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APPENDIX A

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**The Establishment of a Non-Profit  
Distributing Organisation for the Leisure  
Centres in the City of Salford**

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**FIRST CONSULTANCY REPORT**

**John Steward**

**Routing**

**Art and Leisure Lead Members Briefing – 8<sup>th</sup> August 2000**

**Directors Team – 17<sup>th</sup> August 2000**

**Project Steering Group – 13<sup>th</sup> September 2000**



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## **The establishment of a non-profit distributing organisation to operate the leisure centres in the City of Salford**

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### **1.0 Introduction/context**

- 1.1 The City Council as part of its budget strategy resolved to explore the potential benefits of establishing a leisure trust to manage its leisure centres. I was appointed as a consultant to investigate how this could be best achieved in the interests of the community, the City Council and its staff.
- 1.2 This report has been prepared under the direction of the project Steering Group, which is chaired by Cllr. Keith Mann and a Core Staff team that has representatives from across the Education and Leisure Directorate.
- 1.3 The purpose of this report is to outline the current position, examine how other local authorities have met the challenges faced by their leisure service function and consider the implications and the way forward for the City of Salford.

### **2.0 Overview of Current Position**

- 2.1 The leisure centres in Salford were developed primarily in the mid seventies to early eighties. The City has three dual-purpose centres (swimming pools and dry sports); three pools and three dry sports centres. The City Council would also be responsible for the Water Sports Centre, at Salford Quays, which is programmed to open in 2001. These are the leisure centres that are the subject of the proposal to transfer their operations from the City Council to a Trust or another non-profit distributing body (NPDO).
- 2.2 The current Leisure Centres in-house service contract has now been operating since the successful bid under Compulsory Competitive Tendering (CCT) in 1997. The past three years has seen the launch of a range of successful initiatives that have increased the profile of the service and succeeded in reversing a trend of falling attendances that is currently evident in most UK public leisure centres. The Passport to Leisure initiative has been particularly successful in broadening the appeal of sports participation across the community. In 1999/2000 there were almost 1.4 million visits the leisure centres in Salford (see Appendix A), a 4% increase

on 1998/99. The trend towards use of fitness suite has also been embraced with the provision of 4 new suites over the past 3 years.

- 2.3 The leisure service has responded positively to the budgetary challenges it has faced over the past three years, achieving savings across the service. In 1997 the cost of delivering the leisure centre service was £2.5m. In 1999/2000 the cost of delivery had been reduced to £2.3m through efficiency improvements. It was not possible to achieve the projected income outturn in 1999/2000 because of an unrealistic forecast that sought an income increase in excess of 20% of the 1997 figures.
- 2.4 In order to remain within the allocated budget provision of £2.3m in the current financial year, a package of economies and income generating initiatives has been agreed. For 2001/2 further savings of up to £350,000 would be achieved as a result of the financial advantages of an NPDO. That level of saving could not otherwise be achieved without severely impacting on the level and quality of service delivery.
- 2.5 The majority of the City's leisure centres are located at the heart of the communities they serve. In addition to providing basic sport and leisure facilities they are also an important focus for other community activities. These activities underpin the Council's policies on regeneration and support for the socially excluded. For example, the sports development programme has already proved to be very effective in reducing crime and improving the quality of life for participants. Further budget cuts would impact on this and other programmes that enhance many areas of community life. The current activities being undertaken in the City's leisure centres is summarised in Appendix B

### **3.0 Response from other local authorities**

- 3.1 Over twenty-five local authorities have established non-profit distributing organisations (NPDOs) to manage their leisure facilities in response to a range of operational, investment and financial pressures.
- 3.2 There are predominantly three types of NPDO model that have been adopted by local authorities to operate leisure centres. These are Charitable company limited by guarantee, unincorporated Charitable Trusts and a non-charitable Industrial Provident Societies (IPS).

### 3.4 Charitable company limited by guarantee

The company limited by guarantee (CLG) would be subject to the Companies Act registered at Companies House. Members would have liability, generally £1. The Lowry Centre Trust is a CLG that has established subsidiary trading companies. Lowry Centre Ltd operates The Lowry building and Lowry Centre Development Company Ltd to manage the property. Any trading profits from those companies are reinvested into the organisation.

