

TAUNTON DEANE BOROUGH COUNCIL

EXECUTIVE

WEDNESDAY, 27TH AUGUST, 2003

REPORT OF THE DIRECTOR OF COMMUNITY SERVICES

This matter is the responsibility of the Executive Councillor for Leisure, Arts and Culture, Councillor Mrs. Bradley

LEISURE TRUST

1. EXECUTIVE SUMMARY

- 1.1 The report seeks approval to delay the Trust live date by three months, as well as authorising to review the form of leisure trust in the light of recent Government proposals.

2. PURPOSE

- 2.1 The purpose of the report is to:

seek the Executive's approval to extend the timescale for the Leisure Trust live date to 1st January, 2004; and

to reconsider the most appropriate form of trust in light of recent Government proposals.

3. BACKGROUND

- 3.1 At a Joint Meeting of the Executive and Health and Leisure Review Panel, held on 21st November, 2002, Taunton Deane Borough Council resolved to establish a Non-Profit Distributing Organisation (NPDO) to operate the Council's Leisure Centres, Golf Course and Sports and Health Development Services.

4. TIMESCALE

- 4.1 The original target date for commencement of the new leisure trust was October 2003. This allowed a nine month implementation period which was always going to be challenging, but meant that savings could be maximised during the set-up year. However, as the project has progressed there have been a number of issues which have caused some delay. These issues relate to:

- the transfer of leases on Blackbrook, Wellsprings and Castle;

- complications surrounding the most appropriate form of trust following the Government's latest proposals; and
- some general slippage due to the volume of work/impact of other corporate projects.

In view of these issues, it is now believed that a start date of October 2003 is not achievable. The project team and external leisure and legal advisers have revised the timetable and recommend that a more realistic start date would be 1st January, 2004. The financial impact of this change is shown in Appendix A and shows a total cost of £60,000. This can be funded within the existing approved budget as the money set aside to fund the Council's breach of their partial exemption limit will no longer be required. This cannot be confirmed until the scheduled VAT inspection in September has been completed, but our VAT Advisers (PWC) are confident in our conclusions.

5. FORM OF TRUST

5.1 At a Joint Meeting of the Executive and Health and Leisure Review Panel held on 21st November, 2002 the Council's advisers, Strategic Leisure Limited, presented a report outlining two forms of NPDO, Company Limited by Guarantee (CLG) and Industrial and Provident Society (IPS). Based on the information available at the time, the IPS was recommended by the consultants and approved by the Council.

Subsequent to that decision the circumstances have changed and the purpose of this section of the report is therefore; to present a rationale for a recommendation to change the form of trust from an IPS to a Company Limited by Guarantee.

5.2 The Original Decision

The report prepared by Strategic Leisure in October 2002 went into some detail about the characteristics of the two forms of trust and set out the main advantages and disadvantages of the two models. A synopsis of this is set out in the table below.

Company Limited by Guarantee	Industrial and Provident Society
<p>Main Characteristics</p> <ul style="list-style-type: none"> • Incorporated organisation with limited liability • Trustees recruited from the 'great and the good'. • Organisation complies with Company Law and Charity Law. • Receives mandatory relief from NNDR, Council can 'top-up' using discretionary powers. • Need for trading subsidiary. • Subject to Corporation tax on 'profit'. 	<p>Main Characteristics</p> <ul style="list-style-type: none"> • Incorporated company with limited liability. • Can have employee ownership and 'worker Directors'. • Can be established with wider community representation. • Can apply for 'exempt' charity status. • Regulated by Financial Services Authority. • NNDR relief discretionary. • No need for trading subsidiary.

Company Limited by Guarantee	Industrial and Provident Society
<p>Advantages</p> <ul style="list-style-type: none"> • Mandatory NNDR relief. • Model understood by the business community. • Relatively easy to alter constitution. • Becoming the Government's favoured approach. 	<p>Advantages</p> <ul style="list-style-type: none"> • Less regulation. • Allows employee ownership and involvement. • Taxation advantages the same as CLG subject to local authority policy on rate relief. • Established model for leisure services.
<p>Disadvantages</p> <ul style="list-style-type: none"> • No scope for employee ownership and involvement if charitable status is sought or required • Need to comply with two regulatory bodies 	<p>Disadvantages</p> <ul style="list-style-type: none"> • Somewhat 'antiquated' structure, less understood in the business community. • Difficult to change constitution.

The choice of form of trust is taken by individual local authorities based on the relative importance of all the factors described above.

In the specific case of Taunton Deane Borough Council, the consultants advised in favour of an IPS because it was their view that that particular form of trust most closely reflected the objectives of the Council in relation to the 'externalisation' of leisure services and in particular:

- the ability of an IPS to be deemed an 'exempt' charity and therefore receive the same tax advantages as a CLG without the involvement of the Charity Commission (subject to the use of the Council's discretionary powers);
- the potential for greater ownership, involvement and empowerment of staff through the IPS model due to the fact that it is not required to be a registered charity.

