

**Agenda Item No:** 10  
**Report To:** Cabinet  
**Date of Meeting:** 27<sup>th</sup> February 2020  
**Report Title:** Tenterden Leisure Centre Procurement  
**Report Author & Job Title:** Len Mayatt, Cultural Projects Manager  
**Portfolio Holder** Cllr. Peter Feacey  
**Portfolio Holder for:** Culture, Tourism & Leisure



**Summary:**

This Report introduces the opportunity to accept the early surrender of Tenterden Leisure Trusts lease for Tenterden Leisure Centre, so enabling the Council to lead a procurement exercise to appoint a leisure operator in readiness for when the current contract with Serco Leisure expires on 31<sup>st</sup> March 2021. The Report also proposes an investment proposal for the centre to be considered as part of the procurement exercise via prudential borrowing.

**Key Decision:** YES

**Significantly Affected Wards:** Tenterden North Ward, Tenterden South Ward and St Michaels

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

- I. Accept the early surrender of Tenterden Leisure Trusts lease for Tenterden Leisure Centre, on terms to be agreed in a Memorandum of Understanding and an appropriate Surrender Lease between the Council and the Trust;**
- II. Agree to a procurement exercise with associated costs and responsibilities so that a new contract can be entered into for 1<sup>st</sup> April 2021;**
- III. Agree a cost neutral or more favourable, investment package by the Council within the procurement exercise. Delegate authority to the Head of Finance & IT in consultation with her Portfolio Holder to agree appropriate; arrangements to facilitate the new contract;**
- IV. Delegate authority to the Heads of Regeneration & Projects Culture and Tourism & Leisure in consultation with their respective Portfolio Holders to agree relevant procurement documentation and contracts to give effect to the above.**

**Policy Overview:** This project supports The Council's Corporate Plan 2015 -

**Financial Implications:**

2020 Priority 3 – Active and Creative Ashford

It is anticipated the cost of the procurement exercise for the Council will be up to circa £60,000. Tenterden Leisure Trust have already commissioned work up to £24,300 and agreed to provide a further £40,000 to the Council for funding the remainder of this work.

In order to maintain the attractiveness of the facility and its ability to attract new customers, an investment package of say up to £1m should be considered. If the proposal is approved, the Council will seek tenders from prospective operators detailing how they will repay the authority over the life of the contract, so the scheme is cost neutral or better to the Council and raises participation levels in healthy lifestyles.

**Legal Implications**

A suite of contract and lease documentation will need to be produced, predominately by external providers due to the bespoke nature of the leisure contract and resource implications for the in-house legal team.

**Equalities Impact Assessment**

See Attached

**Other Material Implications:**

This project will have resource implications for the Council across a number of teams as outlined in the attached PID.

**Exempt from Publication:**

**NO**

**Background Papers:**

**Contact:**

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## Report Title: Tenterden Leisure Procurement

### Introduction and Background

1. This Report describes the proposal to initiate and complete the procurement of an operator for Tenterden Leisure Centre from 1st April 2021, to secure and implement investment in the town's main leisure facility giving consideration to ABC's position for investment and maintenance responsibility as well as investigating opportunities for carbon reduction initiatives, while enhancing service delivery, especially in the rural community and fully servicing hard to reach and target groups.
2. Ashford Borough Council leases the facility to Tenterden Leisure Trust (TLT) until 2052. The Trust have a contract with Serco Leisure Ltd to operate the facility until 31<sup>st</sup> March 2021. TLT currently take the lead role in managing the contract with Serco Leisure and ABC reviews the Trust's management of that contract. TLT have worked hard to manage the current contract for many years and have done so with minimal recourse to ABC, providing a quality service for the centre users in partnership with Serco Leisure
3. Noting there is a strong likelihood the eventual operator of the facility will be another Trust and TLT are finding it increasingly difficult to find volunteers to fulfil their obligations, TLT wish to surrender their lease on 31<sup>st</sup> March 2021 and have asked the Council to take on responsibility for the operation of the centre from that date, as well as the procurement of a new operator.
4. This Report proposes the Borough Council leads a procurement exercise to provide an operator from 1<sup>st</sup> April 2021 when the current contract expires.

### Proposal/Current Position

5. The Trust appointed Max Associates in July 2019 to support them in the procurement of an operator for the facility. With support from Council officers and the Council elected member representative on their Board, TLT have been working with Max Associates on the production of a draft service specification and supporting documentation in preparation for a tender exercise during 2020.
6. The lease with TLT makes provision for them to surrender the lease on every tenth anniversary of the execution of the lease. The next potential surrender date is July 2022. However, in order to enable the Council to manage the facility from the start of the new contract, it is proposed the Trust surrenders their lease sixteen months early on 31<sup>st</sup> March 2021.
7. As the procurement exercise needs to be led by one contracting authority, it is proposed the Council leads and completes the procurement exercise from 1<sup>st</sup> March 2020, with TLT transferring the work they have initiated with Max Associates to the Council for completion.

