

## Notice of KEY Executive Decision containing exempt information

Appendices A, B and C to this report are exempt by virtue of paragraph 3 of the Access to Information Procedure Rules pursuant to Schedule 12A Local Government Act 1972, as amended as it concerns Information relating to the financial or business affairs of any particular person (including the authority holding that information).

Appendix H to this report is exempt by virtue of paragraph 5 of the Access to Information Procedure Rules pursuant to Schedule 12A Local Government Act 1972, as amended as it concerns information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

**Reasons:** The public interest in maintaining the paragraph 3 exemption outweighs the public interest in disclosing it as it is more in the public interest the information contained in Appendix A, B and C is commercially sensitive as there is detailed commercial information about an organisation and the terms of the proposed Contractual arrangements some of which are the subject of negotiation and agreement.

The public interest in maintaining the paragraph 5 exemption outweighs the public interest in disclosing it as it is more in the public interest that the information contained in Appendix H contains legal advice.

|   |   |
|---|---|
| <b>Subject Heading:</b>                   | New Leisure Centre - Rainham  |
| <b>Cabinet Member:</b>                    | Councillor Damian White   |
| <b>SLT Lead:</b>                          | Jane West   |
| <b>Report Author and contact details:</b> | Guy Selfe, Health and Wellbeing Manager, 01708 433866, <a href="mailto:guy.selfe@havering.gov.uk">guy.selfe@havering.gov.uk</a> |
| <b>Policy context:</b>                    | Places – Havering has excellent leisure facilities and award winning parks  |
| <b>Financial summary:</b>                 | Costs of £7.99m funded from the approved capital programme  |

**Key Executive Decision – Part Exempt Report**

|  |   |
|--|---|
|  | (£7.79m) and virement from capital contingency (£0.20m). The new centre is expected to deliver net income to the Council over the remaining term of the leisure management contract. This achieves savings to the Council. However, there is a need to smooth operational financial performance over the period to 2028/29 until the business model reaches maturity. |
| <b>Reason decision is Key</b>                        | Indicate grounds for decision being Key:<br>(a) Expenditure or saving (including anticipated income) of £500,000 or more<br>(b) Significant effect on two or more Wards   |
| <b>Date notice given of intended decision:</b>       | 11 May 2021   |
| <b>Relevant OSC:</b>                                 | Towns & Communities Overview & Scrutiny Sub- Committee  |
| <b>Is it an urgent decision?</b>                     | No  |
| <b>Is this decision exempt from being called-in?</b> | No  |

**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"/>            |

## Part A – Report seeking decision

### DETAIL OF THE DECISION REQUESTED AND RECOMMENDED ACTION

To agree to:

1. Note the posting of public notices and that no objections were received to the proposed appropriation and disposal of part of Rainham Recreation Ground; and to:
2. Approve the appropriation of part of Rainham Recreation Ground shown outlined red at appendix G (“the land”) for planning purposes pursuant to section 122 of the Local Government Act 1972; and
3. Approve, subject to the best consideration review set out below, the subsequent disposal of the land pursuant to section 233 of the Town and Country Planning Act 1990; and
4. Approve the allocation of £331,292 from the Business Risk Reserve to the Leisure Contract Reserve to support the new Rainham leisure centre in the initial years of operation.
5. Subject to 1 to 4 above, agree to vary the contract with SLM for delivery of and ongoing services at a new leisure centre on Rainham Recreation Ground as follows;
  - a. Grant of lease on Rainham Recreation Ground for 15 years to co-terminate with the leisure management contract of 30 September 2036
  - b. Delivery of a new leisure centre on Rainham Rec Ground; and
  - c. Ongoing services from the new leisure centreas further set out in this report.
6. Delegate authority to the Chief Operating Officer to finalise the terms of the lease and contract variation and any other required legal arrangements relating to 5 above.

