

**North Yorkshire Council**  
**Shareholder Representative**

**16 October 2024**

**Brimhams Active Limited Termination of Leisure Operating Agreement**  
**Report of Assistant Chief Executive (Legal and Democratic Services)**

*Appendix 1 to this report contains exempt information as described in paragraphs 3 and 5 of Part 1 of Schedule 12A to the Local Government Act 1972 (as amended) and it is considered that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.*

**1.0 PURPOSE OF REPORT**

- 1.1 To seek the Shareholder Representative's agreement to Brimhams Active Limited entering into a Deed of Termination with the Council to take effect on 1 December 2024 which will enable the leisure and associated services in the former borough of Harrogate to be brought in house.

**2.0 BACKGROUND**

- 2.1 Brimhams Active Limited ("Brimhams"), being a wholly owned company of the Council, entered into a contract with Harrogate Borough Council in July 2021 for the operation of sports and leisure centres and provision of sports, leisure services and associated services within the borough of Harrogate. As a result of local government re-organisation this contract automatically transferred to the Council on 1 April 2023.
- 2.2 In January 2024 the Executive resolved that all of the Council's leisure services would transfer to a single in-house model. To bring the leisure service in the former borough of Harrogate in-house the July 2021 contract with Brimhams needs to be terminated.
- 2.3 There is a power for the Council to terminate the operating contract by providing written notice that expires on 31 March of any year. Given that the Council has made the decision to bring the service back in house, there are no practical benefits in continuing with the Brimhams' contract until 31 March and an earlier transfer will facilitate the existing shared management arrangements and ensure stability for Brimhams' staff and customers. A transfer of the service with effect from 1 December 2024 is therefore proposed to take effect by way of the Council and Brimhams mutually agreeing to terminate the operating contract through a Deed of Termination, a draft of which is at Appendix 1 of this report.
- 2.4 The Board of Brimhams are meeting on 28 October 2024 to resolve whether to enter into the Deed of Termination. However, under Brimham's Articles of Association there is a list of Reserved Matters which are items that may only be decided on or approved by the Council as shareholder. Entering into the Deed of Termination would fall within the list of Reserved Matters and as such the approval of the Council for this Reserved Matters is being sought in accordance with the Council's scheme of delegation in the Constitution. More particularly the Council has appointed the Chief Executive Officer as the Shareholder Representative and has provided for the following specific delegations to the Shareholder Representative:
- Matter 28: Entering, amending or terminating any agreements which create a potential liability for the company below £500k;

- Matter 33: Any other matter which is not listed above and is a reserved matter of a company partly or wholly owned by NYC.

2.5 This report therefore seeks the Shareholder Representative's permission for the Brimhams' Board to proceed to resolve to enter into the Deed of Termination.

### **3.0 ALTERNATIVE OPTIONS CONSIDERED**

3.1 To wait until 31 March before terminating the contract. There are for the reasons outlined the report no practical benefits of delaying the transfer until this time.

### **4.0 FINANCIAL IMPLICATIONS**

4.1 The report to Executive in January 2024, set out anticipated service delivery costs and savings as a result of bringing leisure services from all providers back-in house. In relation to Brimhams Active specifically, the two areas highlighted were in relation to savings from irrecoverable VAT, approximately £213k and increased NNDR liability of £146k as the council does not qualify for reliefs. Resulting in an estimated saving of £67k per year. As the project progresses, these assumptions will continue to be revised. There is a specific review around pay and rewards for Leisure as a whole, which is on-going.

4.2 A project budget of £376k has been approved to cover transition costs for bringing services in house, of this approximately £90k relates to Brimhams services.

4.3 It is expected that within the terms of the Deed of Termination, there will provisions which set out the transfer of all assets and liabilities, equivalent to the value of reserves, to North Yorkshire Council.

### **5.0 LEGAL IMPLICATIONS**

5.1 The legal implications are incorporated in the body of this report.

### **6.0 EQUALITIES IMPLICATIONS**

6.1 An Equalities impact screening has been completed. The termination of the contract will give effect the Council's decision to transfer all of the Council's leisure services to a single in-house model. The new delivery model is considered to have a positive impact, with a greater focus on health, wellbeing, inclusion and targeted services.

### **7.0 CLIMATE CHANGE IMPLICATIONS**

7.1 A climate change screening has been completed. The termination itself will have a negligible impact on climate change. The ongoing Leisure Investment Strategy will make recommendations relating to individual sites and consideration of climate change impacts will be part of this stage.

### **8.0 REASONS FOR RECOMMENDATIONS**

8.1 To give effect to the Council's decision to bring leisure services in house in a timely manner.

### **9.0 RECOMMENDATION**

9.1 That the Shareholder Representative:

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| i)  | Approves that Brimhams should enter into the Deed of Termination to terminate the leisure operating agreement with North Yorkshire Council; and |
| ii) | Authorises the Assistant Chief Executive (Legal & Democratic Services) to agree to the final version of the Deed of Termination.                |

**APPENDICES:**

Appendix 1 – draft Deed of Termination (*Exempt Information*)

Appendix 2 – Equalities Impact Screening Assessment

Appendix 3 – Climate Change Impact Screening Assessment

**BACKGROUND DOCUMENTS:**

*Executive Report and Decision of 9 January 2024*

Barry Khan  
Assistant Chief Executive (Legal and Democratic Services)  
County Hall  
Northallerton  
16 October 2024

Report Author – Jennifer Norton, Assistant Director (Legal)

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions.