

Is the final decision on the recommendations in this report to be made at this meeting?

**Yes****Phased Reopening of Council Sports Centres**

<b>Final Decision-Maker</b>	Cabinet
<b>Portfolio Holder(s)</b>	Councillor Jane March – Portfolio Holder for Culture, Leisure and Economic Development
<b>Lead Director</b>	Paul Taylor – Director of Change and Communities
<b>Head of Service</b>	Gary Stevenson – Head of Housing, Health and Environment
<b>Lead Officer/Author</b>	Gary Stevenson – Head of Housing, Health and Environment
<b>Classification</b>	<b>Part Exempt</b> Exempt Appendix A and B by virtue of paragraph A,B and C of Schedule 12A of the Local Government Act 1972 (as amended): Information relating to the financial or business affairs of any particular person including the authority holding that information
<b>Wards affected</b>	All

**This report makes the following recommendations to the final decision-maker:**

1. To note the impact of the various restrictions put in place in response to Covid-19 on the operation of the Council's three sports centres,
2. To waive the £249,634 management fee income due from Fusion Lifestyle in 2020/21
3. To provide Fusion Lifestyle with interim financial support up to a maximum of £420,000 to 31 March 2021 to facilitate the reopening of the Council's three sports centres
4. To delegate to the Head of Housing Health and Environment in consultation with the Director of Change and Communities, the Monitoring Officer, and the Portfolio Holder for Culture, Leisure and Economic Development authority to vary the existing contract and all necessary legal agreements with Fusion Lifestyle to enable the reopening of the Council's three sports centres.
5. To instruct the Head of Housing Health and Environment to prepare a report that reviews the options for the future the delivery and extent of sports centre activities from 1 April 2022.

**Explain how this report relates to the Corporate Priorities in the Five Year Plan:**

- A Well Borough and Our Services – providing financial support will ensure that the Council can continue to deliver important services that contribute to the health and wellbeing of residents, providing opportunities for exercise and participation in leisure and sports activities.

**Timetable**

<b><i>Meeting</i></b>	<b><i>Date</i></b>
Overview and Scrutiny	1 September 2020
Cabinet	10 September 2020

Tunbridge Wells Committee Report, version: March 2019

# Phased Reopening of Council Sports Centres

## 1. PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1 This report considers the provision of interim financial support to Fusion Lifestyle to the end of March 2021 to enable the Council's three sports centres to reopen quickly in line with Covid secure restrictions.
  - 1.2 Consideration of the longer term service delivery options for the next contract period from March 2022 will take place in the coming months and be the subject of a further Cabinet report.
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## 2. INTRODUCTION AND BACKGROUND

- 2.1 The Council's three sports centres at Putlands Paddock Wood, The Weald at Cranbrook and the Tunbridge Wells Sports Centre are operated by Fusion Lifestyle under a facilities management contract until 31 March 2022.
- 2.2 Prior to the award of the contract to Fusion in 2006, the Council subsidised the provision of this important but discretionary area of service provision. Fusion's proposition to invest in the centres and services plus their experience in the gym and leisure market created a new annual management fee source of income for the Council. This year's management fee is £249,634
- 2.3 In 2013 the Council considered a proposal to exercise an extension to the contract accompanied by an investment in the facilities at the Tunbridge Wells Sports Centre and an increase in the management fee income. Although not part of the original proposal, the Council approved a loan to Fusion to fund the works, repayable over the period of the extension. As at 31 March 2020, the outstanding loan balance was £681,063.
- 2.4 In response to COVID-19 pandemic emergency legislation was introduced that required sectors of the economy to close their premises. This included the closure of sports centres from the end of business on 20 March 2020. The Council's sports centres closed and arrangements were put in place with Fusion to carry out essential maintenance and operational tasks to 'moth ball' the facilities for the duration closure period.
- 2.5 The closure has had a significant economic impact within the public and private leisure sector in the UK. The extended period of enforced closure has resulted in revenue lines collapsing and, while the industry has placed staff on furlough to reduce staffing costs, many of the fixed costs to maintain facilities have remained. This has led to most leisure providers and trusts requesting additional financial support to reopen these important community facilities.
- 2.6 The pandemic is also projected to have a longer term impact on the industry due to the requirements necessary to ensure facilities are made COVID-19

secure and because of demand issues arising from site users having confidence in returning to use them. This is likely to lead to a period of uncertainty and rationalisation within the industry.

