

Item No.	Classification: Open	Date: March 2021	Decision Taker: Strategic Director of Environment and Leisure
Report title:		Gateway 3 – Variation Decision Variation to the Leisure Management Contract	
Ward(s) or groups affected:		All	
From:		Director of Leisure	

RECOMMENDATIONS

1. That the Strategic Director for Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance, Business & Jobs approves the variation of the Leisure Management Services contract with Sports and Leisure Management Ltd. (SLM) for the value of £3.642m for the period of 1 April 2021 until 20 June 2023, subject to key performance indicators being met.
2. That the Strategic Director for Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance, Business & Jobs approves the loss of management fee currently estimated to be £6.9m for the period 1 April 2021 to 20 June 2023 that would have been due to the council under the previous contract arrangement between the council and SLM.
3. That the Strategic Director for Environment and Leisure notes that if a future lockdown prohibits SLM from running all, or the majority, of their services for 28 days or more then the council and SLM will meet to agree what, if any, impact the future lockdown has on income and expenditure and agree an adjustment to the above amount in respect of the lockdown period only, as detailed in paragraph 16.

BACKGROUND INFORMATION

4. On the 11 April 2016 the council entered into a seven year contract commencing services in June 2016 with an option to extend for a period or periods of up to a further seven years with Sport & Leisure Management Limited (SLM) for the management of the council's eight leisure facilities and for the operation of the sports booking service. SLM operate under the name of Everyone Active (EA).
5. Prior to the COVID-19 pandemic, the leisure contract was performing well operationally but was not achieving the income levels anticipated in line with the contract. The council and SLM were in discussion at that time about the best way to address this.
6. On 20 March 2020 the government instructed that all public leisure centres should close the following day for public health reasons in relation to the COVID-19 pandemic.
7. As a result the council agreed a series of financial support packages in order to support the contract ready for reopening the centres after any lockdown. The first financial support package covered the period when the leisure centres were closed from 21 March to 31 July 2020 and covered:

- A payment to make up the shortfall on sums received from government for staff on the furlough scheme, so that staff received 100% of their salary.
 - 100% of the salaries of a skeleton group of non-furloughed staff to maintain the sites and plant equipment.
 - Utilities, maintenance and incidental costs.
 - A waiver of the management fee for the period 21 March to 31 July 2020.
 - The net financial impact of the initial support package was up to £1.627m.
8. The second support package covers the period from the date on which the leisure centres reopened (1 August 2020) up until 31 March 2021 and established:
- A capped sum of up to £2.6 million for the opening of all sites in the leisure management contract. As noted in the September cabinet report this arrangement will expire on 31 March 2021 and, for the avoidance of doubt, the council will be under no obligation to provide further support beyond this date.
 - Any shortfall in income or increases above forecast expenditure will be the liability of SLM and no further monies will be requested from the council during the support period.
 - Continued waiver of the management fee.
9. Officers then took a report to cabinet in October 2020 and gained approval to continue in contract with SLM from 1 April 2021 until the end of the contract in 2023. Cabinet gave approval for the council to enter into negotiations with SLM and agree a contract variation for this period. The aim of this was to enable the council to fully evaluate the options available to it when the current contract ends in June 2023. The options appraisal has been completed and a Gateway 0 report was presented to cabinet on 9 March 2021.
10. This report is seeking approval for a variation of the Leisure Management Services contract with SLM for the period of 1 April 2021 until 20 June 2023 and as delegated to the Strategic Director of Environment and Leisure in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance & Resources by Cabinet in the cabinet report in October 2020. Please note that cabinet member titles and responsibilities have changed since October 2020; the responsibilities under the previous Cabinet Member for Finance & Resources (that are relevant to this paper) are now under the Cabinet Member for Finance, Business & Jobs.

KEY ISSUES FOR CONSIDERATION

Key Aspects of Proposed Variation

11. The variation recommended in this report relates to the financial support arrangement between the council and SLM for the period of 1 April 2021 until 20 June 2023.
12. The council will continue to waive the management fee until 20 June 2023.
13. The council will provide funding to cover SLM's forecasted operating deficit. The forecasted operating deficit costs have been provided by SLM to the council; this details SLM's expenditure and central costs for the relevant year of the support period.

