

REPORT OF THE SERVICE DIRECTOR, PLACE AND COMMUNITIES**HOLME PIERREPONT COUNTRY PARK REVISED OPERATING MODEL****Purpose of the Report**

1. To seek approval to a voluntary ending of the current arrangements for the management Contract of the Holme Pierrepont Country Park (HPCP) and National Water Sports Centre (NWSC) with Holme Pierrepont Leisure Trust (HPLT), and to enter into a direct agreement (and any incidental commercial agreements) with Serco Leisure Operating Limited (SLOL) for the operation of the site subject to the approval, in line with the Constitution, of any land and property arrangements required between the parties.

Information

2. Nottinghamshire County Council (NCC) entered into the Contract on 28 March 2013 with HPLT) to operate HPCP, home of the NWSC.
3. HPLT discharges its obligations under the Contract through a Managing Agent Agreement (MAA) with SLOL. The relationship between NCC, HPLT and SLOL is underpinned by a Direct Agreement (DA) between NCC and SLOL to ensure continuation of the arrangements in the event of failure of the HPLT. A Works Procurement Agreement was also entered into directly with SLOL, and the obligations under that arrangement have been discharged by SLOL. A lease of the site was granted to HPLT.
4. SLOL were the original winning bidder through the procurement process undertaken by NCC for the operation of HPCP and the NWSC, and recommended creation of HPLT to provide an industry standard, tax efficient operating model for the site.

Holme Pierrepont Leisure Trust

5. The HPLT is an Industrial and Provident Society (and therefore non-profit making organisation), with a number of trustees appointed to manage its affairs. These trustees are often interested in the aspirations of HPLT, or the facilities which they manage, rather than being professionals in the service or business area in which HPLT operates.
6. Despite many years of successful operation of the NWSC and HPCP site by HPLT, flooding incidents have impacted badly on the operations over the last two winters, and the Covid 19 pandemic has worsened the situation further as the summer revenue streams which subsidise the site over the winter period have also been lost.
7. The overall viability of the facility has as a result been reduced, with HPLT needing additional financial support from NCC over the 2020/21 financial year to meet operating losses and keep the site viable. Payments were made by the Council in accordance with Government Procurement Policy Note (PPN) 02/20 and 04/20. Losses have continued into the early part of 2021/22 due to the tail of the pandemic.

8. Dialogue between NCC, HPLT and SLOL has been extensive however, it is apparent that the current model of operation is no longer sustainable or sufficiently fleet of foot in operation in its current form, and options to move to a different operating model have now been explored, including seeking external advice on the options available to the partners.
9. The DA allows NCC to step into the shoes of HPLT and contract direct with SLOL in various circumstances. Many of those step-in options are however complex and are neither necessary nor appropriate in the current circumstances whereby the viability of the HPLT has reduced by the cumulative impact of various external events rather than a specific contractual failure.
10. Recent discussions with HPLT have confirmed that HPLT trustees are keen to agree to the existing contractual arrangements with HPLT being ended voluntarily, and for NCC to contract directly with SLOL.
11. To that end, the parties are currently working towards delivering a revised operating model for HPCP and the NWSC which will remove any ongoing liabilities on HPLT by moving to a direct contractual arrangement between NCC and SLOL.
12. HPLT would effectively be wound up once their Contract with NCC, and the MAA with SLOL, were ended. Future liabilities of HPLT would fall away from the date of termination.

Timescales

13. The partners are proposing a provisional end of the arrangement with HPLT as soon as possible in the Autumn subject to completion of all the necessary transfer arrangements and procedures and contractual documentation.
14. SLOL would step into the shoes of HPLT to contract directly with NCC, taking on all of the contract liabilities and being paid and managed directly by NCC. From a service/user perspective the transition would be invisible, with any affected staff being transferred to SLOL from HPLT through the Transfer of Undertakings (Protection of Employment) regulations (TUPE) as necessary.
15. Advice has been sought on the best way for NCC to end the current agreements with HPLT and enter into a direct relationship with SLOL. Options include either the assignment and variation of agreements and the lease and/or the termination of existing and grant of new agreements and a lease with SLOL. Some agreements, like the DA will terminate all together. Discussions on the documents required are ongoing between the parties and is subject to legal advice and support on the route to follow and the documents required.

Operational and Financial Impacts

16. Removal of HPLT will make operating the site easier for SLOL, and less time consuming for NCC, but some or all of the tax benefits available to the Council through the current trust model will be lost, including the need to charge VAT where applicable and the loss of Business Rate rebates for much of the site.
17. At this point any additional costs incurred in 2021/22 are considered Covid 19 related, as the impact of the pandemic continues to be felt across the whole leisure sector, and recovery is likely to take several more months, if not years. Any additional monies required to support the site in the short term will therefore be an additional cost to the Communities Committee.

