

By: Mike Austerberry, Corporate Director of Enterprise and Environment

To: Bryan Sweetland, Cabinet Member for Environment Highways & Waste

Subject: Formation of a company as an option to take over the new Cyclopark facility in Gravesham.

Classification: Unrestricted

Summary: The preferred option for the future management of Cyclopark is to procure an external operator.

This paper seeks approval for the fallback option of incorporating a new charitable company as operator, whose registered name shall be Cyclopark and to appoint KCC as the sole corporate member and director (see paragraph 3 (4)).

Introduction

1. (1) Cyclopark is currently in development on a 43 hectare linear site to the south of Gravesend. The site was previously redundant land, made available as a result of the realignment of the A2 trunk road.

(2) Cyclopark is due for completion in spring 2012, and will be a unique multi-sports park offering the most comprehensive range of cycle sports disciplines and related sports in the country, and attracting up to 100,000 visitors per year.

(3) The County Council is the developer of the facility, working in partnership with a range of other organisations.

(4) It is the County Council's preference for Cyclopark to be managed by an external operator once the development is complete.

(5) Over £8 million has been raised for the development of Cyclopark, from a range of sources including the County Council (£2.2m), the Homes and Communities Agency (£1.7m), The Colyer Fergusson Trust (£1.5m), British Cycling (£600,000), Sport England (£1m), and the EU (£750,000).

(6) Under the terms of a previous decision (10/01494) the County Council has agreed to provide financial support to Cyclopark in the form of revenue funds of up to £125k per annum, in order to secure its financial future. This underpinning support is required by external funding agreements for 25 years. Officers will work with the Operator, once appointed, to reduce this requirement without compromising the operational viability of Cyclopark.

(7) In addition, Gravesham Borough Council has agreed to provide £20k per annum for the first three years (totalling £60k) in order to support the early development of Cyclopark.

(8) In order to comply with the conditions of partner funding agreements, the future operator of Cyclopark must be a charitable organisation or Industrial and Provident Society with an HMRC charity tax reference by December 2011. Accordingly officers are seeking to procure a suitably experienced operator with charitable status to operate the facility.

2. Procurement process to appoint an operator (Preferred option)

(1) It is intended that the operator will be appointed later this year, and will be operating in 'shadow' form, working with KCC officers soon after. In this way the opening of the facility in spring 2012, and its handover should proceed smoothly.

(2) The procurement process is being led by Commercial Services to ensure we present the Cyclopark operational service as a commercially viable enterprise to the sports and leisure industry, with assistance from KCC's Legal Services team. The procurement timetable is as follows:-

a) Completion of tender documents in consultation with external partners by July

b) Advertising opportunity on OJEU and South East Business Portal and other outlets for a period of 80 days during within which time open days and presentations will be made available to potential operators.

c) The tender returns will be assessed against a range of criteria including the operators' track record, ability to deliver regeneration, youth, environment and sport related performance targets.

d) An assessment will then confirm the operator's intentions, ambitions and capacity to meet the challenging criteria set by the funding partners. The assessment panel will be made up of funding bodies, user-group representatives and KCC Members. At this stage it is suggested that KCC membership is comprised of the Portfolio holder and Deputy, plus others to be selected on a cross-party basis.

(3) Once an operator is appointed, they will be expected to work with officers to continue developing and improving Cyclopark. Subject to good performance, and with the consent of the funders, the facility, funding agreements, related contracts and assets may be transferred to the Operator within 3 (three) to 5 (five) years. This may include a transfer of the freehold and leasehold land, plus transfer and novation of existing funding agreements from the County Council to the operator.

3. Contingency plan- creation of an independent charitable company

(1) In the event that the procurement process fails to produce a suitable operator, the County Council has three options.

(i) To operate the facility itself

(ii) Withdraw from the whole project

(iii) Create an independent charitable company to operate the facility.

(2) The first option would leave the County Council in the role of operator, and this would not satisfy the legal requirements of some funding partners, exposing the County Council to the risk of claw back of funds.

(3) The second option would place the County Council in a difficult position of defaulting on legal funding agreements with external partners, and the probable repayment of a number of grants; as well as leaving a developed site with no viable future and a waste of public fund investment.

(4) Accordingly, it is proposed that the County Council forms an independent company with the sole purpose of managing Cyclopark in the event that the services of a suitable operator cannot be procured. This is the subject of the recommendation.

(5) The County Council intends to form the company and start to recruit suitable and able trustees now in order to prepare for an application to the Charity Commission for charitable status if required.

(6) The company must be ready to proceed in the event that an operator is not appointed in accordance with our preferred strategy (see section 2). Accordingly, unless and until a suitable operator is awarded the contract, the County Council will be the only member and director of the company. For the time being, it is suggested that David Brazier (Deputy Cabinet Member for Environment Highways and Waste) should represent the County Council at meetings of the company and board. The County Council will submit an application to the Charity Commission for the new company (to be called 'Cyclopark') to be given charitable status.

