

Cabinet



Title of Report:	Development of a new Partnership Agreement with Abbeycroft Leisure	
Report No:	CAB/SE/17/019	
Report to and dates:	Cabinet	28 March 2017
	Council	25 April 2017
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Purpose of report:	To seek approval to enter into a new Partnership Agreement with Abbeycroft Leisure Ltd	
Recommendations:	<p>It is <u>RECOMMENDED</u> that, subject to the approval of full Council:</p> <p>(1) a new Partnership Agreement be entered into with Abbeycroft Leisure Ltd for a period of 15 years, with options to extend for 5 + 5 years , subject to the protections included in the Partnership Agreement; and</p> <p>(2) the Partnership Agreement is finalised in line with Report No: CAB/SE/17/019 and the Heads of Terms attached at Appendix 1.</p>	
Key Decision: <i>(Check the appropriate box and delete all those that do not apply.)</i>	<i>Is this a Key Decision and, if so, under which definition?</i> Yes, it is a Key Decision - <input type="checkbox"/> No, it is not a Key Decision - <input checked="" type="checkbox"/> As it is a decision of full Council and not Cabinet.	

Consultation:		<ul style="list-style-type: none"> The Partnership Agreement builds on the principles of the Promoting Physical Activity Framework that was consulted on in 2016. The Agreement has been developed in consultation with Abbeycroft 	
Alternative option(s):		The existing Management Agreement and associated leases (that are out of date) are relied upon to manage the agreement with Abbeycroft and a competitive procurement process is entered into to identify a new partner.	
Implications: Entering into a procurement exercise will take around 18 months having regard to the contract value and length and market testing. The procurement process and contract management will require additional resource in the Council.			
Are there any financial implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> The new Partnership Agreement is linked to a management fee. The accompanying annex shows the reduction in that fee to zero by 2022. The reduction is dependant on investment by the Council using its £1.5m investment fund. 	
Are there any staffing implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> Council officers will manage the relationship with Abbeycroft and oversee the performance reviews 	
Are there any ICT implications? If yes, please give details		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> <ul style="list-style-type: none"> 	
Are there any legal and/or policy implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> The new Partnership Agreement will ensure services meet the principles of the Promoting Physical Activity Framework. All leases will need to be varied to reflect new arrangements 	
Are there any equality implications? If yes, please give details		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> <ul style="list-style-type: none"> The new Partnership agreement will ensure services meet the principles of the Promoting Physical Activity Framework 	
Risk/opportunity assessment:		<i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>	
Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Abbeycroft performance deteriorates failing to meet objectives of the Partnership agreement	Low	Effective board of trustees; support through stakeholder group; effective monitoring of performance	Low

Increased competition in the leisure sector means that Abbeycroft loses market share and costs increase	Medium	Investment in facilities to ensure they remain attractive to users, continued development of offer to meet current needs and trends	Low
Ward(s) affected:		All Wards	
Background papers: <i>(all background papers are to be published on the website and a link included)</i>		Promoting Physical Activity Framework: https://democracy.westsuffolk.gov.uk/documents/s15009/CAB.FH.16.029%20Appendix%20A%20-%20Framework%20Guidelines.pdf Abbeycroft Leisure Annual report 2015-16 http://apps.charitycommission.gov.uk/Accounts/Ends38/0001117138_AC_2_0160331_E_C.pdf Investment in Council's leisure facilities: https://democracy.westsuffolk.gov.uk/ieListDocuments.aspx?CID=172&MIId=3289 Overview and Scrutiny report Jan 2017 https://democracy.westsuffolk.gov.uk/documents/s17390/OAS.SE.17.004%20-%20Review%20of%20Abbeycroft%20Leisure%20Ltd%20Performance%20005-2016.pdf Delivering with Less – Leisure Services: https://www.wao.gov.uk/publication/delivering-less-leisure-services Quest Accreditation information http://www.questnbs.org/quest/assessments-guidance/quest-for-facilities-2016	
Documents attached:		Appendix 1: Heads of Terms Partnership Agreement including Schedule 2 (Strategic Leisure Advice) and Schedule 3 (Management Fees Payable).	

1. Key issues and reasons for recommendations

1.1 The Council's existing partnership with Abbeycroft Leisure Ltd

1.1.1 Abbeycroft Leisure has worked in partnership to deliver sports and leisure services for St Edmundsbury Borough Council since Abbeycroft's creation in 2005. The Council leases the buildings of Haverhill Leisure Centre and Bury St Edmunds Leisure Centre to Abbeycroft and a management agreement supports those lease arrangements. In 2015 Abbeycroft merged with Anglia Community Leisure (ACL) and Abbeycroft Leisure Ltd took on responsibility for Forest Heath Leisure Services too.