A number of local authorities have established CLGs as a precursor for formal registration by the Charities Commission. Those local authorities have been able to claim rate relief prior to registration by proving the company objects are charitable. Hounslow LBC is one example.

### 3.5 Unincorporated Charitable Trust

The characteristic of a charitable trust is that its objects (remit) are exclusively charitable; it provides a public benefit and it operates on a not-for-profit basis. Charities are governed by the Charities Commission. This is the governing organisation that is responsible for interpreting legislation dating back to the 1600's.

The nominated Trustees are responsible for the administration of the charity in accordance with the law and its trusts as set out in its governing document. This NPDO must have charitable status (registered and exempt) in order to obtain rate relief. Trading companies that are limited by guarantee can be created under an unincorporated Charitable Trust to limit the liability of Trust Board members.

Examples of authorities now with Leisure Trusts in operation include, Barnsley, Chester, Sheffield and Tameside.

### 3.6 IPS (exempt charity)

An IPS is governed by a set of rules that are defined on establishment. Those rules are submitted to the Registrar of Friendly Societies for registration. An IPS must be democratically controlled by its members. Although similar to a charitable trust an IPS differs in that it has share capital, and all Members have to hold at least one share. Membership is usually open to all staff operating in the organisation. This enables staff to have a higher degree of involvement in the management of the organisation than in a Trust.

Local authorities that have established an Industrial Provident Society include Bexley, Bristol, Greenwich, Thanet and Wycombe.

#### **4.0 Why an NPDO?**

4.1 Financial advantages have tended to be the main, but not sole driving force for the establishment of NPDOs organisations. Other benefits can include;

- Improved ability to re-invest and develop facilities
- Better access to external funding and partnership opportunities
- Greater community ownership and involvement in service delivery

4.2 At least seven local authorities that have considered the establishment of an NPDO and have chosen not to proceed further. These include Camden, Dudley, Newcastle and Stoke on Trent.

4.3 The reasons for rejection included:

- Loss of local authority control
- Uncertainty about the level of savings from rate relief and VAT
- Costs of establishment of an NPDO

4.4 The number of local authorities now actively considering an NPDO has increased markedly to satisfy requirements under Best Value.

#### **5.0 The Implications of establishing a Non Profit Distributing Organisation (NPDO) in Salford**

5.1 The leisure centres to be considered for transfer (by lease or sale) to an NPDO are:

- Broughton Recreation Centre
- Broughton Pool
- Cadishead Recreation Centre
- Ordsall Recreation Centre
- Irlam Pool
- Eccles Recreation Centre
- Worsley Pool
- Pendlebury Recreation Centre
- Clarendon Recreation Centre

- Water Sports Centre, Salford Quays (upon completion in 2001)

## **6.0 Potential Financial Benefits**

### **6.1 Reduced Business Rates**

An NPO has the benefit of qualifying for 80% mandatory National Non-Domestic Rates (NNDR) that would equate to a saving estimated at £350,000, directly funded by Central Government. This could be increased to up to 85% if the Council deemed it appropriate. The level of saving is likely to be affected by a forthcoming rates review. This suggests a reduction in financial benefit of around 15%.

### **6.2 VAT savings**

Initial estimates suggest there could be a VAT advantage. However, the VAT regulations are continually changing and a full detailed evaluation would be required to determine the VAT implications for each NPDO model. It is possible that the City Council's VAT position could be adversely affected.

## **7.0 Representation on the Board**

7.1 Legislation dictates that the NPDO must be demonstrably independent of the City Council. Both the Trust and IPS models would allow representation of up to 20% by Elected Council Members. Those Members must vote in the interests of the NPDO. Legal advice would need to be sought to ensure that the Member representatives could not have any actual or perceived conflict of interest. Prior to transfer of the service a shadow board would be established thus ensuring that the necessary representatives are in place early in the process.

7.2 The City Council would be able to exert additional influence over activity through the initial definition of the *objects (remit) of the NDPO* and through any *property lease agreement*. Moreover, the City Council would be able to *agree the activities* that the NPDO would have to undertake in order to secure the grant to operate the leisure centres. However, the City Council would not be able to influence over the day-to-day operation of the service.

## **8.0 Leisure Centres Operating Grant**

8.1 The City Council would need to provide an annual grant to the NPDO. The City Council would be able to influence the nature and scope of the service to be delivered through a funding

agreement. However, this agreement must not be seen to compromise the independence of the NPDO and cannot be prescriptive on pricing.