### Background

1. Cabinet on 15 January 2020 agreed in principle that the Rainham Recreation Ground site be progressed as the site for a new leisure centre subject to a successful planning application and that the tendering of the construction be progressed whilst the planning application was considered.
2. Cabinet also noted that subject to the approval of capital budget, all subsequent decisions relating to a new leisure centre on Rainham Recreation Ground, including the variation of the existing concession contract with Sport and Leisure Management (SLM) to include delivery of the leisure centre and ongoing leisure services at the centre, will be made

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by the Leader, in consultation with the Lead Member for Finance and the Chief Operating Officer.

3. The Council is required to consult prior to determining that Rainham Recreation Ground is used for the new leisure centre. That consultation has been completed with the results set out in this report.
4. The planning application has been approved, a tender process for the new leisure centre completed and financial terms agreed with SLM.
5. Further decisions are now required to progress the matter as set out in this report.

### **AUTHORITY UNDER WHICH DECISION IS MADE**

Constitution Part 2, Executive Functions:

“The Leader of the Council is responsible for arranging for the exercise of all executive functions...And may exercise any Executive functions personally provided notice is given to the Proper Officer.”

### **STATEMENT OF THE REASONS FOR THE DECISION**

The decision is required to enable the construction of a new leisure centre on Rainham Recreation Ground to commence. The decision is also required to vary the Leisure Management Contract for the delivery of and services at the new leisure centre. Cabinet previously agreed in principle to progress a new leisure centre in the south of the borough on 15 January 2020 and noted that further decisions such as a variation to the leisure management contract and final build price would be made by the Leader of the Council in consultation with the Lead Member for Finance and the Chief Operating Officer.

#### **Current Situation**

Consultation

1. Adverts were placed in two consecutive editions of the Romford Recorder on 14<sup>th</sup> and 21<sup>st</sup> May 2021 regarding disposal of part of Rainham Recreation Ground and appropriation for planning for a new leisure centre. This is a requirement under the Local Government Act 1972 and the Town and Country Planning Act 1990 respectively. A twenty-eight day consultation period for objections to be made has now ended.

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2. The Cabinet report dated 15 January 2020 sets out the result of ‘conversation’ with Rainham residents regarding which of two potential sites was the preferred site for a new leisure centre. 66% of Rainham residents indicated Rainham Recreation Ground to be their preferred site in an online survey.
3. Whilst only verbal responses, the perceived majority of visitors to ‘drop in’ sessions at Rainham Library supported the Rainham Recreation Ground site. There were some clearly against this option, citing over time the loss of what was a larger open space that has been reduced with the development of the Rainham Tesco and some housing. Visitors to the drop in sessions were made aware of the online survey, with many saying they had completed this. There were hard copy surveys available at the ‘drop in’ sessions, and a number of these were completed and have been included within the overall survey response.
4. The drop in sessions also provided valuable feedback that whilst Rainham Recreation Ground was the preferred location, it was highlighted that a new leisure centre should be sited further back on the site away from Viking Way. This suggestion has been implemented in the planning application/ permission for the site.

### **Leisure Centre Project**

5. The contract with SLM provides a mechanism for delivery of new leisure facilities by SLM. This includes planning application, design and build (both by SLM) and template lease. There is to be mutual agreement on fees on an open book basis.
6. The Council owns the freehold interest in the site that is subject to this report.
7. All Council owned land is held for a particular purpose and the process of documenting any change to that purpose is called “appropriation”. As the decision recommended by this report is to utilise the site for the provision of a leisure centre (subject to the usual development consents) it is recommended that the site is appropriated for planning purposes pending disposal.
8. The Council is authorised to appropriate land that it owns for planning purposes under Section 122 of the Local Government Act 1972 which, subject to a number of provisions, allows “a principal council to appropriate land which belongs to the Council and is no longer required for the purpose for which it was held immediately before the appropriation....”.
9. When the appropriation is in respect of open space the Council is required under Section 122(2A) of the Local Government Act 1972 to advertise its intention to do so for two consecutive weeks in a newspaper circulating the area in which the land is situated and consider any objections which may be made to them. No objections were received.
10. By formally appropriating the land for planning purposes the Council or any other person may - subject to Section 241 of the Town & Country Planning Act 1990, develop the land in accordance with a planning permission.