- 2.7 Various easements to the closure legislation have been made over recent weeks, including the reopening of indoor swimming pools and gyms from 25 July, subject to compliance with the appropriate guidance to be 'Covid secure' to protect staff and customers using the facilities.
- 2.8 At the time of writing this report, the Council's three sports centres remain closed, a decision made by Fusion due to the financial implications of reopening in compliance with the Covid secure guidance.
- 2.9 A proposal to reopen all three centres on a reduced phased basis has been put forward by Fusion. The proposal seeks financial support from the Council of up to £355,000 with the potential for up to a further £65,000 to underwrite 5% of the projected income for the period August 2020 to March 2021.
- 2.10 There is an ongoing dialogue with senior Fusion management about the detail of the package, recognising the financial impact of the Covid secure guidance on the centres' capacity and the predicted change in customer participation levels.
- 2.11 Details of Fusion's projected income and expenditure for this period are set out in Appendix A. The figures are in the process of being revised, with the support requested expected to reduce, to reflect the time that has elapsed and the intention that the reopening is now planned to take place in at the beginning September prior the Cabinet considering this report.
- 2.12 Fusion is confident about the accuracy of the forecast expenditure. It has already sought to mitigate costs through the renegotiation of key supply contracts and a reduction of between 40% and 50% of payroll costs relative to pre-crisis levels, including a significant reduction in the head office overhead. The projections contain no allowance for profit during this interim period.
- 2.13 The projected income levels are based on pre-Covid actuals adjusted to reflect local market conditions and the revenue growth factors published by UKActive in the Covid-19 Impact Report "the Fitness & Leisure Sector's Path to Recovery". This industry body forecast is based on multiple data sources and provides prior year growth factors for health & fitness, group exercise and swimming. In summary the UKActive analysis envisages the overall sector trading at 30% of the normal levels during July with this improving to 60% by March 2021.
- 2.14 Fusion is less confident about the projected income figures and much will depend on the customers' desire and confidence to return. If the projections fall below expectations, Fusion will be responsible for up to 95% of the shortfall. However, it has asked the Council to underwrite the remaining 5%, a figure of to £65,450. If the financial performance exceeds the projections the Council has proposed the sharing of any surplus between the two parties.

