

**NOT FOR PUBLICATION:** Appendices 1 (a, b c), and 8 to this report contain information considered to be exempt under Paragraphs 3 and 5 of Schedule 12A to the Local Government Act 1972 as amended

Agenda Item No.

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**REPORT TO:** Management Board  
Leader Meeting (discussion only)  
Cabinet Member CTS Meeting (discussion only)  
Cabinet

**DATE:** 18 May 2020  
1 June 2020  
4 June 2020  
17 June 2020

**SERVICE AREA:** Culture, Tourism & Sport

**REPORTING OFFICER:** Head of Culture, Tourism & Sport  
(*Michael Constantine*)

**SUBJECT:** **SPORT & LEISURE SERVICE DELIVERY REVIEW**

**WARDS AFFECTED:** All District

**FORWARD PLAN REF:** 028CTS19

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## **1.0 PURPOSE OF REPORT**

- 1.1 This report follows Cabinet's decision of 16 December 2019 to progress the plan for the creation of a Local Authority Controlled Company (LACC or the Company) following the review into the delivery of sport and leisure within the District undertaken by Strategic Leisure Limited (SLL).
- 1.2 It recommends how the Company's governance will work in order to seek approval of its creation and governance arrangements. The report also appends and references an implementation plan for full operation including the transfer of assets and employees to the Company during the summer of 2021.

## **2.0 RECOMMENDATIONS**

- 2.1 Cabinet note that the most appropriate form of company is that of a Company Limited by Guarantee with the Council as sole member.
- 2.2 Cabinet note the impact of including the Turkish Baths, Little Explorers Day Nursery and three Community Centres in the review and approve the scope

of Leisure Services to be transferred as outlined in para 5.2.

- 2.3 Cabinet approve the Business Plan at **Appendices 1a, 1b and 1c** and notes the anticipated improvement of c. £284k pa (potentially rising to £585k if investing in facilities as per the accompanying report at agenda item 7) comprising:
- Business Rates Relief of £222k pa
  - Improved financial performance of £130k pa
  - Benefits from efficient VAT management of £76k pa
  - Offset by additional costs of £144k pa
- and the mitigation of:
- an additional £1.3 million of irrecoverable VAT through the transfer of the 'new pool for Ripon' project into the Company, and
  - the partial exemption cost to the Council of keeping the service in-house estimated at £302k per annum.
- 2.4 Cabinet approve the Company vision set out in para 5.3 and the working name for the LACC being 'Brimhams Active'.
- 2.5 Cabinet note the outcome of the public consultation at **Appendix 2a**.
- 2.6 Cabinet note the Equality Impact Assessment at **Appendix 3**.
- 2.7 Cabinet approve the formation of the Company Limited by Guarantee and the transfer of Leisure Services (as defined in para 5.2 of the report) into it with an effective operational target date of 1 August 2021.
- 2.8 Cabinet approve the proposed governance arrangements for the Company and delegate authority to the Head of Legal & Governance to finalise the list of Reserved Matters and the Articles of Association and the Board composition and terms of appointment at **Appendix 5**
- 2.9 Cabinet approve the Council appointments to the six Board positions set out at paragraph 5.8.2.
- 2.10 Cabinet note the implementation plan at **Appendix 4** and approve the project governance as set out at **Appendix 9**.
- 2.11 Cabinet delegate authority to the Director of Economy & Culture, in consultation with the Head of Legal & Governance, the Head of Finance, the Leader and Cabinet Member for Culture Tourism & Sport to commence the detailed implementation of the Company Limited by Guarantee. This will involve (but is not limited to) an update on progress which will be presented at each Transformation Board and specifically to Cabinet in spring 2021, using the following actions:
- (a) Recruitment and appointment of a Managing Director with interviews and the decision on appointment being made by the six Council appointments to the Board detailed at 5.8.2

- (b) Recruitment and appointment of two other Executive Directors in line with the Job Descriptions and Terms of Appointment proposed by the Managing Director
- (c) Complete formation and registration of the Company in advance of the commencement of it employing the Managing Director
- (d) Ensure the development of a robust, detailed Business Plan by the Company
- (e) Development of a performance specification and details of contract management for Leisure Services Contract
- (f) Preparation and execution of the Leisure Services Contract between the Council and Company
- (g) Preparation and execution of the Transfer Agreement between the Council and Company
- (h) Preparation and execution of the Back Office Services Agreement between the Council and Company including insurance arrangements
- (i) Enter into leases for all facilities with the Company on terms and conditions to be agreed by the delegated officers or appropriate occupation and management agreements
- (j) Execute novation agreements in relation to service/supply contracts currently in place in relation to the operation of leisure services

