

LEISURE AND ENVIRONMENT COMMITTEE

22 JUNE 2021

ACTIVE4TODAY – UPDATE ON GOVERNANCE ARRANGEMENTS

1.0 Purpose of Report

- 1.1 To update members on the various amendments to the Governance Arrangements between the Council and Active4Today.

2.0 Background Information

- 2.1 At its meeting on 22 September 2020, the Committee approved a draft Governance Agreement, and authorised officers to consult and negotiate with the Board of Active4Today to secure the execution of the Agreement between the parties. The draft Governance Agreement has been prepared for the Council by Anthony Collins Solicitors, based very much upon the version already in existence between the Council and its wholly owned development company - Arkwood Developments Ltd. The intention is to provide a consistency of approach by the Council in its control and overview of its wholly owned companies.
- 2.2 The Governance Agreement will provide greater clarity around governance arrangements:- regulating the Council and Company's respective responsibilities around the operation and management of the Company and the relationship between both parties. It will secure greater transparency between the Council and the Company and reinforce the Council's role as shareholder. The intention is that it will sit alongside the Articles of the Company and underline the Council's role as shareholder in exercising a decisive influence over both: strategic objectives and significant decisions of the Company.
- 2.3 Following the Committee's approval, the draft Agreement was sent to the Company for consideration by its Board. The Board considered the document on 27 January 2021, and subject to some minor amendments indicated it was willing to enter into the Agreement.
- 2.4 Members will recall that in November 2019, the Committee also approved a decision to review the Service Contract between the Council and Active4Today. At the time, pre-covid, the Company had generated a good balance sheet and it seemed a good time to review the payment mechanisms within the contract. The contract, being a public services concession contract currently provides two payment mechanisms (one in-year and one at the end of the year). It was agreed to look at re-scoping the payment mechanisms to enable more efficient VAT treatment and to reflect the commercial reality between the Council and the Company. In effect it was decided to amend the payment mechanism so that there would either be a 'management fee' paid by the Council to the Company in anticipation of the Company making an operating loss, or a 'right to operate fee' from the Company to the Council in the event of an operating surplus.

3.0 Progress on governance arrangements

- 3.1 Amended documents have been drafted and a number of discussions held between officers of the Company and the Council in order to progress the decisions taken by the Committee. However, the financial situation has changed significantly due to the pandemic

and the leisure facilities being closed for many of the intervening months since the Committee's decision in November 2019. In addition, the Council has more recently approved the taking on of the management of the Southwell Leisure Centre from the Trust (SLCT). It is intended that Active4Today, will deliver the operational management of the Leisure Centre on behalf of the District Council. This has meant that further amendments to the Governance Agreement and the Service Contract have needed to be negotiated between the Council and the Company to reflect this.

3.2 Good progress has been made on all of the necessary strands of work required to facilitate the changes referred to above, namely the:

- Negotiations over the Governance Agreement and Service Contract amendments;
- Leases (i.e. Lease from SLCT to the Council and Underlease from the Council to Active4Today);
- TUPE process of transferring the employees from the SLCT to Active4Today; and the
- Collaboration Agreement between the SLCT, the Council and the Company to enable the Trustees to continue to fulfil their charitable obligations.

3.3 The negotiations and redrafting of documents are currently ongoing and, subject to the Trust being able to resolve some outstanding charitable procedural requirements that it is required to adhere to, it is anticipated that these could all be complete and operational by 1 July 2021. Progress on these matters will continue to be reported to the Committee.

4.0 Equalities Implications

4.1 There are no equalities implications arising from this report.

5.0 Financial Implications – Ref No.

5.1 There are no direct financial implications arising from this report.

6.0 RECOMMENDATION that:

The Committee note the report.

Reason for Recommendations

To ensure that the Governance arrangements between the Council and its wholly owned company are effective and clear.

Background Papers

For further information please contact Karen White on Ext 5240.

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