

**Agenda Item No:** 9

**Report To:** Cabinet

**Date of Meeting:** 6th December 2018

**Report Title:** *Leisure Procurement Exercise Update*

**Report Author & Job Title:** Christina Fuller, Head of Culture

**Portfolio Holder / Portfolio Holder for:** Cllr Gerald White, Lead Member for the Leisure Procurement Exercise

**Summary:** This report updates Members on the evaluation process undertaken which has included the detailed solutions submitted by appropriately selected leisure operator bidders. These submissions have been assessed as part of the leisure procurement exercise that the Cabinet previously agreed at its meeting of 8<sup>th</sup> March 2018. The procurement exercise, undertaken in partnership with ALT, is continuing but this report seeks approval from the Council to agree the need for much needed capital investment into the facilities to create high quality modern leisure facilities that will significantly increase participation levels and contribute to the health and wellbeing of the residents of the borough.

**Key Decision:** YES

**Significantly Affected Wards:** Borough wide

**Recommendations:** **The Cabinet is recommended to:-**

- I. Note the progress made in procuring a new leisure operator to date, the timescales anticipated to complete the exercise and the legal framework to support the new arrangements;**
- II. Endorse the Partnership Board's decision to take forward two bidders to the next stage of the procurement exercise;**
- III. Agree for appropriate officers to undertake all legal and project work to complete the procurement exercise and legal framework;**
- IV. Note that whilst the capital investment is planned to be financed from Prudential borrowing, the capital financing costs will be met from the net savings to be realised across the lifespan of the contract within the leisure service budget.**

- V. **Delegate responsibility to the Director of Finance and Economy in consultation with the Portfolio Holder for Finance and Portfolio Holder for Housing (as chair of the Partnership Board and Lead member) to agree the final level of Prudential borrowing, ensuring it is affordable to the Council and covers the necessary risk and resource implications.**

<b>Policy Overview:</b>	The current corporate plan sets out the Council's key priorities and highlights the need to improve leisure facilities and participation to support an active Ashford.
<b>Financial Implications:</b>	<p>Members are asked to agree the need for capital investment for the leisure facilities as part of the procurement exercise. They should note the current annual direct costs (excluding maintenance and planned lifecycle of the buildings) for the Council related to leisure facilities that totals £420,000 per annum. The range of Prudential borrowing costs and business cases submitted by the bidders at this time can be offset against the Council's existing costs.</p> <p>Further negotiation is required and officers are mindful that Members will wish to support the delivery of re-furbished and re-ordered facilities enabling exciting new activities in addition to a well-managed leisure stock portfolio balanced against this affordable position for the Council.</p>
<b>Legal Implications</b>	New lease arrangements with ALT include the Council agreeing new leases of 15 + 5 years and a Funding Agreement (to cover monitoring arrangements and any appropriate management fee) for the leisure facilities. ALT will directly contract with the new leisure operator whilst a Deed of Guarantee between the Council and the leisure operator covers the industry standard risks where ALT is not in a position to cover such risks, for example, contamination of the site.
<b>Equalities Impact Assessment</b>	See Attached
<b>Other Material Implications:</b>	-
<b>Exempt from Publication:</b>	No
<b>Background Papers:</b>	-
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## Report Title: *Leisure Procurement Exercise Update*

### Introduction

1. This report updates Members on the leisure procurement exercise, undertaken by the Council in partnership with Ashford Leisure Trust (ALT) that aims to appoint a new Leisure Operator to manage the Stour Centre, Julie Rose Stadium & Conningbrook Lakes and Spearpoint Recreation Ground & Pavilion for 15 years (with an option to extend for a further 5 years) as agreed at the Cabinet meeting of 8<sup>th</sup> March 2018.
2. The Partnership Board (including Cllr Gerald White, the Chief Executive, Head of Finance and Economy, the Head of Culture, the Council's Solicitor and four ALT Trustees) have overseen the leisure procurement exercise assisted by an Evaluation Team, which includes ALT Trustees and appropriate Council officers. Both groups benefit from the support of a jointly funded external leisure procurement expert and solicitor.

