

Agenda Item No: 8.5
Report Title: Wave Leisure Annual Service Delivery Plans 2018/19
Report To: Cabinet **Date:** 19 March 2018
Cabinet Member: Councillor Nicholson
Ward(s) Affected: All
Report By: Phillip Evans, Director of Tourism and Enterprise
Contact Officer(s)-

Name(s): Bee Lewis
Post Title(s): Head of Property & Facilities
E-mail(s): Bee.lewis@lewes-eastbourne.gov.uk
Tel No(s): 01323 415521

Name(s): Bob Brennan
Post Title(s): Procurement Manager
E-mail(s): robert.brennan@lewes-eastbourne.gov.uk
Tel No(s): 01323 415502

Purpose of Report:

To seek Cabinet approval for the 2018/2019 Annual Service Delivery Plans for Leisure and Newhaven Fort proposed by Wave Leisure Trust (WLT) and authorisation to enter into leases for the four leisure centres operated by Wave Leisure.

Officers Recommendation(s):

- 1** That Cabinet approves the Annual Service Delivery Plan for Leisure as set out in the report.
- 2** That Cabinet approves the Annual Service Delivery Plan for Newhaven Fort as set out in the report.
- 3** To delegate authority to the Director of Regeneration and Planning, in consultation with the Strategic Property Board, to negotiate and conclude Heads of Terms for leases of Seahaven Swim and Fitness Centre and Downs Leisure Centre and to authorise completion of a lease.
- 4** To delegate authority to the Director of Regeneration and Planning, in consultation with the Strategic Property Board, to enter into long leases of Lewes Leisure Centre and Meridian Leisure Centre from ESCC to the Council, and to negotiate and conclude Heads of Terms for subleases of those properties from the Council to Wave Leisure, to include authorisation to complete the leases.

- 5 That Cabinet resolves that the leases will help the Council to secure the promotion or improvement of the social well-being of the Council's area.
 - 6 That the delegations at paragraphs 3 and 4 above include authorisation not to dispose by auction or invitation of tenders following public advertisement (sought under Contract Procedure Rule 18.1).
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Reasons for Recommendations

- 1 The management agreement between the Council and Wave Leisure requires Cabinet to approve the Annual Service Delivery Plans.
- 2 This report proposes that the Council enters into long leases of the leisure centres with Wave for the reasons set out in para 2.20.

Information - Annual Service Delivery Objectives Leisure 2018-2019

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- 2.1 WLT have produced a proposed Annual Service Delivery Plan and this is reproduced at Appendix A (for the leisure service) and Appendix B (for Newhaven Fort) to this report.
- 2.2 The priorities for 2018/2019 continue to build upon those set out in previous years. Wave is encouraged to augment existing networks and partnerships and seek to establish new relationships to deliver services that will be of benefit to the local community. The plan underpins the Council's strategic aims and objectives.
- 2.3 The plan is aligned with three core objectives:
 - (a) Increasing participation and reducing health inequality;
 - (b) Improving accessibility and social inclusion;
 - (c) Reducing environmental impact.
- 2.4 Emphasis is placed upon encouraging participation in rural communities and for families on a low income, particularly among Council tenants.
- 2.5 WLT is encouraged to provide activities aimed at opportunities for increasing physical activity for older people. This is to reflect the District's ageing population which is above the national average in every band over 50.
- 2.6 The plan takes account of equality of opportunity to ensure that services are accessible as widely as possible and reflects the diversity of the local community.

- 2.7** If the proposed plan for 2018/2019 is approved by Cabinet, WLT will be notified of the Council's agreement and the plan will form part of WLT's contractual responsibility to deliver on behalf of the Council.
- 2.8** The Council's Client Officer will monitor and evaluate WLT's performance against the plan. There will be a quarterly review of performance along with monitoring of the agreed performance indicators.
- 2.9** WLT recognise that the plan should be numerate where possible with realistic and achievable outcomes. Where it is not possible to measure outcomes statistically, alternative success criteria will be employed to measure the benefits to the community.
- 2.10** The Council's Client Officer sets and monitors the performance of the Leisure Trust against key performance indicators. The indicators are a means for the Council to monitor the performance of WLT in meeting the Council's agreed aims and objectives. They are regularly monitored through the quarterly meetings between LDC and WLT.

Information - Annual Service Delivery Objectives Newhaven Fort 2018-2019

- 2.11** WLT have produced a proposed Annual Service Delivery Plan and this is reproduced at Appendix B to this report.
- 2.12** On 1st May 2015 WLT was granted operational management responsibility for the Newhaven Fort. The four priorities for 2018/2019 are for WLT to:-
- 1)** Enhance the regeneration opportunities in Newhaven by increasing the number of visitors to Newhaven Fort and generating local job opportunities.
 - 2)** Maintain and grow the heritage and educational potential of Newhaven Fort in a way which is accessible to the general public.
 - 3)** Improve the current facilities on offer.
 - 4)** Minimise the ongoing liabilities of the Council and potentially produce a revenue stream for the Council.
- 2.13** In order to achieve the above four LDC priorities, WLT has identified three separate but interlinked areas for the Newhaven Fort Management and Operational Team to focus on, namely:
- Experience
 - Education
 - Events

The plan attached at Appendix B details how the Council's priorities and Wave's three pillars interlink.

