

TRAFFORD COUNCIL

Report to: Executive Committee
Date: 18th December
Report for: Decision
Report of: Executive Member for Leisure, Arts, Culture and Heritage

Report Title

PART I - New Operating Agreement between Trafford Council and Trafford Leisure Community Interest Company (CIC)

Summary

The report sets out the proposed governance and contractual arrangements between Trafford Council and Trafford Leisure CIC

Recommendation(s)

It is recommended that the Executive

- 1) Approve, in principle the new governance arrangements based on a new contract and Operating Agreement with Trafford Leisure CIC, together with amended Articles of Association that reflect the new governance arrangements.
- 2) Note – that a further report will be brought back to the Executive in the new year detailing the full implications of adopting an agency model agreement between the Council and Trafford Leisure.
- 3) Delegate authority to the Corporate Director of Place in consultation with the Director of Legal and Governance to negotiate and agree the terms of new agreements and leases with Trafford Leisure CIC Limited in relation to the use and operation of the facilities.
- 4) Delegate authority to the Director of Legal and Governance to enter into and sign and/or seal the said agreements and leases on behalf of the Council.

Contact person for access to background papers and further information:

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Background Papers:

CORPORATE PRIORITIES AND GOVERNANCE CONSIDERATIONS	
The Best Start for our Children and Young People	<p>The new Operating Agreement has been developed based on the findings of Sport England's Strategic Outcomes Planning (SOPM) process. This evidence-based approach has ensured that programmes and activities are aligned to the Councils Strategic outcomes.</p> <p>The service specifications within the new agreement will support the successful delivery of community-based programmes that enable children and young people to be more active, reach the recommended levels of physical activity and improve their physical and mental health.</p>
Healthy and Independent Lives for Everyone	The new Operating Agreement will support Trafford Moving's placed based community plans. Local partnerships working with health providers at a neighbourhood level to reduce inactivity levels, tackle health inequalities, and improve health and wellbeing outcomes for all.
A Thriving Economy and Homes for All	The Council's Leisure Investment programme and refurbishment of local leisure centres will contribute towards neighbourhood and town centre economic growth. The new Operating Agreement will promote the use of local supply chains and creation of training, apprenticeships and employment opportunities for residents.
Address the Climate Crisis	The new Operating Agreement reflects the Councils Carbon Reduction policy. The new agreement and contractual arrangements will support the leisure investment and refurbishment programme in looking towards gas free solution across all sites. Where possible, centres will include the provision of secure cycle storage with bike hire options to promote Active Travel. The new contractual arrangements will specify how Trafford Leisure will contribute towards Trafford's carbon reduction targets in managing the Leisure estate on behalf of the Council.
Culture, Sport and Heritage for Everyone	Developed from the findings of the SOPM, the new Operating Agreement underpins the delivery of Trafford Moving, the borough's sport, physical activity strategy, with its a clear, simple vision for more people to move more, each day. Equally the Operating Agreement supports the outcomes of the Councils Walking, Wheeling, and Cycling strategy to incorporate physical activity and Active Travel in residents' daily routines. The service specifications within the new Operating Agreement will ensure that programmes and opportunities are available and easily accessible to all.