2.13 Cabinet delegate authority to the Director of Economy & Culture, the Head of Organisational Development & Improvement and the Head of Legal & Governance to:

- (a) Commence formal consultation with staff and Trade Unions
- (b) Finalise of staff transfer arrangements and related human resources considerations including obtaining admitted body status for pension purposes for the Company

2.14 Cabinet recognise the scale in undertaking the transfer to the Company and agrees the additional project resources to implement the transfer of £180k from the Invest to Save/Council Investment Reserve, as outlined in paragraph 5.8.4.

2.15 Cabinet recognise the opportunities created by the Company and the accompanying report at agenda item 7 for investment in developing facilities.

### **3.0 RECOMMENDED REASONS FOR DECISIONS**

3.1 There is a need to achieve best value for the services the Council provides, to reduce net operating cost wherever possible, whilst at the same time maintaining and where possible improving service for residents.

3.2 The December 2019 report and its appendices set out the benefits, implications and proposed approach to the creation of a Company for the

Council's sport and leisure service. In particular it was explained that changes to the delivery model with the creation of a Company and transfer of operations is anticipated to provide significant financial improvements through mandatory NNDR relief (at 80%). It will allow the Company's management and staff to have a single focus free from the distractions of the Council's day-to-day operational requirements, which should in turn lead to an improved and enhanced service. The transfer into a Company retains the opportunity to explore further alternative delivery models, such as outsourcing, when we have a stable and renewed facilities portfolio and a clearer and better understood employee contract basis.

- 3.3 A four week consultation exercise has been undertaken with current service users and stakeholders.

The detailed contents of this report indicating the sources of savings, assumptions and costs involved combined with the governance structures address the concerns raised through the consultation. The public nature of this report also provides opportunity for stakeholders and residents to understand the detailed rationale for the creation of the Company and the transfer of Leisure Services.

#### **4.0 ALTERNATIVE OPTION CONSIDERED AND RECOMMENDED FOR REJECTION**

##### **To retain existing delivery model**

- 4.1 Whilst continuation of the existing delivery model provides stability and known results it does not provide for a step-change in operational performance, nor critically does it provide simple access to the financial benefits which will result from a more tax efficient model, namely the reduction in business rates (80%) and VAT efficiencies.

#### **5.0 THE REPORT**

##### **Background**

- 5.1 In 2018 the Council commissioned SLL to carry out four separate, but linked leisure studies comprising: Built Facility Strategy; Operational Review of the Leisure Facilities and Active Lifestyles Service; Leisure Facilities Strategy; and an Appraisal of Alternative Delivery Models. SLL's final report was presented to Cabinet on 16 December 2019 and as a result Cabinet agreed in principle to progress the creation of a Company to run its sport and leisure facilities and services.

Cabinet also agreed in principle to the investment phasing proposed within the SLL report and to receive a future report detailing the impacts and timescales. The investment proposed is dealt with in a separate report at agenda item 7.

## Updated Business Case

- 5.2 The Turkish Baths, Little Explorers Day Nursery and three Community Centres were initially excluded from the review as these operations are not the type of facility which an external third party sport and leisure operator would typically run. However, as explained in the December 2019 Cabinet report, it was anticipated that, should alternative delivery model arrangements be confirmed, these services would be considered for transfer. The Turkish Baths and Community Centres provide a wide range of health and wellbeing opportunities for all ages and fit closely within the Leisure Services 'offer'. The 'outstanding' Little Explorers Day Nursery is both located on and managed by the Harrogate Hydro site team. The Nursery's ethos of service excellence providing activity for the youngest in society provides Leisure Services with a full age span of delivery. The evaluation has therefore been updated to include these operations.

An evaluation of the potential impacts of the Company accompanies the report as **Appendices 1a, b and c**, reflecting the expanded scope which comprises 11 current venues and the Active Health Service:

- Harrogate Hydro
- Ripon Leisure Centre
- Ripon Spa Baths
- Nidderdale Leisure Centre
- Knaresborough Swimming Pool
- Starbeck Baths
- Active Health Service
- Harrogate Turkish Baths
- Jennyfield Styan Community Centre
- Knaresborough Community Centre
- Fairfax Community Centre
- Little Explorers Day Nursery

When the 'new pool for Ripon' is completed it will be operated by the Company and Ripon Spa Baths will be available for disposal by the Council.

