



ADUR & WORTHING  
COUNCILS

Joint Strategic Committee  
8 September 2020

Key Decision [Yes/No]

Ward(s) Affected:

**COVID-19 Response to ACL Insolvency - Adur Leisure Sites**

**Report by the Director for the Economy**

**Executive Summary**

**1. Purpose**

- 1.1 The purpose of this report is to update members of the Committee on the leisure services in Adur following the insolvency of Adur Community Leisure and to agree a way forward for the reopening of leisure facilities in Adur District.

**2. Recommendations**

- 2.1 The Joint Strategic Committee is recommended to:
- Note the events and progress to date outlined within the report
  - Approves the creation of a budget of £353,000 to take forward the project as outlined in paragraph 6.
  - Approves the use of Government Covid 19 Emergency Funding for this purpose.
  - If the opportunity arises, delegate authority to the Director for the Economy in consultation with the Leader and the Executive Member for the Environment to award an Adur Leisure Service Provision Contract.
  - Further to paragraph 3.7.3 delegate authority to the Director for the Economy to negotiate the purchase of ACL assets (including any potential lease arrangements) to enable ongoing service delivery.

- Note that a further report will be presented to the committee in November updating members on progress, whether or not a new provider has been identified, and/or the Leader and Executive Member have exercised their authority above.

### **3. Context**

3.1 Adur District Council owns 3 leisure facilities and until recently, these have been operated and maintained by a charitable Trust, Adur Community Leisure (ACL) operating as a subsidiary company of Impulse Leisure. These facilities are:

- Lancing Manor Leisure Centre
  - a dry side leisure centre in Lancing, built in 1971
- Southwick Leisure Centre
  - a dry side leisure centre in Southwick, built in 1972
- Wadurs Community Pool
  - a 25m 5 lane swimming pool in Shoreham, built in 1993

3.2 Following lockdown in March, and in common with many leisure operators across the country, ACL made a request for financial support from the Council to help manage immediate cash flow pressures resulting from the closure of the facilities. On April 28<sup>th</sup> officers agreed under delegated authority (and under the terms of the existing budget) to support ACL with an advance payment of the Annual Service Fee for the period 1<sup>st</sup> April 2020 – 31 March 2021 (£125k), much of this sum went towards paying their staff for the pre-furlough period.

3.3 A subsequent request for further funding was to be the subject of a report to the 7<sup>th</sup> July Joint Strategic Committee. This report benefited from detailed advice from a specialist leisure consultant and was part funded by Sport England as part of a national programme.

3.4 At the meeting of 7<sup>th</sup> July, members of the Joint Strategic Committee, members were informed that following a dialogue with Sport England, a revised proposal had been received on the 6<sup>th</sup> July from Adur Community Leisure, setting out an alternative way forward for the leisure facilities in Adur. Mindful of the late notice and time needed to properly assess the proposal, members of the Committee were advised that it would be inappropriate to discuss the item at that time.

3.5 Accordingly, following a proposal by the Leader of Adur District Council, it was agreed that owing to the urgent nature of the decision and the new proposal put forward by ACL, the Joint Strategic Committee delegated authority to the Leader of Adur District Council, in consultation with the Executive Member for the Environment, for a decision on this matter, following a full report and update from Officers outlining the options.

### 3.6 Update since July

3.6.1 The Council was notified that Adur Community Leisure had declared insolvency following a Board Meeting on 16th July 2020. Sadly, this meant that the ACL staff were issued with redundancy notices and each of the facilities closed.

3.6.2 A creditors meeting was held on 27th July by Smith Williamson (SW), the insolvency practitioner (IP). SW was officially appointed as the liquidator on 28th. The role of the insolvency practitioner is to recover as much of any outstanding debt as possible for each of the creditors. While it is in occupation SW also has direct responsibility for maintenance and security of each of the leisure venues.

3.6.3 Smith Williamson has requested, as part of its duties, time to remain at the properties to investigate what prospect there might be for an operator to step in and run the current leisure operation from one or more of the 3 venues subject to agreement with the Council. Mindful of the significance of leisure and the role it plays in people's lives, and the many clubs and societies that depend on a robust operator being able to open the facilities, the Council has been actively engaging with the IP.

3.6.4 Any new award of the contract to provide leisure services in Adur District must be sanctioned by the District Council which is the freeholder of each of the 3 venues. As such, discussions have been held with the IP over a period of weeks to determine whether a suitable award can be made, noting that the IP is also looking for a sale of the ACL assets to an incoming supplier or the Council is no supplier is sourced.

