

North Yorkshire Council

Executive

21 May 2024

Marketing exercise to procure a short-term operator for Alpamare Waterpark

Report of the Corporate Director of Resources

1.0 PURPOSE OF REPORT

- 1.1 To update Members on the outcome of the marketing exercise to procure a short-term operator for Alpamare Waterpark (the Waterpark);
- 1.2 To seek approval from the Executive to enter into negotiations with the preferred bidder to try to finalise acceptable terms for the short-term operation of the Waterpark;
- 1.3 To note the time constraints in achieving an aspirational summer of 2024 opening of the Waterpark; and in recognition of the time constraints to seek approval from the Executive to delegate the authority to enter into the potential short-term lease, along with the agreement of any associated tenant incentives, to the Corporate Director of Resources in consultation with the Assistant Chief Executive Legal & Democratic Services, Corporate Director Community Development, the Executive Member for Finance and Resources, and the Executive Member for Culture, Arts and Housing; and
- 1.4 For the Executive to note the intention to immediately commence a review of the long-term options for the operation of the Waterpark in the event the council is unable to finalise the terms of the lease for the short-term operation with the preferred bidder.

2.0 SUMMARY

- 2.1 This report provides details of the outcome of the marketing exercise to procure a short-term operator of the Waterpark and seeks approval to enter into negotiations with a preferred bidder.
- 2.2 The council has aspirations of the Waterpark being operational for the 2024 core summer season, however there are obvious time constraints associated with the achievement of this goal. In recognition of these time constraints this report seeks authority for the decision to award the lease, and the approval of any associated tenant incentives, to be delegated to the Corporate Director for Resources as the Council's Section 151 Officer. Any decision would be made in consultation with the Assistant Chief Executive Legal & Democratic Services (Monitoring Officer), Corporate Director Community Development, the Executive Member for Finance and Resources, and the Executive Member for Culture, Arts and Housing. This decision will be recorded in a further report for these named individuals.

2.3 The report also outlines the council's intentions should it be unable to agree final terms with the preferred bidder.

3.0 BACKGROUND

3.1 The Waterpark was constructed by Benchmark Leisure Limited (Benchmark) pursuant to a £9m loan arrangement with Scarborough Borough Council (SBC) and opened to the public in August 2016. The site includes:

- i. Water Park comprising an indoor wave pool, four slides, two outdoor pools, restaurant and bar;
- ii. Changing rooms, WCs;
- iii. Spa on First Floor;
- iv. Adjoining carpark.

3.2 The Waterpark forms part of the wider North Bay development which sought to achieve 55 acres of regeneration consisting of a Principal Visitor Attraction (PVA), commercial development and accommodation. The original Development Agreement with Benchmark, which has now expired, dated back to 2002 and the premise behind the agreement was that the developer could not take any profit out of the scheme until the PVA was delivered. The PVA comprised the Waterpark and the Open Air Theatre. The works to the Open-Air Theatre were part funded from the first phases of the North Bay development and were completed in May 2010.

3.3 In September 2013 Scarborough Borough Council's Full Council approved the provision of a commercial loan to Benchmark of up to £9m to fund the development of the Water Park with a projected build cost of £14m; with the remaining £5m and any potential cost overruns being funded by Benchmark.

3.4 The works were completed in August 2016 at which point SBC granted a 35-year lease of the Waterpark to Benchmark including its immediately adjoining carpark. The interest against the loan was set at a commercial rate and loan repayments were made by way of the rental payments pursuant to the lease. Only once the loan was repaid would Benchmark be permitted to take any profit out of the remaining North Bay development.

3.5 The Development Agreement with Benchmark expired in March 2021 however the loan agreement with Benchmark in respect of the Waterpark continued. SBC subsequently enforced a loan guarantee from Benchmark's parent company which was settled in October 2022.

3.6 Due to Benchmark's continued failure to meet significant loan repayments, North Yorkshire Council issued Benchmark with a statutory demand, Benchmark subsequently entered into voluntary administration and the council took possession of the Waterpark by way of forfeiture in December 2023.

