



Havering
LONDON BOROUGH

Notice of Non-key Executive Decision

Subject Heading:	<p>(1) To waive the contract regulations to allow the café at the South Essex Crematorium to re-open following the COVID-19 pandemic. The service will be operated by a sole trader on a year long concession contract to allow time for a procurement exercise to take place.</p> <p>(2) Grant of a contracted out lease for a year term to the sole trader.</p>
Cabinet Member:	Cllr Viddy Persaud, Cabinet Member for Public Protection & Safety
SLT Lead:	Barry Francis, Director of Neighbourhoods
Report Author and contact details:	Lee Macey, Operational Manager, Cemeteries & Crematorium
Policy context:	Charging for services (via annual rental income)
Financial summary:	The decision will support the income budgets of the services via the rental income received via the letting of the Café.
Relevant OSC:	Towns and Communities
Is this decision exempt from being called-in?	Yes. It is a Non Key officer decision.

Non-key Executive Decision

The subject matter of this report deals with the following Council Objectives

- | | |
|-------------------------------|-------------------------------------|
| Communities making Havering | <input type="checkbox"/> |
| Places making Havering | <input checked="" type="checkbox"/> |
| Opportunities making Havering | <input type="checkbox"/> |
| Connections making Havering | <input type="checkbox"/> |

Place an X in the as appropriate

Part A – Report seeking decision

DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION:

Recommendations

1. Grant a new lease for a year term which will be contracted out of the Landlord and Tenant Act 1954.
2. Award a concession contract for a period of 12 months to Chris Andrews (as a sole trader) the ex-Director of Works Skills & Independence Group.
3. To waive the competition requirements under Contract Procedure Rules 10.6 on the grounds of CPR 14.3/4 'where it is in the best interest of the Council for the provisions in these rules to be waived to enable contract procurement to be rapidly progressed'.

Background

The South Essex Crematorium has a café on site which provides an invaluable service to the recently bereaved and funeral professionals, by way of the provision of a variety of a hot and cold snacks & refreshment. In addition, it provides facilities to host small wakes following funeral services.

The Works, Skills & Independence Group (WSIG) was successfully running the café at the South Essex Crematorium since February 2016, following a successful one year pilot scheme. The café is a well-regarded and well used facility providing income to the Council by way of annual rent payable. WSIG, a charity foundation provided work experience / placements for adults with learning difficulties.

In 2016, the Council agreed to grant a lease to WSIG for the duration of three years from 15th February 2017 -14th February 2020. A concessionary contract was also granted to WSIG.

Prior to the Coronavirus (COVID-19) pandemic, Bereavement Services (the Service) sought to grant a short term lease whilst a new competition process was being undertaken. Upon the announcement of 'lockdown' during the COVID-19 pandemic, the café then had to close. The Service wishes to re-open the café to provide this valuable service to the recently bereaved and also to support income targets.

Following the dissolution of Works Skills & Independence 'WSIG', the ex-director of the company has approached the Service to reopen the café facility but on a sole trader basis. The Service will ensure that the café is re-opened in accordance with the Central Government guidance and subject to a risk assessment.

The Service is seeking permission to:

- (1) re-open the café on a year long concession contract to Mr Chris Andrews to allow time for the service to undertake a procurement exercise; and
- (2) grant a short term lease for the same period.

Concession Contract

The Service approached the Procurement Team to undertake checks on Mr Andrews which would allow him to operate the café as a sole trader. Procurement colleagues have advised that there are no official checks for sole traders.

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The Service has noted that, Mr Andrews has successfully operated the café for several years complying with the requirement to provide adults with learning disabilities work experience. He has enhanced menus and improved the service provision by catering for small wakes and installing free Wi-Fi for customers. Lastly, he has maintained regular and timely payment of rent and consistently been awarded 5 stars for food hygiene.

It was determined that to wait to carry out a full procurement exercise and not open the café would not be in the best interests of the Council. It would negatively impact the recently bereaved and not support the income targets of the Service. A year long contract would allow the Service time to undertake a procurement/tender exercise to select a concessionaire with a minimum of 5 organisations to be invited to tender.