The review methodology follows the process of SLL's main review into the delivery of Sport and Leisure (2019) and has been updated to provide a baseline including 2018-19 financial results and the future Ripon facility's budget. This information has been reviewed by PWC's Indirect Taxation specialists whose report is attached as **Appendix 1c**.

It is anticipated that the Company will provide an additional £505k pa resulting from uplifts in income of c. 10% benefiting from the single focus of

delivery and improvement of leisure services (£130k) and tax benefits (£375k). A corresponding increase in costs is limited to 6% reflecting a move towards a decentralised and more commercial approach, though there will be some irrecoverable VAT as a result. This amount reflects the venues and service 'as is' and is not dependant on the future investment contained in agenda item 7.

As outlined, a major financial driver is the ability for the Company to be able to benefit from mandatory relief on NNDR. This is anticipated to be at 80% relief due to the 'not for profit' status of the Company. When this is applied to the 2018-19 financial results the saving would be c. £222k per annum.

PwC have identified a number of options regarding the potential management of ongoing VAT for the Company and Council. PwC anticipate maintaining existing VAT exposure as a minimum with the expectation that net £76k betterment could be generated as the details of the delivery agreements are resolved.

PwC have advised that the transfer of the new facility for Ripon into the Company without being operated by the Council would best mitigate exposure to a breach of partial exemption for VAT. This action is a key driver for the formation of the Company and alone would mitigate a cost of c. £1.3 million. The intended Company commencement date of 1 August 2021 is prior to the completion of the new facility. Transferring leisure services to the Company will also prevent the Council being partially exempt on an ongoing basis (due to increased exempt leisure activity and cost). The partial exemption cost to the Council of keeping leisure in house is estimated at £302k per annum.

The evaluation concludes that progressing the Company has the potential to deliver a positive financial impact of c. £284k pa.

### **Company Vision**

- 5.3 The Company requires a clear vision defining the Council's overall expectations of the Company and from which the detailed contract specifications flow. The proposed vision is:

#### **LACC VISION**

- To facilitate achievement of a healthier, more active population living longer, more independent and happier lives

#### **LACC AIM**

- To be sustainable by taking a balanced approach to accessibility, affordability and commerciality in operating HBC leisure services

#### **LACC OBJECTIVES**

- To reduce the proportion of the population that is physically inactive

- To contribute to reducing health inequalities and particularly obesity in the local community
- To provide opportunities for participation in a wider range of places and spaces, at local level, using e.g. community centres/halls;
- To develop and provide new opportunities to be active through innovative programming and services
- To work in partnership with HBC and other partners and stakeholders to develop additional facility provision where need is evidenced, e.g. as a result of population growth
- To optimise the investment in facilities to provide optimum benefit for the local community
- To ensure flexibility in operational approach
- To operate and grow sustainably and reduce the cost of leisure provision
- To ensure the requirements of all safeguarding, health and safety and other statutory legislation is met

This vision makes clear the Council’s desire for the Company to deliver outcomes aligned to the Sport and Leisure Strategy which has at its heart the aim for Harrogate District to have:

***“A healthier more active population living longer, more independent and happier lives”***

The vision is also clear that the Company is expected to deliver at a reducing revenue cost to the Council.

It is anticipated that the Company will produce a detailed action and delivery plan to meet the expectations of the Vision and Leisure Services Contract specification.

### **Consultation**

- 5.4 Significant employee engagement has been undertaken throughout the development of the Sport and Leisure Strategy and prior to the Cabinet Report in December 2019. This resulted in Cabinet extending the scope to include the Active Health and Lifestyles service. Formal employee and Trade Union consultation will commence under the TUPE process at an appropriate point.

Public and stakeholder consultation was undertaken from 1 to 28 May with

the full results attached as **Appendices 2a and b**.

In summary the consultation findings were that there are concerns regarding how the then anticipated saving of £400k would be achieved, with respondents assuming that there would be increased fees for using facilities or reduced pay for employees. A number opined that the costs for services should be funded universally although a number also agreed that reducing costs, if at no detriment to the level of service or employees, should be explored. There were concerns expressed regarding the transfer of assets to what was thought to be a 'private' company and potential absence of Council control.

