

# *Active Communities Malvern Hills District: A Vision for the Future*

## **Malvern Hills District Sport and Leisure Strategy 2014 - 2024**

Chapter 16:  
Malvern Hills District Council's Leisure  
Procurement Strategy



## CONTENTS

<b>16.</b>	<b>MALVERN HILLS DISTRICT COUNCIL’S LEISURE PROCUREMENT STRATEGY.....</b>	<b>4-21</b>
16.1	Introduction .....	4
16.2	The outcomes required / output specification high level approach.....	4 - 5
16.3	Development of a procurement strategy.....	5
16.4	The scope of any procurement.....	5 - 7
16.5	Summary Position of Partners.....	8
16.6	Procurement Workshop .....	8
16.7	Malvern Splash Leisure Complex.....	9 - 10
16.8	Summary Recommendation – Malvern Splash .....	10
16.9	Upton Hill Community Centre .....	10 - 11
16.10	Malvern Vale Community Centre .....	11
16.11	Sport Martley Leisure Centre (Chantry School).....	11 - 12
16.12	Summary Recommendation – Sport Martley Leisure Centre .....	12
16.13	Sport Dyson Perrins Leisure Centre (Dyson Perrins C of E Academy) .....	12 - 13
16.14	Summary Recommendation – Sport Dyson Perrins Leisure Centre.....	13
16.15	Tenbury Swimming Pool.....	13 - 14
16.16	Summary Recommendation – Tenbury Swimming Pool.....	14
16.17	Potential lots and options for inclusion within the procurement.....	15
16.18	Summary.....	15
16.19	The outcomes required / output specification high level approach.....	15
16.20	Performance monitoring system.....	15 - 16
16.21	Procurement approach used to retender the management contract .....	16
16.22	Procurement options.....	17 - 19
16.23	Timetables for delivery and advisor fees .....	20
16.24	The approach to be taken in delivering facility improvements .....	20 - 21

## LIST OF TABLES

Table 102.	Current arrangements .....	4
Table 103.	Feedback from consultation relating to procurement strategy .....	6 - 7
Table 104.	Summary position of partners.....	8
Table 105.	Restricted procedure process.....	19
Table 106.	Procurement timetable / programme.....	21

## 16. MALVERN HILLS DISTRICT COUNCIL'S LEISURE PROCUREMENT STRATEGY

### 16.1 Introduction

Malvern Hills District Council currently operates a number of contracts with three main operators for a number of facilities within the district. Table 102 summarises the current arrangements which required an investment from the council in 2012/13 of £361,733.

**Table 102: Current arrangements**

Category	Description	Condition	Operator	Contract Expiry	Current annual net cost to MHDC*
Malvern Splash Leisure Complex	Wet and Dry Leisure Centre in Malvern	Average	SLM	Ends Mar 31 2015	£191,759**
Tenbury Swimming Pool	4 lane 25m swimming pool and small gym	Poor	SLM	Ends Mar 31 2015	£69,200
Sport Martley Leisure Centre	Dryside community use facility	Good	WLCA	Ends Mar 31 2015	£45,000
Sport Dyson Leisure Centre	Dryside community use facility	Good	WLCA	Ends Mar 31 2015	£35,782
Upton Hill Community Centre	Community Centre	Average	YMCA	Ends Mar 31 2015	£19,992
Malvern Vale Community Centre	Community Centre	Good	YMCA	Ends Mar 31 2015	£0
<b>Total</b>					<b>£361,733</b>

\*Cost to council includes capital expenditure and any management fees and associated costs excluding officer time based on 2012/13 figures provided by the council.

\*\* Includes a one-off £130,000 capital expenditure on the replacement of the air conditioning system.

### 16.2 The outcomes required / output specification high level approach

One of the key outcomes required in any future arrangement is to reduce the council's on-going financial investment into leisure facilities – e.g. reducing the £361,733 on an on-going basis. In practical terms it is unlikely that this level of support can be reduced to a nil cost to the council, given the council is the landlord in some instances such as with Malvern Splash. There are clearly some opportunities to reduce this in a measured and sustainable way to optimise the sustainability of facilities and services with identifiable needs and those which are valued by their communities.

