

CABINET

RECORD OF DECISIONS taken by the Cabinet at a special meeting held on Friday 18 September 2009 at 12 noon in the Guildhall, Portsmouth.

Present

Councillor Gerald Vernon-Jackson (Chair)
Councillors Jason Fazackarley
Lee Hunt
Leo Madden
Hugh Mason
Eleanor Scott

Also in Attendance

Councillor Steve Wemyss, Leader of the Opposition

122 Apologies for Absence (AI 1)

Apologies for absence had been received from Councillors Mike Hancock CBE MP and Steven Wylie.

123 Declaration of Members' Interests (AI 2)

There were no declarations of members' interests.

124 Exclusion of Press and Public (AI 3)

Discussion took place as to why the whole report was deemed to be exempt as Cabinet Members felt there was some information that should be in the public domain and therefore the minutes could include much of this information. The City Solicitor advised that there was some confidential information relating to the financial affairs of the bidders which should not be disclosed. A revised version of the report is attached as an appendix to these minutes which omits the exempt information.

DECISION:

That the public be excluded from the meeting during the next item of business because it is likely that if members of the public were present there would be disclosure to them of "exempt information" within Paragraph 3 of Part I of Schedule 12A to the Local Government Act 1972.

125 Portsmouth Outdoor Centre (AI 4)

(TAKE IN REPORT BY STRATEGIC DIRECTOR)

The purpose of the report that had been sent out as an exempt report was to consider the future of the Portsmouth Outdoor Centre with the officers setting out five options for consideration.

Councillor Wemyss spoke on the item and referred to the previous position several years ago when the disposal had been considered via a charitable trust. He also referred to being contacted by Motiv8 regarding the handling of this procedure. Councillor Gerald Vernon-Jackson responded that they had been in discussions with Motiv8 although there had been unresolved issues. The Cabinet Members favoured Option 2 and stressed that it would be in the best interests of the staff not to close the centre.

Michael Lawther, the City Solicitor also drew members' attention to the fact that due to the urgency of the need to make a decision on the future of the Portsmouth Outdoor Centre as outlined on the agenda this decision should not be subject to call-in and he asked for the ratification of this by the Cabinet Members.

DECISIONS:

- (1) That the Cabinet instruct officers to proceed with Option 2 being the lease to Parkwood for 25 years as set out within paragraph 5.2 of the report;**
- (2) the Head of Asset Management be authorised to conclude negotiations in respect of this preferred option;**
- (3) the City Solicitor was authorised to undertake all necessary steps and complete all legal documentation relating to the preferred option as quickly as possible and preferably within six months;**
- (4) That either an agreement for disposal or a disposal takes place within six months;**
- (5) That any one-off costs associated with the chosen option, as set out in Table 2 of the report, be funded from the contingency provision for 2009/10;**
- (6) That any ongoing revenue costs for building maintenance associated with the chosen option be funded from the existing Landlord's Maintenance cash limit.**
- (7) that due to the urgency of the decision this should not be subject to call-in procedures.**

The meeting concluded at 12.10 pm.

JW/DMF
22 September 2009
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APPENDIX TO CABINET RECORD OF DECISIONS OF 18 SEPTEMBER 2009

REVISED OPEN REPORT

REPORT TO: SPECIAL CABINET 18th September 2009
REPORT BY: ROGER CHING, STRATEGIC DIRECTOR
WRITTEN BY: SEAMUS MEYER, JULIAN PIKE AND TOBY LIVERMORE
REPORT TITLE: PORTSMOUTH OUTDOOR CENTRE

1. Purpose

1.1 The purpose of this report is to consider the future of the Portsmouth Outdoor Centre (POC).

2. Recommendations

2.1 That members instruct officers to proceed with one of the options set out in paragraph 5.

2.2 To authorise the (interim) Head of Asset Management to conclude negotiations in respect of the preferred option.

2.3 To authorise the City Solicitor to undertake all necessary steps and complete all legal documentation relating to the preferred option as quickly as possible and preferably within 6 months.