14. SLM will pay the council any 'exceptional revenue' they receive in any month during the support period e.g. revenue not expected by the partners such as grant funding.
15. SLM will pay the council 50% of any reduced deficit. The reduced deficit is equal to the projected deficit – actual deficit + actual profit.
16. Please note that points 13 – 15 do not apply if a future lockdown prohibits SLM from running all, or the majority, of their services for 28 days or more. In this scenario, the council and SLM will meet to agree what, if any, impact the future lockdown has on income and expenditure, and agree an adjustment to the monthly sums payable during the lockdown period, on the basis that the council would fund SLM's operating deficit during that period.
17. The maximum liability of the council to SLM will be £3,642,000 plus VAT (this excludes the waived management fee which shall not count towards the cap).
18. A clause has been added to the agreement, which enables the council to terminate the contract at any time on giving three months' notice without any early termination penalties being paid by either side.

Reasons for Variation

19. The outbreak of the COVID-19 pandemic and the resultant imposition of lockdowns have had a fundamental impact on the operation and financial performance of the council's leisure facilities. As such, SLM are unable to generate pre COVID-19 levels of income from Southwark leisure centres and require financial support to keep facilities open. The government issued guidance which recommended that local authorities should support contractors at risk so they are in a position to resume normal contract delivery once the outbreak is over. In accordance with government advice, and for the reasons detailed below, a variation to the contract is required.
20. Leisure facilities provide vital health, leisure and wellbeing services to Southwark residents and the council is determined to keep them open. The health and wellbeing of Southwark residents has never been more important and the services delivered by leisure providers play a vital role in supporting residents' physical and mental wellbeing during the pandemic. In providing funding to SLM the council can keep all leisure facilities open and retain its free swim and gym offer. This is in line with the council's commitment in the Borough Plan 2020 – 2022 to: 'Invest in our leisure centres and ensure our residents can continue to access high quality leisure services'.
21. Although the COVID-19 pandemic has generated an enormous amount of uncertainty about the future of leisure services, the proposed contract variation will provide certainty to both residents and SLM. Residents can be assured that they will receive a consistent service once leisure facilities are permitted to reopen, and SLM and their staff will be able to continue to operate during this extremely challenging period.
22. The contract variation is required as the alternative options under consideration by the council, as listed below, all require significant lead in times (at least 18 months). Continuing the contract with SLM allows sufficient time for officers to fully explore other options for the management of its leisure services when the contract ends in 2023, whilst ensuring that leisure facilities can remain open.

- Insourcing – direct delivery by the council
- Set up a New Organisation (Leisure Trust)
- Shared Services or Local Authority Controlled Company
- New outsourcing of service

23. It is normal practice for the council to review its position two years prior to the contract ending to ensure they have sufficient time to implement any decision.
24. Officers have reviewed the impact of the COVID-19 pandemic on the leisure facilities and leisure management contract in the context of benchmarking information available for other local authority/leisure operator partnerships in London and beyond. The review confirmed that the council's response to the challenges thrown up by the COVID-19 pandemic in respect of local authority leisure facilities closely mirrors the approach exercised by other local authorities across London and the UK. The review also confirmed that the significant financial challenges faced by the council in relation to this service (that is, forfeiture of an anticipated management fee payment and unexpectedly incurring additional costs reflecting net losses at the leisure facilities) is common to many other local authorities, including most London boroughs.
25. These findings indicate that the council is not acting outside of the norm in terms of supporting SLM financially and in its exploration of alternative management models for the future.

Future Proposals for this Service

26. As previously noted a Gateway 0 strategic options assessment was presented to cabinet on 9 March 2021 which set out the preferred option of an insourced service for delivery of leisure centre management beyond 2023. A more detailed gateway 1 report on the preferred option will be brought to cabinet in autumn 2021. The timing of the Gateway 0 ensures that officers will have sufficient time to implement any decision made at cabinet.

Alternative Options Considered

27. The council has considered the option of bringing the leisure service in house from April 2021. At the time that alternative options were considered, including not providing leisure services (which was considered not to be a feasible option in the interests of residents), officers concluded that, although it might be possible to insource the service by 1 April 2021, this would be an accelerated process involving risk and costs which could be avoided if the process is conducted in a more measured way. This would not be in the interest of residents; it would be preferable that they have a consistency of service during this turbulent period. This also applies to staff members working on the contract.
28. Considering the risks around the timeframe involved, along with the objective of minimum service disruption, the recommended way forward for residents and customers is to remain in contract with SLM.
29. As noted, a comprehensive management options appraisal on the delivery of the leisure service beyond June 2023 has been completed and was presented to cabinet on 9 March 2021. A more detailed gateway 1 report on the preferred option will be brought to cabinet in autumn 2021.

