

**TONBRIDGE & MALLING BOROUGH COUNCIL**

**LEISURE and ARTS ADVISORY BOARD**

**10 December 2012**

**Report of the Management Team**

**Part 1- Public**

**Matters for Recommendation to Cabinet - Council Decision**

**1 LEISURE FACILITIES REVIEW OF MANAGEMENT OPTIONS**

**Summary**

**This report brings forward a recommendation to Council to establish a new Not for Profit Distributing Organisation to operate the Council's main leisure facilities. A presentation will be made at the meeting by the Consultant (RPT Consulting) appointed by the Council to assist with the review.**

**1.1 Background**

1.1.1 At the last meeting of this Board, Members considered a report and presentation informing them of a review of management options for the future delivery of the Council's leisure facilities in the context of examining how to sustain high quality service provision and leisure opportunities for the Borough looking into the future. The management options can be summarised as follows:

- Operation by the Council
- New Not for Profit Distributing Organisation (NPDO)
- New NPDO already established to operate another Council's facilities
- New NPDO established by a Leisure Management contractor
- Leisure Management contractor without NPDO structure

1.1.2 Members will recall from the presentation made by Robin Thompson of RPT Consulting at the last meeting, that each option varied in terms of a range of features, including governance, control, service delivery, staffing, finance and support services. An initial comparison of the delivery options was provided, particularly focussing on financial and quality risk. It was noted that, due to tax advantages relating to Business Rates and Value Added Tax, the NPDO options could save the Council in the region of £500,000 per annum, without any detrimental impact on service quality.

- 1.1.3 Due to the significance of the Council changing its management approach in the future, staff briefings have taken place to engage staff in the decision-making process and liaison has been undertaken with representatives from UNISON.

## 1.2 Consultant's Report

- 1.2.1 RPT Consulting has completed its review, with particular focus on the critical service provision issues and financial considerations and has recommended to the Council that it should consider the establishment of a new NPDO to manage its leisure facilities in the future. This would include Larkfield Leisure Centre, Angel Centre, Tonbridge Swimming Pool and Poult Wood Golf Centre.
- 1.2.2 Attached at **[Annex 1]** the Executive Summary of RPT's report and a full copy of the report has been circulated separately with these papers. Robin Thompson will be in attendance at the meeting to present his findings to Members and to answer any questions.
- 1.2.3 Members will note from the report that it is the Consultant's view that the recommended option is best placed to achieve the Council's objectives of the review in relation to corporate themes, quality of service, asset management, financial savings and, most importantly, protecting the long term sustainability of the service in the future. The Consultant has evaluated each of the options against these outcomes and the evaluation table is shown below:

Outcome	In House	New NPDO	Existing/ Hybrid NPDO	Private Sector
Deliver Corporate Priorities				
Quality of Service				
Asset Maintenance				
Financial Savings	X			X
Long Term Sustainability				

Key:

- X – no delivery of the outcome or even opposite impact on the outcome  
 – some delivery of positive outcomes  
 – very good delivery of positive outcomes

- 1.2.4 In overview, it is felt that the establishment of a new NPDO delivers a number of benefits over and above the other management options including the following:
- A single focus on providing quality leisure provision in the Tonbridge and Malling area ensuring there is no "leakage" of resources or distraction of commitment from the Borough.
  - Greater financial savings than the in-house and private sector options and comparable with existing/hybrid NPDO.
  - Reinvestment of surpluses into the Council's facilities.

- Council representation on the Board to retain involvement.
- The rest of the Board would be local people initially recruited and appointed by TMBC.

1.2.5 The proposed option will generate mature savings to the Council of circa £500,000 per annum, primarily through legitimate exemptions from business rates and VAT and including an allowance for additional client monitoring costs and central support. A new NPDO will ensure a continual focus on the Council's leisure facilities and will ensure all surpluses are reinvested in the buildings owned/services provided by the Council.

1.2.6 A key element of the options review was a comparison of the financial differences between the options of establishing a new or working with an existing NPDO. Members will note from the consultant's report that the financial difference between the two options is relatively small. This is due primarily to the efficiency of the existing operation, comparing favourably both in terms of financial performance and quality against industry benchmarks.

### **1.3 A New Not for Profit Distributing Organisation**

1.3.1 The new management arrangement will be an NPDO established as a Company Limited by Guarantee. Whilst profits or surpluses can be made they must be reinvested in the service and not distributed to shareholders or other outside bodies. NPDOs, normally referred to as a Trust, have been successfully operating Council leisure facilities in a number of districts for a number of years, including Sevenoaks, Gravesham, Shepway, Dover, Thanet, Canterbury and Ashford.

1.3.2 The land and property assets would remain entirely in the Borough Council's ownership with a lease granted in favour of the Trust. This will define the ongoing responsibilities of the Council in terms of major works and the operational repair and maintenance responsibilities of the Trust.

