

<b>Cabinet</b>  29 July 2020	
<b>Report of:</b> James Thomas, Corporate Director, Children & Culture	<b>Classification:</b> Unrestricted
<b>Safe and Viable Re-opening of Leisure Centres</b>	

<b>Lead Member</b>	<b>Councillor Sabina Akhtar, Cabinet Member for Culture, Arts and Brexit</b>
<b>Originating Officer(s)</b>	Judith St John, Divisional Director of Sports, Leisure and Culture
<b>Wards affected</b>	All wards
<b>Key Decision?</b>	No
<b>Forward Plan Notice Published</b>	21 May 2020
<b>Reason for Key Decision</b>	N/A
<b>Strategic Plan Priority / Outcome</b>	<b>All priorities</b>

### Executive Summary

This report sets out the impact of the government's closure of leisure centres on 20th March to mitigate Covid-19 on the council's leisure service contract provider, GLL. This is an industry wide issue, affecting all leisure centre operators, giving rise to financial instability in the leisure market.

There are two leisure contracts in operation in Tower Hamlets; the main leisure management contract covering six of the boroughs centres in which the Council is in direct contract with GLL, and the Poplar Baths contract in which the Council is in a direct contractual relationship with Folera, a special purpose vehicle which sub-contracts the leisure centre management and operation to GLL.

This report seeks approval for a contract variation to the main GLL Leisure Management contract (LMC) to ensure the continued operation of the leisure service within Tower Hamlets. This contract variation will be subject to an 'open book' review.

Financial issues related to the loss of income at Poplar Baths are also detailed within the report.

## **Recommendations:**

The Mayor in Cabinet is recommended to:

1. Authorise the Corporate Director Resources to negotiate and agree a management fee sum of up to £181k for Poplar Baths.
2. Authorise the Corporate Director Resources to negotiate and agree the removal of the Leisure Management service element from the main Poplar Baths PPP agreement, to bring it in line with the main leisure management contract or as a continuation of the current arrangements between LBTH and Folera.
3. Approve a contract variation to the main leisure management contract to provide a management fee of up to **£593k** to GLL, pending further negotiation of the repayment schedule and share of surplus.
4. Approve the proposed pricing schedule at para. 3.2.
5. Approve the phased restoration of safe and viable leisure centre activities in three phases with decisions upon implementation of each phase to be determined following a review of guidance, implementation, demand and lessons learned.
6. Note that a detailed Equalities Impact Assessment has not been conducted at this stage, however, if the leisure services were to cease, or some centres not to reopen, there would be loss of service provision for protected characteristics including single sex provision, older people and disability provision to name a few.

## **1 REASONS FOR THE DECISIONS**

- 1.1 On 20 March government announced the closure of all leisure centres as part of its strategy to mitigate COVID-19. The closure of facilities has serious financial implications for Greenwich Leisure Limited (GLL), the borough's leisure operator.
- 1.2 Following the loss of its income stream, but with continued building and staff related costs, there is a danger that GLL, and other leisure operators in the country will go into administration without financial assistance from partner local authorities. The impact of this scenario would be devastating for the leisure industry and ultimately put the future of quality leisure centre provision nationally at risk. Due to the sub-regional and national risk associated with this outcome, the twelve local authorities in London that have GLL as its operator are working collectively in a client group to agree principles across all local authority areas to increase the likelihood of a successful outcome for leisure operator survival but also to mitigate risks for the local authorities concerned.

## **2 ALTERNATIVE OPTIONS**

- 2.1 A high level options appraisal has been conducted, which has identified the following options:

- Option 1: Do nothing (not recommended)
- Option 2: Bring the leisure centres in-house (not recommended)
- Option 3: Provide GLL with a grant (not recommended)
- Option 4: Provide GLL with an interest bearing loan within the existing contract duration to end in 2022 (not recommended)
- Option 5: Provide GLL with a loan (interest to be determined) to be repaid over an extended contract period up to 2 years in duration (not recommended)
- Option 6: Execute a contract variation for a management fee of £593k to cover GLL's immediate cash-flow difficulties (recommended)

2.2 Option 1 is not suitable because it may lead to the collapse of GLL in Tower Hamlets, leading to job losses and the inability to provide a leisure service in the short to medium term. In addition, it would be incumbent upon the Council to either bring the service in-house or mothball leisure provision completely. If the Council were to make a decision to not operate a leisure service it would have significant detrimental impacts on the health & wellbeing of residents, increasing the health inequalities in the borough. It is important to note that leisure centres attract 2 million visits per annum and are a valued community service. The loss of such a well-used service is likely to create significant resistance from residents and would necessitate an extensive communications plan to manage public concerns and complaints.