Relationship to GM Policy or Strategy Framework	<p>The Operating Agreement is aligned to GM Moving, the regional Greater Manchester Strategy for physical activity. GM Moving supports a whole system approach to reducing inactivity levels across the conurbation.</p>
Financial Considerations	<p>The new Operating Agreement formalises the financial governance of the contract with Trafford Leisure CIC. This includes the setting and monitoring of budgets and associated reporting requirements.</p> <p>The Councils approved revenue budget includes for provision of financial support to the CIC for the delivery of leisure services.</p> <p>There is also an approved capital investment programme for leisure to improve and maintain facilities with the intention for this to reduce the level of council revenue support over the medium term.</p> <p>A further report will be provided to Executive regarding a recommendation for Trafford Leisure CIC to provide services as an agent of the council. This is to take advantage of a change in VAT regulations from HMRC in 2023 which will enable the Council to recover VAT costs for sporting activities which is not possible under the current agreement.</p>
Legal Implications:	<p>Section 19 of the Local Government (Miscellaneous Provisions) Act explicitly gives local authorities the power to provide recreational facilities.</p> <p>Trafford Leisure CIC (CIC) was incorporated as a 'Teckal' company in 2015 to provide leisure services for Trafford. A Teckal company is essentially an extension of the Council.</p> <p>A key change to the new contract is the adoption of an agency model, which will enable the Council to make a significant saving on VAT. The relevant legal principles will be incorporated into the new contract to ensure that the criteria for the agency model are met.</p> <p>To incorporate the new changes (as set out in section 2 of this report), the Council intends to use the standard Sport England contract documentation for the new arrangements between the Council and the CIC. This is a comprehensive contract which will enable the council to fully capture the new arrangements.</p>

	There are no other legal implications that would preclude the parties from entering into a new contract at this stage.
Equality/Diversity Implications	As part of the performance framework a set of indicators have been developed to promote equality through the services provided. This will allow us to measure the usage from our ethnically diverse communities, address the gender gap in physical activity, enable people with a long-term health condition and ensure the best start for our children and young people.
Sustainability Implications	The Operator shall take account of, and comply with, the Local Authority's Carbon Neutral Action Plan and Carbon Neutral Framework which sets out the Local Authority's aims and objectives for minimising its environmental impact.
Resource Implications e.g. Staffing / ICT / Assets	Dedicated resource has been allocated from the Council to deliver the Operating Agreement from Leisure, Modernisation, Estates, Finance, Legal with other services providing expertise throughout the process. Trafford Leisure have also provided dedicated resource; the council have supported Trafford Leisure in resourcing a dedicated Project Manager to expedite the delivery of the Operating Agreement and oversee its implementation.
Risk Management Implications	<p>Effective management of risks is an essential part of good governance and as such Trafford Council have a Risk Management Strategy. The principle of proactively managing risk will be part of implementing the Operating Agreement.</p> <p>A comprehensive risk log has been developed. Risks will be reviewed regularly as part of the transition arrangements with Trafford Leisure and embedded within the governance framework for this proposal.</p>
Health & Wellbeing Implications	Physical activity plays a significant role in improving health and wellbeing including the mental wellbeing of Trafford residents. The new Operating Agreement will enable the investment in Leisure services and local leisure assets to provide targeted community based programmes that support health and wellbeing and address health inequalities, reducing levels of inactivity.
Health and Safety Implications	Health and Safety (H&S) will continue to be a priority. The service specification of the Operating Agreement sets out the H&S management and requirements the leisure services must comply with. Alongside this will sit a set of specific H&S business processes KPI's to monitor performance.

Socioeconomic duty Implications	The agreement will align with Trafford Moving and its seven priority areas where people of low financial and economic means reside, this can also be a driver to being physically inactive. The agreement will see Trafford Leisure take activity to these areas and support residents via the Trafford Moving Concessionary Pass which offers discounted use of the boroughs Leisure Centres.
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1 Background

