of large/adventure inflatables; replacement of IT equipment and upgraded software; branding and signage.
- **Totton Health and Leisure Centre:** New reception area with combined reception and grab and go café provision; new barriers; changes to the dry changing provision at Totton, including refurbishment and new equipment/showers (including accessibility adjustments); refurbishment of studio; energy investment; replacement of gym and fitness equipment; interactive/water feature walls for young children at the pool; introduction of large/adventure inflatables; replacement of IT equipment and upgraded software; branding and signage.

10.12 Protected Programming and Pricing: As outlined in the Specification, pricing and some programming and bookings are protected. The preferred bidder has also committed to our existing Opening Hours as a minimum.

- Protected programming includes Active Lifestyles classes, Applemore Early Years, use of the Lymington ATP during school hours, and all clubs and

groups usage (existing bookings and usage will be honoured for at least the first 12 months of the contract).

- The preferred bidder will need to obtain the written permission of NFDC if they wish to adjust general pricing by more than CPI. Some pricing is protected further, where the preferred bidder will need to consult with NFDC if they want to increase pricing at all (up to a limit of CPI). This protected pricing applies to active lifestyles programmes and schemes such as Hampshire Talented Athletes and bookings by Lymington Hockey Club at the ATP in Lymington. Price for Life will also be protected in the same way that it is currently.
- All schools' usage and pricing (wet side and dry side) is protected. The preferred bidder would not be able to increase schools pricing above CPI without NFDC consent.

- 10.13 **Increasing Participation:** Freedom Leisure have stated that their vision is that “everyone in the New Forest, regardless of age, background or ability, feels able to access and participate in activities at all five health and leisure centres”, and also “through physical activity and sport initiatives out in the rural communities and in the most deprived areas of the district.” A new Active Communities Manager post will be created by Freedom Leisure in addition to existing staffing, and they will be responsible for tackling inactivity and increasing participation across the district. Initiatives may include discounted block bookings for “club marked” clubs, providing programmes for the 0 – 18s age range, enhancing dementia friendly programming, and working with partners across the voluntary sector to develop targeted community programming such as Orienteering.
- 10.14 **Staffing:** As part of their bid, Freedom set out their proposed staffing structure which would remain the same as the current structure, with all staff transferring over and no changes planned, which would have a positive impact on morale. They have a lean central team in place, backed by regional and subject matter experts to support the on-site team with clear reporting lines. Freedom have a good training programme, including career progression, apprenticeship training and a commercial sales training programme. They fully met all of the Council’s strategic outcomes in their response and have backed their proposals up with performance indicators and targets.
- 10.15 **Maintenance and Lifecycle Responsibilities:** The majority of maintenance and lifecycle replacement responsibilities would sit with the preferred bidder, and any exceptions have been clearly laid out within the Specification. The preferred bidder would be responsible for all statutory testing and inspections. The Council would retain responsibility for the overall fabric and structure of the buildings, and a detailed Condition Survey was undertaken to make clear what works are expected from both parties over the 11-year contract period.
- 10.16 **Performance Measurement, Monitoring and Review:** The preferred bidder have committed to providing regular performance reports to the Council, including formal annual updates to the Community and Leisure Overview and Scrutiny Panel. The proposed reports are listed in Appendix 4.

11. RISK ANALYSIS

- 11.1 A general principle of Risk Management is that risks can be TREATED, TRANSFERRED, TOLERATED or TERMINATED

11.2 In the current in-house operational model, all risks associated with the Market, Utilities, Brexit and Competition are tolerated solely and entirely by the Council; this is a very high-risk strategy especially bearing in mind, these are entirely discretionary services. A driver of this alternative delivery model is that a significant overall proportion of risk from all categories will be transferred and/or shared with the preferred bidder; a specialist in the market. Categories of risk, along with an overview of what is being transferred and retained is explored in more detail below.

