



## **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>	Interim Agreement for Re-Opening of Leisure Facilities
<b>Key decision?</b>	Yes
<b>Date of decision (same as date form signed)</b>	17 July 2020
<b>Name and job title of Officer requesting the decision</b>	Aysha Rahman – People Manager Jake Betts – Leisure & Culture Manager
<b>Officer contact details</b>	<a href="mailto:arahman@melton.gov.uk">arahman@melton.gov.uk</a> <a href="mailto:jbetts@melton.gov.uk">jbetts@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 a further period of 2 months (July &amp; August 2020), allowing SLM to re-open the leisure facilities. This decision will be subject to a review by the Director for Housing and Communities in consultation with the Director for Corporate Services on a monthly basis to ensure it accords to Government advice and remains financially viable;</li><li>2. Authority to enter into the 2 month interim agreement with SLM in the preparation of facility remobilisation commencing on the 25<sup>th</sup> July 2020 and negotiate appropriate financial arrangements for the business recovery period;</li></ol>

	<p>3. Delegated authority for the Director for Housing and Communities in consultation with the Director for Corporate Services to negotiate the terms of any such variation within this 2 month period upon being satisfied it accords to Government advice and remains financially viable for the Council;</p> <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 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). Melton Borough Council took the formal decision to support SLM for an initial 3 month period of April – June 2020 (on a month by month) to;</p> <ol style="list-style-type: none"> <li>1. Waiver of the management fee during the period of the closure (redacted information);</li> <li>2. Support with the retention of staff positions in an attempt to maintain and preserve the security of the buildings and equipment they are responsible for (redacted information).</li> </ol> <p>A total of (redacted information) per month.</p> <p>The Council is now seeking a formal decision having received a further request for financial support from SLM, to remobilise leisure sites, by negotiating financial arrangements via an interim agreement whilst work on a longer term Deed of Variation to the contract is negotiated.</p> <p>With government guidance rapidly changing, the council have suggested that whatever social distancing measures are in place at the time of reopening of leisure facilities on the 25<sup>th</sup> July, SLM &amp; the council will adopt the relevant forecasted position. The financial position could be improved further by lifting of restrictions to social distancing and recovery of further sums through furlough payments, which will ultimately reduce the financial support required.</p> <p>SLM have projected a financial loss of (redacted information) for the period July 2020 to March 2021 based on the <b>2metre</b> social distancing government guidance, which includes payment of (redacted information) management fee to MBC. <b>(Appendix A1-Exempt)</b>.</p>

SLM have projected a financial loss of (redacted information) for the period July 2020 to March 2021 based on a **1metre** social distancing government guidance, which includes payment of (redacted information) management fee to MBC. (**Appendix A2-Exempt**).

SLM are working towards July 25<sup>th</sup> on a phased re-opening of fitness suite and group exercise and aquatic activity on the 1<sup>st</sup> August.

For July & August 2020 with a **2metre** Social Distancing this forecast equates to (redacted information), which includes waiver of the (redacted information) management fee to MBC. For July & August 2020 with a **1metre** Social Distancing this forecast equates to (redacted information), which includes waiver of the (redacted information) management fee to MBC.

SLM would like the Council to waive the management fee & support with additional expenditure (detailed in the financial comments below) during this period.

SLM have provided the Council with staffing structure and costs for July re-opening (**Appendix A3 - exempt**) which is in line with forecasted figures provided. These appear reasonable considering the extent of facilities and activities they propose in the phased reopening.

SLM have requested a decision on July resources, in order to make the necessary arrangements to take key staff off furlough, preparation of the building and staff training for the 25<sup>th</sup> July re-opening.

SLM need to be at a legally and financially confident position in order to proceed with reopening on 25<sup>th</sup> July. Delaying the reopening will also delay financial recovery for the Council.

After further negotiation with SLM, the Council proposes to (*redacted information*) to reflect actual performance for each month. SLM projections for July & August will (*redacted information*) either the 2m or 1m forecasted position, reducing the financial risk to the Council. If the net costs are higher than the cap, SLM will be liable for these costs.