- 1.1 Trafford Leisure Community Interest Company (CiC) are the Council's current leisure provider and manage the Council's leisure centres and wider leisure estate on the council's behalf.
- 1.2 In September 2017, Executive approved £7.1m of investment for the refurbishment of Urmston Leisure Centre. The centre was temporarily closed due to COVID, but in March 22 was fully opened to the public and has been operating successfully as move Urmston
- 1.3 In October 2018 the Executive approved proposals for the development of new leisure centres in Stretford and Altrincham and requested that a review of the arrangements for the delivery of leisure be carried out.
 - 1.3.1 Leading industry experts Max Associates were commissioned to work with the Council, Trafford Leisure CIC and Sport England to: -
 - Develop a SOPM in line with Sport England guidance.
 - Consider options for the delivery of leisure services.
 - Review the Council's investment approach and consider alternative affordable options.
- 1.4 Subsequent to the approved proposal, reports to the Executive in September 2019 and to Council in July 2020 set out the financial challenges faced by Trafford Leisure and approved the Council to provide financial support, by way of a loan and grant respectively.
- 1.5 Currently Trafford Leisure CIC manages the leisure centres on behalf of the Council. The company is wholly owned by Trafford Council and is limited by shares. Any profits must be treated as assets of the company and under the Articles of Association these assets are protected under an 'asset lock' whereby they are protected for the benefit of the community they serve, Trafford residents.
- 1.6 The Community Interest Company was established in September 2015. Trafford Leisure currently have an Operating Agreement with the Council, however its now outdated and excludes lease arrangements, the current agreement is also limited in scope to fully meet the Council's strategic priorities as evidenced in the SOPM.
- 1.7 The delivery of leisure services, both from the Council's fixed leisure infrastructure, and in the community is a critical role in meeting the Council's corporate objectives.

Ensuring the Council has the right partner and structure is therefore essential. In addition, the investment in improving facilities is dependent on a self-financing business case. It is therefore essential, to ensure that the management of an enhanced facility mix can generate sufficient additional footfall and revenue to secure the operating profits to meet the revenue costs of the Council's prudential borrowing requirements.

1.8 In January 2021 the Executive were presented with a set of considerations as part of the SOPM stage 3 review in relation to the management and delivery of leisure services.

1.9 The management options considered were:

- Continuation with its local provider (Trafford Leisure CiC) with an update to existing arrangements
- Merger with another existing Leisure Trust or similar
- Procure a national / regionally established trust / commercial operator.
- Bringing the service back in-house managed by the Council.
- And / or Community Asset Transfer of (some) facilities; for example – Old Trafford Sports Barn

1.10 The Executive approved to the recommendation for the continuation with its local delivery provider – Trafford Leisure CiC with an update to existing arrangements, including the development of a new Operating Agreement.

1.11 In February 2022, Executive approved £52.1m into the capital programme to cover the costs of the proposed refurbishment of Altrincham, Sale and Stretford Leisure Centres. The programme was subsequently increased to £74.65m by Executive in February 2023 across all centres to include the successful Levelling Up Fund (LUF) bid for Partington and additional Sport England funding for Altrincham.

1.12 The Council has an annual base budget for in-year Leisure CIC support and also holds a CIC reserve to smooth the impact of in-year Trafford Leisure deficits over the expected 5-year leisure investment period to profit and loss maturity. This will also be utilised to support the ongoing borrowing costs over the long term.

1.13 In March 2023, the Executive approved Trafford Moving - the borough's Sport and Physical Activity Strategy which underpins the Council's investment in its Leisure estate. Trafford Moving is focused on the development of place-based community plans to improve residents health and wellbeing and address health inequalities. The investment in the borough's leisure facilities, alongside the development of local programmes of activity and sport are crucial to the successful delivery of Trafford Moving's outcomes

2 Developing a new Operating Agreement

2.1 To ensure that the Council's significant investment in its leisure estate delivers the strategic outcomes the council requires, there needs to be in place a comprehensive Operating Agreement between the Council and its current leisure provider, Trafford Leisure CIC. To that end, Council officers have drawn on the expertise of Sport England, Greater Sport and the independent advice of Max Associates working with Trafford Leisure to develop a new fit for purpose agreement and contractual arrangements.

