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25 April 2018

To: All Councillors

As a Member of the **Council**, please treat this as your summons to attend a **Special meeting** to consider the Leisure Review on **Thursday 03 May 2018 at 6.00pm in the COUNCIL CHAMBER, TOWN HALL, MATLOCK.**

Yours sincerely



Sandra Lamb  
Head of Corporate Services

## AGENDA

### 1. APOLOGIES

Please advise Democratic Services on 01629 761133 or e-mail [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk) of any apologies for absence.

### 2. PUBLIC PARTICIPATION

To enable members of the public to ask questions, express views or present petitions, **IF NOTICE HAS BEEN GIVEN**, (by telephone, in writing or by electronic mail) **BY NO LATER THAN 12 NOON OF THE WORKING DAY PRECEDING THE MEETING.**

### 3. INTERESTS

Members are required to declare the existence and nature of any interests they may have in subsequent agenda items in accordance with the District Council's Code of Conduct. Those interests are matters that relate to money or that which can be valued in money, affecting the Member her/his partner, extended family and close friends. Interests that become apparent at a later stage in the proceedings may be declared at that time.

**4. LEISURE REVIEW – CONTRACT AWARD**

**3 - 24**

To consider a recommendation that a 10 year contract with option to extend for a further 5 years, to operate and maintain the District Council's four Leisure Centres at Ashbourne, Bakewell, Matlock and Wirksworth be awarded to Freedom Leisure Ltd. To also seek approval for £1.2m from Capital Resources to support the investment programme to facilitate a reduction in annual revenue costs and that Council discharge its responsibility for an annual contract review and performance to the Community and Environment Committee.

**NOTE**

For further information about this Agenda or on "Public Participation" call 01629 761133 or e-mail [committee@derbyshiredales.gov.uk](mailto:committee@derbyshiredales.gov.uk)

COUNCIL

3 MAY 2018

Report of the Head of Community & Environmental Services

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## **LEISURE REVIEW – CONTRACT AWARD**

### **PURPOSE OF THE REPORT**

For Council to note the progress of the Leisure Review to date and to approve the award of the contract for the management of the Leisure Centres.

### **RECOMMENDATION**

1. That the contract to operate and maintain the District Council's four Leisure Centres at Ashbourne, Bakewell, Matlock and Wirksworth, be awarded to Freedom Leisure Limited to commence on 16 May 2018 for a 10 year period with an option to extend for a further 5 years.
2. That the terms of the contract, summarised on paragraphs 2.3, 2.4 and 2.9 of the report are noted.
3. That a 3 month mobilisation period following award of contract is noted, enabling full operational control by Freedom Leisure Limited on 1 August 2018
4. That £1.2m of Capital Resources to support the investment programme outlined in paragraph 2.5 of the report is approved and by doing so, facilitate reduced annual revenue costs of Leisure Services by £150,000pa across the life of the contract as outlined in paragraph 2.13.
5. That Council discharges responsibility for an annual contract review and performance to the Community and Environment Committee.

### **WARDS AFFECTED**

All wards

### **STRATEGIC LINK**

Leisure Services support the District Council's Corporate Aim to promote quality of life and also makes a significant contribution to the safety and health of the community of Derbyshire Dales. The review has reflected on the District Council's priorities,

whilst also seeking to ensure that we deliver value for money and work effectively with partners.

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## **1 BACKGROUND**

- 1.1 On 26<sup>th</sup> September 2013, the District Council considered the Medium Term Financial Plan (MTFP) which showed that over the following three years, savings of over £1.4 million were required. At the same meeting, the Council considered a report on 'Planning for the Future', which approved a series of service reviews, including a review of Leisure Services, which would be carried out with the intention of achieving savings to contribute towards the overall savings target.
- 1.2 As with all Service Reviews, the scope of the Leisure Review is to consider three questions:
  - Does the service need to be provided at all?
  - Does the service need to be provided by the District Council or could it be provided by someone else, and
  - What level of service is needed?
- 1.3 On 16<sup>th</sup> January 2014, the Community Committee considered a report which set out the review process and the methodology for bringing the leisure review to a conclusion. The report reflected upon the substantial contribution Leisure Services has made across the District and the Peer Review which noted that the level of subsidy support provided by the District Council, whilst reducing, was still considered to be high.
- 1.4 A Leisure Service review team was formed to support the process, comprising of officers from across the District Council. During the course of the year a range of meetings with staff from Leisure Centres, Sports Development, elected members and external agencies such as Sport England, Derbyshire Sport and representatives from Hathersage Swimming Pool were held.
- 1.5 The review was split into two phases, the first was to identify operational improvements and efficiencies, and the second was to consider the longer term management and delivery arrangements.
- 1.6 A report on the outcomes of the first stage of the review was considered by the Community Committee on 10 July 2014. This identified a number of opportunities to achieve greater savings, protect and enhance income and/or achieve more efficient working arrangements. In total savings amounting to £111,500 were identified and an action plan to achieve these by implementing the measures before 31 March 2015 was put into place and achieved.