11.3 Risk Transfer

11.3.1 “Decline in demand for services” (partially transferred) – The majority of this risk would be transferred to the preferred bidder, as any decreases in demand will mean they need to change and adapt to the market in order to reach their income targets. The exception is if income varies by 7.5% in years 2 and years 7 – 11 in line with the Net Income Adjustment schedule of the contract. The preferred bidder also has the benefit of economies of scale when it comes to marketing, with tried and tested approaches and wider research nationally.

11.3.2 “Major competitor in area” (majority transferred) – The Council would only share some of the risk in a small number of specific circumstances that are outlined within the Net Income Adjustment (Schedule 28 of the Contract). The Operator has wider expertise and experience in similar situations/threats and have set out how they would compete as part of their bid.

11.3.3 “Recruitment and retention of skilled workforce” – This risk would be transferred to the preferred bidder. The preferred bidder has the benefit of a larger pool of staff across multiple sites and a larger training team with detailed and varied training programmes. Staff engagement and turnover would be monitored by the Council, with payment adjustments made should the preferred bidder underperform in this area. Their approach to staffing – including training – was outlined within their bid.

11.3.4 “Insurance claims against the service” (majority transferred) – The preferred bidder would primarily be responsible for staff and public health and safety when on site or within the facilities and would hold public liability insurance for the sites.

11.3.5 “Property Services Compliance” (majority transferred) – The preferred bidder would have the primarily responsibility to meet compliance with legislation in many areas like fire doors, water quality, legionella, electric and gas.

11.3.6 “ICT/Technological” – The responsibility for ICT/technology would lie with the preferred bidder, including the impact of failing to keep up with ICT developments.

11.3.7 “Change in Law” (partially transferred) – In the majority of situations, the risk associated with changes to the law that affect the leisure industry (and in turn, increase costs or reduce demand/capacity) would transfer to the preferred bidder. The only Change in Law risk retained by the Council would be in the event of a further outbreak of Covid-19 or other pandemic.

11.3.8 “Utilities Risk” – All utilities risk would transfer to the preferred bidder, as set out in the contract.

11.3.9 “Investment Risk” – Similarly, the preferred bidder would be expected to ensure they received a return on investment. If the ROI was not achieved, then preferred bidder would absorb this.

11.4 Retained Risk

11.4.1 Income and expenditure variations greater than 7.5% – whilst the risk of decreased demand is mostly transferred to the preferred bidder, a Net Income Adjustment would take effect if income or expenditure varied by more than 7.5% in the transition year (resulting in an adjustment to year 2) and/or Years 3 – 5 (resulting in an adjustment to years 7 – 11; capped at 10%.

11.4.2 “Decision Making” – Any key changes to the Service will always require consent from the Council. Any changes would continue to result in public scrutiny and press/public interest.

11.4.3 Buildings Insurance risk will be retained by the Council; however, Property Damage and contents insurance will be taken out by the preferred bidder.

11.5 Third Party Default Risk

11.5.1 The Council utilises the independent Dun & Bradstreet financial evaluation software to provide a set of key indicators when looking to enter into any significant contract with a third party. Dun & Bradstreet delivers an Overall Business Risk that uses the best available scores, ratings, and indices to provide a high-level assessment for large global enterprises to small businesses. In general terms, a score of 100 is seen as low risk, with scores nearer to 0 representing high risk. The Dun & Bradstreet report is a standard format and does not take into the account the individual circumstances that prevail within particular organisational structures, for example, the report produced for a non-for-profit charitable trust would be the same set of indicators as produced for a large PLC despite their business purpose and objectives being very different.

11.5.2 With the pandemic taking effect mid-way through the procurement process, two Dun & Bradstreet reports were run for Freedom Leisure. The results are included in Appendix 5: Confidential – Exempt Information. The nature of Freedom Leisure, being a charitable non-for-profit trust, which looks to re-invest the majority of any surpluses, means some of the measures taking into account profitability, and strength of balance sheet for example can become distorted.

11.5.3 To manage the risk that a transfer of operational delivery of this nature brings, the contract contains provisions in relation to Operator Defaults and Breaches, Authority Defaults, Authority Step-In, Dispute Resolution and also what happens should the agreement be terminated for any reason.