### 3.7 Implications of Insolvency

3.7.1 Whilst the IP remains in occupation of the facilities, responsible for insuring and securing the buildings, it has retained one member of

ACL staff to ensure the health and safety processes, security and asset management is maintained during this period

- 3.7.2 The IP has made all other staff redundant and has terminated their contracts of employment.
- 3.7.3 Whilst the IP is entitled to remove and sell all ACL assets at any point in time, the IP has agreed not to do this whilst the Council and IP attempt to source an alternative provider. In addition, this enables the Council to carry out due diligence on the IP's asset lists to ensure that no landlord's assets are included in the listing. It is acknowledged that it may, at a future date, assist a speedier return to delivery of Adur leisure services, for the Council to consider the purchase of any ACL assets required for service delivery to ensure any incoming provider is able to swiftly commence service to the community without delay (any benefit to the incoming provider will be addressed within the proposed contract with that provider). It should be noted that given the intended shorter term nature of the interim contract, that unless the current equipment is on site, any incoming provider would have to re-equip the centres with new equipment which would then form part of the new contract price potentially increasing the cost to the Council significantly. At present the ACL assets remain in situ whilst the Council and IP carry out the due diligence process on the asset listing and a negotiation on their price is concluded.
- 3.7.4 Given the financial status of ACL, the IP has confirmed to the Council it is operating at a loss, and is therefore unable to remain in situ for any length of time unless the Council agrees to underwrite the IP's operating costs which include the costs for maintaining and securing the properties and the cost for one member of staff it has retained to carry out the regular and required property maintenance. The IP has asked the Council to reimburse the costs from 14th August in the approximate sum of £13,000 per month. As the Council would be faced with a similar level of costs if it assumed responsibility for the buildings, this seemed a reasonable approach whilst issues around assets and any potential new operator are resolved.

#### **4. Alternative approaches**

- 4.1 The Council is currently considering the ability to enable a third party community group to activate the outdoor areas (3G soccer pitches and tennis courts) as a very short term and interim measure, and is consulting with the IP to see if this is possible, the IP has its own insurance and other issues to consider and to do this would have to agree to release these areas from its control.
- 4.2 It has also been considered whether or not it is appropriate to take the properties back from the IP to enable smaller community groups to run individual areas of a facility but at this stage, this would create additional user health and safety risks, costs, maintenance and insurance issues, as well as additional management, security and resource issues for the council. Additionally any incoming community group would have to be sufficiently financially robust to meet the insurance, utility challenges as well as the potential for possible claims from the previous staff.
- 4.3 In considering the alternative approaches, advice is being taken from the appointed leisure consultant on best approaches to achieve a strong and resilient service outcome.
- 4.4 Traditional routes to procuring a leisure operator are time consuming and expensive. The Covid-19 Pandemic provides an added urgency and Council officers have examined what alternative approaches may be available under the new policies and legislation that the Government has introduced since the Pandemic began. It should be noted that there is significant disruption in the Leisure market at present so it is not an optimal time to find a new long-term provider.

#### **5. Issues for consideration**

- 5.1 The importance of leisure in people's lives has taken on a new dimension since the beginning of the Covid-19 Pandemic. Many individuals, clubs and societies have contacted the Council to express their concerns about the facilities remaining closed once ACL passed into insolvency.
- 5.2 The operation of leisure services will be challenging both operationally and financially for some foreseeable time, in particular whilst social distancing measures continue to apply. Any new provider will need to be sufficiently financially robust to manage and maintain the facilities and any new contract award will need to reflect the new challenges alongside changes in the needs and expectations of local communities and the importance of leisure

to people's health and well being. The Sport England leisure consultant is reviewing this as part of his instruction, to advise on how a longer term service delivery review to meet the new challenges.

## **6. Interim Procurement Strategy**

- 6.1 Given the community need and extreme urgency to activate the venues as soon as practical, it is intended to let a shorter term contract rather than undergo a full procurement process at this time. This can be done by using the Cabinet Office Procurement Policy Note PPN01/20 which remains in force, and enables the Council to negotiate and make a direct award. It is noted however that given the current climate and the future unknowns, there may not be many, if any, sufficiently viable parties interested in running Adur leisure services.
- 6.2 In parallel to this, the Council has commissioned the consultant recommended by Sport England to undertake a shadow bid to ensure that any deal offered by an incoming provider will represent value for money in light of COVID 19 restrictions and current market conditions for leisure providers.
- 6.3 Seeking to let a shorter term emergency contract will also provide time for the Council to fully assess the type of leisure service that it would like to support in the future, and to review its facilities with the aim of developing a leisure investment strategy. Again consultant support is required to collate information and report on this review. This will inform the tender process when the Council seeks to procure an operator for the longer term.
- 6.4 Whilst there is significant interest in operating elements of current service, it is the Council's view that it is better to contract with one provider who is capable of managing all of our venues and facilitating community use with a good track record in leisure management.

## **7. Engagement and Communication**

- 7.1 The Council has been in regular contact with the IP practitioner Smith Williamson to ensure it is in a position to enable a smooth transition to a new operator and to protect the Council's interests.
- 7.2 The duties of the IP practitioner are to investigate what prospect there might be for an operator to step in and run some of the current leisure operation from one or more of the 3 venues. Mindful of the significance of leisure and the role it plays in people's lives, and the many clubs and societies that

depend on the facilities, the Council has been actively engaging with the insolvency practitioner on this matter.

