

YOUR LEISURE

Cabinet: 28 January 2021

Report Author: Madeline Homer (Chief Executive)

Portfolio Holder: Cllr-Rick Everitt - Leader of Council

Status: For Recommendation

Classification: Unrestricted

Key Decision: Yes

Reasons for Key: Expenditure not in budget and exceeding virement rules/Significant effect on communities

Ward: All Wards

Executive Summary:

In late February 2020 the emergence of Covid began to impact trading performance with a substantial decline in income being evident up until the 20 March when all Your Leisure's (YL) facilities and services were required to close at which point all of their customer income ceased.

The financial impact of Covid on YL will be evident from this report. The facilities and services they provide were forced to close for five and the partial reopening resulted in substantially reduced income through meeting social distancing guidelines. This has now been further impacted by both the Tier 4 imposed restrictions and the current national lockdown requiring closure of gyms. Whilst substantial effort and actions were and continue to be taken to mitigate the impact, YL faces significant financial challenges.

In turn the council faces the prospect of facilities and services not reopening in the future and having to seek alternative arrangements to provide the services currently delivered by YL. The current climate will create challenges in finding a replacement operator particularly with the existing loan and pension liabilities. To avoid this situation, this report is proposing the following financial support strategy to maintain YL to the end of 'trading restrictions' as a result of COVID 19. The strategy will be reviewed every 3 months.

Recommendations:

1. To note the report.
2. To give authority to the s151 Officer, in consultation with the Leader to:
 - a. approve a loan to Your Leisure of between £700k-£1.5m, terms to be agreed but with an interest rate equivalent to market rate.
 - b. provide additional funding to the Winter Gardens to ensure that it can reopen and operate from October 2021 to address the cost of replacing and relocating the boilers at an estimated cost of £230,285 plus VAT.
 - c. explore with YL the potential to refinance, through Council prudential borrowing the existing loans in respect of Ramsgate and Hartsdown Leisure Centres.
3. To agree that the Council will extend the Theatre Royal Agreement until 28 April 2022.
4. To give authority to the Director of law and Democracy to negotiate and agree any relevant legal agreements required to reflect these recommendations.
5. To bring back a further report following the review mentioned in 3.1 below.

Corporate Implications

Financial and Value for Money

As the report highlights, the financial impact of Covid-19 on the leisure industry has been profound. The council has been working closely with Your Leisure (YL) over the last nine months to try to ensure leisure facilities can remain open when Government guidance and customer appetite permits.

The council has a direct connection with YL surviving and ultimately thriving - if YL fails and goes into administration or liquidation, there are multiple risks and costs that would fall to the council. If YL failed, the council would want to take over YL's operations to ensure the continuation of leisure services in Thanet, even if, longer term, we may want to find another provider. This would require the council to accept YL staff under TUPE. The council would also inherit YL's pensions deficit and this would, at the very least, result in long term increased costs, as the council's pensions contributions would increase. At worst, KCC (who manage our pensions scheme) could insist on a lump sum payment and this could run into millions of pounds.

YL is responsible for meeting loan repayments in respect of two loans, originally for investment in our two leisure centres. These repayments are around £600,000 per annum. The council guarantees these loans; further, the loan terms stipulate that early redemption attracts penalties that are equal to the value of all principal and interest due over the life of the loans. YL's failure would present a risk that the loans would have to be redeemed, including penalties, and this could amount to £8million.

The report contains some "asks" that include financial support to YL. This support would need to pass the State Aid test and the council will need legal advice on this point. The key support is in the form of either a council guarantee for a YL overdraft with its bank, or a loan from TDC to YL, of up to £1.5m. There are ongoing discussions with YL's bank (Lloyds) as to the best route.

There are also ongoing discussions with Lloyds regarding the punitive loan terms between YL and Lloyds - the loans that are guaranteed by TDC - with a view to attempting to negotiate an improved arrangement.

Regarding a potential council loan to YL, the council would have to be mindful of entering into an agreement that committed us to a long term relationship without the benefit of having considered all potential options for the provision of leisure services in the district.

Legal

The legal implications are set out in the report. All leases/licences etc will be reviewed by the legal team as appropriate to give effect to these recommendations.

Corporate

These are contained in the report.

