

# Gloucester City Council

<b>Meeting:</b>	<b>Council</b>	<b>Date:</b>	<b>19 October 2023</b>
<b>Subject:</b>	<b>Provision of Leisure Services</b>		
<b>Report Of:</b>	<b>Cabinet Member for Culture and Leisure and Cabinet Member for Performance and Resources</b>		
<b>Wards Affected:</b>	<b>All</b>		
<b>Key Decision:</b>	<b>Yes</b>	<b>Budget/Policy Framework:</b>	<b>Yes</b>
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<b>Appendices:</b>	<b>1. SLC Options Appraisal Executive Summary 2. Hazlewoods Report with redactions 3. [Exempt] Redacted tables from Hazlewoods Report</b>		

## 1.0 Purpose of Report

1.1 To consider the circumstances that led the Aspire Sports and Cultural Trust to seek to enter liquidation, and to consider options for the future provision of leisure services.

## 2.0 Recommendations

2.1 Council is asked to **RESOLVE** that

- (1) The background to Aspire Trust's decision to seek to go into liquidation and the Council's disappointment at this decision is noted.
- (2) Authority is delegated to the Managing Director, in consultation with the Head of Finance and Resources, to enter negotiations with Aspire Trust to work with their liquidators to secure the best outcome for all creditors of the Aspire Trust, including the Council.
- (3) Authority is delegated to the Managing Director, in consultation with the Cabinet Member for Culture and Leisure and the Cabinet Member for Performance and Resources, to procure a temporary provision and award a contract to an interim services provider to manage the facilities at GL1 and Oxstalls, with an aspiration that all those recently made redundant by Aspire Trust be given guaranteed priority interviews for relevant roles in the new provision.
- (4) Authority is delegated to the Managing Director with the support of other appropriate officers to continue to procure a long-term partner to manage the leisure provision within the City in accordance with the Council's Sport and Physical Activity Strategy.

- (5) Officers are to provide regular updates to Party Group Leaders on the re-establishment of leisure services to the community, and to periodically report to the Overview and Scrutiny Committee.
- (6) A leisure contingency reserve fund of £260k is established to support the development of this interim leisure service management. Funding to be drawn down by the Managing Director and the Head of Culture and Leisure after consultation with the Cabinet Member for Culture and Leisure and the Cabinet Member for Performance and Resources.

### **3.0 Background and Key Issues**

- 3.1 The Aspire Sports and Cultural Trust is a charitable trust that was established in 2008 to provide sporting and leisure opportunities and to operate the Council-owned facilities at GL1 Leisure Centre and Oxstalls Sports Park. The Trust was contracted by the Council to manage these facilities for a 15-year period ending September 2023.
- 3.2 Two years ago, the Council commenced a procurement process to secure a leisure services provider from the expiry date of the contract with the Aspire Trust. The Council obtained the support of an expert leisure consultancy SLC to advise on procurement options and strategy. The options appraisal (executive summary at Appendix 1) was considered at a Cabinet meeting on 4 May 2022, and the options appraisal set out a number of recommendations as to how the Council should proceed, including:
  - That the contract period with Aspire Leisure and Culture Trust be extended by a further 12 months on the condition that a Partnership Development Plan (PDP) is agreed for the duration of this extension, and
  - To follow the recommended route to procure a new leisure contract from an external provider
- 3.3 Having received a draft of this options appraisal report, Council Officers began negotiations with Aspire Trust over the possibility of a 12-month contract extension in March 2022. After some negotiation between the parties, the Council and the Board of the Aspire Trust agreed a PDP for the contract extension period in July 2022. This referenced the need for monthly meetings to review and agree a management fee, which was agreed at that point at £360k per annum. This sum was subsequently included in the Council budget, adopted by full Council in February 2023.
- 3.4 In early 2023, Aspire Trust's management informed the Council that they did not believe the management fee previously agreed as part of this PDP would be sufficient to enable them to continue trading beyond August or September 2023. At a meeting in March 2023, Aspire shared its business plan forecasts for the financial year 23/24 indicating that a further £260k management fee would be needed to enable it to continue to trade to the end of the financial year.
- 3.5 Facing this request for additional financial support, the Council commissioned Hazlewoods in May 2023 to undertake on behalf of the Council an independent review of Aspire Trust's business plans, forecasts and budgetary position. The report on the review was received in June 2023 and is included in Appendix 2. Redactions in accordance with the Local Government Act 1972 Schedule 12A to this report have

been made to prevent the identification of individuals and on the basis that a number of the tables within the report contain financial information which will commercially prejudice the Council's procurement of a new leisure services provider. These redacted tables are included in a separate exempt Appendix 3.