Lease

The lease dated 6th April 2017 was contracted out of s24-28 of the Landlord and Tenant Act 1954 and has expired. The Service would like to grant a new lease on the same terms as the lease dated 6th April 2017 but to Mr Andrews.

AUTHORITY UNDER WHICH DECISION IS MADE

Contract powers

(a) To approve commencement of a tendering process for, and to award all contracts below a total contract value of £500,000 but above the EU Threshold for Supplies and Services.

Contract Procedural Rules 14.3 states that the exceptions to the competition requirements may only be made where:

- a. the **Competition Financial Threshold Exceptions** is completed and signed by the relevant **SLT member**;
- b. the persons awarding the contract can demonstrate that the **contract represents best value** that can be obtained in the circumstances; and
- c. the ground falls into one of the grounds set out in 14.4 – ground 14.6.6 **'where it is in the best interest of the Council for the provisions in these Rules be waived to enable contract procurement to be rapidly progressed.**

(b) The constitution in rule 3.3 (a) and 3.4(a) has delegated to first and second tier manager respectively to approve the commencement of a tendering process and the award thereof.

General Powers

(c) To manage buildings and facilities under their control including letting, hiring or otherwise permitting the use of such premises and property for occasional purposes and to dispose of obsolete, worn out and surplus stores, equipment and vehicles, ensuring that value for money is obtained on all asset disposals.

STATEMENT OF THE REASONS FOR THE DECISION

Non-key Executive Decision

To enable the café to continue to operate, meeting all the requirements to provide opportunities for adults with learning difficulties and meet the income requirements of the Service.

OTHER OPTIONS CONSIDERED AND REJECTED

The option of not awarding the concession contract and granting a new lease for 12 month duration was considered but rejected.

If the recommendations of this report are not considered; it will result in the closure of the café, a much loved and well respected facility for the bereaved. Furthermore, the Service would be unable to meet the income requirement which is gained via rent payable.

PRE-DECISION CONSULTATION

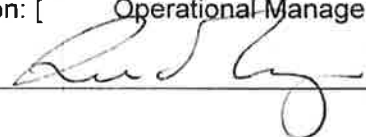
None.

NAME AND JOB TITLE OF STAFF MEMBER ADVISING THE DECISION-MAKER

Name: Lee Macey

Designation: [Operational Manager, Cemeteries & Crematorium]

Signature:



Date: 30/7/2020

Part B - Assessment of implications and risks

LEGAL IMPLICATIONS AND RISKS

The recommendations are as follows:

- (1) Grant a new lease for a period of 12 months’;
- (2) Award a concession contract for the same period to R Andrews the ex-Director of Works Skills & Independence Group; and
- (3) Waive the competition requirements under Contract Procedure Rules 10.6 on the grounds of CPR 14.3/4 ‘where it is in the best interest of the Council for the provisions of these rules to be waived to enable contract procurement to be rapidly progressed’. The total gross turnover of the contract is £156,000.

Concessionary contract

- a. A concessionary contract was granted to Works Skills & Independence Group, the contract together with the lease terminated on the 14th February 2020. Legal were advised that the company went into dissolution on the 13th November 2018 and legal provided advice of the effect of dissolution, namely that the contracts and assets of a dissolved company rests with the Crown. Officers decided for the reasons in the report to award a new lease and new concession contract to the ex-director of Works Skills & Independence Group, for a 12 month period. Legal were advised by the officer this was so that the Council in the meantime could prepare for new competitive process to let the lease and concession contract.
- b. Due to the value of the contract the Concession Contracts Regulations 2016 do not apply to this contract, however the Council must still apply the principles of equality, transparency, non-discrimination and proportionality in the process.
- c. Contract Procedural Rules (CPR) 10.6 requires a competitive process for the award of contracts however due to the circumstances the officers seek to waive this requirements under CPR 14. CPR 14.4 requires an SLT member sign a Competition Financial Threshold, and the Council demonstrates that the waiver of the rules represents best value, and the Council has shown that it is in the best interest of the Council, for the provision of the rules be waived to enable contract procurement to be rapidly progressed. If the SLT Director is satisfied the reasons are met they can grant the waiver.
- d. Legal understand this is a temporary measure until a competitive process.
- e. The Regulations - state that an operating entity is a person or public entity or group of such persons and entities, including temporary associates of undertaking which offers the execution of the provisions of services, therefore there is no restriction to prevent the Council appointing a sole trader; however in assessing whether to proceed with the new sole trader the Council’s procurement department will have to undertake a financial assessment of the proposed sole trader as it would with any entity wishing to undertake the Council’s contract.