- 7.3 The Director for the Economy has kept in regular contact with the Executive Member for the Environment and the Leader and regular briefings given on the position with respect to ACL.

## **8. Financial Implications**

- 8.1 The annual budget for the operation of the ACL contract is £135,000 for 2020/21.

- 8.2 The consultancy support for the review of the contract cost £9,750 and was part-funded by Sport England £2,080 with the residual costs funded from within existing budgets.

- 8.3 The Council will need to release funding now for:

- Management of the facilities until the end of the financial year;
- Consultancy support for the interim procurement and the strategic review of leisure facilities;
- Any leasing costs associated with the equipment previously leased by ACL;
- Funding for the acquisition of ACL owned leisure equipment to ensure best value in any interim procurement and efficient reactivation of the sites.

Overall a budget of £353,000 is requested. Full details of the breakdown of this amount is available on request. No breakdown is provided in the report due to the commercial nature of the negotiations with the IP for the acquisition of the equipment and the potential negotiations with any leisure operator.

- 8.4 At present, it is not known what the final cost associated with any new operator is. To support the interim procurement our consultant will produce a shadow bid to ensure that any costs proposed by any operator will be reasonable. Clearly due to the impact of Covid 19, the costs in the next couple of years are likely to be higher. If additional budget is required, this will be addressed in the update report in November when it is hoped that a new operator will be identified and contract negotiations will be near final.

- 8.5 The Council has received £768k in emergency funding from the Government for support during this period. It is proposed to allocate part of this funding

towards the net cost of the proposed funding package. Elsewhere on the agenda is the budget monitoring report which estimates, that after allowing for government funding and the cost pressures associated with Leisure, the Council's overall position is a minor underspend of £54,000. If any deficit emerges during the year this will be funded from the reserves that were set aside for this purpose at the year end.

Finance Officer: Sarah Gobey

Date: 21st August 2020

## **9. Legal Implications**

- 9.1 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.
- 9.2 s1 of the Localism Act 2011 empowers the Council to do anything an individual can do apart from that which is specifically prohibited by pre-existing legislation.
- 9.3 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.
- 9.4 The Cabinet Procurement Policy Note - Responding to COVID-19 01/20 dated March 2020 acknowledges that in such exceptional circumstances authorities may need to procure goods, services or works with extreme urgency and this is permissible under Regulation 32(2)(c) of the Public Contract Regulations 2015 which reads: the negotiated procedure without prior publication may be used for public contracts in any of the following cases.... (c) insofar as it is strictly necessary where, for reasons of extreme urgency brought about by events unforeseen by the contracting authority the time limits for the open or restricted procedure cannot be complied with . It is further recommended that the term of the emergency contract be proportionate to the nature of the emergency.
- 9.5 If Regulation 32 is not used by the Council, it is open for the Council to use regulation 72(1)(d) where a new contractor replaces the one to which the authority originally awarded the contract as a consequence of the initial contractor's insolvency. Awards under this regulation must be on the same



contract terms, and the incoming supplier must be able to meet or better the original contractor's qualitative selection.

- 9.6 Any eventual provider of leisure services in Adur, will need to consider at the time of operation, whether in all the facts and circumstances surrounding the insolvency of ACL and the reopening of the services, whether there are any subsisting TUPE Transfer and/or potential redundancy payments liabilities to the previous ACL staff.
- 9.7 Any arrangement entered into with any new supplier is to be compliant with the rules on state aid that are in force at the time of any contract. For the time being and until December 2020, the European Commission has published a temporary framework setting out a new and acceptable level of aid for emergency COVID situations up to a sum of EUR800,000 subject to publishing and reporting requirements.

## **Background Papers**

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## **Sustainability & Risk Assessment**

### **1. Economic**

The pandemic has had a major impact on the wider economy and has made operating conditions in the leisure sector challenging. Remaining limitations on operating leisure facilities will need to be taken into account in any financial plan for re-opening facilities.

### **2. Social**

#### **2.1 Social Value**

The pandemic has had a major impact on the lives of individuals, families and our communities. Leisure and its relationship with health and well being will be of vital importance to local communities as we recover.

#### **2.2 Equality Issues**

The pandemic has had a disproportionate impact on some communities and this will need to be reflected in our recovery planning for leisure.

#### **2.3 Community Safety Issues (Section 17)**

The pandemic has raised a number of community safety issues both direct and indirect. Leisure, health and well being have an important role to play in this regard.

#### **2.4 Human Rights Issues**

No specific matters.

### **3. Environmental**

The environmental impact of leisure provision is an increasingly important consideration and encompasses aspects such as travel and the management of buildings and facilities.

### **4. Governance**

Governance advice will be sought from the councils's Monitoring Officer at each stage of the process.