3.6 The report confirmed that further financial support of that scale requested would be needed and also highlighted a number of issues and concerns around Aspire Trust's future plans. It included a number of recommendations to address these. The four key recommendations were:

1. **Transparent Financial Reporting** - Aspire should be required to provide detailed and transparent financial reports, including a breakdown of its overhead costs, particularly the energy bill. This information will allow the Council to better understand the current financial situation and identify areas where cost-saving measures can be implemented.
2. **Collaborative Revenue Enhancement Plan** - Aspire needs to develop a comprehensive plan to enhance revenue for the swimming pool. This plan should include innovative strategies for increasing visitor numbers, exploring partnership opportunities with local businesses, and implementing effective marketing campaigns. By working collaboratively with the Council, Aspire can ensure that financial burdens are shared, and revenue-generating initiatives are effectively pursued.
3. **Independent Energy Audit** - Given the concerns surrounding Aspire's substantial energy bill, an independent energy audit should be conducted to assess the pool's energy usage, identify potential energy-saving measures, and estimate the financial impact of implementing those measures. This audit will provide valuable insights for both Aspire and the Council, enabling them to make informed decisions about reducing energy costs and promoting sustainability.
4. **Assessment of staffing costs:** the budget for 2023/2024 allocates an increase of almost £500k on 2022/2023. It is important to see where the money is being spent, pay rises, addition heads etc and whether the expenditure is essential.

3.7 In July 2023, the Council made a proposal to Aspire Trust to revise the PDP, including an offer to provide the requested additional £260k financial support but conditional on acceptance of the above Hazlewoods recommendations including greater Council oversight of Aspire Trust's spending decisions.

3.8 After further negotiation between the parties during August and September 2023, the Council believed it had reached agreement in principle with Aspire Trust, and were informed that the proposed revised PDP and associated contract extension would be put to their Board meeting being held on Tuesday 26<sup>th</sup> September 2023. On Wednesday 27<sup>th</sup> September 2023, the Council was informed that the Board of Trustees of Aspire Trust had decided not to extend contract and would be seeking to enter liquidation. The reason given to the Council was as follows:

**“The information that has been provided by Gloucester City Council does not satisfy the requirements of good Governance for the Charity.**

**Trustees are required by law to ensure that they do all that they can to improve the position of the Charity and not worsen it. In the current context this is no longer possible.**

**To satisfy their legal duty, Trustees have determined that they have no alternative than to cease trading at the conclusion of the current 15 year Facility Management Contract term, on 30<sup>th</sup> September 2023. As a result, given the Balance Sheet position of the Charity, it will enter into insolvency.**

**The Leadership of Aspire Sports and Cultural Trust will do all that it can to work with it's contract partners to align the external communication of the Contract end and will make the necessary arrangements with it's respective landlord partners to hand back the facilities and any contractual inventory during the coming days."**

- 3.9 The Council understands that Aspire Trust has engaged an insolvency practitioner from Crowe UK to advise on entering liquidation – at the time of writing this report, a liquidator has not formally been appointed and Aspire Trust has not yet filed for liquidation and trustees are still legally in control of that business.
- 3.10 The Council believes that Aspire Trust closed the facility doors to the public at 2pm on Friday 29<sup>th</sup> September 2023, and informed its staff at 2.30pm that they were being made redundant. Staff were given redundancy notices and sent home. A few key former Aspire Trust staff have been temporarily engaged to support the insolvency advisor for data gathering purposes. The Council took back control of GL1 and Tennis Centre buildings over the weekend of 30 September/1 October 2023., and University of Gloucestershire took back control of Oxstalls Sports Arena. The Council has given the insolvency practitioner a one-month licence to access its premises for data gathering purposes.
- 3.11 The Council believes that in the event of a liquidation, it will be the largest creditor of Aspire Trust. Council approval is sought to enable officers to work with any liquidator to secure the best outcome for all creditors of Aspire Trust, including the Council.
- 3.12 In the last two weeks, Council officers and University colleagues have been working to identify options to reopen their facilities as soon as practicable, particularly to those clubs who require minimal external support to operate. Grass pitches at Oxstalls were reopened and made available to pre-booked clubs by the weekend of 7/8 October 2023. 2G, 3G and 4G pitches are in the process of being reopened in the coming weeks. The Council has also held meetings with representatives from many of the main sporting clubs using these facilities, including the swimming club, to discuss and identify ways in which those clubs can resume their use of these facilities (indoor and outdoor) in the coming weeks. The University was able to reopen its Arena facilities with immediate effect for its own internal teaching uses, to enable that educational provision to continue without disruption, and is working with the Council to re-establish some community usage of those facilities in coming weeks.
- 3.12 In parallel to this, Council Officers (working with SLC) have begun to explore options for the appointment of a leisure services provider on an interim basis, to bridge the 12–18-month gap until a longer-term provider can be procured. Following an initial filtering stage, a small number of interested providers have been asked to submit written proposals. These will be evaluated using the following criteria:

