

Subject:	Sports Facilities Contract Extension		
Date of Meeting:	14th August 2020		
Report of:	Executive Director, Economy, Environment & Culture		
Contact Officer:	Name:	Ian Shurrock	Tel: 01273 292084
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Ward(s) affected:	All		

FOR GENERAL RELEASE**1. PURPOSE OF REPORT AND POLICY CONTEXT**

- 1.1 Wealden Leisure Ltd trading as Freedom Leisure manage the council's sports facilities pursuant to two contracts with the council – both on very similar terms. The current ten year contract with Freedom Leisure in relation to all the facilities listed in 3.1 below (except Portslade Sports Centre) expires on the 31st March 2021. An additional contract with Freedom Leisure to manage Portslade Sports Centre commenced in 2016 to run concurrently with the existing contract and also expire on 31st March 2021. These two contracts are referred to as the Sports Facilities Contract and there is provision within the contract for an extension of up to five years.
- 1.2 The council's sports facilities were required to close on the 21st March 2020 due to the Covid-19 pandemic with a consequent loss of income to Freedom Leisure from operating the centres. The Government has allowed sports facilities (including gyms and swimming pools) to re-open from 25th July 2020.
- 1.3 However, there will continue to a negative impact on income levels for some time while the business is restored. Social distancing requirements will reduce capacity in some exercise areas and other measures e.g. increased cleaning, will all impact upon financial sustainability. A phased re-opening of facilities has been agreed with Freedom Leisure with the Withdean Sports Complex being the first to open on 27th July.
- 1.4 Freedom Leisure anticipates that it will incur a significant financial loss during the current financial year to operate the facilities. The council had previously provisionally sought a two-year extension to the contract with Freedom Leisure. A three year extension is now recommended in order that the impact of the financial pressure created by the Covid-19 pandemic can be mitigated over an extended period.

2. RECOMMENDATIONS:

That the Committee:

- 2.1 Notes the significant financial impact of the Covid-19 pandemic upon Freedom Leisure as the operator of the council's Sports Facilities Contract and the financial support already provided to Freedom Leisure as outlined in the table in 3.11 of Part 2 report.
- 2.2 Agrees to waive the management fee which Freedom Leisure is required to pay the council during the period 1 July 2020 to March 2021 and notes that the council may be able to claim some of this lost income from central government.
- 2.3 Agrees to vary the contract for the period 1 July 2020 to 31 March 2021 to allow a phased reopening of the sports facilities
- 2.4 Agrees to exercise the option to extend the Sports Facilities Contract with Freedom Leisure by three years until 31 March 2024 and agrees the variation to the management fee as set out in 3.15 of the Part 2 report.
- 2.5 Grants delegated authority to the Executive Director Economy, Environment & Culture and Executive Lead for Strategy, Governance & Law to settle the terms of the contract variations and take any steps necessary to implement the recommendations above.

3. CONTEXT/ BACKGROUND INFORMATION

Sports Facilities Contract

- 3.1 The sports facilities included within the Sports Facilities Contract are:
 - King Alfred Leisure Centre
 - Moulsecoomb Community Leisure Centre
 - Paddling pools (Hove Lagoon, King's Road, The Level Water Feature Saunders Park)
 - Portslade Sports Centre (added from 2016)
 - Prince Regent Swimming Complex
 - Stanley Deason Leisure Centre
 - St Luke's Swimming Pool
 - Withdean Sports Complex
- 3.2 Freedom Leisure commenced operation of the Sports Facilities Contract on 1st April 2011 and under the terms of that contract a payment is made by Freedom Leisure to the council to manage the facilities.
- 3.3 There is provision in the existing contract for an extension of the initial term by up to five years on the existing terms and conditions. If the council elects to extend the contract, the parties then have to negotiate the management fee which will apply for the remainder of the contract.

Sports Facilities Investment Plan

- 3.4 The council are aware of the ageing of the facilities which are managed under the Sports Facilities Contract with the consequent deterioration in the condition of those facilities. The most recent facility to be built is the Moulsecoomb Community Leisure Centre which opened in 1991. As a consequence the council

has commissioned a Sports Facilities Investment Plan together with an appraisal of management options, so that the future of the sports facilities can be determined. This work has included detailed condition surveys on all the facilities to inform the Investment Plan.

Sports Facilities Contract – original contract extension negotiations

- 3.5 In order for the Sports Facilities Investment Plan to be completed to inform any re-tendering of the Sports Facilities Contract, negotiations commenced with Freedom Leisure to extend the existing contract by two years from 31st March 2021 to 31st March 2023. There is provision within the current Sports Facilities Contract that enables the council to extend the contract by up to 5 years.
- 3.6 These negotiations recognised that Freedom Leisure had not achieved the financial return they had expected as per the original bid for the contract. Therefore, it was accepted that a reduced management fee would be received for the extended contract period. After detailed negotiations provisional agreement was reached that a management fee to be paid to the council for each year of the two year contract extension. Unfortunately, shortly after the negotiations were concluded the Covid-19 pandemic resulted in the closure of the facilities. Consequently, the provisional financial agreement reached for the contract extension needed renegotiation, due to the pandemic affecting the financial performance of the sports facilities.