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11. The Council should only propose to appropriate land for planning purposes if it has an intention to see the land used for development which promotes or improves the economic, social or environmental wellbeing of its area and believes that the appropriation is needed in order to facilitate or achieve any of these aims. In this case, the Council does intend to see the land used for development, and a full list of benefits are included in the attached EQHIA (Appendix F).
12. As part of the contract variation, a lease is to be granted to SLM. The Council is authorised to dispose of any land that it owns but where such land can be regarded as open space (defined under Section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden, or used for the purposes of public recreation...”) the Council must advertise its intention to dispose of the land for two consecutive weeks in a newspaper circulating the area in which the land is situated and consider any objections which may be made to them. No objections were received.
13. The planning application and tender for construction have been progressed at risk concurrently with the statutory consultation for appropriation and disposal of Rainham Recreation Ground. This is in order that if, having considered the outcome of the consultation the Council determines to appropriate and dispose of the land, development of the site may commence promptly.
14. The planning application for the new leisure centre has been successful, with the Decision Notice being issued upon completion of a S106 agreement in relation to the carbon offset payment for the build. The S106 agreement is, at the time of writing, ready for engrossing.
15. Tendering by SLM of the construction of a new leisure centre on Rainham Recreation Ground has taken place. A tender report is attached at Exempt Appendix C This, to include construction, fees, fit out costs and contingency, provides a fixed price of £7,999,583 for the new leisure centre. Detail of the agreed fee payable by SLM for addition of the leisure centre to the existing concession contract is at Exempt Appendix A
16. As previously set out in the Cabinet report of 15 January 2020, the contract between the Council and SLM provides a mechanism for inclusion of delivery and ongoing services of a new leisure centre into the existing contract by way of variation. The Contract also provides a template lease that may be used following final agreement on Heads of Terms.
17. The lease for the new leisure centre on Rainham Recreation Ground will operate in conjunction with the leisure management contract and will co-terminate with the Leisure Management contract on 30 September 2036 or upon earlier termination of the leisure management contract.
18. Subject to the recommendations of this Executive Decision being agreed, we will seek independent valuation to ensure Section 233 of the Town and Country Act 1990 compliance.
19. Also, subject to the recommendations of this Executive Decision being agreed and upon finalising the terms of the lease and variation, construction of the

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leisure centre may commence with an estimated completion date of October 2022.

**OTHER OPTIONS CONSIDERED AND REJECTED**

1. Do not progress a new leisure centre in the south of the borough. This has been rejected as Cabinet have already agreed to progress a new leisure centre and the funding is in place.
2. Agree to build a new leisure centre but do not incorporate it into the leisure management contract with SLM. The contract with SLM requires that it is given the opportunity to build and manage any new leisure facility subject to agreement on terms (including price) with the Council. An acceptable financial position has been reached for SLM to build, operate and manage the new leisure centre. SLM also manage all the other Council owned leisure centres in the borough so will provide continuity of management economies of scale.
3. Not to appropriate the land for planning purposes. In this case the land will remain held by the Council designated as public open space, but the Cabinet decision will not be carried out.

**PRE-DECISION CONSULTATION**

There has been a public consultation as mentioned above and business partners have been consulted. In making this decision, the Leader has consulted with The Lead Member for Finance and Chief Operating Officer.

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

Name: Guy Selfe

Designation: Health and Wellbeing Manager

Signature:

Date:

## **Part B - Assessment of implications and risks**

### **LEGAL IMPLICATIONS AND RISKS**

The Council has a power under s.19 Local Government (Miscellaneous Provisions) Act 1976 to provide recreational facilities within its area and a duty under NHS Act 2006 to take such steps as it considers appropriate to improve the health of the people in its area.