Key to any successful procurement is the council's requirement; e.g. the outcomes they wish to commission linked to an output specification. Sport England has recently developed a Procurement Toolkit which the council can use as a guide and baseline template for the output specification. This will need to be adapted to meet the council's particular needs over and above what has been developed as current practice across the leisure sector. Feedback from

officers and members has highlighted the following additional considerations that will need to be built into the council's requirements:

- Increasing participation rates of adults and young people against nationally recognised benchmarks, through working with the Sports Partnership - Herefordshire and Worcestershire
- Being commission friendly to take advantage of commissioning opportunities linked to Lifestyles Services – e.g. Falls Prevention, Health Trainer Services, Adult Weight Management Services, Children and Young People Weight Management Services etc. Working closely with South Worcestershire Clinical Commissioning Group and Sports Partnership – Herefordshire and Worcestershire
- Close alignment with local schools, Sports Partnership – Herefordshire and Worcestershire, Health and Wellbeing Group and delivery of Health and Wellbeing Plan (2013-2016).

### **16.3 Development of a procurement strategy**

The council wishes to develop a procurement strategy to ensure the most cost effective and sustainable solution. In developing the strategy a number of areas have been explored which are summarised below:

- The scope of any procurement – what to include within the procurement
- Potential lots and options for inclusion within the procurement – how the procurement is designed
- The outcomes required / output specification high level approach – what the council wants to commission
- Performance monitoring system – how the council proposes to monitor contracts and its approach to partnership
- Procurement approach used to retender the management contract - what technical approach to use – e.g. competitive dialogue or restricted procedure
- The approach to be taken in delivering the re-provision of facilities - how facility improvements will be approached within the procurement process and contract
- Procurement Timetable / Programme – timescales and key milestones.

### **16.4 The scope of any procurement**

A key consideration for the procurement is which facilities to include and which to combine together into 'lots' or groupings of facilities with a synergy that will appeal to the operator market.

Given a number of the facilities within the current contract are not owned by the council, SLC sought to explore the views of owners of the assets in relation to their appetite and capability to take on operational responsibility for their facility. This relates specifically to the following facilities:

- Tenbury Swimming Pool – owned by Tenbury Swimming Pool Ltd
- Sport Martley – owned by Chantry School, Martley – an Academy School
- Sport Dyson Perrins – owned by Dyson Perrins C of E Academy, is a co-educational secondary school with academy status in Malvern
- Upton Hill Community Centre – owned by Worcestershire County Council and leased to MHDC.

To provide the council with options, it is important to explore which of these assets could be operated through a different mechanism other than through a management contract let by the council. The reason for the council deciding not to operate or support a facility directly will be influenced by the following considerations:

- The contribution of the asset to the Sport and Leisure Strategy
- The nature of the partnership and shared objectives
- The condition of the building and responsibilities over repairs, maintenance and future facility improvements
- The confidence and capability of the owner of the building to make their own operational arrangements either through direct delivery or sub contracting out the operation to a third party
- Affordability and sustainability of the operation.

Following focused consultation with representatives of the non-council owned facilities the following was explored:

- An update on the development of the procurement strategy for the council and context of the Sport and Leisure Strategy
- The appetite of the organisation to operate the facility themselves
- Key issues and opportunities for consideration in relation to operating the facility themselves
- Any concerns over future repairs and maintenance costs of facilities and how this could be funded
- The type of service offering the owner of the facility would be confident in delivering – e.g. full leisure operation, lettings plus or lettings only
- What support and assistance the owner of the asset would require in the event that they took the management on themselves from the council
- Any other issues relevant to the procurement – e.g. legal, political, financial, social considerations.

Feedback from this consultation was as follows in table 103:

**Table 103: Feedback from consultation relating to procurement strategy**

Facility	Feedback	SLC Comment
Malvern Splash Leisure Complex	Real appetite from existing and potential operators to bid for Malvern Splash	This will form a key element of any contract.
Tenbury Swimming Pool	SLM looking for longer term position from MHDC to support their planning.  Tenbury Swimming Pool Company still very dependent on MHDC and has no income of its own.	The findings of the needs analysis and FPM work will inform the council's approach as to its position on future support for Tenbury.  Need for a feasibility study to explore optimal facility mix capital and revenue costs.
Sport Martley Leisure Centre	Chantry School seeking external operator – very happy with arrangements at present.	Opportunity to work with school to ensure it includes sufficient facilities to support sustainability.

