

REPORT OF THE LEADER OF THE COUNTY COUNCIL

COVID-19 CULTURAL SERVICE CONTRACT VARIATIONS

Purpose of the Report

1. To seek formal approval for the time-limited variation of Cultural Services contracts with Country Park Partners due to the unprecedented COVID-19 crisis on the following basis that the variations should:
 - a. Establish temporary payment mechanisms that mitigate the financial damage of the COVID-19 Crisis to Country Park Partners and the County Council.
 - b. Enable Country Park Partners to remain financially viable so that they can swiftly mobilise to reopen when COVID-19 restrictions ease and ultimately resume provision of the original contract as soon as practicably and safely possible.

Information

2. Some information relating to this report is not for publication by virtue of Schedule 12A of the Local Government Act 1972, paragraph 5, due to the confidentiality of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. Having regard to all the circumstances, on balance the public interest in disclosing the information does not outweigh the reason for exemption because the information would add a limited amount to public understanding of the issues but would significantly damage the Council's legal position. The exempt information is set out in the **Exempt Appendix**.
3. On 18 March 2020, Policy Committee approved¹ the closure of premises at all country parks falling under the Council's responsibility. Then, on 23 March 2020, following revised government guidance and large numbers of the public visiting both local and national green space sites, the Council took the decision to close all country park car parks, leaving them only open to local access.
4. Like many business industries, the private leisure sector has been hit very hard financially by the COVID-19 crisis. This is due to the almost complete collapse of revenue since mid-March and is exacerbated by the very low profit margins (circa. 1-5% on average)² across the sector.
5. Two of the Council's country parks are operated under concession style contract models by private leisure companies. Unlike many other contractual arrangements, these concession style contracts mean that each operator is heavily reliant on income from site operations to

¹ NCC Policy Committee Report, *Coronavirus: Short Term Refocusing of Council Activity*, 18 March 2020, para. 6

² LGA, *Options for Councils in Supporting Leisure Providers through COVID-19: Guidance*, 29 April 2020, Pg. 3

maintain cashflow, rather than from large scale direct contract payments from the County Council for the services provided. The companies have approached the Council for financial support at this time due to the unprecedented financial impact of the virus. The two country parks and their respective operators are:

- a. Rufford Abbey Country Park – managed by Parkwood Leisure Ltd.
 - b. Holme Pierrepont Country Park – managed by the Holme Pierrepont Leisure Trust who in turn appoint Serco Leisure Ltd. as their managing agent.
6. Both the Council and our Partners wish primarily to take a collaborative approach to reach a negotiated position that protects both the Council and our Country Park Partners. This approach will provide immediate financial reassurance to our Partners. It also creates space to monitor and assess a fast-changing environment and to continue dialogue to respond in partnership with our Partners. Thus, it is proposed that the Council agreeing variations to the respective contracts is the best way of achieving this.
7. It is proposed that the contract variations are implemented on the basis of central government advice in the document *Procurement Policy Note 02/20 – Supplier Relief due to COVID-19*. This recommends that contracting authorities:
- a. Continue to pay contractors as normal during the period of restrictions despite temporary suspension of most aspects of service delivery;
 - b. Put in place appropriate payment measures to support supplier cash flow;
 - c. Cooperate with suppliers on an open book basis;
 - d. Ensure invoices are paid as swiftly as possible upon receipt.

Moreover, it has been agreed with both suppliers that any financial support will only be offered by the Council to at most cover their costs and losses, not to enable Partners to make a profit.

8. The following paragraphs outline the planned time-limited contract variations proposed for both providers including proposed changes to their monthly payments.

Parkwood Leisure – Rufford Abbey Country Park

9. The annual management fee for 2020/21 for Rufford Abbey Country Park is £123,549.48. This is broken into monthly instalments of £10,295.79.
10. The principle of the contract variation proposed with Parkwood Leisure Ltd. is that the Council will make a base payment at the start of each contract month that covers actual costs incurred by Parkwood during the month. Before the end of the contract month, Parkwood will then release their actual costs for Rufford for the month on an open book basis. If actual costs exceed the base payment, the Council will make a further top-up payment. If actual costs fall short of the base payment, the Council will invoice Parkwood for the difference.
11. The current estimated monthly actual costs for the Park are circa £60,000 and this figure is likely to form the monthly base payment sum. The actual cost amount is liable to fluctuate month by month. Moreover, once government restrictions ease, it is likely that both the Park's running costs and income will increase due to the partial reopening of certain services. Parkwood have agreed that any income they receive will offset their actual costs for the month alongside the Council's payment. However, in the early months of reopening, it is uncertain

whether this will decrease or increase the likely financial contribution from the Council since it cannot be predicted in what numbers the public will visit country parks once restrictions lessen.