The detailed contents of this report indicating the sources of savings, assumptions and costs involved combined with the governance structures address the concerns raised through the consultation. The public nature of this report also provides opportunity for stakeholders and residents to understand the detailed rationale for the creation of the Council controlled Company and the transfer of Leisure Services.

### **Form of Company**

- 5.5 It is recommended that the Company should be set up as a company limited by guarantee being a legal entity incorporated under the Companies Act 1985. Unlike the most common company structures, it does not issue shares but instead the members of the company undertake to guarantee to contribute a sum of money (normally a nominal value) in the event that the company is wound up.

The Company will have a Board of directors and be wholly owned by the Council. It will have the following features:

- (a) limited liability – the liability of the Council is limited to the amount that they have guaranteed to pay when forming the company (this will be a nominal sum)
- (b) the Company has separate legal personality so can enter into contracts, take on or make loans, employ staff, etc
- (c) the profits of the Company are subject to corporation tax
- (d) it is regulated by the Companies Acts

Unless the Council is outsourcing the service delivery to a company that is wholly controlled by the Council it will be necessary to undertake a procurement exercise. Contracts for the provision of leisure services are Services which are subject to a light touch regime for the purposes of the EU procurement rules, but would still require a procurement process to be carried out.

The proposed governance for the Company is therefore designed to meet the "control" and "activity" requirements of the Teckal case and/or conditions of the Public Contracts Regulations 2015 (PCR) which allow an exception to the rules requiring a procurement exercise to be undertaken. If the governance is not designed to meet the control tests set out in Teckal/PCR



(explained in the legal appendix) then this would effectively defeat the Council's choice of a wholly owned company structure to deliver the Services.

Council control over the Company will be exercised through:

- (a) the Council appointments on the Board of Directors
- (b) a list of reserved matters requiring Council approval
- (c) a Leisure Services Contract between the Council and the Company

Details of the Company's governance are set out later in this report.

## **Financing the Company**

- 5.6 The Council will continue to invest significantly (in accordance with the agreed Business plan) by way of payment for the management and the delivery of the services. This will reflect the current overall cost of providing the services of £3.3 million pa (2018-19) and will be developed with PWC to optimise benefits resulting from managing indirect taxation.

The detailed service specification will be developed that clearly outlines the required service levels and outcomes for residents from this significant continued investment. This will be contained in the Leisure Services Agreement (see para 5.8.5). The specification will be flexible and the payment to the Company will change over time reflecting both the Company's performance in reducing net costs and any agreed investment in facilities and anticipated return from such investment.

As part of the detailed implementation of the LACC, further work is needed on exactly how the funding schedule will be managed including a suitable performance regime designed to ensure that the required level of services are delivered. The level of funding will be determined on an annual basis as part of the Council's and the Company's budget process reflecting the annual business plan. It is expected that, over a number of years, the subsidy required will reduce. The development of the Business Plan by the Company and the Council's agreement to the Plan will form the basis of annual budgeting and performance monitoring. The Leisure Services Agreement will specify the arrangements for changing the level of funding to the Company due to under or over performance against the Business Plan.

It is essential that the Council does not provide grant aid to the Company, as this could constitute state aid. Payment to the Company must be commensurate with reasonable market payment to a third party to deliver management services. It is also important to note that there is a 20% tolerance for third party income generation under the Teckal rules.

## HBC Relationship Manager

- 5.7 Both SLL and experienced authorities have identified that it is important the Council has sufficient expert internal resource to manage the relationship. This role will ensure the client/contactor relationship is created and maintained by assisting and holding the Company to account in ensuring that Company meets the required outputs within the service specification.

Initial scoping by SLL indicates that the role would need to focus on five areas with an estimated longer term resource demand of around two days a week:

- (1) Be **the initial contact within the Council for any queries** regarding the operational specification, the contract, the transfer of employees, assets, maintenance and all aspects of the transfer.
- (2) Be the **initial Council contact for progress** needed by the Company outside the Board structure to enable the transition and start up to move smoothly.
- (3) **Contract management by integrating the Company's reporting into the Councils reporting framework.** This will identify how the Company is performing, how it is meeting the contract and the specification and identify any areas of concern. There will be a need for a Council Officer to meet regularly with the Company to be able to report regarding operational aspects of the new arrangement.
- (4) **Developing the partnership working approach** regarding initiatives the Council wishes the Company to be part of or contribute to and new initiatives the Company wishes to gain a view from the Council regarding.
- (5) **Investment planning and managing** providing a key link between delivery of capital programmes for the 'owner' (the Council) and the operator (Company).

