

# TAUNTON DEANE BOROUGH COUNCIL

**EXECUTIVE – 22<sup>nd</sup> DECEMBER, 2003**

## **REPORT OF THE CHIEF EXECUTIVE**

This matter is the responsibility of Executive Councillor Bradley

### **ESTABLISHMENT OF LEISURE TRUST - TONE LEISURE (South West) LIMITED**

#### **(1) Executive Summary**

1.1 This report recommends the transfer of the Council's Leisure facilities and its development services to Tone Leisure (South West) Limited. It revisits the original rationale for pursuing this decision, issues that have arisen during the process of working towards the transfer, financial issues including the level of funding for the first 15 months, legal issues to be considered in recommending the transfer, and finally highlights matters that remain outstanding.

1.2 The fact that various matters remain outstanding at the time of drafting the report means that on certain issues a verbal update will be made to the meeting. Some of these issues are fundamental to the decision to transfer. Verbal updates will be given on: -

- Wellsprings sub-lease (para 4.1.13)
- Wellsprings funding (para 4.1.19-20)
- Wellsprings VAT implications (para 4.3.9-13)
- Vivary Golf Course (para 4.1.21)
- Extent of undervalue / Section 123 Assessment (para 5.6.1)
- Pensions (para 5.2)
- Service Level Agreement terms (para 4.4.9)
- Terms of Leases (para 4.4.11-12)
- Risk and Reward (para 4.4.16)

1.3 The report will be presented to the meeting by Strategic Leisure Limited, our external advisers.

#### **(2) Introduction and Purpose of the Report**

2.1 In October 2002 the Council approved in principle the establishment of a leisure trust to operate its leisure centres, development services (sport and health) and Vivary Park Golf Course.

2.2 The original report to the Executive of the 21st November 2002 is reproduced at Appendix 1.

2.3 Since then considerable work has been done to facilitate such a transfer. The purpose of this report is to update members on important matters that have arisen in relation to the establishment of the leisure trust and to seek final

approval (subject to the negotiation of final terms with the trust), to affect the transfer on 1<sup>st</sup> January 2004.

### **(3) Original Rationale for Establishing a Leisure Trust**

#### **3.1 Sports Best Value Review**

3.1.1 As part of its best value review of leisure services the Council commissioned an independent evaluation of management options. The report written by Strategic Leisure Limited assessed continued in-house service delivery, a private sector partnership and the establishment of a Non-Profit Distributing Organisation (trust).

3.1.2 The report concluded that a leisure trust would offer the Council best value based on a number of financial and operational considerations.

#### **3.2 Financial Considerations**

3.2.1 In financial terms, the establishment of a trust was estimated to give rise to tax-based savings (VAT and NNDR) of circa £290,000 per annum. Allowing for additional costs associated with trust management and an allowance for working capital and contingencies it was predicted that the trust would save the Council around £183,000 per annum.

3.2.2 In view of the identified need to spend considerable capital in maintaining the leisure facilities it was felt that the revenue savings generated by the trust should be used to fund the investment required thus resulting in a cost neutral position. If the trust did not go ahead the Council would need to find the money to maintain the facilities from other sources.

3.3.3 Furthermore it was felt that by establishing an arms-length organisation, additional capital could be found from external sources.

3.3.4 There was therefore a sound rationale for the transfer because tax based savings would be made and potential external inward investment if secured would provide better value for money and improved services than retaining the services in house.

3.3.5 It was also felt that setting up a trust would engender increased community involvement in the Leisure service and that operational independence from the Council would encourage a more enterprising organisational culture.

3.3.6 Initially the trust was going to be established as an Industrial and Provident Society. The Executive agreed to change this to a Company Limited by Guarantee following further legal advice. For the remainder of the report Tone Leisure (South West) Limited is referred to as the Company.

3.3.7 Since then the officer team and external consultants have been working towards the transfer.

#### **(4) Where are we now and what has changed?**

##### **4.1 Service and Facility Issues**

4.1.1 Since the original report there have been a number of developments in relation to the facility portfolio that have impacted on the future scope of the leisure trust.

##### **Blackbrook Leisure and Tennis Centre**

4.1.2 Part of the site of the Blackbrook Centre is built on leasehold land. Under the terms of the lease there is a prohibition against assignment without the Landlord's consent. In the time available it has not been possible to negotiate such consent and it will therefore not be possible for the Company to take a sub lease of the premises from the 1 January 2004.

4.1.3 It has therefore been necessary to look at alternative ways of enabling the Company to deliver the services at Blackbrook.

4.1.4 Whilst the granting of a licence to the Company would enable it to take rateable occupation, and hence obtain the benefit of NNDR relief, external legal advice is that this would be a breach of the terms of the lease and could lead to forfeiture effectively preventing the Centre being open.

4.1.5 The Council therefore needs to deal with this either by managing the services at Blackbrook alone in house, or by providing the services through a Management Agreement with the Company. Whilst the latter does not achieve the NNDR or VAT benefits, it does retain the integrity of the portfolio managed by the Company and appears the preferable option until the landlord's consent can be obtained.

4.1.6 Members are therefore recommended to approve the letting of a Management Agreement to the Company to provide sports and leisure services at the Blackbrook Centre and that in the special circumstances relating to the creation of the company and the need for interim arrangements in respect of the Blackbrook Centre, that Standing Order 13 which requires a tendering process in respect of procurement contracts be waived. This is in accordance with Standing Orders 4 and 14 which provide that in special circumstances alternative quotations need not be obtained where there is no genuine competition. In this instance the nature and length of the proposed agreement is such that it is considered that there is no genuine competition.

4.1.7 Members are further recommended to authorise the Chief Executive to negotiate with the Landlord to obtain consent to the release of the prohibition against assignment.

##### **Castle Leisure Centre**

4.1.8 Members will recall that the Borough Council operates this facility under a tripartite agreement in conjunction with the school and the County Council.

4.1.9 That agreement was terminated after discussion in October 2003.

- 4.1.10 The notice period is six months and this was served at the beginning of October 2003. It was hoped that the County would not require the full six months notice enabling the Borough Council to stop operating the centre on 1<sup>st</sup> January i.e. the transfer date. This has not been possible and the Company will need to operate the centre until 31<sup>st</sup> March 2004.
- 4.1.11 There will therefore need to be two TUPE transfers of employees, the first to the leisure trust on 1<sup>st</sup> January and the second on 31<sup>st</sup> March to the County.