11.5.4 “Authority Step-In” allows the Council to temporarily step in and provide the Services in the event of a serious risk to persons, property or environment, to discharge a statutory duty, or because an emergency has arisen.

11.5.5 Should the agreement be terminated, the TUPE transfer process would apply. All relevant remuneration, benefits etc would be paid by the Operator up until the transfer date, and then staff who are fully or mainly involved in the delivery of the services would transfer back over to the Council.

11.5.6 In the event of an Operator Default, the Operator would be liable and pay the Authority:

- Costs to rectify anything necessary due to an Operator failing to comply with obligations
- Any retendering costs
- Any differences in retendered payments (e.g. if the retendered payments are lower than the Operator's payments, they would need to cover the difference)
- All other Direct or Indirect Losses as a result of breach or termination of the contract

11.5.7 Any dispute arising between the parties out of or in connection with the Contract will be dealt with under the Dispute Resolution process. Dispute Resolution sets out the process for resolving any disagreements, including escalation through to executive management teams, and then through the appointment of an independent moderator.

12. STAFF IMPLICATIONS

12.1 If the recommendations set out in this report are accepted, all 400 Health and Leisure staff, including the Service Manager (Health & Leisure), will transfer to Freedom Leisure on 1st July 2021 on TUPE Transfer.

12.2 TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014". The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer.

12.3 The TUPE regulations apply in the following situations:

- a contractor takes over activities from a client
- a new contractor takes over activities from another contractor
- a client takes over activities from a contractor

12.4 When TUPE applies, the employees of the outgoing employer automatically become employees of the incoming employer at the point of transfer. They carry with them their continuous service from the outgoing employer and should continue to enjoy the same terms and conditions of employment with the incoming employer.

12.5 TUPE refers to the "Transfer of Undertakings (Protection of Employment) Regulations 2006" as amended by the "Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014". The TUPE rules apply to organisations of all sizes and protect employees' rights when the organisation or service they work for transfers to a new employer.

12.6 The following information must be shared with Trade Unions in writing and include:

- the fact that the transfer is going to take place, approximately when and why.

- any social, legal or economic implications for the affected employees for example a change in location or risk of redundancies.
- any measures that the outgoing and incoming employers expect to take in respect of their own employees (even if this is nothing).
- the number of agency workers employed, the departments they are working in and the type of work they are doing if agency workers are used.
- the outgoing employer must provide information about any measures which the incoming employer is considering taking in respect of affected employees.

TUPE Measures

12.7 Incoming employers often have plans to make changes to employment arrangements after the transfer, and under the TUPE regulations these are called “measures”. Employers must consult with staff and Trade Unions about any measures they are thinking about or intend taking as a result of the transfer.

12.8 Measures can include:

- redundancies
- workplace relocation
- changes to staff pay dates
- different working patterns
- different pension arrangements.

12.9 Some minor changes to terms and conditions may be included as measures although there are tight restrictions under TUPE on when terms and conditions may be altered. Measures are often interpreted widely and include non-contractual and organisational matters.

12.10 If there are no measures, employers should inform employees and provide information about the transfer only, although this is likely to be infrequent.

12.11 Based on Freedom Leisure proposed bid and contract, Freedom have confirmed that there will be no redundancies.

Local Government Pension Scheme (LGPS)

12.12 Service Contract contains a requirement for Freedom Leisure to obtain Admitted Body Status from LGPS, this provides all transferring staff with continued access to the LGPS. This will take place during the mobilisation period.

12.13 The transfer of staff from the New Forest staff base to the operator will result in an increase in the average age of the retained NFDC workforce. This is likely to have an impact to the future primary contribution rate that is calculated for the District Council in the next triennial pension revaluation. The likely increase in rate and so increase in this cost will be more than offset by the removal of Leisure pay award and incremental progression from the Council’s Medium Term Financial Plan, as these costs will be the responsibility of the operator under contract.

