

Report to the Cabinet

Report reference: C/028/2005-06.

Date of meeting: 11 July 2005



**Epping Forest
District Council**

Portfolio: Leisure.

Subject: Alternative Management of the Council's Leisure Facilities – Award of Contract.

Officer contact for further information: Derek Macnab (01992 – 56 4261).

Democratic Services Officer: Adrian Hendry (01992 – 56 4246).

Recommendations:

- (1) That, with respect to the future management of the Council's Leisure Facilities, it be accepted that the negotiated position meets the Council's Key Objectives; and**
- (2) That an award of a seven-year Contract (3 years for Epping Sports Centre) to SLM be recommended to the Council for approval on that basis, subject to:**
 - (a) Agreement on the detailed arrangements for calculation of the Council's contribution to Salaries/Wages and Pension Costs above the rate of inflation;**
 - (b) Satisfactory receipt of outstanding information with respect to Memorandum of Association and Licences to Occupy; and**
 - (c) Satisfactory conclusion of the Method Statements.**

Background:

1. On the 14 March 2005, the Leisure Portfolio Holder presented a report to the Cabinet regarding Alternative Management of the Council's Leisure Facilities. The report attempted to address the concerns expressed at the Council meeting of 15 February 2005, which had resulted in the matter being referred back to the Cabinet for further consideration.
2. The Portfolio Holder reminded the Cabinet that the Council had explored a range of possible options for the future management of Leisure Facilities and had undertaken an extensive tendering and evaluation exercise. As a result of this the Portfolio Holder believed that the best option for the Council would be to enter into detailed negotiations with Sports and Leisure Management Ltd, for a seven-year contract.
3. The Cabinet considered the matter, in particular the request from SLM that the annual uplift index was adjusted and their contention that they were not prepared to accept the risk of an external challenge to National Non Domestic Rate Relief.
4. Whilst noting these issues, the Cabinet agreed to recommend that the Council enter into negotiations with Sports and Leisure Management Ltd, as the Council's preferred bidder, on the basis of a seven-year contract. It was also agreed that a further report be submitted to the Cabinet on the outcome of the negotiations to enable the detailed arrangements to be agreed. This was subsequently confirmed by Council. This report

advises Cabinet on the results of those further discussions with SLM. On this basis the report also seeks Members' agreement to an Award of Contract.

Negotiations with Preferred Partner:

5. In accordance with the wishes of Council, the Head of Leisure Services accompanied by colleagues from Legal and Finance Services met with the Senior Management of SLM on the 17 May 2005. Positive discussions were held which enabled a number of issues to be clarified and importantly the identification of the main points which required further discussion to resolve (Copy of Minutes attached at Appendix 1).
6. Although there were still a number of relatively minor outstanding points to be addressed, mainly in relation to the final agreement of Method Statements, (which form an important role on the Contract arrangements with regard to ensuring the quality and safety of the future service), the three main considerations to be negotiated were clearly:
 - (a) The Award of Relief from National Non Domestic Rates;
 - (b) Risk of External Challenge to Rate Relief; and
 - (c) The Management Fee Annual Uplift Indices.
7. The meeting concluded with the parties agreeing to consider their respective positions with regard to these three key issues, with a view to reconvening in a few weeks. In the intervening period SLM's Facility Management specialists attended Ongar Leisure Centre accompanied by representatives of Moveable Floor Contractors. This has confirmed that the moveable floor is technically achievable, within their tender budget estimates. This visit also helped to clarify ongoing general maintenance responsibilities for the Leisure Centres. In addition SLM confirmed their intention to convert the Squash Courts and Bar at Ongar Leisure Centre to Health and Fitness Facilities, whilst acknowledging the concerns of current users.

The Award of Relief from National Non Domestic Rate (NNDR) and Risk of External Challenge:

8. Whether SLM are entitled to relief from NNDR, and if they are who should bear the risk of any subsequent loss of this relief is a key consideration, particularly given that the majority of the revenue benefit to the Council, hinges on this matter.
9. The tender document left it open to those tendering to make their own assumptions about NNDR and submit their bids on that basis. Both Leisure Connections and SLM submitted bids assuming they could obtain NNDR relief by having a not for profit subsidiary enter into the leases for the buildings with EFDC. The trading companies then occupy the relevant parts of the buildings through a non-exclusive licence to occupy. This structure raises two main questions:
 - (i) Is the not for profit company a charitable organisation and therefore entitled to relief?
 - (ii) Are the trading companies occupying areas such that charitable status is not applicable to those areas?