### **Wellsprings Leisure Centre**

#### **(a) Lease Issues**

- 4.1.12 The new centre is due to open during the first week of January 2004. If the Company is not operating the facility when it opens the Council will be faced with a VAT liability of circa £300,000 over two years. It is critical therefore that the transfer takes place on January 1st 2004.
- 4.1.13 The Borough Council entered into a Management agreement with the County Council, Ladymead School and Sport England as part of the Sport England funding package which agreement established (amongst other matters) the extent of the School's use of the Centre. The County Council has agreed in principle that the Centre can be operated by the leisure trust under a sub-lease but final confirmation is still awaited.
- 4.1.14 The County's permission is required as landlord because of the need to sub-lease the centre to the leisure trust to release the tax-based benefits. It is still envisaged that the Company will comply with the terms of the original management agreement.

#### **(b) Business Plan issues**

- 4.1.15 The original lottery application for the Wellsprings Centre envisaged a deficit requirement in the first two years of operation with a breakeven position being reached in year three.
- 4.1.16 Since then there has been some significant shift in the local supply and demand for leisure provision across the public and commercial sectors. A breakeven position is no longer considered realistic for year three and the new business plan reflects a need for an increased deficit in years one and two, an on-going need to subsidise the operation in year three and beyond and a knock on impact on the performance of Blackbrook.
- 4.1.17 This is principally because the health and fitness market previously considered a 'cash cow', is becoming saturated with suppliers who have come into the market since the decision was made to build Wellsprings.
- 4.1.18 The financial implications of these changes are set out in more detail below. These changes in financial performance are an issue that the Council would be facing regardless of the leisure trust project.

- 4.1.19 The funding package for completing the Wellsprings centre included a contribution of £200K from Somerset County Council. That funding was contingent on the Council providing additional discounts for the schools use of the facility.
- 4.1.20 Those discounts are currently being re-negotiated as the current offer has an overly negative impact on the Business Plan and it may well be more financially sound for the Council to provide the capital funding of £200K itself than take the current expected 'hit' of £7Kpa for 10 years on the Business Plan that the current deal represents. These negotiations are not yet complete and an update will be given at the meeting.

### **Vivary Park Golf Course**

- 4.1.21 It has always been the intention to include the operation of the golf course in the transfer of services to the Company. From the Company's perspective this is a financial risk because the levels of participation and income are subject to seasonal climatic vagaries.
- 4.1.22 To compound the situation, the only place that casual users can currently change and visit the toilet is an unsatisfactory portacabin arrangement. This is following the fire that destroyed the original 'club house'. There is a shortfall in the money required to re-build the accommodation and the insurance payout.
- 4.1.23 The Council is negotiating with the private members' club on the site to allow casual users to use the golf club's facilities. These negotiations are not yet completed.
- 4.1.24 The Company fears that if the clubhouse is not rebuilt and a deal to gain access to the club's facilities is not forthcoming, then the level of casual use will diminish further thus leaving a financial 'hole' in the business plan. The Council and the leisure trust are in discussion as to how this risk can be mitigated and reflected in the agreement. Any progress in this area will be reported verbally at the meeting.

## **4.2 Financial Issues**

- 4.2.1 As stated above, there have been a number of factors that have altered the overall financial requirement of the leisure services provided by Taunton Deane Borough Council.
- 4.2.2 It must be stated at the outset however that with the exception of the Blackbrook issues alluded to above, the tax-based advantages of the leisure trust remain as previously stated. Indeed the rationale for the transfer has strengthened because of the potential VAT liability in relation to Wellsprings.
- 4.2.3 As stated above, in October 2002 Strategic Leisure produced a report that showed that there would be tax based savings of £290K should the Council transfer its Leisure Services to a Trust. This was mainly savings in NNDR but included an element for the preferential treatment of VAT.

- 4.2.4 The report to the Council stated that these savings would need to fund some additional costs associated with the establishment of the trust such as the employment of a Finance Manager, office accommodation, external audit and some contingency for cash flow purposes. The net savings were therefore reduced to around £183k per annum.
- 4.2.5 The recommendation to the Council was that these net savings were to be used to fund an investment programme to ensure that the assets were protected and that the service remained competitive in the wider leisure marketplace. The need to find a way to invest in the centres in terms of maintenance remains paramount.
- 4.2.6 It was never intended that the financial model produced in October 2002 would correlate to the level of funding that would ultimately be payable to the Company as the model was produced solely to quantify the tax-based savings.
- 4.2.7 As such the model related to the income and expenditure associated with the operation of the leisure centres and golf course only under a DSO arrangement and did not at the time include other costs that now need to be taken into consideration such as;
- Sport and health development
  - Service Level Agreements
  - Central Overheads
  - Wellsprings

### 4.3 Assessing the initial level of funding

4.3.1 Tone Leisure has prepared a business plan that calculates the level of deficit funding required. Appendix 2 explains how the level of deficit funding has changed over the last 2 years and shows the expected annual level of deficit funding for 2004/05. This reconciles to the Trust's business plan and has been uplifted to reflect the first funding arrangement of 15 months.

4.3.2 In summary, the funding position has changed as follows:-

		<b>£'000</b>
Underlying Trading Position of Leisure DSO 2002/03		61
Plus/ Transfer of Client Functions To Tone Leisure		229
Increased Cost of Leisure Function (regardless of Trust project)		
- Energy, Inflation, etc	131	
- Wellsprings Trading Position (increased deficit)	150	
- Impact of Private Leisure Facilities, and the Introduction of a new leisure site on overall Trading Position	75	
		356
Increased Net Costs of Leisure Function (Trust Issues).		
- Staffing, Insurance	67	
- HQ	15	
- SLAs	45	
- Contingency in Business Plan	40	
		167
<b>Expected Deficit Funding For 2004/05 (12 months)</b>		<b>813</b>

