FMG CONSULTING

MANAGEMENT OPTIONS APPRAISAL

CHESHIRE EAST COUNCIL

Cheshire East Council

A

REPORT

BY

FMG CONSULTING LTD

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1. Introduction

Background

1.1 In February 2013 Cheshire East Council ('the Council') appointed FMG Consulting Ltd ('FMG') to undertake a management options appraisal for the future delivery of its leisure services, covering both leisure facilities and development services. The brief was subsequently expanded to include certain cultural and green space facilities / services.

1.2 Cheshire East is a unitary authority area with borough status which was established in April 2009 as part of the Local Government Reorganisation (LGR) process following the abolition of Cheshire County Council and the Borough Councils of Congleton, Crewe & Nantwich and Macclesfield.

1.3 The Council has recently taken the decision to become a "Strategic Commissioning Authority" to reflect the changed local government landscape of reduced expenditure and a greater focus on localism. This change has resulted in a need to review the future leisure, cultural and green space management options across a wide geographical area and ensure that the chosen management vehicle is fit for purpose to manage the variety of facilities currently in existence.

1.4 Following on from previous work examining the most appropriate leisure management options for the Council in 2009, FMG has been commissioned to provide an updated assessment of the delivery / management options for leisure and how this may link with the cultural and green spaces services taking into account the need to provide the services in the most cost effective manner whilst maintaining quality and reflecting Cheshire East's unique circumstances. Where relevant, this study therefore draws on information from the 2009 report to supplement the additional work undertaken as part of this study.

Scope of the Study

1.5 This options review considers the most appropriate options for the commissioning of the leisure service. The following leisure facilities are included within the review:

- Crewe Swimming Pool;
- Nantwich Swimming Pool;
- Barony Sports Complex, Nantwich;
- Shavington Leisure Centre;
- Sir William Stanier Leisure Centre;
- Victoria Community Centre, Crewe;
- Middlewich Leisure Centre;
- Holmes Chapel Leisure Centre;
- Sandbach Leisure Centre;
- Congleton Leisure Centre;
- Alsager Leisure Centre;
- Macclesfield Leisure Centre;
- Wilmslow Leisure Centre;
- Knutsford Leisure Centre;
- Poynton Leisure Centre.

1.6 There are currently proposals in place to create new Lifestyle Centres which combine a range of leisure, library and adult day care services on single sites throughout the Borough. The proposed phasing and revenue implications of these developments are factored into the scope of this study and analysed within the financial implications section of the report.

1.7 All of the leisure facilities are currently operated directly by the Council which also funds the annual operational deficits. In addition to examining the most appropriate future delivery option for the leisure service, the study considers the viability of packaging the cultural and green space services (also currently operated in-house) within any potential commissioning process.

1.8 Following discussions with the Council, the full range of potential services that could be included within the commissioning opportunity for the leisure facilities are set out in table 1.1 below.

Table 1.1 - Potential Additional Commissioned Services

Service	Service Elements	Potentially In-Scope?
Leisure Facilities	Lifestyle Centres	Yes
	Dual-Use Centres	Yes
	Business Support Team	Yes
Sports & Play Development		Yes
Health Improvement Unit		No – retained within CEC, due to links with emerging Public Health remit
Community Halls	5 community halls	Yes
Green Space	Parks and Open Spaces	Yes
	Countryside	Yes
	PROW	Yes
Arts & Cultural Services	Archives & Local Studies	No – managed on contract by Cheshire West & Chester Council
	Youth Theatres	Yes
	Lyceum Theatre	No – managed on contract by HQ Theatres
	Knutsford Cinema	No – long lease to Curzon Cinemas
	Museums	Yes

1.9 As noted in paragraph 1.1, the study focusses on the leisure facilities as the main income generator and core focus of the commissioning project. However, the financial analysis and evaluation of options assesses the viability of packaging the leisure facilities management together with these other services and facilities.

Methodology

1.10 Our approach to the study comprised the following key tasks:

- A review of the relevant national and local strategic documentation;
- Review of the current financial and non-financial performance of the service, including site visit and a benchmarking exercise to analyse facility performance against industry benchmarks;
- An informative options presentation to members to make them aware of the possible options available and elicit initial feedback;
- A detailed options appraisal and production of an implementation plan.

Report structure

1.11 The draft report is structured as follows:

- Section 1 - Introduction;
- Section 2 – Local and Strategic Context;
- Section 3 - Leisure Facilities Performance Overview;
- Section 4 - Options Review;
- Section 5 - Legal Implications;
- Section 6 – Risk Analysis;
- Section 7 – Financial Implications;
- Section 8 – Evaluation of Delivery Options;
- Section 9 – Summary and Recommendations; and
- Section 10 - Implementation Plan.

Basis of information

1.12 It is not possible to guarantee the fulfilment of any estimates or forecasts contained within this report, although they have been conscientiously prepared on the basis of our research and information made available to us at the time of the study. Neither FMG as a company nor the authors will be held liable to any party for any direct or indirect losses, financial or otherwise, associated with any contents of this report. We have relied in a number of areas on information provided by the client, and have not undertaken additional independent verification of this data.

2. Local and Strategic Context

Introduction

2.1 This section of the report provides background and context to the study by reviewing:

- local demographic information and future population growth estimates to understand the current population profile and how this may change in the future; and
- the national and local strategic context information of relevance to local service delivery.

2.2 The intention is to identify key factors impacting on the current facilities and services and understand the future priorities, targets and changes that will impact on the management of the services / facilities in the future.

Demographic profile

2.3 Cheshire East has a total population of 370,127 over an area of 1,158km^2. The breakdown of the ages within Cheshire East in the 2011 Census indicates that the population is ageing, with the age groups from 45+ years all represented at levels above the national average.

2.4 Cheshire East has a lower than average proportion of both male and females in all age groups from 15 to 34. The relatively low proportion of people of working age and relatively high proportion of older people has implications for the housing needs of the population and for the future economic prosperity of the Borough.

2.5 The Local Plan includes statistics that project an increase in population to 384,000 by 2029. The forecasts also predict that the population aged 65 and over will increase sharply (by 59 per cent) during the period 2009 to 2029. Additional housing will be required to cater for this demand with the largest increases in the population number being in the major towns of Crewe and Macclesfield.

2.6 The Annual Population Survey 2011 calculates that the unemployment rate in Cheshire East is significantly below the regional and national average. In Cheshire East, 10,600 were classed as unemployed, this equates to 5.8% which is low compared to an average of 7.8% in the North West and 7.5% across England.

2.7 Life expectancy in Cheshire East is higher when compared with the national average. Males have a life expectancy of 79.1 years compared to 78.3 years nationally, while females live to an average of 82.7 years compared to 82.3 years nationally.

2.8 According to the Census, 82.3% of Cheshire East are classed as being in 'very good health' (49.1%) or 'good health' (33.2%), with 12.8% classed as being in 'fair health'. This is positive compared to the national statistics for England where 81.4% are classed as being in 'very good health' or 'good health'. The statistics also show that 3.8% of the local population are classed as in 'bad health' with 1.1% in 'very bad health'. These figures are both below the national average figures for England of 4.2% and 1.2% for 'bad health' and 'very bad health' respectively.

2.9 In terms of obesity, data suggests that the number of adults in the Borough that are classified as obese is circa 63,100 or 21.7% of the adult population. This is below the national average where it is estimated that 24.2% of the population are deemed to be obese. In relation to children, the level of obesity is 18.5% in Cheshire East which is also marginally below the national position of 18.7%.

Sport England Key Performance Indicators

2.10 Sport England, the Governments agency for sport measure 5 key areas in relation to sport activity in the Active People Survey. The table below sets out the performance of the Borough compared to the North West and England, taken from Active People 6. (Please note however that Active People involves telephone sampling a maximum of 500 people in the Cheshire East area out of a total population of in excess of 370,000, so is an approximate measure only).

Table 2.1 - Comparison with Sport England KPIs

	Cheshire East	North West	England
KPI1 – 3x30 Physical Activity per week	16.7%*	17.1%*	16.3%*
KPI2 - Volunteering at least one hour a week	8.3%	7.3%	7.6%
KPI3 - Club Membership in the last 4 weeks	22.2%	21.7%	22.8%
KPI4 – Received tuition / coaching in last 12 months	18.4%	15.0%	16.8%
KPI5 - Took part in organised competition in last 12 months	15.3%	13.2%	14.4%

*This information is from APS5, relevant information from APS6 is not available.

2.11 It can be seen that participation (measured at 3 x 30 minutes per week) at 16.7% is above the national average (16.3%). However, the figure is below the North West regional average (17.1%). This trend is reversed for club membership levels. Volunteering, receiving tuition / coaching and organised competition are all above both the regional and national averages. When analysed in more detail, receiving tuition / coaching is most significantly above the averages at 18.4%, compared to 15% in the North West and 16.8% in England.

2.12 Table 2.2 shows the trends between 2010 and 2012 for each of the five key performance indicators. The colours represent the change from the previous year, with green indicating a positive increase and red a decrease in performance. The information is only available from 2010 due to the creation of the Unitary Authority Cheshire East in 2009.

Table 2.2 - Trends for Cheshire East in Sport England KPIs

Indicator	2010/11	2011/12
KPI1 - 3x30 Physical Activity per week observed	19.8%*	16.7%*
KPI2 - Volunteering at least one hour a week	6.3%	8.3%
KPI3 – Club Membership in the last 4 weeks	26.5%	22.2%
KPI4 - Received tuition / coaching in last 12 months	17.9%	18.4%
KPI5 - Took part in organised competition in last 12 months	14.5%	15.3%

*APS5 data therefore 2009/10 and 2010/11 data.

2.13 It can be seen that in the Active People Survey 5 data for 3 x 30 minute physical activity participation has reduced from 19.8% in 2009/10 to 16.7% in 2010/11.

2.14 For the remaining KPIs that use the Active People 6 survey (the last published measured year being 2011/12), volunteering, tuition / coaching and organised competition have all increased from the 2010/11 results, with volunteering significantly increasing from 6.3% to 8.3% in a space of a year.

2.15 Club membership is the only performance indicator in APS6 that has shown a decrease in the 2011/12 results. The figures have significantly dropped from 26.5% in 2010/11 to 22.2% in 2011/12.

What does this mean for Cheshire East?

- The local population will increase over the next 15+ years which will result in additional potential users for the facilities but also highlights the need to ensure facilities and services are fit for purpose and can cope with the increased demand.

- The local population appears to be healthy and relatively active, although there are still improvements that could be made in participation levels. This emphasises the need for a modern and efficient management service which continues to offer a varied programme of activities, in modern and value for money facilities, to contribute towards increasing the healthy living of residents in Cheshire East further still.

- The elderly age profile of the Borough (which is projected to become more pronounced over the next 15+ years) may impact on income from some activities and presents specific challenges that need to be addressed in terms of ensuring programming and facilities cater for all age groups within the Borough. This will be particularly crucial as the challenge for local authorities to increase participation and improve public health will be more important (and perhaps more difficult) than ever in an ageing population.

Cost of inactivity

2.16 Sport England commissioned the British Heart Foundation Health Promotion Research Group at Oxford University to prepare estimates of the primary and secondary care costs attributable to physical inactivity for PCTs across England. This built upon work previously undertaken on behalf of the Department of Health in 2009.

2.17 The cost of inactivity per 100,000 people in Cheshire East has been identified as £1.79m pa. Extrapolating this to the total population of 370,000 identifies a cost per annum of £6.62m for primary and secondary care. There is therefore clearly a significant opportunity to reduce this annual cost through increasing participation amongst Cheshire East residents.

Strategic Documentation Review

2.18 A headline review of key national and local market context information of relevance to local service delivery has been undertaken to identify key factors impacting on the suitability of the different management options locally.

2.19 We have set out below a summary of the key implications for this study from the strategic documentation review. The detailed analysis of each document and the implications for this study are contained in Appendix A.

Strategic Documentation Review - What does this mean for Cheshire East?

- There is a priority, both nationally and locally, to deliver improved services more efficiently. The government is pushing for decentralisation of service delivery through commissioning and increased involvement of local community groups. This study needs to fully consider how best the management vehicles could help enable this.
- Major financial savings are required across the Council with leisure and culture budgets and associated management and staff numbers targeted for significant savings over the next three years. This study will need to identify the management model that is best placed to deliver these savings whilst still ensuring that the Council's non-financial strategic goals can be achieved and the service quality for the community is not negatively impacted.
- Leisure has a major role to play in Cheshire East in reducing anti-social behaviour and improving health, particularly in light of the ageing population profile. Whatever future management arrangements are proposed need to ensure that this focus is not lost at the expense of a profit-driven service. The evaluation section of this study should reflect this priority when assessing the available management options.
- The population is projected to increase in the Borough up to 2030 so the quality and range of services and facilities on offer will need to be sufficient to cater for the increased demand, particularly bearing in mind the need to also improve the financial cost of the service whilst the population profile becomes older (and potentially less likely to participate).
- The Council sees its leisure facilities as a priority and is considering investing in them through the provision of Lifestyle Centres. Any developments will need to take account of the town centre first focussed development strategy and the need for investment in Crewe in particular, as evidenced by the identification of capital funds for the new Lifestyle Centre within the three year capital budget.

3. Leisure Facilities Performance Overview

Introduction

3.1 In order to understand how the leisure facilities are performing, a high level analysis of income, expenditure and performance information has been undertaken. This enables the identification of any significant trends and comparison of headline figures against FMG's in-house performance database, so that we can establish what scope there may be for performance improvement. This will inform which delivery vehicle may be best placed to deliver service improvement in the future.

3.2 The section provides an overview of the key findings, whilst the detailed analysis of net direct cost of operating the facilities and then benchmarks for key income and expenditure areas against FMG's in-house database of national key performance indicators (KPIs) are contained in Appendix C.

3.3 It should be noted that, whilst KPI analysis provides a useful comparison between facilities and against national benchmarks, it is not appropriate to make decisions based solely on the KPI outcomes, as the key issue is whether services are being maximised locally, not simply how they compare nationally. Considering the numbers in isolation does not take into account site specific issues such as local competition, the operational philosophy, the age, quality and design of facilities, any wider community programming restrictions due to "joint use" agreements involving schools, levels of integration of sports development and the demographics of an area. Also, direct comparison between the Council's leisure facilities should be treated with some caution as they are located over a wide geographical area with a diverse range of demographic and economic characteristics within their respective catchment areas.

Net Direct Cost of Facilities

3.4 This part of the report is intended to focus on the net direct operational cost of the leisure facilities. This does not cover the whole cost of the service which is dealt with in the Financial Implications Section of the report (Section 7).

3.5 The figures used to assess the net direct cost of the facilities and to analyse performance against benchmarks are 2011/12 actuals as these were the most recent figures from a complete financial year.

3.6 Table 3.1 sets out the net direct cost of the Council's leisure facilities for the 2011/12 financial year.

Table 3.1 – Net Direct Cost of Leisure Facilities

	2010/11	2011/12
Total Income	(£5,412,510)	(£5,615,186)
Total Expenditure	£8,586,617	£8,927,514
Net Direct Cost	**£3,174,107**	**£3,312,328**

3.7 It can be seen that the net direct cost of the facilities in 2011/12 was circa £3.31m.

Summary of Leisure Facility Performance

3.8 We have reviewed the financial performance of the leisure facilities based on the figures provided by the Oracle finance system with cross-reference to the income figures contained within the onsite system where appropriate. Performance has been compared against national benchmarks produced from FMG's database of leisure centre operational performance data. The key findings from this review are as follows:

- It appears that the net direct cost of operating the facilities in 2011/12 increased by £139k from 2010/11 to £3.31m. Income increased by £203k during this period however expenditure also increased by £342k. These figures should be treated with some caution as there are a number of discrepancies that the finance team are investigating regarding the recording of income for 2011/12 with circa £200k unaccounted for between the onsite till system and the Oracle finance system. In addition, the Council also introduced additional staffing costs (est at £325,000 for 5 months) in the financial year 2011/12 associated with re-introducing paying time and half for hours worked at weekends;

- The leisure facilities in Congleton, Macclesfield and Wilmslow were the three most expensive facilities in terms of net direct operating cost in 2010/11 and 2011/12. This is perhaps not surprising as all three facilities include swimming pools which often result in increased operational costs and these facilities include higher levels of staffing (lifeguards etc) for which the costs have also been affected by the costs of implementing Council single status through paying time and half at weekends. This point is supported by the fact that the lowest operating cost facilities are Barony Park Sports Centre, Shavington Leisure Centre and Holmes Chapel Leisure Centre which are all dryside only facilities.

- Some facilities, and in particular those that share leisure programme time allocations with an onsite high school and associated primary schools such as Middlewich, Sandbach Sir William Stanier & Holmes Chapel Leisure Centres and also Barony Sports Complex perform below benchmark levels for income generation. With the exception of Barony, all of these facilities have limited access for community use during the day (Monday to Friday) throughout the normal school year. None of these facilities have a swimming pool which always generates higher levels of public use and therefore higher levels of income. Middlewich was also adversely affected in terms of income in 2011/12 by the lack of any access to the floodlit astro-turf pitch which had been withdrawn from use by the High School pending the construction of a new replacement facility. The lower levels of community use possible at such smaller joint use sites supports the Council's considerations in relation to transferring these facilities where possible and appropriate back to the respective schools following expiry of the existing joint use agreements.

- The best performing facilities in terms of income generation are those at Crewe Swimming Pool, Nantwich Swimming Pool, Macclesfield Leisure Centre and Wilmslow Leisure Centre. None of these facilities have the same restrictions on programming and income that occur where the facility is jointly provided with a high school.

- Income per visit is below benchmark across the whole portfolio which is in line with the Council's corporate strategic aims to give priority to young people, the elderly and those with disabilities. We understand that headline prices have been benchmarked against nearest neighbours and are already at the higher end of comparisons, however, over a third of all attendances are young people16 years and under and with a further 150,000 total attendances amongst those 60 years or over. Both high priority target user groups for the Council and those that receive significant subsidies through discounted fees and charges for using the facilities.

- Health and fitness income is generally below expectations however the dual-use nature of the facilities as indicated above, the small size of the some of the fitness suites and value for money pricing will be contributing factors to this. The average number of members per station across the portfolio is only 17 compared to an industry average of circa 25 which indicates that the majority of gyms have additional capacity (a latent demand report would need to be procured to confirm this). The exceptions to this are Crewe and Nantwich Swimming Pools which have 27 and 36 members per station respectively. These are the two best performing facilities in terms of income per station and are closer to the £5k - £6k income per station level which we would expect to see from an in-house operation. However, **it is important to note that the Council has recognised this and we understand that the significant recent developments over the past 12 months at Wilmslow, Macclesfield, Shavington, Crewe, Knutsford and Sandbach (alongside minor improvements to equipment at Holmes Chapel, Alsager and Middlewich) has had a significant positive impact on income generation and membership levels, such that the 2012/13 financial performance will be in line with or exceed industry benchmarks in most cases – this clearly supports the benefits of investing in a 'quality' offer and supports the plans for upgrades at nantwich Pool (nearly complete), Congleton, Poynton and a further more significant upgrade, at Alsager and Sandbach**.

- Swimming and sports hall income compared to benchmark is reasonable in a number of the facilities. The leisure centres at Macclesfield and Wilmslow in particular are performing close to / above benchmark for both of these KPIs. If the additional VAT benefits that a trust operation can access were factored in, many of the facilities would be performing close to the benchmark level in these areas. There are however, a number of facilities (smaller joint use centres in particular, due to the inherent restricted daytime community access required by the shared arrangements with a high school) that perform significantly below benchmark for sports hall income which leads to questions about the need to continue operating all of the dual-use facilities which mainly offer large, 6 court sports halls. This analysis supports the Council's long-term thinking around the asset planning for rationalisation and the provision of new Lifestyle Centres.

- Performance against expenditure benchmarks is below expectation, particularly in relation to staffing costs which are often over 100% of income at many of the facilities – however, this is clearly impacted by the decision regarding enhancements, which we understand added £325,000 for 5 months of 2011/12 and has added c.£750,000 in the current year. This is also reflected in the fact that the overall cost recovery percentage is below benchmark across all facilities with the exception of Shavington Leisure Centre and Macclesfield Leisure Centre.

- Utilities costs are reasonable at many of the facilities considering the age of the asset stock however there are some facilities where the utilities costs should be interrogated to understand the reasons for the high costs compared to the benchmark level. Knutsford, Poynton and Sandbach Leisure Centres are all dual-use facilities which have very high utilities costs although this could be partially attributable to the lack of ability to accurately split utilities consumption / costs between the school and the leisure centre elements which may lead to some degree of subsidy of the schools premises being incurred by the Council via the leisure service. The utilities costs for the dual use Middlewich Leisure Centre in particular are above the benchmark level which is a concern because this dual-use facility does not have a swimming pool (although the same issue may apply as at the other dual-use facilities). Finally, Nantwich Swimming Pool has high utilities costs at £61 per square metre. These high utilities costs may be partially related to the provision of the heated outdoor pool.

- Maintenance expenditure is below benchmark across the portfolio which could be looked at as a positive in terms of controlling expenditure however is a concern if the upkeep of the assets is not being invested in for financial reasons as it will lead to long-term increases in major maintenance issues and reductions in income due to increased service disruptions and user dissatisfaction / attrition rates. It is noted that maintenance expenditure appears to have decreased significantly between 2010/11 and 2011/12. The responsibility for the maintenance budget now resides centrally with the asset management team. It is crucial that maintenance expenditure does not decrease further still (unless there is a clear plan for long-term disposal of an asset) as the resulting savings in expenditure are likely to be negated by reductions in income and increased long-term maintenance problems.

- Although there is some marketing spend in the individual cost centres for some of the leisure facilities the amounts are negligible and so have not been recorded in table 3.18. Marketing spend is not allocated per leisure centre as there is a central marketing team which works across all of the leisure facilities. The marketing team spent £39,353 in 2011/12 on marketing activities (this does not include the cost of the staff time i.e. their salaries and wages or associated expenses). Adding on the £1,502 spent on-site results in a total marketing spend of £40,855. This is the equivalent to 0.7% of income and is low when compared to the benchmark of 2.1%. This may be one of the contributory factors as to why performance against the income KPIs was predominantly below the benchmark levels across all of the facilities.

- It is acknowledged that the financial performance at some of the leisure facilities is understated because the true level of income and costs relating to school dual-use status and long-term hire of rooms by the Adult Services team are not accurately reflected in the levels of income / recharges allocated to each facility. This would impact positively on a number of KPIs and overall financial performance if accurate recharges were included.

4. Options Review

Introduction

4.1 Having outlined in sections 2 and 3 the current ‘offer’ and financial performance, the remainder of the report focuses on future provision, starting with an overview of the different options available generally for management of leisure & culture.

4.2 There are a number of different management options available for the Council to consider, each with their own advantages and disadvantages. It may be that one model covers all the facilities and services or that specific models will suit some of the facilities / services and not others.

4.3 We have grouped the management options under consideration as follows:

- Continued in-house management;
- Outsourced management – either through a private company or an existing charitable company (Trust); and
- Establishing a new company – either charitable or non-charitable trust

4.4 The text in this section provides a description of each option, their key characteristics and relative advantages and disadvantages.

In-House Management

4.5 This option involves the retention of the Council’s existing management model, potentially with some operational efficiencies and improvements made in order to generate financial savings and improve performance. Although this model will be very familiar to the Council, we have set out the key features and advantages and disadvantages to allow proper comparison with the alternative options.

4.6 The key characteristics of continued in-house management by the Council are as follows:

- the Council takes direct responsibility for the management and operation of the facilities and services;
- any staff employed in the operation of the facilities are employed by the Council;
- the Council gathers all income generated by the facilities;
- the Council is responsible for all expenditure incurred in the delivery of the services;
- the services continue to use the central support services of the Council;
- the operating risks of the services remain with the Council;
- the maintenance of the assets remains with the Council;

- there are no set up costs associated with this option and no timescale issues.

4.7 The table below sets out the advantages and disadvantages of in-house management.

Table 4.1 - In-house management - advantages and disadvantages

ADVANTAGES	DISADVANTAGES
The Council retains complete strategic and day to day control of services	The Council misses out on potential revenue savings from NNDR relief and VAT
The Council retains professional and operational expertise of services' management and staff	The Council retains liability for the operational performance of the services
Workforce remain within the local government framework and pension scheme (as appropriate)	The Council retains liability for the capital maintenance costs associated with the facilities and any capital funding requirements
Shares central support costs with other departments	Misses opportunity to improve management of the services by accelerating decision-making processes and providing greater autonomy to staff
Cross-relationships with other local authority services	Can have limited access to entrepreneurial spirit and flair (risk and reward)
No set-up costs or lead-in time required	Limited access to the benefits of developing new opportunities and from economies of scale

Summary of In-House Management

4.8 Under this option, there is no change, unless the Local authority can consider other self-financing investment options, the rationalisation of facilities or an operational review to improve the financial position. This solution will not address the risk transfer issues, provide a single focus for the service or protect the service from likely service cuts that will face local government over the coming years.

Outsourced Management

4.9 If the Council was to outsource the management of the service(s) through a procurement process, there would be likely to be two types of bidders:

- private sector organisations (often using 'hybrid' trusts); and
- existing charitable organisations (trusts).

4.10 These two types of organisations have different structures, characteristics and advantages and disadvantages, however would be likely to be directly competing for the right to deliver the service(s) should the Council choose to outsource to an external organisation through a procurement process.

4.11 The third option to outsource the leisure facilities presented in this section is via a trade sale of the assets to an existing private sector commercial operator such as Virgin Active. This would usually be achieved through a property transaction rather than a procurement process.

Private Sector Management

4.12 Following the introduction of Compulsory Competitive Tendering (CCT) to sport and recreational services in 1989, a number of companies were set up to respond to the opportunities of CCT in operating and managing public leisure facilities.

4.13 Since then, there are a number of private companies that have emerged to operate in the public sector sport and recreation market managing facilities and services on behalf of local authorities under contract. These include, by way of example, DC Leisure, Parkwood Leisure, Leisure Connection, SLM and Serco Leisure plus others.

4.14 The key characteristics of private contractor management are as follows:

- the Council would be the "client" and would manage operations under a contract agreed by both parties which would include a specification and performance measurement system;
- the management opportunity would typically be defined by a number of key heads of terms, including:
  - a fixed contract term (typically ten to fifteen years);
  - a management fee payable by the local authority to the contractor (potentially incorporating surplus share arrangements); and
  - a service specification setting out the Council 's requirements in respect of the delivery of the management services (typically including aspects such as pricing, programming, customer care, cleaning, opening hours, maintenance and quality management).
- the contractor undertakes management of the facilities, gathering all income generated by the facilities and being responsible for the majority of costs incurred by the facilities;

- typically, the Council would retain some responsibilities (usually in respect of structural repairs and maintenance) and incur costs in respect of these responsibilities;

- staff are employed by the private contractor via a transfer under the TUPE regulations;

- the operating risks of the services are transferred to the contractor. The contractor would incorporate its own profit (risk) margin within the management fee agreed with the Council and achieves this profit margin by delivering the projected financial performance;

- the Council would monitor the operational performance and service standards delivered by the contractor, such that any failures to perform may be subject to financial deductions;

- the private contractor will use their own central support costs and will not need to use those of the Council, which potentially has an impact on the central resources of the Council.

Hybrid NPDO Management

4.15 In recent years, most of the established private management contractors have started to offer a "Hybrid NPDO" management model (and some also offer charitable models). This model is a legal vehicle with charitable objectives, which can access discretionary NNDR benefits, but is not a charitable company or provident society and not recognised by the Charity Commission, thus removing the opportunity for any significant VAT benefits.

4.16 As with private sector contract management, the Council could enter into a management arrangement where some of the management of the facilities and/or services are subcontracted to the NPDO. Under such circumstances, the Council could benefit from revenue savings provided by this model through discretionary NNDR relief (75% saving on NNDR costs).

4.17 However, discretionary rate relief, as accessed by the Hybrid Trust option, provides a lower level of NNDR savings than the Charitable NPDO option (as outlined later in this section). Further to this, it should be noted that, due to the government's Business rates Retention Scheme which is being introduced in April 2013, the fiscal benefit from NNDR savings is likely to be less of an advantage to local authorities over the next 7 years until 2020. This issue is discussed in more detail in the financial implications section of this report.

4.18 The hybrid organisation may also benefit from additional grant and sponsorship opportunities as external organisations are probably more likely to grant-aid and/or sponsor a NPDO than the local authority itself.

4.19 Currently, the hybrid structure would not benefit from the potential savings generated by the different treatment of VAT within a charitable management structure due to the fact that the Hybrid NPDO is not viewed as a registered charity.

4.20 The advantages and disadvantages of the Hybrid NPDO option are broadly the same as the private contractor management option, as set out in the table overleaf. The only discernible difference is that the hybrid option offers additional NNDR savings as detailed above.

Table 4.2 - Advantages and disadvantages of private contractor management

ADVANTAGES	DISADVANTAGES
Contractor likely to maximise opportunities for income generation and economies of scale	The Council no longer manages day to day operation of the facilities and services (reduced control)
The Council is likely to be able to transfer considerable operational risk over to the private contractor	Contractor may prioritise commercial rather than social objectives e.g. profit (unless stipulated in the contract)
Broader expertise and experience of the private contractor	Potential loss of community focus (unless stipulated in the contract)
Access to capital finance to provide investment into facilities and services	Staff are transferred to the private contractor under TUPE, although pension benefits may be comparable only
The Council can enter into a long-term contract with performance guarantees	Capital finance can be more expensive than that provided by the public sector
The Council has greater certainty of cost in relation to the on-going revenue subsidy	

Use of an Existing NPDO

4.21 Where the Council decides not to set up a new NPDO but wishes to obtain some of the fiscal advantages associated with a NPDO structure an alternative option is to use an existing NPDO that has already been set up by another party.

4.22 There are many existing leisure trusts that have been set up by other local authorities and, once established, have started bidding for new contracts in other local authority areas. Examples include Greenwich Leisure Limited, North County Leisure, Fusion Lifestyle Ltd and Freedom Leisure. Many of these organisations also operate cultural facilities such as community halls and theatres and some, such as Wigan Leisure and Culture Trust or Rochdale Link for Life, were specifically set-up to offer a full range of leisure, cultural and green space services.

4.23 This option provides a similar fiscal solution to the new NPDO option (which is outlined later in this section) without the set up costs, but also provides the benefit of sharing risks across other leisure contracts that the NPDO holds and their associated economies of scale (similar to the private management option but normally on a smaller scale).

4.24 The key characteristics of management by an existing NPDO are as follows:

- responsibility for the management of the leisure facilities is transferred using a contract and specification;

- the NPDO would typically be a registered charity with a board of voluntary trustees and is independent of the Council;
- the Council would lease the facilities to the NPDO and would typically provide an annual management fee to the NPDO, reflecting the likely operational subsidy of the facilities;
- any staff employed to manage and supervise the facilities would be employed directly by the NPDO and transferred under the TUPE regulations;
- the NPDO undertakes management of the facilities, gathering all income generated by the facilities and being responsible for the majority of costs incurred by the facilities;
- typically, the Council retains some responsibilities (usually in respect of structural repairs and maintenance) and incurs costs in respect of these responsibilities;
- the operating risks of the services would transfer to the NPDO.

4.25 NPDOs have become very popular for the public sector seeking to achieve VAT and NNDR savings. A Charitable NPDO would be able to access mandatory NNDR relief which can be topped up with discretionary rate relief which the Council have the option to grant.

4.26 However, the ability for NPDOs to generate significant capital funding, without a track record, is not yet established and therefore capital funding from local authorities is likely (and normally cheaper to finance) if major capital investment is required.

4.27 The ability to access external funding grants is cited as an advantage of the NPDO model. However, it should be noted that grant funding streams in general are limited for leisure facilities at the present time.

Table 4.3 - Advantages and disadvantages of an existing NPDO

Advantages	Disadvantages
Savings on NNDR costs (although limited by the new Business Rates Retention Scheme - see Section 7)	The Council loses direct control of services and manages through a lease and contract
Savings from the different treatment of VAT	Difficulty in attracting significant capital investment
Greater financial and managerial autonomy	Capital finance can be more expensive than that provided by the public sector
Potential benefits from additional external funding opportunities	The Council retains ultimate liability for the operational performance and capital liabilities of the services
Opportunity for considerable community and staff involvement in the management of services	Staff are transferred to the NPDO under TUPE, although pension benefits may be comparable only

Advantages	Disadvantages
Benefits of having a single issue focus for the leisure team	Potential loss of local community focus (unless stipulated in the management contract) due to its lack of local representation
Operational risks potentially transferred to the NPDO from the Council	
May have access to capital finance, but this will be subject to levels of security and trading history	

Trade Sale

4.28 We have assumed that a Trade Sale in this context is the disposal of the leisure assets and thereby local authority leisure provision to a third party to operate as they see fit. This could include operators in the commercial leisure market, such as Fitness First, Virgin Active etc. who may be looking for leisure premises in this area. In this instance some form of leisure services are likely to be continued and staff may be transferred under TUPE arrangements.

4.29 However, this option is unlikely to be applicable to the Council's cultural and green space services as these services do not particularly involve the operation of income-generating assets to the extent that leisure does (particularly since the outsourcing of the management of the Lyceum Theatre to HQ Theatres and the outsourcing of the Knutsford Cinema to Curzon Cinemas).

4.30 It is also possible that other private equity companies or businesses would take an interest in the acquisition of these sites to provide either alternative or complementary services (e.g. sports retailer etc.). It could also cover the acquisition of the land for other commercial uses.

4.31 The key characteristics of trade sales are as follows:

- the local authority would receive a capital receipt from the disposal of the assets;
- the sale could be a freehold sale or a long leasehold (for example 125 years);
- staff may transfer under TUPE to the new owner, subject of course to the continuity of sport and recreational services;
- all operating and asset risks would be transferred away from the Council to the third party;
- the value of the purchase would take into account the potential income stream to be generated from the operation of the facilities, any covenants on the land and for the future land value that may be achieved in current or alternative uses;
- the purchaser will need to finance the cost of the acquisition as well as the operating deficit, unless revenues can be improved from a change in the business model or priorities i.e. a more commercial focus offering facilities at a premium price.

4.32 It should be noted that it is very unlikely that a commercial operator would be interested in acquiring more than one or two of the Council's leisure facilities at most. This is because the major commercial health and fitness operators require a significant catchment area population that only large towns and cities can provide.

4.33 Further to this, it is highly unlikely that any form of concessionary pricing scheme will continue, given the need to generate a return on investment. This will likely result in exclusion of a number of target groups due to their inability to pay commercial rates.

