

**Body:** Cabinet

**Date:** 11<sup>th</sup> July 2018

**Title:** Proposal to transfer EBC Leisure Services facilities to be operated by Wave Leisure

**Report of:** Director of Tourism & Enterprise

**Cabinet member:** Cllr M Bannister

**Ward(s):** Hampden Park, Old Town, Shinewater

**Purpose of the report:** To transfer management of the four EBC Leisure Centres and Motcombe Pool to a new operator and enter into new arrangements with Wave Leisure Ltd.

**Decision type:** Key

**Recommendation:** Cabinet is recommended to:

- (1) Approve measures to create new Agreements with Wave Leisure to operate the four Leisure Centres (Eastbourne Sports Park; Hampden Park; Shinewater; Cavendish) and Motcombe Pool as of 1<sup>st</sup> April 2019. To delegate authority to the Director of Tourism and Enterprise, in consultation with the Cabinet Member for Tourism & Enterprise, to negotiate and conclude any lease, contract, grant and other arrangements to allow for the operation of these Centres in the most efficient structure to achieve this outcome ensuring compliance with all legal requirements.**
- (2) To approve future monitoring of the Agreement provided by Wave in the form of an Annual Report to Cabinet.**
- (3) Approve measures for Wave to operate Regency Community Centre. To delegate authority to the Director of Tourism and Enterprise, in consultation with the Cabinet Member for Tourism & Enterprise, to negotiate and conclude any lease, contract, grant and other arrangements to allow for the operation of Regency Community Centre in the most efficient structure to achieve this outcome ensuring compliance with all legal requirements.**
- (4) Agree that the delegations at a) and c) above include authorisation not to dispose by auction or invitation of tenders following public advertisement (sought under**

## **Contract Procedure Rule 18.1).**

- (5) Resolve that any leases to be granted to Wave Leisure to allow them to occupy premises outlined in this report will help the Council to secure the promotion or improvement of the social well-being of the Council's area.**

**Reasons for recommendations:** To enable improved management and investment opportunities for the existing four 'dry' leisure sites and Motcombe Pool with an emphasis on improving community participation in sports activities and improving the well-being of the local community through a more active lifestyle.

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This report seeks approval for work to begin to negotiate new operating contracts with Wave Leisure to run the four Leisure Centres currently run by EBC; Regency Community Centre; and Motcombe Pool, owned by EBC but operated by SERCO; and for Wave to take over operations at Motcombe Pool when the contract expires on 31<sup>st</sup> March 2019 and for the grant of a new lease to Wave to enable it to occupy.

### **1.0 Introduction**

- 1.1 Of the 4 dry side centres, 3 are based on school/college sites and subject to dual use arrangements with East Sussex CC/and the relevant school/college. The fourth centre is the Shinewater Sports Centre, which although next to a school there is no formal user agreement in place. Both ESCC and 2 of the schools/colleges have confirmed that they wish these arrangements to continue. The JUA (Joint User Agreement) at the third site, Cavendish School ends in April 2019 and three options will be proposed to the School Board in July 2018. The preferred option will be that the JUA is renewed more or less under the same terms. However as the school owns the facility they can opt to either run it themselves or chose an independent partner to operate with. When the JUA expires at Cavendish Sports Centre, then ESCC will no longer have any involvement in the site and the funding from ESCC will cease. Currently ESCC and Cavendish Academy contribute £12,500 respectively. Cavendish Academy has been clear that they are happy to enter in to a JUA with EBC after April 2019 and continue with the £12,500 contribution but are not in a position to increase the funding to cover the ESCC element.

The centres vary in age but most of the buildings, plant and key infrastructure are more than 25 years old. The buildings are designed primarily for community use and although functional and generally fit for purpose, have limited appeal to the visitor market. They are all located across the borough and some way from the seafront but with close proximity to local housing. All four centres are used by community groups, local sports groups and schools.

1.2 At present the Sovereign Centre and Motcombe Pool are operated by Eastbourne Leisure Trust/Serco. The contract and lease with ELT ends in April 2019.

Motcombe Pool is a Victorian structure. Although it is generally in sound condition, it has suffered from equipment failure in recent months (in the form of a major pipe leak) but this has now been repaired and the pool is operating normally. Motcombe is primarily a community pool used by local residents and schools. It would seem logical to separate its operation and management from the Sovereign Centre as its facilities are more likely to be used by local residents than visitors.