- 2.2 Much has moved on in the delivery of Leisure Services over the last decade. No longer is Leisure purely focused on the delivery of fitness and participation in organised sport. Empirical evidence on the benefits of physical activity in improving health and wellbeing on a population basis is now widely accepted.
- 2.3 This “pivot to wellbeing” has galvanised the collaboration of stakeholders across the leisure industry - engaging public, community and voluntary sector partners to come together and tackle inactivity levels.
- 2.4 The new Operating Agreement between the Council and Trafford Leisure has been developed with a clear focus on health and wellbeing outcomes and addressing health inequalities. Drawing on the findings of the SOPM and robustly underpinned by Trafford Moving, the new Operating Agreement is anchored in promoting physical activity as a means to improve all resident’s health and mental wellbeing.
- 2.5 This is the first time such a comprehensive agreement has been negotiated. The new agreement will bring much needed clarity to the relationships, providing a transparent reporting and performance framework that supports sustainability and good governance.
- 2.6 The new Operating Agreement will support the Council’s strategic priorities and delivery of key outcomes as set out within the Council’s Corporate Plan 2024 – 27, namely: -
- Strategic Priority – Culture Sport and Heritage for Everyone.
 - Key Outcomes. Investment in Trafford’s leisure centres and delivery of new programmes in targeted communities. Provision of accessible, effective and sustainable physical activity and sport opportunities for our communities

 - Strategic Priority – The Best Start for our Children and Young People
 - Key Outcome – Good mental and physical health in children.

 - Strategic Priority - Healthy and Independent Lives for everyone
 - Key Outcome – Residents live in good health, remaining independent in their own homes wherever this is possible.

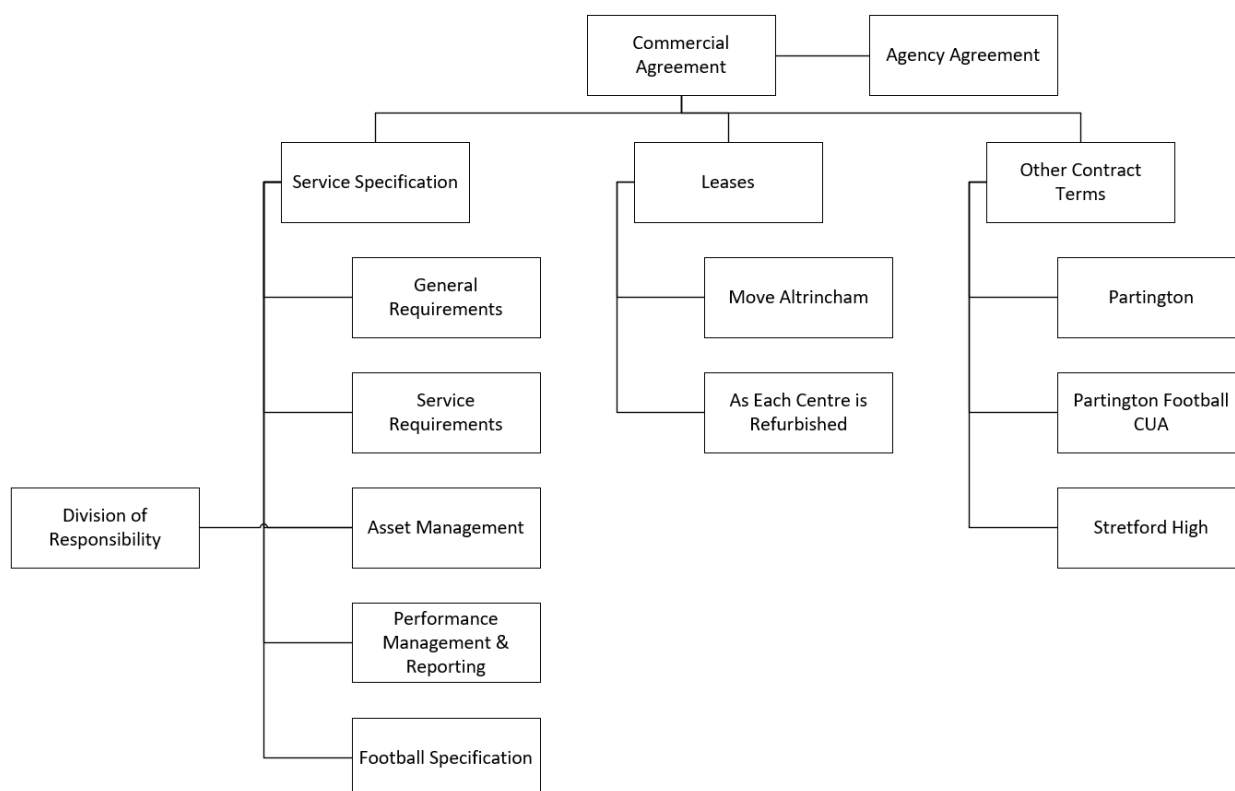
 - Strategic Priority – Address the Climate Crisis,
 - Key Outcome – Leadership in reducing Trafford council’s carbon footprint and increasing the amount the Council re-use, repurpose and recycle, as well as encouraging partners to do the same.
- 2.7 As with most contractual arrangements, success is predicated on the collaboration of all parties in developing the detail that sits behind the contractual headlines. The process of developing the Operating Agreement has been a collaborative one which has strengthened the relationship between Trafford Council and Trafford Leisure.
- 2.8 Equally important is that the detailed negotiation processes are underpinned by a clear, comprehensive and robust legal framework that sets out key expectations and responsibilities covering governance, programme delivery, asset management, funding arrangements and crucially, a performance monitoring framework with reporting against key milestones. This has been a significant gap to date, not only in