Impact of Covid-19 Pandemic

- 3.7 Lockdown for sports facilities was introduced on Friday 21st March 2020 when all the facilities closed. In respect of the Sports Facilities Contract. This constituted a Force Majeure Event under the terms of the contract. Consequently, Freedom Leisure have therefore been excused from performing their obligations under the contract for the period during which sports facilities were not allowed by law to open.
- 3.8 The Government issued a “Procurement Policy Note – Supplier relief due to Covid-19” in which local authorities were requested to assist suppliers (such as Freedom Leisure) with their cash flows in order to support them in the initial stages of the lockdown. This applied to the end of June. Contractually Freedom Leisure are obliged to meet the operational running costs of the sports facilities (apart from landlord responsibilities) but receive the income generated to achieve financial viability. The closure of the facilities with the consequent loss of income placed Freedom Leisure in a difficult financial position.
- 3.9 In order to mitigate costs Freedom Leisure furloughed all apart from two staff of those directly employed pursuant to the Sports Facilities Contract in Brighton & Hove. The two remaining staff have been overseeing the closed facilities together with members of the council’s Sports Facilities Team in order to reduce costs. However, it has not been possible to avoid all costs while the facilities have been closed, such as utilities, even though they have been minimised.

Financial Support to Re-open Facilities/ Sports Facilities Contract Extension

- 3.10 The Government announced that sports centres and indoor swimming pools could re-open from the 25th July 2020. However, Freedom Leisure indicated that to operate the facilities in the current climate would present a significant financial pressure. To implement Covid-19 safety requirements would increase costs for cleaning, and social distancing would limit capacity in some exercise areas. It is anticipated that it will take some considerable time for the levels of usage and hence income.
- 3.11 The pandemic has caused significant financial pressures across the services of the council. It is therefore not possible for the council to provide additional funding in the current financial year. However, a contract extension would give the potential to spread the cost of any support proposal over an extended period.
- 3.12 Importantly the risk of operation would remain with Freedom Leisure. The council is not agreeing to a deficit funding arrangement in which the operational risk would rest with the council, but extending the current contract on different financial terms to reflect the impact of the pandemic.
- 3.13 As the contract requires all the sites to be provided, the phased reopening will need to be agreed in a variation to the contract. Officers have provisionally agreed (subject to the approval of the recommendations above) to the following timetable for reopening the sites:

Site	Aug-20	Sep-20	Oct-20	November 20 - March 21
Withdean Sports Complex	Open - reduced hrs			
King Alfred Leisure Centre	Open - reduced hrs			
Prince Regent Swimming Complex	Closed	Closed	Closed	TBC
Moulsecoomb Community Leisure Centre	Closed	Closed	Open - reduced hrs	Open - reduced hrs
Stanley Deason Leisure Centre	Closed	Open - reduced hrs	Open - reduced hrs	Open - reduced hrs
Portslade Sports Centre	Closed	Open - reduced hrs	Open - reduced hrs	Open - reduced hrs
St Lukes Swimming Pool	Closed	Closed	Open - reduced hrs	Open - reduced hrs
Padding Pools	Closed	Closed	N/a	N/a
TBC - Dependent on Capital Works				
Reduced hours will be reviewed on a monthly basis to reach a normal operating position by April 2021 at the latest				

4. ANALYSIS & CONSIDERATION OF ANY ALTERNATIVE OPTIONS

- 4.1 Negotiations have been on-going with Freedom Leisure to seek a solution to the current very difficult financial situation to enable the facilities to re-open. The option of utilising the contract extension to address the financial situation, rather than a grant or deficit funding is considered to be the best financial solution within the current circumstances.
- 4.2 The Sports Investment Plan will include an appraisal of the options for the future operational management of the sports facilities. The outcomes of this work will be reported to committee.

5. COMMUNITY ENGAGEMENT & CONSULTATION

- 5.1 Not applicable

6. CONCLUSION

- 6.1 The granting of a three-year extension to Freedom Leisure for the Sports Facilities Contract would enable a financially sustainable position to be reached following the financial pressures caused by the Covid-19 pandemic. Furthermore, it would enable the facilities to re-open as per the schedule in 3.13.

7. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 7.1 These are included in the part 2 confidential report.

Finance Officer Consulted: Name Jill Fisher

Date: 05/08/20

Legal Implications

- 7.2 The Council is entitled to extend the contract without the agreement of Freedom Leisure. However, the parties must reach agreement on the Management Fee which should reflect the cost of providing the service. The Covid-19 pandemic has had a significant impact and the reversion to the Council making payments to Freedom Leisure is therefore in accordance with the terms of the contract.
- 7.3 A variation agreement to the original contract has been put in place until the end of June 2020 to deal with the immediate issues relating to the effects of Covid-19 and lockdown.
- 7.4 Legal Services will continue to assist in order to put in place a variation to the contract with Freedom Leisure to cover the staged re-opening of facilities and waiver of the management fee as well as a deed of variation to cover the proposed extension period to 31st March 2024 and the changes to the management fee during the extension period.
- 7.5 The proposed variations to the contract with Freedom Leisure are permitted within the scope of the original contract and are therefore contract modifications which are permitted by the Public Contracts Regulations 2015. The original contracts were procured and as the original contract required the Council to pay a management fee to Freedom Leisure which reflected the cost of providing the service, the risk that these proposals amount to state aid is very low.

Lawyer Consulted:

Alice Rowland

Date: 05/08/20

Equalities Implications:

- 7.6 The council seeks to provide a range of opportunities for residents to participate in sport and community activities across the city and the sports facilities are fundamental to that provision.

Sustainability Implications:

- 7.7 A key focus of this report is the financial sustainability of the Sports Facilities Contract. However, there has been significant investment in the sports facilities

to improve environmental sustainability such as LED lighting, inverters on pumps and more thermally efficient glazing.

7.8 Brexit Implications:

None identified.

7.9 Public Health Implications:

The sports facilities are key locations in the city for regular participation in sport and physical activity. The Covid-19 pandemic has heightened the awareness of the importance of regular participation in sport and physical activity to health and well-being.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Background Documents

1. None