1.3 Regency Community Centre - this Community Centre has core bookings Monday – Friday, generating a modest income and is hired out at weekends as a self-contained space for parties. A flat hire fee is charged and the centre is operated on a caretaker basis, with the centre unlocked and locked at the end of the day and the hirer, hiring on a dry hire basis

1.4 Wave Leisure operates the leisure centres and pools owned by Lewes District Council (LDC) and was set up on a not-for-profit basis in 2006. It has built up a good relationship with LDC and has invested in various improvements in its facilities since undertaking the contract, including major gym refurbishment and fit out. It attracted over 1 million leisure centre visits in 2016/17. Wave Leisure operates as a registered charity and re-invests any surplus it makes in the facilities it operates.

## **2.0 Rationale for working with Wave**

2.1 Wave is a relatively small provider in the leisure centres field with its focus being on Lewes and the south-east. It is based in Seaford and has been operating since 2006. Over the past decade it has slowly expanded its remit to include eight leisure facilities and has contracts in Kent and East Sussex. As a smaller operator based on a not-for-profit model, all of its surplus is re-invested into its facilities. It is also very proactive in working with the wider health sector and has introduced innovative devices such as 'Boditrax' to enable users to monitor their health and well-being with the ability to work-out at home as well as in the gym. The system can also provide personalised body composition results including bone density, muscle mass, hydration levels, etc.

As part of its commitment to improving community health, Wave targets hard to reach groups such as the elderly, those recovering from medical treatment, people with disabilities and the very young, to encourage an active lifestyle. 23,000 older people in Lewes visited leisure centres in Lewes last year participating in sports such as walking football. Wave's commitment to community outreach, its experience in dealing with GP referrals and its drive to reduce hospital admissions will have wider non-economic impacts and benefits to support the Active Eastbourne Strategy and to contribute to our Equalities agenda.

2.2 The Leisure Centres are currently operated by the Tourism and Enterprise Department but priorities for investment in Eastbourne's discretionary provision have focussed more on developing the sport and cultural offer at Devonshire Park as part of the wider Devonshire Quarter redevelopment. The Leisure Centres operate successfully but there has been very limited opportunity for investment in

new kit or infrastructure. If Wave was to be offered the opportunity to operate and manage the Leisure Centres, it is anticipated that staff would be transferred under TUPE conditions and with no additional cost to the Council, Wave could use their expertise and economy of scale to more efficiently manage the current EBC facilities.

- 2.3 The transfer of management to Wave would not present any specific monitoring issues. Wave would be required to produce an Annual Report to Cabinet demonstrating performance against an Annual Service Delivery Plan. In addition to this, specific Performance Indicators (PIs) would be created to feed into the Corporate Plan. There would be formal monthly reporting to the Head of Tourism and Enterprise to deal with routine management issues but it would be anticipated that ongoing communication would operate similar to the existing reporting arrangements.
- 2.4 Wave would be obliged to provide a Health and Safety Report to monitor any issues and to have an ongoing programme to reduce risk and liability.
- 2.5 EBC would maintain ownership of the buildings that it owns and a full repairing lease would apply with the operator.
- 2.6 One of the key aspirations of employing Wave is to drive up customer satisfaction and based on their experience of operating leisure centres at Lewes, Maidenhead and other locations and the good customer feedback they receive, EBC would be looking to raise customer satisfaction at the Eastbourne sites. Regular Customer Satisfaction Reporting would be another integral component of the agreement.

### **3.0 Financial implication**

- 3.1 There are no additional financial implications presented by a transfer of EBC operations to Wave and it is proposed that the operating budget remains the same as at present.

### **4.0 Corporate plan and council policies**

- 4.1 This project will contribute to Thriving Communities: Active Communities agenda and supporting the Active Eastbourne Strategy.

### **5.0 Risk Management**

- 5.1 One of the joint user agreements with East Sussex County Council will come up for renewal after 1<sup>st</sup> April 2019. The agreement at the Sports Park will need to be renegotiated in 2019 due to changes in the land use. EBC will lead on negotiations regarding the joint user agreements.

### **6.0 Legal Implications**

- 6.1 In relation to the joint user agreements, the Council is undertaking due diligence to ascertain whether any specific notice or conditions are required to enable the operating element of the agreements to be transferred to Wave/new agreements entered into with Wave. The Council will only be able to grant/transfer to Wave the interest in the sites that it holds.