8. TLT will remain in situ until their lease is surrendered, which will ensure there is continuation of service delivery for the remainder of the contract with Serco. It will also mean the current saving on business rates (£155,000 per year) will be retained and the Council will be able to continue supporting the Trusts management of the Serco contract.
9. TLT will provide information and advice to the Council on the operation of the centre during the procurement exercise without any specific voting or prescriptive rights for the new contract.
10. However, the Trust has asked for consideration be given to the inclusion of a bursary scheme or similar in the new contract, which reflects the scheme they currently administer which is aimed at supporting and encouraging local young people aspiring to be selected for the national and in many cases international, team in their chosen sports. They have also asked to be included as a stakeholder consultee on the future operation of the facility. Both of these opportunities can be explored and included in the procurement documentation if Members support the Trusts request, subject to them not adversely affecting the Council's financial position.
11. Both parties have agreed the value of the lease is £1, which has been verified by an independent valuation on behalf of the Trust. As the Council has not budgeted for this procurement exercise, The Trust have agreed to pay £40,000 to the Council for the completion of the procurement work, which will include all necessary external legal work, contract documentation and associated costs. This is in addition to the £24,300 the Trust have committed to pay Max Associates for their work.
12. All of the necessary terms will be set out in a Memorandum of Understanding between the two organisations which is currently being drafted and an appropriate Surrender Lease will also be required detailing the terms of the Trusts departure from the facility.
13. If Members accept the proposal described above, a suite of contract documentation will be developed, based on Sport England's industry standard methodology, which includes detailed performance monitoring. This documentation will also mirror those produced for the recent leisure procurement exercise for the Stour Centre, Julie Rose and satellite facilities in Ashford, which will be managed by Freedom Leisure from 1<sup>st</sup> April 2020.
14. As the Freedom Leisure contract is for a fifteen year period with an option to extend for a further five years, it is proposed the Tenterden contract matches the proposed end date of the Freedom contract on 31<sup>st</sup> March 2035 with an option to extend for a further five years if both parties are mutually agreeable. This will allow the Council to more easily combine both contracts in the future should it wish to do so.
15. The contract documentation will include appropriate provision for maintenance responsibilities of the centre, covering exterior, interior and plant & machinery liabilities that are most advantageous to the Council. Ultimately, the aim will be to transfer responsibility to the operator, except for the main structure of the facility. However, this can be reviewed as part of the contract negotiation,

to ensure the Council achieves the most financially advantageous outcome while reflecting the need to make the proposal attractive to the market.

16. Members are asked to note that as the building is thirty years old and certain areas of the building are in need of repair, the Council has committed to replacing the leisure centre roof, refurbishment of the air handling unit and wave machine during 2020 to fulfil its obligations as landlord and maintain the structure and major plant in optimum condition.
17. Members are reminded that in 2018, Serco Leisure as the incumbent operator proposed a £1m investment in the centre to refresh the offer to the growing Tenterden community and to ensure the centre remains 'fit for purpose' for another 15 years. ABC has an option to include a request for investment in the facility as part of the proposed tender process. Any such investment would need to be at least cost neutral to the authority (potentially via prudential borrowing at circa 4% or as advised) the level of any proposed investment could be capped at the tender stage. Members are therefore asked to agree to a similar investment proposal as part of the proposed OJEU tender exercise.
18. By including the investment proposal at the outset of the procurement exercise, potential bidders will be able to clearly see the Council's intent to ensure the facility (which is over thirty years old) remains appealing to new and more demanding market place.
19. More detail on the proposal is included in the attached Project Initiation Document (PID) **APPENDIX C**

## **Implications and Risk Assessment**

20. By accepting direct management of the contract, the Council will be taking on a different role than its current one of overseeing the Trusts function. This will necessitate some changes to job roles within the Culture Team but will not involve an increase in the overall staffing establishment for the team.
21. As the Council had not anticipated entering into this contract, the other departments listed within the PID have had to adjust their work programmes to be able to facilitate this project within the required timeframe, especially the Legal and Property maintenance teams.
22. The main risk attached to this project is the potential for the number of bidders to be small and their quality low. This is being mitigated by Max Associates using their expert market knowledge to construct the bid documents. Through a soft market testing process they will seek to gauge the interest of the market and respond to questions operators may have with detailed and timely responses.

## **Equalities Impact Assessment**

23. 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.

24. Provision will need to be made to continue to provide community sports facilities for people with different abilities and characteristics.

### **Consultation Planned or Undertaken**

25. Consultation has taken place with Tenterden Leisure Trust, appropriate Portfolio Holder, the Borough Council's representative on the Trust Board and Cabinet Members. There will be ongoing consultation with members of TLT on the operation of the centre prior to the new contract being completed.
26. Prior to commencement of the new contract, consultation will be required with the leisure centre staff employed by Tenterden Leisure Trust as part of a potential TUPE process.

### **Other Options Considered**

27. The Council could decide to refuse the Trusts request to surrender their lease early and ensure they continue to manage the current contract and future contracts up to 2052. However, as noted in paragraph three above there is a strong likelihood the eventual operator of the facility will be another trust and TLT are finding it increasingly difficult to find volunteers to fulfil their obligations.

### **Reasons for Supporting Option Recommended**

28. If the procurement proceeds with a duplication of trusts, this could be less appealing to potential operators, due to having a complex management structure. Furthermore, there is a possibility the Trust themselves may find it impossible to meet their current contractual obligations for another thirty-one years.
29. By taking on direct responsibility for the contract, the Council will have more control over the operation and performance of the facility moving forwards.
30. As TLT have agreed to effectively pay for the procurement exercise, the Council's risk of incurring unexpected costs for the procurement work has been significantly reduced.

### **Next Steps in Process**

31. The draft Memorandum of Understanding, Surrender Lease and necessary contract documentation including an option to invest in the facilities will be completed.
32. A fully compliant procurement exercise will be instigated in line with the project timeline detailed in the PID (Section Five)
33. Further Cabinet approval will be sought in time to allow the Council to appoint the preferred bidder in time for the new contract to be mobilised by 1<sup>st</sup> April 2021.