Equality Act 2010 & Public Sector Equality Duty

Members are reminded of the requirement, under the Public Sector Equality Duty (section 149 of the Equality Act 2010) to have due regard to the aims of the Duty at the time the decision is taken. The aims of the Duty are: (i) eliminate unlawful discrimination, harassment, victimisation and other conduct prohibited by the Act, (ii) advance equality of opportunity between people who share a protected characteristic and people who do not share it, and (iii) foster good relations between people who share a protected characteristic and people who do not share it.

Protected characteristics: age, sex, disability, race, sexual orientation, gender reassignment, religion or belief and pregnancy & maternity. Only aim (i) of the Duty applies to Marriage & civil partnership.

The current YL service provides for all local residents regardless of age, disability, gender, gender identity, race, religion or belief and sexual orientation and offers a programme of

activities which aim to engage local people.

Engaging residents in physical activity and sport has many benefits which impact on local priorities such as improving health and well being.

However, if YL ceased trading this would impact on the local offer to ensure the provision of facilities that offer an accessible and quality, yet cost effective, service which meets the diverse needs of the district's local community.

CORPORATE PRIORITIES

- *Growth*
- *Environment*
- *Communities*

1. Introduction and Background

- 1.1. YL is a Registered Society, more commonly referred to as a Leisure Trust, under the Co-operative and Community Benefit Societies Act 2014 with charitable status. Within the Thanet district the company manages a range of facilities and services under 25-year lease and annual funding agreements with the council. The existing lease covering Northdown House, Margate Winter Gardens, Hartsdown Leisure Centre and Ramsgate Leisure Centre expires in October 2024. YL also provides management services at Margate Theatre Royal (currently agreed until September 2021) and manages beach huts along the coastline. In addition, although not subject to agreements with TDC, YL manages the Bluewave Hydrotherapy Pool & Gym in Margate and delivers a range of partner funded community programmes to improve health and wellbeing. YL have retained responsibility for some leisure facilities in Dover however the proposals contained in this report do not support the Dover activity as there are separate arrangements with Dover District Council to cover those.
- 1.2. TDC remains guarantor on the main loans relating to Hartsdown and Ramsgate Leisure centres, this equates to estimated outstanding liabilities in the region of £8m. Over and above these loans there is also a liability attached to pensions of between £2m and £5m as well as various other liabilities should Your Leisure cease trading.

2. The Current Situation

- 2.1. In late February 2020 the emergence of Covid began to impact trading performance with a substantial decline in income being evident up until the 20 March when all YL's facilities and services were required to close at which point all of their customer income ceased.

- 2.2. Beach huts were made available for public use from the 4 July and the two leisure centres opened on the 4 August. The Winter Gardens, Theatre Royal and Northdown House remain closed. Despite being able to re-open some of the facilities, customer confidence remains low, which is unlikely to change as a result of the further national restrictions being applied for an unknown period. Assuming that when they do reopen, original restrictions apply, capacity will remain significantly restricted as social distancing has been applied to all the core leisure centre services including swimming and gym, with exercise classes being suspended.
- 2.3. The challenge of Covid-19 is creating dire consequences for the leisure, hospitality and entertainment sector. Additional funding has been announced in the form of £100m from the National Leisure Recovery Fund. However, this is to help address losses from the beginning of December 2020 onwards, rather than earlier incurred losses. We have submitted our expression of interest and main application, which is being considered by Sport England at the time of writing.
- 2.4. Looking forward, the full extent of the impact on YL is still unknown, including:
 - a. Changes in customers' behaviour and confidence levels as a result of the continued existence of the pandemic in society.
 - b. Whether and at what point it will be viable to re-open the hospitality and entertainment venues.
 - c. The Government continues to implement measures to limit the spread of the virus and, as a result, there is a risk of further restrictions and local lockdowns.
 - d. The current nationwide lockdown is having a further significant impact on income.
- 2.5. YL has taken a range of actions in an effort to maintain liquidity (cash) in the business:
 - a. Taken and continue to take advantage of the Coronavirus Job Retention Scheme (CJRS).
 - b. Successfully applied for £200,000 in grants from the Coronavirus Retail, Hospitality and Leisure Grant Fund.
 - c. Secured short-term financial support from their bankers with an £800,000 loan via the Coronavirus Business Interruption Loan Scheme (CBILS). YL identified an initial requirement for a £2m loan but the maximum they were able to borrow was limited to £800,000.
 - d. Taken advantage of the deferral of the March 2020 VAT liability which is now due to be paid in March 2021.
 - e. Negotiated an instalment arrangement with HM Revenue & Customs for the payment of PAYE liabilities.
 - f. Negotiated payment holidays on rent, loan and utility liabilities and secured additional and advanced funding from local authority partners.
 - g. Facilities or services that under current circumstances are not considered viable have not re-opened.