- 1.7 The second phase of the review included numerous visits and discussions with other Local Authorities, to help identify alternative models for delivering the Leisure Service in the longer term which would help in reducing costs.
- 1.8 The visits were extremely useful in helping to understand those issues which contribute towards the delivery of an efficient and effective service. The main conclusion drawn by the review team was that the specific management arrangement in place (whether delivered by a private contractor, a trust or local authority) is not the defining factor in whether a quality product is delivered at an affordable price. Good practice was observed in all of the differing management arrangements.
- 1.9 The most important thing is that a service needs to have a clear focus, be efficiently managed, be responsive and customer orientated. In many cases costs have been reduced by investing in measures such as new equipment and facilities (e.g. gym equipment and fitness studio space) that are designed to increase participation and thereby maximise income.
- 1.10 In addition to the visits, and after a successful tendering process, FMG Consulting Ltd was appointed to support the second phase of the review. FMG was commissioned to provide a detailed Business Options Appraisal, outlining the financial implications and feasibility of the alternative management options currently available. FMG's role was also to provide advice in order that the Council can determine the most effective choice in line with the District Council's local priorities and local needs.
- 1.11 After several months of review and consultation with management, staff and stakeholders, the final Options Appraisal report was completed and provided in October 2015 highlighting five possible options. These are outlined in Table One.

Options	Leisure Centre	Sports Development
One	In-house	In-house
Two	Outsourced	In-house
Three	Outsourced	Outsourced
Four	New Not for Profit Distributing Organisation (NPDO)	New NPDO
Five	Retain: Arc & Ashbourne Community Asset Transfer: Bakewell & Wirksworth	In-house

(Table One: Options Appraisal)

- 1.12 On 14 January 2016, a presentation was given via a Members' Workshop outlining the work carried out, options available and related benefits. The main report was then circulated to Members for reference. A second workshop was held on 24 February 2016 to provide Members with an opportunity to discuss the options in greater detail. Given the amount of work required in considering the feasibility of each option, Members were asked to provide a steer as to which option(s) they considered most appropriate.
- 1.13 Although it was clear most Members wished to retain all four Leisure Centres and the Sports Development team, given the District Council's financial position, this option was considered as not sustainable. It was agreed that Options 2 and 5 were the most appropriate options, and that further information should be gathered and presented on the viability of these two models.
- 1.14 In addition to the Members' Workshops, several discussions with relevant stakeholders and staff took place, including several meetings with representatives from Anthony Gell School (AGS) and the Anthony Gell Foundation (AGF).
- 1.15 The discussions with AGS and AGF centred on the Joint Use Agreement, a document which highlights the commitments and working arrangements of the partnership between AGS and the District Council at Wirksworth Leisure Centre.
- 1.16 Since opening in January 2000, the District Council, AGS and the AGF have worked in partnership to support the dual-use operation of the facility. This is to be continued by the new operator with the former Joint Use Agreement being replaced with appropriate lease and sub-lease agreements.
- 1.17 In December 2016, a Leisure Review Working Group was formed, which included officers from across the District Council, along with support from Derbyshire County Council's Procurement and Legal services and FMG Consulting. The working group has met regularly and has been provided with up to date guidance on the relevant financial and legal matters, the procurement process and industry specific advice.
- 1.18 The group included:
- Corporate Director (Chair)
  - Head of Community & Environmental Services (Project Lead)
  - Head of Resources
  - Head of Corporate Services
  - Active Communities Officer
  - Community Development and Wellbeing Officer
  - Estates & Facilities Manager
  - Communication and Marketing Manager
  - Senior Procurement Officer (DCC)
  - Senior Solicitor (DCC)

- 1.19 Working Group meetings have taken place on a fortnightly basis to review the advice provided by the consultants as well as discuss matters relating to the leisure and support staff job security, TUPE requirements, transfer of pensions, public consultation, health and safety requirements and the drafting of the contract.
- 1.20 Following each Working Group meeting, or after significant milestones in the timeline were achieved, updates were circulated to all employees via SIDD and to Leisure Services employees not on District Council email who volunteered their own personal email addresses. FAQ's were also emailed to employees and saved in the archive area on SIDD. Updates were included in various publications of Staff Matters.
- 1.21 The group set out a timeline (Appendix One) which identified key points in the process, such as staff, public and union consultation, discussions with partners, deadlines and collation of information, key committee report dates, workshops and milestones in preparing and evaluating the contract.
- 1.22 The group has received advice on the procurement process and the draft contract with the objective of achieving a competitive financial return. The group has been conscious of the need to retain its commitment to the Health and Wellbeing Strategy and the philosophy of supporting local communities.
- 1.23 Given the size, value and complexity of the contract, the procurement process is a detailed and lengthy procedure. Once the contract was advertised bidders were able to express an interest and were provided with a tour of the facilities, which also presented them with an opportunity to ask questions of the management team.
- 1.24 Following this a Pre-Qualification Questionnaire (PQQ) stage requires potential bidders to formal declare an interest in the contract. Those who do so are then subject to a thorough financial assessment before being able to 'pass' through to the Invitation to Tender (ITT) stage.
- 1.25 The ITT requires the bidders to submit their bids based on the contract specification (the key points are covered in the main body of the report). An evaluation of those bids, as well as negotiations enabled the Council to select a preferred bidder.
- 1.26 In total, eight bidders expressed an interest in the contract, which reduced to four at PQQ stage. The remaining four bids were subject to evaluation, with one being put forward for recommendation.
- 1.27 In addition to this, the Council allowed bidders to apply for a 'core' bid, a 'variant' bid or both. The 'core' option is essentially the day to day operation of the leisure centre, including the general upkeep and basic maintenance and repair responsibilities. The 'variant' option includes the day to day operation of the leisure centres but also includes the full liability for upkeep, maintenance and repair (including associated costs) of the facilities.