- 4.3.3 The actual level of funding required by the Trust needs to take into account a number of other factors namely;
- The first year's funding will be for fifteen months (1<sup>st</sup> Jan 2004 to 31<sup>st</sup> March 2005)
  - The figures include the loss of Castle after April 2004 and the addition of Wellsprings.
  - The figures include the impact of Wellsprings and other local conditions on the Trusts customer base.
  - The direct and indirect cost of Blackbrook are shown separately as this will be paid as a management fee rather than via funding
  - The financial plan produced by Tone Leisure includes for the positive effect of VAT although the benefit is much reduced due to Blackbrook
  - The plan includes the cost of contributions to the Somerset County Council Pensions Fund (discussed further below).
- 4.3.4 Predicting future levels of income and expenditure in a volatile market is not easy. Strategic Leisure has reviewed the calculations and assumptions made by the Company and believe them to be reasonable.
- 4.3.5 In view of the need to expedite the transfer the analysis has focused on the first year (15 months) only. Further discussion will need to be had in relation to subsequent years and the need to demonstrate continuous improvement in service delivery. It is likely that this will involve the Council assessing strategically whether it wishes to continue to provide leisure services at the same level as it does currently.
- 4.3.6 The above analysis has reinforced the need to transfer rather than negate it. If the Trust is not formed, this Council will be liable for additional VAT costs on Wellsprings (approx £300k one-off cost) together with a potential ongoing liability of exceeding its partial exemption position (approx £80k per annum ongoing). In addition, the NNDR savings would be forgone, leaving the Council unable to resource the maintenance programme on its Leisure Sites. Officers have recently projected the costs of forming / not forming the Leisure Trust over a 5 year period. In summary, the financial position is as follows:-

	<b>Continue with Trust Option</b>	<b>Delay Trust Option for 6 Months</b>	<b>Delay Trust Option on Blackbrook For Up To 5 Yrs</b>	<b>Abandon Trust Option</b>
	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>	<b>£'000</b>
One-Off Costs	244	544	144	404
Ongoing Costs ( 5 years)	2,976	3,069	3,689	3,781
<b>TOTAL</b>	<b>3,220</b>	<b>3,613</b>	<b>3,833</b>	<b>4,185</b>

As shown, the impact of the proposed Trust arrangements offer the most financially advantageous position for the Council. Further detail on this is available from the Finance Services Manager on request.

- 4.3.7 In view of the outstanding matters that remain to be negotiated with the leisure trust prior to the transfer, urgent discussions are taking place with HM

Customs and Excise to determine if anything can be done to limit the Wellsprings VAT liability in the short term. If this can be achieved and in view of the reduction in tax-based savings arising from the inability to sublet under the Blackbrook lease, then the officers may take a view on whether the transfer should take place on January 1<sup>st</sup> 2004 or indeed at all.

- 4.3.8 The outstanding negotiations with the Company will have a fundamental bearing on this decision since many of them relate to the Council's future commitment and risk.
- 4.3.9 Subject to the outcome of final negotiations with the trust and discussions with HM Customs and Excise regarding Wellsprings, the leisure trust remains the most cost-effective way of delivering services. The level of tax-based savings has been reduced because of Blackbrook and the financial benefit of the transfer has been marginalized accordingly thus reducing the difference between the leisure trust option as reported now and the alternatives evaluated in October 2002.
- 4.3.10 It is clear that the level of risk associated with the outstanding matters to be negotiated and the view taken by Customs and Excise will be crucial in determining the final recommendation to proceed. In view of the timescale for decision making these issues will need to be reported verbally to the Council at the meeting.
- 4.3.11 The table below shows the necessary funding arrangements and the anticipated net cost to the Council if a decision to proceed is taken:

<b>Cost/Income Heading</b>	<b>15 month period £</b>
The funding required to provide the service (excluding Blackbrook) will be (see recommendation in para 8.2):	936,228
The management fee (including central Trust overheads) payable in relation to the agency contract for Blackbrook will be (see recommendation in para 8.2):	1,043,179
Income due to the Council from the operation of the Blackbrook	(1,001,378)
<b>Net cost to TDBC</b>	<b>978,029</b>

This reflects the Trust arrangement for all Leisure Sites with the exception of Blackbrook, which will be dealt with via a Management Agreement.

#### **4.4 Legal Issues**

- 4.4.1 The Council's external legal advisor has assisted with the drafting of this section of the report.
- 4.4.2 The Council currently directly provides recreational and leisure facilities in accordance with the provisions of Section 19 Local Government (Miscellaneous) Act 1976. These powers are augmented by the Council's powers of well-being under Section 2 of the Local Government Act 2000



because it is recognised that the provision of leisure and recreation is likely to promote or improve the economic or social well-being of its area.

- 4.4.3 It was originally proposed that the Council would transfer all of its recreational and leisure facilities and supporting services (for example sports development) to a newly created voluntary organisation and that the Council would thereafter provide funding for all of the transferred services in accordance with the provisions of Section 19 (3) of the 1976 Act. From the date of transfer, all of the services and leisure facilities would have been delivered by Tone Leisure as a principal in its own right and with the benefit of funding support from the Council. This is a tried and tested approach to the delivery of local authority community leisure services and one which has been followed by numerous local authorities throughout England and Wales.
- 4.4.4 The voluntary organisation has now been formed as a company limited by guarantee (Tone Leisure (South-West) Limited ) with charitable objects and which is intended will achieve charitable status in the short to medium term.
- 4.4.5 Unfortunately, for the reasons set out in this report, it has not proven possible to transfer the leisure centre at Blackbrook to Tone Leisure pursuant to Section 19 (3) of the 1976 Act. A Management Agreement under the provisions of Section 19 (1) is therefore the only legally sound option for Tone Leisure to run this facility unless and until the freeholder landlord consents to a sub-letting. In relation to this facility, Tone Leisure will therefore carry out the services as the Council's properly controlled agent and the Council will still, in law, be providing the leisure services at Blackbrook.
- 4.4.6 Local authorities' legal powers in relation to community leisure have been considered in detail by both the courts and the Audit Commission. The Council's primary motive for the transfer should be the improvement of its services and/or better value for money or better service delivery by virtue of re-investment of any savings. If the Council's dominant motive is to save money then this is likely to be an improper and therefore illegal motive. It is therefore important for the Council to consider the terms of the proposed transfer within the context of its overall duties of best value and its fiduciary duties as well as its functions with regard to leisure, recreation and community well-being. These latter functions are powers, rather than duties and local authorities are under no statutory obligation to deliver or to support the provision of leisure and recreation services.
- 4.4.7 Issues which have been highlighted by the Audit Commission in their advice to external auditors (on the basis of advice received by them from leading Counsel) include the following. The Council should include provisions in the documents for annual review and an option for the Council to break the arrangements. These provisions are needed to recognise that, as these are discretionary services, the Council should not inappropriately fetter its future discretion to vary or cease delivering some or all of these services by virtue of the terms of the transfer documents. The terms of the proposed transfer therefore need to be consistent with this and the Council will need to consider the impact of the compensation provisions and any other commitment which it is giving as part of the transfer documents as part of its analysis of the benefits and disadvantages of the proposed transfer.