- h. Submitted an application for £930,000 grant funding through the Cultural Recovery Fund and joined a Theatre Trust national initiative to ‘Save Our Theatres’ and have established a crowd-funding page for Margate Winter Gardens and the Theatre Royal.
- i. Completed a redundancy consultation with the hospitality and entertainment and leisure centre teams resulting in redundancies in preparation for the ending of the CJRS.

Financial Implications of Covid

- 2.6. Table 1 illustrates the implications for the final two months of trading for the financial year ending March 2020. The variance between 2019 and 2020 indicates a Covid trading deficit impact, for just these two months, of (£226,129).

Table 1

Trading Position February & March 2020 (based on management accounts)

Company Wide Trading Position (P&L)	Surplus/ (Deficit)
For February & March 2019 (two months combined)	(£50,723)
For February & March 2020 (two months combined)	(£276,852)
Variance and Covid Impact for February & March	(£226,129)

- 2.7. Table 2 illustrates the implications for the financial year commencing April 2020 up to November 2020. The variance between 2019 and 2020 indicates a Covid-19 trading deficit impact, for these eight months, of (£1,060,761).

Table 2

Trading Position for April - November 2020 (based on management accounts)

Company Wide Trading Position (P&L)	Surplus/ (Deficit)
For April – November 2019 (eight months combined)	£117,190
For April – November 2020 (eight months combined)	(£943,571)
Variance and Covid-19 Impact April – November 2020	(£1,060,761)

- 2.8. The overall impact for the period February – November 2020 (table 1 & 2 combined) is a non-recoverable trading deficit variance of (£1,286,890) - the implication being that compared to the “normal” period in 2019, 2020 trading was worse by £1,286,890.

2.9. YL maintaining a positive cash position is critical for its viability and continuation of services. YL's opening cash balance was £806,529 as at 12 January 2021. It is important to note this opening balance does include the benefit of many of the delivered actions listed above, as well as income previously collected for shows/performances that are currently re-scheduled and deposits for future hospitality and entertainment events. As a starting point the cashflow projections are based upon future expected cashflow with a month end improvement target factored in for the YL management team to focus upon delivering. In the current situation the degree of accuracy is uncertain and therefore a 10% positive and negative sensitivity is also applied to the month end target balance. Table 3 summarises the cashflow position outcomes.

Table 3

Summary of Cashflow Position Outcomes

	First negative month and amount	Peak negative month and amount
Expected cashflow projection	Mar 2021 (£47,122)	Sep 2021 (£2,306,021)
Target cashflow projection	June 2021 (£300,881)	Sep 2021 (£916,671)
10% positive variance on target cashflow	June 2021 (£270,793)	Sep 2021 (£825,004)
10% negative variance on target cashflow	June 2021 (£330,969)	Sep 2021 (£1,008,339)

2.10. YL's accounts for year ending 31 March 2020 have now been audited and approved by the Board for adoption at the Society AGM on 29 September 2020. The auditors, whilst not qualifying the accounts, have made the following statement under the Going Concern section.

'There are material uncertainties related to the events and conditions caused by Covid-19 that, together with the Society's negative unrestricted reserve position, may cast significant doubt upon the Society's ability to continue as a going concern and therefore whether the Society will realise its assets and settle its liabilities in the ordinary course of business at the amounts recorded in the financial statements'.

Application to Cultural Recovery Fund

2.11. The government launched a £1.57Bn Cultural Recovery Fund designed to support the arts and entertainment industry. The fund was overwhelmed with applications and YL, having applied for £930,000, was successful in securing £332,000. This money has now been accepted based on an initial delivery plan to re-open the Winter Gardens and Theatre Royal in April 2021, subject to the easing of restrictions. The Agreement

requires YL to deliver the plan for 1 year following the final 10% payment which is to be received on 28 April 2022.