Identified risks for the Variation

30. There is a risk that from 1 April 2021 until 20 June 2023 SLM could walk away from the contract or become insolvent. If this were to happen, the council could either undertake an emergency in-house transfer or outsource the leisure service to another organisation. With assistance from an external leisure consultancy, the council has completed emergency project implementation plans for both scenarios. The council would implement one of the emergency plans quickly in order to keep service disruption to a minimum.
31. There is also a risk that SLM do not continue to provide a high level of service during the remaining contract term. This could result in a poor service for users and could have a negative impact on the council's reputation. Comprehensive monitoring mechanisms are in place and robust performance indicators have been added to the support agreement with a clear escalation process detailed for if these are not met. As noted in the support agreement, the council will make deductions from any monthly payment if key performance indicators have not been met.

Policy implications

32. The management of the leisure centres and delivery of excellent leisure services is directly linked to the council's commitment to a 'Fairer future for all', in particular:

We want to break down barriers that prevent people from thriving in Southwark, so that whatever your background you can live a healthy life.

33. The refreshed Borough Plan 2020 - 22 sets out a series of commitments across eight themes:

- COVID-19 response
- Southwark Together
- A green and inclusive economy
- Climate Emergency
- Tackling health inequalities
- Homes for all
- A great start in life
- Thriving neighbourhoods

34. Leisure centre provision contributes to the delivery of these commitments. In particular, the Borough Plan states, 'Invest in our leisure centres and ensure our residents can continue to access high quality leisure services.'

35. In addition, leisure centre provision is an important part of the Active Southwark strategy which was agreed by the cabinet in April 2019. The themes of the strategy are:

- Active People – understanding the circumstances of individuals to better shape our services and offer
- Active Places – shaping our environment and facilities so that they encourage more people to be more active
- Active Communities – maximising resources and building partnerships with our communities that promote physical activity

Contract management and monitoring

36. The contract is managed and monitored by officers in the Physical Activity Team. Performance against the annual, quarterly and operational performance standards are monitored on an ongoing basis throughout each quarter and are reported to the council in the quarterly monitoring reports. Performance reports are presented in line with Contract Standing Orders (CSOs). Any deductions for under performance in a quarter will be taken from the following month's payment.
37. The targets for user participation at centres shall be agreed by the council and SLM on or before 1 October 2021 and then at six monthly intervals, on the basis of a reasonable assessment of the recovery of the leisure industry, when compared with a baseline of visitor numbers prior to the pandemic.

Community Impact Statement

38. The recommendation in the report will have limited impact on the community as it recommends maintaining the contract with the current contractor.

Social Value considerations

39. The Public Services (Social Value) Act 2012 requires that the council considers, before commencing a procurement process, how wider social, economic and environmental benefits that may improve the well being of the local area can be secured. The social value considerations included in the tender (as outlined in the Gateway 1 report) are set out in the following paragraphs in relation to the tender responses, evaluation and commitments to be delivered under the proposed contract.

Economic considerations

40. There are no specific economic considerations for the variation of this contract.

Social considerations

41. The council is an officially accredited London Living Wage (LLW) Employer and is committed to ensuring that, where appropriate, our contractors and subcontractors pay staff at a minimum rate equivalent to the LLW rate. SLM have confirmed that they meet the LLW requirements. Quality improvements and cost implications linked to the payment of LLW will continue to be monitored as part of each of the contract review processes.
42. The contractor is required to continue to appoint apprentices in accordance with the terms and condition of the contract. The contractor has extensive experience of running apprenticeship and NVQ schemes and currently employs 350 apprentices across their other contracts.
43. The contractor fully supports the council's approach to not utilising zero hour contracts and has a commitment to employing full and part time staff as opposed to casual staff which has been factored into their staffing structure and costs.
44. The contractor has committed to working with the trade unions throughout the life of the contract.

Environmental/Sustainability considerations

45. There are no specific environmental/sustainability considerations from this contract variation; the variation does not alter the current environmental/sustainability commitments the contractor currently must adhere to.