3.7 The council has aspirations of the Waterpark being operational for the 2024 core summer season and, since taking possession, has been reviewing its options to try to deliver this goal. To enable this the council has instructed works through Align Property Partners to retain the facility in a safe and operational state. Those works are on-going and are due to be completed in late May / early June 2024 to facilitate the potential summer 2024 opening.

3.8 As the council has never operated the Waterpark itself it only has limited information available to it in relation to historic operating costs, trading patterns, income, energy consumption, and operating arrangements. We do know, however, that spiralling energy costs have been a particular financial challenge for leisure attractions such as this facility.

4.0 SHORT TERM MARKETING EXERCISE

4.1 Following a review of the various legally compliant procurement and disposal options available to the council, a short-term letting arrangement was selected as the most viable option. The factors taken into account in this decision making included:

- the aspiration to achieve a summer 2024 opening and the associated time constraints;
- the lack of internal capacity and readily available expertise within the council to run a facility of this nature internally, at short notice;
- the potential financial risks and uncertainty associated with the operation of the facility;
- the longer term opportunities that might be presented if the council considers the Waterpark asset alongside the wider North Bay sites that remain within the council's ownership.

4.2 Consideration was also given to the fact that this facility was never intended to be operated as a community asset or require substantial public subsidy. The concept of the PVA, as defined by the original Development Agreement, was to deliver an attraction which acted as a major magnet for tourism, increasing visitor numbers to the region and supporting the tourist economy, as opposed to a community facility.

4.3 In April 2024 the council launched an informal tender for the short-term operation of the Waterpark. The opportunity of a short-term lease of 12 months, with an option to extend for a further 12 months, was advertised with the inclusion of the Waterpark's immediately adjoining carpark. In view of the short-term nature of the opportunity, bidders were invited to put forward any commercial landlord/tenant incentives as part of their bid such as rent-free periods. The council would also retain responsibility for any latent defects at the facility. The council's primary objective from the informal tender was to achieve a summer 2024 opening of the facility whilst it developed its long-term aspirations for the site.

4.4 Tender returns were requested by 7 May 2024 and officers made arrangements for interested parties to take part in site visits. During the tender period a number of interested parties came forward, some of whom represented experienced national and international leisure operators.

4.5 As part of the tender bidders were asked to submit financial and insurance information, evidence of relevant experience of operating a Waterpark, an operational business plan for the Waterpark including a programme for re-opening by summer 2024, pricing structures, booking system plans, reactive repair and maintenance proposals, staffing structures as well as proposals to increase revenue.

4.6 The predetermined assessment criteria which was issued to all bidders confirmed that bidders were required to pass a financial assessment as well as demonstrate that they could achieve the council's objective of a summer 2024 opening. The scoring criteria for bids was then based on a 40% pricing / 60% quality assessment with the latter focusing on the proposed operational business plan.

- 4.7 The Council has received Tender submissions that are considered in more detail in the confidential appendix of this report. The recommendation is to that one of the bidders is selected as a preferred bidder and that officers take forward further discussions to allow both the council and the bidder to determine if they are able to agree suitable final terms of a short-term letting agreement. This report therefore seeks authority from the Executive for officers to progress those discussions. The details of both bids are set out within confidential **Appendix A**.
- 4.9 There are obvious time pressures associated with the agreement of terms in order to facilitate the potential achievement of a summer 2024 opening date. The Corporate Director of Resources has delegated authority to enter into short term leases of this nature however it should be noted that a decision to award the lease may result in financial implications in the form of commercial landlord / tenant incentives. At the present time any such incentives cannot be quantified with any certainty and, will be subject to further dialogue with the bidder. This report therefore recommends that the authority to enter into the lease, and to approve any associated tenant incentives, be delegated to the Corporate Director of Resources as the Council's Section 151 Officer. Any such decision to approve a lease will be made in consultation with the Assistant Chief Executive Legal & Democratic Services (Monitoring Officer), Corporate Director Community Development, the Executive Member for Finance and Resources, and the Executive Member for Culture, Arts and Housing.