The Council may in the exercise of its duties and powers develop a new leisure centre in its area.

The contract between the Council and Sports and Leisure Management Limited (SLM) requires that: the Council consults with SLM in relation to the design and brief for the new leisure centre; that SLM should be responsible for obtaining all planning permissions and consents required for the new leisure centre; and that via a variation to the contract, subject to agreement on fees to be calculated on an open book basis, SLM shall deliver and manage the new leisure centre. The proposed variation as set out in this report and its appendices is therefore a permitted variation to the contract

The Council is seeking to appropriate land for planning purposes under section 122 of the Local Government Act 1972 and then dispose of the same pursuant to section 233 Town and Country Planning Act 1990.

Section 122 of the Local Government Act 1972 (“the Local Government Act”) enables the Council to appropriate land which belongs to the Council for any statutory purpose for which it is authorised to acquire land and which is no longer required for the purpose for which it is held immediately before the appropriation. The Council must, therefore, consider whether the land is no longer needed for the purpose for which it is so held if it is to be appropriated for planning purposes.

The meaning of the words “no longer required for the purpose for which it was held immediately before the appropriation” was considered by the Courts in the context of the predecessor to section 122. In that instance “not required” was held to mean “not needed in the public interest of the locality”.

Appropriation of the land for “planning purposes” (in order to engage the provisions of sections 203 – 205 Housing and Planning Act 2016 (“the 2016 Act”)) requires the Council to consider the following factors whether;

- a. the appropriation will facilitate the carrying out of development, re-development or improvement on or in relation to the land or is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated;
- b. the proposed development, re-development or improvement will contribute to the promotion or improvement of the economic, social and/or environmental well-being of the area;
- c. it is in the public interest that the proposed development should be carried out, having regard to the provisions of the development plan, whether planning permission is in force and any other considerations that would be material to the determination of a planning application for development of the land;
- d. as noted above, the land is no longer required for the original purpose for which it was acquired



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e. rights capable of being overridden by sections 203 - 205 of the 2016 Act exist and whether interference with such rights is necessary

“Planning purposes” is defined in section 246(1) of the 1990 Act and acquisition for such purposes includes acquisition under section 226 or 227 of the 1990 Act.

Where land is appropriated for planning purposes, it is then held by the Council under the statutory provisions of Part 9 of the 1990 Act. The consequence (by virtue of section 203 - 205 of the 2016 Act) is that the erection, construction or carrying out of any maintenance or any building or work on the land and subsequent use of the land is authorised under those planning powers, if the works are carried out in accordance with planning permission, even if they interfere with third party rights.

Section 241 TCPA 1990 provides that land appropriated by the Council for planning purposes may be used in any manner in accordance with planning permission notwithstanding its status as open space.

It is considered reasonable for the Council to use its powers in this case to appropriate the land within the red line areas as on the Plan attached at Appendix 1 for planning purposes as the appropriation will facilitate the carrying out of development and improvement to the land and contribute to the promotion of the economic, environmental or social well-being of the Borough.

The Human Rights Act 1998 (“the 1998 Act”) prevents public authorities from acting in a way that is incompatible with rights protected by the 1998 Act. Of particular relevance to the acquisition of interests in land or overriding of interests/rights in land are Article 8 of the European Convention regarding respect for privacy and family life and Article 1 of the First Protocol which concerns the protection of property.

Such rights are qualified rights and may therefore be overridden where it is considered that the interference with these rights are proportionate and that the interference is necessary in the interests of, amongst other things, national economic wellbeing.

It is acknowledged that the appropriation of land for planning purposes may result in interference with property rights. However, compensation will be payable in accordance with statute.