2.3 Option 2 is not recommended as the best solution to this issue. Bringing the service in-house has serious, staffing, asset management and financial risks for the Council. Recent condition, mechanical and electrical surveys have identified indicative refurbishment costs in excess of £60 million over the next 10 years. Maintenance costs are currently paid by GLL. If the service were brought back in house, the Council would have to bear this cost. It should also be noted that bringing the service in house means the Council would have to pay for all pension liabilities of staff, NNDR, health & fitness equipment, CRM and IT systems costs to name a few. These are all additional financial risks for the council, which would be borne by the GLL or another leisure contractor in an external contract. These additional costs and risks to the Council have been confirmed by consultancy work undertaken by the GLL London Client Group, which demonstrates that bringing the leisure service in house does not offer best value. Furthermore, bringing the service inhouse is further complicated by the instability of the leisure market following Covid-19, and the extensive recovery time required for the market to return to a steady state. This in turn is likely to place greater risks on income generation required for service delivery for a new 'leisure start up' without the economies of scale associated with more established, larger leisure operators. Despite the significant risks associated with in-house provision it is being considered as a contingency plan should GLL go into administration.

2.4 Option 3 is not recommended following legal advice that this payment is likely to constitute state aid and is therefore not permissible.

- 2.5 Option 4 is not recommended because it is estimated that it will take some time (12-18 months) for the leisure market to recover to a steady state position by which point the existing leisure contract will be close to expiring in April 2022.
- 2.6 Option 5 is not recommended at this time because a contract extension beyond the existing contract period would limit the Council's options for leisure service delivery beyond 2022.
- 2.7 Option 6 is recommended as the most appropriate way forward at this time because it ensures the continuation of leisure services in the borough and enables the Council to consider its options from July 2020 onwards.

### **3 DETAILS OF THE REPORT**

- 3.1 The government mandated closure of all leisure centres on 20 March 2020 has significant financial implications for the borough's leisure provider, GLL, and the leisure sector as a whole.
- 3.2 To mitigate its financial losses, GLL has implemented a number of measures to offset the loss of income during the lockdown period including:
- Suspension of service contracts in all areas
  - Plant have been turned off as much as possible to limit utility costs
  - All non-essential staff have been furloughed to maximise the grant GLL will be able to get from Central Government (over 300 GLL staff furloughed at present)
  - All purchases of equipment, provisions etc. have been suspended
  - Training has been suspended
  - Negotiations are progressing to reduce other costs such as insurance, licencing etc.
  - GLL have factored in the removal of business rates where this applies
- 3.3 Despite the mitigation measures employed, GLL are projecting an immediate projected net loss associated with the cost of maintaining Tower Hamlets facilities during March to July of £593,000 for the main leisure management contract.
- 3.4 Based on these figures, it is being recommended that the Council implements a contract variation to the main leisure management contract to provide for a management fee of £593,000. This figure includes the staff saving resulting from the government's furlough scheme and London Living Wage.

### **4. SECURING A SAFE AND VIABLE LEISURE CENTRE OFFER**

- 4.1 The key considerations for the council are to ensure
- that the **safety** of our residents is paramount
  - that the plans for re-opening the leisure centres are **financially viable** and deliver a safe range of permitted activities
  - that there is a **phased approach to re-opening** the leisure centres that is in the interests of our residents and of the council, and will determine the decisions for each phase
- 4.2 When the leisure centres reopen:

- They will have reduced capacity due to the impact of Social Distancing. Smaller areas such as studios will not be available
  - All activities will be time-limited per user and must be booked in advance online or via the GLL app with cashless payments
  - There will be an enhanced cleaning regime (including hand sanitization stations) in operation alongside other COVID-19 mitigation methods such as one-way routes, phased entry to facilities to control numbers
  - Health suites will be closed until further notice due to increased COVID-19 risk associated with these areas
  - Swimming pools will be restricted to lane swimming only and users must attend the leisure centre wearing their swimming suits and ready to swim
  - Curtailed free and subsidised activities and events initially, as there will not be the capacity to deliver large programmes such as Free swim Friday, Free Swim Saturday for Families and 60+ off peak swimming in a COVID-secure manner.
  - The Council's will have oversight of risk assessments and COVID-secure management of the centres. Leisure centre monitoring will continue during and post restart with Council officers in regular contact with GLL regarding its operations
- 4.3 It is essential to take a phased approach and apply learnings from each stage. Government and leisure industry advice is emerging and regularly changing and safety is an absolute priority. The virus contagion and public health responses will develop further and therefore the decisions to re-open further will be made with GLL with these considerations as a priority.
- 4.4 The council's intention is to require GLL to open the leisure centres on a phased basis as outlined below:
- Phase 1 (July – September 2020) – The target is to provide safe initial re-opening and maximise income generation, focussing on direct debit adult health and fitness members. Minimise operational expenditure by operating a single shift.
  - Phase 2 (October – December 2020) - Extend opening hours, dependant on level of demand and financial considerations to be agreed with Council.
  - Phase 3 (January 2021 onwards) – Working towards a “normal” programme (returning to pre COVID-19 service levels, where safe to do so).

#### 4.5 Phased Opening of Leisure Centres

	Phase 1 (July - Sept 2020)					Phase 2 (Oct – Dec 2020)	Phase 3 (Jan 2021 onwards)
Leisure Centre	Re-opening	Gym	Swimming	Fitness	Events	ALL SUBJECT TO REVIEW	ALL SUBJECT TO REVIEW
John Orwell	Yes	Yes	N/A	Yes	N/A	Extend opening hours and programme including courses and football	Business as usual
Mile End	Yes	Yes	Yes	Yes	N/A	Extend opening hours and programme including courses, lessons, school swimming and football	Business as usual
Poplar Baths	Yes	Yes	Yes	Yes	N/A	Extend opening hours and programme including courses and football	Business as usual
St. George's	No	No	No	No	N/A	Likely to remain closed	Closure under review
Tiller	No	No	No	No	N/A	Likely to remain closed	Closure under review
Whitechapel	No	No	N/A	No	N/A	Likely to remain closed	Closure under review
York Hall	Yes	Yes	No	Yes	Yes (inc. spa treatments only)	Extend opening hours and continue closed door events and spa treatments (not steam rooms/sauna)	Review of re-opening of Swimming pools Business as usual

#### 4.6 Summary of issues related to the leisure centres

Leisure Centre	Issues and financial viability
John Orwell	John Orwell Sports Centre operated at a surplus in 2019-20. Its medium sized gym and large outdoor spaces provide greater opportunities for income generation from the restart.
Mile End Park	Mile End Park Leisure Centre is the largest centre in the borough and provides nearly half of the borough's annual visits. It operated at a surplus in 2019-20 and offers the greatest variety of sport & leisure facilities of all the borough's leisure centres. Reopening this centre will provide the greatest opportunity for maximum income generation during phase 1.
Poplar Baths	Poplar Baths Leisure Centre operated at a deficit at the end of 2019-20. However, this is tied to a totally separate long-term Public Private Partnership between Folera Limited and the council. This agreement means that the council is required to meet the net costs of the impact of closure of Poplar Baths due to COVID-19 of up to £181,000.
St. George's	At the end of 2019-20 St. George's Leisure Centre had a significant operational deficit due to the age of the building and its high maintenance costs, large swimming pools, under-sized gym and fitness areas. Reopening the centre will place the overall financial position of the centres at greater risk and as a result it is suggested that it remains closed.
Tiller	Tiller Leisure Centre operated at a significant financial deficit due to its age, large swimming pool and teaching pool, undersized gym and fitness areas, which cannot offset the high cost of swimming operations. Projections for the remainder of 20-21 financial year indicate that the centre would continue to operate at a significant deficit and as a result should not be re-opened.
Whitechapel	Although Whitechapel Sports Centre has operated at a surplus in the past, at the end of 2019-20 it operated at a financial deficit. This is due to the continuing adverse impact of the Crossrail development on centre usage, membership numbers and competition from private gym operators within the catchment area of the sports centre. Unfortunately, the impact of these two key drivers - Crossrail and competition - will continue in 2020-21, resulting in continued financial pressure and operational deficit in 2020-21 and beyond.
York Hall	York Hall Leisure Centre had a significant operational surplus in 2019-20. The operational surplus is due to events income generated through live sporting events (in particular boxing), and its high membership base (second highest in the borough). The centre also has the opportunity to generate further income through Spa London. Due to its increased income generating potential, York Hall is a key centre in providing a sound financial basis for the centres going forward.