Financial Implications

46. The financial impact of this variation to the current Leisure Management Service contract comprises the support payment and the loss of the management fee that would have been due to the council under the original contract arrangements between the council and SLM. The details of this are in the closed report.

47. The financial impact of these proposals on council budgets has been incorporated into the council's annual budget setting process for 2021/22.

48. The financial position on this arrangement will be monitored and reported as part of the council's revenue budget monitoring process.

Legal Implications

49. Please refer to the concurrent from the Director of Law and Governance.

Consultation

50. There are no consultation requirements for the variation of this Contract.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

Strategic Director of Finance and Governance (EL20/094)

51. This report is requesting that the Strategic Director for Environment and Leisure approves the variation of the Leisure Management Services contract with Sports and Leisure Management Ltd. (SLM) for the value of £3.642m for the period of 1 April 2021 until 20 June 2023, subject to key performance indicators being met.

52. The report is also requesting that the Strategic Director for Environment and Leisure approves the loss of management fee currently estimated to be £6.9m for the period 1 April 2021 to 20 June 2023 that would have been due to the council under the previous contract arrangement between the council and SLM.

53. The Strategic Director of Finance and Governance notes that the financial impact of these proposals has been incorporated into the council's annual budget setting process for 2021/22.

54. It is also noted that the financial position on this arrangement will be monitored and reported as part of the council's revenue budget monitoring process.

55. Staffing and any other costs connected with this report to be contained within existing departmental revenue budgets.

Head of Procurement

56. This report seeks the approval of the Strategic Director for Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance, Business and Jobs (the then Cabinet Member for Finance & Resources) for the variation of the Leisure Management Services contract with Sports and Leisure Management Ltd. (SLM) for the value of £3.642m for the period from 1 April 2021 until 20 June 2023, subject to key performance indicators being met.
57. The report seeks the approval of the Strategic Director for Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance, Business and Jobs, for the loss of management fee currently estimated to be £6.9m for the period 1 April 2021 to 20 June 2023 that would have been due to the council under the previous contract arrangement between the council and SLM.
58. The report also asks that the Strategic Director for Environment and Leisure notes that if a future lockdown prohibits SLM from running all, or the majority, of their services for 28 days or more then the council and SLM will meet to agree what, if any, impact the future lockdown has on income and expenditure and agree an adjustment to the above amount in respect of the lockdown period only, as detailed in paragraph 16.
59. The report confirms in paragraph 41 that the contract pays London Living Wage and will continue to do so for the remaining period of the contract.
60. The plans for the management and monitoring of the contract are set out in paragraphs 36 and 37, whilst risks are presented in paragraphs 30-31.

Director of Law and Governance

61. The report recommends a variation to the contract with SLM to provide ongoing financial support in light of the continuing pandemic. The support package is intended to take effect from 1 April 2021, following the expiry of the current agreement in place between the council and SLM dated 9 October 2020.
62. The decision has been delegated by cabinet, by a decision dated 20 October 2020, to the Strategic Director of Environment and Leisure, in consultation with the Strategic Director of Finance and Governance, the Cabinet Member for Leisure, Environment and Roads and the Cabinet Member for Finance, Business & Jobs.
63. The leisure centres are currently closed pursuant to the Health Protection (Coronavirus, Restrictions) (No 3) and (All Tiers) (England) (Amendment) Regulations 2021 (SI 2021/8) (the "Regulations") which took effect on 6 January 2021. It is not known how long the current 'lockdown' will last, or whether there will be further such orders in future. In any event it is anticipated that social distancing measures will continue to be required which will have a significant ongoing impact on the operation and financial performance of the leisure centres.
64. The Regulations constituted a 'Specific Change in Law' as defined in the contract. This means that the council and SLM are obliged reasonably to negotiate

adjustments to the terms of the contract to take account of the operational and financial impact of the ongoing COVID-19 security legislation and requirements with which SLM is bound to comply. The contract changes described in the report reflect the outcome of these negotiations.

