

REPORT TO CABINET

REPORT OF: HEAD OF LEISURE AND CULTURAL SERVICES

REPORT NO. LAC 132

DATE: 8th NOVEMBER 2004

TITLE:	DELIVERY OF LEISURE SERVICES
FORWARD PLAN ITEM:	NOT YET
DATE WHEN FIRST APPEARED IN FORWARD PLAN:	
KEY DECISION OR POLICY FRAMEWORK PROPOSAL:	YES

COUNCIL AIMS/PORTFOLIO HOLDER NAME AND DESIGNATION:	CULTURAL
CORPORATE PRIORITY:	
CRIME AND DISORDER IMPLICATIONS:	LEISURE SERVICES CAN IMPACT POSITIVELY ON THE REDUCTION OF CRIME AND DISORDER
FREEDOM OF INFORMATION ACT IMPLICATIONS:	
BACKGROUND PAPERS:	

SOUTH KESTEVEN DISTRICT COUNCIL

DELIVERY OF LEISURE SERVICES

RECOMMENDATION

1. That consideration is given to appointing consultants to support the Council in the development of a trust option for the management of leisure services based on the brief attached to this report.

PURPOSE OF REPORT AND SUMMARY

2. At the meeting of the Cabinet held on 10 May 2004, following discussion on the establishment of an Industrial and Provident Society (IPS), it was resolved:

That further work be undertaken into the provision of a local IPS or other vehicle for the provision of other leisure and cultural services provided by the District Council;

To await a further report to the Cabinet authorising progress.

3. This report provides proposals for a consultant's brief to develop the concept of the delivery of leisure services through a not for profit distributing organisation (NPDO). It also provides briefing information on the history of this form of service delivery, current market trends, the involvement of the District Council to date, the reasons for using a NPDO and some of the major issues that will need to be addressed if progress is to be made.

THE NPDO – WHAT IS IT?

4. Essentially, the type of organisation that we are looking at is a charity. The legal meaning of the word "charity" is rather different than the ordinary meaning of generosity to the poor and needy. It encompasses other purposes that are for the benefit of the community as a whole. There are different types of organisation that can have charitable status and, for the sake of simplicity, they are described in this report as charitable trusts or social enterprises. This could refer to a trust, association, company or IPS.
5. A charitable trust provides a form of ownership distinct from traditional direct local authority provision and from profit-making private sector companies. They have their own legal status as a separate company, employing staff and leasing buildings. All facilities managed by a trust would therefore be leased, from the Council, to that organisation. This could include leisure and arts centres. This change of ownership allows the trust to pass the test of occupation that is required to establish eligibility for relief from non-national domestic rates. Such relief is a fundamental driver in any move to management by a trust. The trust retains a relationship with its parent local authority through a service level agreement in return for a guaranteed annual subsidy.

6. It is also important to understand that the Council's role in the management of the trust would be modest. Where a local authority leases land to a trust or industrial and provident society at less than market rent its representation on the board of that organisation would be limited to 20%. In the event that a market rent could be agreed with the NPDO the likelihood that the Council would still contribute revenue funding in excess of 50% of turnover would also limit representation to 20%.