5.3 What Has Changed?

Since Taunton Deane Borough Council resolved to establish an IPS the Co-operative and Community Benefit Societies Act 2003 has been enacted and the Home Office has produced its response to 'Private Action, Public Benefit', a consultation document produced by the Prime Minister's Strategy Unit concerning a review of Charities and Not-for-Profits. It is clear from both the primary legislation and the Government's response to the consultation document that IPSs will be brought more into line with company and charity law. Indeed the Secretary of State has advised as much in recent guidance issued to local authorities.

5.4 Issues and Implications

The implication of these recent changes for Taunton Deane Borough Council's leisure trust is that the balance of factors previously in favour of an IPS relative to a CLG has now altered. For example, it is likely that the exemption in relation to charitable registration will be removed. If this happens the responsibility for regulation of the leisure trust will move from the Financial Services Authority to the Charity Commission thus placing the organisation in the same position as a CLG in relation to; participation of employees in the Board of Management, taxation issues and the rigidity of the regulatory framework.

When the current advantages of the IPS are stripped away some of the advantages of the CLG assume greater significance such as mandatory as opposed to discretionary relief from NNDR, the familiarity with the business model etc.

The issue of the ownership and involvement of employees is an important consideration for the Council. Under a CLG scenario this only becomes an issue when the organisation applies for charitable registration. Directors of a charity are precluded from receiving remuneration thus preventing staff from having ownership or a seat on the Board. Should the Council accept the recommendation of this paper, it will be of critical importance to manage the expectation of employees and consult them fully on the rationale for the change of form of trust.

The employees were initially fully consulted on the proposed transfer to a leisure trust on the basis that they would have an opportunity of being members of the organisation and having two places (plus the Managing Director) on the Board. It is not therefore considered proper or sensible to remove these rights and, indeed, their expertise and in particular the expertise of the Trust's Managing Director will add considerable value to the Board at a critical and formative stage in the Trust's development. When the organisation seeks charitable status, employees will not be able to retain their places on the Board and may not be able to retain their role as members of the organisation. This can be provided for in its constitutional documents. It will be important, however, to ensure that mechanisms are identified and introduced to enable staff to continue to play an active role in the management and development of the Trust.

There is also consensus between the advisers and the Council's Officer Steering Group that the new organisation should be established on as firm a footing as possible. Whilst it would be possible for an IPS to change into a CLG once the implication of legislation and guidance becomes clearer, this would be an unnecessary distraction from the business of providing a leisure service. It is better to amend the form of trust now before the organisation is formally constituted.

6. CONCLUSION

6.1 For the reasons given above it is appropriate to re-visit the approved form of trust for Tone Leisure. At this stage in the implementation process this change can be accommodated with no real impact on; the cost of establishing the trust, the timescale or the future business plan. Given the changes taking place nationally and the advice being given to local authorities, it is considered prudent to recommend that Taunton Deane Borough Council forms a CLG rather than an IPS.

7. EFFECT ON CORPORATE PRIORITIES

7.1 The creation of a Leisure Trust will contribute towards the delivery of the Corporate Priority of Healthy Lifestyles.

8. RECOMMENDATIONS

8.1 The Executive is RECOMMENDED to:

8.1.1 request Full Council to approve a virement of £60,000 from the earmarked Partial Exemption VAT Reserve to the Leisure Trust set-up budget;

8.1.2 resolve that Tone Leisure Limited is established as an incorporated Company Limited by Guarantee;

8.1.3 defer a decision regarding whether to apply for charitable status at this stage; and

8.1.4 resolve that the initial constitution of the CLG allows employee involvement, this to be reviewed concurrent with future consideration of charitable status.

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Background Papers

Health and Leisure Report - 21st November, 2002 - Leisure Trust Status

APPENDIX A

LEISURE TRUST

Financial Implications of Trust Start Date Slipping To 1 January 2003

<i>Figures From SL Model</i>	Full Year Impact	Start Date		04/05 Budget	Eventual FYI
		Impact on 03/04 Budget			
		01-Oct	01-Jan		
VAT Savings	108,086				
Business Rate Relief	181,914				
Reduction in Deficit Funding	32,000				
TOTAL SAVINGS	322,000	161,000	80,500	322,000	322,000

Less/

Set-Up Costs	70,000	70,000	-	-
Working Capital	25,000	10,000	25,000	-
Additional Support Costs	40,000	40,000	70,000	70,000
Full Cost of HOCS	7,945	11,918	15,890	15,890
	142,945	131,918	110,890	85,890

Usable Savings

18,055 -51,418 211,110 236,110

Less Additional Costs

Staff in Community Services Directorate	798	1,115	4,459	22,908
Leisure Officer	15,000	7,500	30,000	30,000
	15,798	8,615	34,459	52,908

USABLE SAVINGS FOR MAINTENANCE

2,257 -60,033 176,651 183,202