Facility	Feedback	SLC Comment
	<p>WLCA keen to continue arrangements. Other operators interested in the opportunity.</p> <p>School keen to explore a more sustainable solution but based on an external operator</p>	<p>The facility should require nil subsidy in medium term.</p>
Sport Dyson Perrins Leisure Centre	<p>Dyson Perrins School keen to operate the facility themselves without subsidy.</p> <p>WLCA keen to continue arrangements. Other operators interested in the opportunity.</p>	<p>Opportunity to cease agreement and support school in taking on the operation itself, thus removing the council's involvement.</p>
Upton Hill Community Centre	<p>YMCA keen to continue operating the site. Invest to save opportunity linked to utility costs and possible risk transfer to new operator post 2015</p>	<p>The council needs to explore costs required to improve Upton Hill Community Centre in 2013.</p> <p>Site would benefit from continuity.</p>
Malvern Vale Community Centre	<p>YMCA keen to continue operating the site linked to transfer to new operator post 2015</p>	<p>Site would benefit from continuity.</p> <p>Section 106 funding opportunities</p>

## 16.5 Summary Position of Partners

Table 104 shows the summary position of partners linked to potential scope of procurement featuring which facilities are included and which are not linked to alternative management arrangements.

**Table 104: Summary position of partners**

Operator	Facilities	Position
SLM	Tenbury Swimming Pool Malvern Splash Leisure Complex	Keen to secure the contract based on as large a portfolio possible to enable more flexibility and development opportunities.  Keen to understand council's longer term position on Tenbury Pool.
WCLA	Sport Dyson Perrins Leisure Centre Sport Martley Leisure Centre	Keen to continue partnerships and look to secure other facilities such as Malvern Splash. Not interested in the Community Centres.
YMCA	Upton Hill Community Centre Malvern Vale Community Centre	Keen to continue partnerships and look to secure other facilities such as Malvern Splash and the Community Use Facilities.
Chantry School	Sport Martley Leisure Centre	School will require an external partner but acknowledges the need to move towards a nil subsidy.
Dyson Perrins C of E Academy	Sport Dyson Perrins Leisure Centre	School wants to take on operation of facility.

## 16.6 Procurement Workshop

On 5 December SLC undertook a procurement workshop with council officers. The aim of the workshop was for SLC to play back their analysis, supplemented by facility performance information provided by council officers which are integrated into the report.

The key outputs of the workshop are summarised below on a site by site basis in relation to options that emerged from the facilitated session, linked to the approach to procurement. Key considerations that were applied to all sites were as follows:

- The condition of the building and investment profile for maintenance
- Future investment needs (e.g. facility improvements)
- The financial performance of the building
- Subsidy per visit
- Future supply and demand for facilities
- Length of existing management agreements / leases.



## 16.7 Malvern Splash Leisure Complex

From the recent condition survey undertaken, Malvern Splash looks to have at least another 10 years operational life remaining, with some potential for extending this in the future. The investment required to keep the building well maintained is identified at £576,000 over the next 10 years. Linked to this are opportunities to reduce utility costs and ultimately, the management fee.

There will also be the need to encourage feedback through the procurement period, proposals from the market as regards potential facility enhancements to improve throughput and revenue. The council has undertaken independent latent demand analysis linked to health and fitness (provision of more studio space) and possibly soft play to facilitate positive responses from the market. The findings are summarised as follows:

Based on a recent Needs Assessment it is unlikely that additional capacity is required within the Malvern Splash gym (stations or studio space), factoring in the planned housing developments across the area, and this is further supported by the longer-term demographic projections. The focus should be on qualitative improvements to increase membership closer to the 30 members per station (which is deemed to be possible if the centre can generate greater overall footfall to the site) and then reduce attrition rates through suitable programming of activity and studio space to broaden the appeal of the fitness facility to a wider resident demographic.

In terms of soft play there is a significant market opportunity to establish a central facility to appeal to residents under 8 years old both across Malvern Hills district and Worcester. To be commercially viable this will need to be of significant size (at 235m<sup>2</sup> total area) and have prominence within the overall on-site leisure offering. The capital expenditure for fit out is relatively low accounting for existing ancillary provision and the facility is projected to return a net profit margin in year one. However, the capital investment required to accommodate this facility will be the issue.

The council should consider opportunities linked to other facilities in the park that could provide additional group exercise capacity should this be identified as a potential growth area – e.g. the current Bowls Pavilion.

Malvern Splash in its current stage of operational life is still strategically important to the council given its location and scale. Its contribution to the leisure and cultural mix within Malvern and supporting outlying villages cannot be overstated.

Contract lengths were discussed at the workshop and the advice from SLC is to focus on a 10 year contract with a potential 5 year extension. It is more than likely that the 5 year extension will prove to be a costly period for the building as it will require significantly greater levels of investment and may be struggling to maintain usage levels due to competitions / changes in demand etc. Operators would require a longer period of time to support any return on investment.

To optimise reducing the management fee levels the council should consider including implementing renewable energy incentives and some level of refurbishment through the first year or in advance of the new contract in partnership with its operator. This will optimise the financial performance of the building. SLC understands that an audit to explore potential energy saving investments is underway.