- 8.2 The operating agreement would set out the conditions the NPDO would need to satisfy for grant payment. It would not be confined by CCT regulations and, therefore, it could be possible to build in more social requirements. The City Council would agree with the NPDO the activities that it would want undertaken and the level and quality of service for each activity. The performance of the NPDO would be determined through specific measures including best value indicators.
- 8.3 The NPDO would be required to submit an annual service plan for approval before grant payment. If the NPDO underperforms then the City Council could exercise an agreement clause to make alternative arrangements to secure delivery of the service.
- 8.4 A grant agreement that included a guaranteed payment over a number of years could provide staff with additional employment security.

#### **9.0 Leisure facility ownership**

- 9.1 The City Council could retain ownership of the leisure facilities and lease them to the NPDO. Experience of other local authorities suggests that the length of lease is usually in the region of ten years. In this way the NPDO would be able to benefit from the security of tenure necessary to attract external funding. The NPDO would need to prove beneficial occupation to qualify for rate relief. The City Council would expect, as part of its agreement, to remain responsible for ongoing structural repairs. Day to day repairs and maintenance would be the responsibility of the NPDO.
- 9.2 Alternatively, the City Council could choose to transfer property ownership and the financial liabilities to the NPDO. The establishment of an arms length company to attract commercial funding or investment could also be considered. However, as far as I am aware, no local authority has actually disposed of its leisure centre property asset in this way.

#### **10.0 Investment Requirement**

- 10.1 Notwithstanding the recent success of the service, income levels are likely to be affected if the leisure service is not able

to satisfy rising customer expectations. Targeted investment would build on recent efficiency improvements and also enable new income streams to be accessed. For example the advent of new technologies (e.g. the possible City of Salford card, Youth Connexions card and internet booking) opens up the opportunity to enhance the quality and scope of the service. The investment strategy for the leisure centres is set out under Appendix C

## **11.0 Funding Opportunities**

- 11.1 An NPDO could establish a subsidiary trading company. This could have greater freedom than the City Council to secure commercial investment.
- 11.2 The length and terms of the property lease between the City Council and the NPDO would determine the extent to which commercial funding could be accessed.
- 11.3 A fuller understanding of the asset value and development potential of the City's leisure centres is required. This would determine the property development opportunities and liabilities and therefore inform any decisions in respect of the future of the properties.
- 11.4 In addition, it is also important to determine the opportunities for the City Council in respect of the Ordsall Leisure Centre, which is already the subject of interest from potential private sector investors.
- 11.5 An NPDO would be well positioned to continue to access funding through the National Lottery and Europe.

## **12.0 Staffing Issues**

- 12.1 Clearly there are sensitive staffing issues to be considered and these would be handled through a process of consultation with both staff and unions. Already there have been staff and union briefings to explain the implications of moving to an NPDO. A list of the questions asked by staff and the responses are summarised in Appendix D. It is estimated that approximately 200 staff would be affected. Concerns have focused on the effect on terms and conditions and pensions. The experience of other NPDOs suggests that these issues can be overcome through continual staff involvement in the process. Other local authorities have found that there can be benefits from staff and members discussion with peers who



have made the transfer to NPDOs. A staff and Member visit to the Leisure Trust at Barnsley MBC are planned for that purpose.

- 12.2 Under an NPDO, it is envisaged that all staff employed in the functions transferring under the 1981 Acquired Right Directive (TUPE) would transfer to the new organisation. This would guarantee protection of existing terms and conditions of employment at the point of transfer.
- 12.3 There are precedents for admitting NPDOs to the Local Government Pension Scheme which have been established by Chester, Greenwich, Tameside, Barnsley and Hounslow.
- 12.4 An NPDO would be responsible for the provision of its own support services. This could impact upon the City Councils central support services as an NPDO would require independent payroll, legal and personnel services.

### **13.0 Transfer and business start up costs**

- 13.1 The transfer of the leisure function would result in the City Council incurring costs for legal and financial advice. There would also be some business start up and administrative costs.
- 13.2 It is difficult to estimate at this stage the level of those costs. However, experience in other local authorities suggests a figure in the region of £50,000-£100,000 for consultancies, legal and other fees. I understand this is not currently costed in the existing Art and Leisure budget.
- 13.3 Prior to the property lease agreement a full conditions survey would need to be undertaken. That scope of work would need to be agreed with the NPDO. It is estimated that this could cost £50,000 - £100,000.