### Evaluation Process

3. At the initial stage of the exercise, Specific Questions (SQ), four leisure operating companies submitted applications. These submissions were evaluated and the recommendation made to the Partnership Board in June to take all four through to the next stage: Invitation to Submit Detailed Solutions (ISDS). One decided to withdraw before this stage due to a heavy workload.
4. The remaining three bidders submitted their detailed solutions 1<sup>st</sup> October 2018. These bids included plans for capital investment in addition to solutions for quality management, facilities management, meeting authority outcomes, approaches to marketing and pricing, staffing and volunteering and ultimately the financial impact to the Council and ALT.
5. Following a face-to-face dialogue meeting, a clarification stage and presentations by each of the bidders, the ISDS bids have been analysed and scored against the agreed procurement criteria. The Partnership Board in November considered these scores and agree that the two top scoring bidders should be taken forward to the next stage – Invitation to Submit Final Tender (ISFT).

### Capital Investment

6. In order to complete the ISFT, a formal commitment from the Council to support capital investment is required. Council approval enables the Partnership Board to agree the final bids and select the successful bidder.
7. A range of solutions and levels of capital investment, including direct investment from bidders to support the business case, has been presented to the Partnership Board and requested of the Council.

8. As part of the ISFS evaluation, further clarification on costs and business proposals will enable the partnership to ensure the bids are robust and viable in terms of capital delivery and costs, income and expenditure and lifecycle liabilities and most importantly meet the ambition of the partnership as identified in the procurement specification.

## **Legal Framework**

9. ALT currently have a lease for the Stour Centre to 2030 and are operating the Julie Rose Stadium under a two-year temporary arrangement. The legal framework between the Council, ALT and Operator post-appointment is complex given the liabilities and risk undertakings of the different parties and the structures of the bidders.
10. The final structure and legal documentation, leases and guarantees are being formed as part of the procurement process. Members are asked to delegate responsibility to the appropriate officers and through the decisions of the Partnership Board, to bring forward all the necessary legal documentation that appropriately covers the delivery of the capital investment, the successful operation of the facilities and appropriate monitoring and payment mechanisms.

## **Implications and Risk Assessment**

11. The main risk attached to this project is the potential for bidders to drop out of the process. It is considered highly unlikely given the time and considerable amount of resources bidders have already committed to the procurement to get to the final stage.
12. Challenges by bidders are possible as part of procurement exercises. The risk of these being successful has been mitigated by following strict guidelines recommended by the leisure procurement experts.

## **Equalities Impact Assessment**

13. Members are referred to the attached Assessment. The key issues arising are that the proposals under consideration will not have a negative impact on people with protected characteristics.

## **Consultation Planned or Undertaken**

14. Consultations have taken place with ALT and Cabinet Members. Bidders have undertaken extensive research as part of the bidding process in order to ascertain the current leisure habits of residents and their aspirations for the future.

## **Options and Reason for Recommendation**

15. Members acknowledge that working in partnership with ALT on the leisure procurement exercise offers the best solution for attracting a high quality leisure operator to jointly invest with the Council in providing outstanding modern leisure facilities for a growing population.

16. The Partnership Board has overseen the leisure procurement exercise agreed by the Council in March 2018 and ensured that it has been conducted properly and fairly and in accordance with the parties own obligations. This included allowing sufficient time for bidders with timescales adjusted slightly at the ISDS stage over the summer period.
17. The Partnership Board will consider the final stage recommendation from the Evaluation Team to agree which bidder provides the best and most effective service according to the tender evaluation scoring process.

## Next Steps in Process

18. Timeline:

13th DECEMBER: Full Council agreement
18th DECEMBER: Initial dialogue meetings with selected bidders
15th/22nd JANUARY: Further dialogue meetings
23rd JANUARY: Issue final tender documents
15th FEBRUARY: Bidders submit final tenders
18th FEB – end of MARCH: Evaluation
End MARCH: Partnership Board agree appointment (subject to Council delegated authority)
End MARCH: ALT Board formal sign off
Early APRIL: Award
1st JULY: Proposed Contract Commencement

## Conclusion

19. The leisure procurement exercise is a fantastic opportunity to provide Ashford with modern leisure buildings and equipment that will increase participation and enable a significant improvement in the health and wellbeing of residents in the Borough.

## Portfolio Holder's Views

20. This has been a robust procurement exercise to date, supported by expert guidance. There are some exciting proposals and the next stage is crucial as it enables the partnership to engage further on the leisure operator proposals to ensure the business case meets the aspirations of the Council.

