

Kings Hill Parish Council

Kings Hill Sports Park – Heads of Terms for Agreement with Tonbridge & Malling Leisure Trust

First Draft (23 October 2020)

This document sets out the heads of terms for the proposed agreement between KHPC and TMLT for the management and operation of Kings Hill Sports Park, in relation to the key documents.

The three principle agreements are:

- Management Agreement – sets out the basis of how the Parish Council will fund the Trust and the key outcomes the Trust will deliver in return.
- Leases – sets out the buildings and property which are to be leased and the principle terms
- Transfer Agreement – what other assets and transfer provisions there are, which only apply at point of transfer

The tables below set out these key agreements

1. Management Agreement

Issue	Proposed Position
Scope of Services	<ul style="list-style-type: none"> • Operation of Kings Hill Sports Park and all associated facilities.
Duty to Cooperate	<ul style="list-style-type: none"> • There is an overarching duty for both parties to work in partnership with each other and to collaborate in delivering the services and community benefit.
Services	<ul style="list-style-type: none"> • Management of the facilities, including operation, programming, events, catering, retail, sports and leisure activities, grounds maintenance, bookings. • Delivery of agreed KHPC outcomes • Operate in accordance with Good Industry Practice and Legislation. • Requirement to continuously improve and deliver Best Value, to be demonstrated in TMLT's business plan.
Length of Term	<ul style="list-style-type: none"> • Management Agreement to be 20/25 years, with a review of the funding every 5 years (or at other times if agreed by both parties), as set out below. • Both lease and management agreement to be terminated if the other one is terminated.

<p>Funding & Review of Funding / Review of Services</p>	<ul style="list-style-type: none"> • To be for an agreed Service Fee in Year One & Two subject to CPI Index increase in Year Two. TMLT to operate on an Open Book basis and profit/loss to be borne by KHPC. In Year Two funding to be negotiated on a Service Fee basis for Years Three to Five with profit/loss risk transferred to TMLT from Year Three. • Thereafter funding fixed for each 5-year period of the funding agreement prior to review, which would reflect any efficiencies delivered in the business plan and indexation costs (based on CPI index). • Funding would be provided quarterly in advance (except Year One, which is to be agreed subject to business plan). • The funding will be renegotiated in accordance with the following process (during every 5-year process): <ul style="list-style-type: none"> ➢ In Year Four [September] – KHPC confirms the priorities and areas they wish to deliver for the subsequent 5-year period. ➢ Trust prepares a draft 5-year business plan in response to priorities by [March] in Year Four. ➢ Business Plan and funding discussed between parties ➢ Seek to agree by [June] in Year Five (9 months prior to end of existing funding period). • If, acting reasonably and in good faith, no agreement to future funding then the funding for the previous period shall continue until such time as the parties are able to agree the level of funding and services, subject to a Long Stop Date. If agreement cannot be reached by the Long Stop Date, then KHPC has the option to terminate the agreement. This will be treated as Voluntary Termination. • There would be VAT applied to the management fee. • NOTE: It is possible that in the future, KHPC's subsidy for the services will reduce to zero. The Management Agreement will continue to apply to the day to day management and operation of the facilities/delivery of the services. • Notwithstanding that the funding is fixed for 5 years, there will be an annual review of the services to ensure these continue to meet KHPC priorities for the next 12-month period. The Management Agreement will set out the timetable for this annual review.
<p>Surplus Share</p>	<ul style="list-style-type: none"> • TMLT will prepare their business plan which allows for reserves to be developed over time, which can be used for reinvestment in the service. • Surpluses over and above an agreed level will be shared between KHPC and TMLT in the proportion of [30:70], annually. • The agreed level to be set to incentivise TMLT once the business plan has been developed and would be at a level which is above the business plan projections.
<p>Insurance</p>	<ul style="list-style-type: none"> • KHPC responsible for organising and paying for Building Insurance. • TMLT responsible for organising and paying for Employers Liability, Public Liability, contents, business interruption.