1.28 The Evaluation Panel consisted of the following officers:

Corporate Director/Deputy CX, Paul Wilson  
Head of Community & Environmental Services, Ashley Watts  
Head of Resources, Karen Henriksen  
Community Development & Wellbeing Officer, Rob Wilks  
Active Communities Officer, Dave Turvey  
Estates & Facilities Manager, Mike Galsworthy  
FMG Consulting, Damien Adams

## **2. REPORT**

2.1 Derbyshire Dales District Council is committed to improving the Health and Wellbeing of residents and visitors through the provision of Leisure Services. The specification for the management of its Leisure Centres was developed to reflect the outcome of the public consultation and member workshops.

Freedom Leisure are the preferred bidder and the main body of this report highlights the key aspects of the specification and some of the additional benefits and features of their submission.

### **2.2 Timescales**

The timeline (Appendix One) highlights the main points throughout the procurement process.

Key dates:

- Approval from Council to outsource the management of the Leisure Centres (05/12/2016)
- Procurement initiation (w/c 19/12/2016)
- Staff, user and Member consultation (w/c 29/03/2017)
- Finalise specification (w/c 19/06/2017)
- PQQ Return Date (25/08/2017)
- Final Evaluation (05/04/2018)
- Due diligence period (05/04/2018 – 17/04/2018)
- Recommendations to Council (03/05/2018)
- Intention to award contract (04/05/2018)
- Alcatel period (04/05/2018 – 15/05/2018)
- Contract Award (16/05/2018)
- Contract implementation (01/08/2018)

### **2.3 Contract Length**

The length of the contract offered is for a period of 10 years, with an option to extend for a further 5 years. A review of contract performance to determine this will take place in year 8 of the contract and a report will be taken to members.

This approach is in line with the industry norm and provides benefits to both the contractor and District Council.

## 2.4 Contract Terms

The target date for contract commencement is 1 August 2018; this allows sufficient time from the contract award date to complete legal process, complete TUPE requirements and mobilise the new contractor.

The management fee will vary each year throughout the life of the contract as detailed in Appendix 2. Year one of the contract will run for 8 months to reflect the 1 August 2018 start date and from 1 April 2019, will align with the financial year.

As stipulated in the tender documents, Freedom Leisure will provide a performance bond to protect the District Council in the event of a default on the contract. The financial resilience of the operator has also been assessed and approved as part of the tender process.

## 2.5 Key Features - Investment and Innovation

In addition to ongoing operation and maintenance costs, Freedom Leisure will invest circa £1m to enhance the facilities at the commencement and throughout the life of the contract. This investment will ensure that the facilities meet changing industry trends, demographics and customer expectations.

Freedom Leisure reviewed the opportunities at all four sites and will implement a number of innovative and capital investment opportunities that will add value, increase participation, reduce inactivity and improve the net financial position of the contract. Examples of the improvements brought about via the capital investments are detailed below.

- Improvements to Health and Fitness equipment across all sites
- Improvements to Indoor Cycling studio at Ashbourne Leisure Centre
- Installation of clip and climb type auto belay system at Wirksworth Leisure Centre's Climbing Wall
- Refurbishment of changing facilities at Bakewell Swimming Pool
- Introduction of new technology to improve customer experience
- Creation of 'grab and go' café at Ashbourne Leisure Centre

In order to achieve the business plan outlined in Freedom Leisure's submission and the annual revenue savings to the District Council as outlined in paragraph 2.13, an initial capital investment of circa £1.2m is also required by the District Council.

This investment will facilitate the conversion equivalent of one badminton court of the main hall at Arc Leisure, Matlock in order to create a high quality group exercise studio on the ground floor and a new soft play area and children's party room on the first floor. This investment will also reconfigure reception and café facilities on the first floor.

The Working Group considered the impact of this development as part of the assessment process and believe the wider participation benefits outweigh programme and club disruption that this will initially create.