12. For reference, the circa £60,000 figure represents over a threefold decrease in expenditure from what is normal for this time of year, due to the closure of the Park, reductions in ongoing operations, and the furlough of non-critical staff .
13. The contract variation is set to be reviewed by NCC and Parkwood on a monthly basis. Once it is agreed that the Park can resume full operational use without COVID-related restrictions, an initial termination date for the variation is set at 30th September 2020 however the variation will include an ultimate long stop date of 31st December 2020 to ensure the variation doesn't continue indefinitely. The proposed contract variation would have the potential to be extended beyond the end of December 2020, but any extension would be the subject of a further report to Committee. This flexible variation end-date provides flexibility to the variation in the face of future uncertainty whilst also providing our Partner with financial reassurance.
14. It is proposed that the revised payments will be met by existing Cultural Service Budgets, which will be significantly overspent as a result, however the revised payments have been fed into the overall COVID-19 financial planning for the Council.

Holme Pierrepont Leisure Trust & Serco Leisure – Holme Pierrepont Country Park

15. The annual management fee for 2020/21 for Holme Pierrepont Country Park is £134,644.63. This will be broken into monthly instalments of £11,220.39. On top of this, there is an annual £100,000 maintenance budget.
16. It should be noted that the business model for Holme Pierrepont Country Park and the National Water Sports Centre is seasonal in nature with the business running a loss during the winter months that is then made up in revenue over the summer. However, major flooding of the site in winter 2020 has meant that the losses from the first three months of this year have been higher than normal . Moreover, the timing of the COVID-19 crisis at the start of the summer season has prevented the Trust from recouping these winter losses from revenue in the usually profitable summer season. As a result, to just meet the Trust's actual costs incurred during the COVID-19 lockdown would still leave the Trust with a significant financial loss.
17. It is proposed that the loss of revenue caused by the flooding shall be dealt with under the existing contract emergency event and loss of income relief clauses in the contract. The costs attributed to COVID-19 including the associated exacerbated losses under the business model shall be the subject of the proposed contract variation. This variation will be based on the principle of bringing the Trust's net losses from March to September 2020 to net zero.
18. Following negotiations with the Trust and Serco Leisure, the proposed contract variation would involve the Council making payments to a maximum of £722,361.00, though it is likely that the final payments will be less than this due to revenue streams reopening as COVID-19 restrictions ease. The proposed contract variation would have the potential to be extended beyond the end of September 2020, but any extension would be the subject of a further report to Committee.
19. As with the proposed contract variation for Parkwood, the principle agreed with the Trust for the proposed time-limited contract variation is that the Council will make a base payment at the start of each contract month. However, unlike the Parkwood Variation, the Trust will release their actual costs on a three-monthly, open book basis. If actual costs for those three months exceed the base payments during those months, the Council will make a further top-

up payment. If actual costs fall short of the base payments, the Council will invoice the Trust for the difference.

20. As above, it is proposed that the revised payments will be met by existing Cultural Service Budgets, which will be significantly overspent as a result, however the revised payments have been fed into the overall COVID-19 financial planning for the Council.

Other Options Considered

21. The Council could choose to not enter into a contract variation and simply continue to pay the monthly management fee under the terms of the contract. This option has been dismissed for the following reasons:
- a. By not offering the financial assistance detailed in this report one or both of the Contractors could potentially become insolvent. Under both contracts contractor insolvency is considered a Contractor Default and allows the Council to terminate the contract. Although some costs may be recovered through the Parent Company Guarantee and associated indemnities the ultimate consequence of such insolvency would mean that the service would come back in-house to the Council at least temporarily whilst a new contractor was procured. This would involve the TUPE transfer of relevant staff into the Council together with the resumption of all site and services related responsibilities by the Council.
 - b. Any consequential procurement of a new contractor plus the associated mobilisation period could take anywhere between 6 and 18 months before the facilities would be operational under a new contractual regime. Furthermore, due to the financial toll of the crisis on the sector, it is likely that any new supplier, if one could be found, would want an increased monthly fee from the Council to offset their risks.
 - c. Even if neither party became insolvent there is a risk that the partner decides to attempt to walk away from the contract due to the desire to cut losses (i.e. that the contract is discharged as they are no longer able to perform their obligations due to events outside of their control). If the Council dispute such a claim this would likely result in litigation. The staffing, financial and procurement consequences of this are as set out in paragraphs a and b above together with any associated litigation costs (unless such litigation costs could be recovered during the litigation process).
22. An alternative option could be for the Council to agree a contract variation and payment mechanism with both Contractors that falls short of supporting either party to break-even but still remain financially afloat. This would reduce the financial burden on the Council but is contrary to the national guidance set out in the PPN and is also likely to foster ill-will with the Council's Partners whose cooperation and good will is vital for the effective operation of the country parks as important Council assets.

Reason/s for Recommendation/s

23. The financial mitigation proposals contained within the contract variation for both Country Park Partners recognise the particular issues affecting the concession style contract models in operation at each site and aim to achieve the following:
- a. Show that the County Council is following national guidance contained within *Procurement Policy Note 02/20 – Supplier Relief due to COVID-19* including the establishment of contract variations on an open book basis.