## 5.0 NEW PRICING SCHEDULE

5.1 It is recognised that following the easing of the lockdown and leisure centres opening, there will be a number of social distancing measures in place that restrict capacity, income generation and how GLL process transactions. Officers have worked with GLL to simplify the pricing points for users, to enable them to effectively use the GLL app or book online as the basis for users to pre-book and pay for an activity. Secondly, with restricted capacity under social distancing, the proposed pricing enables maximising income levels whilst still offering concessions, therefore protecting the Council's financial position where possible. The proposed price increases have been negotiated with GLL in order to ensure that **the concessionary pricing for over 60's, under 16's, concessionary groups and borough residents is retained at a low level.** The pricing would remain in place for the current financial year and reviewed in advance of next year's (21/22) fees and charges report based on opening restrictions/level of demand/open book financial review.

5.2 The proposed pricing schedule is below:

<b>Non Member Pricing</b>			
Activity	Price Type	Current Price	Proposed Price
Swimming	Adult	£5.45	£6.50
	under 16	£1.85	£2.00
	Over 60	£1.90	£2.00
Fitness Classes	Adult	£9.75	£12.00
	under 16	N/A	£7.00
	Over 60	N/A	£7.00
<b>Member Pricing</b>			
Swimming	Adult	£4.40	£5.50
	Adult Conc	£1.90	£2.00
	Under 16	£1.05	£1.15
	Over 60	£1.10	£1.20
Gym	Adult	£7.50	£10.00
	Adult Conc	£5.45	£6.00
	Under 16	£3.60	£3.80
	Over 60	N/A	N/A
Gym Induction	Adult	£18.90	£20.00
	Adult Conc	£5.45	£6.00
	Under 16	£3.60	£4.00
	Over 60	N/A	£10.00
Fitness Classes	Adult	£7.50	£10.00

	Adult Conc	£2.60	£3.00
	Under 16	N/A	£6.00
	Over 60	£2.60	£3.00

## 6.0 **CONTRACT VARIATION**

- 6.1 Officers have undertaken negotiations with GLL with a view to implementing a contract variation to the main leisure contract to provide for a management fee of £593,000 in order to stabilise the finances of GLL sufficiently to enable their continued operations following the severe impact of lost income. This figure includes the staff saving resulting from the government's furlough scheme and includes a London Living Wage uplift.
- 6.2 The phased re-opening and new pricing provide a basis for the Council to recover its financial position from the surplus generated by the proposed service levels, based on usage of c.65%. A positive financial position would enable the management fee to be repaid to the Council within the existing contract term at the end of March 2022. GLL has confirmed that repayment of the management fee would be the first call on the surplus funds after all leisure centre running costs have been covered. Officers are also negotiating to vary the contract so that LBTH would receive a high proportion of the surplus share, over and above the repayment of the management fee.
- 6.3 In summary, the above proposals provide a coherent package which delivers:
- Assurance about prompt re-opening of those centres which are safe and viable
  - Satisfactory plans about managing the COVID-19 health and safety issues with three phases, with some activities curtailed
  - Price increases that retain the low concessionary charges for under 16s and over 60s and increase adult prices in a measured way
  - A schedule for repayment of the management fee in the duration of remaining contract – subject to the level of demand

## 7. **POPLAR BATHS**

- 7.1 The council entered into a long-term Public Private Partnership with Folera Limited in 2014 that delivered the restoration of leisure facilities at Poplar Baths, affordable housing and Haileybury community centre.
- 7.2 The Council effectively underwrites or “guarantees” part of the arrangement under the Development Agreement. The Development Agreement splits the arrangement for the purposes of default resolution into two parts; the Leisure Tranche and Non-Leisure Tranche. The Leisure Tranche is essentially guaranteed by the Council. Should the leisure element of the arrangement default, the Council are liable to pay the net amount of bank lending, hedge break costs (which changes with the market value of the swap) and any additional amounts to Folera, which Folera will then use to redeem the

Leisure Tranche debt.

