

## **CABINET**

**17 JANUARY 2012**

### **THE STIRLING CENTRE**

Portfolio Holders: Councillor Howard Doe, Housing and Community Services  
Councillor Alan Jarrett, Deputy Leader and Finance

Report from: Robin Cooper, Director Regeneration, Community and Culture

Author: Richard Hicks, Assistant Director Customer First, Leisure,  
Culture, Democracy and Governance

#### **Summary**

An opportunity has arisen to secure significant external investment into the Stirling Centre, one of Medway's seven leisure centres.

This opportunity would entail greater community use of the facility, extending its current opening hours, with guarantees around current pricing levels for customers, and would be secured through the granting of a long term lease to an external operator, following the opportunity being offered to the open market.

#### **1. Budget and Policy Framework**

1.1 As the value of the proposed transaction is over £100,000, but below £1,000,000, the leasehold disposal is a matter for Cabinet.

#### **2. Background**

2.1 The Stirling Centre is located on Maidstone Road in Rochester, next to Rochester airport. It has an indoor 5-Court main hall and there are floodlit outdoor facilities including three outdoor tennis courts, two 5-a-side courts and a netball court.

2.2 The Council has been approached by a third party to take on the management of the Stirling Centre under a long term lease. The arrangement would involve a significant level of investment into the site by the third party provider, with guarantees over enhancing community use and widening the hours the facility is open to the public, and over the prices charged to the public.

2.3 In the current economic climate, this is clearly a very attractive proposition, as the Council incurs net costs in running the facility, and the Council's capital programme is currently highly constrained. The opportunity to realise significant investment into the facility, whilst at the same time providing

guarantees over enhanced community use and the prices charged, and no longer incurring the net running costs for the leisure centre, is one that should be grasped.

- 2.4 To ensure that this is indeed the optimal position the Council can secure, the opportunity has been offered to the open market, and all responses will be fully evaluated to ensure the best possible position for Medway and Leisure customers. Appendix 1 sets out the detail of the opportunity.
- 2.5 The Stirling Centre generates £203,000 income per year (direct costs are budgeted at £279,000, giving a net cost to the authority of £76,000).
- 2.6 The Stirling Centre has been operating on reduced opening hours for over three years, and is in need of considerable capital investment to enhance the facility. The Council's current financial position does not allow either of these issues to be addressed, but this opportunity will present a way forward on both aspects.
- 2.7 As the Council does not have the resources to undertake the required investment or extend the opening hours it is proposed that offers are formally agreed from interested third parties to refurbish the Stirling Centre for their own and the public's sporting and complimentary uses, whilst maintaining the existing community uses currently provided at the facility. A minimum capital investment of £500,000 will be sought from interested parties.
- 2.8 It is proposed that a development agreement is granted to the successful applicant that will require the agreed investment into the facility, followed by the grant of a long leasehold interest. Existing levels of community use will be enhanced and the facility will be proactively marketed to the whole of Medway.

### **3. Options**

- 3.1 Decline the third party approach and continue to provide direct but limited leisure services to the public from the centre.

This is not the preferred option as it will not secure investment into the facility or result in longer opening hours, and the Council will continue to be responsible for the net costs of providing the facility.

- 3.2 To enter into arrangements with the interested party without marketing the opportunity.

This is not considered a viable option as the Council would not be able to demonstrate that it has obtained the best commercial deal, without submitting the opportunity to an open market process.

- 3.3 To market the opportunity to take a long lease of the facility for sporting and leisure purposes, including an obligation to invest in enhancing the facility and enhancing community access

This is the preferred option for the reasons set out below.

- 3.4 To close the centre, declare the property surplus and sell it on the open market.

While this might achieve a better financial return, it would not support the Council's aims and ambitions for active participation in sport and leisure. The Council's sustainable community strategy sets out that two of its six ambitions are that (i) Medway residents enjoy good health and wellbeing (ii) Medway is recognised as a destination for culture, heritage, sport and tourism. In order to achieve these aims the strategy sets out that the Council will seek to improve access to and uptake of active recreation across all age groups and that it will seek to improve the range and quality of cultural, sporting and heritage facilities.