- b. Support the continued liquidity of both Country Park Partners and thus save on costs down the line by avoiding the risks of having to temporarily return the operation of the parks in-house and re-tender the contracts.
- c. Improve the conditions for both contracts continue to operate after the COVID-19 crisis with minimal difficulty, thus continuing to make Nottinghamshire a great place to live, work, visit and relax.
- d. Protect jobs of Nottinghamshire residents working at both country park sites.

Statutory and Policy Implications

24. This report has been compiled after consideration of implications in respect of crime and disorder, data protection and information governance finance, human resources, human rights, the NHS Constitution (public health services), the public sector equality duty, safeguarding of children and adults at risk, service users, smarter working, sustainability and the environment and where such implications are material they are described below. Appropriate consultation has been undertaken and advice sought on these issues as required.

Financial Implications

- 25. For Rufford Abbey Country Park, the financial implications of the contract variation are circa. £60,000 a month plus or minus whatever the actual costs of the COVID-19 crisis prove to be until the crisis ends and the park returns to full operational use. It has been assumed at this point that those costs will be incurred for a minimum of three months, but could be considerably longer, however a long-stop date is required to ensure that the arrangements remain time limited and protect the Council's position.
- 26. For Holme Pierrepont Country Park, the financial implications of the contract variation are circa £722,361.00 for 2020 plus or minus whatever the actual costs of the COVID-19 crisis prove to be until the crisis ends and the park returns to full operational use. It has been assumed at this point that those costs will be incurred for a minimum of three months, but could be considerably longer, however a long-stop date is required to ensure that the arrangements remain time limited and protect the Council's position.
- 27. With both contract variations, the final amount paid depends on how much the base monthly payments in both cases are recompensed as costs reduce as both Partners begin to receive income once services partially reopen in the months ahead. It should be noted that initially operating costs may increase as sites reopen without the revenue to offset those costs, although staged reopening will be a requirement of any planned return to normal operation in the longer term.

Human Resources Implications

- 28. In the event that the variations were not agreed and the parks then had to be brought back in-house then it would be necessary to bring operational staff into the employment of the Council in accordance with the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations.

Implications for Service Users

- 29. Both Rufford Country Park and Holme Pierrepont Country Park are key assets in the County Council's Visitor Economy Strategy (VES) and their operation and commercial viability is essential if residents are to continue to enjoy access to these facilities and the wider tourism related economic benefits associated with delivering the VES.

30. The two sites have seen significant improvements in the range and quality of the visitor experience since they have been transferred to Parkwood and the Holme Pierrepont Leisure Trust and supporting these businesses appears to be the best way to ensure the sites are able to operate effectively in the post COVID-19 economy.

Legal Implications

31. The proposals have been assessed and further information regarding the legal implications is set out separately in an **Exempt Appendix**.

RECOMMENDATION/S

- 1) That the policy principles and parameters for establishing contract variations with our Country Park Partners, Parkwood Leisure Ltd. and Holme Pierrepont Leisure Trust, including open book accounting procedures, are agreed for the reasons set out in this report.
- 2) The Service Director for Place and Communities be authorised to finalise terms within those parameters and to agree the completion of the necessary contract variations in consultation with the Group Manager for Legal Services and the S.151 Officer.
- 3) Finance and Major Contracts Management Committee monitors the situation and progress with recovery at the sites and receives a further report about the potential need for any extension of support before the end of September 2020.

COUNCILLOR MRS KAY CUTTS MBE **Leader of the Council**

For any enquiries about this report please contact: Derek Higon – Service Director: Place and Communities, Tel: 0115 9773498

Constitutional Comments (EP 29/05/2020)

32. The recommendations fall within the scope of both Communities and Place Committee and Finance and Major Contracts Management Committee however there are also overarching policy principles being established and so it is considered that Policy Committee is the most appropriate Committee to consider and determine the report. Any resulting contract variations shall be in a form approved by Group Manager Legal, Democratic and Complaints.

Financial Comments [RWK 28/05/2020]

33. The report proposes additional contract payments of £180,000 for the operation of Rufford Country Park for the 3 months to the end of June 2020, and £722,361 for the operation of Holme Pierrepont Country Park for the period to the of September 2020. The proposed payments total £902,361.
34. There is no existing budget provision to meet these additional contract payments. The additional costs will be included in the estimated additional costs reported to Policy Committee and to MHCLG and will be considered for financing from the additional funding provided by Government. Work is on-going to assess the financial impact of the COVID-19 crisis on the council's 2020/21 and its MTFS.

Background Papers and Published Documents

Except for previously published documents, which will be available elsewhere, the documents listed here will be available for inspection in accordance with Section 100D of the Local Government Act 1972.

- 'Procurement Policy Note 02/20 – Supplier Relief due to COVID-19'

Electoral Division(s) and Member(s) Affected

- 'All' or start list here