

# Council



Forest Heath  
District Council

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| <b>Title of Report:</b>     | <b>Anglia Community Leisure – Changes to Governance</b>   |                  |
| <b>Report No:</b>           | <b>COU/FH/15/012</b>  |                  |
| <b>Report to and dates:</b> | <b>Cabinet</b>  | 17 February 2015 |
|                             | <b>Council</b>  | 27 February 2015 |
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| <b>Purpose of report:</b>   | To seek approval for the novation of current legal agreements between the Council and Anglia Community Leisure (ACL) to reflect changes it has agreed to make to its own governance, and also to clarify the position regarding the pensions of staff of the trust who transferred from Forest Heath when ACL was established.  |                  |
| <b>Recommendation:</b>      | <b>RECOMMENDED that</b><br>:<br><b>(1) the existing management and funding agreements between Forest Heath District Council and Anglia Community Leisure be novated on 1 April 2015 to Abbeycroft Leisure to allow the formation of a single merged trust; and</b><br><b>(2) Forest Heath District Council agrees to act as guarantor for the pension scheme applicable only to its own former employees who transferred to Anglia Community Leisure.</b> |                  |

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| <p><b>Key Decision:</b></p> <p><i>(Check the appropriate box and delete all those that <b>do not</b> apply.)</i></p>  | <p><i>Is this a Key Decision and, if so, under which definition?</i></p> <p>Yes, it is a Key Decision - <input type="checkbox"/></p> <p>No, it is not a Key Decision - <input checked="" type="checkbox"/></p>  |
| <p><i>The decision made as a result of this report will be published within <b>48 hours</b> and cannot be actioned until <b>seven working days</b> have elapsed. This item is included on the Decisions Plan.</i></p> |   |
| <p><b>Consultation:</b></p>   | <ul style="list-style-type: none"> <li>• Anglia Community Leisure and Abbeycroft have carried out their own consultation to support their merger, and have consulted with Forest Heath on it, which has resulted in this report.</li> </ul>   |
| <p><b>Alternative option(s):</b></p>  | <ul style="list-style-type: none"> <li>• The merger of the trusts is not a council decision, as they are autonomous independent organisations though they would not be able to realistically pursue it without FHDC agreeing to the recommendations in this paper.</li> <li>• Therefore there is the choice for FHDC to refuse to switch the current agreements. However, this would mean foregoing the benefits of the merger explained in this paper, and may also create a need to review the current provision of the services.</li> <li>• The Council could also choose not to underwrite the pensions of its former staff, but this would be likely to lead to a large reduction in any potential future savings by the trust, as they would need to secure and fund a bond.</li> </ul> |
| <p><b>Implications:</b></p>   |   |
| <p><i>Are there any <b>financial</b> implications?<br/>If yes, please give details</i></p>  | <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p>  |
| <p><i>Are there any <b>staffing</b> implications?<br/>If yes, please give details</i></p>   | <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <ul style="list-style-type: none"> <li>• Not directly for any of the councils' own staff, but obviously this affects the staff of the trust(s).</li> </ul>   |
| <p><i>Are there any <b>ICT</b> implications? If yes, please give details</i></p>  | <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>  |
| <p><i>Are there any <b>legal and/or policy</b> implications? If yes, please give details</i></p>  | <p>Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <ul style="list-style-type: none"> <li>• As set out in the paper in relation to the legal agreements between the Council and the trust.</li> </ul>   |
| <p><i>Are there any <b>equality</b> implications?<br/>If yes, please give details</i></p>   | <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>  |

| <b>Risk/opportunity assessment:</b>  |   | <i>(potential hazards or opportunities affecting corporate, service or project objectives)</i>    |                                       |
|--|---|---|---------------------------------------|
| <b>Risk area</b>   | <b>Inherent level of risk (before controls)</b> | <b>Controls</b>   | <b>Residual risk (after controls)</b> |
| The merger does not proceed and the advantages it offers are not obtained by any party.                            | Medium  | Carried out due diligence to ensure a merger is a viable, sustainable and prudent option.         | Low                                   |
| The new trust fails.   | Low   | Negotiate a new partnership agreement in summer 2015 once the merger process is safely navigated. | Low                                   |
| The pension liability for former FHDC staff is not under-written   | High  | Investigate options and put in place either a guarantee or bond.                                  | Low                                   |
| <b>Ward(s) affected:</b>   |   | All Ward/s  |                                       |
| <b>Background papers:</b><br><i>(all background papers are to be published on the website and a link included)</i> |   | None  |                                       |
| <b>Documents attached:</b>   |   | None  |                                       |