- 4.4.8 The issues which members will need to take into account will include the requirements of Somerset County Council. Somerset County Council have required the Council to give an assurance that it will meet any employer's contribution to the Pension Fund which Tone Leisure fail to make and that if there is a deficit in the Pension Fund attributable to Tone Leisure's employees the Council will make good that deficit. Careful consideration has been given to the issue of whether the Council can legally give such an assurance or guarantee and it is considered that, on balance, it probably can, provided the assurance or guarantee is limited to those liabilities which the Council would be likely to continue to have if it had continued to run the existing leisure services in-house. The law in relation to guarantees and assurances under Section 19 and other local authority legislation is not free from doubt and the terms of the Transfer Agreement (which will include Tone Leisure's commitments to the Council with regard to the guarantee) have therefore been drafted very carefully so as to limit the Council's liability.

#### **Service Level Agreements**

- 4.4.9 There will be Service Level Agreements between various sections of the Council and the Company whereby the Council will continue to supply services to the Company for an initial period of upto two and a quarter years. The extent of services to be supplied and the cost will be stipulated within the agreements, as well as terms for termination etc. The exact terms are still the subject of negotiation and a verbal update will be given to the meeting.
- 4.4.10 The Services to be supplied will be personnel, building design, communications, corporate purchasing, direct debit, IT and the services provided by the print room.

#### **Terms of the leases**

- 4.4.11 It is proposed that each of the facilities to be run by the Company will be leased to it for a term of 15 years at a peppercorn rent. Under the terms of the standard lease the Council has a high level of responsibility for repair, but this is in order to secure VAT savings and therefore reduce overall cost.
- 4.4.12 The lease will provide that they can be broken on six months notice by either side, and further that in certain circumstances where the leases are broken, or the facilities have closed, the Council will pay compensation to the Company. The exact terms of these provisions are still being discussed and will be reported verbally to the meeting. These provisions will have a direct effect on the Section 123 valuation referred to later in the report.

#### **The Funding Agreement**

- 4.4.13 The Council's funding to the Company will be governed by the terms of the Funding Agreement as will other matters relating to financial management and monitoring of the company. The agreement will incorporate the Council's Strategic Framework which will be the mechanism whereby the Council controls the extent and direction of the services to be provided by the Company. It is an essential element of the Agreement that funding is only

agreed on an annual basis and no commitment to forward funding is given, although the Council's intention to do so is expressed.

- 4.4.14 For reasons referred to elsewhere in the report it will not be possible initially to grant a sub lease of Blackbrook. In order to provide continuity of service the Council will provide the service at Blackbrook through a Management Agreement with the company. It is anticipated that this will be for a short fixed term pending negotiations with the Council's lessor to enable a sublease to be granted. If the consent to sublet is received, it is the intention to grant a lease in the agreed form for a term equating to the balance of the fifteen years then outstanding. It does mean however that until such time as a sub lease can be granted it will not be possible to obtain NNDR and VAT relief in respect of Blackbrook.
- 4.4.15 If a sublease can not be agreed then the Council will continue to operate Blackbrook under the Management Agreement with the resultant implications set out above.

### **Risk and Reward**

- 4.4.16 The Council has a fiduciary duty in reaching a decision to transfer the leisure services. A commercial evaluation needs to be carried of the potential cost and liabilities. At the present time it is not possible to do this as two fundamental issues which affect the level of risk remain unresolved. Both the outcome of the negotiations on the break clauses and compensation in the lease, and the outcome of the negotiations on pensions could increase the financial risk to the Council. Once these issues are resolved an evaluation will be carried out and the outcome reported verbally.
- 4.4.17 To conclude, when considering whether to approve the proposed transfer, the Executive/Council need to consider the proposed terms of the transfer, the anticipated benefits which it will bring, any disadvantages and risks, the Council's future flexibility to implement change and the likely cost of such change.

### **4.5 Start-up costs**

- 4.5.1 In October 2004 it was estimated that the start-up costs would be £70,000. This figure will be exceeded and the latest estimate of costs to completion are £140,000. There are a number of factors that have impacted on the original estimate including; unforeseen legal complications and the need for considerably more external assistance e.g. Blackbrook, agency fees in relation to the recruitment of Finance Manager, purchase of accounting software etc.
- 4.5.2 The money for this additional cost up to £104,000 has been found from existing budgets and the shortfall will be dealt with through the normal budget monitoring cycles. No additional revenue is therefore being sought.

## **(5) Key Issues arising from the Transfer**

### **5.1 Length of Lease**

- 5.1.1 The proposed term of lease for the facilities is fifteen years. Members need to be aware that the establishment of the leisure trust is therefore a long term commitment. The ability to break the leases is one of the outstanding matters to be resolved with the Company (discussed below) and this is critical if the Council is to retain future flexibility over a discretionary service.
- 5.1.2 There is a fine balance to be achieved in terms of this flexibility whilst giving the Company sufficient security of tenure for its financial security. It is recognised by both parties that much is likely to happen in the next five years in relation to supply and demand for community leisure and the facilities and services to be provided on day one will not necessarily be able to keep pace with those changes. Indeed a number of the buildings may well need replacing during that timescale.