To assist with negotiation and selection of operator, the council will need to develop its own internal comparator to understand the likely financial performance of Malvern Splash and other facilities included in the procurement.

It is recommended that the council have the opportunity to exit from Malvern Splash after 10 years through either a redevelopment of the site, or sale of the land. By 2025 it will be at the end of its operational life.

As with all other councils, it will be impossible for the council to commit to re-provide a major leisure facility on the same scale and this 10 year period will enable the council to develop its strategic position on how to manage the potential loss of Malvern Splash post 2025 or a key decision to maintain what will be by 2025 an expensive to maintain and tired building.

Forthcoming new pool developments at Worcester and Tewkesbury could have an impact on the demand for swimming and leisure water in the future.

## **16.8 Summary Recommendation – Malvern Splash Leisure Complex**

Audit energy saving investment opportunities to feed into procurement process.

Develop a prioritised investment programme to bring the facility up to first rate condition at the beginning of the new contract to optimise pay back on the investment to reduce the management fee.

Explore opportunities to include other assets within Park to include within Malvern Splash contract – e.g. Bowls Pavilion or Council House.

Seek to procure a 10 year contract with an option for 5 more years.

## **16.9 Upton Hill Community Centre**

Upton Hill Community Centre is costing more to operate than it should due to excessive utility costs. Through a focused investment and on-going repairs and maintenance, this issue can be addressed to enable the operator to run the facility more cost effectively resulting in reduced cost or nil cost.

On the assumption that the occupancy levels and demand for the centre will remain high, the council may wish to want to continue to support community provision at the Hill Centre.

Links with the sustainable Malvern Vale Community Centre are key in packaging these two facilities together to provide some economies of scale and service continuity. This could also open up the potential for external grant funding opportunities and potential upfront investment from the operator.

The council should continue to identify investment priorities for the Upton Hill Community Centre linked to a programme of repair and maintenance which would occur in the first year of operation under a new lease which it is expected to be circa 10 years with an option to extend by 5 years. If there was sufficient investment in the building fabric to extend the life of the building for another 15 years, a lease of 25 years+ would potentially enable greater levels of external funding to be sought. SLC queries if the market would see this as an attractive proposition and recommend this is tested in the soft market testing exercise.

It is recommended therefore that the council should prior to the procurement exercise seek to secure a more sustainable long term future for Upton Hill Community Centre through direct negotiation with YMCA in accordance with Part B regulations.

## **16.10 Malvern Vale Community Centre**

Malvern Vale Community Centre, on the assumption that occupancy and utilisations continue to develop will remain a highly sustainable facility, particularly given its £420k repairs and maintenance allocation from section 106 funding. This presents an opportunity to further enhance the facility through extensions (e.g. nursery/crèche) linked to planning gain contributions from the development. A decision on whether Worcestershire County Council will take up its option for a primary school to be built on the land adjacent the community centre is expected by May 2014. There is also geographical synergy with Sport Dyson Perrins which could attract a bid from the incumbent YMCA to take on the dual use centres as well.

The council should seek to use the stronger financial sustainability of Malvern Vale Community Centre and combine this with the more resource intensive Upton Hill Community Centre. As already mentioned these two facilities together would provide some economies of scale and service continuity.

The council should seek to make the lease periods of both Malvern Vale and Hill Community Centre co-terminus at circa 10 years with an option to extend by 5 years. A lease of 25 years+ would potentially enable greater levels of external funding to be sought. As with Upton Hill Community Centre, SLC queries if the market would see this as an attractive proposition, despite the lifecycle costs being covered and recommend this is tested in the soft market testing exercise.

It is recommended therefore that the council should prior to the procurement exercise seek to secure a more sustainable long term future for both Community Centres through direct negotiation with YMCA in accordance with Part B regulations. As such and if negotiations are positive, the Community Centres should sit outside of the procurement exercise.

## **16.11 Sport Martley Leisure Centre (Chantry School)**

Sport Martley Leisure Centre, as with Sport Dyson Perrins, is a facility that as part of the wider school campus that should be able to operate with zero levels of subsidy despite its rural location. This view needs to be confirmed by the leisure market through a procurement exercise. SLC believe the current levels of funding are unjustifiable post 2015. The council should not need to subsidise a dynamic and responsive programme, good management and covering of additional utility / repair and maintenance costs.

Consultation with Chantry School has shown that the school very much likes to have an operator in place and as such, it is recommended that subject to agreement with the school, the facility is included within the procurement lots.

It is expected that operators as with Sport Dyson Perrins will be encouraged to sweat the asset hard.