The Council's Contract Procedure Rules say that no lease of land where the estimated rent exceeds £25,000 per annum shall be made except after auction or the invitation of tenders or expressions of interest following appropriate public advertisement, unless authorised by Cabinet.

The delegations above include authorisation not to dispose by auction or invitation of tenders following public advertisement (sought under Contract Procedure Rule 18.1).

Where it is necessary for the Council to grant a lease (e.g. in relation to Regency Community Centre and Motcombe Pool) the leases are to be structured so that the grant of the lease (i.e. the grant of a right to exclusive possession of land for a determinable period of time) is the main object rather than the delivery of detailed and enforceable service obligations (i.e. under a public service contract or public services concession contract). The lease of land and existing buildings by the Council is not in itself subject to the European public procurement regime and regulations.

The Council cannot dispose of land held in the general fund for a consideration less than the best that can be reasonably obtained in the market, except with the consent of the Secretary of State. Disposal includes leasehold sales where the lease term exceeds seven years.

The Secretary of State has given a general consent for the purpose of land disposals by local authorities (Circular 06/03). Specific consent is not required for the disposal of any interest in land that the authority considers will help it to secure the promotion or improvement of the economic, social or environmental well-being of its area. Disposal at less than best consideration under the general consent is subject to the conditions that: the undervalue does not exceed £2 million; the disposal is State aid compliant; and the land is not held as housing land or under the Planning Acts. Therefore, all proposed transactions where the aggregate of "undervalue" exceeds the £2 million threshold will require the specific consent of the Secretary of State.

Recommendation e) asks Cabinet to resolve that the leases will help the Council to secure the promotion or improvement of the social well-being of the Council's area. This gives the Director scope to negotiate terms that may result in an undervalue provided that there are positive outcomes for social well-being.

Valuation advice will be needed to ensure that these requirements are complied with.

In disposing of any land or interest in land the Council must ensure that it does so in accordance with State aid rules. The Director will have to ensure that the leases are compliant with State aid rules. Typically this would be through the disposal at market value through (i) an open and unconditional bidding process or (ii) an expert valuation. In this case if the Council is intending to grant a lease on terms that provide a subsidy (ie not market value) then the comments on State aid below will be relevant.

The Council is intending to provide Wave Leisure with grant funding (which may

include a lease at less than market value) in relation to the operation of the facilities. Under a grant agreement, the funder makes a payment to the recipient for a specific purpose. The recipient is not obliged to deliver any services to the funder, although the funder may claw back grant which has not been spent or is misapplied. A grant arrangement does not create a contract that is subject to public procurement rules.

Grant funding and other subsidy will be State Aid if it is an advantage given by public authorities on a selective basis to undertakings (broadly, organisations that put goods or services on a market) which could potentially distort competition and affect trade in the European Union. The arrangements proposed with Wave Leisure should fall outside of the definition of State aid because the services provided cater to a local market and such activities will have no effect on cross border trade. In particular, Wave Leisure (as the beneficiary) only supplies services to a limited area within a Member State and it is unlikely to attract customers from other Member States so that the assistance given to it by the Council will not have more than a marginal effect on the conditions of cross-border investments or establishment if any.

The amount of subsidy required can be benchmarked against current operating costs to ensure value for money.

[26 June 5279-EBC-KS][27 June 5279-EBC-CJEC]

## **7.0 Equality analysis**

- 7.1 Wave Leisure has a good record in terms of satisfying equalities and fairness objectives and is proactive in its inclusiveness agenda. It undertakes equality monitoring and reporting on its existing sites in Lewes. Under any new Agreement the same monitoring measures will be harmonised for the sites in Eastbourne. A full equality analysis will be carried out prior to the Agreement being signed and consultation with DIG will ensure that Wave adapts any measures needed to improve accessibility.

Equality and fairness reports will be prepared in accordance with EBC policies and procedures.

## **8.0 Conclusion**

- 8.1 Whilst there would be no financial savings as the budget would be transferred in its entirety and EBC will have to underwrite any shortfall within the income targets. There would be clear benefits of Wave operating the Eastbourne sites. Wave would be well placed to deliver the aspirations of the Active Eastbourne Strategy, Wave have a track record of receiving grant funding and growing the GP Referral scheme.