



Joint Strategic Committee  
3 November 2020

## ADUR & WORTHING COUNCILS

Key Decision [Yes/No]

Ward(s) Affected:

### **Re-Opening Adur's Leisure Facilities**

### **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 negotiations and progress towards making a direct award to South Downs Leisure (SDL) to secure the sustainable re-opening of leisure facilities in Adur.

#### **2. Recommendations**

- 2.1. The Joint Strategic Committee is recommended to:
  - Update members on the current negotiations to progress a direct award with SDL (prior to the Director for the Economy exercising his delegated authority to award the contract in consultation with the Executive Member for the Environment and the Leader of the Council).
  - Approve additional budget of £282,870 for the management of the Leisure Facilities in 2020/21, funded from the emergency grant provided by the government.
  - Note that a direct award is subject to SDL's governance processes.

### **3. Context**

- 3.1 Members of the Committee will recall that the Council was notified that Adur Community Leisure (ACL) had declared insolvency following an ACL Board Meeting on 16th July 2020. Sadly, this meant that ACL staff were issued with redundancy notices and each of the facilities closed.
- 3.2 At their September Meeting, members of the Joint Strategic Committee agreed to delegate authority to the Director for the Economy in consultation with the Leader and the Executive Member for the Environment to make a direct award of an Adur Leisure Service Provision Contract; and to negotiate the purchase of ACL assets (including any potential lease arrangements) to provide the best opportunity for a new operator to get up and running quickly under a sustainable contract.
- 3.3 Mindful of the vital role leisure plays in people's lives and the associated level of urgency, it was agreed that the council should seek to let a shorter-term contract under the current 'emergency powers' set out in Cabinet Office Procurement Policy Note PPN01/20.
- 3.4 A cautionary note was raised in the September report about the prospect of a viable party coming forward. Members of the Committee agreed however, to receive an update on progress at this (November) Committee whether or not a direct award had been made.

### **4. Progress and Proposals**

- 4.1 Following the September Committee, many groups and individuals have contacted the Council to seek reassurance that the facilities will re-open and to offer their services in helping to achieve this goal. Those making contact have emphasised the important role active leisure plays in people's lives and added significance since the beginning of the Covid-19 Pandemic.
- 4.2 Working closely with the appointed Insolvency Practitioner, officers of the council have been approached by potential operators but none of these have been as sufficiently experienced and financially robust to put forward proposals for managing and maintaining the three leisure sites (as well as responding to new challenges and the needs of local

communities), as SDL has evidenced. The officer team has also had the benefit of input and advice from the leisure consultants SLC, who have been able to move swiftly to help prepare a model contract based upon advice from Sport England. The final terms of the model contract are still in negotiation.

- 4.3 Using the COVID-19 emergency provisions, a direct award for a shorter term service contract for a period of 5 years with SDL is proposed after which a full procurement exercise will be run.
- 4.4 The SDL team has an established financial and operational track record and has developed additional businesses to support its core offer in recent years. SDL have been responsible for the provision of leisure services for Worthing since 2014 under the terms of a contractual arrangement with Worthing Borough Council. SDL has built a strong reputation for working with local communities to support health and well-being as well as exemplary work to support people in vulnerable groups.
- 4.5 As is the case with the vast majority of leisure operators nationally, SDL has required additional financial support from Worthing Borough Council to reflect the impact of the Pandemic and in particular, the period earlier in the year when facilities were closed for several months. During the crisis, SDL has responded creatively to provide a safe environment for customers to return to and each of its Worthing sites is open.
- 4.6 Under the terms of the proposed direct award to SDL, Adur's leisure facilities at Lancing and Southwick and will re-open at the beginning of February 2021.
- 4.7 The proposed contract will be framed around the delivery of a Business Recovery Plan prepared by SDLT. Under the terms of this Plan, the facilities will open in a phased manner beginning in February 2021 with Lancing Leisure Centre and then Southwick Leisure Centre, followed by Wadurs swimming pool in March. Understandably, the activities that will be available will need to reflect the operating conditions at that time, in particular any additional controls that respond to the current Pandemic.
- 4.8 The Business Recovery Plan involves a major commitment in time, energy and resources over the coming months to recruit and train staff;

ensure robust ICT; prepare the buildings and test existing equipment and install new equipment in line with all of the relevant health and safety guidance and advice. As part of the Plan, SDL have prepared a detailed schedule of tasks that need to be completed in partnership with the Council and the Council has appointed an officer on a 3 month contract to assist with these preparations.