If bids coming back from the market show that there is a requirement for some element of subsidy, SLC is confident the levels of that subsidy will be considerably less than is currently being provided by the council.

One of the Academy's strategic priorities is for the development of a full size STP. This would further enhance the proposition and attractiveness of the facility to the market. The council should continue to be proactive in supporting this development.

The joint use agreement with Chantry School ends in January 2019. Given this will only then provide less than 4 years before the agreement ends, it is recommended that the management

agreements of both community facilities become co-terminus – e.g. end at the same time linked to a sensible contract period for an operator – 5 years plus 5 year extension. SLC suggests an end date of March 31, 2020 with a 5 year option for extension.

It is recommended that the council renegotiates the utilities allocation and repairs and maintenance allocation with the Academy prior to the procurement exercise to link to utilisation and occupancy from 1 April 2015. Costs being borne by the operator who then has a VAT liability is not the most cost effective way to address this.

SLC recommends this issue is addressed at the earliest opportunity with the Academy. There are a number of commonly used models to identify allocation of cost in community use and these should be explored with the Academy.

### **16.12 Summary Recommendation – Sport Martley Leisure Centre**

It is recommended that subject to agreement with the Academy, the facility is included within the procurement linked jointly to Sport Dyson Perrins.

It is recommended that the management agreements of both community facilities become co-terminus with an end date of March 31, 2020.

It is recommended that the council renegotiates the utilities allocation and repairs and maintenance allocation with the Academy prior to the procurement exercise to link to utilisation and occupancy from 1 April 2015.

The council should continue to support the Academy in its bid for a new STP.

### **16.13 Sport Dyson Perrins Leisure Centre (Dyson Perrins C of E Academy)**

Sport Dyson Perrins is a facility as part of the wider school campus (particularly including the new STP) that should be able to operate with zero levels of subsidy. This view needs to be confirmed by the leisure market through a procurement exercise. SLC are convinced that the current levels of funding are unjustifiable post 2015 and the council needs to seek to move away from financial support for community use – because the money should not be needed in order to ensure a dynamic and responsive programme, good management and covering of additional utility / repair and maintenance costs.

Consultation with Dyson Perrins C of E Academy has shown that the school would like to have an operator in place and as such, it is recommended that subject to agreement with the Academy, the facility is included within the procurement lots.

It is expected that operators will be encouraged to demonstrate how they will programme the facility to optimise performance and sweat the asset hard. To date this has not at all been the case.

If bids come back from the market show that there is a requirement for some element of subsidy, SLC is confident the levels of that subsidy will be considerably less than is currently being provided by the council.

In addition, it is recommended that the council renegotiates the utilities allocation and repairs and maintenance allocation with the Academy prior to the procurement exercise to link to utilisation and occupancy from 1 April 2015. 60% of all costs being borne by the council (£42k per annum) are not equitable. There are a number of commonly used models to identify allocation of cost in community use and these should be explored with the Academy.

The joint use agreement currently runs until January 2027.

The council should engage with the Academy to revisit some of the key elements of the existing management agreement to explore bringing the termination date forward to coincide with for example, Sport Martley. It is recommended that the management agreements of both community facilities become co-terminus – e.g. end at the same time linked to a sensible contract period for an operator – 5 years plus 5 year extension. SLC suggests an end date of March 31, 2020 with a 5 year option for extension taking account of Council elections.

#### **16.14 Summary Recommendation – Sport Dyson Perrins Leisure Centre**

It is recommended that subject to agreement with the Academy, the facility is included within the procurement linked jointly to Sport Martley.

SLC is confident the levels of that subsidy will be considerably less than is currently being provided by the council.

It is recommended that the council renegotiates the utilities allocation and repairs and maintenance allocation with the Academy prior to the procurement exercise to link to utilisation and occupancy from 1 April 2015.

It is recommended that the management agreements of both community facilities become co-terminus – e.g. end at the same time linked to a sensible contract period for an operator – 5 years plus 5 year extension. SLC suggests an end date of March 31, 2020 with a 5 year option for extension taking account of council elections.

#### **16.15 Tenbury Swimming Pool**

From the recent condition survey undertaken, Tenbury Swimming Pool will need significant capital investment of £457,550 just to maintain its current performance and operation over the next 10 years.

The Tenbury Swimming Pool Ltd and SLM have not developed any proposals to enhance the facility to enable it to be more sustainable.

SLC's recent needs analysis concluded that the Pool was unsustainable and was not of strategic importance in terms of meeting the swimming needs of the vast majority of Malvern Hills district residents. In terms of value for money, the Pool historically has been using a disproportionate amount of subsidy per visit compared to any other leisure facility in the district supported by the council.