managing leisure delivery but in supporting and managing the relationship between the Council, Trafford Leisure CIC and Trafford Leisure Board.

3 The New Operating Agreement

3.1 The Operating Agreement will cover all key aspects and contractual arrangements between the Council and its Leisure provider; legal, governance, property management, leases, financial arrangements, funding schedules, service specifications, performance monitoring and reporting across the entire Leisure estate.

The full scope of the new agreement is set out in Fig 1 below.



3.2 Using Sport England's Leisure Service delivery documentation, the following sections have been developed to capture all elements of the agreement.

3.2.1 **Commercial Agreement** – this is the legally binding contract entered into by Trafford Council and Trafford Leisure, outlining their rights, responsibilities, and obligations.

3.2.2 **Service Specification** - This sets out the scope of service, the minimum delivery requirements and outcomes Trafford Leisure must deliver. The outcomes will align to the strategic outcomes of the Council and Trafford Moving as set out within the SOPM.

3.2.3 **Football Specification** sets out the scope of service for the management of identified pitches and pavilions. The Football Specification will ensure pitches and pavilions in Trafford are better managed and maintained, with the outcome of sustaining and growing usage, which supports the outcomes of the borough sport and physical activity strategy, Trafford Moving.

3.2.4 **3rd Party Agreements** are in place where Trafford Leisure provide services outside of Council owned property at:

- Streford High School
- Partington Sports Village
- Broadoak
- Move Urmston Food Beverage - Charley Limited

3.2.5 **Leases** contractual agreement between landlord (Trafford Council) and Trafford Leisure CIC for managing the Council's leisure assets and supporting the council's wider sport and leisure offer.

4 Performance Monitoring

4.1 The Operating Agreement includes a performance framework with a comprehensive suite of performance indicators. These indicators will allow for closer monitoring and evaluation of facility and organisational performance by Trafford Council through quarterly reporting from Trafford Leisure. This will help Trafford Council to understand performance and outcomes at each facility along with seasonal trends in participation and usage. It will also highlight areas where development and improvement are needed to meet targets. This information will also be monitored against Sport England's Moving Communities platform which can match performance against similar sized facilities and boroughs.

4.2 Regular monthly and quarterly reviews will be put in place and monitored and measured against the suite of KPI's covering the following areas:

- **Participation** – This section will capture all the member activity, numbers and demographics of the users of Trafford Leisure facilities.
- **PARS** – This is the council's commissioned Physical Activity Referral Scheme for Trafford residents with a long-term health condition, which Trafford Leisure facilitate. Indicators will capture the number of residents participating in the programme and the key outcomes from the programme.
- **Engagement** – This will capture the number of schools engaged at facilities and the number of Holiday Activity and Food programmes Trafford Leisure have hosted.
- **Social** – Trafford Leisure will be completing information on social value via Moving Communities and Trafford Council's Social Value Portal. This section will also capture Trafford Leisure's Training, Education, Employment and Skills contributions along with engagement with community groups.
- **Financial** – This will monitor Trafford Leisure financial position in line with current monitoring.
- **Internal Business Process** – Monitoring for this section will include the operational performance across the estate. This will include indicators such as number of accidents, complaints or safeguarding incidents.