1.3.3 The new NPDO will employ staff currently working in the Leisure Services Business Unit, who will be transferred to a new Trust on existing terms and conditions. The Trust will incur all expenditure and retain all income in connection with the operation of the service. The Council will have a Management Contract with the NPDO, and will pay a fixed sum each year. Whilst the NPDO will be independent from the Council, the Council will still own the facilities and the NPDO will operate under a lease with conditions attached. The Council will closely monitor the NPDO against performance outcomes included in the Management Contract, and regular reports will continue to be considered by Members of this Board. The Management Contract will include a detailed specification and will determine areas such as opening hours, programming, charging, etc.

1.3.4 The new NPDO will establish its own local Management Board, which would typically have eleven Trustees. All of the Trustees would be from the Tonbridge &

Malling area, two would be serving Members of the Council and one would be a member of staff from the new NPDO.

## **1.4 Quality of Service**

- 1.4.1 A fundamental aim of the review of management options was to ensure that the current high level and range of service delivery are maintained in the future. Members will be fully aware of the commitment this Council has given to the delivery of its leisure facilities over many years, which is reflected in the excellent ratings achieved for all the leisure centres under independent Quest assessment, the UK Quality Scheme for Sports and Leisure. (See separate report in these papers).
- 1.4.2 The establishment of a new NPDO will protect high levels of service delivery. Existing standards and levels of service will be clearly outlined in the Management Contract and customers using the facilities should see no perceptible change. The general charging regime, programming of activities and concessionary arrangements for protected groups, such as people with disabilities, those in financial need, young people and senior citizens will remain. Any significant change to existing service delivery arrangements will be subject to approval by the Council, which would include an Equality Impact Assessment.

## **1.5 Staff**

- 1.5.1 Following the report to Members at the last meeting of this Board, staff briefings were undertaken and there has been liaison with representatives from UNISON. The staff briefings were attended by over 50 staff currently employed by the Leisure Services Business Unit. The key issues raised by staff related to TUPE including pension rights and the potential for future variation to terms and conditions, operational advantages to working in a Trust, how support services would be provided and the initial cost of forming a Trust. Staff also sought to understand why the process would take so long. Response to these issues was discussed at the meetings by the Council's consultant, the Leisure Contracts Manager and representatives from Personnel Services and UNISON in an open and transparent debate with staff. In overall terms staff expressed a strong preference for the creation a new NPDO.
- 1.5.2 Under the proposal to establish a new NPDO all staff currently employed within the Leisure Services Business Unit would transfer from the Council on their same terms and conditions (including pension) and would be fully protected under the Transfer of Undertakings (Protection of Employment) Regulations 1981.
- 1.5.3 With regard to central support staff currently providing services to the Leisure Services Business Unit, an analysis of time allocation is being undertaken. It is not currently anticipated that any posts will fall into the category of supporting/servicing the LSBU for over 50% of the time. Consequently they will not need to be considered under the TUPE regulations.

- 1.5.4 Within the Management Contract for the new NPDO it will be the intention to require the NPDO to continue to purchase its central support services from the Council for a fixed period typically of two years. This would include areas such as Payroll, Personnel and IT support and will provide continuity to the provision of services and enable a measured transition. After this period the NPDO will have the freedom to continue with the arrangement if the Council is willing, or seek these services from elsewhere.
- 1.5.5 Subject to Council agreeing the recommendations outlined in these papers, a formal consultation exercise will need to be undertaken with all staff affected in liaison with UNISON. This will be designed to reassure staff and provide a detailed explanation as to how a transfer will affect them, and of the various protections that will be their right.

## **1.6 The Proposed Way Forward**

- 1.6.1 Subject to Council agreeing the recommendation of establishing a new NPDO, there will be a significant amount of work to be undertaken prior to any new arrangement being implemented. This will include the following:
- Preparation of formal documents including transfer documents, leases and Management Contract
  - Establishing the NPDO including VAT registration and Articles of Change registration
  - Staff consultation
  - Priority matters, including the preparation of condition survey, equipment inventory and asset survey
  - Novation of sub-contracts
  - Preparation of operational Business Plan for the new NPDO
  - Trustee recruitment
- 1.6.2 The Consultant has advised that this process normally takes in the order of 12 months to achieve and will require external assistance, particularly in relation to specialist legal advice. It is envisaged that a new organisation will be established and operational by 1 April 2014, but our programme will be kept under close review in order to achieve the earliest start date consistent with ensuring that the new arrangements are robust. Regular reports will be submitted to the Leisure & Arts Advisory Board throughout 2013 ensuring that Members are kept fully involved in the establishment of the new arrangements.