### **5.2 Pensions**

- 5.2.1 The original assumption with regard to pension liabilities was that the Company would gain admitted body status with the Somerset County Council pension fund, and commence business on 1<sup>st</sup> January 2003 with their share of the existing pension fund deficit on their balance sheet. The Council would be left with the share of the deficit attributable to non-leisure staff, and the employers contributions attributable to both parties would be subject to review as part of the normal actuarial revaluation.
- 5.2.2 Somerset County Pension Fund has very recently reviewed its policy on the admission of new bodies to their pension fund. They advise that the above route will require either a guarantee (assurance) from TDBC or an indemnity bond to cover the Trust's share of the deficit. They have reviewed the TDBC fund deficit and informed this Council that the share attributable to leisure staff amounts to £300k. Unless we can provide a guarantee (assurance), they will require an indemnity bond to cover £300k plus £100k "liability". Initial discussions with bond providers suggest that this may have to be cash backed. This is obviously not a sensible or pragmatic way forward, and not in the interests of the taxpayers of Taunton Deane.
- 5.2.3 In conclusion, it is our view that this Council is in a position to offer some form of assurance to Somerset County Pension Fund on that portion of the deficit attributable to leisure staff, and the funding application has been submitted to them on this basis.
- 5.2.4 The assurance can be given under the provisions of Section 111 Local Government Act 1972 which augments the Council's powers under Section 19 Local Government (Miscellaneous Provisions) Act 1976 on the basis that it is no more than the Council's existing liabilities if it continued to run the existing leisure services in-house. The assurance will be limited to staff wholly employed in the facilities and services transferred by TDBC to the Trust. The number of staff employed by the Company in the provision of leisure services from these facilities will be closely monitored as part of the

management arrangements – to give this Council some form of assurance that their liability is not growing. There are also explicit provisions in the transfer agreement requiring the Company to give the Council all necessary information in this regard. New facilities opened by the Company will not be subject to this assurance.

### **5.3 Leisure Strategy, Business Plan and Service Delivery**

- 5.3.1 The Council sets out its requirement for the services to be provided as a schedule to the funding agreement. The ‘Strategic Framework’ identifies the Council’s philosophy for the service, its priorities and the outcomes that it expects to see delivered. The leisure trust has prepared a detailed business plan that demonstrates how these requirements will be delivered.
- 5.3.2 The business plan is based on the best value continuous improvement plan and contains a set of detailed performance outcomes and outputs that are related to the strategic framework. There are performance indicators for all of the facilities and services. The Council will work in partnership with the leisure trust to monitor the economy, effectiveness and efficiency of the service and work towards continued improvement of service delivery. There are monthly, quarterly and annual reviews of performance against target.
- 5.3.3 On an annual basis the Council and the Company will meet to discuss how well the partnership is doing in delivering the community’s leisure needs. These reviews will be quantified and provide a basis for the negotiation of the level of funding for the forthcoming year. The Council will be able to influence the services it wants the Company to provide through variations in the scale and scope of the service. Such decisions will be reflected in the level of funding.
- 5.3.4 The need for a strategic review of leisure services across the Borough including how the service contributes to the County Sports Partnership is recognised by both parties. It is suggested that this is produced by the Council (in consultation with the trust) in 2004. A five-year leisure strategy will set out the requirements of the service and identify any areas for facility rationalisation and/or service development. This document will guide future financial negotiations and guide the leisure trust in terms of what the Council expects its partner to deliver on its behalf. Further details regarding monitoring arrangements and the production of a leisure strategy will be brought to a future meeting.
- 5.3.5 The future management of Blackbrook will be different to that outlined above until the landlord’s consent to sublet has been obtained. The Company will operate the centre as the Council’s agent in accordance with a two-year agreement.

### **5.4 Future Investment and Maintenance**

- 5.4.1 As referred to in the introduction, part of the rationale for the establishment of the leisure trust was to release funds to ensure that the portfolio of leisure buildings remained in serviceable condition. In October 2002 an investment plan was prepared based on condition surveys commissioned by the Council.

It was apparent that the savings over a ten-year period were just about sufficient to carry out essential maintenance on the facilities (but not to enhance them). Since then no significant work has been carried out and a backlog of maintenance issues has developed. The cost of providing the service has increased (as outlined above e.g. Wellsprings), the start-up costs have increased and the potential savings have been reduced (e.g. due to Blackbrook).

- 5.4.2 As a result it is proposed that the capital allocated to essential maintenance in the first year be reduced to £78k to be spent on items with a health and safety implication. This reduction will compound some of the problems with the buildings and increase the risk of failure. The Company are concerned about this and protracted discussions have taken place regarding future break provisions and compensation clauses. This remains one of the issues to be agreed and again a verbal update will be given at the meeting.
- 5.4.3 Similarly the final split of landlord/tenant responsibilities is still outstanding however this is more of a logistical issue than an insuperable matter of policy. The principle is that the Council is responsible in the main for repair and replacement of assets (plant, equipment, fixtures, fittings etc) because it is more tax-efficient to do so.
- 5.4.4 The leisure trust will have its own budgets for day to day 'responsive' maintenance to enable it to react quickly to issues that impact on the customer.

## **5.5 Audit Commission**

- 5.5.1 The Audit Commission has given advice throughout the process of transferring the leisure services to the Company. Following discussions with key personnel in June 2003, a report was prepared which generally supported the Council's approach to the creation of a leisure trust. Following the decision to change from an Industrial and Provident Society model to a Company Limited by Guarantee, and to delay the start date for the Trust until the 1 January 2004, a further report was prepared which supported both these decisions. There have also been informal discussions with various members of the Audit Commission in relation to various aspects of the transfer which have arisen since the date of the last report.

## **5.6 Section 123 Assessment**

- 5.6.1 Under the provisions of S123 Local Government Act 1972 and the General Disposal Consent (England) 2003 the Council is able to dispose of land for less than market value without the need for the consent of the Secretary of State where the authority considers that this will help secure the improvement of the economic, social, and environmental well-being of its area and where the extent of the difference between the market value and the consideration obtained for the land is less than £2,000,000. In this case all the facilities are to be disposed of by way of leases at a peppercorn rent. It is therefore necessary to review the terms of the leases and establish the extent of the undervalue to ensure that the disposals fall within the criteria of the General Disposal Order. This exercise is currently being carried out by the Chief Valuer with the

assistance of outside advisers and the results will be reported verbally to the meeting.