2.4 That either an agreement for disposal or a disposal takes place within 6 months.

2.5 That any one-off costs associated with the chosen option, as set out in table 2, be funded from the contingency provision for 2009/10.

2.6 That any ongoing revenue costs for building maintenance associated with the chosen option be funded from the existing Landlord's maintenance cash limit.

3. Background

3.1 The current core business of the POC is the educational programme for schools, which is comprised of environmental studies and outdoor activities. This programme is delivered throughout the school year. During evenings, weekends and throughout the school holidays the Centre remains open and delivers its commercial programme.

3.2 64% of the use of the POC is educational (31% of use is by Portsmouth schools, 1229 students from 25 schools in 2008/9) the other 36% is commercial courses. 13,800 three-hour teaching sessions are delivered each year to schools in Environmental Studies and Outdoor Activities. Schools are charged a subsidised rate and the shortfall is made up from the Portsmouth City Council (PCC) and

Hampshire County Council (HCC) subsidies and the income generated from the commercial programme.

- 3.3 In addition to the Portsmouth and Hampshire schools use, some independent schools, tertiary colleges, and teacher training courses use the POC. It is also used by Motiv8 and Releasing Potential for self-tutored courses.
- 3.4 The Centre has an excellent reputation within the field of Outdoor Education for the quality of the programme it provides, for its dedicated and well-trained staff and, for its exemplary safety record.
- 3.5 Portsmouth schools presently use over 150 facilities, providers or activities that take learning outside the classroom. Schools recognise the value and importance of extending and enriching the curriculum that allows pupils to experience the world beyond the classroom environment.
- 3.6 This includes activities and trips that are within the local vicinity, further afield or even abroad.
- 3.7 Within Portsmouth these opportunities include Portsmouth Outdoor Centre, Fort Purbrook, Portsmouth Outdoor Education Centre, HMS Dockyard, Mountbatten Centre, Hilsea Lines, Portsmouth Football Club, City Museum and other museums, the seashore, local theatres, local historical sites, shopping centres, libraries and places of worship.
- 3.8 Schools also use a wide variety of environmental study centres and Outdoor Activity Centres around the area, including Stubbington, Little Canada, Calshot, The Old Kingswood Centre, Minstead, UKSA at Cowes, Medina Valley Centre and the Portsmouth Outdoor Education Unit.
- 3.9 Portsmouth schools currently contribute £49,800 to the running costs of Hampshire-based facilities at Minstead, Sparsholt and Stubbington, which allows Portsmouth pupils to attend these centres at a subsidised cost. The subsidy reduces the cost to parents by approximately £50 per week for pupils that attend.
- 3.10 In 2005 POC benefited from a New Opportunities Fund (NOF) grant to build a climbing tower at a cost of £61,261. The conditions of the grant state that if the grant funded asset is disposed of through sale, transfer or lease the full market value of the asset may have to be returned to the Fund. This is estimated to be £30,000. The New opportunities Fund is now The Big Lottery Fund.
- 3.11 At the Culture and Leisure Executive meeting on 20th March 2008 the following was approved;
 - (1) that expressions of interest be sought to lease the POC for a minimum 25-year full repairing lease;

- (2) that the terms and conditions of the lease allow the tenant to develop the facilities and charge market rates in order to maximise the rental offer;
- (3) that external consultants be engaged to assist with the marketing and leasing of the POC, and a request be made to fund this from the contingency reserve;
- (4) that it be noted that if the asset is leased or disposed of, the grant for the climbing tower may become repayable and there may be a future call on the budget;
- (5) that the Head of Asset Management be authorised to accept the offer providing best value, having first consulted the Executive Member for Culture and Leisure;
- (6) that the City Solicitor be authorised to undertake all necessary steps and complete all legal documentation to effect the disposal.
- (7) that consideration be given to alternative proposals that may be developed by the staff whilst the expressions of interest are sought;
- (8) that a timetable and progress reports be provided to all Culture & Leisure briefings.

