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| <b>Cabinet</b>  | <br><b>TOWER HAMLETS</b> |
| 27 January 2021   |   |
| <b>Report of:</b> James Thomas, Corporate Director Children & Culture | <b>Classification:</b><br>Partially Exempt<br>(Appendix 1)  |
| <b>Procurement of the Leisure Management Contract</b>                 |   |

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| <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 Sport, Leisure & Culture                |
| <b>Wards affected</b>                    | All wards  |
| <b>Key Decision?</b>                     | Yes  |
| <b>Forward Plan Notice Published</b>     | 3 December 2020  |
| <b>Reason for Key Decision</b>           | Financial Threshold and Impact on Wards                                      |
| <b>Strategic Plan Priority / Outcome</b> | <b>All Strategic Plan Priorities</b>   |

### Executive Summary

Physical inactivity has been scientifically linked to obesity, cardio-vascular disease and poor mental health. During the pandemic national lockdowns, medical advice has stressed the importance of physical activity to maintain health. The WHO recommends moderate intensity of 75-150 minutes of vigorous physical activity per week or an equivalent combination. The recommended levels for Children and adolescents are 60 minutes per day of moderate to vigorous intensity, aerobic activity to maintain physical health.

Tower Hamlets has high levels of health inequality and public leisure centres, which offer an affordable programme of sport & physical activity, plays a vital role in helping people stay active and improve their physical and mental health, and will play an important role in the recovery of the nation following the coronavirus.

There are two leisure contracts in Tower Hamlets, The Leisure Management Contract (LMC) that oversees the governance and management of the borough's 6 leisure centres, which includes the following centres:

- John Orwell Sports Centre
- Mile End Park Leisure Centre & Stadium
- St. George's Leisure Centre
- Tiller Leisure Centre
- Whitechapel Sports Centre

- York Hall Leisure Centre

and the Poplar Baths contract.

The LMC was awarded to GLL for a 15-year period in 2004, on a full repairing lease, surplus share basis, with some specified exceptions. This contract expired in May 2019 and was extended for a further 3 years ending in April 2022 following Cabinet approval in September 2017.

The initial contract cost was circa £24 million over 15 years, with an annual management fee up to £2.3 million plus indexation being paid annually. However, the renegotiated contract delivered the management fee as a medium-term financial strategy saving as a condition of the contract extension from 2019-2022, with costs being covered by surplus income generated from the contract.

Following the refinancing of the Poplar Baths contract the leisure service provision element was transferred into a direct contract between GLL and the Council and shortened to be co-terminus with the Leisure Management Contract. Therefore there is an opportunity to re-procure both contracts into one seamless contract to cover all the centres in the borough.

This report seeks approval to

1. Extend the Leisure Management Contract and Poplar Baths contract by 2 years to 2024
2. To extend the leisure centre leases
3. Re-procure a new leisure management contract when the existing one ends

### **Recommendations:**

The Cabinet is recommended to:

1. Authorise the Corporate Director Children and Culture to Extend the existing leisure management contract (LMC) and the Poplar Baths leisure services contract by two years each to 2024. This extension will allow the leisure market to stabilise and give GLL additional time to repay the management fee to the Council
2. Authorise the Corporate Director Children and Culture in consultation with the Corporate Director Place to extend the leisure centre leases.
3. Note the financial information regarding the leisure portfolio in Appendix 1.
4. Authorise the Corporate Director Children and Culture to begin preparatory work for the re-procurement of the leisure management

contract, including the Poplar Baths Leisure Services and that a further report be brought to Cabinet setting out the options for the procurement in due course.

5. An Equalities Impact Assessment has not been completed as yet because the procurement planning has not begun at this stage.
6. Authorise the execution of any agreements necessary to give effect to the recommendations.

## **1    REASONS FOR THE DECISIONS**

- 1.1 To comply with contract standing orders, which requires cabinet approval before procurement is commenced. In addition, the re-procurement of the current leisure management contract, which will expire in 2022 is a key decision due to its value and the impact on all wards of the borough.

## **2 ALTERNATIVE OPTIONS**

- 2.1 [Table 1 below illustrates a high-level options appraisal for the leisure management contract. This initial analysis has identified that an external procurement of the leisure contract offers best value to the Council and is the most effective process for re-procuring the leisure contract.