Requirements in the Contract

12.14 Based on feedback from staff and Trade Unions, there is a requirement within the contract for all staff including new staff to be paid a minimum of £9.25 throughout the contract period.

Support Services

- 12.15 Support services will be reviewed where Leisure represents a significant element of the work in that relevant area.

Contract Management

- 12.16 The Council will need to invest in a contract monitoring post and additional property services resource to ensure effective delivery of the contract specification and delivery of the Council's ongoing Landlord maintenance responsibilities.

13. FINANCIAL IMPLICATIONS

In-house Position Vs 10 Year Core Contract Position

- 13.1 To compare the in-house position to the 10-year core contract position, an average in-house position has been calculated which takes into account the performance of the Leisure centres going back over a 4-year period (2017/18 – 2019/20 actuals and 2020/21 original budget). The actuals for 2017/18 and 2018/19 have been adjusted to include additional retained income as a result of a change in VAT position (the Leisure Centres no longer needing to charge VAT on sporting income, but losing the ability to reclaim VAT on the sporting services expenditure) which resulted in the Council receiving a backdated VAT refund from HMRC relevant to these financial years. The figures for 2019/20 and 2020/21 were already inclusive of this VAT change.
- 13.2 The average in-house operating position, i.e. the generation of income as against the direct operating expenditure (so excluding central support and NFDC corporate costs), equates to an average surplus of £101,000 per annum.
- 13.3 Under the contract model, this average surplus will be replaced with an average annual management fee receivable by the Council.
- 13.4 The Council will need to invest in a contract monitoring post and additional property services resource to ensure effective delivery of the contract specification and delivery of the Council's ongoing Landlord maintenance responsibilities. This annual cost of these 2 elements will be in the region of £80,000.
- 13.5 Support services will be reviewed where Leisure represents a significant element of the work in that relevant area. It is anticipated that annual savings of around £200,000 will materialise from these reviews.
- 13.6 The contractual position in comparison to the average in-house position, and allowing for the internal changes required, **results in a net revenue financial gain of between £7M - £8M over the life of the contract**, with the potential for this to exceed £8M if maximum Net Income Adjustments are not required.
- 13.7 In addition to the £7M - £8M revenue benefit, the innovation and improvement Capital Investment (including energy investment) of £2.2M, with the majority of this spent within the first 2 years of the contract and the proposed £2.4M on equipment replacement over the life of the contract will see significant improvements to the variety and quality of the leisure offer available at the Council's 5 Leisure Centres.

Transition Year and Open Book Basis

- 13.8 In recognition of the current risks that exist in the market as a result of the Coronavirus, an open book transitional arrangement has been allowed for within the

contract for the first 12 months of operating. Within this arrangement, the operator will have full operational responsibility and will share detailed financial data with the Council on a monthly basis. This is similar to the arrangement that the Council has entered into with the operator of Dibden Golf Centre during the current financial year and has been widely recognised across the sector as an appropriate way to share risk and ensure a strong recovery by the operators within the Leisure sector.

13.9 The Council's own MTFP assumes an income reduction in the financial year 2021/22 of £2.1M under the continued in-house model. The Government's Sales, Fees and Charges compensation scheme has been extended to run into Q1 of the 2021/22 financial year. This enables the Council to reclaim around 70% of lost income during the period April – June.

13.10 On the basis that the lost and irrecoverable income expected by the in-house operation was to result in a larger service deficit in 2021/22 and 2022/23, the contract position for year 1, the 'Transition Year', sets a financial ceiling whereby the Council will pay the operator up to £1.5M before a risk share position sets in. The Council benefits more significantly than the operator for a deficit smaller than this.

Capital Investment and Use of Prudential Borrowing

13.11 Freedom Leisure have included Innovation and improvement Capital Projects to the tune of £2.242M within their bid. From the outset, the Council stated it would support Capital Investment through prudential borrowing, if required by the successful bidder. This is where the Council arranges borrowing on behalf of the operator, taking advantage of the lower levels of interest charges available to Local Authorities. The operator repays the loan and interest, via the Council, over the life of the Contract.