#### **4. Advice and analysis**

- 4.1 It is anticipated that a development agreement followed by a long lease to the successful bidder will result in significant investment into the site, allowing greater community access at safeguarded prices to an enhanced facility.
- 4.2 Within the development agreement there will be clauses confirming the level of investment, scope of works and timescale for completion. Upon satisfactory completion of the agreed works, a long lease will be granted that will provide guarantees over access for community use and increased opening hours.
- 4.3 Should an agreement be reached, the current staff would transfer under Transfer of Undertakings (Protection of Employment) Regulations 2006
- 4.4 Within any agreement it is stipulated that the present fees and charges would be protected and in future years the agreement of the Council would be required to alter any of these charges above the Council's fees and charges for similar facilities and services. Existing community use would be safeguarded, and wider opening times would be offered.
- 4.5 Any agreement would pass full responsibility for insurance and maintaining the building and surrounding areas to the lessee.
- 4.6 In considering granting a long lease, the Council would need to be satisfied that any lease terms represent best consideration, or would have to obtain the consent of the Secretary of State (either an express consent or a general consent) to a disposal at an undervalue. There is a general consent to dispose of property at an undervalue of up to £2 million where the disposal is likely to contribute to the promotion or improvement of the area's social, economic or environmental wellbeing. The proposal to follow an open market process is to ensure that the Council gets the best deal available, but it is likely that, as the Council is restricting the property's value by imposing strict conditions on its use, it may be necessary to use its "well being" powers as there may be a reduction in the open market value to reflect the restriction on use.
- 4.7 In order to ensure the best possible terms are obtained the opportunity will be marketed upon the principal terms and conditions as contained in Appendix 1.

- 4.8 A Diversity Impact Assessment screening form has been completed and is attached as Appendix 2. This shows that a full Diversity Impact Assessment is not necessary.

## 5 Risk Management

Risk	Description	Action to avoid or mitigate risk
The Lease to a third party is not agreed.	Negotiations cannot be concluded, the Council continues to bear the net costs of running the Stirling Centre and is unable to provide investment into the facility.	Market the property on the basis of the development agreement to invest and enhance the facility, followed by long lease on full repairing/insuring basis.
Community access is not safeguarded.	Current levels of access and prices are not safeguarded in the lease process.	The Lease will contain covenants to enhance community access and to a pricing structure that matches the Council's for existing customers.

## 6. Consultation

- 6.1 The offer has been placed on the open market in The Estates Gazette and Kent on Sunday.
- 6.2 Informal discussions on the proposals have been held with the staff at the Stirling Centre.

## 7. Financial and legal implications

- 7.1 The Stirling Centre is budgeted to cost the Council £76,000 for 2011/12.
- 7.2 As the lease will include those parts of the Centre car park currently leased to a third party there would be a loss of revenue income amounting to £28,105 per annum until the expiry of the current leases in October 2013. This income is included in the net cost figures as set out in paragraph 7.1.
- 7.3 There are 5 contracted members of staff currently employed at the Stirling Centre and these are all part time. As the Council will be requiring the lessee to use the premises for similar purposes, it is likely that the Transfer of Undertakings (Protection of Employment) Regulations 2006 would apply and the existing staff would transfer to the lessee. However, it is not possible to confirm that until after the bids have been assessed. Nevertheless, it is proposed that the Council makes it a requirement that the staff transfer to the successful bidder on their existing terms and conditions in accordance with the Transfer of Undertakings (Protection of Employment) Regulations 2006, whether or not TUPE strictly applies.
- 7.4 In determining whether to use the power to dispose at an undervalue, once a transaction has been negotiated, the Council needs to undertake a valuation

of the land so that it is aware of the extent of the undervalue that is being authorised. There is also a requirement under s123(2A) to advertise the disposal of open space in the local press and to consider any representations received, as part of the area to be leased falls within the definition of open space in the 1972 Act.

- 7.5 If the disposal is determined to be at an under value, the Council must be satisfied that there are no state aid issues (or if there are, that they are below the de minimis level of 200,000 Euros for a period of three years).