### **14.0 Timescale**

- 14.1 The experience of other local authorities suggests that the establishment of an NPDO usually takes 9 -12 months. There is currently a trend towards the IPS model partly because it can be quicker to establish than a Trust.

## **15.0 Summary**

- 15.1 The City Council's leisure centre service has undergone a radical transformation over the past three years as a result of the CCT process. Clear marketing and development strategies combined with cost conscious management has created a service that is well placed to move forward. There is scope for service development but this is dependent upon further capital investment.
- 15.2 If the City Council chooses not to establish an NPDO then the opportunity for the financial benefits, outlined in this report, would be lost. Present and future budget strategies would be likely to include cutbacks in the level and quality of the service. It is likely that the Council's commitment to the social exclusion agenda and maintenance of the current number of leisure centres would then be seriously undermined.
- 15.3 In the medium term there would also be uncertainty about whether the City Council would have the necessary capital funding available to invest in the facilities.
- 15.4 The creation of an NPDO for Salford's Leisure Centres would achieve immediate financial advantages through business rates and possibly VAT. However, these could only be guaranteed in the short term. In the medium term, rate reviews and new legislation could impact upon those financial benefits.
- 15.5 Whilst the City Council would not be able to control the NPDO it would in a position to exert its influence through the definition of the organisations objects, the contract agreement, the property lease and through representation of the NPDO Board.
- 15.6 An NPDO could be better placed to access external funding and enter into partnerships that could address investment requirements. However, the model adopted, the length of contract and the facility leases would govern the extent to which this funding could be secured. A fuller understanding of the property development opportunities is required in order to inform any decision in respect of the leisure centre buildings.
- 15.7 The circumstances in Salford; its social exclusion agenda allied with the commitment to the Community Strategy, would require an NPDO that is tailored to Salford's particular requirements.

- 15.8 The potential for the protection of staff conditions of service for a period of time beyond the point of transfer will need to be investigated.
- 15.9 Notwithstanding the issues outlined in this paper, the City Council will be aware that there is a requirement under Best Value to demonstrate that all options have been considered in respect of the operation of its services.

## **16.0 Next Steps**

- 16.1 This report raises a range of complex and far reaching issues that require further investigation.
- 16.2 It is therefore recommended that further work is undertaken to determine the organisational options and the legal and financial issues in order that an informed decision on the preferred NPDO model can be taken. There are a number of consultancy companies specialising in this area of work. It is estimated that it would cost in the region of £10-15,000. A consultants' brief has been attached to this report (Appendix E) which sets out the scope of work that should be undertaken.
- 16.3 It is also recommended that the Leisure Centre property development opportunities are considered in order that the City Council is presented with a full picture. That work would require an appraisal of the property and planning issues for each centre and would need to be co-ordinated with the Development Services Directorate. An external property consultant would provide the necessary commercial perspective. A scope of work is to be prepared that sets out the key elements. I would expect that work to cost in the region of £15,000.

## **17.0 Recommendations**

- That the City Council agrees, in principle, to establish an NPDO to operate the ten leisure centres as set out in this report.
- That a consultant is commissioned to undertake the detailed work necessary to fully evaluate the options for the establishment of an NPDO in accordance with the attached brief at a cost in region of £15,000.

- That an independent commercial study is undertaken to evaluate the potential of Leisure Centre property assets and development opportunities.

## **APPENDIX A**

**City Leisure: Attendance Figures 1999/2000**

Facility	Attendance
Broughton Pool	137,382
Broughton Centre	62,000
Cadishead Centre	55,600
Clarendon Centre	175,000
Eccles Centre	272,800
Irlam Pool	93,600
Ordsall Centre	80,700
Pendlebury Centre	262,000
Walkden Centre	19,824
Worsley Pool	231,308
<b>Total Attendances</b>	<b>1,390,214</b>

All figures are estimated from the income generated at each site throughout the year.

- Spectators taken as a 10% of all the attendances.
- At Broughton Centre, Clarendon Centre and Cadishead Centre spectators are expressed as 15% to include bar patrons.

The 99/00 figure of 1,390,214 represents a 4% increase on the previous year.