Charitable Status of SLM Community Leisure Limited:

10. At the meeting of the 17 May SLM outlined their proposed operating structure in more detail and agreed to provide Counsel's opinion supporting their entitlement to NNDR

Relief. The opinion was received on 13 June, but the instructions to Counsel were not. Unfortunately despite further requests, the instructions to Counsel and a copy of the Memorandum of Association of SLM Community Leisure Limited have still not been supplied. However, the Council has received a firm assurance that they will be supplied.

11. A charity is defined by Section 67(10) of the Local Government Finance Act 1988 as “an institution or other organisation established for charitable purposes only”. SLM Community Leisure Limited satisfies this definition as it was established only for the purpose of the provision of facilities for recreation or other leisure time occupation with the facilities provided in the interests of social welfare. As stated earlier, the Memorandum of Association is still to be received. However, Counsel advised that the Memorandum was in line with the Recreational Charities Act 1958. Thus the objects of the company are charitable and it has been established for charitable purposes only.
12. Counsel also states “In those circumstances, it appears that provided SLM Community Leisure Ltd can properly be said to be the occupier of the hereditament that both mandatory and discretionary rate relief can be given”. A further material consideration is to the question of who is occupying the property.

Occupation of the facilities:

13. The contract would be entered into with SLM Ltd who would then grant a sub-lease to SLM Community Leisure Ltd, which in turn would issue non-exclusive licences to occupy to SLM Fitness & Health Ltd and SLM Food & Beverage Ltd. As long as SLM Community Leisure Ltd is the occupier relief can be awarded. A problem arises where either of the trading companies are deemed to be occupying the part of the premises they are using. If this is the case then separate rates bills should be issued to the trading companies for their respective areas.
14. The briefing note to members of the Ad Hoc Working Group on 7 December 2004 advised them of officers concerns at the time about group structures. Members were advised that where a trading company was in occupation it could be seen as having a sub-lease and the area would not be eligible for rate relief. To quote from para 6.30 of that report “If any area is occupied exclusively by one of the other companies this may create a sub-lease of that part of the building”. In setting up their structure SLM have attempted to avoid this issue by only providing the trading companies with non-exclusive licences to occupy.
15. If this matter were to be challenged in the courts, then the situation would be determined on the basis of the facts not the paperwork. Therefore a danger exists that if a challenge was raised, and if that challenge was to end up in court, it might be decided that the facts were that, the trading companies were exclusively occupying the relevant areas and relief should not have been given for those areas.

Policy and Financial Implications:

16. At the Council's Management Board of 15 June, EFDC's existing policies on the award of rate relief were discussed and information was requested on the wider implications of any change in policy. The current policy on the award of rate relief has been to follow a strict definition of what constitutes a charity, such that unless an organisation was a registered charity it would not qualify for mandatory relief. Clearly having considered Counsel's opinion in this instance and having re-visited the legislation an organisation does not need to be a registered charity to be a charitable organisation. However, SLM have advised that they have applied for charitable status for SLM Community Leisure Ltd, and anticipate the company being constituted as a Charitable Independent Provident Society by October 2005.

17. A bigger financial implication could follow from the award of the top up 20% discretionary relief. Currently where premises have qualified for mandatory relief top up has generally not been available. The policy states:

“Where a charity is in receipt of 80% charitable relief the Council will not award a further 20% discretionary relief (except in the cases of properties occupied by local scouts and guides organisations, village halls which provide a post office facility and hospices within the District).”

18. Where top up relief is granted the Council must bear 75% of the cost. The current policy could be expanded to include leisure premises operated by charitable organisations. If top up relief were awarded to SLM on the leisure centres they may be running, it would cost EFDC approximately £29,350 per annum. If top up relief were made available to the eight other leisure premises that have mandatory relief this would have an annual cost in the order of £8,550. Additionally if the Council were to start awarding top up relief more widely it may become difficult to defend not giving it to many other organisations.
19. The cost of expanding the top up policy, £37,900, is broadly similar to the value of the top up for Council leisure centres, £39,100. However, it was thought it would be possible to negotiate with SLM to get them to bear part of this cost. In conclusion it was considered prudent, to avoid future potential liabilities from widening the policy, to refuse to grant top up relief to SLM. This was the negotiating position agreed to enter into further discussion with SLM.

Risk of External Challenge:

20. The other point on NNDR is who should bear the risk of any loss of relief. SLM initially stated that EFDC would have to bear this risk. At the discussions held on 17 May a sliding scale was suggested for sharing the risk such that in the first year SLM might bear 100% of any loss, then in the second SLM might bear 90% and EFDC 10% and so on. SLM indicated they were prepared to consider such a mechanism and discuss it at the next meeting.

