Dear Sir/Madam,

The Cabinet Member for Arts and Leisure (Councillor I.K. Lloyd) is to consider the following report and make a decision on Friday, 24th July, 2015 at 3.00 p.m. in Committee Room C, Town Hall, Nuneaton.

Yours faithfully,

ALAN FRANKS

Managing Director

AGENDA

PART 1

PUBLIC BUSINESS

1. EVACUATION PROCEDURE

A fire drill is not expected, so if the alarm sounds please evacuate the building quickly and calmly. Please use the stairs and do not use the lifts. Once out of the building, please gather outside the Yorkshire Bank on the opposite side of the road.

Exit by the door by which you entered the room or by the fire exits which are clearly indicated by the standard green fire exit signs.
If you need any assistance in evacuating the building, please make yourself known to a member of staff.

Please also make sure all your mobile phones are turned off or set to silent.

2. **PUBLIC CONSULTATION** - Members of the public will be given the opportunity to speak on specific agenda items if notice has been received.

3. **DECLARATIONS OF INTEREST** - To receive declarations of Disclosable Pecuniary and Other Interests, in accordance with the Members’ Code of Conduct.

   **Note:** Following the adoption of the new Code of Conduct, Members are reminded that they should declare the existence and nature of their personal interests at the commencement of the relevant item (or as soon as the interest becomes apparent). If that interest is a Disclosable Pecuniary or a Deemed Disclosable Pecuniary Interest, the Member must withdraw from the room.

   Where a Member has a Disclosable Pecuniary Interest but has received a dispensation from Standards Committee, that Member may vote and/or speak on the matter (as the case may be) and must disclose the existence of the dispensation and any restrictions placed on it at the time the interest is declared.

   Where a Member has a Deemed Disclosable Interest as defined in the Code of Conduct, the Member may address the meeting as a member of the public as set out in the Code.

   **Note:** Council Procedure Rules require Members with Disclosable Pecuniary Interests to withdraw from the meeting unless a dispensation allows them to remain to vote and/or speak on the business giving rise to the interest.

   Where a Member has a Deemed Disclosable Interest, the Council’s Code of Conduct permits public speaking on the item, after which the Member is required by Council Procedure Rules to withdraw from the meeting.

4. **ETONE SPORTS CENTRE – DUAL USE AGREEMENT** - report of the Director of Assets and Street Services attached. *(Page 3)*
**Individual Cabinet Member Decision**

**Report Summary Sheet**

<table>
<thead>
<tr>
<th>Date:</th>
<th>24th July 2015</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subject:</td>
<td>Etone Sports Centre – Dual Use Agreement</td>
</tr>
<tr>
<td>Portfolio:</td>
<td>Arts and Leisure [Councillor I. K. Lloyd]</td>
</tr>
<tr>
<td>From:</td>
<td>Director – Assets &amp; Street Services</td>
</tr>
<tr>
<td>Summary:</td>
<td>To seek approval for a new Dual Use Agreement between the Borough Council and Matrix Academy Trust for the operation of the Etone Sports Centre and associated All Weather Pitch [AWP] covering the period 2015 – 2027.</td>
</tr>
<tr>
<td>Recommendations:</td>
<td>That the Dual Use Agreement attached at Appendix 1 to this report be approved.</td>
</tr>
<tr>
<td>Reasons:</td>
<td>To allow the Borough Council and Matrix Academy Trust to use the Etone Sports Centre and associated AWP in a structured manner that maximises its benefit to borough residents of all ages, while ensuring that running costs are apportioned in a transparent, fair and equitable manner.</td>
</tr>
<tr>
<td>Options:</td>
<td>Agree the recommendation.</td>
</tr>
<tr>
<td></td>
<td>Do not agree the recommendation.</td>
</tr>
<tr>
<td>Subject to call-in:</td>
<td>Yes.</td>
</tr>
<tr>
<td>Forward plan:</td>
<td>No</td>
</tr>
<tr>
<td>Corporate priorities:</td>
<td>Aim 1 Priority 3 and Aim 4 Priority 3 2</td>
</tr>
<tr>
<td><strong>Relevant statutes or policy:</strong></td>
<td>No applicable</td>
</tr>
<tr>
<td><strong>Equal opportunity implications:</strong></td>
<td>No direct implications.</td>
</tr>
<tr>
<td><strong>Human resources implications:</strong></td>
<td>No direct implications.</td>
</tr>
<tr>
<td><strong>Financial implications:</strong></td>
<td>The Borough Council and Matrix Academy Trust will meet various costs of running the Etone Sports Centre and the associated AWP in accordance with their relative use of the facilities.</td>
</tr>
<tr>
<td><strong>Health inequalities implications:</strong></td>
<td>The Etone Sports Centre and associated AWP have a direct and very beneficial effect on the health and well-being of a large number of residents of all ages.</td>
</tr>
<tr>
<td><strong>Risk management implications:</strong></td>
<td>No direct implications.</td>
</tr>
<tr>
<td><strong>Environmental implications:</strong></td>
<td>No direct implications.</td>
</tr>
<tr>
<td><strong>Legal implications:</strong></td>
<td>No direct implications.</td>
</tr>
</tbody>
</table>