THE EMERGENCE OF LEISURE TRUSTS

7. The use of leisure trusts to manage local authority leisure facilities is a relatively recent occurrence. The establishment of Greenwich Leisure Limited (GLL) in 1993 is often cited as the starting point. GLL is an IPS that was originally set up to manage seven leisure centres in the Borough of Greenwich. Today it has a portfolio of over 30 public leisure centres within the M25 belt. Expansion was not part of the organisation's original mission but it quickly found itself and its services in demand beyond the borough boundaries.
8. Greenwich Leisure is now recognised as London's most successful social enterprise and part of its adopted role is to help others follow in its footsteps by promoting public sector values with private sector freedoms. The public subsidy of leisure in Greenwich has declined and the company's turnover has increased tenfold. That turnover has not come at the cost of social equity. Discount card schemes have remained for poorer residents and employees' wages have improved.
9. Over 80 local authorities have now copied the Greenwich model, involving 9000 employees and the management of assets worth well in excess of £215m. More facilities are now in the hands of social enterprises than operated through contracts with the private sector.
10. Although the use of leisure trusts by local authorities has been most significant in the sporting sector it is by no means exclusive to this particular area of cultural activity. Trusts have been used for many years to deliver arts services although these tend to have developed independently from local government. Stamford Arts Centre, for example, was originally managed by a trust before being handed over to the District Council. However, as in sport, local authorities are now using trusts to manage arts facilities with a view to enabling development in a climate of financial constraint. An example can be seen at Northampton where, in 1994, the Council created a trust to manage the Derngate Theatre. At the time of the trust's creation the Council's annual subsidy to this facility was £1.02m. By 2001 this had reduced to £615,000. Clearly it is necessary to look behind these figures to gain an understanding of how this has been achieved. Generally, however, the combination of reduced rates with savings reinvested in the facility, and the increase in external sponsorship, has been responsible for the Council's improved financial position.
11. Trusts are also being used for the management of other local authority leisure services. At Wigan a single trust has been established to manage sports facilities,

sports development, arts facilities, arts development, parks and open spaces, playing fields, tourism, play services, libraries and festivals.

THE SOUTH KESTEVEN EXPERIENCE

12. Since the completion of the leisure best value review consideration has been given to alternative methods of managing cultural facilities. It was originally believed that the establishment of a trust to manage facilities part way through an existing management contract was unlikely to receive the blessing of the Charities Commission or the Financial Services Authority (which regulates IPS structures). Indeed this thinking was prevalent at the time of the review when we concluded that consideration of a social enterprise solution for leisure centres would have to wait until existing contracts expired in 2008. We concentrated our initial attention on arts facilities but were quickly distracted when a new type of trust emerged. This is now recognised as a hybrid and was developed by leisure contractors to provide the benefits of a trust to their clients. This allowed the company to retain contract management responsibilities, and, importantly, receive a slice of the savings. This model was promoted to the District Council by its current contractor, Leisure Connection Ltd., and ultimately, for reasons documented elsewhere, the Council chose not to follow this path. Other authorities have successfully adopted the hybrid approach although it is fair to say that it has not gained universal acceptance and is not as appealing as a local independent solution.

BENEFITS OF LEISURE TRUSTS

13. Leisure trusts are particularly well placed to undertake the provision of cultural services. Amongst the recognised benefits the following should be considered.

- The idea of “public” management, rather than “for profit” management is attractive to local authorities. There is a reassurance that profits can be reinvested rather than paid out in dividends.
- Local authorities tend to provide leisure facilities for the benefit of local communities with the aim of improving the quality of life. This objective is matched perfectly by the Recreational Charities Act.
- There are several financial consequences of converting to leisure trusts.
 - Charities do not need to charge VAT on entrance charges to leisure facilities. Whilst this will increase receipts by 17.5% it has to be borne in mind that VAT exemption cannot be gained on capital works.
 - Charities receive mandatory exemption from National Non Domestic Rates of 80% with the remaining 20% relief being discretionary. This is where most of the savings that allow facilities to be improved are made.
 - Profits made by charities are exempt from corporation tax.
- The use of trusts for the management of leisure services, rather than local authorities, has significant appeal to would-be sponsors.
- Trusts have access to some pockets of funding that are denied to local authorities.
- The community takes greater ownership and interest in the operation and management of leisure facilities.

