

Cobtree Manor Park Golf Course Development Works

Final Decision-Maker	Cobtree Manor Estate Charity Committee
Lead Head of Service/Lead Director	Head of Regeneration & Economic Development – John Foster
Lead Officer and Report Author	Leisure Manager – Mike Evans
Classification	Public
Wards affected	Boxley

Executive Summary

This report provides the Committee with an update on MyTime Active's plans to build a brand new clubhouse at Cobtree Manor Park Golf Course and seeks permission for a change to the contract that will facilitate a refurbishment to the current clubhouse in place of building a brand new clubhouse.

This report makes the following recommendation to this Committee:

1. That approval be given for the capital sum in the current contract to be invested into a refurbishment of the existing clubhouse building, with new extension, at Cobtree Manor Park Golf Course instead of being invested in a new clubhouse building.
2. That a waiver of the requirement to enter into a competitive procurement process for the contract to manage Cobtree Manor Park Golf Course be presented to and approved by the Director of Finance & Business Improvement before the actions in recommendation 3 below are undertaken.
3. That authority be given to the Director of Regeneration and Place to instruct Mid-Kent Legal Services to amend the contract and lease thus incorporating the changes approved in recommendation 1 above and for the amended contract, lease and any other ancillary documents to be entered into by the Council.

Timetable

Meeting	Date
Cobtree Manor Estate Charity Committee	11 July 2019

Cobtree Manor Park Golf Course Development Works

1. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
Impact on Corporate Priorities	Accepting the recommendations will materially improve CMET's ability to achieve the following corporate priorities: <ul style="list-style-type: none"> • A vibrant leisure and culture offer, enjoyed by residents and attractive to visitors 	Head of Regeneration and Economic Development
Risk Management	The risks of the preferred option and the not preferred options are covered in sections 3.1, 3.2, 3.3, 3.4, 4.1 and 4.2. Future risks will be mitigated as described at 7.2 and 7.4.	Head of Regeneration and Economic Development
Financial	Not progressing with this option puts the income generation of the golf course operation at risk, which increases the risk of CMET not receiving its annual management fee from MyTime Active	Paul Holland, Senior Finance Manager (Client)
Staffing	Accepting the recommendations will not have an impact on staffing	Head of Regeneration and Economic Development
Legal	Pursuing a breach of contract will not overcome the construction issues faced by the contractor. If a challenge is received to the amended contract, as no new procurement will have been undertaken, the waiver will demonstrate that MBC have considered the risk and made	Team Leader Contracts and Commissioning

	the reasonable decision to amend the current contract due to the new information discovered re the site. The amount to be spent by MyTime Active under the current contract must remain the same or further decisions as to a new procurement process will have to be made.	
Privacy and Data Protection	No additional data will be held	Leisure Manager
Equalities	Any changes to existing buildings should consider government guidance on Access to and Use of Buildings: Approved Document M to ensure they are accessible as possible to all members of the community.	Policy & Information Officer
Crime and Disorder	Not progressing with the preferred option could leave the site vulnerable to criminal damage and deliberate destruction of property	Head of Regeneration and Economic Development
Procurement	Risks and mitigations are identified in paragraphs 2.11, 3.2, 3.3 and 3.4 and exempt appendix 1.	Head of Regeneration and Economic Development

2. INTRODUCTION AND BACKGROUND

- 2.1 MyTime Active has been operating Cobtree Manor Park Golf Course under the current contract since 1 September 2017.
- 2.2 The contract requires MyTime Active to invest the contract capital sum in a brand new clubhouse building, course improvements, driving range, and facility improvements. The contract capital sum is detailed in exempt appendix 1.
- 2.3 MyTime Active has been working to that end since the contract began. MyTime Active representatives have presented plans to CMET and ward councillors and engaged with Maidstone Borough Council Planning in a pre-app discussion. A planning application for the new-build clubhouse and associated works was submitted in August 2018, validated in October 2018 and planning permission was granted in February 2019.
- 2.4 The construction of the new-build clubhouse has been complicated by its location on the site. Ancient woodland close to the intended location meant

that a new location had to be sought. A new location was identified, adjacent to the existing clubhouse, but the topography there comes with added drainage complications which require additional piling work. This has led to increased construction costs.

- 2.5 Work has been done to re-profile the construction budget and deliver the scheme but this reduces the footprint and specification of the building to such an extent that it puts great pressure on the future income streams of the business, the income streams being the golf course, the new driving range, the new fitness and wellbeing facilities and the increased and improved food and beverage offer.
- 2.6 MyTime Active is no longer in a position to deliver the new clubhouse because the capital costs of doing so are greater than forecast and greater than the capital sum identified in the contract. The forecast return on investment makes that level of investment unviable.

Refurbishment of the existing clubhouse

- 2.7 MyTime Active has proposed a refurbishment of the existing clubhouse as a solution to the affordability of the scheme. The refurbishment would give maximum value for money to CMET and MyTime Active as the high costs associated with the location of the building would be avoided. This would maximise the investment into the facility improvement, fixtures, fittings and equipment of the building and deliver maximum benefit to customers.
- 2.8 The same contract capital sum would be spent on the project, which would include the extended and refurbished clubhouse, new fitness and wellbeing gym and studio, golf course upgrades, new driving range and car park improvements. This level of capital investment is viable.
- 2.9 Delivering the four income streams in a refurbished building will ensure the future revenue of the business operations are delivered and the future payments to CMET are protected.
- 2.10 MyTime Active have some initial plans of the refurbishment available for CMET to see at the 11 July meeting. Representatives from MyTime Active will be present on 11 July to brief committee members.