**Contact details:**

Brent Davis – Director – Assets and Street Services.
024 7637 6347
AGENDA ITEM NO. 4

REPORT TO: Councillor I. K. Lloyd  24th July 2015

FROM: Director – Assets Street Services

SUBJECT: ETONE SPORTS CENTRE – DUAL USE AGREEMENT

PORTFOLIO: Arts and Leisure

1. Purpose of Report

1.1 To seek approval for a new Dual Use Agreement between Nuneaton and Bedworth Borough Council and Matrix Academy Trust for the operation of the Etone Sports Centre and associated All Weather Pitch [AWP] covering the period 2015 – 2027.

2. Recommendations

2.1 That the Dual Use Agreement attached at Appendix 1 to this report be approved.

3. Background

3.1 On 27th September 1977 a Dual Use Agreement was entered into between Warwickshire County Council and Nuneaton and Bedworth Borough Council, relating to the Sports Centre at the Etone School in Nuneaton. The length of the Agreement was 40 years and is it therefore due to expire on 26th September 2017. There is no provision for either party to unilaterally terminate this Agreement prior to the expiry date. There is no provision for any compensation being payable to the Borough Council at the end of the term.

3.2 The Etone School became an Academy on 1 January 2012. The Academy has a long lease of the site for 125 years from Warwickshire County Council and this lease encompasses all the County Council’s land holdings on the site including the land upon which the Sports Centre stands.

3.3 In spring 2013 the Borough Council was contacted by the then Head Teacher of the Etone Academy who wanted to discuss the potential for the Etone Academy to take on the full operation of the Etone Sports Centre and the associated All Weather Pitch [AWP].

3.4 A series of meetings with Etone Academy took place during the early summer of 2013 around the potential for the Etone Academy to take on the full operation of the Etone Sports Centre and the AWP. However, these discussions stopped for a period of some months following a poor Ofsted report which resulted in Etone Academy concentrating on making improvements to its core educational activities.
3.5 Discussions then commenced again with Etone Academy in late 2013 when the Council was contacted by Barr Beacon School which had taken over the executive management of Etone Academy in order to assist it to improve its academic and overall performance. Subsequently a new legal entity – “Matrix Academy Trust” - was established to run both Barr Beacon School and Etone Academy. Discussions continued with Matrix Academy Trust in relation to them taking over the operation of Etone Sports Centre.

3.6 At its meeting of 1st October 2014, Cabinet received a report that recommended responsibility for the future management and operation of the Etone Sports Centre be moved from the Borough Council and its leisure management service provider [SLM], to Matrix Academy Trust. Following consideration of this report Cabinet resolved that:

“Delegated authority be granted to the Director – Assets and Street Services, in consultation with the Cabinet Member for Finance and Civic Affairs and the Cabinet Member for Arts and Leisure, to conclude negotiations with the Matrix Academy Trust to move responsibility for the future management and operation of the Etone Sports Centre from the Borough Council and its leisure management service provider, to Matrix Academy Trust using a mutually agreed “Community Use Agreement” to replace the existing “Dual Use Agreement” between the Borough Council and Matrix Academy Trust”.