The full job description, person specification, evaluation and reporting responsibilities of this role will be developed in the transition phase.

## 5.8 Company Governance Arrangements

### 5.8.1 (1) Articles of Association

The Company will require a set of Articles which set out how the Company and its business are to be governed. It will be filed at Companies House and therefore is available to view by the public. Once agreed they can only be changed with the consent of the Council.

The Articles have been developed to comply with the requirements of the Companies Act legislation and aim to provide the appropriate controls for the Council whilst at the same time providing the required independence, flexibility, and commercial decision making for the company. The Articles provide that the directors are responsible for the management of the Company's business, for which purpose they may exercise all the powers of the Company. They also provide that the members (i.e. Council) may, by

special resolution, direct the directors to take, or refrain from taking, specified action. However, no such special resolution invalidates anything which the directors have done before the passing of the resolution.

It is proposed that the Articles include a bespoke provision referencing Reserved Matters (see below).

The Articles will also contain provision around quorum, voting and the Chair. It is proposed that all decisions be taken by a majority vote with a quorum that reflects the need for there to be a majority of Council appointed representatives present. For any Board decision to be taken there will need to be a majority of Council appointed Directors present in order to satisfy the Teckal test.

### 5.8.2 (2) **Composition of the Board of the Company**

Officers have been considering the ideal composition of the Board of directors, and were originally looking at a structure with nine directors, six being Council officers and/or members appointed by the Council, and three being Company appointments with the required expertise to bring about a significant improvement in the delivery of the Services. This would include a managing director, who could recommend the specialisms and roles of the other two external appointments, e.g. a commercial director overseeing commercial development, marketing and communications and finance and an operations director overseeing day-to-day business delivery. The Company appointments would follow a suitable recruitment exercise, and their appointment, and the terms of their appointment, as directors would need to be approved by the Board subject to the remuneration cap listed in the Reserved Matters.

The six Council appointees would be non-executive directors, and the external appointees would be three executive directors. The Council appointees are likely to be part-time and the external appointees are likely to be full-time, but could also be part-time.

SLL have raised the issue as to whether the six plus three structure described above would enable the Company to obtain the required degree of external expertise. To address this it is possible to create a potential structure model of six and up to five directors, with six being Council officers and/or members appointed by the Council, and a maximum of five being Company appointees, including the managing director, if they recommend the additional appointments. This again would be on the basis that the Company appointments would follow a suitable recruitment exercise, and their appointment, and the terms of their appointment, as directors would need to be approved by the Board.

There is no fixed model as to whether the Council appointed directors

should be officers or members and the position varies by organisation. However the legal advice recommends that the Council's Section 151 Officer should not be a director. It is proposed that the six Council appointees to the Board be:

1. Cabinet Member for Culture, Tourism & Sport
2. Chief Executive
3. Director Economy & Culture
4. Member
5. Member
6. Member

It is critical to the success of the Council's relationship with the executive management of the Company that the six Council appointees are provided with advice and guidance to positively challenge the executive. The internal relationship management role outlined in para 5.7 will be a key element, as will external development opportunities via organisations such as Sport England. It is anticipated that the Council will seek such professional advice as needed from time to time to support the Council's appointees in ensuring the Company meets the terms and spirit of the Leisure Services Agreement. The Council's normal expenses policies on payments to officers and members will apply in relation to their appointment on the Board.

In so far as remuneration for the Company directors, they will have employment contracts with the Company which will detail their roles, responsibilities, remuneration and reward package. It is anticipated that these significant roles will be developed by the managing director of the Company during the transition phase and will be a 'reserved matter' which will need appropriate Council approval.

The Company will be required to indemnify the directors in relation to liability arising from their acting properly as directors of the Company and also provides insurance for them. Insurance cannot be put in place until the company has a business plan in place and will be for the Company to fund.