## 2.6 Pricing Policy

The current concessionary/discount scheme of 33% will be protected to ensure those in need of support can still access the leisure centres across the district. This includes the following:

- People on low income
- Disabled people
- Children and young people
- Students in full time education
- People of National Retirement age and above
- Talented athletes

The contractor may increase the level of discount offered to these target groups, but cannot reduce the amount to less than the current concession of 33% off the full price.

Freedom Leisure will be given the flexibility to adjust the 'commercial' prices, which will be approved by the District Council's Contract Manager (to be appointed) on an annual basis.

All existing prices will be honoured throughout the first contract year and the Contractor must provide evidence and sound business reasons to the District Council's Contract Manager to support pricing proposals, including market research and benchmark comparisons both locally and nationally.

In addition, Freedom Leisure propose to offer significant added value to customers in the form of:

- Free swimming for over 75's
- Free swimming during school holidays for young people aged 16 and under
- Free casual swimming for children under 5
- Free swimming lessons for identified Year 6 pupils who have not reached the National Curriculum criteria of being able to swim 25m
- An annual bank of 1,000 hours of time to support the District Council's Physical Activity and Sport Team and Active Communities initiatives
- Programming of free activities during the summer holidays, such as the Junior Summer Fitness Challenge
- Members of the Leisure Centres will be able to use all the other 80+ Freedom Leisure Centres across England and Wales
- The introduction of online, kiosk and contactless payments across the centres

## 2.7 Programming and Sports Development

The specification was developed to enable the new operator to be creative, flexible and more commercial in their approach to centre programming whilst maintaining strong partnership working arrangements with the District Council's Sports Development Team, including the underpinning approach to community development through relationships with local community groups, schools, public health and organisations such as Active Derbyshire.

The District Council will work together with Freedom Leisure and other local partners to create a new strategy for physical activity and sport which will ensure a coordinated approach is taken to improving levels of physical activity across the District.

Freedom Leisure will recruit roles such as an Active Communities Manager, Active Communities Apprentice and Aquatics Coordinator, which will help deliver improvements to centre programming and community based initiatives.

Further to the direction of travel and the additional resources highlighted above, Freedom Leisure will be given the flexibility to make adjustments to centre programming to meet market demand within the principles summarised below:

- The operator shall encourage greater use by groups who have been traditionally under-represented, such as young people, people who are economically disadvantaged, people with disabilities, older people and minority ethnic groups.
- Pay and play/casual use remains available.
- Use of the pools for school swimming is protected.
- Wirksworth pitch bookings are protected
- The operator must retain links with the District Council's Sports Development team.
- The right to use Ashbourne Leisure Centre for Shrovetide and all centres for civil emergencies
- The crèche at Ashbourne Leisure Centre is protected for the first year of the contract.
- Blueberry Café at Arc Leisure Matlock lease continues (lease break in 2020)
- All existing club and group bookings are honoured during the first six months of the contract.
- The right to use Arc Leisure, Matlock for Elections is protected throughout the duration of the contract.

There will be as high a proportion of casual use of the facilities as possible consistent with a balanced programme of use, including but not exclusive to public, clubs, schools, and instructor led classes and courses. A comprehensive swimming programme will be further developed to meet the demand for Learn to Swim in people of all ages.

Programming will be responsive to participation trends and will provide a dynamic and forward-looking service, including having a promotional strategy in place that keeps customers informed of programme development and any planned changes.

Freedom Leisure is also required to deliver and provide meeting space for a range of targeted programmes such as health referral, weight management and cardiac rehabilitation, along with and any other future schemes approved by the District Council's Contract Manager which promote the use of the facilities to improve levels of physical activity.

The measurement of programming and sports development initiatives will be monitored through the agreed methods by the District Council's Contract Manager and performance reports will be provided at appropriate times.

## 2.8 Opening Hours

The current opening hours will be classed as 'core hours' and will be the minimum requirement for the new operator, although these hours may increase (subject to planning restrictions) to meet market demand. Any adjustments will require prior approval by the District Council's Contract Manager.

The minimum opening hours shall be reviewed by the parties on an annual basis and any decision to amend these times will be based on throughput trends for the Facilities or bespoke usage patterns. Any closure or part closure of a facility should be reported to the District Council immediately and as a maximum within an hour of its occurrence.

Customers will be able to access opening hours and programmes through the introduction of the 'GymJam' app. This feature will also enable customers to view all group exercise and pool programmes on their smart phones and other devices.

## 2.9 Maintenance and Lifecycle Costs

The District Council's procurement process allowed for 'variant bids' with the aim of achieving the most economically advantageous tender. This has allowed the Council to carefully consider the level of liability it may wish to retain. For example, the Council may retain the liability for building structure and major plant and equipment failure, with day to day maintenance becoming the responsibility of the operator or, under a variant bid, pass on the full liability for maintenance, structural and lifecycle replacements to the operator.

As part of the procurement process, the Council commissioned full condition surveys of all 4 properties which identified the current condition of the buildings and plant and also outlined timescales and budget costs for the lifecycle replacement of building elements based on their operating lives. This was made available to the bidders and their submissions were made taking this into account.

Freedom Leisure's leading bid was a variant bid and, as such was based on the inclusion of 100% of the liabilities. Accordingly they will be fully responsible for the improvement, maintenance and general upkeep of the Leisure Centres throughout the life of the contract including lifecycle replacements and any structural issues which are currently the responsibility of the Council.

Freedom Leisure will be required to ensure that the facilities and all equipment are fully functioning, adequately serviced, available for use and maintained and operated in compliance with current legislative and statutory requirements to ensure they perform in the most efficient manner.

This approach is of significant financial value to the District Council as the operator will have full maintenance responsibility for the facilities for the duration of the contract, including the procurement, arrangement and financing of all repairs, maintenance and lifecycle items. Additionally, this approach also transfers a significant element of risk for items such as plant failure from the Council to the operator.

Freedom Leisure will implement Programmed Maintenance, comprising of:

- Planned Preventative Maintenance (PPM)
- Statutory/mandatory testing/inspections
- Lifecycle replacement
- Capital investment programme

Maintenance of all buildings, plant and equipment will be maintained as per industry guidelines and contractor recommendations. Internal decorations will be renewed every three years in high use areas, other areas will be decorated at least 20% each year. External decorations will be renewed every five years.

Such items will be covered by the main contract and leases of the buildings between the Council and the Operator. In cases where properties are already held on a leasehold basis, (Bakewell and Wirksworth) these agreements will mirror the terms of the existing leases.

Responsibility for external landscaping and management of District Council car parks will remain with the District Council.

Where partners are involved (i.e.:AGS), an annual meeting to discuss the forthcoming year's repairs, maintenance and development will be required.

## 2.10 Energy

Full responsibility for the procurement, management, cost and use of gas, water electricity and pool chemicals will transfer to Freedom Leisure, who will be required to operate the facilities in an environmentally sensitive and sustainable manner, to

reduce energy consumption, minimise chemical usage, and recycle appropriate non-hazardous wastes.

It was a requirement in the specification for bidders to demonstrate how they will have a positive impact on the environment through the following means:

- Reduction in the use of environmentally harmful chemicals
- Proposed approach to energy management (including as appropriate reducing energy consumption, energy conservation and use of renewable energy)
- Targets for reducing CO2 emissions
- Increasing water efficiency and maximising water recycling opportunities
- Maximising recycling and reducing waste
- Green transport plan (for staff and Users)
- A training and awareness programme for staff and users
- Demonstration of how existing sustainable practices can be continued, extended and energetically promoted to staff and users

Freedom Leisure have committed to achieving the above criteria and will introduce an Environmental Management System to support and monitor this.

*In addition to the requirements of the specification, Freedom Leisure have already undertaken detailed site surveys to identify energy saving opportunities. As a result of these surveys, Freedom Leisure's business plan include an investment upwards of £230,000 in energy works to upgrade items such as air handling plant, building management systems, water recycling and water treatment systems.*

*As well as improvements to equipment, adjustments will be made to day to day operations, including the provision of environmental impact training for staff. In order to quantify its commitment to improving the energy efficiency of the facilities, the contractor has set a target of reducing the Carbon Dioxide emissions from the leisure centres by 186 tonnes per year. The success of this will be reported on an annual basis to the District Council's Contract Manager.*

## 2.11 Surplus Share Agreement

Freedom Leisure have an agreed 'profit margin' within their profit/loss account and once all income and expenditure (including the management fee and 'profit margin') is factored in then the contract should break even each year.

If performance exceeds expectations any 'profit' beyond break even is shared 50/50 with the District Council using the following method;

Within three months of the end of each contract year, Freedom Leisure will provide the District Council with a surplus share statement for the previous contract year,

subject to their calculation being audited by their auditors. There is a calculation detailed in the contract as to exactly how the surplus is calculated and any surplus is shared 50/50 and must be paid to the District Council within 30 days.

## 2.12 Performance and Review

The new operator is required to demonstrate how they are contributing towards the District Council's wider outcomes on annual basis. This includes feedback on a wide range of outcome measures including but not exclusive to:

- Targets within the District Council's strategies and service plans
- Levels of participation (linked to the Councils Health and Wellbeing Strategy)
- Outreach initiatives (linked to the Sports Development Team)
- Customer Engagement/Marketing

In addition to an annual review, monthly performance review meetings will take place between the District Council's Contract Manager and Freedom Leisure. This will include reporting back on the progress of annual plans and agreed KPIs.

As well as reporting back on operational performance, such as cleaning standards, customer satisfaction, and health and safety management, Freedom Leisure is required to provide feedback on more strategic issues. These will include engaging with rural communities, increasing participation and reducing inactivity levels, supporting disadvantaged communities and under-represented groups.

Subject to approval of Recommendation 5, an annual report on the contract review and performance will be presented to Members.

There is a Performance Monitoring System within the Contract that can result in financial deductions for Freedom Leisure if they do not meet the requirements of the Council's Services Specification. This will hopefully not be needed but is included to protect the Council in the event of poor performance.