3.7 However, the Cabinet report also advised that should either the Borough Council or Matrix Academy Trust, or both of the parties, decide that they did not wish to adopt the operating model set out in the draft Community Use Agreement, the current arrangements would continue [i.e. with SLM continuing to manage the Sports Centre on the Borough Council’s behalf] and a new Dual Use Agreement would need to be developed and entered into by no later than September 2017.

3.8 Matrix Academy Trust indeed did decide that they did not wish to take over the operation of the Etone Sports Centre under a mutually agreed Community Use Agreement. Arising from this decision, the Borough Council [through SLM] has continued to operate Etone Sports Centre during public use times and a new Dual Use Agreement has been developed that is acceptable to both the Borough Council and Matrix Academy Trust. This is attached at Appendix 1 to this report.

3.9 The keys features of the new Dual Use Agreement attached at Appendix 1 are:

- The new Dual Use Agreement will run for a period of 12 years from 2015 to 2027.
- The Borough Council will be responsible, both directly and through its appointed sports centre management contractor, for the overall management and maintenance of the Sports Centre and the general upkeep, maintenance and repair of the AWP
- The Borough Council will meet 68% and Matrix Academy Trust 32% of the above annual maintenance and repair costs for the sports centre and car park, which represent the respective proportions of the overall annual hours operation of the sports centre and car park that both parties enjoy.
• The Borough Council will meet 68% and the Matrix Academy Trust 32% of the annual gas, electricity and water costs for the sports centre, which represent the respective proportions of the overall annual hours of operation of the sports centre that both parties enjoy.

• The Borough Council will meet 80% and the Matrix Academy Trust 20% of the identified annual contribution to an Earmarked Reserve to meet the cost of renewing the AWP after 10 years, which represent the respective proportions of the overall actual usage and footfall of the facility that both parties enjoy. If at any point this or any subsequent agreement is terminated and the All Weather Pitch is not renewed via the Earmarked Reserve, the Borough Council will refund all unspent contributions made by the Matrix Academy Trust to the Earmarked Reserve.

• The proportion of costs to be met by the Borough Council and the Trust will be reviewed at the end of the summer term each year in order to take account of any changes to the duration of terms or numbers of Bank Holidays that occur within normal term-time.

• The Borough Council, through its appointed sports centre management contractor, will be entitled to retain all income which they receive in respect of the Sports Centre, including the All Weather Pitch.

• Matrix Academy Trust will have the right to exclusive use of the Sports Centre and, if required the AWP and Car Park, for “open evenings” on no more than 3 occasions in any calendar year.

• The Borough Council will have use of the Sports Centre, AWP and Car Park for the hours below

**TERM TIME**

<table>
<thead>
<tr>
<th>Days</th>
<th>Hours</th>
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<tbody>
<tr>
<td>Mon – Fri</td>
<td>[17:00 - 22:30]</td>
</tr>
<tr>
<td>Sat</td>
<td>[08:00 – 22:00]</td>
</tr>
<tr>
<td>Sun</td>
<td>[08:00 – 22:00]</td>
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</tbody>
</table>

**SCHOOL HOLIDAYS**

<table>
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<tr>
<th>Days</th>
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<tbody>
<tr>
<td>Mon – Fri</td>
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</tr>
<tr>
<td>Sun</td>
<td>[08:00 – 22:00]</td>
</tr>
</tbody>
</table>

**BANK HOLIDAYS**

Closed [other than those falling outside term time]

• Matrix Academy Trust will have use of the Sports Centre, AWP and Car Park for the hours below

School days from 06:30 to 17:00.

Brent Davis
DUAL USE AGREEMENT

THIS AGREEMENT is made this day of 2015 BETWEEN

MATRIX ACADEMY TRUST (Company No 07654219) (hereinafter called "the Trust") of the one part and NUNEATON AND BEDWORTH BOROUGH COUNCIL (hereinafter called "the Borough Council") of the other part

WHEREAS

The Trust holds the leasehold for the buildings and land at the school known as Etone College in Nuneaton in the County of Warwickshire (hereinafter called "the Academy") under a 125 year lease from Warwickshire County Council.

It is agreed as follows:-

1 (1) For the purposes of this Agreement the Indoor Sports Areas and Facilities and the Outdoor Sports Areas and Facilities shall mean the sports facilities identified in Schedule 1 to this Agreement, as may be varied from time to time, in writing, by mutual agreement between the two parties, as shown edged red on plan ‘A’ annexed hereto.