The draft interim legal agreement (**Appendix A4-exempt**) for July and August will give both partners time to go through any necessary legal and governance processes on longer term arrangements via a deed of variation, which will also be better informed by the market position/leisure climate post

	reopening and ongoing government guidance.
<b>Alternative options rejected</b>	<ol style="list-style-type: none"> <li>1. Not to support the proposals – this is not a 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. In addition, the provider could bring a claim against the Council for a payment that compensates for all shortfalls in revenues (subject to them taking reasonable steps to mitigate its losses) due to it being a contractual requirement.</li> <li>2. Keeping the leisure centres closed – this is not a preferred option as delaying the reopening of the leisure sites will delay financial recovery for both parties. SLM will be incurring gradually increasing staffing costs, as the job retention scheme for furloughed staff, tapers away. A prolonged closure could also prompt SLM to consider whether redundancies should be made and, in these circumstances, the Council could be liable for some of the costs.</li> </ol>
<b>Legal implications</b>	<p>This is a key decision and has been taken using a General Exception.</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>should</u> act 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>The Change in Law provisions in both of the Council’s contracts with SLM (clause 43 of the Waterfield Contract and clause 47 of the Sports Village Contract) <u>entitle</u> SLM to claim (where a "Qualifying Change in Law" event has taken place):</p> <ul style="list-style-type: none"> <li>- relief from obligations under the contracts; and</li> </ul>

	<p style="text-align: center;">- adjustments to the Management Fee.</p> <p>The central government response to the Covid-19 pandemic has included bringing into force the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020/350 (the <b>Coronavirus Regulations</b>) which state that indoor fitness studios, gyms, swimming pools, soft play areas or other indoor leisure centres or facilities must be closed. It is anticipated that even once re-opening is permitted (from 25 July 2020), further statutory restrictions will remain on the operation of leisure centres in the United Kingdom.</p> <p>Since such legislation specifically references leisure centres, the Coronavirus Regulations (and any future legally binding restrictions on leisure centre operation) meet the contractual definitions of a Qualifying Change in Law.</p> <p>The letter of variation states that this situation is a Qualifying Change in Law pursuant to the provisions in the contracts and as a result the provider is unable to claim any further sums (other than those approved in this decision) for this period.</p> <p>The value of the total proposed support as a percentage of the overall contract value is a permitted variation for the purposes of the procurement regulations (Regulation 72(1)(c) of the Public Contracts Regulations 2015). This proposal also aligns with the government guidance mentioned above (Procurement Policy Note (PPN) 02/20 and also PPN 04/20 which updated Cabinet Office guidance with a view to lockdown restrictions being lifted).</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>
<b>Financial implications</b>	This information is exempt from publication under paragraph 3 of the Schedule 12A to the Local Government Act 1972
<b>Other implications</b>	Non-Refund for Waterfield Leisure Centre members using the Car Park – This was explored as an option to mitigate losses to the Council for remobilisation of leisure centre sites. This is not a preferred option due to any increase costs of using the leisure site for members, could be a barrier to participation. Secondly prior to COVID pandemic members received a car park refund, so to make this change may

	create reputational damage/negative media attention.			
<b>Background papers considered</b>	The following information is exempt from publication under paragraph 3 of the Schedule 12A to the Local Government Act 1972 :  2m Social Distancing Financial Forecast (Appendix A1) 1m Social Distancing Financial Forecast (Appendix A2) Client Resources for July (Appendix A3) Interim Agreement (Appendix A4)			
<b>Declarations/conflict of interest?</b>	None			
<b>List consultees</b>		<b>Name</b>	<b>Outcome</b>	<b>Date</b>
	Ward Councillors			
	Legal	Kieran Stockley		17.7.20
	Finance	David Scott		17.7.20
	Human Resources	N/A	N/A	N/A
	Equalities	N/A	N/A	N/A
	Communications			
<b>Confidential Decision?</b>	No			
<b>Call In Waived by Scrutiny Committee Chair?</b>	Yes - approval from Scrutiny Chairman 24 June 2020 and 17 July 2020			
<b>Has this been discussed by Cabinet Members?</b>	Yes			
<b>Cabinet Portfolio Holder Signature</b>	A Pearson (signature redacted)..... Signature  17 July 2020.....Date			

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

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Form Received	21/7/20	
Date published to all Councillors	21/7/20	
Call In Deadline	Not applicable	