5.0 LONG-TERM PLANS

- 5.1 During the term of the short-term let of the Waterpark the council intends to develop and take forward plans for its long-term operation. The informal tender documentation set out that the initial lease term offer is 12 months, with an option to extend for a further 12 months depending upon the progress of those plans.
- 5.2 In the event that the council is unable to agree terms with the preferred bidder, the Executive is asked to note that officers will immediately review and progress options for the long-term operation of the Waterpark.

6.0 ALTERNATIVE OPTIONS CONSIDERED

- 6.1 As part of the review of the legally compliant options to achieve a summer 2024 opening, the council has looked at the options of operating the facility in-house, to operate the service via external operators under a management agreement, to manage the site through property agents and to formally dispose of the site. None of these options were achievable within the time constraints.

7.0 FINANCIAL IMPLICATIONS

- 7.1 There may be financial implications associated with the short-term operating proposals for the Waterpark in regards to any landlord / tenant incentives that might need to be agreed by the council to facilitate the proposals.
- 7.2 Any landlord / tenant incentives explored through the further discussions with the preferred bidder - along with the associated assessment of potential financial implications for the Council - would be subject to the approval and satisfaction of the Corporate Director of Resources.
- 7.3 Any decision to enter into a short-term operating agreement with the preferred bidder would take consideration of the potential financial implications associated with the final

agreed terms, and be agreed by the Corporate Director of Resources in consultation with the Assistant Chief Executive Legal & Democratic Services (Monitoring Officer), Corporate Director Community Development, the Executive Member for Finance and Resources, and the Executive Member for Culture, Arts and Housing.

- 7.4 It should be noted that there would also be financial implications for the Council associated with the need to retain the facility in a dormant but operational state if final terms for the short-term agreement cannot be agreed. There is therefore a balance required to protect the longer term value of the asset for the future whilst minimising the cost to the Council of supporting shorter term operations.

8.0 LEGAL IMPLICATIONS

- 8.1 The council has wide powers to enter into leasehold arrangements under the Local Government Act 1972. A land deal is not a procurement of public works, services or supplies so sits outside the council's procurement responsibilities under the Public Contracts Regulations 2015 and its own Procurement and Contract Procedure Rules. As the proposed tenancy is less than seven years, section 123 of the 1972 Act allows the council to prioritise the objective of reopening the facility as opposed to obtaining the best monetary return.

- 8.2 The council is however required to have regard to the UK subsidy control regime which is reflected in its Property Procedure Rules. The council and the preferred bidder are able to enter into reasonable commercial incentives which a landlord in similar circumstances might offer provided, no economic advantage is conveyed as might constitute a subsidy pursuant to the regime. There is a wide margin of appreciation for what a commercial incentive might be in these circumstances. If final terms can be agreed with the preferred bidder, they will have to satisfy a subsidy control assessment and, it is proposed that the delegation for the council to enter into a short-term lease is subject to satisfying this condition.

9.0 EQUALITIES IMPLICATIONS

- 9.1 An equalities impact assessment has been undertaken and identified no negative impacts on people with protected characteristics. The assessment is attached in Appendix B.

10.0 CLIMATE CHANGE IMPLICATIONS

- 10.1 A climate change impact assessment has been undertaken and is attached as Appendix C.

11.0 REASONS FOR RECOMMENDATIONS

- 11.1 To facilitate the potential opening of the Waterpark for the summer 2024 season.

12.0 RECOMMENDATION(S)

For the Executive to:

- i. note the outcome of the marketing exercise to procure a short-term operator for Waterpark;
- ii. approve that officers enter into negotiations with the preferred bidder with the aim of agreeing final terms;

- iii. delegate the authority to enter into the potential short-term lease, along with the agreement of any associated tenant incentives, to the Corporate Director of Resources in consultation with the Assistant Chief Executive Legal & Democratic Services (Monitoring Officer), Corporate Director Community Development, the Executive Member for Finance and Resources, and the Executive Member for Culture, Arts and Housing; and
- iv. note the intention to immediately commence a review of the long-term options for the operation of the Waterpark in the event the council is unable to finalise the terms of the lease for the short-term operation with the preferred bidder.