- 2.15 Remobilisation of the centres will take 10 to 14 days. To avoid further delays, some elements of the work and activities needed to remobilise are in progress at the time of writing this report. As part of the dialogue with Fusion, a draft Letter of Intent has been produced which, in return for commitments from Fusion including revisions to key performance indicators around performance and customer satisfaction, offers that the Council will underwrite up to £20,000 of any abortive staff costs associated with remobilisation should the overall support package not be approved.
- 2.16 The package of support also seeks the waiver of the management fee income for 2020/21 as part of the proposed reopening plans. Approximately 70% of the management fee income should be recoverable via the Government's scheme to assist local authorities with lost income however full details of this scheme are to be announced.
- 2.17 To support their business plan, Fusion has submitted an application for the Coronavirus Large Business Interruption Loan Scheme (CLBILS). This application has been approved on the basis that Fusion's remobilisation plans are approved by the councils for which they deliver contracts. The CLBILS funding will cover the costs of the restart, including staff restructure, site configuration, and IT systems which will enable Fusion to operate more efficiently with reduced staff levels.
- 2.18 Fusion has outstanding invoices to the value of circa £257,000 from before the Covid closure, including management fees and loan repayments. As a condition of the package of support, these invoices will be paid in March 2021. The CLBILS funding will also be used to pay Fusion's pre Covid debts to the Council and the outstanding loan repayments from 2020/21 in March 2021.
- 2.19 If financial support is agreed by the Council, Fusion's actual financial performance would be reviewed monthly on a fully open book basis. This will require Fusion management accounts to be submitted setting out a detailed breakdown of actual costs incurred, and income generated, for each site. These would be compared to the baseline projections in Appendix A and any variations would be challenged and fully understood before the monthly support payment is made.
- 2.20 A review of Fusion financial position has been carried out by Local Partnerships on behalf of a number of Local Authorities who have contracts with Fusion together with a credit check from Dun & Bradstreet.
- 2.21 The Local Partnership's report is at Exempt Appendix B. The confidential details of the report can be discussed in exempt session, but it highlights that Fusion acted quickly to deal with the impact of COVID-19. They have worked with their client councils to quickly mothball facilities and have taken action to reduce costs. In particular they have successfully utilised the Job Retention Scheme to minimise current staff costs. During the closure Fusion are in a steady state financial position and generating a small surplus. Some councils have provided direct financial support during the closure period. No such direct

support has been provided this Council however, the recovery action for the outstanding debt was held in abeyance.

- 2.22 The contract with Fusion ends on 31 March 2022. Re-commissioning work was in hand prior to the Covid restrictions coming in to force to review the current services and develop options for consideration by councillors towards the end of 2020 with a procurement process following in 2021.
- 2.23 This work will continue, taking account of the current market conditions and projections for the future, which will impact on the financial viability of the sports offer. It is proposed the work will incorporate a review of the service delivery options.
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### **3. AVAILABLE OPTIONS**

- 3.1 Provide financial assistance requested to enable all three sports centres to reopen with a full range of activities on offer.
- 3.2 Consider the option of reopening some activities at Tunbridge Wells Sports Centre with no financial support.
- 3.3 Reject the request for financial assistance and continue negotiations with Fusion to open all three centres
- 3.4 Reject the request for financial assistance and seek a contractual remedy to the position.
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### **4. PREFERRED OPTION AND REASONS FOR RECOMMENDATIONS**

- 4.1 The preferred option is to provide the financial support requested to 31 March 2021, up to a maximum of £420,000. This option will lead to the reopening of the sports centres in good time with all activities being available to residents, although subject to the government guidelines.
- 4.2 It will ensure that the facilities and equipment are operating and maintained, avoiding the need for moth balling maintenance and associated costs.
- 4.3 Reopening in September will reduce the potential loss of custom to other types of fitness offers and nearby sports centres, helping to protect the viability of the Council's sports offer which will be important in both the short and long term, whoever the future provider is.
- 4.4 If the Council did not provide the requested subsidy for each site that it wishes to re-open Fusion are likely to be in a position to claim that the current contract is frustrated. In that case responsibility for the maintenance of the sites would revert to the Council. It is considered unviable for the Council to operate the sports centres directly itself in the short-medium term, due to a lack of available resource/expertise within the Council. This would result the sports centres remaining closed and the Council being responsible for all the costs associated

with maintaining the plant, equipment and buildings until alternative arrangements could be put in place.

- 4.5 Providing the financial support and continuing with the contractual relationship reduces the likelihood of formal debt recovery action being required.

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## 5. CONSULTATION RESULTS AND PREVIOUS COMMITTEE FEEDBACK

- 5.1 No external consultation has been undertaken. The issue has been discussed at Group Leaders' meetings.

### RECOMMENDATION FROM

- 5.2 The [insert committee] were consulted on this decision on [insert date] and agreed the following recommendations:

[Insert text from the Committee resolution]

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## 6. NEXT STEPS: COMMUNICATION AND IMPLEMENTATION OF THE DECISION

- 6.1 The contract variation agreement will be put in place together with arrangements to measure progress.
- 6.2 The reopening of the three sports centres will be communicated through usual channels in conjunction with Fusion's marketing campaign.