Table 4.4 - Advantages and disadvantages of a trade sale

ADVANTAGES	DISADVANTAGES
Local authority receives a capital receipt	Local authority has no leisure facilities under its control from which to provide public sport and leisure services.
Local authority transfers all the risks of operating the facilities to the new owner	New owners may seek to remove any leisure facilities and services in the future and replace with more commercial focus
Allows the new owners to manage the business on a commercial basis that may increase investment and employment	May be politically difficult to achieve
Access to future capital investment for the facilities and provide leisure services on a commercial footing	Likely to be unpopular with users on lower incomes as new facilities may incur a premium price
Staff will transfer to the new owner under TUPE for as long as the leisure facilities are provided	Focus on the provision of a commercial facility offering around health and fitness at a premium rate at the expense of a subsidised community leisure offering
	Staff are transferred to the NPDO under TUPE, although pension benefits may be comparable only

Establishing a New Company

4.34 The third overarching option for the Council is to establish a new organisation to run the leisure facilities (and potentially also take on some or all of the cultural and green spaces service areas). There are many forms which the organisation could take including:

- Unincorporated Charitable NPDO;
- Industrial and Provident Society (IPS);
- Company Limited by Guarantee (CLG);

- Charitable Incorporated Organisation (CIO);
- Limited liability partnership (LLP);
- Community Interest Company (CIC).

4.35 The text below explains the key features, advantages and disadvantages of these options in more detail. It is worth noting that these different types of company structure are often classified under the umbrella of Social Enterprises. A social enterprise is a company which:

- has a clear social and/or environmental mission set out in their governing documents;
- generates the majority of their income through trade;
- reinvests the majority of their profits;
- is autonomous of state;
- is majority controlled in the interests of the social mission; and
- is accountable and transparent.

4.36 All of the different structures discussed in this section can therefore be termed social enterprises – indeed, Greenwich Leisure Limited (which manages leisure services in the south east of England) is often used as a case study of a successful social enterprise.

4.37 The majority of the vehicles noted above are considered to be NPDO's – non-profit distributing organisations, for which there are a number of common characteristics.

Non Profit Distributing Organisations

4.38 A Non Profit Distributing Organisation (NPDO) is an organisation that is not able to distribute profits or surpluses to a third party, for example shareholders, but must use these profits or surpluses to reinvest in the organisations objectives to improve services.

4.39 The key characteristics of the operation of services by a new NPDO are as follows:

- the Council will enter into a contract and specification for the management and operation of the service / facilities;
- the assets, as per other options, will be transferred under a lease to the new NPDO;
- in return for the services and management of the existing facilities, it will receive an agreed fee from the local authority, probably in the form of an annual grant or perhaps a management fee;
- the operating risks of the services would theoretically transfer to the new NPDO. However, in reality, the new NPDO may not have the financial resources to absorb unforeseen operational losses and may request additional funding from the Council;
- the new NPDO may be a charity to take advantage of the fiscal benefits including VAT and NNDR relief;

- the NPDO will often have limited opportunity to raise capital finance, as it may have limited security and no trading history;
- a new NPDO will be likely to include many of the existing management team but may attract other senior officers to the team (finance, HR or legal for example).

Table 4.5 - Advantages and disadvantages of a new NPDO

ADVANTAGES	DISADVANTAGES
Management team are likely to understand the business, demographics and market together with the opportunities that this provides	The Council loses direct control of the services and facilities and it uses the contract and lease as a control mechanism
Opportunity for considerable community and staff involvement in the management of services	Staff are transferred to the NPDO under TUPE, although pension benefits may be comparable only
Operational risks potentially transferred to the NPDO from the Council	Capital finance can be more expensive than that provided by the public sector
May have access to capital finance, but this will be subject to levels of security and trading history	If the NPDO gets into difficultly, it is likely that the Council may have to support the NPDO
Benefits of having a single issue focus for the management team	Asset risk is likely to remain with the Council
May access VAT and NNDR benefits if structured correctly	Lengthy and complex NPDO set-up and transfer process
Greater financial and managerial autonomy of the NPDO	New NPDO may not be able to demonstrate track record of expertise to potential customers and investors
Potential benefits from additional external funding opportunities	Difficulty in recruiting trustees of suitable expertise and calibre

4.40 Over recent years the market has seen substantial growth in the use of these organisations to operate sport and recreational services for local authorities. There are a number of NPDO structures available to operate and manage sport and recreation facilities and services as set out in paragraph 4.34.

Unincorporated NPDO

4.41 The NPDO is a made by a declaration of trust and a trust deed that sets out the terms, objectives and functions of the NPDO together with the names of the trustees. It is registered with the Charities Commission who regulates the NPDO. The objectives are created so that they cannot be amended without the approval of the Charities Commission. The NPDO has tax benefits associated with VAT treatment of sales and purchases and NNDR relief (although the benefits from NNDR relief are not as significant for the Council following the introduction of the Business Rates Retention Scheme - see Section 7).

4.42 It should be noted that under the Unincorporated NPDO, the Trustees have personal liability and they are jointly and severally liable for any liability that accrues to the NPDO. Although it is possible to obtain insurances for these liabilities, this particular option is not seen as being appropriate for the management and operation of sport and recreation services due to the potential liabilities that may occur. For this reason we have not examined this trust structure in any further detail.

Industrial and Provident Societies (IPS)

4.43 These societies are corporate bodies which have limited liability and are registered under the Industrial and Provident Societies Act 1965. To be registered, the business must fall within the conditions of the Act in that the IPS is set up to carry on an industry, business or trade and is a bona fide co-operative society or the society is for the benefit of the community.

4.44 They were previously regulated by the Financial Services Authority although this changed on 1st April 2013 to the newly formed Financial Conduct Authority following the implementation of the Financial Services Act 2012.

4.45 Where an IPS is formed for charitable purposes, it will be deemed to be an exempt charity and enjoy the benefits available to other charitable bodies. The IPS does not need to register with the Charity Commission.

4.46 Under the IPS, each member has only one vote which can impact on the decision making process and where a local authority wishes to have a level of control through "shareholding" this option dilutes the voting rights of the local authority as more individuals become members.

4.47 This structure obtains the benefits of NNDR relief and VAT treatment where it is formed for charitable purposes.

Company Limited by Guarantee (CLG)

4.48 A charitable company limited by guarantee is a legal entity incorporated under the Companies Act 1985. Unlike the most common company structures, it does not issue shares but instead the members of the company undertake to guarantee to contribute a sum of money (normally a nominal value) in the event that the company is wound up,

4.49 The members of the company have limited liability to the level of their guarantee. These companies are regulated by the Charity Commission and are also subject to the requirements set out in the Companies Acts. It is considered that this approach offers flexibility compared to other NPDO models and they are able to change their rules to meet the needs of the business.

4.50 The Directors of the Company are called the Trustees and it is they that are responsible for compliance with the Companies Act and Charities Act and this requires a higher level of skill and knowledge in the company's administration.

4.51 This structure has the benefit of receiving NNDR relief and VAT benefits as registered charities.

Charitable Incorporated Organisation (CIO)

4.52 The CIO is a new legal form for a charity. It was first introduced in Chapter 8 of the Charities Act 2006, but applications to register new organisations as CIOs were not accepted until December 2012 due to the complexities of the new legislation and the resources to implement these changes. The legal framework for the CIO is set out in the Charities Act 2011 and in two sets of regulations and an Order from 2012.

4.53 The CIO is a new corporate structure designed specifically for charities. Most charities have been choosing to adopt a corporate structure (company limited by guarantee) because this can offer several benefits over unincorporated structures. These benefits include:

- the members and trustees are usually personally safeguarded from the financial liabilities the charity incurs, which is not normally the case for unincorporated charities; and

- the charity has a legal personality of its own, enabling it to conduct business in its own name, rather than the name of its trustees.

4.54 Most charities that currently opt for a corporate structure set up as a company limited by guarantee under company law. This means that they are subject to dual regulation by the Charity Commission and Companies House. In light of this, many in the charitable sector have long expressed a desire for a corporate structure designed to meet the needs of charities.

4.55 The CIO was created in response to requests from charities for a new structure which could provide some of the benefits of being a company, but without some of the burdens. Under this structure the charity only has to register with the Charity Commission and not Companies House. It can also enter into contracts in its own right and its trustees will normally have limited or no liability for the debts of the CIO. The same fiscal benefits relating to NNDR and VAT are attributable to the CIOs.

4.56 The Charities Commission has produced two model constitutions for a CIO:

- the foundation model for charities whose only voting members will be the charity trustees; and

- the association model for charities that will have a wider membership, including voting members other than the trustees.

4.57 In practice a CIO using the foundation model will be run by a small group of people (the charity trustees) who will make all key decisions. There may be no time limit on how long charity trustees may serve and they will probably appoint new charity trustees.

4.58 A CIO using the ‘association’ model will have a wider voting membership who must make certain decisions (such as amending the constitution), will usually appoint some or all of the charity trustees (who will serve for fixed terms), and may be involved in the work of the CIO.

4.59 Like companies, which must have both members and company directors, all CIOs must have members and charity trustees. Depending on the CIO’s needs, the same individuals can be both members and charity trustees, or there can be a wider membership made up of people who are not the charity trustees.

4.60 Disadvantages of becoming a CIO include registration time (within 40 days compared to same day service for companies) and that CIOs may struggle to access lending services from banks. CIOs will not have to keep a public record of liabilities, as companies do. Because of this, lenders will have no way of determining if they have outstanding debts, which could make them less inclined to take on the risk of lending. If a CIO wishes to borrow money, the individual trustees may be called upon to give personal guarantees, which defeats one advantage of incorporation. If an organisation is likely to want to borrow money, CIO status may not be appropriate.

4.61 The 'newness' of the model also makes this an un-tested route for service delivery in the leisure and culture field.

Limited Liability Partnership

4.62 A Limited Liability Partnership (LLP) is a business entity which was introduced to the UK in 2000 and is governed by the Limited Liability Partnership Act 2000. An LLP is a corporate body and is legally independent of its members in comparison to a normal Partnership, where legal existence is dependent upon its members.

4.63 LLP members have limited liability i.e. one partner is not responsible or liable for another partner's misconduct or negligence. Therefore, LLP members cannot lose more than they invest, unless fraudulent trading or personal neglect is suspected.

4.64 LLPs do not pay corporation tax but their members do in relation to their share of profits generated in a tax year. Another advantage is that LLP members do not need to hold general meetings and keep records of meetings unlike normal limited companies. LLPs are commonly used by solicitors and accountants.

4.65 The Council would not set-up a LLP itself; however LLPs can be used by local authorities as joint ventures in partnership with external enterprises - although these should be approached with caution and would require detailed legal advice. Further to this a LLP would not achieve the optimum fiscal position in terms of tax and NNDR benefits, for which it is ineligible.

4.66 Another disadvantage is that LLPs find it difficult to ensure that their assets are dedicated to public benefit. There is no clear way of 'locking' the assets of a LLP to a public benefit purpose, other than by applying for charitable status. The Community Interest Company is intended to meet this need.

4.67 It is unlikely therefore that a LLP would prove a suitable vehicle for future delivery of leisure facilities and services.

Community Interest Company

4.68 A Community Interest Company (CIC) is a type of company introduced by the Government in 2005 under the Companies (Audit, Investigations and Community Enterprise) Act 2004, designed for social enterprises that want to use their profits and assets for the public good.

4.69 CICs are intended to be easy to set up, with all the flexibility and certainty of the company form, but with some special features to ensure they are working for the benefit of the community, including a community interest test and limitations on dividends and how assets are dealt with (the asset lock).

4.70 Brio Leisure in Cheshire West and Chester is the first leisure-based Community Interest Company in the UK. It manages 17 of Cheshire West and Chester Council's sports and recreational sites, including 11 leisure centres, three golf courses and three entertainment venues.

Community Interest Test

4.71 This is assessed by the Regulator and defined as "A company satisfies the community interest test if a reasonable person might consider that its activities are being carried on for the benefit of the community".

Asset Lock

4.72 CICs are intended to use their assets, income and profits for the benefit of the community they are formed to serve and therefore must embrace some special additional features to achieve this. They are subject to an 'asset lock' which ensures that assets are retained within the company to support its activities or otherwise used to benefit the community.

4.73 The main elements of the asset lock are as follows:

- CICs may not transfer assets at less than full market value unless they are transferred to another asset locked body (such as to another CIC or a charity);

- if its constitution allows a CIC to pay dividends (other than to another asset locked body - essentially another CIC or a charity) these will be subject to a cap that limits the amount of dividend payable. A similar cap applies to interest payments on loans where the rate of interest is linked to the CIC's performance;

- on dissolution of a CIC any surplus assets must be transferred to another asset locked company (a local authority is not an asset locked company).

4.74 The key characteristics of the CIC are as follows:

- the same body cannot be both a CIC and a charity, a CIC may well be a useful way of operating a charity's trading activity. It could be established in such a way that it could pass some, or all, of its profits to the charity to finance its charitable activities;

- the concept of community is important to understand as it can have a wide range of meanings from the population as a whole to the residents of a particular area or a group of people suffering from a particular disadvantage;

- a CIC cannot be used solely for the financial advantage of a limited group of people, for political purposes or for the benefit of the employees, directors or members of a single organisation;

- the basic legal structure for CICs is a limited liability company. They can either be incorporated as a new company, or converted from an existing company;

- the CIC will operate in the same way as any other company and will have a separate legal identity; the ability to enter into contracts and own assets in its own name; and flexibility in borrowing and fund raising. The separate legal identity means that a CIC will continue to exist despite changes in ownership or management;

- the directors can be paid and will have the same rights and duties as any other directors;

- the members (shareholders) of a CIC will have the same governance and decision-making role as in any other company, but they (and the directors) will be under a stronger obligation to have regard to the wider community which the company serves and involve stakeholders in its activities than might otherwise be the case;

- people dealing with a CIC (such as banks and suppliers) are familiar with dealing with companies and therefore have confidence in dealing with the CIC structure;

- CICs will produce accounts and annual returns just like any other company, which will be available on the public record. Further transparency will be achieved by the annual CIC report;

- the asset lock and other features will give confidence to those funding CICs (particularly those not looking for any financial return) that the assets will be used for the benefit of the community and not unduly benefit the CIC's members or employees;

- CICs do not receive tax breaks from the Inland Revenue by virtue of their legal status and are liable for corporation tax;

- there is no general exemption from VAT for social enterprises that undertake trading activities.

4.75 In some circumstances local government may provide discretionary rate relief to social enterprises if they are for charitable purposes but this is up to the individual local authority discretionary rate relief policy.

Table 4.6 - Advantages and disadvantages of a CIC

ADVANTAGES	DISADVANTAGES
Management team are likely to understand the business, demographics and market, together with the opportunities that this provides	The Council loses direct control of the services and facilities and instead it uses the contract and lease as a control mechanism
A focussed and driven team that will seek to drive the business and profitability for the benefit of the community	Staff are transferred to the NPDO under TUPE, although pension benefits may be comparable only
Operational risks potentially transferred to the CIC from the Council	Capital finance can be more expensive than that provided by the public sector
Access to capital finance, but this will be subject to levels of security	If the CIC gets into difficultly, assets cannot be transferred back to the Council as the Council is not an asset locked body
Strong community focus as annual report on community benefits must be provided to Regulator	No VAT benefit on sports and recreational services
May access NNDR benefits (discretionary)	Could have limited track record and may not be able to demonstrate expertise to potential customers and investors

ADVANTAGES	DISADVANTAGES
Asset lock prevents distribution of physical assets to other parties at less than market value and places restrictions on dividend payments	

Sport & Play Development

4.76 Having set out the key characteristics, advantages and disadvantages of all types of management options, included in table 4.7 is a summary of the advantages and disadvantages of including the sport and play development service under the selected management options being considered, based upon consultation and research of the service.

Table 4.7 - Inclusion of Sport & Play Development

Option	Advantages	Disadvantages
In house	• Existing service has strong links/established relationships with schools, clubs, NGBs, Universities, PCT and other partners • Continued access to central support services (HR, legal and IT support) from the Council • Service covered by Council policies on equality of opportunity and other legislation • Maintain current branding, reputation and core values	• Financial pressure on Council which may impact on this discretionary service • As a public body, the service may be restricted in terms of the types of grant aid that is available • Although perceived as more secure by staff, local authority sports development services are under threat throughout the country and there is no guarantee of job security
Private Sector	• Council can purchase outputs in line with their policies - using an outcome based approach, the private partner has to mould their services to meet agreed outcomes • Strong culture of performance and accountability in delivering targets • Potential for reinvestment in service • No direct political influence, albeit the outcomes will be set in line with Council priorities	• Not many private contractors have experience of running a sports development service • The service will probably be perceived as being primarily for profit / to support facility programming, rather than sports development - this may detract certain community partners and funders from being involved • Working to a contract / specification is necessarily less flexible, making it more difficult to mould services to changing Council/ Partner priorities

Option	Advantages	Disadvantages
Existing NPDO	• As private sector although performance and accountability could be reduced if a clear outcome-based contract is not in place • eligible to apply for funding from government and other funding agencies due to 'not for profit' status • potentially eligible for VAT exemptions on any charges made for services • a tried and tested model which has been around successfully for many years - many early NPDOs set up to manage facilities have now included sports development in their offer, given the obvious links between the services	• may not have the influence that the In House operation has currently with partners and funders – the current operation appears to be very well respected and linked, which would need to be protected • focus of the NPDO may be on facilities rather than the sports development service, meaning that some of the wider health & wellbeing targets may become less important compared to generating activity in the facilities • Working to a contract / specification is necessarily less flexible, making it more difficult to mould services to changing Council/ Partner priorities
New NPDO	• As existing NPDO above, however the localised nature of the new NPDO in terms of trustees / directors means that some of the key development partners could well be trustees in the new vehicle • Current team have detailed knowledge of the service and would transfer with the facilities staff	• As existing NPDO above

4.77 The externalisation of the Sport and Play Development Service may provide the flexibility and a dynamism that can be difficult to achieve within the constraints of the in-house structure and could enable improved decision making and a more flexible staffing structure. There may also be greater opportunities for staff to diversify into other areas of the private sector/NPDO businesses, together with fiscal benefits that cannot be achieved in-house.