### 5.8.3 (3) **Reserved Matters**

The directors are required to seek approval of the Council of those matters detailed at Appendix 5. Council approval of Reserved Matters will be sought in accordance with the scheme of delegation set out in the Council's constitution and therefore the type and value of decision will determine who will be authorised to make it. The reserved matters are not cast in stone, so can be checked and updated as appropriate, either by adding in more control or by relaxing it. There are 22 matters reserved including the approval of an annual business plan, appointment of employees with a cost over £50k pa, committing to contracts over £100k or changing the nature of the Company's business.

The reserved matters do not represent the only Council controls regarding the operation of leisure services. There will also be controls which are exercised through the operation of the leisure services contract and these

will be more specific around matters which are dealt with in the specification for the leisure services and the operation of the centres themselves, e.g. opening times and the pricing policy.

#### 5.8.4 Implementation Plan, Resource Implications and Shadow arrangements

In order to implement the agreed delivery model, there is significant documentation to be prepared and legal requirements to be met. Strategic Leisure Limited are providing specialist dedicated Project Management with their in-depth knowledge of the area working with an internal project team. External legal support has been procured to assist with the preparation of all legal agreements and provide legal advice on TUPE and pensions.

It is proposed to operate shadow arrangements before the incorporation of the Company and the formal commencement of operations, in order to create a separation between the Council service provider functions and staff which will be transferring to the Company, and the client/customer side functions and staff which will remain with the Council.

The early appointment of a managing director for the Company is scheduled in the implementation plan to enable the appointee to be involved in considering what is required to meet the Council's future service delivery requirements. A job description for the role of managing director has been developed and is attached as **Appendix 6**. The role will be recruited through the Council's recruitment process and appointed within the existing pay structure.

The detailed work involved in transferring over 400 employees and casual workers to the new Company will need resourcing. It is anticipated that a part-time Senior Human Resources Advisor would be recruited to deliver this work stream from August/September 2020 for approximately 12-14 months.

There are timescales around the TUPE transfer of staff and consultation but otherwise there are no prescribed timescales that need to be adhered to as a matter of law.

The project delivery budget covers the following areas of activity:

Shadow Arrangements' Managing Director (11 months) plus anticipated Commercial and Operations Directors (4 months ea.)	£ 135k
Professional advice and process management to the Council and Company inc Legal, project management and taxation	£ 84k
Human resources including TUPE transfer, pension arrangements and transfer, advertising and training	£ 45k
HBC Relationship Manager (3 months)	£ 6k
Branding – development and implementation	£ 30k

<b>Total</b>	<b>£ 300k</b>
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To date £123k has been allocated in the Council's Invest to Save Reserve to evaluate the transfer of Leisure Services to a LACC, of which £120k remains.

A further £180k is anticipated to be required to progress the activity to transfer. This would need to be allocated either from existing funds set aside in the Council Investment Reserve to support Culture, Tourism & Sport expenditure in the approved Capital and Investment Programme or from within the Invest to Save Reserve.

### 5.8.5 **Legal Agreements between the Council and the Company**

A number of contracts will need to be prepared and entered into by the Council and the Company before the Company becomes operational. They are summarised below and this report requests delegated authority to complete these agreements and enter into them in accordance with the implementation plan

#### (1) **Transfer Agreement**

This agreement will deal with the transfer of assets and employees.

#### (2) **Leisure Services Agreement**

This is the contract between the Council and Company defining what the Company has to provide. It will contain a detailed outcome specification and performance management measures from the Council to ensure that the Company's services and standards are focused on the priorities of the Council and the needs of local residents, with any fee from the Council linked to the delivery of agreed outcomes.

#### (3) **Back Office Services Agreement**

Newly created LACCs usually have a commitment to retain Council central services for a period of time until they establish their own operations. As identified by PwC, in order to drive through efficiencies within the company the configuration of these services would need to be evaluated in terms of both value for money and taxation efficiency. This Agreement will therefore set out how the Council will provide back office services to support the Company, how they will be paid for and over what term on a service by service basis.

#### (4) **Leases**

There are eleven operational venues being transferred. Leases will be entered into in respect of each site which can be in the same form save for any site specific requirements.

## 5.9 Investment Proposals

A timetable for the Council's enhancement works at Ripon, Knaresborough and Harrogate Hydro has been drawn up and is subject to a separate report. The works will be delivered by the Council and will not have been completed at the time of the transfer. The future venue developments and changes will be reflected in the leisure services contract and the leases.