3.12 The report to the Culture and Leisure Executive also noted that closure of the POC and sale of the building would need to be considered if no suitable offer to lease the POC is received, and that redundancy costs would be incurred if the POC was closed.

4. Progress relating to city council resolution of 20th March 2008

4.1 As a result of the decision of 20th March 2008 by the Executive Member for Culture and Leisure the POC was marketed as a going concern, as opposed to a vacant building.

[4.2 & 4.3 = Exempt]

4.4 Humberts Leisure marketed the POC. Four bidders were shortlisted for interviews in January 2009. At a meeting on 6th February 2009 Company A were selected as the preferred bidder and negotiations began with Company A.

4.5 The process of due diligence took place and concluded with Company A's detailed offer. As this offer did not meet the City Council's expectations, officers were instructed to put the Company A bid in abeyance and make Company B the preferred bidder.

4.6 Negotiations have taken place with Company A and their final offer is included in the summary of options below.

5. Options

5.1 Option 1 – for the City Council to operate the Outdoor Centre

The City Council could either:

1(a) Continue with the current arrangements.

The following costs are applicable:

- i) Operating costs circa £X per annum (£X in first year).
- ii) Building maintenance backlog work is estimated at £X, plus an ongoing maintenance liability estimated at £X per annum.

Total estimated cost first year £X (assuming backlog of maintenance is carried out), subsequent years £X (assuming recommended maintenance is carried out).

There is no budget provision beyond October 2009 to continue this arrangement.

OR

1(b) Adopt a commercial approach to the running of the Centre.

The following factors will need to be taken into account:

- i) There is no current in-house expertise which would be able to manage and run the centre as a viable commercial enterprise, for example marketing and promoting the Centre, to create a profitable business venture.
- ii) Company B or another operator similar to them would be able to utilise existing staff and already have in place staff with commercial management expertise. Staffing costs would need to be reduced to increase income.
- iii) Prices for activities would need to be increased which could change the existing customer base in favour of commercial courses and independent schools to the detriment of Portsmouth schools. Higher prices may reduce the number of courses taken up by Portsmouth schools.

Under the circumstances on this occasion the private sector is best placed to operate in this market and manage the associated business risks.

[5.2 & 5.3 contain exempt information]

5.4 Option 4 – To Close the Centre and to market it as a long term rental property

To close the Centre has the following implications:

- (i) In the first year the cost to PCC would be £X to cover the operation until planned closure, staff redundancies, building security, NNDR, maintenance backlog, estimated repayment to Lottery for climbing tower, marketing fees and repayment of fees taken for advanced bookings. Costs are based upon the assumption it could take 12 months to effect the disposal.
- (ii) The building would be offered with vacant possession for a 25 year lease. With a lower initial cost base and greater flexibility in structuring a business model, it is anticipated that the value of a lease would be increased and appear more valuable and attractive to potential bidders.
- (iii) Exempt
- (iv) After an initial rent free period to allow an operator to stabilise the income at the Outdoor Centre, it is expected that the Council would obtain a rent in the order of £X per annum from year X.
- (v) However, this option would not overcome the difficulties that the Council have already encountered in trying to grant a lease [Exempt information removed.] It would not avoid the difficulties in structuring a deal with a prospective tenant given the uncertainty as regards profitability and costs. It would not remove the risk of any subsequent tenant defaulting on the lease payments.
- (vi) Given the previous expressions of interest in the property from operators looking to rent the building on a vacant possession basis, without a TUPE obligation, it is probable that there will be tenants willing to take the property subject to a schedule of condition. Such an arrangement would necessarily be reflected in a lower rental offer. If this can be achieved the costs outlined above relating to the time taken to remarket might be reduced.
- (vii) Closure would result in redundancy of all permanent staff, and is likely to attract adverse publicity for the City Council, particularly as the excellent reputation of the POC is largely due to the quality of the staff.