Lease Arrangements at the Leisure Centres

- 2.14** Wave Leisure Ltd currently has a Funding and Management Agreement with the Council which is the contractual document setting out what each parties' responsibilities are under the contract. The agreement has been extended once and cannot be extended further and is therefore due to terminate in 2021.
- 2.15** Wave's performance has always been exemplary and the contractual relationship has matured to such a degree that it only requires very light-touch management.
- 2.16** Procurement of leisure operators is an expensive and resource intensive exercise. The operation of Trusts within the leisure industry has matured and over time, the market has settled into two main types of provider: the large commercial type operator who focuses on revenue through the gym, fitness classes, and swim offers; or the smaller provider, such as Wave who can deliver a good standard of facilities, but who also undertake more community-focused activity and development.
- 2.17** There are two further differences however. A large commercial operator is likely to generate a revenue receipt for the Council each year. By contrast, Wave has been in receipt of a grant from the Council each year, but the level of grant is tapering and by 2020 it will have been phased out.
- 2.18** Wave's operating reserves are healthy, but they will not be in the same position to generate a receipt for the Council should they continue to operate the leisure service. However, there are alternative ways in which Wave could assist the Council, such as taking on the responsibility for all repairs and maintenance at the leisure centres, which would reduce the Council's liability. Currently, the Council maintains the structure and plant equipment for each leisure centre.
- 2.19** In conjunction with the Funding and Management Agreement, the leisure centres are all leased to Wave. Both Downs Leisure Centre (DLC) in Seaford, and Seahaven Swim and Fitness (SSF), are owned by the Council. Lewes Leisure Centre (LLC) is leased by the Council from ESCC, as is Meridian Leisure Centre (MLC) in Peacehaven, which is also a PFI scheme.
- 2.20** After some consideration, the recommendation is not to undertake a procurement exercise for the provision of the leisure service in the future, but to instead offer a long lease of the properties to Wave Leisure. This course of action is recommended because:
- (a)** The relationship with Wave has matured to such a degree that it could operate on the basis of minimal control on the Council's part.
 - (b)** A procurement exercise will be costly and resource-heavy;

- (c) The outcome of a procurement exercise is not guaranteed;
- (d) While the Council may not benefit from a revenue return, if the centres are leased on a fully repairing and insuring basis, the Council will make a revenue saving of up to £100,000 on average pa.
- (e) The leases could be incentivised so that Wave has similar obligations to those within the current Funding and Management Agreement.
- (f) It is proposed that the rent review mechanism in the leases is geared so that over an agreed time, Wave pay a rent for the leisure centres to the Council. The target rental income is currently being assessed through a desk-top valuation of the leisure centres.

2.21 To achieve the recommendation set out in para 2.20, the Council will be required to negotiate long leases of LLC and MLC from ESCC. The intention would then be to sublet those two centres to Wave, along with DLC and SSF. Approval is therefore sought for the Director of Regeneration and Planning to negotiate Heads of Terms with ESCC and Wave Leisure and to enter into leases as appropriate, after consulting with the Strategic Property Board.

2.22 It is considered that the leases will help the Council to secure the promotion or improvement of the social well-being of the Council's area.

Financial Appraisal

3 The Council provides WLT with an Annual Service Fee in return for which the Trust helps the Council achieve its aims and objectives as detailed in this report. The Annual Service Fee for 2018-2019 was approved by Cabinet in September 2017. The Service Delivery Plan as provided by WLT therefore has no additional financial implications.

Legal Implications

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4.1 The existing relationship between Wave and the Council is based on a contract in the form of a Funding and Management Agreement (FMA). The FMA requires Wave to deliver detailed and enforceable service obligations as the primary driver of the relationship. This includes an obligation on the part of Wave to submit Annual Service Delivery Plans for approval by the Council. The leases under which Wave occupies the buildings are incidental to the FMA.

4.2 A contract is a legally enforceable agreement which gives rise to rights and duties between the parties. A lease is the grant of a right to the exclusive possession of land for a determinable period of time, being both a contractual relationship and an estate in land. It is possible to have a lease with terms that go beyond those typically found in a lease,

provided that the main object is the occupation of land rather than the delivery of service obligations.

- 4.3** Certain contracts are public services contracts or public services concession contracts subject to the European public procurement regime and related regulations. The lease of land by the Council is not in itself subject to the European public procurement regime and regulations.
- 4.4** This report advises that the relationship with Wave has matured to such a degree that it could operate on the basis of minimal control on the Council's part. There is potential to move from a relationship where the main object is the delivery by Wave of detailed and enforceable service obligations (a **contract**), to one where the main object is the grant to Wave of a right to exclusive possession of land for a determinable period of time (a **lease**).
- 4.5** The proposed leases to Wave will not be subject to the European public procurement regime provided that they are proper leases where the main object is the occupation of land rather than the delivery of service obligations. Care will need to be taken when drafting the heads of terms and the leases to ensure that the leases remain genuine leases with terms that do not turn them into contracts subject to the European public procurement regime.
- 4.6** 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 condition that the undervalue does not exceed £2 million. 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 5 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.
- 4.7** 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.
- 4.8** Recommendation 6 seeks authority to grant the leases to Wave without going to auction or inviting tenders or expressions of interest following appropriate public advertisement. Cabinet has power to authorise leases without going to auction or advertisement (CPR 18.1).

Risk Management Implications

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- 5.1** Risk management screening has been completed and there are no additional risks to mitigate.

Equality Implications

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- 6.1** Equality, accessibility and equality of opportunity are the building blocks of the Annual Service Delivery Plans. The key components of the plans have been designed to increase participation across a number of disadvantaged groups; reduce health inequality; improve accessibility and social inclusion and education. The plans detail how these aims will be achieved.

Background Papers

7 None

Appendices

Appendix A – WLT Proposed Annual Service Delivery Plan Leisure 2018/2019

Appendix B – WLT Proposed Annual Service Delivery Plan Newhaven Fort 2018/2019