Management Fee Annual Uplift Indice:

21. The Council whilst recognising an entitlement for the Contractor to receive an annual uplift to the management fee, to reflect increasing costs, had proposed an all embracing indice to achieve future surety and assist financial planning. SLM have expressed a contrary view, in as much as they believe that some costs are genuinely outside of their control i.e. Utilities (Water, Electricity, Gas) Pay Awards for Staff TUPE Transferred on NJC Conditions and similarly Employers Pension Contributions.
22. Members may recall that the Council has had to bear significant increases in energy costs this financial year as a result of higher tariffs from the Utilities Companies. With respect to Leisure Facilities, SLM had previously agreed to contribute to these increased costs in the region of £68,000 per annum, although the Management Fee will be raised by £30,000 per annum to reflect the Council's contribution. The Council's position has been, that as experienced commercial contractors, SLM should have priced the risk within their Tender. Whilst they claimed to have done this in part, largely to cover anticipated inflationary increases, they were seeking further concessions.

Outcome of Negotiations Meeting 22 June 2005:

23. On the 22 June the Head of Leisure Services convened a further meeting with SLM, again supported by colleagues from Finance and Legal Services. In addition the latter stages and conclusion of the negotiations, were held in the presence of the Leader of Council and Leisure Portfolio holder. After due consideration of respective propositions and movement by both parties, the meeting reached a mutually agreed general position on the key points.
24. SLM were advised that the Members and Officers present did not have the delegated authority to finalise the terms, but felt that they had reached a position which could be recommended to the Cabinet.
25. The main points of the negotiation are broadly outlined in the Head of Leisure Services letter to SLM attached at Appendix 2. SLM have subsequently confirmed their formal acceptance by letter on the 27 June 2005, attached at Appendix 3.

Conclusion:

26. In Summary, SLM have agreed in principle:
 - (a) That whilst they accept that the Council are minded to grant Mandatory Relief (subject to satisfactory receipt and acceptance of the Memorandum of Association of SLM Community Leisure Ltd and details of the proposed Licences to Occupy) the Council is likely not to change its current policy with regard to Discretionary Relief, and therefore for the duration of the Contract, SLM will contribute 50% towards the cost of the remaining NNDR. This currently equates to £40,000 per annum in total and therefore SLM will find £20,000 in year 1.
 - (b) That to alleviate concern about the loss of Rate Relief as a result of external challenge, the parties enter into a tapered risk share arrangement as detailed below. In the event of the Contract being extended by the optional 3 further years, this to be split 50/50 in each year. As any successful challenge would likely contain a retrospective element, each party would meet their cumulative share at any given time. Again on the taper basis agreed.

Risk Share:

Year	SLM %		EFDC %	
	annual	cumulative	annual	cumulative
1	100	100	0	0
2	83	91.5	17	8.5
3	67	83	33	17
4	50	75	50	25
5	33	67	67	33
6	17	58	83	42
7	0	50	100	50
8 to 10	50	50	50	50

- (c) That SLM bear all future costs of utility cost increases, but the Council will meet the additional cost of salaries/wages of the average NJC Pay Award percentage settlement being in excess of RPI. In addition with respect to Employer's Pension Contributions, on the assumption that SLM achieve Admitted Body Status to the Local

Government Superannuation Scheme, the Council will bear the cost of any increase in the Rate of Employer's Contribution in excess of RPI.

(d) SLM will cover the costs of a part-time Leisure Attendant post omitted from their tender in error. Approximately £8,000 to £10,000 per annum.

(e) To recognise movement by SLM, the Council will increase the management fee at the start of the Contract by £10,000. Thereafter this will form part of the annual uplift. This in addition to the £30,000 already agreed, to reflect increases in utilities costs.

Options for Action:

27. To accept the outcome of the negotiations as a satisfactory conclusion and the basis of an Award of Contract.
28. To seek further concessions from the Contractor.
29. To recommend an alternative course of action for future management of the service.