13.12 The Council has previously entered into a similar arrangement, back in 2014 and so this is something that the Council has previously facilitated.

Overall Financial Summary

13.13 The overall financial benefit enables the targeted £400k annual saving to make a significant and invaluable contribution to the Council's Medium Term Financial Plan. The excess above the targeted saving will provide the vital headroom to cover additional funding required to continue to maintain the Leisure Centres to their existing standard and will also be invaluable in establishing and providing sustainable financial support to the development of a wider Leisure and Wellbeing Strategy.

	Targeted Saving	Actual Saving	Additional Headroom on Saving
Annual	£400k	£700k - £800k	£300k - £400k
10 Year	£4m	£7m - £8m	£3m - £4m

13.14 The review has been conducted within the £150,000 budget that was set aside for external expertise and legal support.

13.15 Further information is available in Appendix 5: Confidential – Exempt Information.

14. EQUALITY IMPACT ASSESSMENT

- 14.1 As part of the TUPE transfer of Leisure Centre staff, the Council have a responsibility to ensure that they have paid due regard to their general equality duty when making decisions and setting policy. As all Leisure Centre staff will be included in the transfer, the issue is not about the selection and transfer of individual staff within the Leisure Centres (i.e. the equality impact that this has by selecting some individuals over others) but on the effect the transfer of this function has on the whole organisation. An Equality Impact Assessment has been undertaken and has concluded that the TUPE transfer raises no equality issues.
- 14.2 The Council also have a responsibility to ensure that they have paid due regard to their general equality duty with regards to users and residents within the District. The Vision and Priorities agreed at the outset of this process explicitly set out how any future partnership should have a positive impact on protected groups within the New Forest. This includes low income families, women and girls, people with disabilities, and those in ill-health who require support. The Vision and Priorities were considered throughout the evaluation process. An Equality Impact Assessment has been undertaken and has concluded that the proposed partnership will raise no equality issues and will indeed have a positive impact on protected groups within the District.

15. ENVIRONMENTAL IMPLICATIONS

- 15.1 As part of early investment, Freedom Leisure intend to deliver energy conservation measures to the sites. They would aim to deliver sustainable savings, reduce carbon emissions and future proof the leisure centres against rising energy costs. £275,300 would be invested in energy saving solutions, with an expected annual reduction in energy costs of £51,800 (5.3 years simple payback). They aim to achieve the following:
- 85,500 kWh reduction in electricity consumption per annum (4% reduction)
 - 123,000 kWh reduction in gas consumption per annum (2% reduction)
 - 90 tonnes CO2 saving per annum (5% reduction)
- 15.2 Freedom Leisure would bring their ISO14001 Certified Environmental Management System to the five centres, gaining accreditation for each by March 2022. An Energy Champion would be introduced at each of the facilities to monitor compliance, and constantly look to improve the environmental performance of the facility. They would work closely with their Group Environmental Manager who will train, mentor and encourage cross-site/contract learning and best practice.
- 15.3 Freedom Leisure are proposing a range of actions to reduce our impact on the environment, including:
- 50% recycling rate target
 - Continue to provide recycling bins, ensuring presence in all areas of the facilities
 - Coffee cup recycling
 - Incentivised reusable cup pricing
 - Reduction of single use plastics in the café servery (wooden cutlery/stirrers)
 - Buying of cleaning products in concentrate to reduce deliveries
 - Biodegradable cleaning clothes
 - Buying local products and engaging local maintenance sub-contractors where possible
 - Looking to remove automatic paper receipts with provision only on request
 - Encourage “Active Travel”