RISKS

14. The principal risk that a local authority exposes itself to in transferring assets to a trust is financial failure of the new organisation. In such circumstances more money has to be invested to rescue the ailing company or take the service back in house. This is something that can generally be mitigated by thorough preparation and business planning.
15. An often-cited risk is a change in the law that may prevent trusts from gaining the benefits of rate relief. There is no evidence to support this. Indeed the Government is a staunch advocate of social enterprise and often quotes GLL as a standard bearer. In doing so it regularly champions the benefits of such organisations including the availability of rate relief.
16. There is also support for conversion to trusts from the Audit Commission. Consideration of the use of trusts in leisure management is a feature of current CPA inspections.
17. Last year the Office of the Deputy Prime Minister published a technical advice note on the use of NPDO's. This is a factual document that explains the history and issues raised by the use of social enterprise. It also contains information on the risks associated with NPDO's. The whole document can be accessed here http://www.odpm.gov.uk/stellent/groups/odpm_localgov/documents/page/odpm_lo_cgov_026960.pdf

COMMENTS OF DIRECTOR OF FINANCE AND STRATEGIC RESOURCES

18. The report proposes a sensible way forward to consider this key issue.

COMMENTS OF CORPORATE MANAGER DEMOCRATIC AND LEGAL SERVICES (MONITORING OFFICER)

19. Further work is needed to establish the most appropriate vehicle for the provision of the diverse services listed in this report. Much work has already been carried out in respect of the provision of leisure management by way of IPS. This work has more specifically highlighted the pitfalls to be avoided. This report considers many more services. In consideration of all these services the Council must consider the many alternative vehicles available for provision of these services.
20. If charitable status is to be considered it is recommended on advice from the Charity Commissioners that the Council deals with any vehicle for the set up of the charitable body at arms length. It is essential the Council appoints independent consultants to advise on the most appropriate way forward."

MOVING FORWARD

21. A decision to develop a charitable trust, or trusts, for our leisure services will present several hurdles to overcome. From the outset there must be focus on what we want to achieve. There must be confidence that conversion to charitable status is a prize to covet and there must be an absolute commitment to winning

that prize. It would be disastrous to overcome the hurdles ahead and then not cross the winning post.

22. Whilst the trust route can provide significant flexibility and freedoms to the management of leisure facilities there is a responsibility on those setting them up to ensure that they are properly resourced. A trust is likely to struggle if the local authority sets it up simply to divest itself of cost and responsibility. Equally it is important for the local authority to be prepared to relinquish direct control of facilities and establish a healthy working relationship with the new organisation.
23. The process will engage the Council in a variety of issues. These are all identified in the consultant's brief that is attached to this report. Although the Council has a reasonable level of knowledge in this particular field it will be essential to seek specialist advice in order to make progress.
24. The process of transferring to a trust is complicated and a range of preparatory work will be required. In particular all facilities will need to be leased to the trust or trusts. In order to do that there will need to be a concentrated effort to secure appropriate tenure on existing assets. This will involve negotiations with organisations that have an interest in our current portfolio of assets, such as Lincolnshire County Council and Burghley Estates. There will also be issues in respect of other tenants in our buildings whose tenancies will transfer.
25. Staff will need to be consulted and would have to transfer to the new organisation. The Transfer of Undertakings (TUPE) regulations would apply.
26. The starting point is the engagement of consultants. Once we have a report the extent of the project will become clearer. The current budget contains financial provision of £15,000 for consultancy services for this purpose.