## 6.0 REQUIRED ASSESSMENTS AND IMPLICATIONS

6.1 The following were considered: Financial Implications; Human Resources Implications; Legal Implications; ICT Implications; Strategic Property/Asset Management Considerations; Risk Assessment; Equality and Diversity (the Public Sector Equality Duty and impact upon people with protected characteristics). If applicable, the outcomes of any consultations, assessments, considerations and implications considered necessary during preparation of this report are detailed below.

### 6.2 Legal

Legal Services have been involved in drafting this report and as such the legal advice is contained in the body of this report and the exempt Appendix 8. External legal support has also been procured to support the transition phase and implementation phase including the development of service delivery and other contracts; incorporation of the Company and finalisation of the associated documentation; support for the TUPE transfer of existing employees and the pension arrangements; and the preparation of any leases/licences between the Council and the Company.

When exercising any delegated power in negotiating and entering into arrangements with the Company, legal services will be involved to ensure:

- (1) Observance of the duty to obtain best consideration under section 123 of the Local Government Act 1972, if it grants any lease for more than seven years.
- (2) Compliance with procurement and state aid regulations. State Aid may arise where the Council provides aid to select undertakings (any entity which puts goods or services on the given market), which has the potential to distort competition and affect trade between member states of the European Union.
- (3) Employment law – transferring the service delivery to the Company will trigger a TUPE transfer of current Council staff who are working in or for the leisure service immediately before the transfer.
- (4) Appropriate requirements around conflicts of interest and Director's duties.

### 6.3 Human Resources

As of November 2019 there were 192 employees and 250 casual workers working across all the sites within the scope of the contract.

TUPE transfer and the Council's obligations in respect of informing and consulting with the Trade Unions and Council staff affected by the transfer must be adhered to. Human Resources advice and guidance regarding TUPE regulations and the process to follow to ensure the process is completed correctly and in line with employment legislation will be put in place.

Staff are members of the LGPS, and the proposal is for the Company to be admitted to the relevant section of the LGPS rather than to provide a GAD certified 'broadly comparable scheme'. External legal advice has been procured to advise the Council on the admission agreement.

The initial Job Description and Person Specification for the Managing Director role are attached as **Appendices 6 and 7**.

The post will need to be evaluated using the existing pay structure, with a view to amending at a later date if necessary.

Recruitment to the post will be advised and supported by the Head of Organisational Development & Improvement.

### 6.4 Finance

In total a project delivery budget of £300k is required (see table in paragraph 5.8.4). A balance of £120k from the approved Invest to Save Reserve is available, leaving a balance of £180k to be funded. Approval is sought to fund the balance from the Invest to Save Reserve/Council Investment Reserve.

The ongoing financial benefits of delivering the service through a LACC is estimated to be £284k per annum. This includes a £222k direct saving in business rates as a result of the company being eligible for mandatory business rate relief. However under the existing 50% business rates retention the Council would lose funding of £44k (20%) as a result of the increase in rate relief. In addition, the estimated £1.3m of irrecoverable VAT, as a result of constructing the new swimming pool in Ripon and refurbishing the existing leisure centre, is mitigated through the transfer of the 'new pool for Ripon' project into the Company.

The report from PwC provides information on the potential VAT impact of outsourcing leisure to a LACC. Some of the key points to note within the report are as follows:

- Compared to the position in the Council (were there to be no partial



exemption breach) there would be an estimated £76k annual VAT benefit of leisure being provided via a LACC. This is based on the output VAT gained by applying the sporting services exemption less the input VAT the company will be unable to recover.

- PwC have estimated that due to forecast increased spend on leisure in the coming years, HBC would actually breach the partial exemption limit each year at an annual cost of £302k if we don't take the sporting services exemption and at a net cost of £55k if we do take the exemption.
- Taking both of the above points together, they have estimated that the overall benefit of the LACC would therefore be £378k compared to HBC operating leisure and not take the sporting services exemption and £131k compared to HBC operating leisure but taking the sporting services exemption. In addition, there would be no irrecoverable VAT on the capital spend if operated by a LACC but it would increase if operated by the Council, with the Council taking the sporting services exemption.
- It will be important that any LACC is set up in such a way as to ensure that it is entitled to the sporting services exemption.
- The annual benefit can be improved by minimising the level of services provided and charged by HBC to the LACC. If the company functions are provided in-house then there will be no irrecoverable VAT on the labour element, which there will be if charged by HBC.
- It will also be important that the lease and management agreement are carefully prepared in respect of what costs are the responsibility of the company and what costs are the responsibility of HBC. There is a balancing act in terms of HBC being responsible for as much expenditure as possible (because HBC can recover the input VAT that the company won't be able to) but at the same time ensuring that the company can still make a management charge to HBC (and the Council is not in a position where the company is paying HBC for services provided) and also ensuring that the LACC has an incentive to control the costs for which HBC has responsibility to pay.
- The Council will need to be very cautious regarding receiving any payment from the LACC for anything in order to ensure that it could not be considered as additional payment of rent. If the Council received income from the Company that could be considered as payment for the use of the facilities and hence rent, the rent would no longer be peppercorn in nature and would be exempt rental income which would have significant partial exemption implications for the Council. In order to avoid this risk the Council could opt to tax all relevant land and buildings, but this would shift the risk to the