Procurement regulations

4.78 One of the key issues around a local authority setting up its own NPDO is whether this approach contravenes the public procurement regulations and the value for money principles used by public bodies. In all cases, we would strongly recommend that specific legal advice is obtained on this, prior to confirming a way forward. We therefore set out below simply an overview of key considerations, rather than any opinion.

4.79 Public contracts in the UK are presently governed by the Public Contracts Regulations 2006 ('the Regulations') which implements the provisions of the EU Directive (2004/18/EC). These Regulations set out the procurement requirements for different types of public sector contracts, and while these Regulations may exclude certain types of contracts from their regime, there remain overriding considerations that need to be taken into account to ensure that the EU principles of transparency, equal treatment, non-discrimination and proportionality are at all times maintained (it should be noted that the proposals to revise the existing public procurement rules are being negotiated through the EU Competitiveness Council. The revised directives could be adopted in 2013, but this is dependent on various factors including discussions with the European Parliament. Transposition of the revised directives will then follow; the current proposal would require member states to implement the new rules within 18 months of the new directive being published in the Official Journal of the EU).

4.80 The Regulations currently require certain contracts to advertise in the Official Journal of the European Union (OJEU) and follow the procurement rules set out in the Regulations where the procuring entity is a 'contracting authority'; the contract is a public works, services or supplies contract; and the estimated value of the contract is above the specified financial thresholds.

Part B service contracts

4.81 The Regulations however only apply a lesser regime to Part B service contracts, which are residual contracts i.e. contracts that are considered to only be of interest to bidders within the country where the contract is to be carried out, and which includes recreational, cultural and sporting services e.g. leisure contracts.

4.82 Although Part B contracts, (including leisure contracts), do not need to comply with the full rigours of the Regulations, the procuring entity must never the less ensure that the EU principles of non-discrimination, transparency, equal treatment, and proportionality are maintained in order to avoid any possible challenge.

4.83 Therefore when procuring a Part B contract, procuring authorities should be mindful of the EU principles at all times, as increasingly these principles are seen overriding specific national laws and as such these contracts should be advertised in a proportionate manner.

4.84 The above all assumes that this is a services contract (procuring a contract with the private sector, existing NPDO etc.) that may require procurement, however there is the alternative of a grant arrangement.

Grant and lease arrangements

4.85 Setting up a NPDO and paying a grant to the NPDO would not be deemed to be a services contract and as such would be outside the provisions of the Regulations. In such a scenario the local authority will be divesting itself of the facilities on a lease arrangement and will not be providing any services and therefore the provisions of the Regulations will not apply. This is a grey area but has been used alongside local authorities "well-being" powers to set up NPDOs to provide leisure and cultural services.

4.86 There are however drawbacks to this grant approach in respect of the VAT situation, as the one off grant payment from the Council would not include VAT. This could potentially mean that there is additional irrecoverable VAT for the NPDO, negatively impacting on its financial position.

4.87 It should be noted however that it has been known in the past where Councils have entered into these grant arrangements that HMRC is convinced by the leisure NPDO that the transaction should be treated as a payment for services and that VAT can be attracted and is therefore recoverable, irrespective of the fact that for procurement purposes this same contract has been structured as a grant and not a services contract.

Teckal exemption

4.88 Within the context of complying with EU procurement regulations, the Teckal exemption has been referred to by a number of authorities looking to provide services without opening them up to formal procurement. Teckal is a reference to a case against an Italian local authority, which contracted directly with a consortium set up by several local authorities (including the awarding authority) without an EU-compliant public procurement process.

4.89 The court held (ECJ judgement reference C-107/98) that procurement rules do not need to be complied with where the winning provider is:

- controlled by the awarding authority/authorities in a manner “similar to that which it exercises over its own departments” – structural control; and at the same time
- it carries out the essential part of its activities “with the controlling authority or authorities” – economic dependency.

4.90 These two aspects are now commonly referred to as the Teckal Test, which sets out that the procurement rules are applicable only if the contracting entities are both distinct in law (i.e. separate legal entities / companies) and are not structurally controlled or economically dependent.

4.91 Therefore, for certain types of new delivery vehicle, this exemption could apply, however, in the case of charitable vehicles where independence is necessary, then it is unlikely that the exemption will apply.

Freehold vs leasehold

4.92 In all the options it is generally assumed that the Council will grant a lease / licence to the operator, such that they are in rateable occupation of the premises for NNDR purposes. The normal practice is that this lease / licence is coterminous with the contract and is forfeited if the contract is terminated. Thus the assets revert back to the Council on any termination of the contract.

4.93 This approach protects the Council in relation to getting back the land and buildings in the event of contract termination or business failure by the operator – for example, if the operator becomes insolvent, the contract is usually terminated and the assets revert to the Council.

4.94 Given the length of contracts is very rarely longer than 25 years, there does not appear to be any reason for considering disposing of the freehold of the sites to the operator in any of the scenarios presented.

What if things go wrong?

4.95 For each option there are different implications associated with wanting to end the arrangement / change the terms. These are summarised below, but it is recommended that legal advice is sought in all cases before considering ending or amending a contract / lease.

- ***Contractor / Trust liquidation***
  in the event that the contractor or trust goes into liquidation, then the facilities would revert back to the Council as the contract and lease would be terminated. The Council would then need to either re-tender the operation or provide the services directly;

- ***Poor performance by the contractor / trust***
  The contract / grant agreement should include specific performance requirements and KPIs, which are monitored on a quarterly basis. Poor performance can then be addressed via performance improvement plans or financial deductions from the management fee / grant. For this system to operate, a robust service specification and performance monitoring system is required;

- ***Concerns over members of staff***
  This would normally be reported to the contractor / trust for them to take action appropriately. However, it is unusual for the Council to be able to control this directly, as the staff will be employed by the contractor / trust;

- ***Asset failure***
  if there is a major asset failure (e.g. roof collapse), then this would normally be the responsibility of the Council, such that the Council has an obligation to repair the problem or if it does not, then to pay loss of income to the operator. The Council therefore needs to ensure its responsibilities are managed appropriately to avoid unforeseen financial costs. However, if a full repairing and insuring (FRI) lease has been granted, which is sometimes the case for trusts, then the asset failure is the responsibility of the operator;

- ***Council wishes to terminate the contract or change the scope***
  If the Council wishes to voluntarily terminate the contract then it would normally be liable to pay loss of profits to the contractor, plus all associated breakage and redundancy costs. The same scenario would apply if the Council wished to remove one or more facilities from the contract, unless this was foreseen at the outset and a partial termination opportunity written specifically into the contract. In terms of a local trust with no other contracts, the situation may be slightly different in that it is less likely to be charging loss of profit as without the contract the trust would not survive so it would be liquidated. Also, there is more scope for a ‘negotiated’ solution with the trust in terms of changes in asset stock.

Summary of Options

4.96 There are a number of options highlighted in this section for the future management of the Council's leisure facilities, many of which could incorporate the other Council functions identified in Section 1. The options to be taken forward for further assessment are set out in Table 4.8.

Table 4.8 - Options for Detailed Analysis

Management option	Detailed Analysis?	Justification
In-house	Yes	Current management model so forms the base option to compare all other options to.
Private Management (Hybrid)	Yes	Analyse together as both options are potential outcomes of a procurement process to externalise the management of the facilities to an existing management vehicle.
Existing NPDO	Yes	
Trade Sale	No	Unlikely to be market demand for existing Council facilities. Very limited examples of trade sales occurring in other places. Would not deliver any of the Council's non-financial strategic aims and likely to result in exclusion of key user groups due to pricing and access controls.
LLP	No	Unlikely to be financially viable and no ability for asset lock. If Council is considering setting up a new company, recommended models would be CIC, CLG or CIO, all of which offer greater fiscal and community benefits.
CIC	Yes	Offers benefits of external company with ability to asset lock.
CLG / CIO	Yes	Could take either form as outlined in this report section although CIO is very new and untested structure. Analyse as one option as fiscal benefits are similar across both options.

4.97 At a headline level the key decision for the Council to consider is whether it wishes to contract with an external organisation (in which case it will carry out a procurement process open to private contractors and existing trusts) or does it wish to set up a new management vehicle (in which case it must consider the merits of the different structures set out in this report and confirm the legal powers on which it can do so).

4.98 It is possible that the additional Council services which could be added into the commissioning opportunity could be added into any of the above management options however, in reality, it is rare to have an externalisation of all of these services in a single contract. We have summarised in the table below our emerging thoughts on the most realistic options for the combination of facilities and services based on the strategic fit and our knowledge of the marketplace.

4.99 For the purposes of the table we have grouped the options together into procuring an existing organisation or setting up a new organisation. The table assumes that the leisure facilities are the core base to the commissioning opportunity as there could clearly be a large number of different opportunities if each of the services was examined in isolation (e.g. a green spaces only trust for example) although the establishment of multiple new management vehicles by the Council would not be advisable from a fiscal, service integration or management perspective.

Table 4.9 - Potential Packages of Facilities and Services

Management Option	Leisure Facilities	Sports & Play Development	Community Halls	Arts & Culture	Green Spaces
Existing Organisation	✓	×	×	×	×
Existing Organisation	✓	✓	×	×	×
Existing Organisation	✓	✓	✓	×	×
New Organisation	✓	×	×	×	×
New Organisation	✓	✓	×	×	×
New Organisation	✓	✓	✓	×	×
New Organisation	✓	✓	✓	✓	×
New Organisation	✓	✓	✓	✓	✓

4.100 The financial and non-financial merits of these options are discussed later in this report in Sections 7 and 8. With a new organisation in particular, there are clear opportunities for phasing the transfer of facilities and services, based on the ‘readiness’ of the service to transfer and the ability of the organisation to deliver the required services.

5. Legal Implications

Introduction

5.1 This section deals with the following matters:

- property and leases;
- transfer of employees; and
- pensions.

Property and leases

5.2 Under an outsourcing arrangement, it is normal for all the assets to be transferred to the new operator under a lease arrangement, which provides exclusive use of the facility to undertake the provision of leisure services. This is important to ensure that the new operator can access VAT and NNDR benefits (if applicable).

5.3 It is common practice for the lease to be co-terminus with the contract so that where a contract is terminated, the leases also fall (are determined) at the same time. Normally the leases are "bare" leases, with all the controls around maintenance, advertising and use etc. to be included in the service specification.

Dual-Use Sites

5.4 There are a number of dual-use facilities within the leisure portfolio. All the schools have joint use agreements in place, of which the terms and obligations will be addressed in any future contract and service specification. It is normally very common for these dual use sites to have a lease to the Council from the County Council or Schools, which can be sub-leased to a new operator.

Transfer of employees

5.5 The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (referred to below as TUPE 2006) is the main piece of legislation governing the transfer of an undertaking, or part of one, to another.

5.6 The regulations are designed to protect the rights of employees in a transfer situation enabling them to enjoy the same terms and conditions, with continuity of employment, as formerly. TUPE 2006 entirely replaces the Transfer of Undertakings (Protection of Employment) Regulations 1981 (SI 1981/1794). TUPE 2006 applies to all relevant transfers including service provision changes where services are outsourced, 'insourced' or assigned to a new contractor.

5.7 TUPE regulations were introduced to comply with relevant EC Directives concerning transfers of undertakings. Further statutes and regulations have an effect on TUPE and include:

- The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1995 (SI 1995/2587);

- The Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 (SI 1999/1925);

- Pensions Act 2004, especially sections 257 and 258; and

- The Transfer of Employment (Pensions Protection) Regulations 2005 (SI 2005/649).

5.8 In 2005, the Government issued a code of practice on workforce matters in public service contracts. This Code set out an approach to workforce matters in relation to public sector service contracts which involve the transfer of staff from a local authority to a Contractor or in which staff originally transferred out from the local authority as a result of an outsourcing or a retender of a contract.

5.9 The intention of the Code is to ensure that the Council selects only those Contractors who offer staff a package of terms and conditions which will secure high quality service delivery throughout the life of the contract.

5.10 These must be sufficient to recruit and motivate high quality staff to work on the contract and designed to prevent the emergence of a 'two-tier workforce', dividing transferees and new joiners working beside each other on the same contracts. It should be noted that the current Government abolished this Code in March 2011, although some local authorities are still including the key principles in their contract documentation.

Pensions

5.11 In relation to pensions, the Staff Transfer in the Public Sector and the Transfer of Employment (pension protection) Regulations 2005 do not oblige the new employer to provide the same pension scheme, but states that a "broadly comparable" scheme should be provided. The Regulations have the effect that employees employed by the previous employer when the undertaking changes hands automatically become employees of the new employer on the same terms and conditions.

5.12 Therefore the employees' continuity of employment is preserved, as are their terms and conditions of employment under their contracts of employment (except for certain occupational pension rights). Occupational pension rights earned up to the time of the transfer are protected by social security legislation and pension trust arrangements.

Pension arrangements for new joiners to an outsourced workforce

5.13 Normal market practice is that the operator will offer new recruits taken on to work on the contract beside transferees one of the following pension provision arrangements:

- membership of a good quality employer pension scheme, either being a contracted out, final-salary based defined benefit scheme, or a defined contribution scheme. For defined contribution schemes the employer must match employee contributions up to 6%, although either could pay more if they wished;

- a stakeholder pension scheme, under which the employer will match employee contributions up to 6%, although either could pay more if they wished.

5.14 However, we note that the Council has not signed up to the Principles of Good Employment Practice for Government, Contractors and Suppliers.

5.15 On a retender of a contract, it is usual for a new service provider to offer one of these pensions options to any staff who transfer to it and who had prior to the transfer a right to one of these pension options, in line with the regulations noted above.

Admitted Body Status

5.16 The admitted body status guidance explains the regulatory position provided for in the Local Government Pension Scheme (Administration) Regulations 2008 (as amended). It covers how external providers, such as companies or third sector organisations, can be admitted to the LGPS and sets out the pensions considerations that have to be taken into account when employees transfer from a local authority to an external operator.

5.17 Under this arrangement, a new operator may apply for Admitted Body Status to the Local Government Pension Scheme. This means that employees transferred will continue to enjoy the benefits associated with their current local government pension scheme.

5.18 It should be noted that there can be an additional cost relating to the employers pension contributions associated with the transfer of staff from the local authority to another organisation.

Pension adjustment

5.19 The transfer of the staff under TUPE using an Admitted Body Status may impact on the level of the Employers Contribution that the Council is required to make. It will require a revised valuation, taking into account the number of remaining staff, their age, salaries etc. to determine the amount that is required to be recovered by the Council and likewise the Employers Contribution rate will need to be determined for the staff transferring to the new admitted body scheme.

Auto-Enrolment

5.20 The government has introduced a new law to make it easier for people to save for their retirement. It requires all employers to enrol their workers into a qualifying workplace scheme if they are not already in one. At present, many workers fail to take up valuable pension benefits because they do not make an application to join their employer's scheme. Automatic enrolment is meant to overcome this.

5.21 This is a key risk area to be aware of as it could significantly increase employee costs for whatever organisation is managing the services / facilities at the time. The automatic enrolment scheme started in October 2012 with each organisation being allocated a staging date depending on the size of the organisation.

5.22 On this date any employee who meets the following criteria will automatically be opted-in to the pension scheme:

- is not already in a qualifying workplace pension scheme;
- is at least 22 years old;
- is below state pension age;
- earns more than £8,105 a year; and
- works or ordinarily work in the UK (under their contract).

5.23 Part-time workers who earn less than the amount identified above can ask to take part if they want to and, if they earn more than £5,564, their employer will be obliged to make a contribution too. Those aged under 22, or over state pension age and still working, can also opt-in in the same way.

5.24 According to Council information, the next staging date for the Council is 1st October 2017. There are currently 366 full time equivalent (FTE) staff working within the leisure centres (and another 766 casual employees – FTE figures not available). Of the 366 FTEs, 204 currently pay into the pension scheme at the following rates:

- employer contribution rate of 21.8%;
- employee contribution rate of 5.9%.

5.25 Clearly there is a large risk of staffing costs increasing in 2017 when the additional 162 staff members are automatically enrolled, although it should be noted that a proportion of these people either may be too young (i.e. below 22 years of age) or may opt-out of the scheme as their employee contribution is too much for them to afford at this stage. Under the legislation, staff are entitled to opt-out of the scheme. Those who opt-out will be automatically enrolled again every three years by an employer, or after three months at a new job, at which point they will need to complete the opt-out process again.

6. Risk Analysis

Introduction

6.1 This section provides an overview of the risks that impact on the different management options in the context of the Council. These risks include:

- operating risk;
- third party income risk;
- equipment obsolescence risk; and
- building and plant risk.

Balancing Risk with Value for Money

6.2 In general terms, from the Council's perspective, each management option may have a different level of risk and consequently will have a potential cost to the Council and the operator. The principles of risk management are generally that risks should be allocated to the party best able to manage the risk.

6.3 This approach provides improved value for money, as the operator does not need to include any contingency or additional provisions within the annual management fee for risks that they cannot fully manage and it ensures that the Council is not paying the operator for a risk that it is best able to manage itself (e.g. the building structure).

6.4 We have already provided details of the characteristics associated with each of the management options, which include elements of risk, however this section seeks to provide further detail of the headline risks and who is best able to manage these.

Balancing Risk with Service Quality

6.5 Service quality is a measure of how well a delivered service matches a customer's expectation. The main reason to focus on quality is to meet customer needs while remaining economically competitive, which means that satisfying customer needs is very important for a business to survive, which is especially important where a business is reliant upon income from users.

6.6 On that basis, the operator needs to find a balance between meeting customer expectations within the financial constraints imposed upon it from the cost of providing the service and managing the risk.