- 7.3 Members have previously received reports on the need to refinance the debt associated with the Poplar baths PPP project. The current situation is making the refinancing of the debt challenging, partly because of the general economic uncertainty, but also the fragility of the leisure market. In order to mitigate some of those risks, options for simplifying the contractual arrangements have become part of the discussions including the separation of the financing and service delivery provisions which would nullify the leisure service default arrangement and protect the Council from having to immediately repay that element of debt.
- 7.4 Members are asked to delegate to the Corporate Director Resources, authority to agree to the separation of those elements where that reduces the risks associated with the failure of the leisure service and facilitates the conclusion of the refinancing arrangements. If that can be achieved the on-going debt charges can continue to be met on a monthly basis through the unitary payment to Folera.
- 7.5 In the current circumstances, following the outbreak of COVID-19 which resulted in a national lockdown, the government introduced “The Coronavirus Act 2020,” and The Health Protection (Coronavirus Restriction) (England) Regulations 2020. Folera is claiming that the aforementioned new law amounts to a Qualifying Change in Law. The ‘Change in Law’ provisions within the contract between GLL and Folera and back to back with the council mean that the council is required to meet the net impact of closure due to COVID.
- 7.6 This element is therefore progressing in much the same way as the negotiations on the main leisure management contract but with a legal requirement to meet these costs, rather than the optional decision being sought from the Cabinet in this report. The approach in settling this matter would be similar to that used for the main leisure contract using open book accounting with the actual costs evidenced. In respect of the Poplar Baths contract it is estimated that an additional sum of up to £181,000 would need to be provided and Members are recommended that this arrangement be delegated to the Corporate Director Resources to determine in accordance with the Change of Law provisions.

## 8. **EQUALITIES IMPLICATIONS**

- 8.1 If financial support for GLL is approved the existing concessionary memberships, single sex-provision, disability provision, older & young people programmes, as well as targeted provision for under-represented communities will continue to be provided, ensuring that protected characteristics have affordable, accessible leisure centre provision. However, if the financial support to GLL is not approved, this will have a detrimental impact on equalities provision in the short and medium term as subsidised, free and targeted programmes would cease to be delivered.

## **9. OTHER STATUTORY IMPLICATIONS**

- 9.1 Leisure provision is not a statutory function of local authorities. However, it is regarded as a valued service, which helps in improving the health and wellbeing of residents, which is of vital importance considering the high levels of health inequalities in Tower Hamlets.
- 9.2 Well established leisure operators provide economies of scale and can take advantage of funding streams and exemptions that are not available to local authorities e.g. NNDR savings and service contract discounts due to their bulk buying power. These are some of the many reasons that the majority of local authority leisure services are externally procured because they provide best value. Best value is one of the drivers, which informs the recommendation to financial support GLL to ensure its immediate survival, as opposed to the Council assumes the costs and risks associated with operating the leisure service itself.
- 9.3 Local authority leisure management contracts, including Tower Hamlets', take into account statutory obligations and risks to ensure best value and maximal risk transfer to the leisure operator. In the current climate, leisure operators will be reluctant to assume more risk at a time that is already full of risk due to loss of income and reduced leisure centre usage. It is important to note that if GLL goes into administration then the leisure service will become the responsibility of the Council as does all the following risks and implications, which had previously been assumed by the operator.