Inclusion of Tenbury Swimming Pool in any procurement in its current state of repair will increase the future management fee significantly. This would commit the council into subsidising swims for 63% of the users who do not live in Malvern Hills district.

SLC cannot see any evidence to support the council's continued support post 2015 for Tenbury Swimming Pool, given the financial challenges being faced and need to prioritise investment into leisure services that have the maximum impact. Ultimately, this will be a political decision.

SLC recommends that from 1 April 2015 it ceases to provide financial support to the Tenbury Swimming Pool Ltd and works with the Company and SLM on a managed exit strategy.

Looking ahead in the longer term, the community leisure needs of Tenbury need to be revisited to explore what community facilities can be developed sustainably to meet the needs of residents and complement existing provision. SLC sees this is dry side flexible community and

leisure space, ideally linked to Tenbury High School or linked to facilities that serve existing playing pitches at Palmers Meadow which we understand is a Tenbury Town Council priority.

The role of Tenbury residents and the Town Council and Tenbury High School will be pivotal in shaping this agenda moving forwards.

### **16.16 Summary Recommendation – Tenbury Swimming Pool**

Develop an exit strategy and close Tenbury Swimming Pool on or after 1 April 2015. Support existing users in finding alternative pools to visit / transfer children's swimming lessons to other locations by working proactively with partners.

Support the town council and Tenbury Swimming Pool Company Ltd in further refining its Community Plan to identify the right mix of sustainable leisure provision in the future.

## **16.17 Potential lots and options for inclusion within the procurement**

The following approach to procurement lots emerged from the workshop.

### **Community Centres**

Seek to develop long term leases (10-25 years) with the community centre existing incumbent – YMCA. If this can be achieved and demonstrate best value, then omit the community centres from any future procurement. If in the event agreements cannot be reached, then community centres should be included as a joint lot (Upton and Malvern Vale linked to a long lease and upfront investment in some elements of the building – e.g. heating system).

### **Community Use Schools**

Subject to further consultation with each individual school, seek to combine both community use schools together in a lot. This is to seek to achieve economies of scale and a more holistic approach to provision.

### **Malvern Splash Leisure Complex**

Malvern Splash should be in a single lot as the primary leisure facility for Malvern Hills district. This is due to the technical requirements of operating a wet and dry facility.

### **Tenbury Swimming Pool**

Tenbury Swimming Pool subject to a council decision is unlikely to be included within the procurement given the outcome of the recent needs analysis. This is due to its lack of sustainability, lack of a sustainable business plan and low level of contribution to the council's overall strategic priorities.

## **16.18 Summary**

Subject to the outcomes from dialogue with YMCA, it is likely that the two lots will be presented to market, giving operators an opportunity to bid for one or both lots.

## **16.19 The outcomes required / output specification high level approach**

In identifying the high level approach to outcomes, the council will need to give some consideration to the type of partnership or relationship it wants with its operator. In developing the output / outcome specification, the council will be able to specify its requirements for each lot.

In the case of the community use schools, this will highlight the requirement for a more dynamic approach to management of the sites and their programming.

For Malvern Splash Leisure Complex, this is likely to include some focused redevelopment / refurbishment in year 1 of the contract.

## **16.20 Performance monitoring system**

The council will need to consider its approach to performance monitoring of each contract post 2015. This may be in light of reduced client monitoring budgets and the needs for greater levels of self-reporting from operators linked to a dashboard of KPIs. Building in the requirement for Quest™ (The UK Quality Scheme for Sport and Leisure) accreditation may be another consideration.



In terms of the user data collated and analysed, the council may wish to require more detailed user data to enable it to monitor which members of the community are accessing services. This will also support evidencing contributions of the contract towards wider social and health outcomes.

## **16.21 Procurement approach used to retender the management contract**

### **EU Procurement Directive**

The new EU procurement directive, which is likely to received EU approval in early 2014, and which the Cabinet Office is likely to translate into UK law during 2014, will impact on any future procurement. One of the key impacts that the new directive will have on the leisure market is the removal of the distinction between Part A and Part B services. Currently leisure services fall within Part B and are subject to a lighter touch procurement regime.

The procurement obligations with regard to Part B services are limited, however case law has eroded this distinction creating a degree of ambiguity for contracting authorities when undertaking leisure procurements. Notwithstanding this, the removal of the distinction between Part A and Part B services and the replacement of this with a new light touch regime that does not include the full extent of leisure services will have a significant impact on the sector.