Statement in Support of Recommended Action:

30. The Council has embarked on an extensive Review of Alternative Management Options. They have undertaken a Competitive Tender and thorough evaluation of the bids. The tender received from SLM achieves the Council's Key Objectives, with respect to transfer of the majority of financial risk, capital investment and lower annual revenue costs. The Contract documentation will protect the quality and diversity of the service and enable future access. SLM have maintained a consistently high level of interest in the opportunity to manage and develop the Council's Leisure provision. They have expended considerable resources over a protracted tender period and demonstrated good faith in the negotiations. They have also voiced a strong desire to establish an effective partnership.
31. Whilst it is accepted that the final detailed arrangements to be enshrined in the Contract Documents will need to be developed and agreed, any further renegotiation or reconsideration outside of the broad principles, will incur considerable delay and further uncertainty for users and staff.
32. If the Cabinet were in agreement with the final terms and the Council were to award a seven-year (3 years for Epping Sports Centre) contract to SLM, when they consider the matter on the 28 July, it would be possible to achieve a Contract Start date of 1 November 2005.

Consultation Undertaken:

33. Leader and Leisure Portfolio Holder, SLM, Finance/Legal and Building Services.

Resource implications:

Budget provision: At the Ad Hoc Working Group on 7 December Members were presented with tables of financial data comparing updated estimates for 2004/05 to the proposals of the three providers still involved at that point. The tables covered the two options of 7 and 15-year contracts and showed the two extreme positions of a full elimination of support service costs and the retention of all these costs. As such they could be viewed as maximum and minimum savings. The data relating to the 7-year option for SLM is re-produced below:

	Full elimination of support service costs £'000	No reduction in support service costs £'000
Total 7 year savings	4,109	1,378
Equivalent annual saving	587	197

As set out above, during the course of negotiations to reflect increased utility costs and other changes it has been necessary to allow an increase in the annual management fee of £40,000, although £20,000 of this is off set by the NNDR that SLM will be paying. This will reduce the savings figures expressed above against the updated 2004/05 position. However, it should be borne in mind that if we were now to compare against current cost and income another different picture would be seen.

Personnel: Staff would TUPE Transfer to SLM on current conditions of service.

Land: No Freehold disposal. Leases and Licences to Occupy to be put in place.

Legal: As detailed in the body of the report with respect to NNDR.

Community Plan/BVPP Ref: BVPP – To review the most cost effective means of managing the Council's Leisure Facilities. The Key Objectives of Alternative Management Review were:

- (a) To manage the Council's Leisure Facilities by the most cost effective means possible, therefore reducing the level of revenue support necessary.
- (b) To alleviate the financial risks to the Council and in particular to release the Council from the threat of punitive VAT penalties deriving from exempt income.
- (c) To invest in the facilities to ensure that their fabric is maintained to current standards and that capital refurbishments and new facilities are provided where possible.
- (d) To ensure that high quality and diverse opportunities remain available and accessible to all sections of the local community, and to seek continuous improvement to the service.

Relevant Statutory Powers: Local Government Act 1974

Background papers: Tender from SLM, Notes of Negotiation Meetings, Counsel's advice on NNDR, Minutes of March 2005 Cabinet and Council Meetings, Briefing Notes to Ad Hoc Policy Group.

Environmental/Human Rights Act/Crime and Disorder Act Implications: N/A.

Key Decision Reference (if required): Yes.

**NOTES OF MEETING HELD ON TUESDAY 17TH MAY 2005
TRAINING ROOM – HEMNALL STREET, EPPING**

ALTERNATIVE MANAGEMENT CONTRACT EPPING FOREST DISTRICT COUNCIL

Present: Derek Macnab - Head of Leisure Services (DM)
 Laura MacNeill - Assistant Head of Leisure Services (LM)
 Bob Palmer - Head of Finance Services (BP)
 Alison Mitchell - Assistant Head of Legal & Admin (AM)
 Stephen Hulme - Managing Director SLM (SH)
 David Bibby - Finance Direct SLM (DB)
 Andy Haworth - Director Group Development SLM (AH)

		Action
1.0	<p><u>PURPOSE OF THE MEETING</u></p> <p>DM confirmed, that as outlined in his letter of the 13th May, 2005 (attached) the purpose of the meeting was to start initial negotiations regarding the Council's Leisure Management Contract, now that the Council had formally agreed that "Preferred Partner" status be awarded to SLM.</p> <p>DM explained that at this stage Officers would be engaging in the discussions, but that both the Performance Management and Leisure Portfolio Holders had indicated that they would like to be involved, in concluding any final terms</p> <p>The meeting decided that there would be value therefore in working through the list of issues for clarification identified in the letter of the 13th May, 2005 seeking to mutually agree as much mutually agreeable detail as possible and identify key areas for subsequent negotiations.</p>	
2.0	<p><u>PROGRESS TO DATE</u></p> <p>DM felt it may be of benefit to recap on the background to the Council's decision to pursue an alternative management option for its Leisure Facilities, which may provide a greater degree of context. Reference was made to the Audit Commissions Best Value Inspection of the Service and their conclusion that the test of 'Competition' had not fully been met. The work of the Policy Working Group in relation to the presentations it had received on procurement options and their visits to other Local Authorities was explained. As was their subsequent decision not to develop an 'In-House; Trust, but rather to seek external expressions of interest on a competitive basis. The results of this were highlighted and an overview given as to the</p>	