company in terms of irrecoverable VAT.

- We are reminded that there is a discrepancy between EU and UK VAT law re the exemption available for sporting services and that there is uncertainty as to whether this will be addressed and if so, how.
- Reference is made to HBC being able to make a retrospective VAT claim worth an estimated minimum of £120k if the LACC goes ahead. That means that HBC are deciding to take advantage of the sporting exemption (which would have implications should Leisure Services ever come back in house, but not if it remains with the LACC). The Council would be claiming the income declared as VAT in each of the last 4 years but would have to revisit our partial exemption calculations. On the assumption that the Council breaches the partial exemption threshold each year at a cost of the value of all input VAT related to exempt income, then there should be a small net gain each year – hence the figures quoted. If in any of the previous years the Council didn't breach, then the gain would be significantly more.

### 6.3 Equalities Impact Assessment

An Equalities Impact Assessment has been undertaken and identified that there is the opportunity to build on the current service's work in delivering for all residents, including those with protected characteristics. It is anticipated that specific performance measures will be incorporated into the contract to measure, monitor and improve such performance.

### 6.4 Risks

There are number of risks associated with the project. These are captured in detail along with mitigating actions as a part of the Project Governance. Those set out below represent the pertinent risks that it is felt necessary to bring to the attention of members at this stage of decision making.

**Covid-19** – The current Covid-19 pandemic has led to the closure of all the venues considered for transfer with the exception of the Little Explorers Day Nursery. At this stage we cannot be sure what the medium and longer term futures for leisure services will be. There is significant research being undertaken by the National Governing Bodies for sports and Sport England to understand the population's activity levels and attitudes to future leisure activity.

It is clear from early results that people are recognising the benefits of exercise with it identified as one of the reasons people were allowed to leave their homes for some time. Recent survey results are also indicating that more people are intending to continue exercising and to use indoor leisure venues when they are safe to do so.

The delivery of the existing leisure and active health service to an on-line

and remote contact offer has been remarkable. This success indicates that a future 'blend' of both remote and physical access to leisure services will be part of the Company's agreement with the Council.

## **7.0 CONCLUSION**

7.1 Following Cabinet's decision of December 2019 significant work has identified the scale and benefits in creating a LACC to deliver leisure services. With work supported by external advisors SLL, Weightmans LLP and PwC, Officers anticipate the potential ongoing annual benefit to be c. £284k, rising to £586k should the proposed investment go ahead. The Company's focus on delivering a specific leisure services agreement through a service contract will enable both sustainable growth and increased activity to be delivered.

### **Background Papers:**

Appendix 1a – LACC Baseline financial summary (Exempt)

Appendix 1b – HBC Financial analysis Company Baseline 18-19 (Exempt)

Appendix 1c – PwC Harrogate Borough Council (Exempt)

Appendix 2a – Public Consultation Summary

Appendix 2b – Public Consultation Comments

Appendix 3 – LACC EIA

Appendix 4 – Implementation Plan

Appendix 5 – Articles of Association and Reserved Matters

Appendix 6 – Managing Director Job Description

Appendix 7 – Managing Director Person Specification

Appendix 8 – Legal Advice (Exempt)

Appendix 9 – LACC Project Governance

**OFFICER CONTACT:** Please contact Michael Constantine, Head of Culture, Tourism & Sport, if you require any further information on the contents of this report. The officer can be contacted on 07525 988391 or by e-mail – [michael.constantine@harrogate.gov.uk](mailto:michael.constantine@harrogate.gov.uk)