It will mean that the council will need to undertake a full OJEU procurement exercise once the new regulations have been implemented in the UK.

Other key changes arising from the directives include a reduction in timeframes (principally at the beginning of the procurement process) and potentially a move away from the competitive dialogue process, although there is limited clarity on the new competitive negotiated procedure at present.

The changes in the EU procurement regime will therefore have a significant impact on contracting authorities looking at undertaking a market testing exercise for their leisure services going forward. With the removal of leisure from the light touch regime, contracting authorities will need to think carefully about preparing for future procurement exercises and there will be greater opportunities for leisure providers to bid for such work - potentially increasing competition in the sector and providing a framework within which improved management of procurement processes will be required.

Alongside the changes in procurement regulations, the Equalities Act is a key consideration and it is important that local authorities consult appropriately and give due consideration to the impact of any project, in advance of making significant changes in service provision in order to avoid challenge and judicial review.



## 16.22 Procurement options

### Recommended procurement approach

The different procurement routes available to the council will include formal EU compliant procedures and advertisement in the Official Journal of the European Union (OJEU).

In advance of any changes arising, the current EU procedures are set out in the Public Contracts Regulations 2006, as amended (the Regulations). It is important to note that even where full OJEU procedures are not required for public contracts, the EC Treaty principles of transparency, equality of treatment and fairness will apply and the procuring body must also consider whether there is likely to be cross-border interest in a public contract opportunity. The council will also need to comply with its own internal contracting procedures.

The value of the contract opportunity is likely to be above the current EU threshold of £173,934 for local authority services contracts. If the council were simply letting a service concession such contracts currently fall outside of the scope of the Regulations. However, to comply with EC Treaty principles the contract opportunity should be appropriately advertised.

The council has a number of potential routes for a contract of this nature. Each has its own procedures and timescales. The council will need to consider the appropriate route based on the level of complexity of the contract terms, whether it needs to be able to negotiate any key terms with suppliers, the need for flexibility around investment, the number of likely bidders and the resources available to it to manage the procurement.

#### Negotiated procedure

The negotiated procedure can be used where a procuring body wishes to negotiate the terms of the contract with one or more bidders. However, the negotiated procedure should only be used in exceptional circumstances and similar to competitive dialogue is only suitable for contracts where the requirements cannot be specified precisely or where the nature of the services and the risks attached do not permit overall pricing.

#### Open procedure

The open procedure is suitable where the contract is straight forward with limited requirement for specific skills / technical capacity and where there are a limited number of potential suppliers. It allows for a combined pre-qualification and tender assessment and can be a quicker procurement route than the restricted procedure. The council would send its invitation to tender including its contract documents to all respondents expressing an interest so if there is likely to be a high number of bidders this route may be inappropriate. Tenders can be clarified following receipt by the council but changes to the tender and any negotiation with the bidder are not allowed.

#### Restricted procedure

Interested parties can submit an expression of interest (Pre-qualification questionnaire) in response to the OJEU contract notice. The council can then carry out a shortlisting exercise using a pre-qualification questionnaire and only those meeting the council's selection criteria will be invited to tender (criteria include economic, financial and technical aspects).

Negotiation with bidders is not permitted; therefore, this process should only be used where the council is able to specify its requirements, particularly as the procedure requires that the contract documents are issued with the invitation to tender. In relation to the leisure

management contract, this would mean being able to specify areas such as scope of services, risk sharing, payment terms, monitoring requirements etc.

In line with recent government guidance on procurement, the restricted procedure can be combined with initial soft market testing, such that key issues are addressed via the soft market testing, which then informs the detail of the procurement process - thus limiting the need for variant solutions or negotiation of key points. Table 105 highlights the key processes.

**Table 105: Restricted procedure process**

<b>Review &amp; Instructions</b>
Briefing meeting / workshop
Review of existing documentation
Analysis of scope / key commercial positions
Soft Market Test - Meetings with Bidders
Monthly project team meetings (throughout)
<b>Preparation of Documentation</b>
• Prepare Information Memorandum (IM)
• Prepare PQQ and PQQ evaluation criteria
• Prepare OJEU notice (with legal team)
• Service output specifications
• Prepare performance monitoring system
• Prepare ITT Evaluation Criteria
• Prepare Invitation to Tender (ITT)
• Prepare contract (legal team)
<b>Pre-Qualification</b>
<b>Publish voluntary OJEU notice</b>
OJEU period
Bidders' open day
PQQ submission date
PQQ evaluation and reporting
<b>Agree Shortlist</b>
Challenge period for de-selected bidders
<b>Stage 1 - Invitation to Tender</b>
Issue ITT (inc contract docs)
Clarification Period
Clarification meetings
Closing date for ITT submissions
Evaluate ITT submissions
Tenderer interviews
<b>Officers identify Preferred Contractor</b>
Council reporting to Cabinet etc
Clarification and confirmation of commitments
Contract Award, Alcatel Period & Contract Signature
Bidder start-up/handover period
<b>Contract start date</b>

