



ADUR & WORTHING
COUNCILS

Worthing Cabinet Member for Culture &
Leisure and the Adur Cabinet Member
for the Environment and Leisure
13th March 2024

Decision to be taken on or after
21st March 2024

Key Decision [Yes/No]

Splashpoint Settlement

Officer Contact Details

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Executive Summary

1. Purpose

- 1.1. The purpose of this report is to seek authority to enter into the agreed draft form of settlement agreement which is attached to this report at Exempt Appendix 1. The settlement agreement resolves outstanding matters under the JCT Design and Build 2012 Contract between Morgan Sindall and Worthing Borough Council.
- 1.2. To note the virement of Capital Programme funds of £70k as part of a formal Agreement to help achieve a satisfactory resolution to a long running dispute between the Council and Morgan Sindall (the construction company) over items of disrepair at Splashpoint swimming pool which are recorded as defects associated with the original build.

2. Recommendations

- 2.1. The Cabinet Members authorise the Director for Place to execute the Settlement Agreement (set out in the exempt Appendix to this report) to resolve outstanding issues under the JCT Design and Build Contract between Worthing Borough Council and Morgan Sindall.

3. Background

- 3.1. Splashpoint swimming pool opened in 2013 and has been hugely successful. Nevertheless, unresolved items for repair and corrosion throughout the building have remained problematic over the past 12 years.
- 3.2. The Council and Morgan Sindall (the construction company contracted to build Splashpoint) have collaboratively worked together to resolve items listed on a 'defects tracker' over the last 12 years. This tracker is attached to the Settlement Agreement which is attached to this report as an Exempt Appendix. From the onset, a number of items, including the early failure of the Ground Source Heat Pump, have persisted and remained unresolved for which the Council has been withholding the retention under the JCT Contract for 12 years.
- 3.3. Morgan Sindall had historically sought the repayment by the Council of the majority of a retention sum of £487,455. In 2019 the Council refused to issue this payment; nor would it issue a Notice of Completion of Making Good for defects arising during the Defect Liability Period (DLP) actions which were in accordance with the Contract and entered into negotiations with Morgan Sindall to resolve the items listed below:-
 - Repair of, and upgrade to, the ground source heat pump;
 - Further works to the data / comms room for best resolution of damp atmosphere
 - Agreement regarding the fire dampers and required actions
 - Costs of the replacement gym equipment to Morgan Sindall
 - Agreement to resolve the replacement glazing and
 - Resolution of the matters referred to in the defects tracker
 - Agreement as to how the retention held under the JCT Contract is to be distributed.
- 3.4. Subsequent exchanges of correspondence followed and mindful that legal action would be likely to be both protracted and expensive for both parties and carry litigation risk, the attached negotiated Settlement Agreement has been arrived at.
- 3.5. The successful outcome of this negotiation has seen agreement in principle reached on all outstanding matters, most notably the re-provision of a new Ground Source Heat Pump (GSHP) to an enhanced design recommended by the Council's consultants AECOM. AECOM indicates that the recommended GSHP would provide heat not just to the 'dry side' operations at Splashpoint (in common with the original GSHP) but would also be able to heat the pool water, resulting in significant savings in emissions and expenditure. The

proposed GSHP would also be compatible with a connection to the District Heat Network at a future date.

4. Issues for consideration

- 4.1. Other than the financial and legal issues set out in this report, there are no further issues for consideration.

5. Financial Implications

- 5.1. The total retention sum held by the Council is £487,455.00 which is reduced by Morgan Sindall's payment of £90,000.00 for the Gym Equipment leaving the sum of £397,455 (the "Retention Balance") which is to be released to MS as follows:-
 - On execution of this Agreement £198,728
 - On completion of the Remedial Works £148,727
 - On expiration of the Warranty Period £50,000
- 5.2. Morgan Sindall shall use the retention balance to fund its share of the works to resolve the ground source heat pump and other remedial works at Splashpoint.
- 5.3. On completion of the Remedial Works and in consideration of MS installing and commissioning the ground source heat pump and its operational date, including receipt by the Council of certification for the pump, any warranty, and the first year's maintenance agreement; The Council shall pay to Morgan Sindall, a sum of £200,000 from the existing capital budget being a sum which is less than 50% of the overall supply and installation costs together.
- 5.4. The Council shall also pay a further sum of £70,000 to be vired by the Chief Finance Officer from the Capital Programme Budget to pay for the additional improvements recommended by professional consultants.

6. Legal Implications

- 6.1. Under Section 111 of the Local Government Act 1972, the Council has the power to do anything that is calculated to facilitate, or which is conducive or incidental to, the discharge of any of their functions.
- 6.2. Section 3(1) of the Local Government Act 1999 (LGA 1999) contains a general duty on a best value authority to make arrangements to secure

continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

- 6.3. s1 Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available of assets or services for the purposes of, or in connection with, the discharge of the function by the local authority.
- 6.4. Members are asked to note that in April 2024 the contract will be 12 years old, and if settlement is not reached, any litigation or enforcement action will be far more complex.

Background Papers

None

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Sustainability & Risk Assessment

The ground source heat pump identified for installation should deliver significant benefits in terms of energy efficiency.

1. Economic

- High quality sports and leisure facilities are an important factor in supporting the local economy and ensuring that Worthing remains an attractive place for residents and businesses to thrive.

2. Social

2.1 Social Value

- Active participation in sports and leisure activities makes an important contributor to personal well-being.

2.2 Equality Issues

There are no direct implications from this particular report, but reliable, affordable and accessible sports and leisure facilities play an important role for many people with disabilities.

2.3 Community Safety Issues (Section 17)

Access to sports and leisure provision can play a vital role for vulnerable people including those who may be at risk of involvement in crime.

2.4 Human Rights Issues

Matter considered and no issues identified.

3. Environmental

Improved energy efficiency and reduced emissions will have a significant and beneficial environmental impact and directly contribute to the Council's decarbonisation target.

4. Governance

The outcome of this report will directly impact on the Council's strategy for carbon reduction. Improved and reliable sports and leisure facilities will enhance the Council's reputation. It will be important that contractors work in partnership with the Council's leisure operator, South Downs Leisure Trust. Appropriate risk assessments and risk management will be needed for all works associated with the improved outcomes.