## 2.13 Savings

Evaluation of the submissions focused heavily on quality, improvement and innovation, as well as cost. As detailed in paragraph 2.5, Freedom Leisure were able to demonstrate this throughout their bid and have included an investment programme of circa £1m over the life of the contract which will enhance each Leisure Centre.

In order to achieve the business plan outlined in Freedom Leisure's submission and associated annual revenue savings for the District Council, an initial capital investment of circa £1.2m is required by the District Council.

Freedom Leisure could fund these investments directly at their own borrowing rate, and pass the cost of doing this back to the Council via the annual management fee. Alternatively, the Council bring this investment into the Capital Programme, use its Capital Resources (capital receipts and the capital

programme reserve) to fund the investment, reducing the annual management fee by approximately £150,000 per year and enabling the Council to recover VAT claimed on capital projects, making this the preferred option.

The savings target, as identified in the Medium Term Financial Plan, for Leisure Review compared to savings offered by the Freedom Leisure bid are outlined in the table below:

	Per Year Average	Life of Contract
Saving Target	£400k	£4m
Actual Saving	£510k	£5.1m

The annual cost of the of the contract is not a static figure, with the first four years bearing the majority of the cost due to the improvement programme. However, from year five onwards, Freedom Leisure will be paying the Council to deliver the service. This is shown in Appendix 2.

This, along with the recommended investment strategy will help address the Council's overall revenue challenge in the longer term.

#### 2.14 Transfer

Freedom Leisure have significant, recent experience of mobilising new contracts including the successful transfer of staff under TUPE. This will be completed over a three month period before the official handover date of 1 August 2018.

- 2.15 To ensure there is smooth and effective mobilisation, a joint Mobilisation Board will be created to oversee the process and work to an agreed plan which identifies critical path, tasks, roles and responsibilities.

### 3. **CONCLUSION**

After a well-structured and robust procurement and due diligence process, it is recommended that Freedom Leisure Limited are awarded the contract for a period of 10 years, with the option to discuss a further 5 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 philosophy meets the requirements highlighted during the consultation process.

The development of staff and improved customer experience feature strongly throughout the bid, as does the introduction of customer interactive technology.

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. They will also take on the full liability for the maintenance and repair of each of the facilities as set out in paragraph 2.9.

They have satisfied each of the financial assessments and have provided the required pension and performance bonds.

#### **4. RISK ASSESSMENT**

##### **4.1 Legal**

Power:

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 designates the Council with the power to provide leisure facilities and in accordance with Section 135 Local Government Act, the Council may outsource such services to a third party.

Background:

The Council has undertaken consultation with management, staff and stakeholders and Members have previously resolved to outsource the provision of leisure services at all four of the District Council's Leisure Centres to a specialist leisure services management contractor.

The Council invited tenders through a competitive procurement exercise in accordance with the Public Contract Regulations 2015, the Council's Contract Standing Orders and Financial Regulations. Advice on the procurement process has been provided by the County Procurement Team at Derbyshire County Council.

Legal Considerations:

In procuring this service, officers have had due regard to a number of legal implications which are set out below:

Employment/Staff:

A communications plan has been in place to engage the staff members affected by the proposed outsourcing of the service on a regular basis.

Should the proposal proceed, the employment of all permanent staff currently based working within, and or directly associated with the operation of, the leisure facilities referred to in this report will transfer to the appointed bidder under TUPE (the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended)). TUPE applies where there is a transfer of an undertaking, or business or part of an undertaking or business from one body to another. Information concerning staff will be provided to the contractor in accordance with the Data Protection Act and General Data Protection Regulations and ongoing consultation with staff members will continue throughout this process regarding the transfer.

### Existing Contractors:

Existing contracts relating to the leisure centres (e.g. maintenance, cleaning products, equipment etc) have been reviewed to ascertain restrictions in respect of assignment or termination as appropriate.

Of the 59 contracts reviewed, the majority enable the Council to serve notice of assignment, however, 10 contracts require prior written consent of the contractor to assign the contract to the successful bidder and formal discussions will take place once the incoming operator is selected. If the consent for the contractor is withheld, 9 of the contracts either, expire or could be terminated by the Council on, or, before 31 December 2018. The remaining contract does not provide for termination until the end of its term in September 2021 and has a contract value of approximately £4000 per annum. Officers will work with existing contractors to seek to provide an informed transition to the new provider as appropriate.

### Council Property:

The Council will enter into lease and underlease arrangements of its properties with the successful bidder to manage and maintain those properties as the tenant for the duration of the Contract. Officers have undertaken a full review of the Title at each of the Leisure Centres and are aware of the requirements to obtain consent from the Landlord where the property is leased and obtain consent as appropriate from any agencies who have registered a restriction against disposal of the Title. Although there is a risk that consent is withheld, it may not be unreasonably withheld, and officers will continue to work with the relevant parties to seek consent and enter into the agreements in a timely manner.