- 4.9 SDL will move quickly to combine the membership at Adur Community Leisure with the current FIT4 arrangement that applies to Worthing and this would provide FIT4 members with access to all of the facilities in both Worthing and Adur. During November/December, SDL intend to contact as many clubs and groups as possible that used the facilities previously, with a view to welcoming them back.
- 4.10 In the initial phase of re-opening, opening times may be more limited than pre-Pandemic levels There will be an emphasis on securing repeat bookings and fees and charges will be maintained at affordable levels and aligned closely with the Worthing facilities.
- 4.11 SDL will seek to actively engage with local communities on health and well-being opportunities in partnership with the Council over the term of the contract including targeting under-represented groups and providing activities for vulnerable people. As part of the Plan, once remobilised operations have been established, SDLT will link with the Council and NHS around the successful social prescribing model and also look to make the best use of open and green spaces for community activity.

## **5. Alternative Approaches**

- 5.1 It has also been considered whether or not it is appropriate to take the properties back from the Insolvency Practitioner 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. It must be noted this approach would not alleviate the Council of the responsibility for the costs associated with the facilities and those parts of it that remained mothballed, nor would this protect the Council from next year's business rates liability.

- 5.2 In considering the alternative approaches, advice is being taken from the appointed leisure consultant SLC on best approaches to achieve a strong and resilient service outcome.
- 5.3 Traditional routes to procuring a leisure operator are time consuming and expensive and estimated by our Procurement Officers to take between 18 and 23 months. 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.

## **6. Issues for Consideration**

- 6.1 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. The Council has appointed SLC consultants to advise on a longer term service delivery review to meet the new challenges.
- 6.2 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.

## **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 any new operator and to protect the Council's interests.
- 7.2 Mindful of the significance of leisure and the wellbeing role it plays in people's lives particularly during this COVID-19 pandemic, the Council has received enquiries from many individuals, groups, clubs and societies and has endeavoured to keep them informed of progress.
- 7.3 In line with the September Joint Strategic Committee resolution concerning delegated authority, the Director for the Economy has updated the Executive Member for the Environment and the Leader and provided 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 In September the Council released further funding of £300,000 to fund the following costs:
- 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.
- 8.3 Following negotiations with a leisure supplier, it is now possible to firm up the funding required both in this year and the following 5 years for the provision of leisure services. Overall costs of £717,870 have been identified which exceed the released budget of £435,000 by £282,870. A breakdown of the costs is shown in the confidential appendix.
- 8.4 Whilst the contract payment in 2021/22 is likely to be higher than that paid to previously paid ACL, this reflects the continuing impact of Covid 19 on the income potential of the venues whilst social distancing measures are maintained.
- 8.5 Adur District Council has to date received £943k in emergency funding including its share of the recently announced 4th tranche of funding. In addition, £100m has been made available nationally to support leisure provision. The details of how this is to be allocated is not known at the moment although we are aware that the Department for Digital, Culture, Media and Sport is working closely with Sport England and the Ministry of Housing, Communities and Local Government on the design of the £100 million scheme for local authority leisure provision and that further details are expected shortly.
- 8.6 Adur District Council has the option to continue to mothball the facilities until the pandemic passes and a full procurement exercise can be undertaken. However mothballing the buildings is expected to cost £480,700 in 2021/22 when the Council will assume full responsibility for business rates which would add further financial pressure at this time when government funding is reducing:

	£'000
Staffing costs	114.2
Business rates	175.3

Utilities	46.1
Maintenance	62.4
Insurances	3.5
Leasing costs	79.2
	480.7

By letting a contract using the Covid emergency provisions, any contractor with charitable status benefits from business rate relief and generates income to offset the cost of operating the buildings mitigating the Council's costs within a reasonable timescale acknowledging that a full procurement exercise will take around 18 - 24 months.

