

TRAFFORD COUNCIL

Report to: Council
Date: 14 July 2020
Report for: Decision
Report of: Executive Member for Finance and Investment

Report Title

Re-designation of Leisure Centre Refurbishment Earmarked Reserve

Summary

The Council budget for 2020/21 includes an Earmarked Reserve to be used to support Trafford Leisure Community Interest Company ("Trafford Leisure") to mitigate the impact of loss of income during the proposed refurbishment of the leisure centres operated by them. The enforced closure of leisure centres due to Covid-19 has led to Trafford Leisure losing the majority of its income and as a company wholly owned by the Council it has asked the Council for financial assistance. The re-designation of this reserve will establish a funding source from which the Council would be able to provide essential financial support to Trafford Leisure, where such support is considered to be reasonable and appropriate, whilst remaining within the agreed budgetary framework for the current financial year.

Recommendation(s)

The Council is recommended to approve the re-designation of the Leisure Centre Refurbishment Earmarked Reserve to the Leisure Reserve, to be used for the purposes set out in the report.

Contact person for access to background papers and further information:

Name:
Extension:

Relationship to Corporate Priorities	Improving health and wellbeing of residents. Targeted Support.
Financial	As set out in the body of the report
Legal Implications:	As set out in the body of the report
Equality/Diversity Implications	Provision of Council leisure facilities supports equality and diversity
Sustainability Implications	Leisure provision supports the health and wellbeing of Trafford residents.

Resource Implications e.g. Staffing / ICT / Assets	A number of Trafford Leisure staff have been furloughed to mitigate short term cost pressures.
Risk Management Implications	None
Health & Wellbeing Implications	Leisure provision supports the health and wellbeing of Trafford residents.
Health and Safety Implications	N/A

Introduction and Background

1. In accordance with Government advice the Council's leisure facilities were closed to the public on 20 March 2020 and remain closed in line with the current restrictions on activities introduced as a result of the Coronavirus Act 2020. This report sets out the financial implications of this closure for Trafford Leisure Community Interest Company, the Council's wholly owned company ("Trafford Leisure") who manage and deliver the Council's leisure services.
2. Prior to 2015 the Council's leisure services were managed and delivered by Trafford Community Leisure Trust ("the Trust"). Over a number of years the Council reduced the subsidy it gave the Trust to support the delivery of leisure facilities in Trafford. The Trust ceased to deliver the leisure services in October 2015 when Trafford Leisure was set up and the operation of all leisure activities previously run and operated by the Trust were transferred to Trafford Leisure.
3. In recent years Trafford Leisure has been able to continue to deliver these services without subsidy, albeit the trading position has become tighter in recent periods contributed to some degree by the competition in the market and in part by the deteriorating condition of the Council's leisure centres; the latter being addressed through a programme of investment in the centres as part of the leisure strategy.
4. In September 2019 an update of the trading position was presented to Executive who agreed to the provision of a short term loan facility of up to £2.598m over the period to 2023/24 to cover liquidity issues during the period of construction of two new centres at Stretford and Altrincham. To date £300k of this provision has been drawn down by Trafford Leisure.

Updated Trading Position

5. Since restrictions to control the spread of the Coronavirus were brought into force in March 2020 requiring the closure of all leisure centres the income received by Trafford Leisure has to a large degree ceased, albeit a low level of income from direct debits was still received. This meant that the trading position deteriorated to the extent that the Trafford Leisure requested financial support from the Council, as sole shareholder, and a loan facility of £840,000 was approved in April 2020, to cover a predicted deficit to June 2020. Whilst Altrincham Golf Course re-opened in June, the financial position has not improved to any significant extent and, as at the end of June, £710,000 had been drawn down against that facility, with the balance to be drawn in July 2020.

