

Report To:	EXECUTIVE CABINET
Date:	2 November 2020
Executive Member/Reporting Officer:	Councillor Allison Gwynne, Executive Member (Neighbourhoods, Community Safety and Environment) Debbie Watson, Assistant Director of Population Health Tom Wilkinson, Assistant Director of Finance
Subject:	THE COUNCIL'S SPORT AND LEISURE FACILITIES – FINANCIAL SUSTAINABILITY DURING THE COVID-19 (CORONAVIRUS) PANDEMIC
Report Summary:	<p>Active Tameside, alongside the rest of the Leisure industry and much of the economy was put into lockdown on 23 March 2020 due to the Covid 19 Pandemic. Active Tameside have throughout taken proactive action to minimise the financial distress it was under by taking advantage of the various government initiatives such as receiving business grants, staff furlough scheme and VAT payment holidays.</p> <p>The Council has also supported Active Tameside, in line with Government guidance through the Procurement Policy Notes (02 to 04) which have allowed the Council to advance contracted sums to support the cashflow of Active Tameside. These actions have been reported to and approved by Executive Cabinet throughout the course of the year.</p> <p>Phase One of the Active Tameside post-lockdown reopening plans commenced on 27 July 2020. This report provides an update to Executive Cabinet on the current trading position of Active Tameside and a number of options around the next steps to ensure the survival of the Council's leisure offer through the pandemic.</p>
Recommendations:	<p>That Executive Cabinet be recommended to:</p> <ul style="list-style-type: none"> (i) Agree that the current phased opening as described in section 5.5 remains in place until 31 March 2021, subject to any further restrictions being put in place by central government. (ii) Approve an amount of £1.8m to be paid via a loan agreement to be paid back over the lifetime of the contract to allow Active Tameside to remain solvent during 2020/2021. (iii) Support the completion of a Sport and Leisure review with savings options presented to Cabinet in November, public consultation in December, and proposals presented to Cabinet in January 2021 for with proposed management fee for 21/22.
Links to Community Strategy:	Healthy Tameside
Policy Implications:	Local authorities have a central role to play when it comes to the provision of community sport and recreation facilities and are responsible for the health outcomes for their populations –

specified in the as specified in the Public Health Outcomes Framework.

As part of the health reforms brought in by the Health and Social Care Act 2012, local authorities have a duty to take such steps as they consider appropriate for improving the health of the people in their area. The steps listed in legislation include:

- Providing information and advice
- Providing services or facilities designed to promote healthy living
- Providing services or facilities for the prevention, diagnosis or treatment of illness
- Providing assistance to help individuals to minimise any risks to health arising from their accommodation or environment
- Making any other services or facilities available

Financial Implications:

(Authorised by the Section 151 Officer)

In order to reduce the financial impact of the temporary closure Active Tameside has taken up the offer of financial support from central government and furloughed all staff not required to maintain/sustain the company during the period of facility closure. In addition, Active Tameside has business resilience insurance and they are awaiting a ruling from the high Court as to whether the insurance covers the impact of a pandemic. Whilst it is uncertain as to whether this claim will be successful, this could be used to fund the remaining costs that have been incurred over and above direct government financial support. The Council continues to support Active Tameside's cash-flow position through this difficult period and paid the total value of the 2020/21 management fee of £1.077 million on 1 April 2020.

In addition the repayment of the 2019/20 prudential borrowing sum of £0.788 million has been deferred until 2021/22 at the earliest. It is envisaged that the outstanding historical prudential borrowing debt balance (which excludes new borrowing relating to the recently opened Active Denton) that is due for repayment to the Council by the end of the 2023/24 lease term (including the 2019/20 and 2020/21 sums) will be re-profiled. The outstanding level of prudential borrowing owed to the Council as at 31 March 2020 is £3.8m, and was due to be all repaid by the end of the contract concession in March 2024. The borrowing all relates to previous years capital investment in the facilities operated by Active Tameside. In reality the Council currently pays Active Tameside an annual management fee, of which over 70% is returned to the Council to repay the borrowing.

In addition to the support provided at the start of the pandemic, Executive Cabinet has been updated monthly and advanced all possible sums for contracted works to the end of March 2021. This cash funding will run out by early November, so further additional budgetary support will be required in order to keep them solvent as an organisation and prevent the buildings and associated services from being returned to the Council.

Active Tameside have had a constructive approach and have provided full open book accounting throughout the pandemic. Based on current trading since the lifting of lockdown, it is estimated that Active Tameside will require £1.8m of additional cashflow support to remain viable and continuing offering services

to Tameside residents.

Active Tameside have worked with the Council in trying to minimise running costs, whilst maximising the services provided. This has resulted in some facilities remaining closed to the public.