18. Longer term the potential options for minimising the financial impacts of the revised operating model need to be considered, and it is proposed that this is undertaken to allow consideration of other options in advance of the 2022/23 financial year including the establishment of a different not for profit operating model if appropriate.

TUPE and Pension Issues

19. The operational staff on the site are currently employed by HPLT and will be transferred to SLOL as part of the revised arrangements. Initial discussions indicate that around 74 staff are affected and consultation with those employees is due to commence once approval to the revised arrangements is secured. Many of those affected are temporary or casual staff, or work limited hours, so the permanent Full Time Equivalent (FTE) number is 32.
20. Affected staff will be protected through the application of the Transfer of Undertakings (Protection of Employment) Regulations, commonly known as TUPE.
21. Employees of HPLT who were previously employed by the County Council prior to 2013 have their pensions protected by HPLT obtaining "Admitted Body" status to the Local Government Pension Scheme (LGPS). Only 8 of the current staff are members of the LGPS.
22. As part of the closing down of HPLT and the transfer of staff to SLOL the new employer will also be seeking to obtain Admitted Body status and an application has now been submitted to the LGPS.
22. At the point that the HPLT closes any outstanding pension liabilities will need to be settled. Given the limited number of staff employed by HPLT and even smaller number who are members of the LGPS pension scheme, any deficits or surpluses are likely to be relatively small, and it is proposed therefore that any liabilities are met by the County Council. This would mirror the contractual position if HPLT failed for any reason.
23. Full details of the TUPE and Pensions positions, including any possible liabilities, will be considered by the Corporate Director, Place (or his nominee) the Group Manager for Legal Services and the s151 Officer in finalising the terms of the commercial legal arrangements.

Friends of Holme Pierrepont Country Park

24. Discussions have also been held about establishing a less formal "friends of" type group to take on the community engagement role also provided currently by the trustees of HPLT on a "non-contractual" basis, and work continues to identify the best mechanism for delivering this function on a non-contractual basis in any revised model.

Other Options Considered

25. NCC could choose not to make changes to the current arrangements and continue to enforce its existing contractual rights against HPLT but given the sustainability concerns noted above this is likely to risk the future viability of the facility.

Reason for Recommendations

26. These recommendations will establish a robust and sustainable contractual framework for the management of the HPCP and NWSC to ensure that NCC continues to be able to offer public access to these much valued facilities, including both the HPCP and the NWSC.

Statutory and Policy Implications

27. 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

28. The likely financial impact of the move to a direct operating model is expected to be circa £25,000 in 2021/22 depending up the date when the direct arrangements commence.
29. The potential full year impact of the changes are currently estimated at circa £200,000 and a budget pressure for that amount has been prepared for consideration as part of the development of the revenue budget for 2022/23 should a more efficient alternative operating model not be identified for 2022/23 onwards.

Implications for Service Users

30. NCC's Country Parks have proven essential during the Covid 19 pandemic in maintaining the physical and mental health of residents and it is essential that the site is operating effectively if it is to recover quickly from the impacts of the last 18 months.
31. For the information of the Committee the Council is also looking to commission investigations into potential flood mitigation and protection works given recent increased frequency of flooding events in order to identify any cost effective measures which could be implemented.

RECOMMENDATIONS

That Committee approves:

- 1) The voluntary ending of the Contract arrangement with Holme Pierrepont Leisure Trust (HPLT), and a direct arrangement being entered into between Nottinghamshire County Council (NCC) and Serco Leisure Operating Limited (SLOL) for delivery of the services currently provided through the HPLT.
- 2) That the Corporate Director, Place (or his nominee) be given delegated authority, in consultation with the Group Manager for Legal Services and the Section 151 Officer to agree and finalise the terms of the commercial legal arrangements required to put in place a direct arrangement with SLOL subject to the approval, in line with the Constitution, of any land and property agreements which are required between the parties.
- 3) Termination of the Direct Agreement subject to and upon the ending of the contract arrangement with HPLT, which is then not relevant given the direct relationship that is proposed between NCC and SLOL.

- 4) Further work being undertaken to identify the most cost effective way of delivering the service in the future and to identify any additional costs in 2022/23 and future years.

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Constitutional Comments [CEH 24/08/2021]

27. The recommendations fall within the remit of Communities Committee under its terms of reference.

Financial Comments [RWK 10/08/2021]

28. The report details revised proposals for the management of the Holme Pierrepont Country Park and National Water Sports Centre. Due to the impacts of responding to the Covid pandemic and the time needed for operations and income streams at the country park and watersports centre to recover, and the loss of tax benefits available through the current trust model it is likely that there will be additional costs in 2021/22 and future years. Any additional costs incurred in 2021/22 will need to be met from the revenue budget of the Communities Committee. Any additional costs in future years will be considered as part of the development of the revenue budget for 2022/23.

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.

- None

Electoral Division(s) and Member(s) Affected

- All