## **Conclusion**

34. The leisure procurement exercise is a fantastic opportunity to provide Tenterden with refurbished leisure buildings and equipment, which will increase participation and enable a significant improvement in the health and wellbeing of residents in the Borough.
35. By entering into a compliant procurement exercise, the Council will be fulfilling its obligations to provide best value for its residents.

## **Portfolio Holder's Views**

36. "I would like to take this opportunity to thank Tenterden Leisure Trust who has been a strong local partner and overseen the facility with limited recourse to the Council since 2002. Essentially this procurement aims to attract bidders and provide a platform for the service to raise participation, with all the benefits that brings to the local community".

## **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.

### Armed Forces Community

9. As part of the council's commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council's Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.

10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:

- Current serving members of the Armed Forces (both Regular and Reserve)
- Former serving members of the Armed Forces (both Regular and Reserve)
- The families of current and former Armed Forces personnel.

### Case law principles

11. 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>	Len Mayatt Cultural Projects Manager
<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>	Procurement exercise and investment for Tenterden Leisure Centre
<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.	27 <sup>th</sup> February 2020
<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>	Agree to a procurement exercise to appoint an operator of the facility and consider an investment package in the facility to enhance the facilities. The facility will be available for all residents of the borough.
<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>	Consultation has taken place with Tenterden Leisure Trust, appropriate Portfolio Holder, the Borough Council's representative on the Trust Board and Cabinet Members. There will be ongoing consultation with members of TLT on the operation of the centre prior to the new contract being completed.  Prior to commencement of the new contract, consultation will be required with the leisure centre staff employed by Tenterden Leisure Trust as part of a potential TUPE process.  There will be opportunity for further consultation with the Trust and stakeholders before a final investment plan is approved.
<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</li> </ul>	As noted above there has been and will continue to be consultation with the Trust, operator and stakeholders in the facility.  Groups such as Ashford Access Group will be approached for advice, as well as PCT and other health professionals.  Proposals for the facility will be brought forward and consideration will be given to ensuring that people with protected characteristics are not adversely affected by the operational contract or investment.

people with different protected characteristics?		
<p><b>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.</b></p> <p>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.</p>		
<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/High	Positive
Young adult	Medium/High	Positive
Children	Medium	Positive
<u>DISABILITY</u> Physical	Medium	Positive
Mental	Medium	Positive
Sensory	Low	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
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	None	Neutral
Former service personnel	None	Neutral

Service families	None	Neutral
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<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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<b>Is the decision relevant to the aims of the equality duty?</b> Guidance on the aims can be found in the EHRC's <a href="#">Essential Guide</a> , alongside fuller <a href="#">PSED Technical Guidance</a> .	
<b>Aim</b>	<b>Yes / No / N/A</b>
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

<b>Conclusion:</b>	
<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 will be made to the equality duty, throughout the development of the contract and any investment plans.</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 enhancements to the facility.</p> <p>Monitoring of the policy, procedure or decision and its implementation will be undertaken and reported by the core working group.</p>

**EIA completion date:**

12<sup>th</sup> February 2020



## PROGRAMME INITIATION DOCUMENT

**Project name** Tenterden Leisure Management Procurement

**Release** Discussion Document for PMG – 23<sup>rd</sup> January 2020  
Cabinet Call Over – 28<sup>th</sup> January 2020

## 1. PROJECT BACKGROUND

This document has been drafted to describe the proposal to initiate and complete the procurement of an operator for Tenterden Leisure Centre from 1st April 2021, to secure and implement investment in the town's main leisure facility giving consideration to ABC's position for investment and maintenance responsibility, while enhancing service delivery, especially in the rural community and fully servicing the hard to reach and target groups.

### Current Management Arrangements

Site	Current Management Arrangements
Tenterden Leisure Centre	Serco Leisure manage the contract to operate the centre on behalf of Tenterden Leisure Trust (TLT) until March 2021.

Tenterden Leisure Trust (TLT) lease the leisure centre from ABC until 2052. ABC leases the land on which the centre and car park sits until 2113 from Tenterden Town Council.

TLT have a contract with Serco Leisure to operate the leisure centre until 31<sup>st</sup> March 2021. The Trust have appointed Max Associates to support them in the procurement of an operator for the facility from 1<sup>st</sup> April 2021 when that contract expires. TLT currently take the lead role in managing the contract with Serco Leisure and ABC reviews the Trust's management of that contract.

Noting there is a strong likelihood the eventual operator of the facility will be another Trust and TLT are finding it increasingly difficult to find volunteers to fulfil their obligations, TLT wish to surrender their lease on 31<sup>st</sup> March 2021 and have asked the Council to take on responsibility for the operation of the centre. Given this, the Council will need to lead the procurement exercise and appoint a new operator between January 2020 and April 2021.

TLT will provide information and advice to the Council on the operation of the centre during the procurement exercise. TLT will continue to manage the remainder of the existing contract with Serco Leisure, which will mean the current saving on business rates (£155k per year) will be retained and ABC can continue to oversee the existing lease arrangements with TLT.

TLT will advise without any specific voting or prescriptive rights for the new contract. This will be set out in a Memorandum of Understanding between the two organisations yet to be completed. The surrender value is currently being reviewed by TLT, ABC believes it has a nominal value of £1. There may be a cost implication to the surrender if the Trust bring forward a different value that will need to be considered.

TLT has agreed to pay for the procurement exercise, which includes £40k towards the anticipated procurement costs of £60k, having already committed to paying Max Associates £24k. This means there is no cost to ABC for the procurement work if the cost does not exceed £60k but does mean that more officer resource (refer below) will need to be allocated as the Council will be the lead organisation for the procurement and future operation.