1.1.2 Abbeycroft Leisure is a social enterprise and operates as a business in order to provide a return to the communities within which it operates. It has no shareholders who take a dividend. Its purpose is to make a difference through promoting health and wellbeing by supporting people to engage in physical activity. As a holder of the Social Enterprise Mark, each year Abbeycroft produces a Social Impact Statement that summarises its activities to show it is meeting its social objectives.

1.1.3 The Council pays Abbeycroft Leisure a management fee to support the operation of sports and leisure services in those centres and across the district. This includes the following services:

- The operation of Haverhill, Bury St Edmunds and Skyliner Leisure Centres
- Sports and Physical Activity Development Team
- Project Management of Mass Participation of Events
- Strategic Leisure Advice
- Management of Outdoor Pitches

1.1.4 The core principle of the current agreements is that the Council and Abbeycroft are working in partnership to achieve the best for local communities and provide opportunities to enjoy the broadest range of services. As shown above, Abbeycroft Leisure now provides a range of services that goes beyond the scope set out in the original management agreements with ACL.

1.1.5 When the merged leisure trust was created in 2015, the Council committed to securing a long term reduction in management fee and a new partnership agreement with Abbeycroft as the merged Trust. This report details the approach to, and content of, a new Partnership Agreement, in line with the principles that Cabinet and Council agreed to last year. The report includes references to the recent scrutiny of Abbeycroft's performance to date as examined at the Council's Overview and Scrutiny meeting on 11 January 2016. If agreed, under normal delegated powers officers will refine and develop the agreement and seek agreement from Abbeycroft's Board of Trustees to implement the new Partnership agreement on 1 May 2017.

1.2 Development of the merged Trust and existing agreements

1.2.1 In 2013, the shared approach commenced with the appointment of a joint Chief Executive Officer (CEO) across both Trusts and progressed to sharing a management team and other staff resources, along with some service and

systems alignment. It saw the creation of a sports and physical activity development service. This helped address some financial issues that ACL were then facing and delivered some efficiencies that enabled both Councils to reduce the management fee paid.

- 1.2.2 In 2015, in pursuit of further service improvements and savings, and following a due diligence exercise, the Council agreed that a single merged trust should be created, and the existing management and funding agreements between Forest Heath District Council and Anglia Community Leisure were novated to Abbeycroft Leisure and since April 2015, Abbeycroft Leisure has delivered sports and leisure services for Forest Heath District Council.
- 1.2.3 As arrangements have developed over time, the underpinning legal agreements have become complex to understand. Separate management and business transfer agreements exist for both Forest Heath District Council and St Edmundsbury Borough Council; the approach to maintenance and repairs is different for different sites and the approach to leases for each site varies too. It is essential a new Partnership Agreement addresses legacy issues and provides a framework from which Abbeycroft can grow and develop its business for the benefit of the health and wellbeing of West Suffolk's residents at the same time as reducing the Council's costs in regard to leisure provision.

2. Principles behind the Partnership Agreement

- 2.1 Whilst considering the creation of an investment fund for the Council's leisure facility, Cabinet and full Council approved the Principles on which a new partnership agreement would be developed. These are:
 - a) The Principles of the Council's Medium Term Financial Strategy and value for money considerations;
 - b) The outcomes of the Promoting Physical Activity Framework;
 - c) Optimise utilisation of the investment fund established in December 2016 to achieve the reduction in the management fee payable by the Council to zero.
- 2.2 Further, Cabinet and full Council made a commitment to:
 - a) Develop an outcomes based Partnership Agreement for the benefit of West Suffolk residents and businesses, having regard to West Suffolk's strategic leisure intentions;
 - b) Develop a Service Level Agreement for sports development work;
 - c) Achieve complete clarity re costs, fees and savings and third party agreements that are included in the management fee;
 - d) Agree a suitable period for the new lease and agreement, having regard to Abbeycroft's need to achieve length of tenure that unlocks funding;
 - e) Jointly develop a maintenance and investment plan and prioritise spend linking to West Suffolk's 6 year rolling plan and Abbeycroft 1 year maintenance plan that balances protecting the asset with customer service and user attraction and address the legacy latent defect issues.
 - f) Demonstrate value for money and a strong market offer.

This report outlines how these commitments have been met and the Heads of Terms for the new Partnership Agreement are included at Appendix 1.