	<p>evaluation process and key decisions to date. SLM were aware of the delay caused by the split decision of Council and the need for Cabinet to reconsider some of the issues raised. SH enquired as to why the Ad Hoc Group on Leisure had not recommended any of the Tenders. DM replied that it was his impression that a majority of the Members on this cross-party group had felt that none of the Bids fully met the Council's Key Objectives and that a significant amount of risk still stayed with the Council. This was not however a view shared by Cabinet and Full Council.</p> <p>The meeting went on to address the list of points below</p>	Action
3.0	<u>ISSUES FOR CLARIFICATION/NEGOTIATION</u>	
3.1	<p>Statement of Company and Trust Operational Proposal: DB circulated a copy of SLM's Contractual and Structure Arrangements (<i>attached</i>) as an aid to better understanding. DB explained that this structure had been used consistently in all SLM's Contacts since 1999 and the Company had "Counsel's Advice" as to the robustness of the structure, as a vehicle to deliver Business Rate Relief. SLM agreed to copy this advice to the Council.</p> <p>In addition SLM agreed to forward copies of the proposed "Right to Occupy" agreements.</p> <p>It was explained that overall Contract rests with Sports and Leisure Management Ltd., who in effect utilise three operating subsidiaries to deliver the service i.e. SLM Community Leisure Ltd., SLM Fitness & Health Ltd. SLM Food and Beverage Ltd.</p> <p>It was confirmed that the Directors are the same individuals in all three Companies and that representatives of all companies will be represented at the CORE Group.</p> <p>DB explained that under TUPE the staff will transfer to SLM Ltd., and then simultaneously to the other 3 companies, depending on their future role. Staff can transfer between the operating companies as terms and conditions are identical. In response to some concerns raised by current staff, SLM agreed to forward a list which identified where posts would potentially be located.</p> <p>DB and SH went on to express their desire that SLM achieve Admitted Body Status to the Essex Superannuation Scheme. In their experience they did not feel this would be a problem, but felt that as the process can sometimes be protracted that they would like to apply at the earliest opportunity.</p> <p>SH & AH said that they could understand the uncertainty for current staff and offered to take staff representatives to Fareham (their latest contract) in order to allow them the opportunity to see how SLM handle any transfers and discuss any concerns. The meeting agreed that this would be a positive initiative, after any final decision to award a contract. The suggestion of workplace meetings was also well received.</p>	<p>SLM</p> <p>SLM</p> <p>SLM</p> <p>SLM</p> <p>SLM</p> <p>SLM</p>