65. The recent High Court case of Westminster City Council v SLM [2021] EWHC 98 (TCC) confirmed that this form of contract is a contract for a services concession. Reg 43(1) of the Concession Contracts Regulations 2016 provides that a concession contract may be varied without a further procurement process where (a) that modification is carried out in accordance with a contractual review process or (c) where the need for modification has been brought about by circumstances which a diligent contracting authority could not have foreseen; the modification does not alter the overall nature of the contract, and any increase in value does not exceed 50% of the value of the original concession contract.
66. This proposal is consistent with the guidance from Government in its public procurement policy notes in response to the pandemic. PPN 04/20 requires that local authorities and suppliers work up individual transition plans to allow service delivery to resume on a sustainable basis.
67. In the exercise of all its functions, the council must have due regard to the public sector equality duty in Section 149 of the Equality Act 2010. Specifically to have due regard to the need to (a) eliminate discrimination, harassment, victimisation or other prohibited conduct, (b) to advance equality of opportunity and (c) foster good relations between persons who share a relevant protected characteristic and those who do not share it. The relevant protected characteristics for this purpose are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation. The 'community impact statement' in the report states that no equalities impacts have been identified in connection with the proposed variation.

PART A – TO BE COMPLETED FOR ALL DELEGATED DECISIONS

Under the powers delegated to me in accordance with the council's Contract Standing Orders, I authorise action in accordance with the recommendation(s) contained in the above report (and as otherwise recorded in Part B below).

Signature 

Date 21 April 2021

Designation Strategic Director of Environment and Leisure

PART B – TO BE COMPLETED BY THE DECISION TAKER FOR:

- 1) All key decisions taken by officers
- 2) Any non-key decisions that are sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available (see 'FOR DELEGATED DECISIONS' section of the guidance).

1. DECISION(S)

As set out in the recommendations of the report.

2. REASONS FOR DECISION

As set out in the report.

3. ALTERNATIVE OPTIONS CONSIDERED AND REJECTED BY THE OFFICER WHEN MAKING THE DECISION

4. ANY CONFLICT OF INTEREST DECLARED BY ANY CABINET MEMBER WHO IS CONSULTED BY THE OFFICER WHICH RELATES TO THIS DECISION *

* Contract standing order 6.6.1 states that for contract Variations with an Estimated Contract Value of £100,000 or more, the lead contract officer (LCO) must consult with the relevant cabinet member before the decision is implemented.

5. NOTE OF ANY DISPENSATION GRANTED BY THE MONITORING OFFICER, IN RESPECT OF ANY DECLARED CONFLICT OF INTEREST

If a decision taker or cabinet member is unsure as to whether there is a conflict of interest they should contact the legal governance team for advice.

6. DECLARATION ON CONFLICTS OF INTERESTS

I declare that I was informed of no conflicts of interests.*

7. CONSIDERATION GIVEN TO WHETHER, AS A NON-KEY DECISION, THIS SHOULD BE FORWARDED TO THE CONSTITUTIONAL TEAM FOR PUBLICATION IN ACCORDANCE WITH REGULATION 13(4)*

The decision taker should consider whether although a non-key decision, the decision is sufficiently important and/or sensitive that a reasonable member of the public would reasonably expect it to be publicly available. Where there is any doubt, having considered the importance and/or sensitivity of a decision, it should be deemed that Regulation 13(4) would apply.

I consider that the decision be made available for publication under Regulation 13(4).*

or

I do not consider that the decision be made available for publication under Regulation 13(4).*

(* - Please delete as appropriate)

* Under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, the council is required to put in place a scheme for recording and publishing some officer executive decisions. This process is sometimes referred to as "Regulation 13(4)".

BACKGROUND PAPERS

Background Papers	Held At	Contact
Leisure Management Contract – Management options from April 2021', October 2020 cabinet paper	Leisure Team, 160 Tooley Street	Tara Quinn 07940788704
Link: http://moderngov.southwark.gov.uk/ieListDocuments.aspx?CId=302&MeetingId=6663		

APPENDICES

No	Title
None	

AUDIT TRAIL

Lead Officer	Rebecca Towers – Director of Leisure
Report Author	Catherine Snell – Research & Development Officer
Version	Final
Dated	26 th March 2021
Key Decision?	Yes

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments Sought	Comments included
Strategic Director of Finance and Governance	Yes	Yes
Head of Procurement	Yes	Yes
Director of Law and Governance	Yes	Yes
Director of Exchequer (for housing contracts only)	Yes/No	Yes/No
Cabinet Member	Yes	Yes
Contract Review Boards		
Departmental Contract Review Board	Yes	Yes
Corporate Contract Review Board	Yes	Yes
Cabinet Member	Yes	Yes
Date final report sent to Constitutional Team		26 March 2021