16. CONCLUSION

- 16.1 After a well-structured and robust procurement and due diligence process, it is recommended that Wealden Leisure Ltd trading as Freedom Leisure are awarded the contract for a period of 11 years, with the option to discuss a further 4 years extension. Their approach to working with communities and partners, as well as their commitment to improving the health and wellbeing of residents and visitors is well aligned to the Council's strategic objectives and Corporate Plan.
- 16.2 The development of staff and improved customer experience feature strongly throughout the bid, as well as developing the community programme.
- 16.3 Freedom Leisure has not recommended any immediate changes to staffing structures and levels and will work with the in-house team to ensure that all staff are fully supported by their regional experts.
- 16.4 Freedom Leisure's submission offers substantial investment in the development of the Council's Leisure Centres both in the short term and over the life of the contract.
- 16.5 They will take on full operational responsibility for the 5 Leisure Centres, including the day-to-day repairs and maintenance.
- 16.6 Having undertaken a full risk analysis we are satisfied that the risks retained by the Council are far reduced under this model, with the majority of risk currently tolerated by the Council transferred to the operator.
- 16.7 We are satisfied that they are in a good financial position, supported by partnerships with over 20 Local Authorities, enabling them to sustain the uncertainty due to COVID.
- 16.8 Performance and Monitoring of the contract will be a high priority and there will be a dedicated contract officer who will manage and monitor this contract.
- 16.9 The Task and Finish group have been fully involved throughout the process. The majority of the group are supportive of appointing Freedom Leisure as Operator.
- 16.10 The bid and contractual position exceeds the Council's targeted financial saving, enabling a surplus to be re-invested back into Leisure Centre Maintenance and the development of a wider Leisure and Wellbeing Strategy.

17. TASK AND FINISH GROUP COMMENTS

- 17.1 The first meeting of the Task and Finish group was in April 2018 and throughout the process the Task and Finish group has been robust in asking questions of officers. The complexity and detail of the process has been challenging for both members and all officers involved. As Chairman, I am confident that a well evidenced and correct outcome has been achieved to reach the current point and I commend the recommendation.

18. RECOMMENDATION

That the Community & Leisure Overview and Scrutiny panel recommends to Cabinet:

- 18.1 That the contract to operate and maintain the District Council's five Leisure Centres at Applemore, Lymington, New Milton, Ringwood and Totton be awarded to Freedom Leisure Limited to commence on 1 July 2021 for a 11 year period with an option to extend for a further 4 years.
- 18.2 That the terms of the Contract, summarised in sections 7 and 8 of the report, are noted.
- 18.3 That a 4-month mobilisation period following award of contract is noted, enabling full operational control by Freedom Leisure Limited on 1 July 2021.
- 18.4 That £2.242m of Prudential Borrowing to support the investment programme outlined in paragraph 13.11 of the report is approved.
- 18.5 That Council discharges responsibility for an annual contract review and performance to the Community and Leisure Panel, who will set up a councillor working group at its next meeting.

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Background Papers:

Community & Leisure O&S September 2018
Health & Leisure Review

Community & Leisure O&S November 2018
Health & Leisure Review – T&F Group
Report

Cabinet September 2019
Health & Leisure Review - Expressions of
Interest

Community & Leisure O&S September 2019
Health & Leisure Review

Community & Leisure O&S January 2020
Health & Leisure Review

Community & Leisure O&S March 2020
Health & Leisure Review

APPENDIX 1: SITE FACILITIES

SITE FACILITIES

Applemore



- 25m pool
- 10m learner pool
- Pool viewing gallery
- Sauna and steam rooms
- 70+ station fitness suite with the latest Life Fitness equipment
- Dedicated weights room
- 5 air conditioned studios
- 24 bike cycling studio
- 6 court sports hall
- Wet changing village and dry changing rooms.
- Outside pre-school play area (private rental)
- Therapy room (private rental)
- Vending area
- Free parking

Lymington



- 25m pool
- 10m learner pool
- Pool viewing gallery
- Sauna and steam rooms
- 40+ station fitness suite with the latest Life Fitness equipment
- 2 x air conditioned studios
- 18 bike cycling studio
- Wet changing village and dry changing rooms.
- Treatment rooms (private rental)
- Flood lit outdoor three court Astro-turf pitch
- Vending and seating area
- Free parking