The variant bid was based on the inclusion of 100% of the liabilities, save for the grounds maintenance and car parks as detailed in the Report, and accordingly the Leases and Contract will provide that the successful bidder will be fully responsible for the improvement, maintenance and general upkeep of the Leisure Centres throughout the life of the contract including lifecycle replacements and any structural issues which are currently the responsibility of the Council.

### The Proposed Contract Terms and Contract Management:

Following instructions from the Project Team at Derbyshire Dales District Council, advice on and drafting of the proposed contract between the Parties has been provided by the Legal Services section at Derbyshire County Council utilising an existing Sports England template for the operation of leisure centres. Legal advice on a number of specific issues, including property matters and pensions has been provided by external solicitors via the East Midlands Lawshare Framework. The Contract ensures that there are robust contract management mechanisms in place to ensure that KPIs and standards are delivered to the benefit of the community and that risks to the Council are mitigated by appropriate indemnities and warranties from the Contractor.

In a complex programme such as this there is always a risk of legal challenge; this risk has been mitigated by following due process and therefore the legal risk is considered to be a medium risk.

## 4.2 Financial

As included in the body of the report the proposed management arrangements are forecast to deliver £5.1m revenue savings over the initial contract life. The savings are not achieved in a linear profile as included in the approved MTFP but in total exceed the £4.0m assumed over the same period (see appendix 2).

The effect of the increased savings and change in savings profile will be reflected in an updated MTFP and reported to Council on 31st May 2018.

The use of £1.2m capital resources reduces the council's overall uncommitted capital funds available for other investment work. The revised forecast capital receipts and reserve balances are shown in the table below.

	Balance <sup>1st</sup> April 2017	Expected Receipts	Used in Current Capital Programme	Investment in Leisure Centres	Estimated Balance 31 <sup>st</sup> March 2023
Reserve	£	£	£	£	£
Capital Receipts	2,927,974	700,000	2,971,705	0	656,269
Capital Programme Reserve	2,984,730	230,000	1,556,360	1,196,856	461,514
Total	5,912,704	930,000	4,528,065	1,196,856	1,117,783

The investment in the Council's Leisure Centres enables the associated ongoing annual revenue costs are kept as low as possible. This is a key overall requirement to address future pressures in the MTFP.

## 4.3 Corporate Risk

Whenever a Council service is outsourced, the Council is heavily reliant on the external provider to deliver to the quality and the value as outlined in the contract. Should the provider break the contractual arrangements, the Council might have insufficient resource, capacity, and skills or time to transfer, re-tender or supply the service during the contractual exit timeline. This risk is mitigated by provisions within the contract specification, due diligence carried out during the procurement process, and the requirement for the contractor to provide a performance bond and a pension bond.

The corporate risk is assessed as medium.

## **5. OTHER CONSIDERATIONS**

In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.

## **6. CONTACT INFORMATION**

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## **7. BACKGROUND INFORMATION**

Leisure Specification

## **8. ATTACHMENTS**

Appendix 1 – Tender Timeline

Appendix 2 – Leisure Savings Breakdown

**APPENDIX 1**

		<b>Contract Title:</b>							
		<b>Process Stage</b>							
		Pre-tender				Pre-Award	533		
		Out to Market				Award - Complete	42		
		Evaluation				Complete-Start	78		
		Dialogue / Negotiation							
		Award							
		Implementation							
		<b>Action</b>					<b>Days</b>	<b>Complete Date</b>	
245		<b>Procurement Initiation</b>					<b>0</b>	Wed 16/11/2016	
		<b>Agree procurement Route &amp; Responsibilities</b>					<b>14</b>	Wed 30/11/2016	
		<b>Social Value Act Consideration</b>							
		<b>Risk Analysis</b>							
		<b>Contact Legal Services for Contract *</b>							
		<b>Agree procurement Timetable</b>					<b>14</b>	Wed 14/12/2016	
		<b>Contact Technical Finance to Book In Vetting *</b>							
		<b>Start Procurement Project Report</b>							
		<b>Prepare Draft Specification / Requirements and KPI's *</b>					<b>56</b>	Wed 08/02/2017	
		<b>Consultation *</b>	Start Consultation		Wed 08/02/2017	<b>28</b>	Wed 08/03/2017		
			End Consultation		Wed 08/03/2017				
		<b>Evaluate Consultation Responses *</b>					<b>28</b>	Wed 05/04/2017	
		<b>Market engagement Event *</b>	Issue Advertisement		Wed 05/04/2017	<b>28</b>	Wed 03/05/2017		
			Complete Presentation	7	days before event			Wed 26/04/2017	
			Event Date		Wed 03/05/2017				