6.7 The private sector and to a certain extent the existing NPDO management options have always faced the issue of balancing service quality with cost. Without this fine balance, most of these businesses would not survive, albeit that with public sector provision, some of the financial risk is met by local government through a grant or management fee.

6.8 New NPDOs normally have the comfort that any variation in income or costs may be met from a change in the level of annual grant funding, but more recently, some of these NPDOs have found that the annual grant is fixed and they do not have the resources (human and cash) or commercial acumen to bring about quality services within their limited resources, which results in a downward spiral of reduced income, reduced services to compensate for the reduced income until ultimately the NPDO fails or is amalgamated with other existing NPDO operators. (There are a number of examples of failed leisure trusts across the country).

6.9 Service quality and risk are however directly linked. By managing the risk through maintaining buildings, replacing equipment at the end of its economic life, focussing on the operating costs that are important to delivering income and providing services that meet the needs of customers, a quality service is more likely to ensue.

6.10 In summary, all management options need to address this balance of service quality and financial competitiveness and it will be the option that can deliver the experience and can manage these risks the most efficiently (through direct management or from cash reserves across its business) that will provide the best value for money solution.

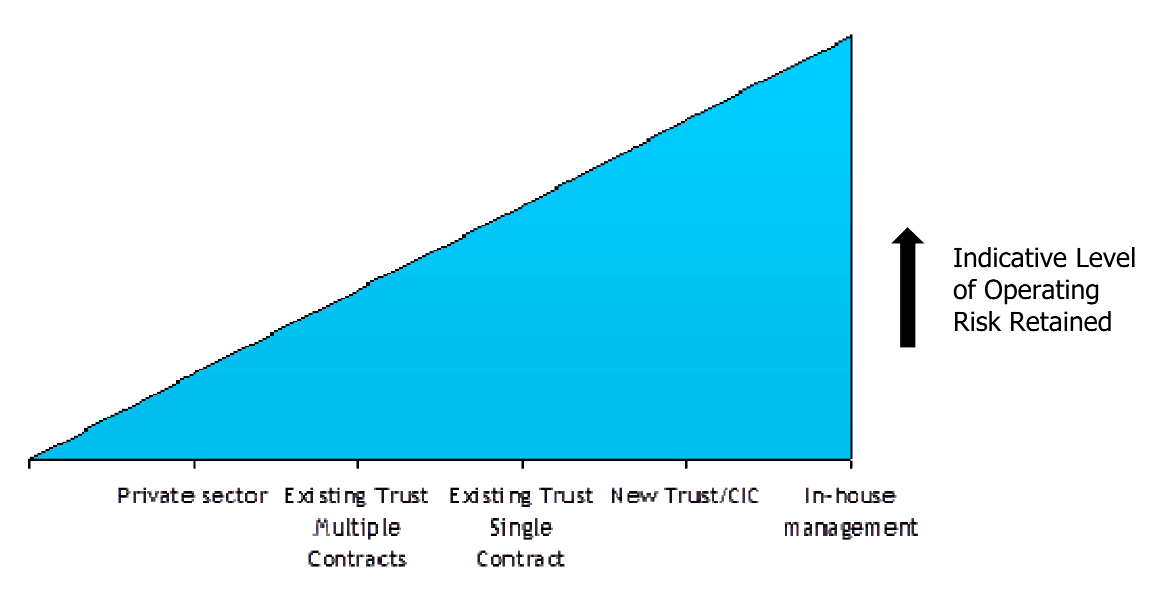
Operating expenditure risk

6.11 The level of risk associated with the operation of sport and recreational facilities is down to the experience of the management and the likely liquidity of the business. The failure to use resources efficiently, managing price sensitivity and programming requirements for users, marketing and branding and also price changes for services (e.g. utilities) are likely to lead to additional costs on the business.

6.12 The Audit Commission Report in June 2006 made it clear that the private sector option was likely to require fewer subsidies than other management options and one of the key reasons for this would be the experience of the management team and the size of their businesses to absorb fluctuations in income and costs.

6.13 Figure 6.1 provides an overview of the risk across the different management options.

Figure 6.1 Indicative assessment of operational risk to the Council under each option



6.14 Under the terms of the contracting arrangements, a new trust, private operator or an existing trust are more likely to have to take responsibility for the operating costs and income and manage these themselves within an agreed contract framework, although it should be noted that with a new trust or CIC set up by the local authority, this risk may fall back to the Council through an increase to the annual grant or management fee to provide the service.

6.15 In general, the private sector operator is more likely to have the resources to manage and sustain any short term losses arising from operating risks occurring. This benefit needs to be considered against the more commercial focus of a private sector operator compared to the management options that retain more risk for the Council i.e. in-house or setting up a new company such as a company limited by guarantee or a community interest company.

Third party income risk

6.16 One of the key drivers to determining the level of annual management fee is the assumptions relating to income. Income from users is used to offset the operating costs of the leisure facilities but income is more sensitive to market changes than operating costs. The gearing effect of a reduction in income can be high when translated to a change (%) to the management fee.

6.17 The key drivers in the management of income levels are:

- marketing and branding;
- reaction to changes in the market;
- opportunities to recognise new ideas (market knowledge and innovation); and
- ability to implement changes to the business model.

6.18 Again, similar to the levels of risk associated with operating expenditure, income follows the same pattern where a management contract is in place, with the private sector leading the level of risk transfer with the in-house option being the lowest in terms of transfer of this risk.

6.19 The new trust may not perform as well as the existing trust as it is likely that the new trust may have less commercial experience than the existing trust. In addition, an existing trust may have other contracts to spread their risks across. The CIC may have the commercial expertise to manage income risk if the right management team is put in place, but if it is set up internally by the Council, the CIC risk profile is similar to the new trust option.

Equipment obsolescence

6.20 This risk is associated with the replacement (or refreshment) of equipment at a time that is earlier than planned. It is similar for the refreshment of the interior of the building (e.g. painting of walls, doors etc.). This risk results in either a one off cash flow cost (the bringing forward of the works) or an additional cost (the works not identified at the commencement of the contract).

6.21 Good asset management strategies and systems are important to ensure that equipment is maintained correctly and replaced at proper time intervals and also that these costs are identified in the maintenance plans when the annual management fee for the contract is set.

6.22 The failure to maintain equipment etc. can lead to unavailability of equipment leading to deductions for poor performance or at worst the closure of the facility and loss of income. The onus is on the experienced technical team to understand not only the importance of the maintenance regime but the implications maintenance has on income generation and also the control of maintenance costs.

6.23 Experience is again key with the management of this risk. The private sector and some larger trusts employ suitably qualified and experienced personnel to assess and optimise the economic life of the equipment and ensure that maintenance is carried out efficiently to minimise cost. New trusts or CIC's set up by local authorities may not have this level of experience and may be exposed to additional risk when compared to the private sector and existing trust options unless there is a transfer of experienced technical staff at the Council who will be on the TUPE list by the nature of the amount of time they spend on the leisure service.

Buildings and plant

6.24 Under management contracts it is likely that the maintenance and responsibility for the structure and foundations of the asset remains with the Council (for example roof / walls / foundations / underground services). It is unlikely that an operator (under any of the options) would wish to take the risk on the assets without a full structural survey and a condition survey, and even then it is unlikely that they will take all of the risk.

6.25 Although the probability of the risk occurring is low, were the risk to occur, this may result in a substantial liability which the operator would not be able to sustain. On that basis, and in common with most management-only contracts, this risk will remain with the local authority (as per the current in-house management arrangements).

6.26 Experience suggests that although operators will not take the structure of the building as a risk, agreements on the plant and building fabric may be taken, with caps on liabilities etc. with the operator. This allows the operator to include in their price an amount to cover the capped liability of the risk, if it were to occur and allows some level of coordination or repairs and maintenance by the on-site team.

6.27 In contrast, the trade sale will transfer responsibility for the assets away from the Council together with the risks associated with them.

Risk mitigation

6.28 Providing that the risks are allocated to those best able to manage these, there are mechanisms that are used to provide improved value for money to the Council in certain areas. These areas of risk mitigation are covered through the management contracts or finance and management agreements between the Council and the operator. These include:

- benchmarking and income share arrangements;
- performance bonds;
- liability caps on certain expenditure areas; and
- contingency sums.

Benchmarking of income and costs

6.29 It is difficult for an operator under any option to provide certainty over their costs and income over a period of more than 5-10 years, without having to increase their risk provision in the event that income does not materialise, or, for example, key activities become outdated.

6.30 In order to provide a value for money solution, some management contracts will have a 5 year review, where the operator can compare their costs with other similar facilities and agree that where the costs of providing elements of the service (e.g. utility costs) are greater than originally planned the additional cost will be shared between the Council and the operator.

6.31 This has also been used on income projections where as a result of a change to the demographics or additional competition (supported by the local authority) income is adversely affected resulting in an additional cost to the operator. This cost can be shared with the Council and the operator and therefore the operator reduces their risk contingency accordingly (and management fee), which may result in a much-improved VFM solution.

Performance Bond

6.32 It is common with any type of outsourcing arrangement to ask the operator to provide a performance bond to the Council where there is a default arising by the operator in terms of their failure to meet the contractual obligations between the Council and themselves. This bond should be sufficient to cover as a minimum any costs arising from a re-tender, any breakage costs incurred by the Council and in some cases, the cost between the original contractors price and the new operators price (although this latter element is now rare).

Income Share Arrangements

6.33 The management fee will include a level of profit that the operator requires to cover the risk of operating the facilities. Experience of other management contracts suggests that the local authority can seek a sharing arrangement of any "super profits" that are generated by the operator. These super profits are shared in different ratios depending on the level of super profit and reflect the risk associated with the operation of the facilities, however a 50:50 share is not unusual.

Liability Caps

6.34 The use of liability caps on maintenance and uninsured losses are seen as providing value for money to the Council as the operator does not need to increase its risk contingency (and management fee) to cover these low probability but high cost risks. The Council shares in the risk, but receive a lower management fee at the commencement of the contract and accepts that, if the risk was to occur, the operator will meet the first part of the liability and only then will the local authority have to step in.

Contingency Sums

6.35 As part of the management fee, the operator will include a contingency within their profit for risks that may occur. This provision is normally an aggregate of the risks that may arise following an assessment of the probability of the risk occurring and the value of that risk. The higher the contingency the higher the management fee, although the overall bid price for contracts is undertaken in a competitive environment.

7. Financial Implications

Introduction

7.1 This section covers the financial implications of the outsourcing options being considered and includes:

- the current net direct costs of the services;
- the impact of VAT and NNDR on the different models;
- the impact arising from central support costs;
- profit, contingency and overheads;
- the impact on pension costs to the Council and operator;
- set-up costs and timescales;
- operational changes to increase revenue or reduce costs; and
- implications of including other services within the commissioning opportunity.

7.2 A copy of the financial model database which includes the base budget, service adjustments and the VAT analysis is shown in Appendix B to this report.

Current net direct costs

7.3 The table below sets out the current net direct costs of the leisure facilities service which are based upon the 2011/12 actuals. It excludes all financing, support service and below the line items. The additional Council services that could be added into the commissioning are addressed later in this section.

Table 7.1 - Summary of Net Direct Cost of Leisure facilities Service

Cost Centre	Description	Net Direct Cost	Likely Transfer?
Leisure Facilities	Management of leisure facilities	£3,312,328	Yes
Senior Management	Senior Management budget	£112,010	No
Leisure Services Manager	Leisure Services Manager budget	£87,714	No

Cost Centre	Description	Net Direct Cost	Likely Transfer?
Leisure Facilities Management	Leisure Facilities Management team	£261,306	Yes
Business Support	Business support team	£170,607	Yes
Marketing	Marketing team	£60,489	Yes
Options Card	Centre membership scheme	(£7,124)	Yes
Malkins Bank and Crewe Golf Clubs	Golf courses	(£31,871)	No
Miscellaneous	Small cost centres – Grounds Maintenance, Luncheon Clubs, Ludford Centre, JU Sandbach and France Hayhurst Centre	£3,076	'JU Sandbach' cost centre only - £2.50
Net Cost		**£3,968,534**	**£3,797,608**

7.4 The net direct cost of the facilities service in 2011/12 was therefore £3,968,534. Of the service elements likely to transfer under TUPE, the net direct cost of service was £3,797,608. We have assumed that the Senior Management and Leisure Services Manager budgets would remain within the Council on the client side, providing the future client monitoring function which is discussed in more detail later in this report.

National Non Domestic Rates

7.5 Non-Domestic Rates is a tax on properties not in domestic use, e.g. hotels, offices, public houses, schools and shops. The amount payable is calculated by multiplying the Rateable Value of the property by the National Rate Poundage set by the Government.

7.6 Under the Local Government Act 1988, different legal entities are entitled to mandatory or discretionary relief from the payment of National Non-Domestic Rates. Discretionary relief is down to the policies approved by each local authority. Table 7.2 sets out a summary of the historic position in terms of what relief has been available.

Table 7.2 - Potential NNDR Relief

Property Eligible for Relief	Type of Relief	Amount of Relief	Financial Implications

Property Eligible for Relief	Type of Relief	Amount of Relief	Financial Implications
Property wholly or mainly used for charitable purposes, which is occupied by a registered charity or charity shop	Mandatory Discretionary	80% Up to a further 20%	Funded by NNDR pool (Government) 25% funded by NNDR pool and 75% funded by Local authority **NET SAVING TO LOCAL AUTHORITY 85%**
Property, all or part of which is occupied for the purposes of a non-profit making club, society or other organisation and is used for the purpose of recreation	Discretionary	Up to 100%	75% funded by NNDR pool and 25% funded by Local authority **NET SAVING TO LOCAL AUTHORITY 75%**

7.7 The requirements for obtaining NNDR relief require the property to be eligible for relief but other tests include the Contractor holding a lease / licence (being in rateable occupation) for the premises and that it has control over the staff managing the services from the property.

7.8 The level of discretionary rate relief awarded would be considered by the Council on a case by case basis. We have set out in the table below the level of discretionary rate relief likely to be awarded under each management option, based on our interpretation of the Council's Discretionary Rate Relief Policy.

Table 7.3 - NNDR Relief Available Under Each Management Option

Management option	Mandatory (80%)	Discretionary	Total Potential Annual Saving
In-house	×	×	0%
Private Management (Hybrid trust)	×	✓ (25%)	25%
Existing NPDO (trust)	✓	×	80%
New CIC	×	✓ (25%)	25%
New NPDO	✓	✓	100%

7.9 However, as from April 2013, the Department for Communities and Local Government's (DCLG) new Business Rates Retention Scheme implemented following the Local Government Resource Review will have a significant impact on the actual savings that awarding NNDR relief will deliver for the Council. Under the new proposals, which begin in April 2013, the mandatory and charitable reliefs that Trusts currently receive will be retained, however any changes in NNDR costs between baseline re-sets (the first re-set period will be for 7 years from April 2013 to 2020) will be shared 50:50 between central and local government.

7.10 This means that the Council's baseline (the amount it receives from NNDR receipts) will be set from April 2013 until April 2020 and if the Council subsequently awards further rate relief to other organisations during this period it will have to meet 50% of this cost. Therefore, whilst setting up a new NPDO may result in the NPDO receiving 100% rate relief, the saving to the Council will actually only be 50% in this circumstance.

7.11 As a result of this new legislation, we have included the following NNDR saving levels within our financial model (N.B. the full saving could be realised from 2020 onwards after the first baseline re-set). They are based on the 2011/12 total NNDR bill for the facilities of £625,614.

Table 7.4 - Assumed NNDR Savings to the Council

Management option	Total Potential Annual Saving %	Total Potential Annual Saving £	Total Potential Annual Saving to Council
In-house	0%	£0	£0
Private Management (Hybrid)	25%	£156,404	£78,202
Existing NPDO	80%	£500,492	£250,246
New CIC*	25%	£156,404	£78,202
New NPDO	100%	£625,615	£312,807

* Assuming the CIC is awarded discretionary rate relief.

7.12 It should be noted that this is still extremely new legislation and there are different interpretations of its implementation / impact with some authorities entering into pooling arrangements with other authorities. We have interpreted the new legislation as set out above however will review these figures in light of any formal policies adopted by the Council once available.

Value Added Tax

7.13 As a general principle, the status of the purchaser of a service will determine the amount of VAT that can be recovered by that purchaser on its costs of providing the service.

7.14 A common principle is that the purchaser can claim VAT on the costs of providing its services in the same percentage of the VAT it charges on its services. For example, where a purchaser provides services, 90% of which are subject to VAT, then the VAT that it pays on purchases to provide the service can be recovered at 90%; thus the purchaser will have a 10% non-recoverable VAT cost.

7.15 The different management options provide, as a very broad principle, the following VAT recovery rates (subject to the level of the management fee in comparison with other income):

- local authority - 100%;

- private sector - 90%; and
- NPDO - 10%-20% (depending upon the level of the management fee).

7.16 On this basis, where any of the above management options incur capital expenditure, it can have serious implications on the overall cost of a capital project, as the non-recoverable element will also need to be added to the capital payments for the project, although there are a number of ways in which this risk is mitigated. Local authorities have special rules regarding the recovery of what would be non-recoverable VAT, but even then there is a limit sometimes to the amount that they may recover.

Transferring Service Operations to a third party

7.17 When a NPDO or private sector contractor consortia takes over the management and operation of the facilities for the Council, they will normally become the principal in providing the supply of services to the public. Where this arises, there will be two main aspects for the Council to consider:

- the effect that capital costs will have on each of the parties to the arrangements; and
- the VAT liability of supplies of services made by the Contractor to the public and how this affects its own VAT recovery position.