- The level of overhead and/or profit to be retained by the Operator
- The level of service / customer offer the Operator proposes to provide within the Council's financial constraints
- The speed, deliverability and robustness of the Operator's mobilisation plans
- The Operator's track record of delivering high quality services
- The Operator's overall capacity and resources to support with mobilisation and ongoing contract management

3.13 Council approval is sought to provide officers with delegated authority to conclude this expedited process, to identify and contract with a preferred operator, and to work with the preferred operator to mobilise and reopen facilities in the shortest practicable timeframe.

3.14 Additionally, Council is asked to create an enabling leisure contingency reserve of £260k (the sum previously earmarked to enable Aspire Trust to continue to trade) for officers to use as a budgetary envelope for the reopening of these leisure facilities.

#### **4.0 Social Value Considerations**

4.1 Sports and activity are closely linked to health and well-being. Due to the expedited process necessary to reopen these leisure facilities as soon as possible, social value considerations will not be evaluated as part of this process for selecting an interim provider. However, social value considerations will form part of the procurement process for the longer-term leisure services provider.

4.2 Council officers will work with the preferred interim service provider to ensure that as many social and well-being outcomes as possible can be re-established as part of the short-term contract.

#### **5.0 Environmental Implications**

5.1 Leisure services are some of the Council's major contributors of greenhouse gas emissions. As such, reducing those emissions can play a significant role in the Council's climate emergency agenda. Coupled with rising energy prices there is a major incentive for both the Council and its leisure operator to invest in technology to reduce emissions.

5.2 The Council will continue to seek innovative solutions to reduce and minimise the carbon emissions of its own facilities and encourage, through its partners, greater participation in active travel and physical activity to support its ambitions to become carbon neutral by 2030.

#### **6.0 Alternative Options Considered**

6.1 Do nothing.

The Council could allow its leisure facilities to remain closed while it continues with the procurement of a long-term provider, or to close them altogether permanently. The provision of leisure services are not statutory duties or obligations and this option would likely be beneficial to the Council's finances. However, it would be detrimental

to the social, physical and mental wellbeing of the residents of Gloucester, so this option is not recommended.

## 6.2 Bring services back in-house.

This option is not recommended for the reasons given in the Options Appraisal report produced in 2022. That report identified that in-house delivery would be the most expensive sourcing option of all those considered, putting the Council's finances under unacceptable strain or leading to a reduction in the range or amount of leisure services able to be provided.

## 7.0 Reasons for Recommendations

7.1 The reopening of the Council's and University's leisure facilities for sports clubs, public and community use, at the earliest practicable date, in the manner proposed, will significantly restore the social, physical, and mental well-being of the residents of Gloucester in the most economical way.

## 8.0 Future Work and Conclusions

8.1 These are summarised in the above sections of the report.

## 9.0 Financial Implications

9.1 There are a range of financial implications for the Council arising from recent events, and the proposed course of action, including but not limited to:

- The Council's position as a creditor of Aspire Trust
- Business Rates and asset management liabilities arising from taking back control of the facilities
- Facility management subsidies and costs, both for the interim service provision and for the longer-term contract.

9.2 Some of these financial consequences are not yet fully known or crystallised. The most direct financial consequence arising from the recommendations in this report is that of creating a leisure contingency fund of £260k to finance the procurement of an interim leisure operator to reopen the facilities. This figure was provisionally earmarked as the additional sum that Aspire Trust indicated it needed to continue to trade beyond September 2023 to the end of the financial year. If agreed, this will create an in-year financial pressure on the Council's finances that will need to be managed through other budgetary corrective action or through the use of one-off reserves. The cost of this interim service provision into future years will need to be factored into budget proposals for consideration by Council in February 2024.

(Financial Services have been consulted in the preparation this report.)

