



**Melton  
Borough  
Council**

## **Record of Cabinet Portfolio Holder Decision**

Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<b>Decision made by</b>	Portfolio Holder for Housing & Communities
<b>Decision Title</b>	Leisure Contract Support & Contract Variation
<b>Key decision?</b>	Yes
<b>Date of decision (same as date form signed)</b>	30 April 2020
<b>Name and job title of Officer requesting the decision</b>	Dawn Garton – Director for Corporate Services
<b>Officer contact details</b>	<a href="mailto:dgarton@melton.gov.uk">dgarton@melton.gov.uk</a>
<b>Decision</b>	<ol style="list-style-type: none"><li>1. Authority to vary the Leisure Agreements (dated 11 October 2011 and 12 April 2018) to enable the Council to deal with the issues arising as a result of the Coronavirus (COVID-19) pandemic and support SLM for an initial period of 3 months (April, May, June). This decision will be subject to a review by the Director of Corporate Services on a monthly basis to ensure it accords to Government advice and remains financial viable;</li><li>2. Authority to enter into negotiations to extend the existing Leisure Agreement dated 11 October 2011 and subsequent contract dated 12 April 2018 for a period of 2 years;</li><li>3. Delegated authority for the Director of Corporate Services to negotiate the terms of any such variation and decide on whether to continue monthly support payments;</li></ol>

	<p>4. Authority for the Legal Services to review, draft and/or complete any associated documentation necessary to effect this decision.</p>
<p><b>Reason for Decision</b></p>	<p>In light of the recent COVID-19 pandemic, various Councils have been approached individually during this uncertain time for assistance in helping the Contractor (SLM) remain viable during the enforced closures of leisure centres (Melton Sports Village &amp; Waterfield Leisure Centre since 21.03.2020).</p> <p>SLM have set out that they are unable to support the enforced closures as they have no ability to generate revenue due to the mandated closures and having to refund membership fees for the period of the closure. Consequently, they were initially seeking support with:</p> <ol style="list-style-type: none"> <li>1. Waiver of the management fee during the period of the closure (£24,931.39);</li> <li>2. Support with meeting the residual staffing costs until such time the leisure centres re-open which included 20% not covered by the Government's Job Retention Scheme (£10,303), Pension Contributions (£923) and Employer NI contributions (£1,636);</li> <li>3. Support with the retention of additional positions which are detailed below in an attempt to maintain and preserve the security of the buildings and equipment they are responsible for (£7,916).</li> </ol> <p>A total of £43,709.39. Melton Borough Council took an in principle decision (subject to this formal approval) on the 23.03.20 to underwrite the costs for a month initially (to be reviewed thereafter). Since that date the Council have been negotiating to reach a mutually acceptable position for all parties.</p> <p>During subsequent negotiations and the contractors inability to repay the support due to</p>

	<p>the short timescales remaining on the contract, the Contractor's request for support was revised to:</p> <ol style="list-style-type: none"> <li>1. Waiver of the management fee during the period of the closure (£24,931.39); and</li> <li>2. Support with the retention of additional positions which are detailed below in an attempt to maintain and preserve the security of the buildings and equipment they are responsible for (£7,916).</li> </ol> <p>A total of £32,847.30.</p> <p>In addition, any surplus capacity from the retained staff are to be put at the council's disposal to support the councils' work in supporting the community. Any furloughed staff that wish to volunteer are also to be directed to the council's community support resource.</p> <p>Whilst repayment is not being mandated by the Council, it is expected that SLM will seek whatever additional government support they can to mitigate the costs to the council and any support paid will be set off against any income made by SLM through membership fees.</p> <p>The Council is now seeking a formal decision on this request to offer support in order to finalise a variation to the Contracts.</p>
<p><b>Alternative options rejected</b></p>	<ol style="list-style-type: none"> <li>1. Not to support the proposals – this is not the preferred option as it would be against the guidance issued by the Government. This could result in the leisure operator having financial difficulties which would not be in the council's best interests and support ongoing leisure provision in the Borough.</li> <li>2. Not to extend the Contract – this would not be the preferred option as the Council's resources are currently diverted to deal with the COVID-19 response and this will impact the commencement of any procurement exercises needed to ensure provision of leisure services</li> </ol>

<p><b>Legal implications</b></p>	<p>This is a key decision. The decision has been taken using a general exception due to ongoing negotiations and the tight timescales involved.</p> <p>The Council has the power to enter into contracts in order discharge its functions (Local Government Act 1972, s111 and the Local Government (contract) Act 1997, s1). The Contract Procedure Rules and Financial Procedure Rules must be complied with.</p> <p>The UK government has recently issued guidance to local authorities and other public bodies who have outsourcing contracts or concession arrangements. In short the government's guidance is that local authorities <u>must</u> act now to ensure suppliers at risk are in a position to resume normal contract delivery once the outbreak is over and, by implication, seek ways of providing support. Councils seeking to apply the guidance would be acting rationally and properly in public law terms.</p> <p>Provided that the variation (to the existing concession arrangement or contract) route is adopted in principle, state aid should not arise – though a claw-back should be included to deal with the provider being better off doing nothing compared to it operating the service. External legal advice is being sought on this point to ensure the Council does not fall foul of any state aid rules.</p>						
<p><b>Financial implications</b></p>	<p>From correspondence with SLM the estimated financial implications per month for the council are as follows:</p> <table data-bbox="719 1509 1374 1749"> <tr> <td>Non-furloughed staff costs for Contracts Manager &amp; Senior Operations Manager</td> <td style="text-align: right;">£7,916.00</td> </tr> <tr> <td>Waiver of management fee:</td> <td style="text-align: right;">£24,931.39</td> </tr> <tr> <td><b>Total Monthly costs</b></td> <td style="text-align: right;"><b>£32,847.39</b></td> </tr> </table> <p>This will be payable from April 2020.</p> <p>Any further costs recovered by the Contractor from the government or through income to be offset will reduce this amount.</p> <p>It is not known whether any of these costs</p>	Non-furloughed staff costs for Contracts Manager & Senior Operations Manager	£7,916.00	Waiver of management fee:	£24,931.39	<b>Total Monthly costs</b>	<b>£32,847.39</b>
Non-furloughed staff costs for Contracts Manager & Senior Operations Manager	£7,916.00						
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<b>Total Monthly costs</b>	<b>£32,847.39</b>						

	will be recovered from the government. There is detailed tracking that is being undertaken on the costs of COVID-19 which this forms part of. Any costs that cannot be recovered will need to be met from the council's reserves.			
<b>Other implications</b>	None			
<b>Background papers considered</b>	Draft Letter			
<b>Declarations/conflict of interest?</b>	None			
<b>List consultees</b>		<b>Name</b>	<b>Outcome</b>	<b>Date</b>
	Ward Councillors			
	Legal	Adele Wylie		28.04.20
	Finance	Dawn Garton		28.04.20
	Human Resources	N/A	N/A	N/A
	Equalities	N/A	N/A	N/A
	Communications			
<b>Confidential Decision?</b>				
<b>Call In Waived by Scrutiny Committee Chair?</b>	Yes			
<b>Has this been discussed by Cabinet Members?</b>	Yes			
<b>Cabinet Portfolio Holder Signature</b>	A. Pearson (approved by email)  30 April 2020			

**ONCE SIGNED, THIS FORM MUST BE HANDED TO DEMOCRATIC SERVICES IMMEDIATELY.**

FOR DEMOCRATIC SERVICES USE ONLY		
Form Received	30 April 2020	
Date published to all Councillors	01 May 2020	

Call In Deadline	N/A	
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