(2) For the avoidance of doubt the Tennis Courts shall be the sole responsibility of, and for the sole use of, the Academy.

(3) The Earmarked Reserve means the replacement funding to be used to replace the All Weather Pitch which shall be held and managed by the Borough Council on behalf of the parties.

(4) All Weather Pitch means the all weather artificial pitch provided as part of the Outdoor Sports Areas and Facilities as identified in Schedule 1 and the Plan
The car park means the car park located in front of the Sports Centre leading directly from the public highway shown edged blue on the plan ‘A’ annexed hereto.

2. The Borough Council shall be responsible; both directly and through its appointed sports centre management contractor [SLM Ltd trading as Everyone Active or any successor organisation], for the overall management of the Sports Centre and in particular shall be responsible for

1. the repair (including any necessary structural repair), maintenance and decoration of the Sports Centre.
2. heating and lighting of the Sports Centre
3. the cleaning of the Sports Centre
4. the provision maintenance and replacement of all furniture fittings and equipment (other than personal items of equipment such as rackets and balls) to be used in conjunction with the Sports Centre.
5. for ensuring that the Sports Centre is provided with all necessary services and facilities (including the payment of all out-goings) to enable it to be properly used as a Sports Centre and
6. for insuring the Sports Centre and its contents to the full replacement value thereof against damage by fire or theft.
7. for all general upkeep, maintenance and repair of the All Weather Pitch

3. (1) The Borough Council will meet 68% and the Trust 32% of the annual maintenance and repair costs for the sports centre and car park, which represent the respective proportions of the overall annual hours operation of the sports centre and car park that both parties enjoy.

(2) The Borough Council will meet 68% and the Trust 32% of the annual gas, electricity and water costs for the sports centre, which represent
the respective proportions of the overall annual hours of operation of the sports centre that both parties enjoy. In order to ensure that accurate usage figures, and hence costs, of gas, electricity and water are available, individual meters for each utility will be installed into the Sports Centre at its own cost by the Borough Council and the Trust hereby confirms its agreement to the works, subject to making good any damage occasioned.

(3) The Borough Council will meet 80% and the Trust 20% of the identified annual contribution to an Earmarked Reserve to meet the cost of renewing the All Weather Pitch after 10 years, which represent the respective proportions of the overall actual usage and footfall of the facility that both parties enjoy.

(4) If at any point this or any subsequent agreement is terminated and the All Weather Pitch is not renewed via the Earmarked Reserve, the Borough Council agrees to refund all unspent contributions made by the Trust to the Earmarked Reserve.

(5) The Trust will not be required to make any contribution to the cost of electricity used to light the All Weather Pitch, in recognition that the usage of the All Weather Pitch by the Trust will take place wholly in daylight hours.

(6) The proportion of costs to be met by the Borough Council and the Trust will be reviewed at the end of the summer term each year in order to take account of any changes to the duration of terms or numbers of Bank Holidays that occur within normal term-time.

(7) All and any maintenance work that is required to the Sports Centre & the Outdoor Sports Areas & Facilities and Car Park shall be carried out and issues remedied in a timely manner. All and any issues or repairs which will impair immediate use of the Sports Centre & the Outdoor Sports Areas & Facilities and Car Park are to be reported to the Trust immediately. Any maintenance tasks which are likely to take more than
two calendar weeks to remedy must be reported to the Trust immediately.

4. The Borough Council shall be entitled to retain for their own use all receipts and other income which they receive in respect of the Sports Centre, including the All Weather Pitch.

5. The Trust shall be deemed to be the occupier of the Sports Centre & the Outdoor Sports Areas & Facilities and Car Park for the hours set out in Schedule Three.

The Borough Council shall be deemed to be the occupier of the Sports Centre & the Outdoor Sports Areas & Facilities for the hours set out in Schedule Two and accordingly the Borough Council shall indemnify the Trust against all liability at law in respect of any death or injury or damage to property during such times.