	<p>In response to keeping the public advised SLM confirmed their intention as per the requirements of the Specification to undertake formal consultation and facilitate feedback and market research. Any such forums could be opened up to local Members of the Council.</p> <p>SH/DB advised the meeting that although SLM Community Leisure Ltd is not currently a Registered Charity this is something that they are actually pursuing.</p> <p>3.2 Annual Uplift/Indices: DB explained that the reason SLM had sought an alternative agreement outside the indices proposed in the Contract was in relation to control and risk. He felt that as SLM were required to honour NJC pay, conditions and pension contribution increases, these were largely outside of SLM's direct control. Similarly, risks in utility costs above inflation were outside of SLM's direct control. Therefore, he sought an arrangement where the Council met any above anticipated inflationary increases.</p> <p>In response BP and DM reminded SLM that one of the Council's Key Objectives was to transfer risk and obtain greater certainty with respect to forward financial planning. As an experienced commercial contractor the Council had anticipated that SLM would have priced risk into their Tender.</p> <p>Similarly, how could EFDC control the amount of energy/water the Contractor was utilising. DM reminded the meeting that as the majority of the annual revenue savings to the Authority were Business Rate Relief (<i>approx 140k out of 180k p.a.</i>) any further inroads into the savings may lead some Members to question the benefit of the Contractual Arrangement. In conclusion, the Council's current position was that the Indices proposed were designed to take on board a number of these cost factors and whilst would listen to suggestions of any alternative indices, would be reluctant to accept SLM's suggestion.</p> <p>SLM agreed to review their position and come back with any options they wished to pursue.</p> <p>3.3. Uniform Business Rate Relief: DM advised that the Council was unlikely to accept all the risk of any loss as a result of challenge/change legislation with regard to Business Rate Relief. Whilst SLM's proposed Contract Clause amendments went some way in mitigation, the bottom line did not change. SH said that the risk of challenge was low and intimated that the "Wandsworth Case" was not successful. In order to see a way forward DM suggested that there could perhaps be a model developed which shared the risk over the timescale of the Contract i.e. EFDC higher in early years with greater proportion transferring to SLM in later years. SLM to discuss the issue and respond accordingly.</p>	<p>Action</p> <p>SLM</p> <p>SLM</p>
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3.4	<p>Branding Identity: It was confirmed that SLM have tendered on the basis of their current brands, which they felt would bring strength to the Contract. Whilst this was acknowledge DM felt it appropriate to voice some concerns about the 'Banana' Fitness Brand, based on some feedback he had received from staff and customers. SH described how initially he had taken some convincing about Banana, but felt it had developed in a manner, which justified his belief that it would increase participation. Although he acknowledged it may be easier to introduce in new facilities. The remainder of the brands seemed largely acceptable although it was felt appropriate to bring the 'Banana' issue to SLM's attention as they would be carrying any commercial risk of customer resistance. Whilst EFDC would like to know the costs of keeping Shapes branding it was unlikely to insist in continuation, if SLM felt there were tangible benefits in promoting 'Banana Fitness'.</p>	
3.5	<p>Ringfencing of Finances: SLM advised that they do not intend to set up a separate company for the EFDC Contract and that a transparent Audit Trail and set of Accounts would be available for each Contract. DM highlighted the Council's desire for any surpluses, to whenever possible, be re-invested locally for the benefit of EFDC Residents. DB stated that the Council must be aware of the commercial reality of the business they were in, which sought to achieve a return for Shareholders. He reminded the meeting that the Income Share Threshold at 70% - 30%, was a mechanism where the Council could receive the benefit of any particular success.</p>	
3.6	<p>Transfer of Information and Activikey: It was confirmed that Activikey was still in the development phase and not currently operating within any SLM facilities. The Method Statement within the Tender submission needs to reflect this. It was SLM's belief that all current members would need to sign a new DD mandate, with the inherent risk of drop out. SLM felt there may be a need for EFDC to continue to operate the DD for 2 – 3 months after any Contract Start Date and asked for the practicality and cost of this EFDC to be explored. In future, DD's will be site specific although other facilities can be accessed, although at this point not in other Authorities Contacts. Concern raised about retention of data on home site memberships, particularly as ESC on shorter Contract Period. SLM felt this could be accommodated.</p>	
3.7	<p>Pension: As per earlier discussion.</p>	
3.8	<p>Staffing Issues: SH stated his desire that any new Contract Manager would be appointed from within EFDC transferred staff.. Whilst he was impressed by Facilities and Management currently at Loughton Leisure Centre he asked that the vacancy at Ongar not be filled. However, the transfer rights of the Acting Manager would be acknowledged. SLM confirmed that they were aware of the particular arrangements in relation to the General Manager at WASP and the</p>	

	Deputy Manager post at ESC. Confirmation was also received that the costs of Bar Staff at ESC had been included in Tender although they were omitted from Structure Chart.	Action
3.9	<p>Squash Courts/Bar at OLC: DM advised SLM of the receipt of a 52 name Petition, largely from squash players, seeking the retention of the Courts and Bar. The Council had considered the Petition and advised the Petitioners that the Council had been seeking additional investment and maximum participation. On this basis it would not be seeking any fundamental alteration to SLM's Tender but would advise SLM of the matter. If SLM could accommodate some of the concerns this would be welcomed. SLM advised that it was a commercial judgement to convert rather than extend and their Business Plan was predicted on this basis. DM asked SLM to respond as to whether they could see any practical way of meeting the Petitioners concerns although he appreciated the way the Tender was structured and the fact that squash usage was currently low (<i>about 20% occupancy</i>).</p> <p>DM went on to explain the possibility of a new All Weather 5 – a side Court, if a capital receipt could be generated from sale of part of old multi-use area.</p>	SLM
3.10	<p>Building Maintenance: The meeting was told how SLM's Asset Management Partners had drawn up the Outline Maintenance Plans. It was felt there was value in them meeting with the Council's Building Maintenance Surveyors to discuss issues in more depth. AH to liaise with LM.</p>	
3.11	<p>Moveable Floor in Main Pool – OLC DM outlined how the Council had welcomed the imaginative proposal to install a moveable floor to increase Learn to Swim capacity. However, more detail as to how this could practically be achieved was requested. SLM had taken advice and received a cost estimate from a major supplier, but wished to have other companies work up feasibility. DM confirmed that the Council would require further details and the provision would be a contractual obligation. If not possible the financial implications would need to be clearly understood.</p>	SLM
3.12	<p>Monitoring Performance: LM highlighted that this Method Statement appeared to be identical to the KPI Section. A further Method Statement was requested.</p>	
3.13	<p>Concessionary Pricing DM explained about the Council's review of concessionary pricing and Members desire to explore a move from "age" related concessions to "ability to pay". SLM advised that whilst they had not implemented Activikey they were rolling out their leisure card system to be called Oxygen. When operational this would be distributed to all residents forming a useful database. However, any concessions/promotions would have to be purchased. The cost of Oxygen to be met by SLM.</p>	SLM