TLT have worked hard to manage the current contract for many years and have done so with minimal recourse to ABC, providing a quality service for the centre users in partnership with Serco Leisure. TLT wish to remain 'an interested stakeholder' and be consulted as part of a local user forum. They would also like to see a bursary scheme for the benefit of local sporting individuals/groups continue as one of the outputs of the contract, even if the Trust does not manage it themselves. It should be possible to accommodate these two requests from TLT within the procurement exercise without adversely affecting ABC's management of the process.

## **Term and Investment**

In order to ensure the facility is fit-for-purpose and sustainable for the proposed 15 years plus 5year extension, the Council can agree to make capital investment into the facilities based on engagement of the market. It is imperative the overall investment and operation package is cost neutral to ABC. Although a 15 + 5 year contract is proposed to mirror the new contract with Freedom Leisure for the Stour, Julie Rose and Spearpoint Centres from 1<sup>st</sup> February 2020. Alternatively, a 14 +4 year contract could be offered, which would allow both leisure contracts to be combined more easily in the future which is probably more desirable.

In 2018, Serco as the incumbent operator proposed a £1m investment in the centre to refresh the offer to the growing Tenterden community and to ensure the centre remains ‘fit for purpose’ for another 15 years. ABC has an option to include a request for investment in the facility as part of the tender process. Any such investment would need to be at least cost neutral to the authority (potentially via prudential borrowing at circa 4% or as advised) the level of any proposed investment could be capped at the tender stage. Members will be asked to consider the most appropriate tender and investment proposal.

The building is circa 30 years old and is about to receive a new roof, air handling unit and wave machine via investment from ABC as landlord. Decoration was undertaken 10years ago and new bidders would most probably include another redecoration and new gym equipment in their submissions. The issue for consideration will be whether the Council wishes to consider new redesign of spaces to make the business more viable and meeting the needs of the local community.

ABC could consider a procurement exercise without an option to invest in the facility at all. This will mean a service contract only. This may not generate a significant amount of interest from potential operators as the margins would be minimal and the Tenterden Leisure Centre is relatively isolated.

Noting that potential bidders do not normally have easily accessible money to invest in facilities and generally, councils can borrow at advantageous rates with a view to achieving a ‘cost neutral’ investment package with bidders, it is proposed that bidders are asked to submit proposals for investment at tender stage at the same scale as Serco previously proposed.

## **Vision**

This vision includes the key aspirations and ambitions that ABC wants the leisure operator business to support and deliver. The vision will help to identify an outcome framework that shapes the service delivery specification and future performance measures.

In addition, the procurement exercise has a number of clear objectives that the Council and stakeholders can agree and wish to progress as part of the exercise. These compliment the visions’ outcomes and are listed for reference at the end of the document.

### **Vision:**

1. We need to respond to Tenterden’s growth and enhance a vibrant mix of exciting sporting, health and recreational facilities to improve the quality of people’s lives and civic pride.
2. We must exploit, embed and enhance the opportunities that sport and active recreation provides to help local people develop and maintain active, healthy lifestyles.

3. We need diverse and creative approaches that target the inactive so we address the local health and wellbeing priorities that sport and physical activity impact upon.
4. We must ensure that more people become and remain active more regularly, providing opportunities to get started, stay involved and compete at all levels.
5. We want to develop, test, and share innovations with imaginative and productive partners so we improve communications and programming that raise participation.
6. We want exceptional service quality and investment used wisely to enhance our facilities and programmes.
7. We want to invigorate the local economy, provide jobs and strengthen our reputation in supporting Ashford's economic success.
8. We need a community-based approach that helps local areas and neighbourhoods embrace the benefits of regular sporting and active recreation and local infrastructure that in turn helps support community spirit and collaboration.

## 2. PROJECT DEFINITION

### Project Aim

To award a leisure management contract to an established operator to manage the scope of facilities identified above.

### Project Objectives

- Encourage market engagement, ensuring a focus on service quality and investment that supports a better leisure offer and improved income generation.
- Provide a framework for innovation, encouraging partnerships which deliver increases in participation and enable the promotion of social and health outcomes.
- Achieve financially sustainable leisure provision that reduces the client's liabilities.
- Balance quality, increasing participation, achieving broader outcomes in health and wellbeing, commercial performance and cost.
- Ensure fair contractual positions which can be adopted but avoid lengthy dialogue and that reduce costs and time for clients and contractors in the procurement process.
- To ensure a broad range of accessible and affordable services and activities are available to all sectors of the community, including those in particular need.

The key deliverables are summarised below:

- Ensure that a long-term operator is appointed and in place by **April 2021** to avoid having to extend the current Serco Leisure contract.
- Ensure that the business case for any investment and overall contract cost is tested at key stages of the procurement process.
- Ensure that the selected operator has a robust approach to financial and operational management meeting industry best practice procedures as a minimum.
- Ensure that the operator delivers against the vision described above.
- Develop a performance-based specification that the operator can deliver against and that ABC can enforce/monitor.
- Ensure that the service provided is bespoke in relation to ABC's objectives and community need.

- Ensure that there is flexibility in delivery of the services so that future developments can be incorporated in the operations of the leisure facilities and services.
- Ensure that the operator develops and improves the service at all times.
- Adhere to the Council's procurement and EU procurement Regulations.
- Ensure that a comprehensive delivery programme is maintained with an appropriate balance of outreach product commensurate with the needs of the community.
- Ensure a high quality sustainable leisure service.