7.18 In terms of capital expenditure, if the principal to the supply cannot recover all the VAT payable on these works, this could adversely impact on the Council's finances as they could lose all their exempt VAT benefit. Furthermore where the contractor or NPDO cannot reclaim all the VAT (their irrecoverable VAT) they will add this back to the contract price which the Council will need to finance.

7.19 In terms of VAT on supplies, each of the providers has a different VAT status in that the services provided have different VAT rates depending upon the service provider, which again can impact on the level of the management fee charged for providing the service, for example swimming lessons are VAT exempt when provided by an NPDO but not when provided by the private contractor.

7.20 The indicative fiscal benefits associated with each of the options are set out in Table 7.5 based on our interpretation of the income contained within the Oracle finance system. As part of the implementation plan for the preferred option the VAT status and sums of income in the Oracle finance system should be clarified and the potential VAT savings confirmed.

Table 7.5 - VAT Savings under each option

Facility	In-House	Private Sector	Existing NPDO	New NPDO	New CIC
Base income net of VAT	£5,622,615	£5,622,615	£5,622,615	£5,622,615	£5,622,615
Additional VAT payable/(benefit) on Income compared to Council	£0	£240,183	(£760,717)	(£760,717)	£240,183

Facility	In-House	Private Sector	Existing NPDO	New NPDO	New CIC
Irrecoverable VAT on Purchases	£0	£23,377	£359,646	£351,224	£22,289
Net VAT adjustment/(saving) from Council Base	**£0**	**£263,560**	**(£401,071)**	**(£409,493)**	**£262,472**

7.21 It can be seen that the private sector option is required to pay more VAT on its income than the Council does by £240,183 which means that if the private sector operated the facilities the income they could retain would be lower than that of the Council (for example swimming lessons are subject to VAT for the private sector, but not the Council).

7.22 Likewise the NPDO does not have to account for VAT on sport and leisure income, whereas the Council has to pay VAT on certain services, and therefore charging the same prices would mean the NPDO would keep more of the income than the Council is able to do so by c£761k per annum.

7.23 The general principle of recovering the VAT paid for supplies and services is that it can only be reclaimed in the same proportion as the income that is subject to VAT for services provided to users. In calculating the "VAT recovery rate" it is necessary to establish the income that is subject to VAT plus also taking into account the income from the management fee, which is also subject to VAT.

7.24 The financial model calculates that the VAT recovery rate for the Council is 100%, private sector is 96% and the NPDO options are circa 40%, which means that the VAT on expenditure which is incurred will be partly recovered in these proportions. The recovery of VAT by the NPDO is normally circa 10% but with the management fee (operating subsidy) this improves the recovery rate significantly.

7.25 The table above sets out the amount recoverable compared to the base Council position. It can be seen that the private sector cannot recover circa £23k but the NPDO options cannot recover over £350k which will need to be added to the cost of providing the leisure service under their management approach.

Central Support Costs

7.26 The leisure centre management element of the service which is likely to transfer to any outsource management vehicle (as defined in table 7.1) incurs approximately £3.4m of additional support service costs, plus £2.325m of notional financing costs.

7.27 It is assumed that the financing costs represent depreciation of buildings and equipment and do not represent cash budgets that would be available for transfer to a new management vehicle or could be saved following a transfer of the service to an alternative provider.

7.28 On that basis, this section deals with the accounts described as ‘support service’ costs which are the recovery of the cost of providing central support functions of the Council which totalled £3.4m in 2011/12.

7.29 Table 7.6 sets out a summary of the central support charges allocated to the leisure centre management element of the service.

Table 7.6 - Central Support Recharges

Central Support Service Department	2011/12 Recharge
Assets	£2,416,706
Audit	£15,835
Chief Executive	£29,811
Communications	£33,177
Corporate Improvement	£10,071
Customer Services	£105,314
Democratic	£85,169
Directorate Management	£74,595
Facilities	£45,700
Finance	£84,351
Financial Services	£54,805
Head of Borough Treasurer & Head of Assets	£10,261
Head of Policy & Performance	£5,778
Human Resources & Organisational Development	£145,789
ICT	£179,227
Insurance & Risk	£34,627
Legal	£35,760
Plan & Perform	£3,106
Procurement	£30,922
Total	**£3,401,005**

7.30 From experience, it is difficult to establish the exact level of savings from central support services that can be achieved from the outsourcing of a service, as current recharges are not usually allocated on an actual service usage basis, but more commonly are distributed over the local authority on a per head, per computer, per m2 basis. Likewise, where an outsourcing occurs, managers of these central support functions will need to consider the redistribution of workloads and subsequent impact on staffing levels before calculating any savings to be made.

7.31 At the time of preparing the report we had not been provided with the details of the overall Council-wide central support services costs and number of employees (broken down by central support service department), which would allow us to provide an indicative estimate of the potential savings that the Council may achieve as a result of the outsourcing. However, having discussed the methodology of calculation / allocation of central support costs with the Council it appears that in previous years different approaches were utilised by different departments. Given that the Council is currently reviewing its methodology of calculation / allocation of central support costs with the aim of improving the accuracy and consistency of the methodology used across the Council, we would recommend to the Council that it considers the residual impact on all central support costs following a decision on the future management arrangements of the leisure and culture service, in light of the updated central support cost calculations for the services.

7.32 What is clear is that an existing trust or private contractor would not require the services of any of the Council's central support functions, given that they will have their own 'head office' support teams. Therefore, savings could potentially be made as a result of an outsourcing. The Council should bear in mind that this is not a simple pro-rata calculation as, for example, a theoretical saving of 0.25 of an FTE would not necessarily equate to an actual saving of 0.25 of a central support post.

7.33 Based on our experience of other similar studies we have included an indicative saving of 15% of the central support costs for the service from outsourcing. We have seen very few examples where Councils have been able to save higher levels than this due to the reasons discussed above.

Profit, contingency and overheads

7.34 Under the different management options, the operator will seek to make a charge for their profit and contingency. There is no strict guide to the level of these, which is dependent upon how busy the leisure contracting market is, the level of risk transferred to the Operator from the Council and the Operators' own pricing mechanism.

7.35 There are some trends in the market, bearing in mind that the private sector normally have shareholders which need to see a profit to see a return on their investment, existing NPDOs normally need to set aside operating surpluses as contingency against changes in income and costs or to pay a "service" fee to their parent company and new NPDOs need to generate cash reserves to meet unexpected changes in income or service costs.

7.36 Similarly, the Operator will seek to recover its central support costs / overheads through its contracts, and the amounts are normally a percentage of income to finance these. Again, different models use different percentages, on the basis that the "Head Office" costs are distributed over a number of contracts, which in turn spreads the cost.

7.37 Table 7.7 sets out the percentage applied to income to cover profit and contingency and overheads under the different management options, calculated from the current base income and adjusted for the impact on VAT.

Table 7.7 - Calculation of profit / contingency and overheads under each option

Services	In House	Private Sector	Existing NPDO	New NPDO	New CIC
Income (incl. VAT benefit)	£5,622,615	£5,382,433	£6,383,332	£6,383,332	£5,382,433
Rate % - Central Overheads	0%	5%	5%	5%	5%
Rate % - Profit and Contingency	0%	5%	5%	2.5%	2.5%
Total Amount (£)	**0**	**£538,243**	**£638,333**	**£478,750**	**£403,682**

7.38 The private sector normally are able to spread their legal, finance, personnel and IT costs over a vast number of contracts. The existing NPDO could be similar but this could vary depending upon the size of the NPDO and the number of contracts it holds. The private sector has shareholders to satisfy so a higher level of 'profit' has been allocated when compared to a new Trust / CIC.

7.39 A new trust or CIC would have additional costs which it will have to pass directly to this contract (including for example IT services, accountancy, accommodation costs, support staff etc.), rather than spread across a number of contracts (e.g. an accounting system). We have also assumed a £250k per annum provision for senior management staff such as a Finance Director and Chief Executive. This results in an overall allocation of circa 8% of income for overheads and senior management costs for a new trust or CIC.

Pensions

7.40 The impact of a large number of staff leaving the Council's pension scheme may have implications on the employers' contribution rate, as the value of the fund, the current and future liabilities to meet pension payments and the age of those remaining within the scheme and who continue to contribute will change.

7.41 It is essential that the value of the change in the employers' rate is determined to ensure that the financial projections take into account the current actuary projection of the pension fund assets and liabilities.

7.42 The Council will need to take actuarial advice to understand the long-term implications for pensions. It will need to:

- decide whether the new operator must seek Admitted Body Status;
- calculate the required employer contribution rate from the operator;
- understand the level of pension deficit - this is likely to remain with the Council and not be transferred; and

- decide if a bond is required from the new operator (and to what value) to cover potential shortfalls in the pension fund at the expiry of the contract or whether the Council will act as guarantor.

7.43 As this area requires specialist advice, we have not included any sums for an increased pension cost at this stage. Similarly, we have not included any additional sums for additional costs in relation to automatic enrolment of staff within the pension scheme in 2017 as this will be the same across all options and so does not provide a differentiator in terms of level of savings / additional costs.

7.44 We have included a £25,000 cost per annum as provision for a pension bond. A pension bond protects the local authority from loss in the event that the external company defaults in payment of contributions to the pension fund or there is a deficit on expiry of the contract.

Set Up Costs and Timetable

7.45 Each management option will have a different lead in time to set up. Outsourcing a contract to a private sector provider or an existing NPDO will require a contract, leases and a specification but the new NPDO will also require the appointment of trustees, delivery of company documents, registration with the Charity Commission etc. and potentially the recruitment of senior key staff (Chief Executive/Finance Director etc.).

7.46 The advisor fees are estimates and will be dependent upon whether the Council uses its own legal services to procure the contract and leases for the new arrangements or it uses external advisors. Where the Council uses its own legal team, the estimates on advisor fees is likely to reduce by circa £40,000 to £50,000.

7.47 Furthermore, under these outsourcing options, the Council would need to consider the impact and cost of monitoring any future contract. We have assumed that this role could be fulfilled within the budgets retained in the Council for Senior Management and Leisure Services Manager.

7.48 The table below sets out the estimated costs and timeframe for delivery of the transfer of services. These costs have been incorporated within the net present value calculations (see Appendix B).

Table 7.8 - Summary of set up costs and timetable

Services	In House	Private Sector	Existing NPDO	New NPDO / CIC
Timeframe	0 months	12 months	12 months	12 – 18 months
Advisor Fees – legal, financial and procurement	£0	£50,000 - £80,000 +	£50,000 - £80,000 +	£150,000 - £250,000

Opportunities to Increase Revenue and Reduce Costs

7.49 So far this section has covered the financial impact that will result mainly from structural characteristics of the various potential management options. However, there are a number of areas where, in a competitive tendering process, we believe that external contractors would seek to increase income and reduce expenditure and pass the benefit of these savings back to the Council through the management fee.

7.50 We have identified potential areas which may be targeted in table 7.9. Latent demand assessments and a more detailed operational review would need to be carried out to confirm the exact level of increases / savings that could be achieved however we have made estimates based on the results of the benchmarking process, site visits to each of the facilities and our experience of evaluating bids from leisure contractors.

7.51 It is worth reiterating that this analysis is based on the 2011/12 data and we understand that a number of these opportunities are already being delivered through recent investment in the sites and resultant improvements in income generation. It should be noted that potential for additional income at joint use facilities is often restricted by the terms of existing legal agreements.

Table 7.9 - Potential Operational Efficiencies

Service Area	Description	Potential Financial Impact
Fitness income at Macclesfield Leisure Centre	Fitness income was significantly below benchmark for this quality of facility and location. Increased by c35% (£1.5k extra per station) for existing operators and £750 per station for new companies.	Existing Operators - £76,500 pa New Trust / CIC - £36,250 pa
Fitness income at Wilmslow	Fitness income was significantly below benchmark for this quality of facility and location although noted that competition is strong in the area. Increased by c20% (£1k extra per station) and £500 per station for new companies.	Existing Operators - £41,000 pa New Trust / CIC - £20,500 pa
Fitness income at Congleton	Fitness income is significantly below benchmark for this location considering the limited local competition. Increased by c50% to achieve c£5k+ per station by existing operators on basis that they would invest capital immediately into the facility.	Existing Operators - £41,000 pa
Investment into fitness facilities at Congleton	To achieve the above income increase it would be necessary to invest capital into improving the fitness suite. Assumed £250k investment depreciated over 5 years	Existing Operators - £50,000 cost pa for first 5 years
Swimming income at Congleton	Swimming income is very low for a facility in this location considering the relative lack of	Existing Operators - £88,000 pa

Service Area	Description	Potential Financial Impact
	local competition. 50% increase in swimming income to c£700 per sqm of water by existing operators. 25% increase for new companies.	New Trust / CIC - £44,000 pa
Utilities costs	Utility costs assumed to decrease by 5% due to economies of scale provided by large private contractors as evidenced in recent bids.	Private contractor - £69,000 pa
Income at dual-use sites	Income is low at these facilities (often for good reason) however this is an area that existing contractors will always target. Assumed 10% increase by private contractor, 5% increase by existing trust and 2.5% increase by new organisation.	Private contractor - £200,000 pa
		Existing Trust - £100,000 pa
		New Trust / CIC - £50,000 pa

7.52 The above operational income and expenditure changes have been incorporated within the financial projections. It should be noted that, whilst these changes might seem significant, we are confident that they are prudent as they still result in performance below benchmark levels (albeit considerably closer to benchmarks) and below levels we have witnessed on similar bids for other leisure management contracts.

7.53 In summary, the projected level of operational changes are as follows:

- Private management contractor – £509,500 net saving per annum;(however this will be constrained by the current joint use agreements that are in place)
- Existing trust – £340,500 net saving per annum;
- New trust – £152,750 net saving per annum;
- New CIC - £152,750 net saving per annum.

7.54 Staffing costs are also high when compared to benchmark level which is something that would be investigated by an external operator however further work would be required to establish whether this is related to the number of staff and staffing structure or the rates of pay so we have not made any assumptions in relation to reduced staffing costs. We understand that the costs associated with recent changes in terms and conditions amount to c.£750,000 pa in the staffing budget and it is unclear whether any of these changes could be revisited to reduce the overall cost.

Summary of Management Fee and Total Cost to the Council

7.55 A summary of the management fee and all the adjustments included within this section for each of the options is shown in table 7.10.

Table 7.10 - Summary of Adjustments and Management Fee

	Private Sector £	Existing NPDO £	New NPDO £	New CIC £
Current Net Direct Cost budget (In-House)	£3,797,608	£3,797,608	£3,797,608	£3,797,608
NNDR Savings	-£78,202	-£250,246	-£312,807	-£78,202
Pension Bond	£25,000	£25,000	£25,000	£25,000
Operational Changes	-£509,500	-£340,500	-£152,750	-£152,750
Central Overheads, Profit and Contingency	£538,243	£638,333	£478,750	£403,682
Management Team	£0	£0	£250,000	£250,000
VAT Impact	£263,560	-£401,071	-£409,493	£262,472
Revised Management Fee	**£4,036,650**	**£3,471,915**	**£3,676,308**	**£4,239,284**
Central Support Cost Savings (Year 3 figures)	-£510,151	-£510,151	-£510,151	-£510,151
Retained Landlord Maintenance Responsibilities*	£150,000	£150,000	£200,000	£200,000
Total Cost to Council	**£3,676,558**	**£3,108,973**	**£3,366,157**	**£4,197,659**
Saving compared to In House	**£121,049**	**£688,634**	**£431,451**	**-£521,101**

* Contingency sum for retained landlord maintenance responsibilities in addition to current maintenance spend. Higher sums allocated for new trust/CIC as they will have less reserves so Council may need to retain more asset risk.

7.56 The table above identifies the financial impact on the changes that are likely to be achieved under each of the management options being considered. The main issue for the private sector option is that it has a worse VAT position than the Council and it cannot deliver a significant rate relief on its business rates compared to the NPDO (Trust) options. In addition to the net direct cost of the service, the private sector needs to add the recovery of its overheads and profit.

7.57 In terms of the two trust options, the main additional costs are similar to that of the private sector option with the addition of significant irrecoverable VAT. The main benefits are the savings in VAT on income and NNDR which lower the overall cost compared to the in-house option. The new trust produces lower savings than an existing trust because it has increased management costs and less access to the capital funds, economies of scale and new expertise that an existing trust could offer.

7.58 A new CIC is not as financially viable as the other options because it does not produce the same level of VAT / NNDR savings or provide access to the capital funds, economies of scale and new expertise that an existing trust or private contractor could offer.

7.59 It should be noted that there will be some variances to these costs from year to year as a result of set-up costs, a phased approach to central support cost savings and the depreciation of capital invested by existing operators. The full impact of this is set out within the net present value calculations below.

7.60 In addition to the changes in management vehicle, the Council has been considering a programme of asset changes in terms of investment and rationalisation as highlighted previously in this report. The full financial impact of these changes on the preferred option is set out in section 10.

Net Present Cost / Value of Options

7.61 The table below provides a comparison of the cashflows over 25 years from 2014/15 (including set-up costs in 2013/14) and converts these into a current value using a discount rate of 3.5% (excluding inflation) in accordance with HM Treasury Green Book. The cashflows are negative (i.e. payments to the management vehicle / costs incurred) so we have labelled this as a comparison of net present costs. The full calculations are contained within Appendix B.

Table 7.11 - Comparison of Net Present Values / Costs

	In-House £ (Base)	Private Sector £	Existing NPDO £	New NPDO £	New CIC £
Total 25 year cost	£94,940,205	£91,424,170	£77,234,553	£84,664,134	£105,451,700
Net Present Cost (including set-up costs)	£60,473,754	£58,516,256	£49,477,942	£54,180,446	£67,421,434
Benefit compared to base NPC	**£0**	**£1,957,498**	**£10,995,812**	**£6,293,307**	**-£6,947,681**

7.62 Table 7.11 demonstrates that the net value over a 25 year period would be in the region of £2m if contracting with a private contractor, £11m if with an existing trust, £6.3m if setting up a new trust and a cost of £6.9m if setting up a new CIC. This financial benefit can then be compared to the non-financial implications discussed in section 8 of this report.