- 2.12. A specific and substantial issue relating to the Winter Gardens is the need to replace and relocate the boilers in the Main Hall and Queens Hall. Without this work being completed the building cannot be heated. A quotation received from YL's contractor totals £230,285 plus VAT. YL does not have the available resources to address this matter.

Financial Support Required

- 2.13. The financial impact of Covid on YL is evident. The facilities and services they provide have been forced to close for ten months now, and despite the partial reopening of the leisure centres there is substantially reduced income through meeting social distancing guidelines. Whilst substantial effort and actions were and continue to be taken to mitigate the impact, YL faces an uncertain future and the possibility of insolvency and liquidation.
- 2.14. In turn the council faces the prospect of facilities and services not reopening in the future and having to seek alternative arrangements to provide the services currently delivered by YL. The current climate will create challenges in finding a replacement operator particularly with the existing loan and pension liabilities. To avoid this situation, YL is requesting the following financial support and contractual amendments:
- a. Access for YL to draw upon, as required, either a guaranteed overdraft with Lloyds or a loan from TDC of between £700k-£1.5m, repayable over a 15 year period at an interest rate equivalent to market rate. This requirement is due to the factors described in this report, but can be more easily attributed to the £1.2m shortfall in the amount requested (£2m) in comparison with the £800,000 received through the Coronavirus Business Interruption Loan.
 - b. To ensure the Winter Gardens can reopen and operate from October 2021 onwards, additional funding is provided to address the cost of replacing and relocating the boilers at an estimated cost of £230,285 plus VAT.
 - c. To facilitate YL protecting much of the advanced income for shows/performances and to meet the obligations of accepting the cultural recovery funding.
 - d. To explore with YL the potential to refinance, through Council prudential borrowing the existing loans in respect of Ramsgate and Hartsdown Leisure Centres. Having had early conversations with Lloyds, an additional payment break has been agreed for 3 months in order to allow the time to further review this.

Consideration of removing the Winter Gardens and the Theatre Royal from the YL operations.

- 2.15. We have considered in discussion with YL whether removing the Winter Gardens and Theatre Royal would improve the financial position and enable YL to focus on the core leisure facilities.
- 2.16. The Winter Gardens, in addition to the urgent replacement of boilers and heating system as mentioned above also requires very substantial repairs and improvements to the building, estimates of £3-4 million pounds have been discussed, this is for necessary repairs to maintain the building and improve the facilities, something that can not currently be supported by YL or TDC
- 2.17. TDC have applied for funding under the Margate Towns Fund initiative for the Winter Gardens. If initial approval is obtained in March 2021 then a detailed business case will need to be developed to include match funding and a possible joint venture partners will need to be considered. This would include exploring enhanced uses for this iconic building. This process would take several months.
- 2.18. If the Margate Towns Fund Grants are not available, TDC would have to consider other options for the Winter Gardens which might include the sale of the building, (which would require specific member agreement in accordance with the Council's disposal process) a new commercial letting to a business that would develop the building further, or various forms of joint partnership development, although during the continued uncertainty of the Covid-19 Pandemic 2021 is not an optimal time to be going to the private sector market.
- 2.19. It should also be noted that any change in the operation of the Winter Gardens before April 2022 would impact on the Cultural Recovery Fund Grant.
- 2.20. The Theatre Royal is also subject to a Margate Towns Fund bid. The timescales are also as mentioned above in respect of Winter Gardens, for developing and exploring opportunities, if initial approval is forthcoming.
- 2.21. The Theatre Royal is held by YL on an annual licence but would also mean that in practical terms it would be necessary to agree to any taking back of this property with YL.
- 2.22. In view of the issues outlined above, the recommendation would be to look at the options for Winter Gardens and Theatre Royal over the next twelve to eighteen months, whilst they remain under the YL agreement, subject to the financial and Pandemic issues outlined earlier.

3. Options

- 3.1. To adopt the recommendations as set out in the report and review the strategy in 3 months.
- 3.2. To reject the recommendations and instruct officers to come back with an alternative strategy for YL

Contact Officer: Madeline Homer, Chief Executive

Annex List

None

Background Papers

None

Corporate Consultation

Finance: Tim Willis, Deputy Chief Executive & S 151

Legal: Estelle Culligan, Director Law and Democracy