## **Project Scope**

### **In Scope**

#### **The following facilities/services are in scope:**

- Tenterden Leisure Centre

The scope of this project is to work within the identified project funding (currently estimated at £60k) to ensure that the all work is completed within budget, on time and to a quality determined by the Council and appropriate regulations.

Specifically, this project includes:

- Developing a performance based specification that an operator can deliver against
- Work with the legal, procurement and property departments within ABC to develop a legally binding contract for the operator and to ensure that leases for the facilities dovetail with the contract, specification and objectives
- Develop new revised lease arrangements between ABC and a new operator and any warranties between ABC/operator.
- Comply with EU Procurement Regulations
- Comply with the Councils' Financial Regulations
- Ensuring this proposed contract mirrors the same ambitions as the new leisure contract between ABC and Freedom Leisure

### **Out of Scope**

All other leisure services are outside the scope of this project.

### **Project Deliverables**

- Produce and supply relevant information for potential bidders
- Produce and publish OJEU notice
- Produce and distribute SQ documentation
- Produce and distribute ISDS documentation including transparent evaluation protocols
- Organise bidders' clarification meetings
- Hold dialogue with bidders
- Conduct efficient evaluation of bids at each stage of procurement process
- Ensure a compliant procurement process that successfully identifies an operator to manage the leisure services subject to ABC approval

- Produce and monitor the project Risk Register
- Submission of reports/updates as appropriate in order to ensure all local approvals are met and that financial regulations are adhered to
- Award of contract to preferred bidder
- Appropriately mobilised the contract
- Review arrangements for car parking refunds for centre customers
- Review responsibilities for ongoing repairs and maintenance of the centre and plant
- Staff and stakeholders consulted with at appropriate times
- Seamless transfer of service to new operator whilst maintaining high levels of customer satisfaction.

### **Constraints/Limitations**

This project will need to consider the following:

- Councils' democratic processes and timescales
- EU procurement Regulations
- Councils' Standing Orders and Financial Regulations
- Current leisure operating contracts/leases with TLT/Serco
- Charity Commission observations on TLT's proposed surrender of their lease with ABC
- TUPE for existing staff engaged in the current contract
- Pension rights of existing staff engaged in the current contract
- Finance available for investment via prudential borrowing or the most financially advantageous mechanism

### **Interfaces**

- ABC Working group including Portfolio Holder from Culture and Property
- Procurement, Finance, HR, Property Services, Legal, Comms departments
- Project Manager\* - Max Associates (It is proposed a Single Source Supplier form is completed, allowing ABC to continue working with Max Associates on this project)
- External Legal Advisors\* - (It is proposed a Single Source Supplier form is completed, allowing ABC to continue working with Trowers & Hamlyns on this project)
- Incumbent contractor/leaseholder – Serco Leisure and TLT
- Leisure centre stakeholders
- Bidding organisations

\*Both of these organisations have worked on the recent ABC led leisure procurement, so have an understanding of the area and services required. Both have provided high quality services during that procurement process.

### **Assumptions**

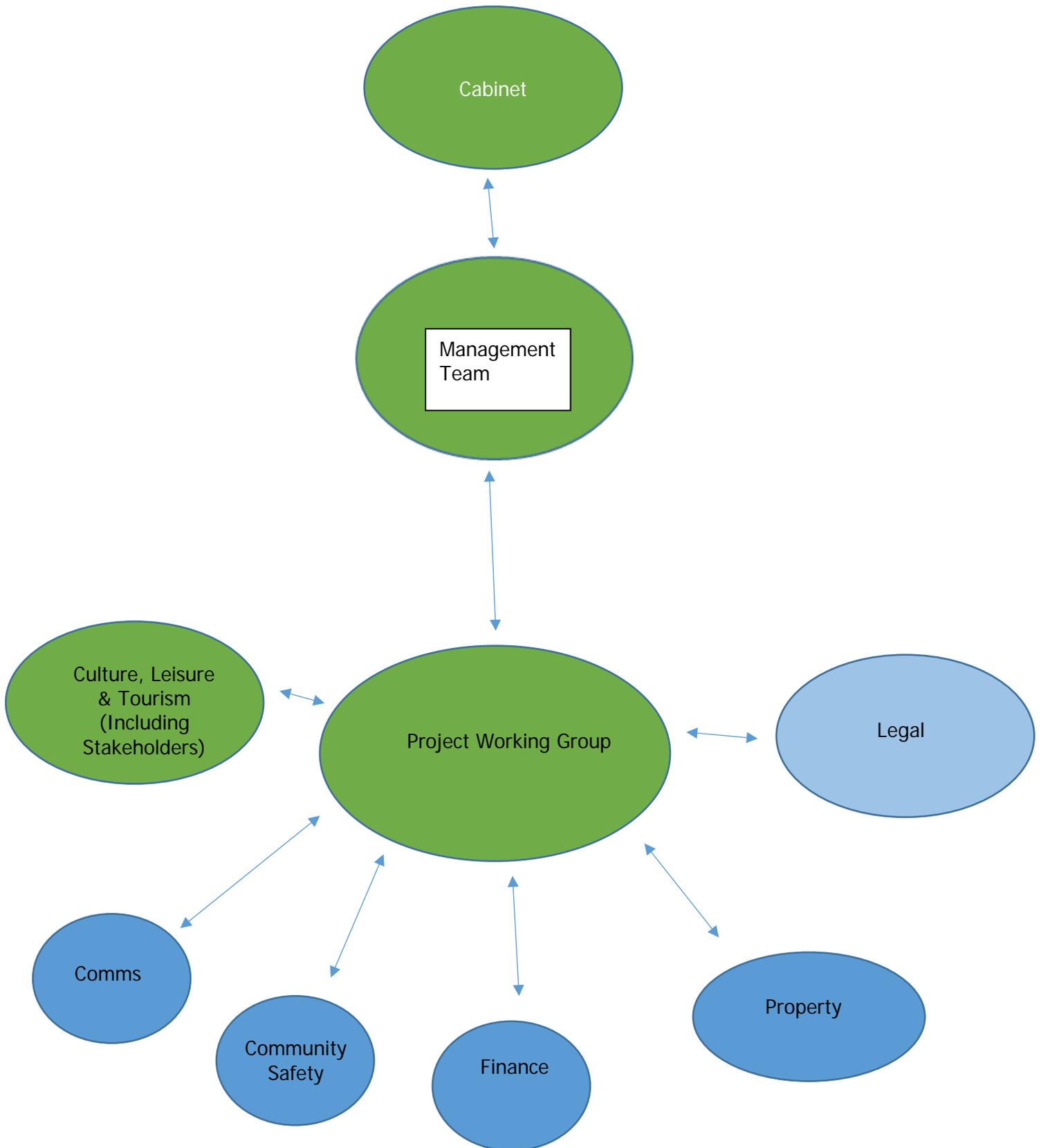
This PID assumes that:

- All those involved in the project will endeavor to complete tasks and work packages meeting deadlines as required.
- Those involved in the project will inform the Project Manager of any issues that may have implications regarding the delivery of the project.

- Those involved in the project inform the Project Manager of any unforeseen or potential risk, even if perceived as minor.
- That the Project Working Group inform the Project Manager of any changes to the scope of the project, in relation to corporate strategy or political priorities.
- That any changes to the scope may affect the completion date, the cost or the quality of provision.
- Any deviations from the agreed scope will be reported to the Project Working Group for approval.
- That the Project Manager can operate freely within the agreed scope of the Project.

### 3. PROJECT GOVERNANCE STRUCTURE

The project governance structure is shown in the chart below:



## **Responsibilities of the Project Working Group (PWG)**

The PWG will be responsible for:

### **Strategic review and operational management**

- provides the strategic control, direction and accountability for the way in which the project is progressed;
- ensures an effective and deliverable programme is prepared and delivered;
- ensures that decisions are taken in a timely manner and by the appropriate individual or body;
- make sure satisfactory progress is made in preparing and implementing all necessary plans;
- make sure legal agreements – new/revised lease arrangements between ABC and the new operator are in place in a timely manner in line with the procurement project plan
- ensure that TLT's surrender of their lease is managed in a timely and compliant manner.

### **Risk Management**

- risks are properly identified, assigned and managed;
- issues relating to the project are identified and addressed;
- work tasks are identified and clearly assigned;
- that opportunities are fully explored and considered;

### **Cabinet engagement**

- ABC Cabinet and O&S, are briefed and prepared for decisions needing their respective approval ;

### **Communications**

- there are adequate and effective communication channels between all involved;
- an appropriate communications plan is implemented;
- the reputation and good name of ABC and TLT is upheld;
- relevant services and stakeholders are fully involved as required;
- Trustees, members, stakeholders, those affected and the public are properly informed in a timely manner;
- Charity commission is engaged at suitable stages prior to TLT surrendering their lease and revising their M&A

### **Finance and resource**

- that costs are properly identified and met;
- the project is properly resourced;
- ABC's financial regulations are observed;
- key individuals are properly supported;

## Composition of the PWG

Culture, Leisure & Tourism	Christina Fuller Len Mayatt	Project lead and overall management
Legal (ABC)	TBC	Management of the legal process and document production
Legal (External)	Trowers & Hamlyns	Production of main contract documentation and leases (Single source supplier required)
Corporate Property & Projects (including Procurement)	Dan Stone	Management of leases, management of capital works (if agreed) and ongoing maintenance liabilities
Finance/Insurance	TBC	Study of profile and agree contract clauses
Comms	TBC	As and when required
Max Associates	Lisa Forsythe	Project Manager (Single source supplier required)

The PWG will meet as and when required (nominally on a monthly basis) and will commission the necessary elements of work required to complete the project (Culture, Finance, Legal, Operational, Property and Communications). It will be a key requirement of the PWG to develop a system of communication channels that effectively ensure all working group members, partners and key stakeholders are kept fully informed and able to contribute to all aspects of this project.

### Members of the PWG will be prepared to:

- Respect confidentiality of information.
- Attend meetings whenever reasonably possible. Deputies for members will be welcome if members are unable to attend.
- Work with other group members to achieve agreement on key issues to address and prioritise action.
- Complete and deliver work as agreed.

**Working:** As and when required for Strategic decisions and operational issues (deferring to Cabinet/Management Team as required)

Action notes will be taken by an appointed support officer

Agendas and other papers will be published no later than 3 working days preceding the meetings.

The group will be chaired by the Head of Culture, Leisure & Tourism

## Key Decisions

### Prior to contract advertisement:

**Cabinet approval to proceed will be required by March 2020 in order to meet the procurement deadline.**

- Sign off key contract documentation including
  - Tier 1 and tier 2 evaluation criteria for each stage of project
  - Services specification
  - Contract terms and conditions
  - Heads of terms between ABC and the new operator
  - Memorandum of Understanding between ABC and TLT

**During Procurement Process:**

- Sign of key contract documentation updates during procurement processes
- Sign of evaluation recommendations at:
  - SQ stage
  - Detailed stage  
The Council will need to take finances and cap ex requirement to cabinet.
  - Recommendation of preferred supplier at final tender stage for O&S, and Cabinet approval.