3.14	<p>Membership: It appeared as though the current Membership Scheme would remain until such times as proceeded by Activikey.</p>	Action
3.15	<p>Business Continuity: SLM accepted that they had not produced an overarching Business Continuity Method Statement, although they understood the requirements. It was felt that they could draw from existing Health and Safety and Operational procedures to produce something acceptable.</p>	SLM
3.16	<p>Quality Assurance: SLM were advised that EFDC had recently retained their ISO9001/2000 Quality Assurance Accreditation, which would run for another 3 years. SLM agreed to retain this Accreditation until if or when it may be replaced by an equivalent i.e. Quest.</p> <p>It was similarly confirmed that Chartermark would be retained and this will be added to the Agreement.</p>	EFDC
3.17	<p>Future of Epping Sports Centre: DM outlined how the Council had found itself in the position of only offering a 3 year Contract. If performance was good there would be the possibility of Contract Extension. In the meantime, if SLM had any innovative ideas to improve the service/facility, accepting that an Extended Contract period would be required, any such proposal would be welcomed.</p>	
3.18	<p>Minimum Investment Verification: SLM agreed to produce Statements of Accounts, copies of Invoices etc., to verify the minimum levels of investment guaranteed in the Tender. In order to ensure the Council was receiving value for money for its capital contribution to Ongar Leisure Centre, the Council would be involved in the procurement process.</p>	
3.19	<p>Method Statements: It was agreed that the Council would initially identify where they required improvement or clarification on the list of Method Statements identified and would pass these to SLM for a consideration/adjustment. It was accepted that these would need to be mutually agreed as they form an integral part of the contract documentation.</p>	SLM
3.20	<p>SLM's Expectations of the Council: SLM had an expectation that the Council would seek to form an effective partnership, based on mutual understanding and adopt a supportive attitude to their desire to encourage maximum participation. Not only to meet social objectives but maximise the return on their investment. In addition, it was assumed that the Council would honour its maintenance responsibilities. DM expressed the view that it was in everyone's interests to develop a good working relationship and that he hoped this relationship could be extended to other areas of Leisure Services.</p>	SLM

Date: 24th June 2005
Our Ref:L/DM/JB

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Without Prejudice

Leisure Management Contract - Epping Forest District Council

Dear Andy

Further to our meeting on Tuesday, I am writing to seek confirmation of your formal acceptance of the main points negotiated.

We will forward general notes covering the numerous other issues of confirmation, clarification etc, but in light of the timescale for the preparation of the Cabinet Report, felt it appropriate and for the avoidance of doubt, to reiterate the key considerations.

It is our belief that the following was agreed:

1. Contribution to Discretionary National Non Domestic Rate Relief

For the reasons set out by the Head of Finance, the Council will be minded to award Mandatory Relief, but will not be seeking an alteration to its current Policy on Discretionary Relief. The cost of this discretionary element, currently equates to £40,000 per annum. We reached agreement that SLM, for the duration of the Contract, will contribute 50% towards the cost of Discretionary Relief for the Leisure Centres managed under contract. It is accepted that the cost may fluctuate as a result of valuation appeals.

2. Risk of External Challenge to Rate Relief

You have confidence in your business model and as above, the Council are minded to Award Mandatory Relief. We have reached this conclusion based on your experience in other authorities and your Counsel's Legal Advice. However, we will require copies of the

Memorandum of Association of SLM Community Leisure Ltd and details of the proposed Licences to Occupy.