- **Continuous Improvement** – Trafford Leisure will be adopting an industry approved quality assurance framework known as Quest. The Quest assessment will be completed annually on a chosen facility. Each facility will also complete a customer survey which will provide a customer satisfaction score.
- **Climate** – This will measure Trafford Leisure’s impact on the council’s corporate priority to address the climate crisis.
- **Human Resources** – The Council will monitor Trafford Leisure’s Human Resource policies and procedures in line with set criteria and indicators.

5 Property Management

- 5.1 To optimise and protect the substantial investment in the leisure estate, it is essential to establish a clear asset management arrangement. Implementing a governance framework for the maintenance of the Council’s leisure assets will extend their lifespan, reduce instances of equipment and plant breakdowns, and support the safe and continuous operation of services. This approach will not only help reduce future capital costs but also mitigate the potential for liabilities arising from the unavailability of services due to asset failure.
- 5.2 The maintenance and management of the leisure centre buildings and service specifications within the Operating Agreement will be underpinned by a clear Division of Responsibilities agreed between the Council and Trafford Leisure. This will identify where responsibility and obligation sit across Trafford Leisure, the council and third parties.
- 5.3 The division of responsibility seeks to bring clarity in determining ownership of the key maintenance tasks, the day-to-day responsibilities for the delivery of service and programme outcomes, and the reporting and resolution of issues as they arise.
- 5.4 To protect the assets an annual licence for a Computer Assisted Facilities Management (CAFM) system has been purchased which will report into the Operating Agreement reporting structure. The system will digitalise the management of facilities and provide clear transparency of maintenance activity with a golden thread of asset information. The information will provide evidence for decision making and inform optimal budget forecasting. In addition to improving value for money & operational practices the system will act as safeguard as it incorporates a document register for Health & Safety & supplier insurances.

6 Governance

- 6.1 In order for Trafford Leisure (CIC) to meet its obligations across the delivery of all aspects of the Operating Agreement as set out in section 3 of this report, it is essential that it has fit for purpose governance arrangements in place that support good decision making.
- 6.2 Trafford Leisure Board, supported by the council, and Sport England have embarked on a governance review. In order to attract the level of ongoing capital and revenue funding required to support the Council’s Leisure Investment Strategy and develop robust and sustainable community programmes of sport and physical activity, Trafford Leisure are implementing Sport England’s Tier 3 framework.

- 6.3 The Code was launched in 2016 and revised in 2020. The code sets out the levels of transparency, diversity and inclusion, accountability and integrity that are required from those organisations who seek or are in receipt of funding from Sport England via UK government and National Lottery awards.
- 6.4 Tier 3 represents the top level of mandatory governance requirements. Sport England and UK Sport generally categorise an investment as Tier 3 if:
- The funding is intended to be granted over a period of years.
 - The funding is granted for continuing activity rather than a one-off project; and
 - The total amount of funding is greater than £1m
- 6.5 Equally important is that working towards Tier 3 accreditation will take the board on an improvement journey ensuring the necessary skills are in place for the board to be effective and operate within a transparent and fit for purpose governance framework.
- 6.6 The process will bring quality assurance to the work of the board in holding the organisation to account, bringing the right levels of challenge and support to decision making to ensure compliance and the sustainability.
- 6.7 Trafford Leisure have developed an implementation plan to be delivered over the next 3 years which will define.
- Standards and metrics by which success will be measured
 - Resources required.
 - Schedule and review process
 - Evaluation – maintaining appropriate governance practices
- 6.8 Progress to date includes succession planning for the board and the development of recruitment processes and procedures for the appointment of a new chair and directors.