2.3 **Outcomes Based Partnership Agreement:**

2.3.1 The Partnership Agreement includes a section that requires the Trust to offer and promote facilities, activities and initiatives that meet the objectives of the Council's Promoting Physical Activity Framework. The outcomes of the Framework are listed in the Agreement. Abbeycroft are required to produce an Annual Sports and Physical Activity Development Plan that identifies a programme that supports those outcomes having regard to local need and priorities. This would include, but is not limited to:

- a) Health Initiatives
- b) Events Programme
- c) National Governing Body Partnerships/initiatives
- d) Physical Activity Initiatives

2.3.2 The Partnership Agreement (section 9) requires Abbeycroft to operate a concessionary pricing scheme that contributes to the delivery of the Council's priorities and the outcomes in section 1 of the Partnership Agreement. At section 12 it sets out performance and monitoring requirements and these are explained in more detail at section 3 of this report.

2.4 **Service Level Agreement (SLA) for sports development work**

Abbeycroft will act as the Councils' advisor in relation to issues that affect the provision of sport and physical activity in West Suffolk. A Schedule (2) to the Partnership Agreement details the activities that Abbeycroft will undertake in this role. These include:

- a) Acting as the contact with county, regional and national agencies and manage those relationships.
- b) Co-ordinating and managing large scale projects associated with Sport and Physical Activity including the development and submission of funding bids.
- c) Managing the Councils' requirements in relation to sport and physical activity development

2.5 **Achieve complete clarity regarding costs, fees and savings and third party agreements that are included in the management fee.**

2.5.1 Currently the legacy arrangements mean that there are different arrangements for different sites for maintenance and repairs and this has proved to be the most significant challenge for achieving transparency. The Council currently sets aside £259,350 into a capital fund for leisure buildings to address key maintenance and renewals obligations under the terms of the current leases.

2.5.2 Separate contributions are made for renewal of synthetic pitches the average life expectancy of synthetic turf is generally 10-15 years, dependant on maintenance and usage. A resurface of a synthetic pitch of this size would typically cost around £180,000 - £200,000 + VAT. The Council is responsible for four such pitches across the Borough at Nowton Park, King Edwards School, Haverhill Leisure Centre and the new Skyliner Sports Centre.

2.5.3 Whilst the Council has been clear of its intention to reduce the management fee to zero, consideration has to be made of these other costs the Council incurs in regard to leisure centre operation. The Partnership Agreement is

clear that Abbeycroft has responsibilities in keeping facilities in a good state of repair and all leases will be updated to include an annex that clearly sets out both parties' obligations in regard to repairs and maintenance. The Partnership Agreement (section 8) requires Abbeycroft to ensure that it sets aside adequate funds to meet its repairs and maintenance obligations.

- 2.5.4 To support this approach to maintain the leisure centre assets, Abbeycroft and the Council are committed to jointly developing a maintenance and investment plan and prioritise spend linking to West Suffolk's six year rolling plan and Abbeycroft's one year maintenance plan. This will balance protecting the asset with customer service and user attraction and address the legacy latent defect issues. This work is underway and will be completed by May 2016.
- 2.5.5 In addition, Abbeycroft's five year business plan will include a financial plan for each centre in the portfolio together with proposals for use of the investment fund. This will ensure that all financial issues relating to the leisure centres are clearly understood and considered together.
- 2.5.6 Section 4 of the Agreement sets out further detail on financial management and funding and at Schedule 3 a table shows the proposed reductions in management fees. This schedule is reliant on sound business cases being developed for the use of the investment fund the Council has set up. The figures have been developed having regard to a number of initiatives that will reduce costs or increase income for Abbeycroft. These include:
- a) Abbeycroft internal efficiencies
 - b) New Leisure Facility - Skyliner Sports Centre
 - c) Development at Haverhill Leisure Centre to revise leisure offer
- 2.5.6 In respect of Haverhill, outline feasibility and costings have been produced. To secure the financial support from the Council's £1.5m investment fund facility, Abbeycroft will be producing a detailed business case for the proposal. Subject to updated leases and partnership agreement, Abbeycroft will be able to seek other external funding for these improvements and will also invest its own capital for example in the fit out of new leisure facilities. Furthermore, Abbeycroft will take on responsibilities for the repairs and renewals of new facilities provided. All developments will be subject to planning approval.
- 2.5.7 Through these schemes Abbeycroft has committed to deliver a zero management fee to the Council by 2022. It is clear the potential is there in the centres to deliver this level of saving and the detail will be worked through in each individual case. Those business cases will be considered by Cabinet separately. Then, post 2022, there will be a gradual shift of repairs and renewals responsibilities to Abbeycroft in order to further reduce the Council's financial support of leisure services. The review of delivery at year 3 will be used to review the asset plan and agree the transition to a repairing lease so the Council will see further savings in its asset management plan.
- 2.6 **Agree a suitable period for the new lease and agreement , having regard to Abbeycroft's need to achieve length of tenure that unlocks funding**
- 2.6.1 Any new partnership agreement needs to mirror the length of the accompanying lease(s). As all the current leases for Abbeycroft sites have