6. On the 9th July the Government announced that indoor leisure facilities and swimming pools will be allowed to re-open to the public from the 25th July. All the leisure facilities therefore remain closed, with the exception of Altrincham Golf Course, which means that Trafford Leisure continues to be in deficit, with little or no income available to meet its current outgoings, which largely consist of staffing costs in respect of their staff and fixed overheads. This creates a very real and immediate pressure for Trafford Leisure as, without further financial support being made available to them, they will be unable to pay their staff or to meet other unavoidable and continuing outgoings.
7. The Council will continue to work with Trafford Leisure to mitigate the extent of the projected trading losses and actions to agree the phased re-opening of leisure centres, in line with Government guidance. However, as there will be a requirement to maintain social distancing and an enhanced cleaning regime, the re-opening of facilities will not immediately improve their financial position.
8. Trafford Leisure does not have reserves in place and would not be able to secure finance from a commercial lender. Given that the Council is the sole shareholder in Trafford Leisure and underwrites the financial position, it is the only realistic source of finance. In addition, given the Council's relationship to Trafford Leisure, in the event that the company ceased to trade, the Council would be required to pick up the responsibilities for the staffing and other associated costs in relation to the leisure facilities which are currently operated by them.
9. The Council previously provided a loan to the CIC on the basis that it was short term support urgently required to deal with the immediate effects of the pandemic restrictions. Trafford Leisure has approached the Council seeking support in the form of a grant to cover their projected trading deficit to the end of the financial year. For the reasons set out below, it would not be open to the Council to provide a further facility directly to Trafford Leisure by way of either a loan or a grant to cover the projected deficit for that fixed period.
10. However, it is clear that if Trafford Leisure is unable to make the payments which it is liable for in any given month, the company would be unable to continue and the responsibility for those payments would undoubtedly fall to the Council in those circumstances. The Council therefore needs to make provision for the payments for which it could ultimately become directly responsible. These could be funded through the use of the Leisure Centre Refurbishment Earmarked Reserve, if this reserve was re-designated to enable it to be used to address wider financial pressures associated with leisure provision, as set out in the financial comments below.
11. Given that these responsibilities would ultimately fall to the Council to pick up, there is merit in the Council working with Trafford Leisure to keep the financial position under review on a month by month basis and, where it is clear that there are no other resources available to Trafford Leisure to meet the liabilities in a given month, the Council would be in a position to advance the required funds to the company from the newly designated reserve. This would be a commercial decision on the part of the Council taken at an operational level on a month by month basis and would simply allow the Council to offset the liability which would otherwise fall directly on the Council in the event that Trafford Leisure was not able to make the payments itself.

12. The Council has employed Max Associates to work with Trafford Leisure to review their financial projections to the end of the financial year. Based on this assessment the funds which will be held in the reserve should be sufficient to support Trafford Leisure on the above basis to meet the funding gap through to the end of the financial year. During the remainder of the year an open book analysis of income and expenditure will be undertaken each month with Trafford Leisure to give an overall assurance on the costs incurred. Payments will only be advanced on a month by month basis, and will be subject to approval by the Corporate Director for Finance and Systems.
13. Trafford Leisure will also continue to work with the Council to ensure the leisure centres remain available for use as reception centres if required in a civil emergency, and as office space for Manchester Foundation Trust community service staff at George H Carnall.
14. The Council will be required to carry out a full review of its current leisure strategy in the future to ensure that it remains financially viable, meets our corporate plan objectives and delivers best value for the authority. This review will commence later in the year.

Financial Position

15. In April a loan of £840k was approved by the Chief Executive in consultation with the Leader to support Trafford Leisure for the first three months of 2020/21. To date £710k has been drawn down with the remainder expected to be utilised during July. At that stage the total amount of loans provided to Trafford Leisure will be £1.14m, including the £300k advanced during 2019/20.
16. Within the Council's earmarked reserves a specific reserve exists to cover the potential risks associated with reductions to operational income during future redevelopment works at the leisure centres, as included in the leisure strategy. The value of this reserve is £968k.
17. A re-designation of this reserve to allow its application to support the trading position during the remainder of 2020/21 will mean that the future reserves strategy will need to prioritise the replenishment of the reserve in the event further support is required during future phases of redevelopment. In addition it would be prudent to continue to increase the reserve to cover any potential defaults on the existing loan amounts.

Legal Position

18. Recreational services are discretionary, pursuant to Section 19 of the Local Government (Miscellaneous Provisions) Act 1976, and Section 111(1) of LGA 1972 in conjunction with Section 19 of the 1976 Act. The Council has previously determined that the provision of leisure services is important for the health and well being of its residents and, as indicated above, these services are currently provided through Trafford Leisure.
19. Prior to the Covid emergency Trafford Leisure was already facing a challenging financial position. That position became critical with the closure of all leisure facilities in March 2020 and the Council agreed the loan facility referred to above, essentially to cover monthly trading deficits for April to June 2020.