### **OPTIONS APPRAISAL (HIGH LEVEL)**

**Table 1: Leisure Contract Options Appraisal**

| <b>Option</b> | <b>Title</b>                          | <b>Description</b>  | <b>Benefits</b>                                      | <b>Drawbacks</b>   | <b>Recommendation</b> |
|---------------|---------------------------------------|---|--|--|-----------------------|
| 1             | <b>Do Nothing</b>                     | The Council could opt to let the contract expire and close down the Council run public facilities                                   | This would deliver some minor savings to the Council | This would significantly reduce the services available to the local community  |                       |
| 2             | <b>Manage the Facilities in-house</b> | The council could opt to bring the management of the facilities in-house and run the centres without a contracted external operator | Full internal control of the service operations      | The council does not currently retain the management expertise required for running leisure facilities internally so a new management team would need to be employed<br>The existing GLL operational staff would also need to be employed by the council via TUPE arrangements. This option would certainly increase the cost of running the centres for the council due to the Council's inability to take advantage of the management and supply chain economies of scale delivered by contracting to an established leisure provider with a large portfolio.<br>In addition, it would also mean that that risk and liability of |                       |

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|   |  |   |   | centre operations would sit with the council.  |  |
| 3 | <b>Re-procure the leisure management contract including the Sports Development and Outdoor Education</b> | Approach the market to tender for a single combined contract to manage the whole leisure portfolio, with the exception of Poplar Baths, and the Council's Sports Development and Outdoor Education Services | This will allow the council to manage the majority of the portfolio under a single contract, which is the simplest, most efficient, and most effective option. It minimises the workload for the contract management team having one point of contact and maximises the specialist expertise, resource and supply chain efficiencies.<br>By transferring Sports Development & Outdoor Education Services to the leisure operator, the Council can also make MTFS savings via salary and operational costs and provides specialist local sports knowledge within the service | None that can be identified  |  |
| 4 | <b>Cross Borough Partnership / Shared Services</b>   | The combination of services between 2-3 other local authorities to provide financial efficiencies, especially with regards to 'back office functions'   | Possibility for significant cost reductions via economies of scale and by sharing back office functions, in particular.<br>Greater strategic development across borough boundaries<br>This arrangement presents opportunities to explore efficiency savings via reduced   | This option does not have a track record of successful delivery, especially in London Leisure contracts.<br><br>Reduced resourcing across a wider geographical area may lead to loss of a higher level of scrutiny at a local level and potentially reduced level of local resource impacting the quality of service provision |  |
| 5 | <b>Becoming a Mutual / Teckal</b>  | The creation of a separate organisation either  | None that can be identified   | Expensive legal process<br>Council loses control of the "tekal" as it operates as an independent body (as with standard LMC)<br>The teckal may need to grow  |  |

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|  |  |  |  | (procure new contracts) to become sustainable, and the focus on original contract becomes diluted |  |
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### **3 DETAILS OF THE REPORT**

- 3.1 On 20<sup>th</sup> March 2020 the government announced the closure of all leisure centres as part of its strategy to mitigate COVID-19. The closure of leisure facilities had serious financial implications for Greenwich Leisure Limited (GLL), the borough's leisure operator that lost millions of pounds in income, which threatened the viability of their business.
- 3.2 On 29<sup>th</sup> July 2020 Cabinet agreed the safe and viable reopening of four of the borough's leisure centres on a phased basis. These centres were:
  - John Orwell Sports Centre
  - Mile End Park Leisure Centre
  - York Hall Leisure Centre &
  - Poplar Baths Leisure Centre (separate contract)
- 3.3 The four-month closure resulted in GLL losing millions of pounds in income and accumulating a significant financial deficit. To ensure the safe and viable reopening of the borough's leisure centres, the Council provided circa £715k of financial support £593k for the LMC and £121k for Poplar Baths to enable the leisure centres to reopen once the lockdown was lifted. (See the following link to the Safe and Viable Re-opening of Leisure Centres Cabinet Report from 29<sup>th</sup> July 2020 for further background information)
- 3.4 Due to the financial challenges caused by Covid-19, the leisure restart emphasized financial performance of the centres via income generation based on a customer direct debit funded adult health and fitness offer with increased pricing to offset the reduced capacity due to social distancing.
- 3.5 In addition, the Cabinet report delegated authority to the Director of Resources to integrate the Poplar Baths Leisure Centre Contract into the main leisure management contract.
- 3.6 The second national lockdown, which closed leisure centres from 5<sup>th</sup> November to 2<sup>nd</sup> December placed further financial pressures on GLL operating the centres in a financially viable way. GLL has already stated that lockdown 2 has resulted in a projected deficit to March 2021. However, the announcement that the furlough scheme would be extended to March 2021, paying up to 80% of salaries, will reduce the financial pressure on GLL by contributing to staff salaries.
- 3.7 GLL has projected a financial deficit for the leisure centres to March 2021 (See appendix 1 for further commercially sensitive information on the leisure centre financial position). This includes actual figures for August to October but projections from November '20 to March '21. The accounts were based on the following assumptions:
  - Existing customers will return to the centres when the lockdown is lifted
  - Whitechapel Sports Centre will open when the lockdown is lifted
  - St. George's Leisure Centre will remain closed until March '21