New Milton



- 25m pool
- Pool viewing gallery
- Sauna and steam rooms
- 50+ station fitness suite with the latest Life Fitness equipment
- Dedicated weights room
- 2 x air conditioned studios
- 27 bike cycling studio
- Four court sports hall
- Wet changing village and dry changing rooms
- Vending area
- Free parking

Ringwood



- 25m pool
- 10m learner pool
- Pool viewing gallery
- Sauna and steam rooms
- 70+ station fitness suite with the latest Life Fitness equipment
- Dedicated free weights area
- 24 bike cycling studio
- 1 x air conditioned studio
- 5 court sports hall
- Wet changing village and dry changing rooms
- Vending area
- Free parking

Totton



- 25m pool
- 10m learner pool
- Pool viewing gallery
- Sauna and steam rooms
- 50+ station fitness suite with the latest Life Fitness equipment
- Dedicated free weights area
- 30 bike cycling studio
- 1 x air conditioned studio
- Four court sports hall and additional access to college hall
- Wet changing village and dry changing rooms
- Vending area
- Free parking

APPENDIX 2: ASSESSMENT GRID

Criteria	In-House	Partnering	NFDC New Company			Asset Transfer
			Trust	Trading Co.	Mutual	
1. Financial Impact – Income	●	●	●	●	●	●
2. Financial Impact – Subsidy (aim to reduce/remove current subsidies)	●	●	●	●	●	●
3. Potential to contribute towards the vision and outcomes for the service	●	●	●	●	●	●
4. Control and influence over strategic decision making	●	●	●	●	●	●
5. Impact on directly employed staff	●	●	●	●	●	●
6. Impact on support service costs	●	●	●	●	●	●
7. Risk Transfer	●	●	●	●	●	●
8. Potential for investment opportunities	●	●	●	●	●	●
9. Cost to implement/set up	●	●	●	●	●	●
10. Likely timescales	●	●	●	●	●	●
11. Impact on long-term sustainability of the service	●	●	●	●	●	●

● Low potential benefit
 ● Medium potential benefit
 ● High potential benefit

APPENDIX 3A: TO FOLLOW

APPENDIX 3B: TO FOLLOW

APPENDIX 4: EXAMPLE PERFORMANCE REPORTS

Performance Report	Monthly	Quarterly Reports	Annual Reports
Dashboard Reports	✓	✓	✓
Key Performance Indicator Report	✓	✓	✓
Net Promoter Scores and Customer Satisfaction Action Plan	✓	✓	✓
Quarterly Monitoring Report (see table below for contents)		✓	✓
Strategic Performance Indicator Report		✓	✓
Annual Service Report (see table below for contents)			✓
Environment and Energy Plan			✓
Event Management Plan			✓
Marketing Plan Report			✓
Assurance Framework Report			✓
Annual Planned Preventative Maintenance (PPM) Schedule			✓
Annual Schedule of Programmed Maintenance			✓
Annual Lifecycle Replacement Programme			✓
Annual Update of Equipment Inventory			✓
Sport England Quest and National Benchmarking Service outputs and subsequent improvement plans			✓

Quarterly Monitoring Report	<ul style="list-style-type: none"> - Customer Experience - Cleaning and Housekeeping - Food and Beverages - Marketing, Research and Comms - Data and ICT Management - Health and Safety Management - Major Incident reporting
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	<ul style="list-style-type: none"> - Active Lifestyles - Opening Hours - Access - Programming For All - Pricing - Staffing and Skills Development - Safeguarding - Equalities - Ventilation - Heating and Lighting - Pool Water Quality - CCTV & Security - Statutory/Mandatory Inspections - Building Maintenance - Equipment Maintenance - Grounds Maintenance - Environment/Energy Management - Water and Drainage - Any specialist reports as listed above
<p>Annual Service Report</p>	<ul style="list-style-type: none"> - Financial Report - Staff Satisfaction Survey Report - Any specialist reports as listed above

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