JOHN SLATER
HEAD OF LEISURE AND CULTURAL SERVICES
SOUTH KESTEVEN DISTRICT COUNCIL

SOUTH KESTEVEN DISTRICT COUNCIL

ESTABLISHMENT OF A LEISURE TRUST

BACKGROUND

1. South Kesteven District Council is considering the establishment of a trust or industrial and provident society with charitable objectives to operate some or all of the services currently provided by its Leisure and Cultural Services Section. Initially it is anticipated that the trust will take responsibility for the provision of arts facilities although it may be feasible to introduce other activity at an early date. A list of services is outlined in appendix 1.
2. The decision to move towards this model follows a best value review of leisure services and detailed consideration of proposals for use of an industrial and provident society (IPS) for the management of sports facilities in conjunction with an existing contractor. The IPS proposals failed because the Council was not convinced that the objectives of the organisation would provide sufficient community benefit to warrant charitable status. It would also have meant the IPS being inserted mid-term into an existing management contract. However the Council does believe that it is worth pursuing the provision of a wider independent trust with relevant objectives.
3. Like many local authorities the Council finds it increasingly difficult to fund a growing range of services. Leisure is an expensive service with a substantial portfolio of property and it is recognised that continued investment will be required if the service is not to be diminished. A recent exercise to establish priorities for the Council has identified some distinct issues that leisure services can support, although the service itself will not be one of these recognised priorities. Against this background the Council would like to establish a long-term solution for leisure that will provide a sustainable platform for service delivery.
4. This brief does not provide detailed information on the current legal status of the Council's leisure property portfolio and current management arrangements. These are diverse and interested parties are strongly recommended to contact the Council for further information. Contact details are given at the end of this document. The Council has not undertaken any work on the benefit of a single trust as opposed to two or more based on services or geography. Throughout this document the word trust should therefore be treated as both singular and plural.
5. The Council would like to be in a position to consider its options for the provision of a trust by the end of the current calendar year. It now seeks to appoint consultants to provide project management advice and support on all aspects of the following.
 - Establishing a mechanism for delivering services of the Council through the establishment of a not for profit leisure trust or trusts.
 - Transferring all services currently provided by the Leisure and Cultural Service Section to that trust.

- Transferring all services to an IPS.

OBJECTIVES

6. With the establishment of a trust the Council would like to address the following objectives.

- To establish a sustainable infrastructure for the long-term delivery of leisure services for the community of South Kesteven.
- To maximise financial advantage, and in particular access opportunities for savings and investment that may not currently be available to the District Council.
- To demonstrate innovation, efficiency and flexibility in the way services are managed.
- To establish a sense of 'ownership' amongst staff and customers with a view to improving morale, motivation, job satisfaction and ultimately the quality of service.
- To increase, and benefit from, community involvement in the operation and management of the facilities and services.
- To achieve exceptional value for the local taxpayer.
- To open up new funding opportunities for the development of leisure services in South Kesteven.

CONSULTANT'S ROLE

7. The consultant appointed by the council will undertake the following.

- Advise the Council on all issues relevant to the establishment of the trust and the subsequent transfer of all relevant leisure and cultural services to it.
- Provide advice on which model of not for profit trust would be most appropriate.
- Evaluate the advantages and disadvantages of establishing a single trust together with the option of a number of trusts based on individual services, geographical location, or a combination of services/locations and make recommendations to the Council accordingly.

- Develop a project plan, showing sequentially, all the necessary tasks that the Council must undertake to establish the new trust and transfer its assets to it – all to be within a workable and agreed timescale.
- Provide advice on the composition, competencies, responsibilities and appointment of the board of the new trust – taking cognisance of FRS8 (statement of related parties).
- Provide advice on the liabilities of members of the board.
- Advise on a management and staffing structure for the trust giving particular attention to the possible piecemeal development of the organisation and the economies of scale that may only result after all services are transferred to, and operated by, the trust.
- Draft the Articles of Association and applications and/or registrations with the appropriate bodies to establish the trust.
- Provide advice on the transfer of existing staff to the trust including the relevance of the TUPE legislation and obligations on terms and conditions and pensions. Notwithstanding these obligations it is also important to provide an indication of appropriate terms and conditions for the trust to aspire to in respect of its staff generally.
- Provide advice on the need to transfer property to the trust and to recommend the most appropriate method of transfer, if required, together with proposals for the maintenance of these assets.
- Assist the Council in the development of a business plan for the trust to include consideration of branding and marketing issues at an early stage in the process of establishing the trust.
- Provide advice on appropriate methods of accountability to ensure that the Council has confidence in the operation of the trust and to ensure that the two organisations enjoy a constructive relationship.
- Identify any leisure service areas that would not be suitable for transfer to the trust and any services where transfer might incur significant risk.
- Ensure that the trust is appropriately structured to gain maximum benefit from NNDR and VAT relief.
- Provide advice on any other financial, taxation, legal or other benefits that the transfer of services to a trust may present.
- Agree with the Council broad aims and objectives of the trust.