## **5.7 Disposal of Public Open Space**

- 5.7.1 Under section 123 (2A) Local Government Act 1972, it was necessary for the Council to advertise the proposed disposal of Vivary Golf Course as this is public open space land and to consider any objections. This was done and no objections have been received

## **(6) Outstanding Matters**

- 6.1 The decision to establish the leisure trust is an important one and should not be taken lightly by anyone. There are complex legal, financial, property, personnel, service and operational issues to consider. A Company Limited by Guarantee (Tone Leisure Limited), the 'leisure trust' was formally incorporated in November although a 'shadow board' of Directors had been recruited some months before. The embryonic trust and more recently the Company have been independently advised by their own set of lawyers. The legal documents governing the relationship between the Council and the Company are necessarily complex and detailed. They include;

- Transfer Agreement
- Funding Agreement (incorporating strategic framework and trust business plan)
- Leases
- Service level agreements
- Blackbrook Management Agreement

- 6.2 Not surprisingly there has been much discussion regarding the provisions within these documents and the relative significance to both parties. There are still a number of issues that remain to be resolved and these include;

- Break provisions and compensation
- Service level agreement
- Final landlord/tenant responsibilities and works to be carried out in the first year
- Blackbrook Management Agreement and management fee
- Pensions

- 6.3 There is a risk to the Council that any changes agreed to could impact on the short and medium term funding arrangements. This may make it ultimately difficult to demonstrate that best value has been obtained by the transfer (particularly if it can not obtain the landlords permission to sublet at Blackbrook). Also the Council must ensure that anything it agrees to does not improperly fetter its future discretion over a discretionary service. It needs to retain the option to reduce (or increase) the scale and scope of leisure service it wishes to provide.

- 6.4 The project team will continue to negotiate with the leisure trust on these outstanding issues and will report verbally to the meeting on the outcome of these deliberations

## **(7) Summary and Conclusions**

- 7.1 In October 2002 an in-principle decision was taken to establish a leisure trust. Much work has been undertaken to move towards that eventuality. It has been a long and at times difficult road with many hurdles to overcome some expected and some not. A number of items are yet to be finalised and will be reported verbally.
- 7.2 Subject to; a satisfactory outcome on these outstanding matters, discussions with HM Customs and Excise on Wellsprings and the short to medium term resolution of the Blackbrook sub-lease, the leisure trust remains the best value method of service delivery and the transfer should go ahead as planned on 1<sup>st</sup> January 2004.
- 7.3 Thereafter the success of the leisure trust will depend on a number of factors. The main one being a mutual commitment to working in partnership to maintain and develop the services and to provide quality leisure services at a value for money price. The Council will remain ultimately responsible for the service as landlord and major financial contributor. It must ensure that a strategic framework is in place and regularly reviewed including the imminent production of a leisure strategy.
- 7.4 The Council must develop a robust Leisure Strategy and it must monitor the financial and operational efficacy of its partner, the leisure trust, to ensure its corporate vision and desired outcomes for the service are delivered. The Council will need to allocate sufficient revenue and capital support to make sure the leisure trust remains viable, subject to it meeting the agreed targets.

## **(8) Recommendations**

- 8.1 The majority of the items discussed above are for members to note. There are however a number of matters where formal resolutions are required subject to the outcome of discussions with the leisure trust on outstanding issues.
- 8.2 These items are covered in the following recommendations that the Executive are asked to endorse and recommend to Full Council:-
- **1. That the Council approves the transfer of services and facilities to Tone Leisure on the terms described in this report and as set out in the associated documentation.**
  - **2. That the Council approves the level of deficit funding required for Tone Leisure to operate the Services (excluding Blackbrook) for the first 15 months at £936,228.**
  - **3. That the Council suspends standing orders to enable it to enter into a two-year management contract with Tone Leisure in relation to Blackbrook and that the management fee for the first year (fifteen months) will be £1,043,179. The income from this arrangement will return to the Councils General Fund Budget.**



- **4. That the Council make the necessary amendment by way of supplementary estimate from Reserves to its General Fund budget for 2003/04 (£165,429).**
- **5. That the Council make the necessary amendment to the base budget position for 2004/05 (£812,600).**
- **6. That the Council authorises the Chief Executive to negotiate with the family trust to release the clause preventing a sub-lease at Blackbrook.**
- **7. That the Council agrees to the provision of a Pensions Guarantee to Somerset County Council**
- **8. That Members ratify the decision to accept £200,000 from Somerset County Council towards the cost of completion of the Wellsprings Leisure Centre or Members decline the offer and request a supplementary estimate for £200,000 from unallocated capital resources from Full Council.**

**Contact Officers:-**

Penny James, Chief Executive  
e-mail: [p.james@tauntondeane.gov.uk](mailto:p.james@tauntondeane.gov.uk)  
Tel. 01823 356401

Shirlene Adam, Head of Finance  
e-mail: [s.adam@tauntondeane.gov.uk](mailto:s.adam@tauntondeane.gov.uk)  
Tel. 01823 356310

Judith Jackson, Senior Solicitor  
e-mail: [j.Jackson@tauntondeane.gov.uk](mailto:j.Jackson@tauntondeane.gov.uk)  
Tel. 01823 356409

Juliette Dickinson, Head of Commercial Services  
e-mail: [j.Dickinson@tauntondeane.gov.uk](mailto:j.Dickinson@tauntondeane.gov.uk)  
Tel. 01823 356311

David Thompson, Chief Valuer  
e-mail: [d.thompson@tauntondeane.gov.uk](mailto:d.thompson@tauntondeane.gov.uk)  
Tel. 01823 356437

Karen Dyson, Leisure Development Manager  
e-mail: [k.dyson@tauntondeane.gov.uk](mailto:k.dyson@tauntondeane.gov.uk)  
Tel. 01823 356549

**JOINT MEETING OF THE EXECUTIVE AND HEALTH & LEISURE  
REVIEW PANEL - 21<sup>st</sup> NOVEMBER 2002****Report of Director of Community Services****(This matter is the responsibility of Councillor R Henley)****LEISURE TRUST STATUS****Summary**

The report considers various options for the delivery of Leisure Services taking into account the maintenance requirements of the facilities. It recommends the establishment of an Industrial and Provident Society based Leisure Trust to manage all of our Leisure facilities, Golf Course, sports development and sport pitch bookings. It is suggested that all of the resultant revenue savings after costs have been deducted should be re-invested into the facilities to pay for the identified maintenance requirements.

