

## **ASHFIELD DISTRICT COUNCIL: OFFICER DECISION RECORD**

Please use this form to record those executive decisions which are taken by officers and are **not** designated as 'Key Decisions' – or in other words those decisions which are **not** included in the Forward Plan. There is a separate form for recording Key Decisions.

You should also use this form to record decisions about those functions which are reserved to the Council or to its committees. The Constitution explains what these reserved functions are and who is responsible for them.

**1. Title/Subject Matter**

To commission PWC to provide VAT advice in relation to the Leisure Operator Contract and Kirby Leisure Centre new build.

**2. Decision Reference No: RBT/FIN/BB/**

**3. Decision Taken:**

- To seek specialist VAT advice in relation to the terms needed to be included in the Leisure Operator Contract to ensure ADC's partial exemption position is not adversely impacted on due on the high value capital works at Kirkby Leisure Centre.
- To commission PWC to provide the advice.

**4. Reasons for the Decision:**

- 4.1 Goods and service have an associated VAT rate, set by HMRC. The VAT rate determines the amount of VAT that is chargeable on the goods and services.
- 4.2 Businesses who are VAT registered, collect and pay the VAT they charge on their goods and services (output VAT) to HMRC and they can reclaim the VAT they have paid on goods and services (input VAT) in providing the associated goods and services. If VAT has been incurred in purchasing goods or supplies that are used in supplying goods and services that are categorised as VAT exempt they cannot reclaim the VAT.

- 4.3 However Local Authorities are allowed to reclaim an “insignificant amount” of input VAT incurred in relation to their exempt business supplies (must be less than 5% of the total input VAT incurred by the Local Authority) – known as partial exemption. The Council monitor this position to remain under the 5% threshold.
- 4.4 The provision of land and buildings in an exempt supply and under the Leisure Operator Contract we are providing the Leisure Centre Operator with the use of our Leisure Centers for them to provide the Leisure services. Therefore the costs of capital works associated with the new build Kirkby Leisure Centre and potentially any other capital works at Leisure Centre’s would be against exempt supply. The new build Kirkby Leisure Centre is a major capital project, the VAT incurred will result in the VAT against exempt supplies being in excess of 5% of the total input tax. This would result in all the VAT incurred against all exempt supplies not being recoverable and this would be a cost to the Council. In respect of new build Kirkby Leisure Centre only this would be circa £3m.
- 4.5 There is more than one option to mitigate the above position and seeking specialist advice will ensure we choose the best option, and that the arrangement is reflected in the Leisure Centre Contract correctly.
- 4.6 PWC are our existing VAT advisors, and they provided preliminary advice but detailed advice, specific to our Leisure Operator Contract would fall outside the scope of the existing contract. The advice is expected to cost between £3k and £5k which under Contract Procedure Rules means quotes are not required.
- 4.7 The advice is also required urgently due to the advisors needing a draft of the Leisure Operator Contract, which has only recently been issued and the advice needing to be received and reflected in the Contract by the end of October 2020.

**5. Alternative Options Considered / Rejected:**

To not seek specialist VAT advice: This could result in the contractual arrangement for Leisure Operator Contract not reflecting terms that protect the Council’s partial exemption position.

**6. Implications**

**Legal** – The recommended approach is in line with Contract Procedure Rules.

**Finance** – The advice will costs between £3k and £5k and can be funded within the existing revenue budget provision for leisure centre projects.

**HR** – No implications

**Name / Title of the officer taking the Decision:**

Use your own name and title. Do not 'pp' for a more senior officer who has asked you to take the decision.

Bev Bull, Chief Accountant (Deputy 151 Officer)

Date: 14<sup>th</sup> October 2020

**Name / Title of the relevant Lead Cabinet Member consulted (if appropriate)**

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(This decision is not subject to call-in and is circulated for information only). **If a Cabinet Member has a conflict of interest relating to this decision, then this should be declared and a request for dispensation will be considered.**

Date:

**Name / Title of the relevant Committee Chairman consulted (if appropriate)**

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(for non Executive/Council side function decisions)

Date:

The completed form should be emailed to any member of the Democratic Services Team:

- Lynn Cain [email: [l.cain@ashfield.gov.uk](mailto:l.cain@ashfield.gov.uk) ]

They will arrange for it to be published on the Council's web site.

**EXEMPT OR CONFIDENTIAL BACKGROUND INFORMATION IN SUPPORT OF THE DECISION**

Use this section to share any confidential information that would not be published or placed on the Council's web site. The information will only be shared within the Authority, as appropriate.

For further support or guidance please contact Ruth Dennis, Director of Legal and Governance (and Monitoring Officer) [r.dennis@ashfield.gov.uk](mailto:r.dennis@ashfield.gov.uk) or any member of the Democratic Services Team