## **8. Recommendations**

- 8.1 That Cabinet agrees to grant a development agreement, followed by long leasehold interest of the Stirling Centre, following external marketing, and to grant delegated authority to the Chief Finance Officer in consultation with the Portfolio Holder for Finance and the Portfolio Holder for Housing and Community Services to:

8.1.1 Consider any objections made pursuant to the advertisement under section 123(2A) of the Local Government Act 1972 and to determine, in the light of those objections and all other relevant matters, whether to proceed with the development agreement and lease and if so;

8.1.2 To enter into the necessary legal agreements with the successful bidder, if necessary using its well being powers under circular 06/03 Local Government Act 1972 general disposal consent (England) 2003, to complete the development agreement and lease upon the best terms reasonably obtainable.

## **9. Suggested reasons for decision**

- 9.1 To secure significant third-party investment into the facility, whilst continuing and enhancing community access with price guarantees.
- 9.2 The proposal will also achieve budget savings and minimise the Council's future liability for ongoing maintenance costs.

### **Lead officer contact**

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**Background Papers:** None



## **Leasehold Disposal Process**

### **The Opportunity**

Through a short marketing process, proposals have been sought from interested parties to refurbish the Stirling Centre for their own and/or the public's sporting and complimentary uses, whilst maintaining the existing community uses currently provided from the facility. A closing date for proposals has been stated in the particulars.

Under the arrangement the successful party will enter into a development agreement (DA) with the Council. This will give the party possession of the premises to enable the agreed schedule of works to be completed within a maximum of for example 18 months of completion of the DA. Upon satisfactory completion of the works the form of lease attached to the DA will be granted.

The DA (where practical) and the lease will require the premises to be open for the use of the public and any current hirers i.e. club bookings (subject to temporary closures of part, if necessary, to enable the works to be carried out). To ensure the community uses are protected a community use agreement will also be completed simultaneously with the DA and continue during the lease itself.

On completion of the DA, TUPE will apply to current staff and all the associated costs are to be the responsibility of the new provider.

### **Lease terms**

1. **Parties:** Medway Council and *another*
2. **Term:** 99-years from date of completion
3. **Demise:** As per attached plan edged black
4. **User:** Sports Centre with community use
5. **Repairs:** Tenant to keep the premises in good and tenantable repair, both internally and externally, throughout the term.
6. **Insurance:** Tenant to insure in joint names with Council
7. **Rent:** To seek offers and subject to review every 5 years.
8. **Rent Review:** x % of average gross turnover for the preceding 3-years prior to review. Upward or downward, but not less than 75% of the highest previously passing rent.
9. **Alienation:** Assignment of whole subject to prior consent of landlord (which will include a requirement for the new tenant to enter into a community use agreement). Absolute prohibition against sub-letting the whole of the demise. Sub-letting of part for contracted out terms of up to 5-years will be permitted, subject to the landlords prior consent, provided they do not compromise the community uses.
10. **Outgoings:** Tenant responsible for all outgoing.

11. **Keep Open:** Tenant to keep premises open for normal hours of use associated with use as sports centre.
12. **Community Use Agreement:** Tenant to agree a community use agreement with Council to allow access by public, schools and local sports clubs and to agree level of fees for use of the facility by the public.
13. **Alterations:** Subject to prior consent of landlord, not to be unreasonably withheld.
14. **L&T Act:** Lease to be excluded from security of tenure provisions of the Landlord & Tenant Act 1954.
15. **TUPE:** Tenant upon completion of the DA (and then lease) to be responsible for transfer of current Council employees under TUPE regulations.
16. **Costs:** Tenant to bear Council's surveyor and legal costs.

Part of the demise is currently L3 open space and any agreement/lease would require disposal of open space process by way of notices and any due consultation if any objections arise (likely to be delegated to Council officers).

#### **Minimum information to be included in any bid**

Offers are to be made in writing only and sent in a sealed envelope to the name and address on the title page of the particulars. The envelope should be clearly marked **Ref TW/12/1/2/DA. Closing date for submission of bids: noon Friday 3<sup>rd</sup> February 2012**

Offers should include:

- The full name and address of the bidder, details of their track record and proposed funding.
- Detailed description of their proposal.
- Proposed refurbishment works and their value.
- Length of lease (up to 99-years) required.
- Rental offer.
- Percentage of turnover offer to be applied to the rent review calculation.
- Any proposed conditions.