20. Trafford Leisure have approached the Council for further assistance given the impact the continuing restrictions on their operations are having on their financial circumstances.
21. Given the extent of the deepening financial crisis facing both Trafford Leisure and the Council consideration has been given to the Council's overall financial position and its responsibilities in relation to the company's liabilities more generally in the event that the company ultimately is unable to continue and the leisure services revert to the Council. The advice of Leading Counsel has been obtained in this regard to provide assurance as to the lawfulness of any decision to provide further support to offset the company's ongoing liabilities.
22. As referenced above, the Council would not be able to provide the assistance which was requested by Trafford Leisure, which would have required the Council to provide a facility in the form of a loan or a grant to cover the projected deficit through to the end of the financial year. If it were to do so, such support would almost certainly be considered to be unlawful State Aid. This would be because, although the EU Commission has recognised COVID-19 as an "exceptional occurrence" under TFE Un Article 107 (2) (b), the support now proposed would go beyond the scope of the Temporary Framework adopted by the EU Commission for support to be given to companies to address the immediate consequences of the pandemic emergency
23. There is however a need to ensure that the leisure centres will still continue to be available as reception centres for emergencies and a need to support Trafford Leisure staff and ensure that suppliers can be paid. If those two responsibilities are not supported, as indicated above, the liability for such payments would ultimately fall on the Council. In those circumstances it is reasonable and appropriate for the council to consider making a decision on a commercial basis to fund the payment of those outgoings by Trafford Leisure so as to avoid the liability falling to the Council directly. Payments on that basis would not be caught by the state Aid provisions.
24. Local Authorities have a General Power of Competence (GPOC) under the terms of the Localism Act 2011. GPOC is a power of first resort. It is a power to do anything "that individuals generally may do." Subject to some exceptions, not material for present purposes, GPOC is a power to do something "in any way whatever", to do it "for a commercial purpose or otherwise", and to do it for the benefit of the area, its residents and persons present in its area. GPOC is expressed not to be limited by the existence of any power which to any extent overlaps it. This provision would give the Council the lawful authority to make a decision to fund payments on the basis set out in paragraphs 10 and 11 above.
25. It is proposed that provision for such payments could be made from an existing reserve. However, as that reserve was initially earmarked for a different purpose, Council's approval for the re-designation of that reserve is required to enable such payments to be brought within the Council's budgetary framework.
26. Finally, consideration has been given to whether a decision to provide financial support made on a month by month basis to meet monthly payments as set out above would be lawful in the context of S114 Local Government and Finance Act 1988 ("S114"). Counsel has advised that whilst a decision to provide a facility to Trafford Leisure which would cover their projected deficit for the entire trading period would not be lawful and would give rise to a situation where the duties of the

Council's S151 officer to issue a report under S114 would be likely to be engaged, a decision taken on a month by month basis to offset payments which would otherwise fall directly on the Council would be a lawful exercise of the council's powers, provided the payments are provided for within the budgetary framework.

Other Options

The Council could decide not to re-designate the Leisure Centre Earmarked Reserve. This would mean that there would be no provision within the Council's budgetary framework from which it could lawfully make any payments to offset the liabilities of Trafford Leisure. As a consequence, Trafford Leisure would not be able to meet its' financial liabilities, including payments to staff, and would be unable to continue to provide leisure services. The responsibility for those services and the associated financial liabilities would then fall back on to the Council.

Consultation

No consultation is required.

Reason for Recommendation

If Trafford Leisure is unable to make the payments which it is liable for in any given month, the company would be unable to continue and the responsibility for those payments would undoubtedly fall to the Council in those circumstances. The Council therefore needs to make provision for the payments for which it could ultimately become directly responsible. This would also enable the Council to make payments directly to or on behalf of Trafford leisure on a month by month basis in order to offset any potential liabilities which would otherwise fall to the Council.

Finance Officer Clearance **GB**
Legal Officer Clearance **JLF**

CORPORATE DIRECTOR'S SIGNATURE



To confirm that the Financial and Legal Implications have been considered and the Executive Member has cleared the report.