Appendix 1 provides an estimate of the cashflows that Active Tameside are estimating that they require. It is proposed that cash is advanced on a monthly basis following review of the trading and operations. If it is expected that the cash requirement will be greater than the £1.8m outlined a further update to Executive Cabinet will be brought forward at the earliest possible opportunity. The first drawn request for November as set out in Appendix 1 is for £310k.

The Council will work with Active Tameside to agree how this cashflow support will be recovered when agreeing the future management fee and scope of future service provision.

**Legal Implications:
(Authorised by the Borough
Solicitor)**

Members will be aware of the short term financial assistance which has already been provided to Active Tameside in accordance with the covid response procurement exemptions.

This report is seeking to provide further financial assistance via a loan with the benefit of the Council's prudential borrowing rate.

This further assistance of this kind may not amount to State Aid if it can be established that any other market operator would act in the same way i.e. other organisations in the same position as the council effectively acting as the commissioner and also in a quasi-parent guarantee position would act in the same way. This is known as the Market Economy Operator Principle.

Therefore Members need to be content from the financial analysis in this report represents value for money for the council and is a benefit to residents of Tameside and that it is a sound economic decision which would be made by other economic operators in the same circumstances.

Members also need to consider that without the provision of this further assistance this report concludes that it would be likely that Active Tameside would not be able to continue to operate which would deprive the Tameside residents of their leisure facilities.

It is advisable that the loan should only be offered on an open book basis to ensure transparency and that the arrangement should be formalised by a variation to the existing contract.

In relation to the review it is critical that this is undertaken expediently and as comprehensively as possible and that it is aligned with the asset management review. It is important that this is a key requirement of any rescue package and should be stated as a requirement of the financial support.

Risk Management:

Active Tameside have risk management and business continuity plans in place. Any additional risks identified as a result of the review will be noted and sets taken to mitigate these.

Access to Information:

Appendices 1 & 2 to the report are exempt from publication as they contain exempt information relating to paragraph 3 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). On balance, under paragraph 10 of Part 2 of Schedule

12A, it would not be in the public interest to disclose this information to the public because disclosure would, or would likely to, prejudice the commercial interests of the Council and/or 3rd parties, which, in turn, could impact upon the interest of the local taxpayer.

Background Papers:

For background papers relating to this report can be inspected by contacting Tom Wilkinson, Assistant Director of Finance tom.wilkinson@tameside.gov.uk, or Debbie Watson, Assistant Director of Population Health on 0161 342 3358, or at debbie.watson@tameside.gov.uk

1. BACKGROUND

- 1.1 Active Tameside was established as a Leisure Trust in 1999 and since then the Council has had a contractual relationship for them to provide a comprehensive leisure offer from the Council owned premises which are leased at a peppercorn rent to the Trust. The contractual arrangements have been accompanied with an annual management fee to Active Tameside to allow them to provide the leisure offer required by the Council.
- 1.2 The management fee is reviewed periodically with the management of the Trust. The current management fee arrangements were agreed to run for a 3 year period from 2018/19, 2019/20 and 2020/21 and followed an in depth review of the Council's leisure offer by Max Associates to test whether it was fit for purpose in the market at that time. Whilst the Trust was facing some financial difficulties at that time, a new management team was brought in and has driven significant improvements to the operation which saw it start to generate surpluses for the first time in a number of years.
- 1.3 As part of this process it was agreed that the fee would be reviewed again in 2020 in advance of the final three years of the Council's contract with the Trust which expires at the end of the 2023/24 financial year.
- 1.4 The rationale for the timing of this review was to allow for the new management team to deliver against their business plan, and allow a period of trading of the new flagship Denton Wellness Centre.
- 1.5 The COVID 19 pandemic has not impacted on the timing of this review of the management fee, but it has changed the context of the operating environment which has to be considered as part of any future management fee arrangements and how the Council's leisure services recover from the pandemic.
- 1.6 As part of the pandemic response to date this report also summarises the cashflow support that the Council has provided during 2020/21 by way of a number of advanced payments to Active Tameside for services commissioned and the management fee. The Council has also agreed to the deferral of the repayment of long term borrowing obligations from Active Tameside.
- 1.7 At the August Executive Cabinet meeting, it was agreed to bring a further report outlining the future options for Active Tameside to ensure the long term sustainability of the Council's leisure offer.

2. FINANCIAL PERFORMANCE OF ACTIVE TAMESIDE AND TRADING UPDATE

- 2.1 Since the review of the Council's Leisure arrangements by Max Associated in 2018, the Trusts financial performance had improved significantly. The management fee has reduced over that time from £1.498m to £1.077m with the Trust forecasting a surplus of £300k in 2019/20. Closure of all facilities in the last 2 weeks of March resulted reduced this surplus to £127k, such was the impact of the full closure on income.
- 2.2 The annual management fee is also partly used to repay long term borrowing to the Council for capital investments in the estate made in previous years. These borrowing repayments amount to £0.788m per annum and are repaying capital expenditure on the fabric of the Council owned buildings that will revert to the Council at the end of the lease in March 2024. The net management fee was therefore only £289k in 2020/21 and with the projection of a £300k surplus, the Trust would have been in a position to accept a further management fee reduction as part of the next round of management fee discussions.