8. In providing this information consideration should also be given to any other issues that the consultants feel is relevant.

QUALIFICATION

9. In order to qualify for appointment consultants must be able to demonstrate and evidence a track record of helping local authorities establish, and transfer staff to, a successful leisure trust. They must also be able to provide specialist legal and financial advice.

DURATION

10. The Council would like to appoint a consultant as soon as possible and wants to be in a position to make a public decision on this issue by the middle of the next calendar year. That will require the bulk of the work to be completed by April 2005 to allow time for political consultation and fine-tuning of the proposals. The Council would also expect to be able to retain the appointed consultants to assist with the establishment of the trust if such a course of action proves to be required.

TERMINATION OF CONSULTANCY

11. It is proposed that the consultants be appointed under the terms of a contract for services that contain appropriate provisions for indemnity and termination in the event of any breach of the contract and non- performance. The contract will be for a fixed term which will determine at the end of that fixed period.

PRESENTATION OF PROPOSALS

12. Consultants Wishing to bid for this work should set out their proposals to show the following.

- How the objectives outlined in this document will be addressed.
- Details of how relevant experience and expertise can be brought to bear on this project.
- An outline work plan with associated timescales, resources to be deployed and outputs that would be delivered.
- The price for the work to show cost build up including expenses and all other overheads.
- The charge per day that would be levied if additional services are required.
- The desired method and timing of fee payments.

CONSULTANTS DETAILS

13. In submitting a tender to carry out this work please provide information as outlined below.

- Name of organisation
- Address
- Contact details
- Name of primary contact
- C.V's of relevant personnel
- Details of your organisation
- Two appropriate referees who may be contacted to verify your abilities
- A statement of confirmation that that you can carry out the work in the agreed timescale.

SUBMISSIONS

Three copies of your proposals together with relevant documentation should be sent to:

Head of Leisure and Cultural Services
 Council Offices
 St Peter's Hill
 Grantham
 NG31 6PZ

This should arrive no later than noon on ?????

For further information please contact John Slater on 01476 406150 or by email at john.slater@southkesteven.gov.uk

Electronic versions of submissions should be sent to the above email address after????

Submissions will be short listed and successful organisations will be asked to make a presentation to a panel on????

John Slater
 Head of Leisure and Cultural Services
 South Kesteven District Council
 Tel 01476 406150

SOUTH KESTEVEN DISTRICT COUNCIL
LEISURE AND CULTURAL SERVICES

LIST OF SERVICES

1. Guildhall Arts Centre Grantham
2. Stamford Arts Centre
3. Bourne Corn Exchange
4. Arts Development
5. Grantham Meres Leisure Centre
6. Stamford Leisure Centre
7. Bourne Leisure Centre
8. Deepings Leisure Centre
9. South Kesteven Sports Stadium
10. Sports Development
11. Play Services
12. Play Equipment (pending possible transfer of part of service)
13. Wyndham Park Grantham
14. Queen Elizabeth Park Grantham
15. Dysart Park Grantham
16. Harrowby Lane Playing Field Grantham
17. Arnoldfield Grantham
18. Recreation Ground Stamford
19. Empingham Road Playing Field Stamford
20. Uffington Road Playing Field Stamford

- 21. Recreation Ground Bourne
- 22. Langtoft Playing Field
- 23. Grantham Cemetery
- 24. Events management
- 25. Adoption and management of open space (part)
- 26. Closed churchyards (part)
- 27. Cycle facility Grantham