Opening Hours	<ul style="list-style-type: none"> • Minimum opening hours will be specified in the agreement, broadly based upon the existing opening hours. • Changes to minimum opening hours can only be made with the agreement of KHPC, such consent not to be unreasonably withheld or delayed.
Programming & Bookings	<ul style="list-style-type: none"> • Protected bookings to be identified, which could include protection of casual use at certain facilities and other groups rather than purely clubs. Schedule to be developed. • Programmes of use to be reviewed annually by TMLT with any significant variations to be agreed by KHPC but not unreasonably denied.
Pricing	<ul style="list-style-type: none"> • A list of core prices to be prepared by TMLT on an annual basis. Pricing to be within the control of TMLT but subject to reasonable consideration of factors outlined in the Management Agreement and to include the CPI Index, trading position, market conditions and comparable facilities.
Parish Council Use of Facilities	<ul style="list-style-type: none"> • Facilities to be available for use in line with KHPC's business continuity plan, with compensation being paid for loss of income. TMLT will be under an obligation to use all reasonable endeavours to mitigate any loss. • Other use will be paid for at prevailing rate.
Utilities	<ul style="list-style-type: none"> • KHPC to take tariff risk, over and above inflation (using CPI) or above an agreed level. TMLT to have sole right to determine supplier. • Payments for increased tariff will only be paid if TMLT have not met their target financial levels in the business plan. • TMLT to take consumption risk. • TMLT will be under an obligation to use all reasonable endeavours to reduce consumption levels.
Service Development	<ul style="list-style-type: none"> • TMLT responsible for delivery of strategic plan in response to KHPC outcomes. • Business Plan produced for each 5-year period. • Annual Service Delivery Plan prepared and performance monitored and reported quarterly.
Quality of Service	<ul style="list-style-type: none"> • TMLT will be required to achieve and maintain Quest at Entry level (or other similar quality standard) from Year Two onwards and maintain appropriate quality standards.
Customer Service	<ul style="list-style-type: none"> • TMLT will be required to publish and meet agreed customer care standards in terms of response times and values.
Health & Safety	<ul style="list-style-type: none"> • TMLT to be responsible for Health and Safety and will provide H&S policy and operating plans, which may be reviewed by KHPC.
Staff & Management Issues	<ul style="list-style-type: none"> • TMLT will be under an obligation to employ sufficient numbers of appropriately trained staff to deliver the services.

	<ul style="list-style-type: none"> • TMLT will be required to comply with all relevant employment legislation and good employment practice generally. • TMLT will undertake all appropriate checks to comply with safeguarding requirements.
Asset Management Issues	<ul style="list-style-type: none"> • TMLT will repair and maintain the facilities in accordance with the agreed repair and maintenance schedule. • TMLT will prepare an annual repair and maintenance programme for review by KHPC. • TMLT will repair and maintain all existing equipment. • TMLT will replace any equipment which is beyond repair on a like for like basis or equivalent value basis or such other basis as the parties may agree. • TMLT will liaise with KHPC regarding any significant equipment replacement programmes.
Marketing and Use of Parish Council Logo	<ul style="list-style-type: none"> • KHPC logo required on literature and 'trnactive working in partnership with KHPC' wording required on core documentation to be agreed.
Change in Law	<ul style="list-style-type: none"> • General change in Law – TMLT responsibility. • Specific change in Law – KHPC responsibility.
Change Procedure	<ul style="list-style-type: none"> • KHPC can request change – TMLT must respond with costs and if agreed then implemented with cost implications. If not agreed then dispute resolution or third party. • TMLT can request change – KHPC discretion whether agreed or not. If not agreed then dispute resolution or third party.
Monitoring & Performance	<ul style="list-style-type: none"> • TMLT to report on the Business Plan and Annual Service Delivery Plan and KHPC to be able to monitor performance. Reports to be presented in a quarterly report, the format of which is to be agreed. The format will be attached as a schedule but will be based on a Balanced Scorecard approach. • Annual review of performance and delivery against outcomes – preparation of business plan and service development. • If requested, TMLT will be required to attend Parish Council Presentation and Meetings.
Dispute Resolution	<ul style="list-style-type: none"> • Procedure as follows: <ul style="list-style-type: none"> ➢ TMLT Head of Operations and KHPC Clerk seek to agree. ➢ Chief Executive of TMLT and KHPC Clerk seek to agree. ➢ Third Party determines through mediation. ➢ Going to court can only be implemented if mediation fails.
Termination	<ul style="list-style-type: none"> • Can be terminated by either party based on default by the other party which would include the following: <ul style="list-style-type: none"> ➢ TMLT default – material breach, insolvency. ➢ KHPC default – material breach, non payment of funding. ➢ Also Voluntary Termination by the Parish Council – upon not less than twelve months notice. • Consequences of termination:

	<ul style="list-style-type: none"> ➤ To follow the requirements under exit and handover (see below). ➤ Compensation. <ul style="list-style-type: none"> • TMLT default – no compensation payable, except outstanding capital sums which TMLT have invested. • KHPC default (and Voluntary Termination) – compensation for costs of TMLT.
Partial Termination	<ul style="list-style-type: none"> • KHPC unable to partially terminate. • TMLT unable to partially terminate.
Exit & Handover	<ul style="list-style-type: none"> • TMLT will be required to: <ul style="list-style-type: none"> ➤ Deliver the assets associated with the service back to KHPC (in the agreed state of repair). ➤ Provide TUPE information. ➤ Apportion the costs/income. ➤ Cooperate with KHPC.