been started at different times and are for different durations, all leases are being reviewed and will be standardised to work with the new Partnership Agreement across both Forest Heath and St Edmundsbury Councils. These changes will be implemented from 1 May 2017 to coincide with the new Partnership Agreement.

- 2.6.2 At Bury St Edmunds Leisure Centre and Skyliner Sports Centre, the sites are leased to the Council by Suffolk County Council. As part of the negotiations on the Skyliner site a head lease of 125 years has been agreed with an underlease to be granted to Abbeycroft Leisure. The County Council has been clear that it wants security of tenure for the operator having regard to the community use agreement on the site.
- 2.6.3 As the Council wants Abbeycroft to be more financially independent, it needs to enable Abbeycroft to access sources of external funding. One criteria funders such as Sports England or the Football Association make is that the period remaining on the lease of the site in question has to be at least 10 years. As such, and having regard to the longer term outcomes the Council wants Abbeycroft to deliver, it is proposed that all leases and the Partnership Agreement should initially be for a period of 15 years with safeguards and extension options built in.
- 2.6.4 The Leases and Partnership Agreement will be subject to three yearly reviews. At the ninth, twelfth and fifteenth anniversary there will be a 24 option period during which (i) the parties can mutually agree to extend the arrangement for a further five years beyond the then current expiry date or (ii) the ability for the Council to serve notice to terminate the arrangement at the then current expiry date. This will achieve a potential term of 25 years (ie 15 + 5 + 5). In addition there will be a review of performance against the Partnership agreement after 3 and 6 years.
- 2.6.5 The reviews will assess performance against the outcomes of the agreement and include an assessment of the wider leisure market at that time and scrutiny by the Council's Overview and Scrutiny Committee. If a material breach of the Partnering Agreement occurs then the Council will work with Abbeycroft to seek a resolution but if that fails the Council can terminate the agreement implementing the break clause. (Section 13).
- 2.6.6 This approach creates a balance of incentivising Abbeycroft to take a longer term view of savings and delivery opportunities that protect our assets and deliver against the outcomes we have specified, to deliver management fee reductions, while the Council is not locked into a long agreement if there are any performance issues.
- 2.6.7 In addition, Abbeycroft will be able to leverage alternative funding into improvement schemes and the Council should be creating the conditions for Abbeycroft to invest further into the facilities. Funders will look at length of lease in evaluating a loan, and more favourable rates can be obtained against improved security. A longer Partnership Agreement term also reflects the fact that many of the outcomes we are seeking to demonstrate are long term.

2.7 **Demonstrate value for money and a strong market offer**

- 2.7.1 In January 2017, the Council's Overview and Scrutiny Committee scrutinised Abbeycroft's performance to date. That scrutiny included a comparison of costs, approach and service offer from other local authorities in the region showing that Abbeycroft delivered a value for money offer and a range of service that exceeded that which some other Councils enjoyed. The Committee recommended:
- a) The need for full transparency of costs to the Council of providing leisure services;
 - b) The need for the agreement to focus on the outcomes for the health and wellbeing of communities.
 - c) The approach to developing a Partnership agreement with Abbeycroft for at least 10 years and alignment of leases will deliver a value for money service for the Council.
- 2.7.2 The Committee also examined Abbeycroft's governance and performance both in regard to outcomes and finance. Since its establishment in 2005, Abbeycroft acquired Social Enterprise status in 2010 and has continued to grow and now operates 12 facilities across Suffolk and Cambridgeshire attracting in excess of 1.6 million visits and employs 450 staff. The supporting report evidenced the improvements in attendance together with the outcomes that were being delivered through a number of health initiatives.
- 2.7.3 The management fee that the Council pays to the Trust reduced by 78% from over £784,000 in 2005 to £172,000 that the Council will pay Abbeycroft in 2017/18. Clearly continuing to achieve reductions will be more challenging but the performance and growth of Abbeycroft to date shows it is an established provider in the leisure sector and securing consistent improved performance both for the user and the Council. At the same time as reducing reliance on management fee, Abbeycroft has absorbed additional costs such as utilities and will absorb the increases in staff costs through the introduction of the living wage.
- 2.7.3 Trust models continue to be used to deliver leisure services across the UK as they are seen to offer a number of benefits. This was summed up in a report by the Welsh Audit Office in December 2015 "Delivering with less – Leisure Services" stated that
- "Trust options are very much being promoted by the Welsh Government and are increasingly seen as offering a range of financial benefits".*
- The report does state there are risks in pursuing a trust model in respect of organisational and financial failure hence the Councils obtained a Dun & Bradstreet credit rating report that concluded Abbeycroft is considered to have a lower than average risk of business of failure (a 1.14% chance).

