

## WRITTEN STATEMENT OF DECISION BY CHIEF EXECUTIVE

### SECTION A

**DATE OF DECISION:**

**1<sup>st</sup> April 2017**

**PORTFOLIO AREA:**

**Community and Leisure**

**SUBJECT TITLE:**

**Leisure Centre Management Contract**

It is considered that the financial information within this report contains exempt information within the meaning of paragraph 3 of Schedule 12A of the Local Government Act 1972, as amended. It is further considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information because it relates to the financial or business affairs of a particular company.

### SECTION B – IDENTITY OF THE “DECISION-MAKER”

**Name of Officer:**

**Roger Tetstall**

**Title:**

**Chief Executive**

Pursuant to Delegated Powers as set out in paragraph (2) of “Delegations to Chief Executive” in Part 3 of the Constitution, namely

“To do anything, in consultation with the Leader, which is calculated to facilitate, or is conducive or incidental to the discharge of the Council’s functions subject to:

- (i) the matter being regarded as an emergency or urgent situation; and
- (ii) a report back to the Council, Cabinet or Committee concerned. “

### SECTION C – SUMMARY

#### Background

The Council’s five leisure facilities have been operated by Valley Leisure Ltd pursuant to a contract which came to an end on 31<sup>st</sup> March 2017. A new contractor, Places for People (“PfP”), was due to take over management of those facilities with effect from 1<sup>st</sup> April 2017.

The contract with PfP (“the Contract”) was due to be signed on Friday 31<sup>st</sup> March 2017.

Pursuant to a resolution of Council dated 9<sup>th</sup> November 2016, the Head of Legal and Democratic Services in consultation with the Head of Community and Leisure Services and the Head of Finance was granted delegated authority to set out the award pre-conditions and to settle the terms of the final form, clarified contract.

On the evening of 31<sup>st</sup> March 2017, it emerged that there were significant differences between PfP and the Council as to a number of provisions to be included in the Contract. Relevant Council officers were adamant that this represented a change of position by PfP. During extended overnight negotiations, agreement was reached on the most significant differences, save for those concerning which party would bear the risk relating to financial losses caused by any delays to the demolition and re-build of Andover Leisure Centre as a result of any objection to the Secretary of State against the order to be made by the Council in respect of the permanent extinguishment of the established right of way between West Street and the entrance to the existing sports centre.

In the absence of agreement on this matter, it was proposed that a clause ("the Termination Clause") be included in the contract which would have the following effect and consequences:

In the event that no objection was lodged before the deadline of 5<sup>th</sup> May 2017, the parties would continue as envisaged under the original contract.

If an objection was lodged such that the parties were prevented from completing the ALC works without significant cost or risk to the Council, the Council would have the right to terminate the contract. There would be a costs-cap of £335,000 to any liability of the Council as a result of termination on or before 12<sup>th</sup> May 2017. In event of termination, the bid-cost element of PfP's annual deficit payment would be reduced to £24,794.43 for the first 30 days.

In the event of termination, the Council would have the right to require PfP to continue to provide services at the leisure sites (to be paid for by the Council in accordance with the original agreement) until the Council either appointed an alternative operator or took the services in-house.

The Head of Finance advised that he considered this to be the appropriate way forward but that, in his view, the financial implications of this course of action differed from those which had previously been laid before Council to such an extent that the inclusion of the Termination Clause with a contingent liability of £335,000 required the Chief Executive to authorise its inclusion in the Contract pursuant to his delegated powers contained in paragraph (2) of "Delegations to Chief Executive" in Part 3 of the Constitution

## **SECTION D – THE DECISION**

### The Decision

That the Head of Legal and Democratic Services, in exercising the authority delegated to her by Council on 9<sup>th</sup> November 2016 to settle the terms of the final form, clarified Leisure Centre Management contract, be authorised in consultation with the Head of Community and Leisure Services, the Head of Finance and the Community and Leisure Portfolio Holder to include the Termination Clause in the Contract.

## **SECTION E – REASONS FOR THE DECISION**

### **The decision-maker's reasons for making the decision recorded in Section D:**

The situation was urgent (and thereby justified use of the above mentioned delegated powers) because, in the event that the Contract was not signed, then the Council's five leisure facilities would not have been opened to the public on the morning of 1<sup>st</sup> April 2017, nor for an indeterminate period thereafter. The decision maker accepted the professional advice received was that this was the best course of action available to the Council.

**SECTION F – DETAILS OF ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

The following alternative options were considered and rejected:

Decline to sign the Contract with a view to

- the Council directly managing the facilities in the future or
- reaching agreement with Valley Leisure Limited to manage the facilities in the future or
- reaching agreement with the 'second-placed' tenderer (SLM) to manage the facilities in the future or
- closing the facilities down until a replacement operator could be secured.

**SECTION G – OTHER RELEVANT MATTERS CONCERNING THE DECISION**

Reputational issues and the importance of continuity of public service delivery.

**SECTION H – BACKGROUND PAPERS**

None

**SECTION I – Any Conflict of Interest Declared and Dispensation Granted**

None

We certify that the decision this document records was made Pursuant to Delegated Powers as set out in paragraph (2) of "Delegations to Chief Executive" in Part 3 of the Constitution and is a true and accurate record or minute of that decision.

Signed by the Chief Executive:

Dated 1-4-2017



Signed by the Deputy Leader (the Leader holding a personal interest):

Dated 1/4/17