## **1. Key issues and reasons for recommendation(s)**

### **1.1 Background**

- 1.1.1 Members will be aware that Anglia Community Leisure (ACL) and Abbeycroft Leisure (AL) have been working in partnership since February 2013. This project commenced with the appointment of a joint Chief Executive Officer (CEO) and progressed to sharing a management team and other staff resources, along with some service and systems alignment. It has also seen the creation of a sports and physical activity development service. This has resulted in some efficiencies that have seen the trusts achieve savings that have contributed to reduced management fees from the Council over the last two years.
- 1.1.2 Whilst the trusts have shared a lot of services and resources they have continued to operate as independent organisations with two separate boards and governance arrangements. Both trusts agreed that this is not the most efficient operating model and agreed to explore a merger in April 2014. On that basis, a due diligence exercise was carried out in July last year, and legal advisers were engaged to assist with this process. Council officers and the Portfolio Holder were engaged in this discussion at this time.
- 1.1.3 The formal due diligence exercise highlighted the high level advantages and disadvantages and identified that both trusts needed to review some elements of their approach prior to agreeing to merge. Both trusts agreed to review their position in October 2014 and the reviews took place in December. The identified issues have now all been resolved and both boards have agreed to merge with a target date of the 1st April 2015, subject to the relevant council agreements being novated.
- 1.1.4 Whilst the Council does not need to give permission for the trusts to merge (as this is their decision) it does need to allow for various agreements to be novated to Abbeycroft Leisure by 1st April 2015, which are explained in the remainder of this report.

### **1.2 Management Fee Reduction & Future Partnership Agreement**

- 1.2.1 The table below shows how the management fee for the FHDC facilities managed by ACL have been reduced over a period of time.

## 1.2.2

| Year               | Fee        |
|--------------------|------------|
| 2009/2010          | £1,044,823 |
| 2010/2011          | £963,940   |
| 2011/2012          | £824,048   |
| 2012/2013          | £753,100   |
| 2013/2014          | £723,000   |
| 2014/2015          | £625,500   |
| 2015/16 (proposed) | £523,000   |

This excludes the property costs borne by FHDC as owner. The fee for 2015/2016 has been discussed with representatives of the trusts and has been proposed at £523,000, which is an overall reduction of £102,500 against the prior year. This is subject to the separate budget-setting papers on this agenda. If approved, this will mean this particular cost to the taxpayer has halved in the last seven years, and reduced by £200,000 since the single management team was formed. However, while this is impressive, there will be a need to continue to reduce the fee significantly in the years to come, as the pressure on all councils' finances grow, and it is felt that a single trust will put West Suffolk in the best possible position to achieve that.

1.2.3 With that in mind, it is proposed that the single trust and the West Suffolk councils enter into a discussion to set a long term management fee reduction programme through a new agreement that will be finalised (post-merger) in summer 2015/16. This will require full councillor involvement and approval, hopefully including joint scrutiny. It will also allow a complete review of the current arrangements from all three parties' perspectives, looking at matters such as funding, investment, maintenance and leases, but also the future treatment of pensions.

1.2.4 The councils have already seen some benefit from a new partnership approach with the trusts leading on sports development and physical activity, mass participation events and the development of a new playing pitch and built facilities strategy. The merger also provides the trust with a further mechanism to control costs and maximise income, therefore creating a solid foundation for the longer term business plan and management fee discussions planned with the two councils. It therefore also offers considerable benefits to the existing members of the trusts' facilities, as well as to taxpayers.

## 1.3 **Model of Merger**

1.3.1 The trusts engaged legal advisers to assist with the process of merger and have moved to a position whereby it has been agreed that the model of merger will see Anglia Community Leisure merge into Abbeycroft Leisure with the emerged single entity being named Abbeycroft Leisure. This allows a far simpler model of merger than creating a new trust, and allows as much

continuity as possible.

1.3.2 The model of merger was discussed at length by the boards of both organisations and the decision to use this model of merger has been taken in the light of examining key and relative elements of both trusts.

1.3.3 This final proposal has been agreed by both boards. This issue was also subject to stakeholder consultation and the feedback from this exercise was fed into the decision making process.

#### 1.4 **Memorandum & Articles of Association**

1.4.1 The trusts have also taken the opportunity to review their governing documentation to ensure that it remains in line with best practice but also allows the new trust to capture opportunities to expand services if the opportunity presents itself.

1.4.2 After examining the original charitable objects of the trusts it was agreed to expand these to include to:

a) provide or assist in the provision of both indoor and outdoor facilities in the interests of social welfare for recreation or other leisure time occupation of individuals available to the public at large, save for special facilities being provided for those who have need of such by reason of their youth, age, infirmity or disability, financial hardship or social circumstances with the object of improving their conditions of life; and/or

b) promote community participation in healthy recreational activities and understanding of the benefits of a healthy active lifestyle; and/or

c) provide or assist in the provision of community facilities to be available to all sections of the community without distinction, including use for meetings, lectures and classes and/or other forms of recreation and leisure time occupation with the object of improving the conditions of life for all those who use the facilities; and/or

d) promote the education of the public through the provision of facilities for performing arts; and/or

e) advance the education of the public through the preservation of heritage assets; and/or

f) pursue such other charitable purposes consistent with the above as the Trustees shall determine.