**No price guide will be available.**

Medway Council will not undertake to accept the highest or any offer and will not be responsible for any costs (abortive or otherwise) incurred by applicants.

**Medway Council  
Asset and Property Services  
January 2012**





**The Stirling Centre**  
**Maidstone Road, Rochester**

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## Diversity Impact Assessment: Screening Form

<b>Directorate</b>  Regeneration, Community and Culture	<b>Name of Function or Policy or Major Service Change</b>  The Stirling Centre – opportunity to enhance service provision through external investment		
Officer responsible for assessment  Gary Ingram/Paul Boyd	Date of assessment  9 January	New or existing?  New	
<b>Defining what is being assessed: The Stirling Centre</b>			
<b>1. Briefly describe the purpose and objectives</b>	<p>An opportunity has arisen to secure significant external investment into the Stirling Centre, one of Medway's seven leisure centres.</p> <p>This opportunity would entail greater community use of the facility, extending its current opening hours, with guarantees around current pricing levels for customers, and would be secured through the granting of a long term lease to an external operator, following the opportunity being offered to the open market.</p>		
<b>2. Who is intended to benefit, and in what way?</b>	<p>Residents of Medway, and beyond. Increased opportunity to participate in sport and leisure activities at the Stirling Centre</p> <p>Staff of the Stirling Centre – potential increased opportunities</p> <p>Medway Council – improved services for residents and visitors.</p>		
<b>3. What outcomes are wanted?</b>	<p>To attract as many users as possible to the Stirling Centre by securing significant external investment.</p> <p>The Stirling Centre is currently used by a variety of schools, a cardiac rehabilitation group, indoor football leagues, clubs hiring space for badminton and other activities.</p> <p>The Stirling Centre is also used by the general public using the sports courts and fitness gym as well as attending the Stirling Tennis Club where coaching is available.</p>		

	An audit of the existing usage will be carried out prior to any agreement commencing as a benchmark against which future usage levels can be compared to monitor for any adverse or disproportionate unfair impact.	
<b>4. What factors/forces could contribute/detract from the outcomes?</b>	<p>Contribute</p> <p>Development of high quality, affordable, attractive programme of activities to suit as many participants as possible meeting the needs of Medway residents</p> <p>External investment</p>	<p>Detract</p> <p>Competition from quality competitors</p> <p>Loss of direct control by the Council, although conditions will be included in any lease</p>
<b>5. Who are the main stakeholders?</b>	Residents of Medway, Medway Council, external operator	
<b>6. Who implements this and who is responsible?</b>	<p>The Council via leisure services, which will still retain a role ensuring that the external operator is complying with the lease – e.g. ensuring public provision and pricing in line with the lease agreement</p> <p>The operator will implement the provision of enhanced service.</p>	
<b>Assessing impact</b>		
<b>7. Are there concerns that there <u>could</u> be a differential impact due to racial groups?</b>		Brief statement of main issue
	NO	
<b>What evidence exists for this?</b>	<p>Leisure services cater for all of the community and the usage pattern via the integrated programme of activities indicates that people from all racial groups in Medway make use of our facilities.</p> <p>Note: We use survey results and comments from customers to identify, engage and offer appropriate services wherever possible. Feedback from customers is routinely used by managers in planning services, and this reflects views from all parts of the community. We carry out a detailed demographic and population profile of a 20 - 30min drivetime around our facilities via a specialist external</p>	