Scale and Scope of Commissioning Opportunity

7.63 The Council is also considering adding other in-house services to the new management vehicle as set out previously within this report. The 2011/12 net direct costs (excluding all central support costs, capital financing and below the line costs) of each of these services are set out in table 7.12.

Table 7.12 - Net Direct Cost of Additional Services

Cost Centre	Income	Expenditure	Net Direct Cost	Notes
port & Play Development	£529,127	£872,861	**£343,734**	Excludes £288,285 of support services & capital financing costs etc.
ommunity Halls	£41,184	£97,919	**£56,735**	Excludes £61,983 of support services & capital financing costs etc.
rts & Cultural Services	£31,863	£855,310	**£823,447**	Excludes £298,796 of support services & capital financing costs etc.
reen Spaces*	£458,199	£1,976,022	**£1,517,823**	No below the line / notional costs stated as figures are budget, not outturn.
et Cost	**-1,060,373**	**3,802,112**	**2,741,739**	

* Figures for green spaces are 13/14 budget figures and not 11/12 actuals

7.64 The net direct cost for the additional services being considered for inclusion in the new management vehicle are circa £2.74m however the following should be noted:

- **Community Halls** – the cost includes for the five community halls named in Section 1 only, community halls management costs are included in the overall arts and culture cost centre and there are no maintenance costs included in these figures, which would require a transfer of budget from the Council's asset management team;
- **Arts and Cultural Services** – this includes all cost centres with the exception of Archives, Knutsford Cinema, the Lyceum Theatre and the remainder of the community / civic hall costs which have been excluded. Management cost centres for cultural facilities and the community halls are included within these costs. There are no clear maintenance costs for the museums although there are grants to the museums which might include provision for some of these costs;
- **Green Spaces** – includes costs for the three service elements named in Section 1 only. Figures are 2013/14 budget figures rather than 2011/12 actual outturn figures.

7.65 A detailed line by line financial analysis should be carried out once the Council decides which services it may incorporate within the new management vehicle and when they are likely to be incorporated. The more detailed investigation into the line by line nature of the income and expenditure needs to be carried out to properly assess the impact on the VAT position of the new management vehicle and other potential fiscal savings, however the following headline key points can be identified from our initial review:

- Only £14,996 of NNDR expenditure is identifiable from the numbers provided which limits the potential savings that could be provided in this area;

- Accurate maintenance costs need to be identified within the figures to ensure that all relevant costs are factored into the affordability assessment;

- Only £300,223 of the income identified is from 'fees and charges'. The remaining circa £700k is either from recharges or, in the majority of cases, grants. We would need to understand the exact nature of these income lines however, considering the type of services we are assessing, it is quite likely that a large proportion of the income will be grant-based and thus not vatable income. This therefore limits the savings that a charitable trust can produce in this area;

- Circa £60,000 of VAT benefit would be generated on vatable income of circa £300,000 by a charitable trust. However, applying the circa 40% VAT recovery rate of the trust (as identified previously in this section) to the net expenditure of £1.60m (net expenditure when staffing expenditure is excluded from the above stated costs) would result in circa £189,000 of additional irrecoverable VAT. Whilst this is a very high level calculation, it identifies immediately the potential issues with adding services into a trust that have significant expenditure with low associated income. In this scenario, over £100k of additional savings would need to be found purely to maintain the services at their existing cost due to the negative impact on VAT.

7.66 The VAT issue is clearly a significant concern in relation to the future sustainability of the other services, particularly the green spaces. This would need detailed further analysis before transferring these services to a third party provider or trust.

8. Evaluation of Delivery Options

8.1 In assessing the range of options for future delivery and management of the leisure, culture and green space facilities and services, a robust evaluation mechanism is required which is based on bespoke local needs and balances financial and non-financial implications appropriately.

8.2 This section sets out the evaluation framework, following the service review and consultation undertaken to date. It is intended that the following options will be evaluated using this framework:

- Retention of In-house Management;
- Outsourcing procurement process leading to contract with a private sector operator using a 'hybrid' trust or an existing NPDO;
- Establishment of a new social enterprise (which could include a charitable trust or CIC – further discussion on this is provided in section 9).

Evaluation criteria and process

8.3 This evaluation process will help inform recommendations about the most efficient and effective management option.

8.4 Following the strategic review and consultation with Council officers and elected members, the main drivers identified by the Council for this study are as follows:

- Degree of strategic control by Council;
- Impact on service delivery;
- Impact on staff;
- Provision of a service in line with Corporate objectives;
- Impact on residual costs;
- Ability to transfer risk;
- Opportunity for partner / community involvement;
- Flexibility for future asset plans / changes; and
- Flexibility for future inclusion of additional services / facilities.

8.5 A brief definition of these criteria is set out overleaf.

Degree of strategic control by the council

8.6 It is likely that the Council will want to retain as much influence and control of the service as possible to enable the service to reflect the strategic objectives of the Council and any changes to these.

Degree of operational control by the council

8.7 The Council currently has day to day operational control at each of the facilities and this could potentially reduce depending on which management vehicle is selected.

Impact on service delivery

8.8 This focuses on which of the management options can bring about further improvement in service efficiency and effectiveness, comparing market understanding of the strengths and weaknesses of the options plus local understanding of the current situation.

Impact on staff

8.9 In house management would have little or no impact on staff as this would be a continuation of the existing arrangements. Other management options would involve TUPE staff transfers and other change processes, which would have a greater impact on staff.

Provision of a service in line with Corporate objectives

8.10 Delivery of the Council's objectives is crucial. Therefore, this is a high priority for the management options review.

Impact on residual costs

8.11 The service currently utilises a range of central services (HR / payroll / accounting / asset management etc.). In other delivery options these central services may not be required which could impact on residual costs for the Council – for example, the Council will retain these central support costs, but with a smaller portfolio of services over which to distribute the costs.

Ability to transfer risks

8.12 Transferring to a new form of management model may enable some of the risks associated with running this service to be transferred away from the Council. The level and type of risk transfer will depend on the selected option. Some of the key risks were outlined in section 6 of this report.

Opportunity for partner / community involvement

8.13 The Council wishes to 'future proof' existing partnership arrangements that contribute to innovative and effective services to the local community. The level of community and partner engagement possible will be different across the various options.

Flexibility for future asset plans

8.14 We have already noted some of the Council's plans for asset transfers and delivery of new Lifestyle Centres, which will impact on future management arrangements. Any future vehicle therefore needs to include sufficient flexibility for inclusion of these changes over the next 5-10 years. Also, there may need to be flexibility to account for transfers under the Localism agenda or changes to the joint use agreements.

Flexibility for future inclusion of additional services / facilities

8.15 As noted in this report, there are clear opportunities for packaging of a number of facilities and services in future delivery arrangements, which means that the chosen approach needs to be sufficiently flexible to allow inclusion of additional services / facilities in the future.

Weightings

8.16 On the basis of advise received following discussion with the council, the following weightings have been set.

Table 8.1 - Weighting of non-financial criteria

Non-financial criteria	Weighting
Level of Council strategic influence	10%
Impact on service delivery	15%
Impact on staff	10%
Correlation with Corporate objectives	15%
Impact on residual costs	5%
Ability to transfer risk	5%
Partner/community involvement	10%
Flexibility for future asset plans	15%
Flexibility for future inclusion of additional services / facilities	15%

8.17 Table 8.2 overleaf contains an analysis of each option against the stated criteria. Each option is given a raw score out of 10 for each category, which is then weighted according to the priorities noted in table 8.1.

Table 8.2 - Analysis and scoring of each option

Criteria	Weighting	In-house	Outsourcing (private contractor / existing trust)	New Social Enterprise
Level of Council strategic influence	10	10 Retaining the service in house would give the Council maximum control at both a strategic and operational level.	6 Some protection through management contract and management fee, but likely to be less than in trust scenarios, with less flexibility to adapt to changing priorities. Changes would be via the formal change mechanism in the contract, although minor changes would likely be agreed on an informal basis.	8 A balanced trust board including elected members would allow the Council to retain a good degree of strategic control, albeit there cannot be more than 20% influence.
Impact on service delivery	15	6 Steady improvement in services over recent years and continued ability to deliver community initiatives. However, limited opportunity for access to national best practice models or support networks such as SPORTA. Increase cost outside of services control in particular Pay Harmonisation.	9 Step change derived from private sector expertise and commercial drivers. Council's access initiatives will need to be protected in any management agreement, but this can be done via the service specification.	8 Possible improvement in short to medium term derived from single clear focus and ability to create new organisational culture. Local focus should ensure community initiatives retained.

Criteria	Weighting	In-house	Outsourcing (private contractor / existing trust)	New Social Enterprise
Impact on staff	10	7 The decision to stay in house would have minimal impact on staff. Pay and conditions would be protected, as would pensions. However, the opportunity for career progression and the ability to innovate is perhaps more limited than in some of the other vehicles and the financial climate is such that protection of non-statutory services is no longer guaranteed.	5 Staff likely to be more nervous about the private sector route and would be a more significant change than a trust option. TUPE and Admitted Body Status should offer some protection for existing employees. Positively, there may be greater opportunity for career progression and more structured training programmes.	7 Staff will be TUPE transferred and essentially be working for a different organisation. Although seen as a 'softer' option than the private sector it still involves a big change, albeit the local focus and understanding should provide some comfort. Admitted Body Status should offer some protection for pensions of existing employees.
Correlation with Corporate objectives	15	8 Correlation can be retained and controlled in-house. However, competing corporate priorities may make it difficult to focus on essential issues that benefit the customer.	6 Limited influence - commercial realities would be more important than delivering Council objectives, unless the contract was carefully drafted.	7 Representation by Councillors on the trust board could enhance the correlation and the trust will have a more focused approach given it's 'single-issue focus'.

Criteria	Weighting	In-house	Outsourcing (private contractor / existing trust)	New Social Enterprise
Impact on residual costs	5	6 Limited impact on residual costs (central support charges etc.) as service will remain in-house. This is positive in relation to maintenance of the status quo but offers no opportunity for future savings or efficiencies from different models / sharing of costs.	6 Private provider will have own head office services, so can potentially offer a lower cost service than Council, due to spreading costs over a number of contracts. However, Council will need to reallocate the support posts or make posts redundant to ensure savings are 'real'.	7 Limited initial impact as trust likely to purchase central support services from the Council in first few years of operation. Longer-term, trust may wish to test value for money of services, to ensure a good service / financial deal. Council would need to redistribute the costs to other retained departments or realign staffing, albeit over a longer period of time than the private sector option.

Criteria	Weighting	In-house	Outsourcing (private contractor / existing trust)	New Social Enterprise
Ability to transfer risk	5	2 The risk associated with the services and facilities is retained by the Council, with no opportunity to transfer any of the risks to third parties, unless some form of asset transfer is undertaken on a small number of facilities.	8 Considerable operating risk can be transferred, but as outlined in section 6 there are a number of strategic risks which are likely to remain with the Council for value for money reasons. In particular, long-term asset risk is likely to remain with the Council.	6 Considerable operating risk can be transferred, but as outlined in section 6 there are a number of strategic risks which are likely to remain with the Council for value for money reasons. In particular, long-term asset risk is likely to remain with the Council. Further to this, a new vehicle will not have the trading history or reserves to support fluctuations in trading, meaning that the Council may need to step in or provide additional funding.
Partner/community involvement	10	7 The service will be able to continue with its community involvement initiatives if the service remains in house. However, there is no opportunity for increased integration / joint working, which may be the case in other vehicles.	5 Commercial driver likely to override commitment to local involvement, unless specifically highlighted as a requirement in the contract documentation. This can be written into the service specification, but requires careful consideration up-front.	9 Service level agreement can embed local involvement. Local involvement assured via community involvement plan and Board of Trustees make-up. Research suggests the positive role trusts can play in enhancing partnership working and encouraging community involvement.

Criteria	Weighting	In-house	Outsourcing (private contractor / existing trust)	New Social Enterprise
Flexibility for future asset plans	15	8 This option would retain maximum flexibility to incorporate any (likely) future changes in facility stock.	6 Reduced flexibility going forward, unless changes can be planned prior to transfer and included in the contract documentation or instigated via the formal change procedure in the contract.	7 Less flexibility than in-house, as the trust is a separate entity, which will look to re-negotiate the financial implications. However, likely to be more flexible than a non-local delivery vehicle.
Flexibility for future inclusion of additional services / facilities	15	6 All of the services / facilities are currently in-house, apart from the Lyceum Theatre and Knutsford Cinema. There should therefore be existing synergies be the services, but this could be constrained by the silo mentality of local government and is susceptible to future cuts, particularly to development services.	6 Reduced flexibility going forward, unless changes can be planned prior to transfer and included in the contract documentation. Also, the expertise of the contractors to deliver development services or green spaces is less proven, meaning that it may not be the most appropriate route.	7 Less flexibility than in-house, as the trust is a separate entity, which will look to re-negotiate the financial implications. However, likely to be more flexible than a non-local delivery vehicle and there are clear synergies in creating a locally focused, comprehensive vehicle that delivers a number of customer-facing services and facilities.
Total non-weighted score		**60**	**57**	**66**
Weighted percentage		**70%**	**64%**	**74%**

Summary of non-financial evaluation

8.18 The evaluation demonstrates that a new social enterprise vehicle has the potential to provide the highest level of non-financial benefits to the Council. However, there is little statistical difference in the evaluation between the current model of service delivery and a new trust vehicle. This conclusion is also logically valid when it is considered that a new local social enterprise would essentially be the same personnel as the current service, albeit under a different delivery model. The current partnerships, service focus and quality of delivery should therefore remain in both models.

8.19 In summary the benefits of the trust management vehicle are as follows:

- Savings on NNDR costs and VAT;
- Involvement of external expertise in the trust Board;
- Involvement of key partners to shape future priorities and activities;
- Greater financial and managerial autonomy;
- Opportunity for community and staff involvement in the management of services; and
- Benefits of having a single issue focus; and
- Ability to expand in future to take on additional services / facilities.

8.20 In relation to financial issues there is a forecast benefit in transferring the leisure services to a charitable trust vehicle in particular, as detailed earlier in section 7. Section 9 summarises the conclusions of our work and highlights the key factors to be considered in selecting a preferred way forward.

9. Summary and Recommendations

Introduction

9.1 The purpose of this report was to deliver a management options appraisal for leisure services, possibly also including development services, elements of arts and culture and green spaces. The analysis has covered both the financial and non-financial implications of different management vehicles and has covered a wide range of potential options, including:

- Continued in-house management;
- Outsourced management – either through a private company or an existing charitable company (Trust); and
- Establishing a new company – either charitable or non-charitable, covering the following options:
  - Unincorporated Charitable NPDO;
  - Industrial and Provident Society (IPS);
  - Company Limited by Guarantee (GLG);
  - Charitable Incorporated Organisation (CIO);
  - Limited liability partnership (LLP);

9.2 It is worth noting that these different types of company structure are often classified under the umbrella of Social Enterprises - indeed, Greenwich Leisure Limited (which manages leisure services in the south east of England) is often used as a case study of a successful social enterprise. A social enterprise is a company which:

- has a clear social and/or environmental mission set out in their governing documents;
- generates the majority of their income through trade;
- reinvests the majority of their profits;
- is autonomous of state;
- is majority controlled in the interests of the social mission; and
- is accountable and transparent.

Strategic Context

9.3 A strategic review of the context in which the services / facilities will operate was provided in section 2 of the report, which clearly identified the need for any future management to be aligned with key corporate priorities for the Council and identified the major role that the service has to play in Cheshire East in reducing anti-social behaviour and improving health, particularly in light of the ageing population profile.

9.4 The demographic profile of the borough is a key issue in relation to future demand for services and will impact on the types of facilities and programmes offered. The local population will increase over the next 15+ years which will result in additional potential users for the facilities but also highlights the need to ensure facilities and services are fit for purpose and can cope with the increased demand.

9.5 The local population appears to be healthy and relatively active, although there are still improvements that could be made in participation levels. This emphasises the need for a modern and efficient management service which continues to offer a varied programme of activities, in modern and value for money facilities, to contribute towards increasing the healthy living of residents in Cheshire East further still.

9.6 The elderly age profile of the Borough (which is projected to become more pronounced over the next 15+ years) may impact on income from some activities and presents specific challenges that need to be addressed in terms of ensuring programming and facilities cater for all age groups within the Borough. This will be particularly crucial as the challenge for local authorities to increase participation and improve public health will be more important (and perhaps more difficult) than ever in an ageing population.

9.7 The cost of inactivity per 100,000 people in Cheshire East has been identified as £1.79m pa. Extrapolating this to the total population of 370,000 identifies a cost per annum of £6.62m for primary and secondary care. There is therefore clearly a significant opportunity to reduce this annual cost through increasing participation amongst Cheshire East residents.

Current performance

9.8 Alongside assessing the different management options, the report has sought to review existing performance and identify areas of strength and weakness. This has then been used to inform the financial modelling of the options, but provides useful information in its own right, in terms of potential short-term areas to focus on in ensuring high quality services / facilities. Performance has been compared against national benchmarks produced from FMG's database of leisure centre operational performance data. The key findings from this review are as follows: Many facilities, and in particularly those facilities that share leisure programme time allocations with an onsite High school and associated primary schools such as Middlewich Leisure Centre, Sir William Stanier Leisure Centre, Holmes Chapel Leisure Centre and Barony Sports Complex perform below benchmark levels for income generation.