## **10. COMMENTS OF THE CHIEF FINANCE OFFICER**

- 10.1 Officers have worked in a co-ordinated way across London to explore the options for maintaining a Leisure management Contract with GLL. Given that it is a non-statutory service the option of essentially not agreeing to support GLL with the consequent loss of leisure facilities to the borough is available but has been discounted (Option 1).
- 10.2 The proposed Option 6 retains a significant element of risk that throughout the remainder of the contract circumstances become apparent such that the additional management fee proposed cannot be repaid – those risks are largely from future waves of the virus resulting in another lockdown and closure of leisure facilities or trading demand not meeting the projections set out in the report. In both scenarios the management fee is at risk of not being recovered and the options for re-provisioning leisure facilities would remain with the Council.
- 10.3 A loan is not considered appropriate primarily because of the risks associated with GLL being an on-going concern that would require the writing off of the loan immediately to revenue – essentially rendering it a grant with the associated concerns set out for option 2. A loan would also require the agreement of Full Council following a recommendation from the Audit Committee to change the Council's Treasury Management policy.

10.4 On balance and taking into account the risks, the proposed recommendations set out in this report represent the best option available at this time IF Members are minded to continue to provide leisure services in the borough.

## **11. COMMENTS OF LEGAL SERVICES**

- 11.1 In response to the Covid epidemic Central Government issued PPN/02/20 (Appendix 1) which is guidance to public sector organisations relating to the support of contractors whose contracts have been severely affected by the measures introduced to control the spread of the virus. PPN/02/20 suggests a number of measures that may be undertaken by the Council, to support GLL where a contractor is at risk of bankruptcy and it is in the interests of the supporting organisation to ensure the continuance of the contractor so that the services can be resumed following relaxation of the measures.
- 11.2 In the case of GLL, the effect of the leisure centre closures by Central Government has severely affected GLL's ability to remain solvent as this has completely stopped the revenue collected from the public who would otherwise use the centres. If GLL ceases to exist the Council would have to re-procure leisure services which could take as long as 2 years or incur other significant expenditure to deliver the leisure services. GLL is not the only leisure operator impacted by quarantine and due to the instability of the leisure market it is clear that a re-procurement exercise is unlikely to be successful. Therefore, it is in the interests of the Council to engage in some form of arrangement to stabilise GLL and such action would be within the remit of PPN/02/20.
- 11.3 PPN/02/20 also goes further to say that financial assistance in the circumstances represents Best Value even though there is no service provision provided the action is necessary to safeguard the future provision of the services. Therefore, these activities satisfy the Council's Best Value duty
- 11.4 The Procurement Law applicable to the contract variation is the Public Contracts Regulations 2006 as the contract was originally advertised before the Public Contracts Regulations 2015 came into force. Contract Variations are therefore governed under the rules stated in the precedent case Pressetext.
- 11.5 The nature of the variation is to exchange future reward from sale receipts to a guaranteed receipt of the management fee based upon the anticipated usage rates over the remainder of the contract period. The Council will receive a greater share of the income generated from receipts in exchange for paying the management fee. Therefore, overall GLL should not be placed in a more advantageous position than they would have been by the end of the contract period. However, the change to a management fee basis will provide a period of stability for GLL at the current time.
- 11.6 The contract with Folera for the provision of a building and leisure service at the Poplar Baths site contains a clause by which Folera may claim from the Council in the event that they suffer loss due to a qualifying change in law. The baths

had to be closed as a result of central government introducing legislation to combat the spread of Covid. Therefore, provided that Folera have taken reasonable steps to mitigate the loss resulting from the change in law, it is within the contractual terms for the Council to compensate Folera for that loss.

11.7 The partial reopening of the leisure centres in line with central government allowances may lead to some services being inaccessible to persons with a protected characteristic which on the face of it could be considered discrimination for the purposes of the Equality Act 2010. However, the partial reopening has as its intention the legitimate aim of safeguarding all users of the facilities and the long-term viability of the service as a whole. Therefore, the activities detailed in this report and undertaken in this regard may be considered proportionate for the purposes of the Equality Act 2010.

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## **Linked Reports, Appendices and Background Documents**

### **Linked Report**

- None.

### **Background Report**

### **Appendices**

- Appendix 1: Procurement Policy Note 02/20: Supplier relief due to Covid-19 & Procurement Policy Note 02/20: Model Interim Payment Terms

### **Background Documents – Local Authorities (Executive Arrangements)(Access to Information)(England) Regulations 2012**

“Poplar Baths Refinancing”, Cabinet report 26/02/2020

### **Officer contact details for documents:**

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