APPENDICES:

Appendix A – Restricted Private and Confidential Appendix: Preferred Bid Summary

Appendix B - Equalities Impact Assessment

Appendix C – Climate Change Impact Assessment

BACKGROUND DOCUMENTS:

Gary Fielding

Corporate Director – Resources

Northallerton

Report Authors – Kerry Metcalfe, Carol Rehill

Presenter of Report – Kerry Metcalfe Assistant Director Commercial, Property and Procurement

Note: Members are invited to contact the author in advance of the meeting with any detailed queries or questions

Appendix B – EIA

Initial equality impact assessment screening form			
This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.			
Directorate	Corporate Resources		
Service area	Commercial, Property and Procurement		
Proposal being screened	Marketing exercise to procure a short-term operator for Alpamare Waterpark		
Officer(s) carrying out screening	Carol Rehill		
What are you proposing to do?	Enter into negotiations with the preferred bidder for the short-term operation of the Alpamare Waterpark		
Why are you proposing this? What are the desired outcomes?	Re-opening of the Alpamare Waterpark for summer 2024		
Does the proposal involve a significant commitment or removal of resources? Please give details.	No		
Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC’s additional agreed characteristics As part of this assessment, please consider the following questions: <ul style="list-style-type: none"> To what extent is this service used by particular groups of people with protected characteristics? Does the proposal relate to functions that previous consultation has identified as important? Do different groups have different needs or experiences in the area the proposal relates to? If for any characteristic it is considered that there is likely to be an adverse impact or you have ticked ‘Don’t know/no info available’, then a full EIA should be carried out where this is proportionate. You are advised to speak to your Equality rep for advice if you are in any doubt.			
Protected characteristic	Potential for adverse impact		Don’t know/No info available
	Yes	No	
Age		X	
Disability		X	
Sex		X	
Race		X	
Sexual orientation		X	
Gender reassignment		X	
Religion or belief		X	
Pregnancy or maternity		X	
Marriage or civil partnership		X	
NYC additional characteristics			
People in rural areas		X	
People on a low income		X	
Carer (unpaid family or friend)		X	
Are members of the armed forces community		X	
Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people’s access to public transport)? Please give details.	The proposal takes place in Scarborough’s North Bay and will improve leisure facilities in that area.		
Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with	No significant effect. The Alpamare Waterpark was operating in the area up until October 2023. This proposal seeks to re-open it for summer 2024.		

protected characteristics? Please explain why you have reached this conclusion.				
Decision (Please tick one option)	EIA not relevant or proportionate:	✓	Continue to full EIA:	
Reason for decision	To facilitate the potential opening of the Alpamare Waterpark for the summer 2024 season			
Signed (Assistant Director or equivalent)	Kerry Metcalfe, Assistant Director Commercial Property and Procurement			
Date	9 May 2024			

Appendix C - Climate change impact assessment

The purpose of this assessment is to help us understand the likely impacts of our decisions on the environment of North Yorkshire and on our aspiration to achieve net carbon neutrality by 2030, or as close to that date as possible. The intention is to mitigate negative effects and identify projects which will have positive effects.

This document should be completed in consultation with the supporting guidance. The final document will be published as part of the decision making process and should be written in Plain English.

If you have any additional queries which are not covered by the guidance please email climatechange@northyorks.gov.uk

Please note: You may not need to undertake this assessment if your proposal will be subject to any of the following:

Planning Permission
Environmental Impact Assessment
Strategic Environmental Assessment

However, you will still need to summarise your findings in in the summary section of the form below.

Please contact climatechange@northyorks.gov.uk for advice.

Title of proposal	Marketing exercise to procure a short-term operator for Alpamare Waterpark
Brief description of proposal	To seek a short term operator for the Alpamare Waterpark in the North Bay, Scarborough and facilitate an aspiration to open the facility for the core 2024 summer season
Directorate	Resources
Service area	Property
Lead officer	Kerry Metcalfe
Names and roles of other people involved in carrying out the impact assessment	n/a
Date impact assessment started	09/05/2024

Options appraisal

Were any other options considered in trying to achieve the aim of this project? If so, please give brief details and explain why alternative options were not progressed.

N/A – the aim of the project is to open the facility for the 2024 core summer season. Any option chosen to facilitate this aspiration would have the same impacts from a climate change perspective.

What impact will this proposal have on council budgets? Will it be cost neutral, have increased cost or reduce costs?