- Tiller Leisure Centre potentially reopening from February '21
- 3.8 Government recently announced a £100 million support package for the leisure industry. The application process for this grant has just been finalised with a deadline of 15<sup>th</sup> January 2021. The Tower Hamlets submission has been submitted, led by the Council in partnership with GLL. Any request for financial support to offset the leisure centre deficit must be from the government support grant process in the first instance.
- 3.9 It should be noted however, that the National Leisure Relief Fund (NLRF) is not retrospective and grant applications can only be made for the period 1<sup>st</sup> December 2020 – 31<sup>st</sup> March 2021. Consequently, the full cost of the leisure centre deficit from 1<sup>st</sup> August to 30<sup>th</sup> November will not be met from this source and the method of managing the deficit will need to be determined.
- 3.10 In order to manage this complex procurement, a high-level cross directorate project board will be put in place to oversee the procurement of the contract and decisions regarding the assets.
- 3.11 The leisure market has irrevocably changed. The Tower Hamlets leisure management contract has gone from generating a significant surplus to a sizeable projected deficit in March 2021.
- 3.12 The challenges presented by Covid-19 including national lockdowns, social distancing, reduced leisure centre capacity, reduced facility usage and therefore income generation, has placed a significant financial pressure on leisure operators and local authorities.
- 3.13 Although, the leisure market is a mature one, it has a limited number of leisure operators. The London local authority leisure market is dominated by 3 key operators: GLL, Fusion and SLM, with the remaining centres being operated by smaller organisations such as local trusts (like Newham), local authority partnerships (South East London) and mutuals like Wandsworth. The ongoing uncertainty regarding leisure centre operations during the pandemic has resulted in an extreme adverse financial impact on leisure operators, that are struggling to remain solvent with the reduced income streams associated with Covid-secure centre operations. Consequently, it is highly unlikely that they will want to assume greater risk by bidding for other leisure contracts.
- 3.14 Furthermore, in an unstable market, it is problematic to be specific about the Council's requirements, especially with regard to the transfer of risk, because the operator's ability to deliver these requirements are largely unknown and may be compromised due to the impact of Covid-19. Consequently, a competitive dialogue approach would be the preferred procurement method. The retender process will take approximately two years to complete so will need to begin in 2022. The indicative timetable for the retender (with an extension agreed) of the leisure management contract is outlined below:

| Dates                         | Works Description   |
|-------------------------------|---|
| February 2021 – December 2021 | <p>Feasibility and options appraisals (to run concurrently):</p> <p><b>Market Review.</b> The review will look at the performance of our leisure facilities from re-opening, assess the stability of the market (i.e. how many operators, business potential), what is the operator attitude to risk and what type of contract the council would implement</p> <p><b>Facility Review.</b> Full review of our portfolio including options for facilities impacted by Covid-19</p> <p><b>Management Options appraisal – an overview of options for management contracts.</b></p> <p><b>Procure Legal/Consultant procurement support</b> – specialist consultants to assist with the delivery of the procurement exercise.</p> |
| February 2022 – July 2022     | <b>Compilation of Procurement documentation</b> – legal and specification documentation with assistance from internal and external support.   |
| July 2023 – November 2023     | Procurement process (Competitive Dialogue)  |
| November 2023                 | Contract Award  |
| January 2024 - April 2024     | Contract Mobilisation   |
| May 2024 onwards              | New contract commencement   |

- 3.15 As a result of the change in the market, the original plan to go out to the market in January / February 2021 is no longer feasible. The leisure market is very unstable and a procurement process at this time is unlikely to be successful due to leisure operators being financially compromised and not in a position to engage in a competitive tender that increases their risks. It is for this reason that a contract extension of two years is being proposed to enable optimal market conditions for the Council.
- 3.16 The Covid-19 situation is still fluid, and a greater period of time is necessary to obtain a reliable picture of leisure provision in the borough. As a result, it is recommended that the Council takes additional time to assess the market, to determine customer usage patterns, income generation and overall leisure centre performance instead of going out to tender in an unstable market. To facilitate this a contract extension would be helpful. This additional time would cover the closure periods from lockdowns 1 and 2 (6 months), and the current

national lockdown provide additional time for GLL to repay the £593k management fee, enable the market to stabilise and give sufficient time for the completion of the preparatory work necessary for a successful procurement process.