Finance Officer: Sarah Gobey

Date: 22.10.20

## 9. Legal Implications

- 9.1 The Cabinet Office Procurement Policy Note 01/20 dated March 2020 considers that there will be a range of commercial actions that must be considered by contracting authorities in responding to the impact of COVID-19. In such circumstances, authorities may need to procure services with extreme urgency. This is permissible under the current Public Contract Regulations 2015 and recognised in the Policy Note by the Crown Commercial Service.
- 9.2 Regulation 32(c) confirms that in specific cases and circumstances as laid down in the regulations, contracting authorities may award public contracts by a negotiated procedure without prior publication, insofar as it is strictly necessary where for reasons of extreme urgency brought about by events unforeseeable by the contracting authority, the time limits for the open or restricted procedures with negotiation cannot be complied with. The Council's procurement team has confirmed that usual time limits for a procurement process of this nature would take approximately 18-24 months.
- 9.3 Prior to any contract award, the Council must therefore be satisfied that it has sufficient reason to act with extreme urgency in making the proposed direct award as a result of COVID-19. Further financial urgency arises, as the Council must take all reasonable steps to minimise the cost in addition to the urgency to comply with the Council's public wellbeing function, by sourcing a supplier that can deliver leisure and recreational facilities to the residents of Adur.

- 9.4 Although use of Regulation 32 does not require the Council to publish a Voluntary Ex Ante Transparency or VEAT Notice, for transparency purposes and as an additional advance protection to the Council in making the proposed direct award, the Council is advised to publish a VEAT Notice on the OJEU portal, it will in any event be required to publish a contract award notice, but this will be after the contract award has been made.
- 9.5 The Cabinet Office Guidance 051/20, provides for temporary guidance on the rules relating to State Aid, which are to be reviewed on 31st December 2020. There is a new threshold for expenditure of up to EUR800,000 which is aimed at remedying the liquidity shortage faced by undertakings and ensuring that disruption caused by the COVID-19 outbreak do not undermine their viability. This is in effect a de-minimis level for the COVID-19 period with the limit expiring on 31st December 2020 unless it is reviewed. This does not replace or relax the wider EU limits on State Aid, and the non-COVID-19 current de-minimis threshold.
- 9.6 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.
- 9.7 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
- 9.8 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.
- 9.9 s1 Local Government (Contracts) Act 1997 confers power on the local authority to enter into a contract for the provision of making available assets or services for the purposes of, or in connection with, the discharge of the function by the local authority
- 9.10 Under the Public Contract Regulations 2015 where a Public Authority is to enter into a contract for the supply of goods & services, and the value of those goods and services exceeds a financial limit of



[£189,333], any procurement exercise to contract for those goods and services must be conducted in accordance with the Regulations and a failure to do so may be declared upon receipt of a procurement challenge, anti-competitive and in breach of the Regulations.

- 9.11 The direct award under Regulation 32 must be for a term proportionate to the urgency (taking into consideration a requirement for the supplier to make a return on its investment). The proposed term is for a period of 5 years, and the Council will need to ensure that 18-24 months prior to the expiration of that term, a procurement exercise is commenced under the Regulations.

Legal Officer: Joanne Lee

Date 20/10/2020

### **Background Papers**

Report to Joint Strategic Committee 8th September 2020 - COVID-19 Response to ACL Insolvency - Adur Leisure Sites

### **Officer Contact Details:-**

Martin Randall, Director for the Economy

Telephone 01903 221209 Email: martin.randall@adur-worthing.gov.uk

## **Sustainability and 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

### **5. Sustainability & Risk Assessment**

A Risk Register will be prepared and assessed through the Project Board. Any associated risks are delegated to the Project Team in the form of a risk assessment. This organic document is assessed on a monthly basis.