Please explain briefly why this will be the result, detailing estimated savings or costs where this is possible.

The potential impact on council budgets will be considered alongside any final decision to award a short term operating lease for the facility.

<p>How will this proposal impact on the environment?</p> <p>N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.</p>	<p>Positive impact (Place a X in the box below where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</p>	<p>Explain why will it have this effect and over what timescale?</p> <p>Where possible/relevant please include:</p> <ul style="list-style-type: none"> • Changes over and above business as usual • Evidence or measurement of effect • Figures for CO₂e • Links to relevant documents 	<p>Explain how you plan to mitigate any negative impacts.</p>	<p>Explain how you plan to improve any positive outcomes as far as possible.</p>	
<p>Minimise greenhouse gas emissions e.g. reducing emissions from travel, increasing energy efficiencies etc.</p>	Emissions from travel			X	The re-opening of the facility will cause increased emissions relating to visitors travelling to the facility.	Facility is located near public transport links	
	Emissions from construction		X				
	Emissions from running of buildings			X	The re-opening of the facility will increase emissions relating to the operation of the site.	Options will be explored to review plant and equipment at the site to make it more energy efficient	
	Other		X				
<p>Minimise waste: Reduce, reuse, recycle and compost e.g. reducing use of single use plastic</p>				Any such measures would be at the discretion of the operator	Will follow environmental legislation and codes of practice to minimise waste. Preferred		

<p>How will this proposal impact on the environment?</p> <p>N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.</p>	<p>Positive impact (Place a X in the box below where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</p>	<p>Explain why will it have this effect and over what timescale?</p> <p>Where possible/relevant please include:</p> <ul style="list-style-type: none"> Changes over and above business as usual Evidence or measurement of effect Figures for CO₂e Links to relevant documents 	<p>Explain how you plan to mitigate any negative impacts.</p>	<p>Explain how you plan to improve any positive outcomes as far as possible.</p>
					<p>bidder takes part in schemes to reduce their use of energy, water and other resources.</p>	
<p>Reduce water consumption</p>			X	<p>The re-opening of the facility will have a negative impact due to the nature of the facility</p>	<p>As above.</p>	
<p>Minimise pollution (including air, land, water, light and noise)</p>			X	<p>As above</p>	<p>As above.</p>	
<p>Ensure resilience to the effects of climate change e.g. reducing flood risk, mitigating effects of drier, hotter summers</p>		X				

<p>How will this proposal impact on the environment?</p> <p>N.B. There may be short term negative impact and longer term positive impact. Please include all potential impacts over the lifetime of a project and provide an explanation.</p>	<p>Positive impact (Place a X in the box below where relevant)</p>	<p>No impact (Place a X in the box below where relevant)</p>	<p>Negative impact (Place a X in the box below where relevant)</p>	<p>Explain why will it have this effect and over what timescale?</p> <p>Where possible/relevant please include:</p> <ul style="list-style-type: none"> Changes over and above business as usual Evidence or measurement of effect Figures for CO₂e Links to relevant documents 	<p>Explain how you plan to mitigate any negative impacts.</p>	<p>Explain how you plan to improve any positive outcomes as far as possible.</p>
Enhance conservation and wildlife		X				
Safeguard the distinctive characteristics, features and special qualities of North Yorkshire's landscape		X				
Other (please state below)						

<p>Are there any recognised good practice environmental standards in relation to this proposal? If so, please detail how this proposal meets those standards.</p>

Summary Summarise the findings of your impact assessment, including impacts, the recommendation in relation to addressing impacts, including any legal advice, and next steps. This summary should be used as part of the report to the decision maker.

Although certain negative climate impacts have been identified within the assessment of the proposals these are outweighed by the positive economic impacts associated with the re-opening of the facility.

Sign off section

This climate change impact assessment was completed by:

Name	Carol Rehill
Job title	Head of Legal Major Projects
Service area	Property / Tourism
Directorate	Resources / Communities
Signature	
Completion date	09/05/2024

Authorised by relevant Assistant Director (signature):

Kerry Metcalfe, Assistant Director – Commercial, Property and Procurement

Date: 09/05/2024