Cllr Gerald White (Chair of Partnership Board and Lead Member)

## Contact and Email

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# Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:

- (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
- (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
- (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
- (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

## Public sector equality duty

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
- (a) Eliminate discrimination, harassment and victimisation;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).

3. These are known as the three aims of the general equality duty.

## Protected characteristics

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

## Due regard

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
- removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - Encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the

potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.

8. In terms of timing:

- Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
- Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.
- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

**Case law principles**

9. A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one so that it needs to be considered not only when a

policy, for example, is being developed and agreed but also when it is implemented.

- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on "Meeting the Equality Duty in Policy and Decision-Making" (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Christina Fuller
<b>Decision maker:</b>	Cabinet
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	<p>Endorse the Partnership Board's decision to take forward two bidders to the next stage of the procurement exercise</p> <p>Approve capital investment in to the sports facility portfolio.</p>
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	8 <sup>th</sup> December 2018 – Cabinet 13 <sup>th</sup> December – Full Council
<b>Summary of the proposed decision:</b> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	<p>To update Members on the progress for procuring a new leisure operator, being progressed by the Council in partnership with Ashford Leisure Trust (ALT), providing information on the timescales anticipated to complete the leisure procurement exercise and the legal framework to support the new arrangements. To agree capital investment to allow officers to complete the exercise as outlined in its previous Cabinet report in March 2018.</p>
<b>Information and research:</b> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	<p>Selected bidders have put forward investment submissions and a business plan for the Stour Centre, Julie Rose Stadium &amp; Conningbrook Lakes and Spearpoint Recreation Ground &amp; Pavilion for 15 years (with an option to extend for a further 5 years). These have been evaluated as part of a first stage (ISDS) of the exercise.</p>
<b>Consultation:</b> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>Key officers from the Council have consulted with Ashford Leisure Trust and key Members and will continue to do so. Bidders have carried out extensive local research to understand the local demographic, future growth and trends in participation levels.</p> <p>This has resulted in bids including programmes to address local needs and raise participation levels.</p> <p>The decision has a positive impact on people with different protected characteristics.</p>

**Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.**

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

<b>Protected characteristic</b>	<b>Relevance to Decision</b> High/Medium/Low/None	<b>Impact of Decision</b> <b>Positive</b> (Major/Minor) <b>Negative</b> (Major/Minor) <b>Neutral</b>
<u>AGE</u> Elderly	MEDIUM	POSITIVE
Middle age	MEDIUM	POSITIVE
Young adult	MEDIUM	POSITIVE
Children	MEDIUM	POSITIVE
<u>DISABILITY</u> Physical	MEDIUM	POSITIVE
Mental	MEDIUM	POSITIVE
Sensory	MEDIUM	POSITIVE
<u>GENDER RE-ASSIGNMENT</u>	NONE	NEUTRAL
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	NONE	NEUTRAL
<u>PREGNANCY/MATERNITY</u>	NONE	NEUTRAL
<u>RACE</u>	NONE	NEUTRAL
<u>RELIGION OR BELIEF</u>	NONE	NEUTRAL
<u>SEX</u> Men	NONE	NEUTRAL
Women	NONE	NEUTRAL
<u>SEXUAL ORIENTATION</u>	NONE	NEUTRAL

<b>Mitigating negative impact:</b> Where any negative impact has been identified, outline the measures taken to mitigate against it.	N/A
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**Is the decision relevant to the aims of the equality duty?**

Guidance on the aims can be found in the EHRC's [Essential Guide](#), alongside fuller [PSED Technical Guidance](#).

Aim	Yes / No / N/A
1) Eliminate discrimination, harassment and victimisation	YES
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	YES
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	YES

<p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>Consider how due regard has been had to the equality duty, from start to finish.</li> <li>There should be no unlawful discrimination arising from the decision (see guidance above).</li> <li>Advise on whether the proposal meets the aims of the equality duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.</li> <li>How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li> </ul>	<p>Due regard has been made to the equality duty, from start to finish of the scoping process and research stage.</p> <p>There will be no unlawful discrimination arising from the decision</p> <p>The proposal meets the aims of the equality duty as all sections of the community including those with protected characteristics will benefit from the new arrangements being proposed.</p> <p>Monitoring of the policy, procedure or decision and its implementation will be undertaken by the Council with ALT and the operator providing relevant information.</p>
<p><b>EIA completion date:</b></p>	<p>22-11-18</p>