**1. Purpose of the Report**

- 1.1 Members will receive a detailed presentation from Mark Sutcliffe of Strategic Leisure, which will outline the conclusions of the work on the best value way of delivering Leisure Services.
- 1.2 The purpose of this report is to highlight the issues for this Council and to make specific recommendations with respect to the formation of a Leisure Trust.

**2. Background**

- 2.1 As part of the Sports and Pitches Best Value Review the Council commissioned Strategic Leisure to undertake a study to evaluate the alternative options for the management of the Sports and Leisure Service in October 2001. The initial feasibility study reported in January 2002. The initial study made the following conclusions: -
  - (1) The current in-house service is providing an economic, effective and efficient service.
  - (2) The establishment of a Trust could provide a Best Value solution. The option could generate a tax-based solution equivalent to around £250,000 per annum.
  - (3) There would be no significant benefit in a private sector partnership due to the cost effectiveness of the current operation.
- 2.2 A more detailed study was commissioned as a consequence to consider the following: -

- i) The need for capital investment given the condition of the facilities.
  - ii) The impact on the Council of any Trust.
  - iii) A draft business plan for the Trust.
  - iv) The scope of any externalization.
  - v) The form of Trust.
  - vi) The needs of stakeholders.
- 2.3 The study was made available in October 2002 and forms the basis of Strategic's presentation and this report.

### 3. **Issues to be considered**

#### 3.1 Scope of the Trust

- 3.1.1 To maximise the financial benefits and cause minimal disruption to the Council the study recommends that the Trust be based on the Leisure Centres, Vivary Golf Course, Development Services and Sports Pitch bookings. It is recommended that other aspects of Commercial Services and Parks are not included at this point.

#### 3.2 Form of Trust

- 3.2.1 The options are Company Limited by Guarantee (CLG) or Industrial and Provident Society (IPS). These are distinctly different.
- 3.2.2 The CLG option involves the incorporation of a limited company and its registration as a Charity. An advantage of this model is that it is readily recognised by the business world and may be the more effective vehicle for attracting institutional funding. Another benefit of a charitable registration is the qualification for Mandatory Rate Relief.
- 3.2.3 However, a CLG is more highly regulated. It must comply with company law as well as charitable law. In addition, as Board Members cannot receive payment this effectively precludes employee representation on the Board.
- 3.2.4 An IPS is a society registered under the Industrial and Provident Societies Act 1965. It is a body corporate with limited liability. It is regulated by the Financial Services Authority.
- 3.2.5 An IPS may be deemed to be an "exempt charity" and therefore the Council can use its discretionary powers to grant mandatory tax relief.
- 3.2.6 An IPS has the advantage of non-charitable status thus allowing a significant degree of employee involvement and community representation.
- 3.2.7 The study recommends that in line with most recently formed Leisure Trusts that an IPS would be a preferred model on the basis that it is easier and quicker to establish, is less heavily regulated and allows for the involvement of employees. This option also assumes that the Council can allocate the necessary capital required to maintain the facilities.

#### 4. **The Need for Investment**

- 4.1 The capital needs of the service were evaluated as part of the study. The Council separately commissioned condition surveys as part of the Asset Management process. Costs were identified for structural, mechanical and electrical work. Strategic Leisure added provisional sums for the replacement of furniture, fittings and equipment.
- 4.2 The analysis showed a requirement over a ten year period of £2.38m. This figure is for essential works only and not for any enhancements or service developments.
- 4.3 Without an externalisation that could potentially fund all or part of these costs the Council will either have to find the capital from other sources or rationalise the portfolio of buildings and Leisure Services.

#### 5. **Financial Implications**

- 5.1 The essential maintenance programme amounts to £2.38m.
- 5.2 The initial study by Strategic indicated opportunity to secure in total £250,000 per annum from tax and VAT advantages.
- 5.3 The second study has updated this financial appraisal and a ten year projection has been produced indicating revenue savings in the region of £290,000 per annum.
- 5.4 A further saving of £16,000 in year one and £32,000 from year two awards will accrue from the reduction in deficit funding from the Council to the Leisure DSO.
- 5.5 A number of key assumptions have been made, notably that the current revenue position is sustainable. This therefore assumes that changes in the market place such as additional competition does not affect future financial performance. This is reasonable for comparing the Trust option against in-house provision as the impact would be equal on both options.
- 5.6 The key factors to consider are as follows: -
  - (1) Circa £290,000 of revenue savings could be generated to fund the capital requirements of the existing facilities.
  - (2) Start up costs of circa £70,000 would need to be taken from year one savings.
  - (3) A contingency allowance of £25,000 should be set aside as initial working capital for the first two years.
  - (4) The study assumes there would be no TUPE transfer of central support staff. To maximise savings, the Council should take steps to negotiate a phased exit route with the Trust allowing them to procure support services from the Council for a period of time. Should this not be the

case, then the Council must make the necessary savings within its support service structure to allow continued contributions towards maintenance. The total level of support services currently charged to our Leisure DSO amount to £158,480. Should the Trust decide not to procure these services from the Council in the future, then the Council will either have to

- i) fund these additional overheads, effectively increasing the burden on the General Fund and HRA; or
- ii) make savings of equivalent value.

- (5) The Trust will incur additional support costs of £40,000 through the recruitment of a Finance Director from year one and £50,000 thereafter and £20,000 for additional personnel support from year two onwards.
- (6) The study assumes that the Head of Commercial Services post and their Personal Assistant would TUPE transfer as well as all of the existing staff directly employed by the Leisure DSO.

5.7 A summary of the estimated financial consequences of transferring to a Trust is attached at Appendix A.

## 6. **Council Structure**

6.1 The formation of a Leisure Trust would have an impact on Commercial Services and Community Services.

6.2 Commercial Services would lose the Head of Commercial Services, their PA and the entire Leisure DSO function. Alternative management arrangements would need to be made for the DLO, Procurement and Cemeteries and Crematorium. The options available to the Council would need to be carefully considered and agreed before the Trust went live. For the purpose of this report, it is suggested that £23,000 be retained each year from the savings to finance these alternative arrangements.