- 2.3 The business was budgeting to turnover £11.6m in 2020/21. The closure of all facilities to the general public on 20 March 2020 until the reopening of some centres in July has resulted in a loss of almost £1m a month in lost trading income. By taking advantage of the government business grants, staff furlough scheme and VAT holidays, as well as other cost saving measures running costs have been reduced by as much as practically possible.
- 2.4 Active Tameside also have business insurance and currently are awaiting a court ruling as to whether the policy wording is sufficient to allow a claim for the business interruption caused by Covid. The ruling and eventual insurance pay out if successful is unlikely to be received until March 2021.
- 2.5 Throughout the closure period Active Tameside been able to continue to provide the commissioned services to vulnerable groups throughout the pandemic and have been paid for these by the Council accordingly.
- 2.6 The Council has also advanced its management fee (as usual), allowed the deferral of the prudential borrowing repayment and advanced funds for the provision of commissioned services for the rest of the year.
- 2.7 Despite these measures and the reopening of some services, Active Tameside will run out of cash mid November 2020 and become technically insolvent. The situation has been made worse as leisure providers are exempt from most Covid-19 emergency support funding. Without further support from central government, the Council, or an insurance payout this will ultimately result in Active Tameside ceasing to be able to trade and handing back the assets to the Council for it to run. The LGA have been
- 2.8 The Council has therefore been reporting a potential call on its budgets for the year in terms of supporting Active Tameside of £3.5m (including prudential borrowing) as part of its monthly monitoring reports to Executive Cabinet.
- 2.9 Since reopening to the general public, albeit with a new covid secure operating model, the centres have continued to run at a loss, largely due to restrictions in the number of users that can be safely accommodated at the facilities and loss of income due to reduced capacity and cancellation of direct debits. In addition significant additional expenditure has been incurred on PPE, cleaning and signage to comply with legislation to be able to open safely and give the customers the comfort and confidence to return.
- 2.10 Trading has been running better than expected since reopening, however, direct debit take for memberships is down by a third from the March 2020 figure, meaning a £56k per month reduction in this important source of revenue.

3. BUSINESS INSURANCE UPDATE

- 3.1 Active Tameside have sensibly insured themselves against business interruption for events that are outside of their control. Unlike most Companies in the UK, Active Tameside will submit a claim for Non damage business interruption under a special “resilience clause” via their business insurance policy. Most insurance policies state a disease had to have been on a specified list before the policy was taken out (impossible for Covid 19). The resilience clause allows a new disease to be backdated to the point it became notified. This provides a very strong case.
- 3.2 Active Tameside’s insurance brokers, Marsh, have this clause in only 700 policies nationally but these companies include FTSE 100 companies and nationally recognised charities. This wording was part of the Financial Conduct Authority (FCA) test case which concluded on 15 September. The Court came down strongly in favour of the resilience clause. It is likely that this will be appealed by the insurers. The appeal is likely to fast

tracked to the Supreme Court and decided upon by January /February. There is also the chance that between the lodging of the appeal and the trial beginning, agreement between the FCA and insurers could be reached

- 3.3 The clause in Active Tameside's policy has a cap of £2.5M per claim. There is disagreement over whether this cap is per centre or in total but worst case it will be a minimum £2.5M over a 3-year period. Active Tameside can demonstrate a loss of over £2.5M up to the end of March 2021 therefore subject to the appeal, there is a strong likelihood of Active Tameside being able to repay any short-term loan before the end of the financial year.
- 3.4 Active Tameside loss adjusters are in the process of working with Active Tameside to prepare a claim so that it will be ready once legal proceedings have concluded. The FCA have written to all insurers reminding them of their responsibility to settle these cases quickly once legal issues are resolved.
- 3.5 Insurance acceptance is the best outcome for both Active Tameside and the Council and this option is being pursued vigorously. This would ensure that any temporary financial support provided by the Council would be repaid.
- 3.6 This is correct at time of writing but may be subject to revision as Court judgements are released and dialogue between insurers and the FCA continue.
- 3.7 Along with other policy holders there has been a high court ruling around the terms of the policy wording that allows the classification of a pandemic as an interruption event. In which case Active Tameside could be due a level of compensation for the period of closure due to the pandemic.
- 3.8 This will address a number of the losses incurred to date but not cover the running losses of the centres now that they are reopen (albeit operating at much reduced capacity).