The Council’s power to dispose of the land is held in s233 of the Town and Country Planning Act 1990 (hereafter “T&CPA”), which holds that where any land has been acquired or appropriated by a local authority for planning purposes and is for the time being held by them for the purposes for which it was so acquired or appropriated, the authority may dispose of the land to such person, in such manner and subject to such conditions as appear to them to be expedient in order;

(a) to secure the best use of that or other land and any buildings or works which have been, or are to be, erected, constructed or carried out on it (whether by themselves or by any other person), or

(b) to secure the erection, construction or carrying out on it of any buildings or works appearing to them to be needed for the proper planning of the area of the authority.

Where such land can be regarded as open space (defined under section 336(1) of the Town and Country Planning Act 1990 as “any land laid out as a public garden or used

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for the purposes of public recreation...”) the Council must advertise its intention to dispose of the land. Section 233(4) of the T&CPA 1990 requires the Council to advertise its intention to dispose of such land in two consecutive weeks in a newspaper circulating in the area in which the land is situated, and consider any objections to the proposed disposal which may be made. This notice (and a similar notice setting out the Council’s intention to appropriate the land) were circulated in the Romford Recorder for a two-week period from 7th May 2021. No objections were received.

The disposal of the land will be pursuant to section 233 of the Town and Country Planning Act 1990. The Council has, in addition to advertising the intended appropriation of the land (pursuant to section 122 Local Government Act 1972) advertised the intended disposal (on the same basis) in accordance with section 233(4) of the Town and Country Planning Act 1990 Notices were circulated in the Romford Recorder during the same two-week period, including a plan of the proposed lease site and allowing 28 days for response from local residents. No responses were received.

The Council is required to take any representations made into account in reaching the final decision to appropriate and dispose. This involves the exercise of a discretion and the duty to act reasonably in a “Wednesbury” sense.

In practice this will involve balancing the benefits of appropriating and then disposing of the land (and the provision of a leisure centre) as against the loss suffered by any landowners that benefit from rights affecting the land and those members of the public that use and enjoy the land for open space purposes. Adjoining landowners will have their rights overridden (in exchange for compensation) by the appropriation process, for example, this would include landowners that have acquired rights to light or have the benefit of restrictive covenants that affect the land. Members of the public that use the open space for recreational purposes will have their ability to use the open space land for these purposes taken away.

The section 233 TCPA 1990 power of disposal is subject at subsection (3) to the standard requirement to obtain either best consideration or the Secretary of State’s consent, for any leasehold disposal for a term of more than seven years. An agreed form of lease was included in the Council’s existing service provision agreement with SLM. It is proposed to adopt this lease, subject to a review that it genuinely represents best consideration for the Council.

The steps taken thus far and the proposed approach to delivery of the leisure centre comply with the Council’s contract with SLM. Subject to the Council complying with legal requirements relating to the land as set out above, it may vary the contract as set out in this report.

Further considerations relating to the legal implications are included in Exempt Appendix H.

### **FINANCIAL IMPLICATIONS AND RISKS**

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Following a tendering process for the construction of a new leisure centre at Rainham Recreation Ground, Piperhill Construction Ltd were evaluated as the preferred contractor. The Project Team, working with Piperhill have progressed a value engineering exercise to reduce the build cost submitted in the tender. This was successful, however, due to construction costs increasing generally, the cost to build the new leisure centre has risen above the budget.

The project team have carried out due diligence by testing these price increases across the construction industry and they have been found to be a reflection of current prices. At the current time, certain construction items are increasing in price almost weekly, for example steel.

A revised build cost has been provided, to include construction, fit out, fees and contingency of £7,999,583. This is a fixed price, including all costs to date, with the project developer bearing the risk on any future increases.