6.3 Community Services would be responsible for monitoring the outcomes of the Trust/ Council partnership and for negotiating the annual grant settlement. In addition, the Council relies on professional advice from individuals who would transfer to the Trust to supplement its strategic leisure work. Whilst not a direct consequence of the Trust formation, it is a reality that a further gap will be created in the Council's ability to strategically plan Leisure Services.

6.4 Taking these factors together, it is suggested that the remit of the existing Leisure Development Manager's post be widened to include Sports issues and that assistance is provided in the form of a new post of Strategic Leisure Officer to fill the gap and carry out the new functions described in paragraph 6.3. It is suggested that £30,000 be retained each year from the savings to finance this post.

## 7. **Control**

- 7.1 There may be a perceived loss of control over Leisure as a result of a Trust being formed.
- 7.2 However, the Council retains the assets, the Council formulates the leases (typically 20 years) and can include break clauses, the Council negotiates the annual grant with the Trust enabling it to ensure the Trust delivers its Corporate objectives and on a Board of sixteen Members could take up to three seats.
- 7.3 In addition, the Council retains responsibility for the strategic direction of Leisure. It is here that the break clauses become important should the Council wish to re-consider the future of any of its Leisure facilities.

## 8. **Staff Impact**

- 8.1 Those staff directly involved in the current DSO operation will TUPE transfer.
- 8.2 The costings shown in this report assume no impact on Central Services staff currently supporting the Leisure DSO; the assumption being that the Trust will procure, certainly in the short term, a similar level of service from the Council's support services as currently used by our Leisure DSO.
- 8.3 The IPS option also allows staff representation on the Board.

## 9. **User Impact**

- 9.1 The IPS option (if agreed) allows community/user representation at Board level.
- 9.2 Although the Trust would wish to develop its own branding, the user should not notice any substantive change in service delivery. They would of course benefit from sustained investment in maintenance of the Leisure facilities.

## 10. **Conclusion**

- 10.1 The establishment of a Leisure Trust would allow revenue savings to be generated to a sufficient degree to meet the substantive maintenance requirements of our facilities. Without these savings the Council would need to secure this funding from elsewhere.
- 10.2 The Trust should be based on the Leisure Centres, Vivary Golf Course, Development Services and Sports Pitch bookings.
- 10.3 The Trust should be an IPS.
- 10.4 Any revenue savings generated should, after the Council's costs are recovered, be re-invested into the facilities.
- 10.5 If Full Council were to approve the formation of a Leisure Trust then the target date for the operation of the Trust would be October 2003.

10.6 Recommendations: -

- (1) That a Leisure Trust be formed on the basis set out in this report.
- (2) That alternative management arrangements for the residual Commercial Services functions are funded from the savings generated by the formation of the Trust (see paragraph 6.2).
- (3) That a new post of Strategic Leisure Officer be created and be funded from the savings generated by the formation of the Trust (see paragraph 6.4).
- (4) That the set-up costs of circa £70,000 be taken from the year one savings.
- (5) That the working capital costs of £25,000 be taken from the year one and two savings.
- (6) That all the residual savings generated by the formation of the Trust be ring-fenced for re-investment in the facilities managed by the Trust.

Contact Officer: Penny James, Director of Community Services  
e-mail: [p.james@tauntondeane.gov.uk](mailto:p.james@tauntondeane.gov.uk)  
Tel: 01823 356403

**APPENDIX A**

FINANCIAL IMPLICATIONS

	<b>2003/04 (6 mths) £</b>	<b>2004/05 £</b>	<b>2005/06 £</b>	<b>Full Year Impact £</b>
Savings identified in appraisal	145,000	290,000	290,000	290,000
Reduction in Deficit Funding	<u>16,000</u>	<u>32,000</u>	<u>32,000</u>	<u>32,000</u>
	161,000	322,000	322,000	322,000
Less/ Set-up costs	(70,000)	-	-	-
Working Capital	(25,000)	(25,000)	-	-
Additional Support Costs	(40,000)	(70,000)	(70,000)	(70,000)
Full cost of HOCS	<u>(7,945)</u>	<u>(15,890)</u>	<u>(15,890)</u>	<u>(15,890)</u>
	(142,945)	(110,890)	(85,890)	(85,890)
<b>Usable Savings</b>	<b>18,055</b>	<b>211,110</b>	<b>236,110</b>	<b>236,110</b>
Less Additional Costs/ Staff (Community Services Directorate)	(798)	(4,459)	(7,331)	(22,908)
Leisure Officer	(15,000)	(30,000)	(30,000)	(30,000)
<b>Usable Savings Earmarked For Maintenance</b>	<b>2,257</b>	<b>176,651</b>	<b>198,779</b>	<b>183,202</b>



## Appendix 2

### Tone Leisure Business Plan Summary

The table below tracks the movements in cost from 2002/3 to 2004/5.

Heading	£	£	Comments
2002/03 Underlying Leisure DSO Trading (Profit)/Loss		<b>61,300</b>	Excludes exceptional items
<b><i>Plus current TDBC Leisure Services which will become the responsibility of the Trust:</i></b>			
Sports Development	113,700		
Head of Commercial Services & support staff	115,300		
<b>Sub Total</b>		<b>290,300</b>	
<b><i>Other cost increases:</i></b>			
Increased cost of TDBC service level agreements	45,000		
Increased energy costs	17,500		Due to loss of CHP units
Net effect of 2003/4 inflation	(17,400)		
2003/04 Growth in trading	(11,400)		
New Head of Finance post	38,000		
Additional staffing requirements	54,500		To meet Health & Safety requirements at the Pools and at Health Suites
Trust HQ costs	15,200		
Increased Insurance costs	29,400		TDBC should see a corresponding drop in insurance costs
Other	18,500		Various
<b>Expected cost of Current Service in 2003/04</b>		<b>479,600</b>	
<b><i>Additional services coming live in 2003/04:</i></b>			
Wellsprings Trading Loss (January to March 2004)		43,000	
<b>Expected deficit 2003/04</b>		<b>522,600</b>	
<b><i>Other cost increases in 2004/05</i></b>			
Inflationary increases in costs and income	68,000		
Contingency	40,000		
Additional Wellsprings Trading loss	107,000		For a full year
Effect on Trading of the opening of the Esporta facility and Wellsprings	75,000		
<b>Expected Trading Loss 2004/05</b>		<b>812,600</b>	