## 10.0 Legal Implications

10.1 There are a number of legal implications arising from matters in this report and the proposed course of action, including but not limited to:

- The contractual relationship between the Aspire Trust and the Council following the termination of the contract and the transfer of information from Aspire back to the Council
- Insolvency procedures and establishing the Council's position as a creditor
- Reliance on the urgent procurement processes to contract with an interim service provider, both in terms of compliance with the Council's own internal contract rules and procedures and also in terms of the legislation (see below).
- Potential employment liability issues

10.2 One Legal are actively providing Council officers with legal support and advice to minimise the risks identified as and when required.

## **Procurement in an Emergency**

### Public Contracts Regulations 2015 ("the Regulations")

- 10.3 The procurement of an interim leisure provider will be above the Threshold laid down in the Regulations and the Council therefore needs to ensure compliance with the legislation. There are tight timescales that the Council need to comply with to ensure that leisure services can continue to be delivered from the council-owned facilities to the residents of Gloucester. The Regulations recognise that authorities may need to procure in emergency situations and provide several routes to enable authorities to reduce the standard time scales of running a procurement.
- 10.4 Under Regulation 27 authorities can reduce the minimum timescales if a state of urgency renders the timescales impracticable. The minimum time limits under the open procedure can be reduced to 15 days for receipt of tenders plus the minimum 10 days standstill period. By using this procedure there is no requirement for the situation to be unforeseeable or not attributable to the contracting authority. This would be the safest option for the Council as it complies with the requirements for openness, fairness, and transparency in the procurement process. However, the process will be a timelier exercise.
- 10.5 Under Regulation 32(2)(c) an authority may procure services without competition provided that they are strictly necessary for reasons of extreme urgency brought about by events unforeseeable by the authority. The circumstances invoked to justify extreme urgency must not in any event be attributable to the contracting authority. To rely on Regulation 32, the Council (as a contracting authority) must be able to demonstrate the following tests:
- There are genuine reasons for extreme urgency
  - The events that have led to the need for extreme urgency were unforeseeable
  - It is impossible to comply with the timescales in the Regulations
  - The situation is not attributable to the contracting authority.
- 10.6 The Council should consider whether these tests are met prior to making a contract award and should keep a written justification that satisfies each of these tests. The Council should limit their requirements to only what is absolutely necessary both in terms of what they are procuring and the length of the contract.
- 10.7 Relying on Regulation 32(2)(c) carries more of a commercial risk which must be well managed. These risks include:

- Poor value for money decisions – consideration should be given as to how the Council can secure pricing through the life of the contract;
- Unequal treatment of suppliers in the procurement process; and
- Lack of documentation around key procurement decisions.

10.8 Even in an emergency, the Council must continue to achieve value for money and use good commercial judgement and sound decision making.

10.9 Selecting suppliers using evidence-based criteria can be beneficial in speeding up the procurement process while ensuring that the supplier is well placed to meet the requirement and may mitigate the risk of any perception that the supplier is being treated more favourably than others.

10.10 Records should be kept to avoid perceptions of unfair treatment and to identify and manage any conflicts of interest.

(One Legal have been consulted in the preparation this report.)

## **11.0 Risk & Opportunity Management Implications**

11.1 The risks are principally financial and legal and are covered in more detail above.

## **12.0 People Impact Assessment (PIA) and Safeguarding:**

12.1 The Council recognises that the provision of leisure facilities, including swimming and club activities, is an important aspect of wellbeing including mental health. Further, that such facilities do play an important role in the lives of some people with protected characteristics.

12.2 The PIA Screening Stage was completed and did not identify any potential or actual negative impact from implementing the recommendations in this report, therefore a full PIA was not required. If another provider were to be in place on an interim basis, there would be no adverse effect on those with protected characteristics as they would have the ability to access the facilities.

12.3 The Council when deciding about long-term provision, must ensure that they have had due regard to the Public Sector Equality Duty in assessing how such a provision should be provided for.

## **13.0 Community Safety Implications**

13.1 None.

## **14.0 Staffing & Trade Union Implications**

14.1 Aspire Trust acted as the employer and it has made most, if not all, of its employees redundant.

14.2 The Council has made clear to those parties expressing an interest in the interim service provision for the reopening of its facilities, its aspiration that all those recently made redundant by Aspire Trust be given guaranteed priority interviews for relevant roles in the new provision.

**Background Documents:**

1. [May 2022 Cabinet Report on Leisure and Culture options appraisal, contract extension and interim arrangements](#)
2. [May 2023 Cabinet Report on Sport and Physical Activity Strategy](#)
3. [Published Sport and Physical Activity Strategy 2023-2028](#)