5.5 Option 5 – To Close and to Market the Centre for Sale

This option is considered to be the best economic option available to the Council for the following reasons:

- (i) The Council could close the POC and market the property, offering vacant possession. It is believed that there would be greater demand for interest and thus greater certainty of finding a buyer. It would be realistic to expect

offers in the region of £X. Although it is understood that the level of capital receipt is a secondary consideration as the primary aim is to eliminate the current operational deficit.

Marketing the freehold would avoid the problems associated with granting a lease. However, whilst marketing the freehold, consideration would also be given to bids received for a shorter term lease where the offers were equivalent in net present value to offers received in respect of the freehold of the building.

- (ii) The marketing could realistically commence within 3 weeks and a transfer completed within 6 to 12 months.
- (iii) The boats would also be sold for an estimated £X.
- (iv) During the first year the costs of closure would include operation until planned closure, staff redundancies, building security, NNDR, estimated repayment to Lottery for climbing tower, marketing fees and repayment of fees taken for advanced bookings at a cost of £X.
- (v) The POC is a building constructed for a specialized use, that of a water based and educational leisure facility and thus the building does not lend itself easily to other uses. There are a number of planning constraints significantly limiting alternate use. Therefore, if sold as a vacant building it will be likely that the essential use of the building would not alter.
- (vi) Legal advice makes it clear that it would be possible to restrict the buildings use to that of an Outdoor Centre by applying a restrictive covenant on the land, if the Council deemed this necessary to ensure a suitable use of the building.
- (vii) Closure would result in redundancy of all permanent staff, and is likely to attract adverse publicity for the City Council, particularly as the excellent reputation of the POC is largely due to the quality of the staff.

[Paragraph 6 Financial Implications = exempt]

7. Legal Implications

- 7.1 Title to POC has been checked and the council have good legal title.
- 7.2 There are no encumbrances other than a restriction registered on behalf of the New Opportunities Fund relating to a grant to build a climbing tower.
- 7.3 If there is a disposal through either sale, transfer or lease then a payment for the full market value of the climbing tower at the time of the sale will need to be paid to the fund.
- 7.4 Where reference is made in the various options to either enter into a 25 year lease, or dispose of the Centre the Council has the power under Section 123 of

the Local Government Act to dispose of land so long as it is for the best consideration that can be reasonably obtained.

- 7.5 There is little evidence arising from the marketing exercise that has taken place that would indicate that either of the offers from Parkwood or Motiv8 is less than best consideration.
- 7.6 Secretary of State consent to the disposal would not be required. where the local authority considers that the purpose for which the land is to be disposed is likely to contribute to the achievement of any one or part of the following objects in respect of the whole or any part of its area, or of all or any person resident or present in its area;
 - (i) the promotion or improvement of economic wellbeing;
 - (ii) the promotion or improvement of social wellbeing;
 - (iii) the promotion of improvement of the environmental wellbeing; and the difference between the unrestricted value of the land to be disposed of and the consideration for the disposal does not exceed £2,000,000 (two million pounds)
- 7.7 Should the Council decide to either dispose of the Freehold or grant a 25 leasehold interest then the difference between the unrestricted value of the authority's interest and the restricted value of the authority's interest, subject to any proposed terms of lease is less than £2,000,000 (two million pounds).
- 7.8 In addition to the above implications in respect of options 2 and 3 TUPE will apply.
- 7.9 Should the Council decide to close the Centre it will give rise to redundancies and possibly other employment law issues. The Council will need to ensure it follows the correct process and procedures to terminate the relevant Contract(s) of Employment.

[Paragraph 8 Summary & Conclusion = exempt]

9. Equality Impact Assessment

9.1 An equality impact assessment will be carried out for this proposal.

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Background Papers – none

The recommendations set out above were approved/approved as amended/deferred/rejected by the Cabinet on.....