7 Adopting an Agency Model

- 7.1 A further report will be brought back to the Executive for consideration setting out the full implications of adopting an Agency model for the provision of leisure by Trafford Leisure CIC on behalf of the Council. The Agency model offers the potential for the Council to recover VAT from HMRC on leisure activities, which is not currently possible under the existing structure with Trafford Leisure.
- 7.2 Following a legal challenge by several councils, in March 2023 HMRC issued revised guidance on VAT treatment of Local Authorities delivering Leisure Services in-house. The outcome is that income from delivering defined sporting and leisure services to the public should now be classed as non-business, with VAT on associated costs fully recoverable accordingly.
- 7.3 In recognition of this fundamental change and the importance of fully understanding the implications of the revised HMRC guidance, independent advice was sought on the best model to achieve an optimum position on recovery of VAT for both Trafford

Council and Trafford Leisure. The Council and Trafford Leisure have also been in contact with other Council's and leisure providers who are or have already evaluated the impact of the VAT change.

- 7.4 Under the current structure, Trafford Leisure has significant VAT costs that it is unable to recover due to the substantial amounts of income earned which is classified as exempt for VAT purposes. Exempt income means that VAT does not need to be added to bills, so is a saving to customers, but it means VAT costs associated with that income are not able to be recovered from HMRC.
- 7.5 The new VAT rules only apply to Council provided Leisure services, and the advice to achieve maximum tax efficiency is for Trafford Leisure to act as an agent of the Council, and for this to be reflected in the new Operating Agreement. This would mean that the income collected by Trafford Leisure would be in future on behalf of the Council, and the legal relationship with customers would be with the Council rather than Trafford Leisure. As a result, income formerly treated as exempt income can then be treated as non-business allowing full recovery of VAT on costs.
- 7.6 The report to the Executive in the New Year will set out the risks, mitigations and benefits of an agency model for both the Council and Trafford Leisure, including the expected financial transactions between the two. The report will also cover the impact on customers, residents and other stakeholders.

The Councils role as sole shareholder of Trafford Leisure

- 7.7 As part of the review into an Agency Model, the Council commissioned external legal advice to advise on legal and contractual implications. The Councils powers and responsibilities as sole shareholder of Trafford Leisure are set out in Articles of Association with Trafford Leisure.
- 7.8 The current Articles of Association do allow the Council to exercise a level of control over Trafford Leisure, however in moving to an Agency Model, we would seek to enhance the Councils requirement to exercise control over the operator by way of provision to:
 - sign off/approval of Trafford Leisure budget
 - sign off to remove/appointment of Chair
 - hold two council positions on Trafford Leisure Board
 - Any changes to the articles of association by Trafford Leisure CIC

8 Other Options

- 8.1 Continue with the current operating agreement that has been in place with Trafford Leisure since 2016. This agreement is limited in its scope and breadth and does not include key agreements such as leases.
- 8.2 Much has moved on in the delivery of Leisure Services over the last decade. No longer is Leisure purely focused on the delivery of fitness and participation in organised sport. The focus now of Sport England and the industry at large, is on improving health and wellbeing and decreasing inactivity levels. This focus

significantly contributes towards the council objectives and needs to be reflected in a new, fit for purpose operating agreement.

8.3 In addition, the relationship between the council and Trafford Leisure CIC has matured since 2016. Trafford Leisure CIC is now aligned through the SOPM to deliver the Councils strategic priorities.

9 Reasons for Recommendation

- 9.1 The report reflects the decision from the Executive in 2021 to continue with its local provider Trafford Leisure CiC).
- 9.2 The new Operating Agreement reflects the outcomes of the SOPM and puts in place new fit for purpose governance and contractual arrangements to ensure effective monitoring and compliance of the Leisure Provider in the delivery of the Councils strategic priorities.

10 Key Decision Yes

If Key Decision, has 28-day notice been published? Yes

Finance Officer Clearance (type in initials)...PC.....
Legal Officer Clearance (type in initials).....SL.....

[CORPORATE] DIRECTOR'S SIGNATURE



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.

Appendices

END OF REPORT TEMPLATE