(7) Part of the application will involve submitting the names of the trustees to run the charity, and demonstrating that the charity will carry out its charitable objects independently from the state (including the County Council).

(8) Subject to good performance and with the consent of the funders, the facility, funding agreements, related contracts and assets may be transferred to the company. This may include a transfer of the freehold and leasehold land, plus transfer and novation of existing funding agreements from the County Council, making the facility independent from the County Council.

(9) Apart from legal fees and disbursements there are no initial financial commitments in relation to setting up the company.

4. Protocol

(1) The setting up of the company will be in accordance with the Protocol Relating to Companies in which KCC has an Interest which the County Council follows as good practice for the setting up new companies.

5. Policy Framework

(1) The following outlines the policy areas this project is helping to deliver:-

(i) Vision for Kent

- Environmental Excellence; Biodiversity and Green Infrastructure,
- Enjoying Life; access to coast, countryside and historic environment
- Keeping Kent Moving; rural; and community transport, public transport, walking and cycling, PROW improvements
- Improving healthcare and well-being; healthy transport choices (of) walking and cycling
- High Quality Homes; local distinctiveness and character

(ii) Towards 2010

- Reduced traffic congestion
- Improved health and quality of life
- Quality homes in a well-managed environment

(iii) Unlocking Kent's potential

Unlocking talent to support the Kent economy; through the creation of a Kent Sports Academy to develop future champions and provide alternative curriculum to improve employability for school leavers

Embracing a growing and changing population; through the provision of local facilities accessible to all sectors of the population, creating more opportunities for intergenerational volunteering and

Build homes and communities, not estates; through the creation of high quality greenspace for leisure and sport which will link old and new communities in a key growth area

(iv) 21st Century Kent

Cyclopark will form a key part of the regeneration of north Kent, within 1 mile of the Ebbsfleet development

(v) Local Investment Plan for North Kent; one of the six core themes is the Thames Gateway Parklands which includes Cyclopark, a priority location within Kent Thameside

6. Consultations

The Cyclopark project has undertaken an extensive consultation process that secured support from more than 80% of local residents. Three national governing bodies for sport have also confirmed their support as have over thirty Kent based sports clubs. The local Member of Parliament Adam Holloway has also campaigned for the project and the Minister for Sports and the Olympics Hugh Robertson also gave his backing and support to the proposal at a recent official visit. Members of the public are kept informed of the project via press coverage, an online newsletter, bi-monthly local forums, presentations to local community groups and publications distributed in the locality

7. Local Members

Gravesham Borough Council has been involved at both officer and councillor level providing both guidance and political endorsement. Local Members have attended consultation events and briefings, and supported the project through planning application process.

8. Conclusion

This will be an important facility with the potential to bring economic and social regeneration benefits to north Kent, and offering a broad range of sports and leisure opportunities. The project benefits from a strong partnership, and has attracted substantial funding from external partners.

In order to ensure compliance with external funders we must either a) appoint an existing operator with charitable status via procurement (see section 2) or, failing this b) create an independent company with charitable status (see section 3 and the subject of the recommendation of this paper).

Whether the successful operator procured following the procurement process or Cyclopark (the charitable company set up by the County Council) is appointed as the preferred operator, a recommendation will be made to Members as to the appointment of the preferred operator and that final confirmation will be sought to proceed to enter into the required agreements.

9. Recommendations:

The Cabinet Member for Environment Highways & Waste is asked to:

- (i) authorise in accordance with the County Council's Protocol Relating to Companies in which KCC has an Interest the creation of an independent company with charitable status or an Industrial**

& Provident Society (IPS) in order to be prepared to operate the Cyclopark activity park as detailed in this report;

- (ii) delegate authority to the Corporate Director of Enterprise and Environment to create the company (and procure charitable status from the Charity Commission) or the IPS; and**
- (iii) appoint the Deputy Cabinet Member for Environment Highways and Waste as the County Council's representative on the company's (or IPS's) board and at the company's (or IPS's) general meetings.**

Background Documents:

- a) Business Plan;
- b) Marketing Plan;
- c) Overall design masterplan;
- d) Pavilion design;
- e) Cyclopark marketing prospectus;
- f) Construction programme 2010-2012;
- g) Integrated whole sports plan and associated targets /objectives (key funding requirement);
- h) Green Travel Plan;
- i) Planning Permission approval letter and conditions

Author Contact Details

Name: Val Hyland
Officer Title: Regeneration and Economy Manager
Directorate: **Enterprise and Environment**

Email: val.hyland@kent.gov.uk

Tel: 01622 221373

Name: Laurence Tricker
Officer Title: Project Manager
Directorate: **Enterprise and Environment**

Email: laurence.tricker@kent.gov.uk

Tel: 01474 338813