**APPENDIX 1**

	<b>Stakeholder Review *</b>					<b>28</b>	Wed 31/05/2017
	<b>Finalise Specification / Requirements and KPI's</b>					<b>28</b>	Wed 28/06/2017
	<b>Complete Tender Documents and Scorecard</b>					<b>21</b>	Wed 19/07/2017
37	<b>Publish PQQ</b>	Publish East Midlands Tender Advert				<b>1</b>	<b>Thu 20/07/2017</b>
		Publish OJEU Notice and Source Derbyshire Advert					
		Publish Contract Finder Notice					
		<b>PQQ Questions Deadline</b>	<b>4</b>	days before log issued	<b>Mon 14/08/2017</b>		
		<b>PQQ Answers log Deadline</b>	<b>7</b>	days before PQQ return	<b>Fri 18/08/2017</b>		
	<b>PQQ Return Date</b>					<b>36</b>	<b>Fri 25/08/2017</b>
11	<b>PQQ Evaluation</b>					<b>11</b>	<b>Tue 05/09/2017</b>
	<b>Financial Checks</b>						
1	<b>Deselect Bidders</b>					<b>1</b>	<b>Wed 06/09/2017</b>
43	<b>Publish Invitation To Tender</b>	<b>ITT Questions Deadline</b>	<b>6</b>	days before log issued	<b>Fri 06/10/2017</b>	<b>0</b>	Wed 06/09/2017
		<b>ITT Answers log Deadline</b>	<b>7</b>	days before ITT return	<b>Thu 12/10/2017</b>		
	<b>Tender Return Date</b>						
50	<b>Tender Evaluation</b>					<b>50</b>	<b>Fri 08/12/2017</b>
35	<b>Negotiation</b>					<b>35</b>	<b>Fri 12/01/2018</b>
3	<b>Deselect Bidders</b>					<b>3</b>	<b>Mon 15/01/2018</b>
25	<b>Publish Invitation To Submit Revised Tender</b>	<b>Revised ITT Questions Deadline</b>	<b>7</b>	days before log issued	<b>Fri 26/01/2018</b>	<b>0</b>	Mon 15/01/2018
		<b>Revised ITT Answers log Deadline</b>	<b>7</b>	days before Revised ITT return	<b>Fri 02/02/2018</b>		

**APPENDIX 1**

	<b>Revised Tender Return Date</b>			<b>25</b>	<b>Fri 09/02/2018</b>
55	<b>Revised Tender Evaluation (including due diligence)</b>			<b>55</b>	<b>Thu 05/04/2018</b>
13	<b>Bidder Meeting Schedule</b>	Issue Invitation		Mon 02/04/2018	<b>13</b> <b>Thu 12/04/2018</b>
		Confirm Acceptance	<b>7</b> days before bidder meetings	Thu 05/04/2018	
		Meetings with bidders completed		Thu 12/04/2018	
14	<b>Finalise Report</b>			<b>14</b>	Wed 18/04/2018
	<b>Submission of Report to Members</b>			<b>1</b>	Thu 19/04/2018
	<b>Publication of Report</b>			<b>7</b>	Wed 25/04/2018
1	<b>Approval to Award Contract (Council)</b>			<b>1</b>	<b>Thu 03/05/2018</b>
11	<b>Notify bidders of award decision (Alcatel or Voluntary Standstill)</b>	Start Standstill		<b>1</b>	Fri 04/05/2018
		End Standstill		<b>10</b>	<b>Mon 14/05/2018</b>
1	<b>Notify bidders of Final Award Decision</b>			<b>1</b>	<b>Tue 15/05/2018</b>
28	<b>Finalise Contract Terms and Conditions *</b>			<b>28</b>	<b>Tue 12/06/2018</b>
1	<b>Publish Source Derbyshire and OJEU Award Notices</b>			<b>1</b>	<b>Wed 13/06/2018</b>
1	<b>Publish Contract Finder Award Notice</b>			<b>1</b>	<b>Thu 14/06/2018</b>
	<b>Contract Start Date</b>				<b>Wed 01/08/2018</b>
	<b>Implementation Period</b>	78			

**SAVINGS GENERATED FROM LEISURE MANAGEMENT CONTRACT****APPENDIX 2**

	Start 1/8/18										2 months	Total
	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	2026/27	2027/28	2028/29	£'000
	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000	£'000
Council budget	600.67	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	965.00	160.83	9,446.50
Contract payments / (receipts)	375.00	350.00	250.00	250.00	(50.00)	(100.00)	(100.00)	(100.00)	(147.00)	(150.00)	0.00	578.00
Other costs*	188.47	379.70	379.70	379.70	379.70	379.70	379.70	379.70	379.70	379.70	63.28	3,669.05
<b>Saving to the Council</b>	<b>(37.20)</b>	<b>(235.30)</b>	<b>(335.30)</b>	<b>(335.30)</b>	<b>(635.30)</b>	<b>(685.30)</b>	<b>(685.30)</b>	<b>(685.30)</b>	<b>(732.30)</b>	<b>(735.3)</b>	<b>(97.55)</b>	<b>(5,096.57)</b>
<b>Assumed Savings</b>	<b>(350.00)</b>	<b>(400.00)</b>	<b>(66.67)</b>	<b>(4,016.67)</b>								

\*Other costs include contract management and foregone business rate income.