6. (1) The Borough Council, through its appointed sports centre management contractor [SLM Ltd trading as Everyone Active or any successor organisation], shall provide necessary staff to control the use of the Sports Centre & the Outdoor Sports Areas & Facilities during the second schedule hours and for ensuring that persons using the Sports Centre leave the Sports Centre & the Outdoor Sports Areas & Facilities and Car Park in an orderly manner. All employees of SLM Ltd trading as Everyone Active [or any successor organisation] that are on site at the Etone Sports Centre during the Trust’s usage hours, must have relevant and timely DBS checks undertaken and make these available to the Trust.
7. (1) Neither party shall permit footwear to be worn or furniture and equipment to be used in the Sports Hall or on the All Weather Pitch which is likely to cause damage thereto.

(2) The Borough Council will be responsible for collecting litter from the car park, the immediate surrounds of the Sports Centre and the All Weather Pitch on a daily basis.

8. The Trust shall have the right to exclusive use of the Sports Centre and, if required the Outdoor Sports Areas & Facilities and Car Park, for “open evenings” on no more than 3 occasions in any calendar year. The dates of such Open Evenings shall be notified to both the Borough Council and SLM Ltd trading as Everyone Active [or any successor organisation], no less than 8 full calendar weeks in advance of the date of the Open Evening.

9. The Borough Council and the Trust shall meet on no fewer than two occasions per calendar year, with these meetings being no more than 6 months apart, in order to review the operation of this agreement. The Borough Council representative shall be the Managing Director or his nominated officer deputy / deputies. The Trust representative shall be the Executive Headteacher or her nominated deputy / deputies.

10. (1) This agreement shall continue in force for a period of twelve years from the date hereof.

(2) If before the expiration of this agreement the Borough Council shall notify the Trust of their wish to continue in occupation beyond the expiry date the Trust shall permit the Borough Council to continue in occupation without charge but otherwise upon such terms and for such period as may be agreed.

11. ANY dispute concerning this Agreement shall be referred to arbitration and final decision of an arbitrator to be agreed between the parties within 28 days of a
request from either party or, in default to be appointed on the request of either party by the President of the law Society in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment for the time being in force.

IN WITNESS whereof both parties hereto have hereunto caused their respective seals to be affixed the day and year first before written.
SCHEDULE ONE

1. **Indoor Sports Areas and Facilities**

1.1 The indoor Sports Areas and Facilities shall comprise the following:

- Sports hall approx. 32.5 m x 16.5m
- Four squash courts with balcony spectator accommodation for two courts only.
- Function room with kitchen facilities. Reception / corridor areas.
- Male / female changing and shower facilities.

2. **Outdoor Sports Areas and Facilities**

2.1 The outdoor Sports Areas and Facilities shall comprise the following:

The All Weather Pitch being a full size hockey / football pitch and associated floodlighting.

3. **The Car Park**

3.1 The Car Park for use by the Borough Council and users of the Sports Centre shall comprise the following

- The car park edged in blue on the Plan
SCHEDULE TWO

Hours during which the Sports Centre & the Outdoor Sports Areas & Facilities and Car Park shall be available for use in a manner to be determined by the Borough Council.

The Sports Centre & the Outdoor Sports Areas & Facilities and Car Park shall be available for use in the manner to be determined by the Borough Council at the following times:-

TERM TIME

Mon – Fri: [ 17:00 - 22.30 ]
Sat: [ 08:00 – 22:00 ]
Sun: [ 08:00 – 22:00 ]

SCHOOL HOLIDAYS

Mon – Fri: [ 09:00 - 22.30 ]
Sat: [ 08:00 – 22:00 ]
Sun: [ 08:00 – 22:00 ]

BANK HOLIDAYS [other than those falling outside term time]
CLOSED
THIRD SCHEDULE

Hours during which the Sports Centre shall be available for use by The Trust

The Sports Centre & the Outdoor Sports Areas & Facilities and Car Park, shall be available for use by the Trust on school days from 06:30 to 17:00.
The Common Seal of MATRIX ACADEMY TRUST was hereunto affixed in the presence of:-

Director/ Secretary

The Common Seal of NUNEATON AND BEDWORTH BOROUGH COUNCIL was hereunto affixed in the presence of:-

Designated Officer
Dated 2015

MATRIX ACADEMY TRUST

- and -

NUNEATON AND BEDWORTH BOROUGH COUNCIL

Agreement for dual use of Etone Sports Centre, Nuneaton