A briefing on the detailed price increases can be found at Exempt Appendix B.

|       |           |
|-------|-----------|
| Costs | 7,999,583 |
|-------|-----------|

Funded by:

|  |           |
|--|-----------|
| Approved Capital Budget for Rainham Leisure Centre | 7,790,000 |
|--|-----------|

|  |         |
|--|---------|
| Approved Virement from Capital Contingency | 209,583 |
|--|---------|

|               |           |
|---------------|-----------|
| Total Funding | 7,999,583 |
|---------------|-----------|

The revenue costs of financing the overall capital programme were addressed as part of the budget setting process and do not need to be reassessed at this stage.

Further financial implications are detailed in the attached exempt appendix A.

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

There are no human resource implications or risks. If the recommendations are agreed SLM would then operate and manage the facility once built, in which case all human resource responsibilities would sit with SLM. This situation would be reassessed were SLM not to manage a new leisure centre in the south of the borough.

### **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.

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

In all situations, urgent or not, the Council will seek to ensure equality, inclusion, and dignity for all.

A new leisure centre will be accessible to all groups sharing a protected characteristic. As part of the detailed design work required, engagement sessions were organised where local residents and interested groups, such as disability groups, were able to see the plans for a new centre and had the opportunity to comment.

An updated EQHIA has been written, which looks at how the new leisure centre will impact on the protected characteristics of the residents in the south of the borough. It also considers the impact of a loss of part of the open space.

### **HEALTH AND WELLBEING IMPLICATIONS AND RISKS**

The benefits to health and wellbeing by having a new leisure centre are numerous, from employment opportunities to improving both mental and physical health. It is recommended that a Health Impact Assessment be conducted on the leisure centre development, covering the period both during and post construction. The HIA will identify and aim to maximise any positive impacts on health and wellbeing, and mitigate for any negative impacts where possible.

The HIA will also consider impact on:

- future public health emergencies or pandemic that may be spread either from (a) direct contact with an infected individual or animal, (b) airborne or (c) infected food, surfaces and materials
- sustaining the Environment against climate change, natural disasters and extreme weather events i.e. flooding/ heatwave or carbon emissions

### **BACKGROUND PAPERS**

None

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**APPENDICIES**

|                   |   |        |
|-------------------|---|--------|
| <b>Appendix A</b> | Financial Implications and Risks                        | Exempt |
| <b>Appendix B</b> | Briefing Note of Cost Changes                           | Exempt |
| <b>Appendix C</b> | Tender Evaluation Report                                | Exempt |
| <b>Appendix D</b> | New Leisure centre Conversation Summary                 |        |
| <b>Appendix E</b> | Free Text Responses to Community Conversation Questions |        |
| <b>Appendix F</b> | EQHIA   |        |
| <b>Appendix G</b> | Red Line Plan – Rainham Recreation Ground               |        |
| <b>Appendix H</b> | Rainham Recreation Ground                               | Exempt |

Key Executive Decision – Part Exempt Report

**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*

**Details of decision maker**

Signed



Name: **Councillor Damian White  
Leader of the Council**

Date: **19/08/2021**

In consultation with:

Lead Member for Finance and the Chief Operating Officer

Signed

Name:  
Lead Member for Finance

Signed

**Key Executive Decision – Part Exempt Report**

Name

Chief Operating Officer

**Lodging this notice**

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

**For use by Committee Administration**

This notice was lodged with me on \_\_\_\_\_

Signed \_\_\_\_\_

**Exempt Appendix:**

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**Reasons: The public interest in maintaining the exemption outweighs the public interest in disclosing it as it is more in the public interest the information contained in Appendix A, B and C is commercially sensitive as there is detailed commercial information about an organisation and the terms of the proposed Contractual arrangements some of which are the subject of negotiation and agreement.**

**Appendix H is not for publication as it contains exempt information by virtue of category 5 of the Access to Information Procedure Rules set out in the Constitution pursuant to Schedule 12 Local Government Act 1972. It is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing it as it includes matters to which legal professional privilege could be claimed and is likely to affect the Council's ability to respond to legal proceedings.**