4. FINANCIAL SUPPORT FOR ACTIVE TAMESIDE

- 4.1 Executive Cabinet have already supported Active Tameside's cash-flow position through this difficult period through a number of measures:
 - 31 March 2020 - repayment of prudential borrowing of £0.788m was deferred to at least 2021/22.
 - 1 April 2020 - paid the total value of the 2020/21 management fee of £1.077 million upfront (as usual).
 - 1 July 2020 – agreed an advanced payment for Adult's and Children's commissioned services of £0.6m to the end of October 2020.
 - 1 October 2020 - advance the remaining £0.845m due for the remainder of the year for the services commissioned from Active Tameside from the Adult's and Children's Services Directorates.
- 4.2 These payments have supported the cashflow of Active Tameside until the end of October. In the absence of further funding whether through a successful insurance claim, specific government support for Leisure Trusts generally, or from the Council, Active Tameside will be unable to continue trading beyond this.
- 4.3 It is important to note, that should Active Tameside become insolvent the facilities would return to Council control and along with them any ongoing liabilities associated with their operation, including any pension liabilities of those staff in the Greater Manchester Pension Fund.

- 4.4 In order to provide Active Tameside further cash funding to buy time as the trading position, outstanding insurance claim, and development of any government support package, it is proposed that the Council advance Active Tameside an amount to be agreed monthly, based on open book accounting to allow the service to remain solvent. **Appendix A** shows the forecast monthly shortfalls from November 2020 to the end of March 2021 and at this point is estimated at £1.8m. It is proposed that the cash support provided will be reviewed on a monthly basis, based on the trading performance and local covid restrictions. The funding amount identified is in line with the losses other Local Authorities are experiencing and all avenues for controlling costs are being explored. It is proposed that the further support required from November 2020 will be via a loan agreement to be paid back over the lifetime of the contract. Officers have been working with other local authorities in Greater Manchester and nationally to share experiences, best practice and approaches taken with leisure providers.

5 LEISURE SERVICE REVIEW

- 5.1 Councils across the country have been faced with a choice between providing financial support to cover the losses sustained during this period or seeing leisure centres close down. To consider the best way to ensure there is a sustainable business model moving forwards in Tameside a detailed review of current leisure/sports provision is needed. The review will need to identify cost savings across the leisure estate to mitigate the continued impact from Covid-19 on income, customer behaviour and confidence and the need to adapt to changing guidance and the challenges presented by the current situation.
- 5.2 The review will ensure alignment and contribute to the Council's Strategic Asset Management Plan (SAMP) to ensure that the Council land and property assets contribute pro-actively to the delivery of the organisations priorities. This strategic and integrated approach to management and investment of the corporate portfolio will ensure that the asset base remains fit for purpose. The SAMP will also inform investment, disinvestment, development and disposal decisions.
- 5.3 The outcome of the review will need to identify cost savings and service redesign to support Active Tameside to repay the loan proposed in this paper over the lifetime of the contract should the insurance claim or a government support package for Leisure Trusts not be forthcoming.
- 5.4 An analysis of current service offer across all Active Tameside facilities has been completed with a summary attached at **Appendix 2**. In general terms, before the pandemic neither the facilities within the Active Tameside estate nor the commissioned services delivered by Active Tameside make significant direct financial losses, the exceptions being Oxford Park, Adventure Longdendale and Active Etherow¹.
- 5.5 The Active Tameside post-lockdown reopening plan commenced on 27 July 2020. The plan was predicated on:
- Optimal Productivity and keeping costs to a minimum
 - Maximising the Commercial Offer - Utilising the Coronavirus Job Retention Scheme (Furlough)
 - Deficit Modelling/ scenario planning to March 31 2021 (modelling increased customer anxiety and reduced capacity)
 - Health and Social Considerations - Improved physical and mental wellbeing
 - Health needs and equitable access to facilities
 - Supporting community groups/ clubs/volunteers

¹ The Council do not own Active Etherow – this building is currently leased from the Kingfisher Trust

- 5.6 To ensure costs are kept to a minimum it is proposed that the current service offer remains in place for the rest of the financial year, notwithstanding possible future changes to government guidance on restrictions. This will mean centres currently closed to the public will remain closed until 31 March 2021. Active Etherow, Active Longendale and Active Oxford Park remain closed to the public with all other centres running a reduced programme and time table. This will allow the Council in partnership with the Provider Active Tameside to develop and consult on options to identify a financially sustainable model, including revised management fee from April 2021 to the end of the current contract.
- 5.7 Future options, including service offer and those relating to the leisure estate will be presented to Cabinet in November, with public consultation in December. A full Equality Impact Assessment will be carried out to inform the outcome of the review. A report will then be presented to Cabinet for consideration and decision in January 2021, which will inform the management fee for 21/22.

6 RECOMMENDATIONS

- 6.1 As stated on the cover of the report.