Contract procurement

- 2.11 Exempt appendix 1 contains details of MyTime Active's initial submission, their final submission and details of the other operators who bid for the contract to manage Cobtree Manor Park in 2016.
 - 2.12 The risks associated with altering the contract arrangements are laid out in section 3.1, 3.2, 3.3 and 3.4
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3. AVAILABLE OPTIONS

Do nothing

- 3.1 Committee could insist the 2017 contract is followed and a new clubhouse is built by MyTime Active. With the increased construction costs the new building will be smaller than desired and will deliver an inferior project than was planned. Building a new clubhouse to the same specification will incur increased capital costs, which are not in the contract, and jeopardise the future business of MyTime Active and therefore its annual payments to CMET.

This option is not recommended.

Re-tender the contract

- 3.2 Committee could re-tender this contract, but any new or previous bidder will need to adjust their capital investment proposals based on the new information available today concerning the ancient woodland and the cost of overcoming the drainage issues at the second building location. Any other operators proposing this will be in the same position and will look to refurbish and extend the existing clubhouse instead. Competing the contract again is likely to put CMET in the same position and the duration of that work will take up capital repayment time and delay the implementation of improved facilities at Cobtree Manor Park Golf Course even further. Re-tendering would, however, avoid any risk of challenge that varying the contract with MyTime Active may elicit.

This option is not recommended.

Pursue a breach of contract against MyTime Active

- 3.3 MyTime Active is a leading operator of golf courses in the UK. Pursuing a breach of contract against them will not change the construction issues faced on site and it will limit the number of operators available to CMET to take the project forward.

This option is not recommended

Alter MyTime Active's current contract to enable the capital sum to be invested into a refurbishment of the existing clubhouse building

- 3.4 With the complications surrounding the construction on site a refurbishment of the existing building is the best option. It will deliver an extension to the existing building increasing the footprint beyond what was planned for the new clubhouse, bring improved facilities to the site in a cost-effective way, and it will protect the financial operations of the site and the annual payments this generates for CMET

This is the recommended option.

4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS

- 4.1 It is recommended that MyTime Active's 2017 contract be altered to approve a refurbishment and an extension of the existing building, instead of a new clubhouse, as part of the overall project to develop the site. The refurbishment will accompany the course upgrade works, new driving range and car park improvements and will be delivered with the same capital sum as is in the current 2017 contract.

- 4.2 It is recommended that a waiver to alter the contract be presented to the Director of Finance & Business Improvement, and an amended lease and Deed of variation be drafted for the creation and management of the new site. The amended contract will have the same end date as the current contract, which was signed in 2017 for 20 years with an option of a five-year extension. The end date of the lease and amended contract will be 31 August 2037, with an option to extend that by a further five years.
- 4.3 The refurbishment option will:
- overcome the problems with constructing a new building elsewhere on site
 - avoid expensive construction solutions and demolition costs
 - deliver a larger building and greater footprint able to meet the demands of increased visitors to the site
 - ensure capital is invested in facilities and improvements that customers can use and benefit from
 - avoid protracted re-tendering and contract breach procedures
 - ensure investment is made in to the Cobtree Manor Park Golf Club site
 - ensure future annual operating payments are made to CMET

Outcomes

- 4.4 The Cobtree Manor Park Golf Course upgrade works can proceed and the benefits to customers can be delivered. Once a way forward is agreed by CMET the necessary legal steps can be taken by officers and MyTime Active will be able to submit a new planning application for the building refurbishment.
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5. RISK

- 5.1 The risks associated with this proposal, including the risks if the Council does not act as recommended, have been considered in line with the Council's Risk Management Framework. That consideration is shown in this report at 3.1, 3.2 and 3.3 and identifies some risks assessed rated as "RED" or "BLACK" should agreement to vary the contract and progress with a refurbishment not be granted. However, we are satisfied that the further responses to those risks shown at 4.1 and 4.2 are sufficient to bring their impact and likelihood within acceptable levels. We will continue to monitor these risks as per the Policy.
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6. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 6.1 No formal consultation with user groups has taken place.

7. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 7.1 If Cobtree Manor Estate Charity Committee agrees to proceed with the recommended option the Leisure Manager, in conjunction with Legal Services, will proceed with this work.
- 7.2 A contract waiver will be presented to the Director of Finance & Business Improvement and an amended lease and Deed of Variation with MyTime Active will be drafted and signed. The amended lease and contract will have the same payment structure and end date as the current 2017 contract.
- 7.3 MyTime Active will progress with the plans for the refurbishment project and submit the required planning application.
- 7.4 Public communications regarding the change to the project will be managed by MyTime Active but must be approved by the Head of Economic Regeneration so that Cobtree Manor Estate Charity Committee's reputation is protected.

8. REPORT APPENDICES

Exempt appendix 1: Procurement information relating to MyTime Active's contract to manage Cobtree Manor Park Golf Course