3. Review of Performance

- 3.1 In entering into a new partnership agreement it is essential the Council has robust review arrangements, and the ability to end the agreement if Abbeycroft does not perform. The following reviews and safeguards have been built into the agreement.(Section 12)

- 3.2 Abbeycroft will:
- a) Produce an Annual report that summarises its financial performance and delivery against these outcomes.
 - b) Arrange quarterly briefing sessions with the Portfolio Holders for Leisure and Culture, a Council Director and the Leisure & Cultural Service Manager at which performance will be reviewed.
 - c) Provide all information required for the three-year review
 - d) Operate an open book approach for the Councils in regard to all its finances and operations
- 3.3 The Councils will:
- a) Schedule a formal review of financial and operational performance at Overview and Scrutiny to take place every three years.
 - b) Have officer representation on Abbeycroft's Stakeholder Panel. The Panel's purpose is to focus on how initiatives that are demonstrating strong social outcomes are sustained and embedded within existing systems or continue with a suitable financial model that reduces the need to secure external funding.
- 3.4 The Councils and Abbeycroft will hold an annual review of management fee reduction plan to include a review of work completed under the maintenance and repairs schedule.

3.5 **Performance Management Framework**

- 3.5.1 To support this, a performance management framework has been developed, that includes some system wide measures being used by Suffolk's Health and Wellbeing Board. The indicators are shown below and each will be clearly defined and have a baseline from which to measure direction of travel. Where appropriate they will be tailored to local need and reflect specific schemes being developed. The design of the indicator suite will be reviewed annually and review of actual performance against the measures will form part of the quarterly review of performance. The indicators are:

Health and Wellbeing Indicators:

- a. Health improvement initiatives delivered : no. of participants and improvements delivered;
- b. Retention rates of new participants accessing facilities;
- c. Barriers to participation addressed;
- d. New opportunities for physical activity created
- e. Reduction in percentage of physically inactive adults;
- f. Increase in number of people using outdoor space for exercise/ health reasons
- g. Increase in healthy life expectancy

Financial and Operational Performance Indicators:

- a. Increase in attendance at facilities;
- b. Increase in income at sites;
- c. Improvement in benchmarking position for sites performing below industry benchmark;
- d. Reduction in per head of population cost of operation;
- e. Meet or exceed forecast reduction in management fee;
- f. % improvement in energy efficiency at leisure facilities.

Quality Indicator

- a. Quest Accreditation maintained (independent assessment of facilities and service including customer experience)

3.5.2 Both parties will review the content of the performance management framework on an annual basis.

3.6 The Agreement includes a break clause and termination provisions that mean, subject to notice if Abbeycroft fails on its obligations under this partnership agreement, the Council has the right to terminate it with the associated leases. The three year reviews (paragraph 2.6.3) create the ability for the Council to serve notice to terminate the agreement at the current expiry date.

4. Other sections of the Partnership Agreement

4.1 The Partnership Agreement also includes sections addressing:

- a) Standard legal requirements including definitions, data protection, rights, declarations
- b) Personnel
- c) Approach to Programming

4.2 Issues such as transfer of staff have already been dealt with through the original business transfer agreement and any new staff are now employed directly by Abbeycroft.

5. Implementing the new Partnership Agreement

5.1 If the recommendations in this report are agreed, officers will complete the Partnership Agreement in consultation with Abbeycroft. Whilst the approach to the new agreement has been developed with Abbeycroft, any legal documents will need to be examined by Abbeycroft's legal advisors. Any changes that are required will only be made if they are in line with the principles and heads of terms detailed in this paper.

5.2 At the same time, leases for all Abbeycroft properties will be updated to reflect these arrangements with the intention to complete the agreements on 1 May 2017.

5.3 Dates for future scrutiny and performance review will be timetabled accordingly.