Lease

Subject to the concession contract being granted, a new lease for a term of 12 months’ will be granted to the sole trader which will be coterminous with the concession contract. The lease will be contracted out of the Landlord and Tenant Act 1954 which means that Mr Andrews will not have the right to remain in the property once the lease expires or the right to renew the lease. Notification provisions will be included within the lease to capture any changes in circumstances that may affect the operation or performance of the contract.

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Provided that there are no adverse results revealed during the procurement exercise and procedural legal checks, the new lease will generally be based on the same terms of the lease dated 6th April 2017.

Upon completion of the lease, the Legal Property team will produce a completion report detailing the terms of the new lease which will be circulated to the relevant departments of the Council.

FINANCIAL IMPLICATIONS AND RISKS

The occupier will continue to pay the existing rental income as covered in the confidential appendix 1 to this report throughout the duration of the 12 month long contract, enabling the income target to be met. This figure is based upon a review of the rental value this year by Property Services, assessed on the space occupied and the facilities provided.

Rita Batcheta. Finance Business Partner

HUMAN RESOURCES IMPLICATIONS AND RISKS (AND ACCOMMODATION IMPLICATIONS WHERE RELEVANT)

Geraldine Minchin. HR Business Partner

EQUALITIES AND SOCIAL INCLUSION IMPLICATIONS AND RISKS

The Public Sector Equality Duty (PSED) under section 149 of the Equality Act 2010 requires the Council, when exercising its functions, to have due regard to:

- (i) the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (ii) the need to advance equality of opportunity between persons who share protected characteristics and those who do not; and
- (iii) foster good relations between those who have protected characteristics and those who do not.

Note: 'Protected characteristics' are age, disability, gender reassignment, marriage and civil partnerships, pregnancy and maternity, race, religion or belief, sex/gender, sexual orientation.

The Council is committed to all of the above in the provision, procurement and commissioning of its services, and the employment of its workforce. In addition, the Council is also committed to improving the quality of life and wellbeing for all Havering residents in respect of socio-economics and health determinants.

Mr Andrews, the sole trader, is committed to continuing the operation of the Café as a community based social enterprise, as well as a viable Cafeteria business. He currently trains and provides work placements for clients (adults with learning difficulties).

Non-key Executive Decision

There are no Equalities and Social inclusion implications or risks arising from this proposal to provide a 12 month contract allowing time for a procurement exercise to take place.

Jerry Haley. Equalities & Diversity

BACKGROUND PAPERS

None.

Non-key Executive Decision

Part C – Record of decision

I have made this executive decision in accordance with authority delegated to me by the Leader of the Council and in compliance with the requirements of the Constitution.

Decision

Proposal agreed

Delete as applicable

Proposal NOT agreed because

Details of decision maker

Signed: 

Name: LOUISE ROAST, HEAD OF BEREAVEMENT + REGISTRATION.

Cabinet Portfolio held:
CMT Member title:
Head of Service title: Louise Roast
Other manager title:

Date: 30.7.20

Lodging this notice

The signed decision notice must be delivered to the proper officer, Debra Marlow, Principal Committee Officer in Democratic Services, in the Town Hall.

<p>For use by Committee Administration</p> <p>This notice was lodged with me on _____</p> <p>Signed _____</p>
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Non-key Executive Decision – Not for publication

Appendix 1