	<p>provider (CMA). Profiles of main user groups and their characteristics are built up using information from FLEX (e.g. age banding members), front-line staff knowledge from interacting with customers and demographic information obtained through surveys and external agencies.</p> <p>This would be written in to any lease agreement, which would be monitored by Medway Council</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	
<p><b>8. Are there concerns that there <u>could</u> be a differential impact due to <i>disability</i>?</b></p>	<p>NO</p>	<p>Brief statement of main issue</p>
<p><b>What evidence exists for this?</b></p>	<p>The Stirling Centre is DDA compliant so accessibility is not an issue.</p> <p>We work with the Primary Care Trust (PCT) running a programme which targets those with a medical need for exercise/fitness, e.g. providing Cardio-Rehab classes for those recovering from heart attacks and others who would not normally use leisure facilities.</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	
<p><b>9. Are there concerns that there <u>could</u> be a differential impact due to <i>gender</i>?</b></p>	<p>NO</p>	<p>Brief statement of main issue</p>
<p><b>What evidence exists for this?</b></p>	<p>The Stirling Centre's programme of activities is open to men and women.</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	

<b>10. Are there concerns there <u>could</u> be a differential impact due to <i>sexual orientation</i>?</b>		Brief statement of main issue
	NO	
<b>What evidence exists for this?</b>	<p>Programme of activities caters for all.</p> <p>We look to Equalities and Access Group for guidance about how to gather evidence about any differential impact due to sexual orientation.</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	
<b>11. Are there concerns there <u>could</u> be a have a differential impact due to <i>religion or belief</i>?</b>		Brief statement of main issue
	NO	
<b>What evidence exists for this?</b>	<p>Programme of activities is developed with input from all groups in Medway.</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	
<b>12. Are there concerns there <u>could</u> be a differential impact due to <i>people's age</i>?</b>		Brief statement of main issue
	NO	
<b>What evidence exists for this?</b>	<p>The Stirling Centre provides a range of activities that attract people of different ages. This inclusive approach has reduced vandalism and improved relationships with local communities.</p> <p>It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.</p>	
<b>13. Are there concerns that there <u>could</u> be a differential impact due to <i>being trans-gendered or transsexual</i>?</b>		Brief statement of main issue
	NO	
<b>What evidence exists for this?</b>	<p>Programme of activities caters for all.</p> <p>We look to Equalities and Access Group for guidance about how to gather evidence about any differential impact due to being trans-gendered or transsexual.</p>	

		It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.
<b>14. Are there any <i>other</i> groups that would find it difficult to access/make use of the function (e.g. people with caring responsibilities or dependants, those with an offending past, or people living in rural areas)?</b>		If yes, which group(s)?
	NO	
<b>What evidence exists for this?</b>		Many residents of Medway commute to London, and so asked for more flexible opening times: as a result, the Echoes gym is now more accessible for commuters and we accept online bookings. This provision would be written into the lease and therefore be maintained or improved.
<b>15. Are there concerns there <u>could</u> be a have a differential impact due to <i>multiple discriminations</i> (e.g. disability <u>and</u> age)?</b>		Brief statement of main issue
	NO	Programme of activities caters for all
<b>What evidence exists for this?</b>		The Stirling Centre's programme of activities have been developed with input from users of the facilities and other groups in Medway.  It would be written into any lease agreements that all future activities and programming must be accessible to and inclusive of all sections of the community.
<b>Conclusions &amp; recommendation</b>		
<b>16. Could the differential impacts identified in questions 7-15 amount to there being the potential for adverse impact?</b>		Brief statement of main issue
	NO	
<b>17. Can the adverse impact be justified on the grounds of promoting equality of opportunity for one group? Or another reason?</b>		Please explain
	NO	
Recommendation to proceed to a full impact assessment?		
<b>NO</b>	<b>This function/ policy/ service change complies with the requirements of the legislation and there is evidence to show this is the case.</b>	

<b>Action plan to make Minor modifications</b>		
<b>Outcome</b>	<b>Actions (with date of completion)</b>	<b>Officer responsible</b>

<b>Planning ahead: Reminders for the next review</b>		
<b>Date of next review</b>	Lease review, Cabinet paper or major service change.	
<b>Areas to check at next review (e.g. new census information, new legislation due)</b>		
<b>Is there <i>another</i> group (e.g. new communities) that is relevant and ought to be considered next time?</b>		
<b>Signed (completing officer/service manager)</b>  Paul Boyd	<b>Date</b>  9 Jan 2012	Paul Boyd
<b>Signed (service manager/Assistant Director)</b>  Gary Ingram	<b>Date</b>  9 Jan 2012	Gary Ingram