**Risks**

- risks are identified and reported to ABC Cabinet/Management Team;
- an issues log is maintained and considered;

**Comms**

- interested groups are kept informed and involved;
- the communications plan is implemented;

**Finance and Resources**

- the costs of the project are identified and budgeted for;
- ABC financial regulations are observed;
- key individuals are properly supported;
- task groups are appropriately supported;

**Key Tasks:**

- **Culture, Leisure & Tourism**
  - Development of Services specification and performance monitoring systems
  - Develop key service policy items including concessions policy, community development
  - Development of evaluation methodologies and tender documents
  - Background information
  - SQ evaluation – technical capacity (service)
  - Bidder meetings and dialogue sessions
  - Tender evaluation – services
  - Reports for Management Team and Full Council as required
  - Maintain a full audit of the procurement process
  - Liaise with Community Safety & Wellbeing on a review of car parking refunds
  - Liaise with Human Resources on issues relating to TUPE and any other relevant staff related issues
- **Legal / Finance**
  - Leisure operating contract and lease documents
  - Develop pricing matrix and payment mechanisms
  - Review and sign off - procurement documents
  - SQ evaluation – finance and consortium structures
  - Bidder meetings and dialogue sessions
  - Tender evaluation – commercial and legal
  - Input into reports for Management Team and Cabinet/Full Council as required
  - Produce a surrender lease to enable TLT to withdraw from their current obligations

- **Corporate Property & Projects**
  - Bidder meetings and dialogue sessions
  - Tender evaluation – capital investment submissions
  - Ongoing liability for maintenance and repairs
  - Planned works to the roof, air handling unit, wave machine and any other landlord responsibilities throughout the project
- **Comms**
  - Stakeholder and customer comms strategy and plans
    - general procurement updates
    - any media enquiries

## 5. PROJECT QUALITY PLAN

The project will be completed in line with the detailed project programme with an overview provided below.  
**Indicative Project Plan and associated outcomes**

Description	Expected Timescales	Methodology / outline project plan
Project Initiation	January/February 2020	<p><b>Project Initiation</b></p> <p>Assess project risks of an outsourcing exercise and identify mitigation strategies</p> <p>Identifying protocols for the procurement process and level of resources required to manage the project.</p> <p>Agree documentation required for the procurement process.</p> <p>Agree other ad hoc support required in an advisory role, for example HR, property etc. Confirming their commitment and informing them of when their time will be needed.</p> <p>Agree how documents/information will be controlled</p> <p>Complete procurement strategy</p>
Working Group Meetings	Ongoing	<p><b>Working Group Meetings:</b></p> <p>These will be held on a regular basis throughout the project and at particular stages such as:</p> <ul style="list-style-type: none"> <li>• After SQ stage to discuss issues / scores and agree who will be taken through to the next stage.</li> <li>• To agree final documents and evaluation strategy</li> <li>• To agree the protocol for dealing with bidder clarification questions throughout the process</li> <li>• To agree invitation to submit detailed solution (ISDS) documents.</li> <li>• After submission of detailed solutions to discuss key finance / legal and technical issues.</li> <li>• After clarifications to agree final scores for bidders and choice of who to take through to final dialogue and tender stage.</li> <li>• Sign of final tender documents</li> <li>• Agree evaluation of final tenders and preferred bidder(s)</li> </ul>
Development of Invitation to Documents	February/March 2020	<p>These documents will include:</p> <ul style="list-style-type: none"> <li>• A description of how the Council will conduct the competitive dialogue and the key stages of the</li> </ul>

Description	Expected Timescales	Methodology / outline project plan
		<p>procurement process, a proposed timetable and conditions for participation;</p> <ul style="list-style-type: none"> <li>• The criteria that will be used to award the Contract;</li> <li>• A Letter of Acknowledgement and Certificate of Non-canvassing and Non-collusion;</li> <li>• Bid Evaluation; providing information on council's weightings between price and quality for the (ISOS) and high level criteria for the ISDS / ISFT</li> <li>• Other supporting information</li> <li>• Evaluation criteria defined and agreed within the project team, based on Council's objectives of the procurement process.</li> <li>• Detailed Solutions - Method statements - a series of questions designed to assess Bidders' proposals, approach and suitability for the project.</li> <li>• Detailed Solutions - Costing document for how bidders are to respond back to the financial costs of the service</li> <li>• Evaluation criteria defined and agreed within the project team, based on Council's objectives of the procurement process; i.e. Increased participation and widening of access to leisure facilities, Improved Quality and customer satisfaction; reduced net cost.</li> </ul>
Development of Services Specification	February/March 2020	<p>Specification will take into account:</p> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Description of facilities</li> <li>• Programming</li> <li>• Customer care</li> <li>• Facility operation/improvement</li> <li>• Health and Safety</li> <li>• Risk allocation</li> <li>• Building maintenance</li> <li>• Ground Maintenance</li> <li>• Performance management, including KPI's</li> </ul> <p>Agree how method statements are to be monitored and which performance indicators are important. Include any performance targets as applicable.</p> <p><b>Outcome</b></p> <p>Output Specifications Completed</p>
Development of Heads of Terms for Contract and / Leases between new operator and ABC  Development of	March/April 2020	<p>Contract to include:</p> <ul style="list-style-type: none"> <li>• Draft Payment Mechanism</li> <li>• Default procedure</li> <li>• Indemnities</li> <li>• Risk allocation</li> <li>• Monitoring and benchmarking</li> <li>• Asset schedules</li> </ul>