## **1.7 Legal Implications**

- 1.7.1 There are a number of powers that can be relied upon to support the proposed creation of an NPDO. For example, Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 specifically permits local authorities to provide indoor and outdoor leisure facilities. It also permits the local authority to contribute by way of a grant towards the cost incurred by a voluntary organisation providing such facilities. This express power can, therefore, be relied on to allow the Council to enter into a Contract with an organisation of private grant funding arrangement in an NPDO.
- 1.7.2 The more general power of competence contained in section 1 of the Localism Act may also be relied upon to support this initiative.
- 1.7.3 In order to assist the Council in the establishment of a new NPDO and any associated legal issues (e.g. staffing, property, asset transfer) it is the intention for specialist legal advice to be procured.
- 1.7.4 Members may be aware that the Council currently has a lease with East Malling & Larkfield Parish Council for the land occupied by Larkfield Leisure Centre. The Parish Council has been informed of the review and has confirmed that if any of the options affected the terms of the lease, then these would need to be taken into account.

## **1.8 Financial and Value for Money Considerations**

- 1.8.1 As Members will appreciate, recharges are made to the LSBU to cover the costs of corporate functions which all services benefit from (for example financial support and IT costs).
- 1.8.2 It will be necessary to disaggregate these costs if the leisure functions set out above are to be provided in future by a legally separate entity. As Members will appreciate, some of the costs can readily be scaled back, but some of the costs will be 'fixed' by nature (an example might be a computer network) and will take more time to unravel. These costs are currently being assessed and at this stage it is difficult to fully quantify the extent. We shall of course keep Members informed.
- 1.8.3 If Members are minded to create a new NPDO, it is most likely that the NPDO will purchase services from the Council in the short term. This has dual benefits in that it affords the NPDO the time to establish itself and its future needs for such services; and it gives the Council time to plan how it can 'downsize' its costs in due course. This will be an important step in ensuring that maximum opportunity is taken to achieve continuity and to generate savings. If in the worst case these costs are not addressed over this period of time, this could mean a netting down of the overall saving at a corporate level.

- 1.8.4 Members will, of course, be aware that the Council needs to make significant financial savings in the future. At Cabinet on 19 November, Members were advised that the savings target has been re-cast following changes to local government financing and the latest estimate is that the funding gap is now circa £2.75M to £3.0M. The savings can be split into a number of tranches over future financial years. The proposed establishment of a new NPDO to run the Council's leisure facilities in the future would generate a saving of £500,000 per annum. This saving delivered through a Trust option would, therefore, make a significant contribution to the overall savings target and is effectively a mechanism that can sustain the range and quality of service provision looking into a rather bleak financial future.
- 1.8.5 As highlighted earlier in this report, specialist external advice will be required to assist the Council in progressing the recommendations within this report. It is estimated that a consultancy budget of £75,000 will be required which the Director of Finance has advised can be met from the 'Invest to Save' Earmarked Reserve. (Provision is being made in Revised Estimates being presented to the Finance & Property Board to 'top up' this Earmarked Reserve which will cover the cost of £75,000).

## **1.9 Risk Assessment**

- 1.9.1 Risk assessment has formed a fundamental part of the options review presented within this report, particularly in relation to both the Council's financial position and also the retention of the existing standards and levels of service. The establishment of a new NPDO offers the greatest opportunity to provide for the long term sustainability of the Council's leisure facilities and, therefore, represents the least risk to the Council. It should be noted that if the Council wished to retain the current in-house operation then savings could only be achieved by a reduction in the current standards and levels of service. Ongoing risk will be managed through the lease and the detailed Management Contract between the Council and the new NPDO and performance will be closely monitored and reported to Members.

## **1.10 Equality Impact Assessment**

- 1.10.1 A full Equality Impact Assessment has been undertaken with the assistance of the West Kent Equalities Officer. A copy of the assessment is attached at **[Annex 2]**. Members will note that if a decision is taken to establish a new NPDO there will be no potential impacts that need to be addressed.

## **1.11 Policy Considerations**

- 1.11.1 Asset Management, Business Continuity, Resilience, Community, Healthy Lifestyles, Human Resources, Procurement, Young People.

## 1.12 Recommendations

1.12.1 It is **RECOMMENDED TO COUNCIL** that:

- 1) a new NPDO be established to operate Larkfield Leisure Centre, Angel Centre, Tonbridge Swimming Pool and Poult Wood Golf Centre in the future;
- 2) a formal TUPE staff consultation be progressed with staff in liaison with UNISON representatives;
- 3) a detailed Project Plan and Timescale be submitted to the next meeting of the Leisure & Arts Advisory Board; and
- 4) the estimated consultancy costs of £75,000 be met from the 'Invest to Save Earmarked Reserve'.

Background papers:

contact: Robert Styles

Nil

Robert Styles  
Chief Leisure Officer

Screening for equality impacts:		
Question	Answer	Explanation of impacts
a. Does the decision being made or recommended through this paper have potential to cause adverse impact or discriminate against different groups in the community?	No	See Equality Impact Assessment attached to report
b. Does the decision being made or recommended through this paper make a positive contribution to promoting equality?	No	As above.
c. What steps are you taking to mitigate, reduce, avoid or minimise the impacts identified above?		N/A

*In submitting this report, the Chief Officer doing so is confirming that they have given due regard to the equality impacts of the decision being considered, as noted in the table above.*