



ADUR & WORTHING  
COUNCILS

Joint Strategic Committee  
12 January 2021  
Agenda Item 12

Key Decision [Yes/No]

Ward(s) Affected: All Adur

**Update on the future of Adur Leisure contract award**

**Report by the Director for the Economy**

**Executive Summary**

**1. Purpose**

- 1.1 This report updates members of the Committee on progress toward the Direct Award of the provision of leisure services in Adur to South Downs Leisure Trust and to secure agreement to the Council providing a financial indemnity to South Downs Leisure Trust to reflect the risks associated with operation of the leisure facilities.
- 1.2 This report is being brought forward for a decision as it is necessary to provide an indemnity in excess of the limit associated with delegated authority. The outcome as a result of this decision will be finalising the Direct Award and the re-opening of the leisure facilities in Adur at the soonest opportunity.

**2. Recommendations**

- 2.1 The Joint Strategic Committee is asked to:
  - i) note progress toward the Direct Award of the provision of leisure services in Adur to South Downs Leisure Trust; and to approve the

contractual and appropriate financial indemnity (the commercially sensitive details of which are set out in detail in a confidential appendix under item 16 of this Agenda) to South Downs Leisure Trust to reflect the risks associated with operation of the leisure facilities.

- ii) To note that in the event that this liability arises, the Council will have to draw down from the working balance to fund these costs; with the Council having the contractual ability to recover either in whole or in part any payments made under the indemnity from the contractual risk reserve at the end of the 5 year period.

### **3. Context**

- 3.1. The background to this report is the successful conclusion of contractual discussions between the Council and South Downs Leisure Trust to secure the re-opening and operation of the 3 main leisure facilities in Adur District under the terms of a 5 year contract with SDLT. This follows a decision at November 3<sup>rd</sup> 2020 Joint Strategic Committee whereby members of the Committee conferred delegated authority to the Director for the Economy to make a Direct Award to South Downs Leisure Trust in consultation with the Executive Member for the Environment and the Leader of the Council.
- 3.2. It is noted that at the time of writing this report, Leisure Services have again been locked down, and with each passing month, the indemnity risk does decrease. However if authorised by this Report, SDLT can enter and prepare facilities, with a view to opening up as soon as this further lock down comes to an end.

### **4. Issues for consideration**

- 4.1. During the course of these discussions, legal advice established that whilst many of the potential risks associated with operating the new contract are classed as 'low' or 'medium' in terms of their likelihood, the ability of SDLT to address any 'worst case' scenario is limited in financial terms and the Council is better placed to manage such risks which in theory at least, could undermine SDLT's operational delivery of leisure services.

- 4.2. To ensure that the Council's commitment is manageable, a cap on the Council's indemnity is proposed and some of the mitigations which reduce the risk still further are already known to have been enacted (the commercially sensitive details associated with managing of which are set out in detail under item 16 of this Agenda).
- 4.3. The need for an indemnity has been identified through contractual discussions. The alternative of not planning to manage these risks is not a realistic or financially responsible option and would jeopardise the re-opening of Adur's leisure facilities.

## **5. Engagement and Communication**

- 5.1. This decision is commercially sensitive and therefore not subject to wider consultation.

## **6. Financial Implications**

- 6.1. The Council has previously released funding of £717,870 for the costs associated with Leisure provision within Adur in 2020/21 including the new contractual payments. This is £582,870 more than the original budget and has been funded from the Covid 19 emergency grants that the Council has received to date.
- 6.2. Since this time, the Sports Council has announced that Adur District Council can apply for funding up to £110,000 from the National Leisure Recovery Fund. An application is currently being finalised. If successful, this will help fund part of the additional costs incurred during the current financial year. In parallel to this an application is also being made on behalf of Worthing Borough Council for funding up to £200,000.
- 6.3. The current position is that the Trust has recently taken occupation of the buildings under a 'tenancy at will'. Under the tenancy at will, the Council will retain responsibility for certain costs such as the utilities associated with the buildings before they are opened. Consequently, any delay to opening the buildings, due to the introduction of Tier 4 restrictions, may result in the Council incurring unplanned additional costs. However, this should be able to be accommodated within the existing budgets especially if the Council is successful in its external funding bid. An update on the financial impact of the new contractual arrangements will be provided in the regular budget monitoring reports that the Councils receive.

- 6.4. Contained within the confidential appendix are further details regarding the financial implications of the proposed indemnity.

## **7. Legal Implications**

- 7.1. Section 1 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.
- 7.2. 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.
- 7.3. 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
- 7.4. In making the direct award to SDL the Council has considered the Cabinet Office Procurement Policy Note 01/20, and has previously set out in the November JSC Report to Members the urgent need for an alternative leisure provider for the wellbeing of Adur residents, against the usual time frames required for procurement of a leisure provider.
- 7.5. Further confidential legal advice is contained within the appendix to this report.

### **Background Papers**

- Report to the Joint Strategic Committee dated 3rd November 2020 - Re-Opening Adur's Leisure Facilities
- Report to Joint Strategic Committee 8th September 2020 - COVID-19 Response to ACL Insolvency - Adur Leisure Sites
- Procurement Policy Note 01/20 dated March 2020

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

Martin Randall  
Director for Economy  
01903 221209  
[martin.randall@adur-worthing.gov.uk](mailto:martin.randall@adur-worthing.gov.uk)

## **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**

Matter considered and no issues raised.

### **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 Council's Monitoring Officer and S151 Officer at each stage of the process.

Reopening the facilities at the earliest possible opportunity will enhance the Council's reputation with the community.