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## 7. CROSS-CUTTING ISSUES AND IMPLICATIONS

Issue	Implications	Sign-off
<b>Legal</b> including Human Rights Act	The recommendation is In line with Government guidelines - PPN 02/20 Supplier Relief (and PPN 01/20 Responding to Covid 19 (Reg 72)). This is an interim measure. Payments will be reviewed on a monthly basis (open book accounting) and paid in arrears. Detailed records have been and will be kept by the Council. Elsewhere on the agenda is a report that recommends that Cabinet make available £6,658,000 of reserves to close the budget deficit associated with the impact Covid 19	Lucinda MacKenzie-Ingle Team Leader - Contracts and Commissioning 21 August 2020

	<p>assistance.</p> <p>A further report will be put forward regarding the long term future of the sites which will review all options for the service</p>	
<b>Finance and other resources</b>	<p>The in-year budget variance required to open the sports centres will need to be met from reserves. The Revenue Management report elsewhere on the agenda recommends that £6.658 million of reserves be made available to manage the financial impact of the Covid-19 pandemic.</p>	<p>Lee Colyer Director of Finance, Policy and Development (s151 Officer) 21 August 2020</p>
<b>Risk Management</b>	<p>There are risks associated with providing support to Fusion Lifestyle. Due diligence has been undertaken the Monitoring Officer and Section 151 Officer are comfortable with the current legal and financial position of the company within the context of the leisure sector as a whole and the need to balance risk with the delivery of service and protection of assets.</p> <p>The Dun &amp; Bradstreet The credit risk for Fusion as at April 2020 shows the overall business risk is low to moderate.</p> <p>The Corporate Insolvency and Governance Act 2020 provides temporary relief until 30 September 2020 from being subject to a winding up petition and from wrongful trading provisions where a business can demonstrate its difficulties arise from trading conditions arising from the COVID-19 pandemic.</p> <p>Performance and pensions liability bonds are in place and renewal will be a condition of the provision of support. The financial support would be paid monthly in arrears and is capped. This will be incorporated in to the contract variation.</p>	<p>Gary Stevenson Head of Housing Health and Environment 24 August 2020</p>
<b>Staffing establishment</b>	<p>There no staffing implications arising from the recommendations</p>	
<b>Data Protection</b>	<p>The decision to provide financial support to reopening of the sports centres does the proposed project or decision not have any impact on the privacy of, or use of personal data. Fusion will need to put in place an</p>	



	appropriate contact tracing system for non members under the NHS Trace and Test requirement.	<p>Gary Stevenson Head of Housing, Health and Environment</p> <p>20 August 2020</p>
<b>Environment and Sustainability</b>	No relevant issues	
<b>Community Safety</b>	No relevant issues	
<b>Health and Safety</b>	The sports centres will need to be Covid secure, complying with the Government's workplace guidance. Revised Risk Assessments and Method Statements are being prepared by Fusion and will be assessment by Council staff.	
<b>Health and Wellbeing</b>	The proposals to reopen the three sports centres will provide opportunities for residents to undertake more activities to	
<b>Equalities</b>	The decisions recommended through this paper have a remote or low relevance to the substance of the Equality Act. There is no apparent equality impact on end users from the plans to reopen the sports centres in line with the Government's Covid secure workplace guidance at this stage. This will continue to be reviewed.	

## 8. REPORT APPENDICES

- Appendix A: Fusion Lifestyle – Financial Projections
- Exempt Appendix A: Confidentiality Undertaking for Exempt Appendix B
- Exempt Appendix B: Fusion Customer Group Headline Review of Fusion Financial Position by Local Partnerships

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## 9. BACKGROUND PAPERS

- [Title or description]: [hyperlink](#)