1.4.3 In addition to this step the trusts have also reviewed how the board should be structured and the new document will allow for twelve trustees. Initially all of the existing trustees will take up posts on the new board which will create a board of ten and the trust will then wish to engage two new trustees.

1.4.4 SEBC did have the power to appoint up to two trustees as long as this did not exceed 20% of the board, whereas FHDC has recently appointed two observers. In light of the continuing development of this organisation and the fact that it operates contracts beyond the local authorities' area, as well as their own facilities, the *automatic* right to appoint board members (or send observers) has been removed. However the trust would welcome applications from members who feel that they could add value to the organisation (in a personal capacity). Application forms are available from the trust CEO who will

also advise of the appropriate recruitment process. It should also be stressed that there will be a close contractual relationship between the trust's CEO and its board and the councils' portfolio holders and officers responsible for leisure. This is also a model which councillors will be familiar with through the way in which the relationships with the charities that manage former local authority housing stock have evolved in recent years (Flagship and Havebury).

## 1.5 **Agreements**

1.5.1 Whilst the Council does not have to give permission for the merger, as the trusts are independent entities, it does need to novate the agreements to the new merged body. In essence this means that Forest Heath District Council will need to transfer all of the agreements it currently holds with Anglia Community Leisure to Abbeycroft Leisure. These agreements include:

- management agreement
- funding agreement
- leases
- dual use agreements.

1.5.2 It is proposed that all of the agreements transfer without alteration at this stage and parties honour the agreements as they stand at the moment. This will allow the merger to take place in a timely manner. Any alteration to the agreements will need to be made in the future linked to the development of the new partnership agreement as mentioned earlier in this report.

## 1.6 **Pensions**

1.6.1 The trusts consulted the pensions scheme manager at Suffolk County Council very early on. After seeking legal advice the trust will honour the existing arrangements in place that were set up when Forest Heath District Council first transferred the service. This means that the Local Government Pension Scheme (LGPS) will remain closed to new entrants working within the Forest Heath Contract but employees will have access to a broadly comparable stakeholder scheme.

1.6.2 This approach means that the existing LGPS admissions agreement (that covers those people who were already in the scheme at the point of transfer) will need to transfer to Abbeycroft Leisure. This affects fewer than 20 former FHDC staff. In theory this is simplistic, however it has raised an issue the trust will need to address with the Council.

1.6.3 When the original admissions agreement was entered into no guarantee or bond was put into place. While this is not without precedent, and reflects the advice both parties were given at the time, this would be regarded as a normal requirement for community admitted bodies. In the case of Abbeycroft Leisure, St Edmundsbury Borough Council guarantee the scheme. If the transfer were to occur now, it would be a definite requirement under new rules in any event.

1.6.4 After consulting with the pension scheme manager at Suffolk County Council, they have confirmed that this situation will need to be rectified and therefore they now require a guarantee or bond to be put into place.

1.6.5 There are two ways in which this could be achieved. Firstly, the Council could guarantee the scheme, as is the case with SEBC and Abbeycroft Leisure. This

is the recommended option. This option means that if the Trust were ever to fail (close) and the LGPS liabilities could not be met from available assets, the Council would then pay any outstanding related LGPS liabilities to the administrating authority (Suffolk County Council) in respect of the Forest Heath/Abbeycroft admissions agreement. This is a normal arrangement for divested services and is replicated across Suffolk for all of the outsourced leisure contracts. If the demand for the service remained and a new contractor was appointed the LGPS liabilities could be transferred to the new operator, but most new operators will want to start with a fully funded scheme.

- 1.6.6 If the Council did not feel that it could offer a guarantee, the alternative will be for Abbeycroft Leisure to secure a bond in respect of the admission agreement relating to the Forest Heath contract. The cost of the bond would have an annual impact on the Trust's finances and, depending upon the level of cover that Suffolk County Council would require, could be between £40,000 and £140,000 each year. It would have to be reviewed annually, and there would be no guarantee in any year that a bond provider could be secured. In fact, investigations into securing a bond suggest that there is no developed market and securing one in the first place will not be easy.
- 1.6.7 From the FHDC point of view, the risk of the trust failing is very low indeed and, therefore, the risk of ever having to honour the guarantee is also low. Effectively, as the owner of the facilities, the Council would not realistically allow the services to the community to stop through a failure of the trust, unless there was no way this could be avoided. At that point negotiations around TUPE and pension liabilities would take place and the guarantee may only be a safety net protection for the pension fund.
- 1.6.8 Offering the guarantee also carries no immediate cost to either party (and FHDC and ACL have neither gained nor lost anything over the last few years either). In contrast, the bond option (effectively an insurance premium) is likely to have a direct cost impact on FHDC. This is because, if the Council did not agree to offer a guarantee, Abbeycroft Leisure will increase their cost base by £40,000 - £140,000 annually and any further reductions in management fee would only be realised after taking this cost into account. Effectively FHDC would be burdening themselves with a significant barrier to further savings from the leisure trust.