### **16.23 Timetables for delivery and advisor fees**

Table 106 sets out the draft timetables and actions required associated with procuring an operator under a Restricted Procedure as this is considered to be the most relevant for the council (assuming all key issues can be appropriately scoped in advance and the council is not wishing to deviate too far from standard industry positions).

Of note are the number of weeks required to deliver a comprehensive procurement, meaning that the council will need to commence pre-procurement work circa one year ahead of its intended contract start date (if following a restricted procurement procedure – slightly longer if competitive dialogue).

Advisor fees are estimated to be circa £50k - £80k and will be dependent upon whether the council uses its own legal / in house leisure services to procure / project manage the contract and leases for the new arrangements or it uses external advisors. Where the Council uses its own legal /in house leisure team with focused support from specialist advisors, fees can be significantly reduced on the assumption that skilled and experienced staff are available.

The final scope of what is included within the procurement process will inform the final decision on the type of procurement process. If the contract is a relatively straight forward management contract with minimal upfront capital investment then the restricted procurement procedure would be most appropriate as it will take less time and incur less cost for the council and bidders.

### **16.24 The approach to be taken in delivering facility improvements**

Any future (ideally costed) capital works to Malvern Splash would be specified within the contract as a required upfront investment. This may link to energy saving initiatives.

If facility developments are proposed to extend or enhance the facilities, provision of clear enabling information (e.g. supply and demand analysis linked to latent demand analysis, site surveys, building condition surveys etc) will be important to reduce bidder costs and encourage market interest. Operators would be encouraged to propose their costed solutions to increase capacity with a view to reducing the overall management fee.

**Table 106: Procurement timetable / programme**

Leisure Operator - Restricted Procurement Process																																																			
Task Name/Week	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42									
<b>Review &amp; Instructions</b>																																																			
Briefing meeting / workshop	█																																																		
Review of existing documentation	█	█																																																	
Analysis of scope / key commercial positions	█	█	█																																																
Soft Market Test - Meetings with Bidders	█	█	█	█																																															
Monthly project team meetings (throughout)	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█	█				
<b>Preparation of Documentation</b>																																																			
• Prepare Information Memorandum (IM)		█	█	█																																															
• Prepare PQQ and PQQ evaluation criteria		█	█	█	█																																														
• Prepare OJEU notice (with legal team)			█	█	█	█																																													
• Service output specifications				█	█	█	█	█	█	█																																									
• Prepare performance monitoring system					█	█	█	█	█	█	█																																								
• Prepare ITT Evaluation Criteria						█	█	█	█	█	█																																								
• Prepare Invitation to Tender (ITT)							█	█	█	█	█	█																																							
• Prepare contract (legal team)																																																			
<b>Pre-Qualification</b>																																																			
<b>Publish voluntary OJEU notice</b>																																																			
OJEU period																																																			
Bidders' open day																																																			
PQQ submission date																																																			
PQQ evaluation and reporting																																																			
<b>Agree Shortlist</b>																																																			
Challenge period for de-selected bidders																																																			
<b>Stage 1 - Invitation to Tender</b>																																																			
Issue ITT (inc contract docs)																																																			
Clarification Period																																																			
Clarification meetings																																																			
Closing date for ITT submissions																																																			
Evaluate ITT submissions																																																			
Tenderer interviews																																																			
<b>Officers identify Preferred Contractor</b>																																																			
Council reporting to Cabinet etc																																																			
Clarification and confirmation of commitments																																																			
Contract Award, Alcatel Period & Contract Signature																																																			
Bidder start-up/handover period																																																			
<b>Contract start date</b>																																																			
<b>TOTALS</b>																																																			

Page 1

*Active Communities Malvern Hills District:  
A Vision for the Future*

**Malvern Hills District  
Sport and Leisure Strategy 2014 - 2024**

**Community Services**

Malvern Hills District Council  
The Council House  
Avenue Road  
Malvern  
Worcestershire WR14 3AF

T 01684 862151

E [communityservices@malvern hills.gov.uk](mailto:communityservices@malvern hills.gov.uk)

[www.malvern hills.gov.uk/sport](http://www.malvern hills.gov.uk/sport)