- 3.17 As a result of the change in the leisure market it is being recommended that the Council approves a contract extension with GLL to 2024. This two-year delay would give the leisure market time to stabilise and provide GLL with the opportunity to increase its operational surplus and pay the Council back the management fee.

#### **4 EQUALITIES IMPLICATIONS**

- 4.1 An integral aspect of any leisure management contract procurement process will be targeted provision at disadvantaged communities and under-represented groups such as older people, women and girls, people with disabilities and younger people. A detailed equalities assessment has not been conducted at this time because the procurement process is still in the planning / collation stage.

#### **5 OTHER STATUTORY IMPLICATIONS**

- 5.1 [This section of the report is used to highlight further specific statutory implications that are either not covered in the main body of the report or are required to be highlighted to ensure decision makers give them proper consideration. Examples of other implications may be:
- Best Value Implications,
  - Consultations,
  - Environmental (including air quality),
  - Risk Management,
  - Crime Reduction,
  - Safeguarding.
  - Data Protection / Privacy Impact Assessment.]
- 5.2 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.
- 5.3 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 extend the existing contract to allow the leisure market to stabilise while providing the best possible option for a successful external procurement process as opposed to the Council assuming the costs and risks associated with operating the leisure service itself.

- 5.4 Local authority leisure management contracts, including Tower Hamlets, consider 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.

**6 COMMENTS OF THE CHIEF FINANCE OFFICER**

Extending the current leisure contracts for a further two years would appear in the current market to offer best value for the council with the exceptional uncertainty in the market and would allow the service to consider future options without any additional revenue costs to the current budget, (excluding any future Covid relates pressure as yet not realised).

**7 COMMENTS OF LEGAL SERVICES**

- 7.1 The Council has the legal power to undertake the activities outlined in this report
- 7.2 The LMC was originally advertised as a tendering opportunity at a time when the Public Contracts Regulations 2006 were in force and therefore the Council must demonstrate compliance with these regulations and the then prevailing case law rather than the current 2015 regulations.
- 7.3 The Council extended the original LMC contract in accordance with the Pressetext case which represented the law on procurement obligations under the 2006 regulations. The nature of the extension was to relieve the obligation of payment of the management fee by the Council to GLL in exchange for a greater share of the surplus generated over an extended period of the contract. The extension period was calculated to leave GLL in a no better no worse situation and was therefore compliant with Pressetext.
- 7.4 However, the global pandemic has seen the leisure centres close which has had a critical impact on income generation. A two-year extension to this contract is intended to allow the market to recover and should see GLL left in a no better no worse position than they would have been in under the terms of the original procurement. Therefore, the extension complies with the rules stated in the Pressetext case and is therefore lawful.
- 7.5 Similarly, the pandemic has significantly impacted the economic viability of the Poplar Baths leisure contract and in accordance with the Pressetext case an extension of two years is allowable as the overall economic position of the contractor will not be significantly greater than that which bidders would have expected at the time of tendering. Also PPN 02/20 allows the Council to make changes to its contracts in order to ensure that contracts remain sustainable in order to ensure that provision under the relevant contract will be possible at the end of the pandemic. PPN 02/20 also details that this activity represents statutory Best Value.

- 7.6 The global pandemic has had a significant and detrimental impact on the leisure sector as a whole. It is clear that if the Council ran a tender exercise to match up with the end of the original contract period no effective competition would be found. Therefore, the Council needs to extend the existing contract in order to allow the market to recover.
- 7.7 Both reasons for extending the contract demonstrate that the Council has no intention of acting anticompetitively when operating the extension and this report details the Procurement exercise that will be undertaken at the end of the extended contract periods.
- 7.8 The new procurement would be a concession agreement and therefore will be run in accordance with the Concession Contracts Regulations 2016 with the winning bidder selected against pre-published evaluation criteria representing a blend of quality and price in order to meet the Council's Best Value duty.
- 7.9 The extension of the Contract is intended to maintain a steady state of the existing service. Therefore, there should be no impact on persons with a protected characteristic for the purposes of the Equality Act 2010
- 7.10 However, any remodelling of the service in the run up to the new procurement will be assessed for equalities related impact and if necessary be subject to an appropriate level of consultation.
- 7.11 Appendix 1 shows financial information relating to GLL and is therefore exempt information. This information could be of advantage to another bidder in the upcoming procurement exercise and therefore the release of this information could prejudice GLL's position in that procurement exercise. This could mean that the Council could face a substantial claim if the information was released. The public interest in maintaining the exemption outweighs the public interest in knowing the information.

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

### **Linked Report**

- Safe and Viable Re-opening of Leisure Centres

### **Appendices**

- Appendix 1: Leisure Centre Finances & Commentary. This information is commercially sensitive and therefore **Exempt**.

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

- None.

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

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