2. Lease

Issue	Proposed Position
Scope of Services	<ul style="list-style-type: none"> • Leases for the following buildings: <ul style="list-style-type: none"> ➤ Kings Hill Sports Park (note – will need to be a sub-lease of existing lease with Liberty) • Red line drawings being prepared to include car park although maintenance of car parks may be retained by KHPC.
Length of Term	<ul style="list-style-type: none"> • Lease to be for 20/25 years. • Lease will terminate early in the event of termination of the Management Agreement.
Rent	<ul style="list-style-type: none"> • Peppercorn rent.
Use of Buildings	<ul style="list-style-type: none"> • Can only be used for its existing use or similar (sport and leisure and cultural activities). • Prohibited uses to be included are any use for political purposes, gambling, any use which would bring KHPC into disrepute. • Change of use would require KHPC agreement. • Sub-letting of buildings is only allowed with agreement of KHPC (and would be contracted out of the 1954 act), excluding the current contracts and uses. Should not stop TMLT from entering into hire arrangements with clubs, etc. • Consideration as to whether KHPC consent required in all cases or in certain circumstances TMLT can do without consent (eg bar and catering).
Maintenance	<ul style="list-style-type: none"> • KHPC responsible for building and structural maintenance, including plant replacement. • TMLT responsible for day to day maintenance. • Responsibility matrix to be developed. Will be attached as a schedule to the management agreement.
Equipment	<ul style="list-style-type: none"> • All equipment would be under licence to TMLT and that responsibilities for the repair and replacement of the equipment would be split in accordance with agreed schedule attached to Management Agreement. • Any equipment not in the agreed schedule is the responsibility of TMLT.
Change in Ownership or Control of TMLT	<ul style="list-style-type: none"> • Requires KHPC agreement.
Assignment of Lease	<ul style="list-style-type: none"> • Not allowed without agreement of KHPC.
Charge Over Lease	<ul style="list-style-type: none"> • Not allowed without agreement of KHPC.
Landlord & Tenant Act 1954	<ul style="list-style-type: none"> • Contracted Out.

3. Transfer Agreement

Issue	Proposed Position
Assets	<ul style="list-style-type: none"> • The assets to be transferred (legal title) will be: <ul style="list-style-type: none"> ➤ Staff (TUPE) ➤ Stock (cash payment) ➤ Contracts (novated) • The assets to be loaned/leased: <ul style="list-style-type: none"> ➤ Facilities ➤ Equipment ➤ Membership database ➤ IPR • The assets to be excluded: <ul style="list-style-type: none"> ➤ Retained contracts ➤ Cash at bank ➤ Existing debts/liabilities • Apportionment of income and expenditure allocations at the transfer date to be agreed with a long stop date of 2 months after date of transfer. • Joint stock take to be undertaken the day before transfer to agree valuation of stock. • Any payments for stock and apportionments to be made within 3 months of transfer.
Pensions	<ul style="list-style-type: none"> • LGPS – the Trust is an Admitted Body. • Risk on contribution rates will sit with the party who is in control of the risk, thus any changes in benefits would sit with TMLT. • Scheme to be returned on a fully funded basis, for the areas which TMLT can control. • TUPE Staff not in LGPS to be auto-enrolled in Aviva DC Scheme on existing Trust terms.
Existing Service Contracts	<p>Contracts</p> <ul style="list-style-type: none"> • Will be novated to Trust where agreed by TMLT. • Consider if there are any contracts to be retained by KHPC. <p>Utilities</p> <ul style="list-style-type: none"> • Transfer of existing contracts for Utilities as agreed. TMLT to hold right to terminate and place contracts with existing Trust supplier.
Staff	<ul style="list-style-type: none"> • Transferred under TUPE. • The Contract will set out in detail both parties' obligations in relation to the TUPE Regulations, including consultation. • Indemnity from KHPC to TMLT to mitigate any liabilities incurred by TMLT in relation to staff claims but arising from an act or omission of the Parish Council prior to the Transfer Date. • Indemnity from TMLT to KHPC to mitigate any liabilities incurred by the Parish Council in relation to staff claims but arising from an act or omission of TMLT after the Transfer Date. • KHPC will meet all remuneration costs up to the point of transfer.
Liabilities	<ul style="list-style-type: none"> • Existing debts and liabilities will be excluded from the Transfer.

Dispute Resolution	<ul style="list-style-type: none">• Procedure as follows:<ul style="list-style-type: none">➤ TMLT Head of Operations and KHPC Clerk seek to agree.➤ Chief Executive of TMLT and KHPC Clerk seek to agree.➤ Third Party determines through mediation.➤ Going to court can only be implemented if mediation fails.
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