However, Members of the Council have consistently expressed concern about the loss of Rate Relief as a result of external challenge. In order to alleviate this concern we have agreed a model, which while sharing the risk equally over the period of the Contract, frontloads the risk on SLM in the early years. It is in this period that we believe the potential for challenge is greater. The mechanism agreed is to share the risk equally over the 7 year period, with SLM accepting 100% in Year 1, tapering equally to 0% in year 7, with the reverse effect for the Council's acceptance of risk (See Appendix 1). In the event of the Contract being extended by the optional 3 further years, this would be split 50/50 in each year. As any successful challenge would likely contain a retrospective element each party, would meet their cumulative share at any given time. Again on the taper basis agreed.

3. Management Fee Annual Uplift Indice

The Council has been seeking an all embracing indice to achieve future surety in the cost of the service thus assisting financial planning. SLM feel that some costs were outside of their direct control i.e. Utilities, (Water, Electricity, Gas), Pay Awards and Employer's Pension Contributions.

We agreed that for the duration of the Contract, SLM will bear all costs, including above inflationary increases for Utilities. However, the Council will meet the additional cost of salaries/wages of the average NJC Pay Award percentage settlement being in excess of RPI i.e. the difference (based on the total staff cost for those posts TUPE transferred at the start of the Contract) between the Average NJC Pay Award and RPI.

With respect to Employer's Pension Contributions, on the assumption that SLM achieve Admitted Body Status to be Local Government Superannuation Scheme, the Council will bear the cost of any increase in the Rate of Employer's Contribution in excess of RPI.

We would seek to satisfy ourselves of the real costs of staff engaged in delivering the service as we would not be prepared to meet the costs of any vacant posts etc. and would have to agree detailed calculations so that pay increases for other reasons were excluded.

4. Shaw Trust Employee Costs

SLM advised that they omitted by error, the cost of the part-time leisure attendant post which is jointly funded by the Shaw Trust. This is estimated in the region of £8,000 - £10,000 per annum. SLM agreed to absorb the cost of this post.

5. Management Fee

To recognise the movement by SLM on these issues, the Council will increase the management fee at the start of the Contract by £10,000. Thereafter this will form part of the annual uplift. This is in addition to the increase of £30,000 already agreed, to reflect increases in utilities costs.

Hopefully, this reflects the final negotiated position, which we felt was reached in a very positive manner. Could you please formally confirm your acceptance as soon as possible. You will appreciate that neither Cllrs. Knapman and Whitbread nor the Officers involved on Tuesday had the delegated authority to commit the Council to the final terms, but this will form the basis of our recommendations to the Cabinet.

Please feel free to seek any clarification.

Yours sincerely

Derek Macnab
Head of Leisure Services

cc: Cllr. Knapman, Leader of Council
Cllr. Chris Whitbread, Leisure Portfolio Holder
Bob Palmer – HOFS
Alison Mitchell – Legal Services
John Scott – Joint Chief Executive
Peter Haywood – Joint Chief Executive
Laura MacNeill – Asst. Head of Leisure

Mr. D Macnab
Head of Leisure Services
Leisure Services
25, Hemnall St
Epping
Essex
CM16 4LU

Date: 27th June 05

Ref: lett)EFDC)NegotiationResponse)27)6)05

Dear Derek,

Subject: Leisure Management Contract.

Thank you for your time and the time of colleagues and Members at our meeting last Tuesday, which we found very positive. I write with reference to your letter to us dated 24th June (received by Fax on the 27th) regarding the points of clarification / negotiation as discussed at our meeting on the 22nd June.

I have responded directly to the points raised below:-

1. **Contribution to Discretionary NNDR.**

SLM confirms that it will contribute 50% of the discretionary element.

2. **Risk of External Challenge to Rate Relief.**

Copies of the Memorandum of Association of SLM Community Leisure Ltd will be forwarded to you forthwith, along with copies of the licenses to occupy.

In respect of the risks associated with the loss of rate relief, we confirm our acceptance of the principles as noted in your letter to us and as detailed in 'Appendix 1'.

3. **Management Fee Annual Uplift Indices.**

SLM confirm our acceptance of the terms noted in your letter.

4. **Shaw Trust Employee Cost.**

SLM confirm our acceptance of the treatment of this cost as detailed in your letter.

5. **Management Fee.**

SLM agree with your comments regarding the adjustments to the Management fee as noted.

We trust that this meets with your requirements and look forward to learning of the Councils decision imminently. If I can be of further assistance please call.

Yours sincerely,

Andy Haworth
Director: Group Development