Description	Expected Timescales	Methodology / outline project plan
Operator Agreement		<ul style="list-style-type: none"> <li>• Compensation and termination protocols</li> <li>• TUPE obligations and other employee issues</li> </ul> <p>Contract (revised/new lease arrangements) between ABC/Operator (can be finalized in the second half of 2020) heads of terms completed</p> <p><b>Outcomes</b></p> <p>Contracts completed / Leases completed</p>
Development of Evaluation Framework	March 2020	<p>Internal evaluation protocol to include – ensure bid compliance, bid scores in each evaluation criteria, overall acceptability and ranking of bidders.</p> <p>Evaluation panels for each area; Services, Technical, Finance/Investment, Legal/risk. Team leaders and panel members identified. Any specialist members included, for example HR.</p> <p>The evaluation timetable for each stage is agreed.</p> <p>Scoring methods agreed; 1 – 10 with definitions for each level of score.</p> <p>Weightings for each criteria agreed.</p> <p><b>Outcomes</b></p> <p>Evaluation Protocol Completed, agreed and understood by all project working group members.</p>
Publish OJEU / SQ	April 2020	<p><b>Outcomes</b></p> <p>OJEU notice drafted and published</p> <p>SQ's drafted and circulated to bidders.</p> <p>SQ's evaluated.</p> <p><b>Bidders invited through to the next stage.</b></p>
Detailed Solutions	June/August 2020	<p>Selected bidders invited through to detailed stage.</p> <p>Bidders complete detailed site visits to assess build opportunities; due diligence on condition surveys; assess technical and financial opportunities.</p> <p>Pre-submission meetings with individual bidders</p> <p><b>Outcomes</b></p> <p><b><i>Bidders submit their Detailed Solutions</i></b></p>
Evaluation of Detailed Solutions	Sept 2020	<p>The detailed Solutions are evaluated in line with the evaluation protocol and a number of Bidders are invited to go through to the final stage. Bidders may or may not be de-selected at this stage.</p> <p><b>Outcomes</b></p> <p>Each submission is evaluated, scored and ranked.</p> <p>Business Case tested</p> <p>Report drafted by Working Group for Management Team/Cabinet (for approval of levels and Business Case of PB)</p>

Description	Expected Timescales	Methodology / outline project plan
		of bidders to take through to dialogue and all dialogue issues.
<b>CABINET APPROVAL</b>	<b>Oct 2020</b>	<b>Approvals gained from Cabinet</b> <b>Two bidders are invited to proceed to the final stage of the dialogue process.</b>
Dialogue Meetings	Nov 2020	Dialogue conducted with selected bidders relating to their submissions and build solutions <b>Outcomes</b> Bidders are clear as to the requirements and service priorities for final tenders All issues from detailed solutions have been discussed.
Invitation to Submit Final Tenders (ISFT)	Dec 2020	The final stage invitation documents are completed taking into account the Detailed Solutions and dialogue undertaken <b>Outcomes</b> Final Stage documents are circulated to appropriate Bidders <b><i>Bidders submit their Final Tenders</i></b>
Evaluation of ISFT	Jan 2020	Final tenders are evaluated in line with the evaluation protocol. Business case tested <b>Outcomes</b> A preferred partner is recommended All bidders are notified as the results of the selection process
<b>PWG/Management Team sign off and fine tuning with preferred bidder</b>	<b>Feb 2021</b>	<b>PWG review of recommendations</b> <b>Council approval of recommendations</b> <b>Standstill / Alcatel period</b> <b>Due diligence commences</b> <b>Full mobilisation plan agreed</b> <b>Final specifications, method statements, management fees, agreements and schedules confirmed.</b> <b>Contract awarded</b> <b>ABC sign contractual agreements</b> <b>Operator sign contractual agreements</b>
Mobilisation	Mar - Apr 2021	TUPE transfer Financial and legal obligations Operational protocols i.e. marketing, programming, direct debit transfers etc. Capital investment boards and working groups commence
Contract Commencement	1 <sup>st</sup> April 2021	Contract commences

## 6. PROJECT TOLERANCES

The project adheres to appropriate statutory and regulatory responsibilities. In particular, to ensure that the Council's Procurement Procedures are adhered to.

## 7. PROJECT CONTROLS

The following Prince 2 major controls for the Project Working Group are proposed-

### Project Initiation (PID)

**Project working Group Meetings:** The group will meet as required to meet the key stages of the project. Team members will be provided dates at least 2 weeks in advance and earlier where possible. It will monitor and working in partnership will assist where necessary all operational issues that may affect a successful delivery of the project.

**PWG:** Will sign off key meetings and decisions as required and report to Management Team.

**Project Plan:** To be monitored by the project manager and project team

**Risk Register:** To be monitored by the project manager and project team

## 8. PROJECT BUDGET

Budget is set out overleaf and will be reviewed on a regular basis by Project Working Group – any deviations to be reported to Management Team.

<b>LEISURE PROCUREMENT PROJECT COSTS</b>	<b>Budget</b>	<b>Actual</b>	<b>Variance</b>
External Leisure Consultant (Max Associates) * if required beyond current commission via TLT	5,000		
Legal Support (ABC)	10,000 to 20,000		
Meeting Venue Bookings	In kind		
Open Days venue hire and catering costs	1,000		
TUPE consultancy and activation costs	tbc		
OJEU Notice via external Legal provider	1,500		
Marketing support	In-house		
Facility Brochure production and associated tender production costs	2,500		
Actuary Report	4,000		
Condition Surveys	In-house		
Contingency	6,000		
<b>TOTAL (funded via TLT)</b>	<b>40,000</b>		

## 9. ABC AUTHORITY TO PROCEED

Cabinet decision – February 2020