- It appears that the net direct cost of operating the facilities in 2011/12 increased by £139k from 2010/11 to £3.31m. Income increased by £203k during this period however expenditure also increased by £342k. These figures should be treated with some caution as there are a number of discrepancies that the finance team are investigating regarding the recording of income for 2011/12 with circa £200k unaccounted for between the onsite till system and the Oracle finance system. In addition, the Council also introduced additional staffing costs (est at £325,000 for 5 months) in the financial year 2011/12 associated with re-introducing paying time and half for hours worked at weekends;

- The leisure facilities in Congleton, Macclesfield and Wilmslow were the three most expensive facilities in terms of net direct operating cost in 2010/11 and 2011/12. This is perhaps not surprising as all three facilities include swimming pools which often result in increased operational costs and these facilities include higher levels of staffing (lifeguards etc) for which the costs have also been affected by the costs of implementing Council single status through paying time and half at weekends. This point is supported by the fact that the lowest operating cost facilities are Barony Park Sports Centre, Shavington Leisure Centre and Holmes Chapel Leisure Centre which are all dryside only facilities.

- Almost all of the leisure facilities perform below benchmark levels for income generation. Middlewich Leisure Centre, Sir William Stanier Leisure Centre, Holmes Chapel Leisure Centre and Barony Sports Complex generate the lowest levels of income. However, with the exception of Barony, all of these facilities are jointly provided at a high school site and have limited access to facilities for community use during the day (Monday to Friday) throughout the normal school year. None of these facilities have a swimming pool which always generates higher levels of public use and therefore higher levels of income. Middlewich was also adversely affected in terms of income in 2011/12 by the lack of any access to the floodlit astro-turf pitch which had been withdrawn from use by the High School pending the construction of a new replacement facility. The lower levels of community use possible at such smaller joint use sites supports the Council's considerations in relation to transferring these facilities back to the respective schools following expiry of the existing joint use agreements.

- The best performing facilities in terms of income generation are those at Crewe Swimming Pool, Nantwich Swimming Pool, Macclesfield Leisure Centre and Wilmslow Leisure Centre.

- Income per visit is below benchmark across the whole portfolio which is in line with the Council's Corporate strategic aims to give priority to young people, the elderly and those with disabilities. We understand that headline prices have been benchmarked against nearest neighbours and are already at the higher end of comparisons, however, over a third of all attendances are young people16 years and under and with a further 150,000 total attendances amongst those 60 years or over. Both high priority target user groups for the Council and those that receive significant subsidies through discounted fees and charges for using the facilities.

- Health and fitness income is generally below expectations however the dual-use nature of the facilities, small size of the some of the fitness suites and value for money pricing will be contributing factors to this. The average number of members per station across the portfolio is only 17 compared to an industry average of circa 25 which indicates that the majority of gyms have additional capacity (a latent demand report would need to be procured to confirm this). The exceptions to this are Crewe and Nantwich Swimming Pools which have 27 and 36 members per station respectively. These are the two best performing facilities in terms of income per station and are closer to the £5k - £6k income per station level which we would expect to see from an in-house operation. **However, it is important to note that the Council has recognised this and we understand that the significant recent developments over the past 12 months at Wilmslow, Macclesfield, Shavington, Crewe, Knutsford and Sandbach (alongside minor improvements to equipment at Holmes Chapel, Alsager and Middlewich) has had a significant positive impact on income generation and membership levels, such that the 2012/13 financial performance will be in line with or exceed industry benchmarks in most cases** – this clearly supports the benefits of investing in a 'quality' offer and supports the plans for upgrades at nantwich Pool (nearly complete), Congleton, Poynton and a further more significant upgrade, at Alsager and Sandbach.

- Swimming and sports hall income compared to benchmark is reasonable in a number of the facilities. The leisure centres at Macclesfield and Wilmslow in particular are performing close to / above benchmark for both of these KPIs. If the additional VAT benefits that a trust operation can access were factored in, many of the facilities would be performing close to the benchmark level in these areas. There are however, a number of facilities (smaller joint use centres in particular, due to the inherent restricted daytime community access required by the shared arrangements with a high school) that perform significantly below benchmark for sports hall income which leads to questions about the need to continue operating all of the dual-use facilities which mainly offer large, 6 court sports halls. This analysis supports the Council's long-term thinking around the asset planning for rationalisation and the provision of new Lifestyle Centres.

- Performance against expenditure benchmarks is below expectation, particularly in relation to staffing costs which are often over 100% of income at many of the facilities – however, this is clearly impacted by the decision regarding enhancements, which we understand added £325,000 for 5 months of 2011/12 and has added c.£750,000 in the current year. This is also reflected in the fact that the overall cost recovery percentage is below benchmark across all facilities with the exception of Shavington Leisure Centre and Macclesfield Leisure Centre.

- Utilities costs are reasonable at many of the facilities considering the age of the asset stock however there are some facilities where the utilities costs should be interrogated to understand the reasons for the high costs compared to the benchmark level. Knutsford, Poynton and Sandbach Leisure Centres are all dual-use facilities which have very high utilities costs although this could be partially attributable to the lack of ability to accurately split utilities consumption / costs between the school and the leisure centre elements which may lead to some degree of subsidy of the schools premises being incurred by the Council via the leisure service. The utilities costs for the dual use Middlewich Leisure Centre in particular are above the benchmark level which is a concern because this dual-use facility does not have a swimming pool (although the same issue may apply as at the other dual-use facilities). Finally, Nantwich Swimming Pool has high utilities costs at £61 per square metre. These high utilities costs may be partially related to the provision of the heated outdoor pool.

- Maintenance expenditure is below benchmark across the portfolio which could be looked at as a positive in terms of controlling expenditure however is a concern if the upkeep of the assets is not being invested in for financial reasons as it will lead to long-term increases in major maintenance issues and reductions in income due to increased service disruptions and user dissatisfaction / attrition rates. It is noted that maintenance expenditure appears to have decreased significantly between 2010/11 and 2011/12. The responsibility for the maintenance budget now resides centrally with the asset management team. It is crucial that maintenance expenditure does not decrease further still (unless there is a clear plan for long-term disposal of an asset) as the resulting savings in expenditure are likely to be negated by reductions in income and increased long-term maintenance problems.

- Although there is some marketing spend in the individual cost centres for some of the leisure facilities the amounts are negligible and so have not been recorded in table 3.18. Marketing spend is not allocated per leisure centre as there is a central marketing team which works across all of the leisure facilities. The marketing team spent £39,353 in 2011/12 on marketing activities (this does not include the cost of the staff time i.e. their salaries and wages or associated expenses). Adding on the £1,502 spent on-site results in a total marketing spend of £40,855. This is the equivalent to 0.7% of income and is low when compared to the benchmark of 2.1%. This may be one of the contributory factors as to why performance against the income KPIs was predominantly below the benchmark levels across all of the facilities.

9.9 It is acknowledged that the financial performance at some of the leisure facilities is understated because the true level of income and costs relating to school dual-use status and long-term hire of rooms by the Adult Services team are not accurately reflected in the levels of income / recharges allocated to each facility. This would impact positively on a number of KPIs and overall financial performance if accurate recharges were included.

Asset stock changes

9.10 Alongside consideration of future management vehicles, the Council has been separately reviewing future asset plans, including opportunities for provision of a number of new Lifestyle Centres to replace ageing assets and potential transfer of other facilities to schools / community groups.

9.11 A number of scenarios have been identified by officers and in previous reports commissioned on the Lifestyle Centres, some of which we have sought to reflect in the modelling in this report – however, this modelling is simply for scenario analysis and is not a recommendation on future asset portfolios, as that is not part of this study. There is clearly further work to do on this prior to confirming what changes will be made and the timescales for these.

9.12 **It is unclear whether the respective schools / community groups / parishes would have the capacity or interest to take on leisure facilities, but there are numerous precedents in other parts of the country. The capacity to deliver would be a particular issue that the Council needs to satisfy itself of prior to any transfers**.

9.13 Further to this, we would note that the Council will need to undertake an Equality Impact Assessment and further consultation on these transfer / rationalisation proposals before a preferred route can be signed off. Without this level of rigour there is a clear risk of challenge from a legal perspective.

Financial implications

9.14 The report assessed the financial implications of the outsourcing options being considered based on the following key income and expenditure areas:

- the current net direct costs of the services;
- the impact of VAT and NNDR on the different models;
- the impact arising from central support costs;
- profit, contingency and overheads;
- the impact on pension costs to the Council and operator;
- set-up costs and timescales;
- operational changes to increase revenue or reduce costs; and
- implications of including other services within the commissioning opportunity.

9.15 This identified savings compared to the current in-house option are set out overleaf.

Table 9.1 - Comparison of Financial Implications of Management Options

	Private Sector £	Existing NPDO £	New NPDO £	New CIC £
Current Net Direct Cost budget (In-House)	£3,797,608	£3,797,608	£3,797,608	£3,797,608
Total Cost to Council	£3,676,558	£3,108,973	£3,366,157	£4,197,659
Average Annual Saving compared to In House	**£121,049**	**£688,634**	**£431,451**	**-£521,101**

9.16 A trust model delivers the highest amount of annual savings for the Council with an existing trust providing higher levels of savings than a new trust, mainly because it has lower management costs, easier access to capital funds that can be invested to generate additional income, economies of scale and new expertise that a new trust could not offer in the short term. This was confirmed when we modelled the net present costs of each option over a 25 year period (see table below).

Table 9.2 - Comparison of Net Present Cost of management Options

	In-House £ (Base)	Private Sector £	Existing NPDO £	New NPDO £	New CIC £
Total 25 year cost	£94,940,205	£91,424,170	£77,234,553	£84,664,134	£105,451,700
Net Present Cost (including set-up costs)	£60,473,754	£58,516,256	£49,477,942	£54,180,446	£67,421,434
25 Year Benefit compared to base NPC	**N/A**	**£1,957,498**	**£10,995,812**	**£6,293,307**	**-£6,947,681**

9.17 There is the potential to include community halls, arts and cultural services and green spaces into the new management vehicle also. However, more detailed investigation into the line by line nature of the income and expenditure associated with these services needs to be carried out to properly assess the impact on the VAT position of the new management vehicle and other potential fiscal savings (as they could in fact lead to additional costs rather than savings).

9.18 The VAT issue is a significant concern in relation to the future sustainability of the other services, particularly the green spaces. This would need detailed further analysis before transferring these services to a third party provider or trust.

9.19 **A further financial issue is the critical mass required to achieve a sustainable footing for the trust in particular. We would suggest that as a minimum all of the main centres that provide community swimming pools need to be included in the trust model and the Council should avoid a situation where there is a mixed model of provision for the main facilities as this will impact negatively on critical mass, service coordination and partner**

engagement. Should fewer facilities / services be included, then there are likely to be significant negative implications in terms of trust sustainability and value for money, when comparing the set up costs and running costs to the services delivered.

9.20 In addition, the non-financial implications of each option must be considered alongside the financial implications.

Non-financial implications

9.21 The non-financial implications of each option have been assessed against a set of agreed weighted criteria, covering the areas set out in the table below.

Table 9.3 - Summary of Non-Financial Implications and Weightings

Non-financial criteria	Weighting
Level of Council strategic influence	10%
Impact on service delivery	15%
Impact on staff	10%
Correlation with Corporate objectives	15%
Impact on residual costs	5%
Ability to transfer risk	5%
Partner/community involvement	10%
Flexibility for future asset plans	15%
Flexibility for future inclusion of additional services / facilities	15%

9.22 Assessing each option against these criteria identified the following weighted scores:

- In-house management – 70%
- Outsourced management (existing trust / private operator) – 64%
- New Social Enterprise – 73%

9.23 In summary the benefits of the new local social enterprise are as follows:

- Involvement of external expertise in the trust Board;
- Involvement of key partners to shape future priorities and activities;
- Greater financial and managerial autonomy;

- Opportunity for community and staff involvement in the management of services; and
- Benefits of having a single issue focus and locally based Board; and
- Ability to expand in future to take on additional services / facilities.

Issues to consider

9.24 Before identifying a recommended way forward in the management options process, there are a couple of key issues which have emerged which contextualise the conclusions. These are summarised below.

- **Requirement for future flexibility** to meet changing asset demands and allow other services/facilities to be incorporated – this non-financial criterion has been included in the assessment and has therefore been considered in some detail. However, it is clearly critical that the Council confirms a preferred way forward on the asset stock and potential rationalisation / replacement / asset transfers, as this will clearly impact on the base position for any future delivery vehicle;
- **How do we best facilitate joined-up thinking?** There is a need to avoid delivering facilities in isolation from other services and facilities, including green spaces. There is also an opportunity to contribute towards significant local priorities associated with health & wellbeing and economic development and examine leisure facilities' role in co-locating with other Council services.

9.25 In addition to these strategic considerations, there is a significant practical concern surrounding the accuracy of information available on which to deliver and monitor the services. There is on-going uncertainty around the accuracy of the financial information in particular, and therefore any future management change should include a budget for installation of updated and integrated financial management systems, such that performance can be monitored more accurately and KPIs reported more specifically. Should the Council decide to set up a charitable trust or outsource to a third party operator, it will be critical to future monitoring and business management that this issue is resolved.

9.26 Further to this, the current split in relation to repairs and maintenance responsibilities will need to be revisited to ensure any operator has adequate budgets transferred to allow them to undertake day-to-day and planned preventative maintenance. The Council will most likely retain responsibility for major lifecycle elements, but the operator will still require a substantial budget to be reallocated from the Council's central property team, which will have an impact on that department also.

Conclusions

9.27 In the context of the issues noted above, and based on the financial and non-financial evaluations undertaken, there are two primary options available in our view:

1) Outsourcing of the management of leisure facilities only, via a competitively procured management contract open to private sector and trust bidders (this is likely to result in the lowest cost solution for leisure facilities management only);

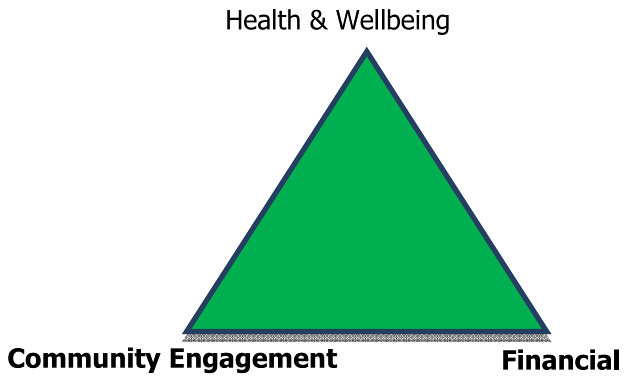
2) Setting up of a new social enterprise vehicle, ideally a charitable trust (company limited by guarantee), with an initial transfer of leisure facilities and sport and play development, followed by potential transfer of other services such as arts and culture and green spaces in the future (this option provides a good level of savings and the greatest

non-financial benefits to the Council, particularly in relation to strategic priorities and integration of services);

9.28 Should the Council wish to maximise financial benefits and risk transfer, then option 1 (outsourcing) is likely to provide the optimum solution against these two issues. However, to facilitate such a route would require firm decisions to be made on future asset stock prior to commencing any procurement process – bids could then be sought on the basis of an agreed future asset portfolio and timing for any disposals / new builds. Without a firm basis for contracting, then it is potentially costly and complex to make unforeseen changes at a future date and would almost certainly result in the Council having to fund loss of profit claims from an operator.

9.29 However, we understand from the consultation and feedback from both Councillors and officers that the objectives of this exercise are not simply financial and that a 'multiple bottom-line approach' is preferred, which balances financial issues with wider objectives, as identified in figure 9.1.

Figure 9.1 – Council Objectives



9.30 In this case, option 2 is considered to offer a more comprehensive solution, given the strengths of a local social enterprise vehicle noted earlier.

9.31 In relation to the preferred type of social enterprise, it is clear from the financial analysis presented in section 7 that a charitable vehicle is essential in order to obtain the fiscal benefits associated with NNDR and VAT, which means that a Community Interest Company is unlikely to be appropriate. In this context, of the vehicles identified in section 4, the Company Limited by Guarantee with charitable status is considered to offer the best solution, particularly in light of the uncertainties associated with the alternative Charitable Incorporated Organisation.

9.32 Taking into account the financial and non-financial implications, the benefits of a charitable trust are considered to include:

- Financial savings from NNDR relief (albeit tempered by the recent changes in legislation) and VAT;
- Access to external grant funding associated with charitable status;
- Involvement of partners in the trust Board, thus promoting partnership working and coordinated service delivery (for example in relation to health and wellbeing);

- Involvement of external expertise in the trust Board, promoting sustainability and providing access to required commercial acumen;

- Greater financial and managerial autonomy, which should result in improved quality of services and pricing in line with market levels;

- Opportunity for community and staff involvement in the management of services;

- Benefits of having a single issue focus;

- The trust can evolve over time to incorporate other assets and services;

- Transfer to a trust will maintain the link between sports development and facilities management, assuming both are transferred together; and

- A sufficient level of flexibility can be retained to accommodate future asset changes - given that the asset plans are unlikely to be confirmed in the short term and require significant further consultation and assessment before a preferred route is approved.

9.33 Further to this, a balanced trust board including elected members and senior officers would allow the Council to retain a good degree of strategic control, ensuring service delivery is aligned with the priorities of the Council (although the level of representation cannot be greater than 20%, otherwise the trust cannot be seen to be independent for charitable purposes).

9.34 A detailed outcome specification and performance management system will ensure services are focused on the priorities of the Council and local residents, with any grant aid linked to delivery of agreed outcomes.

9.35 However, as noted earlier, we would suggest that as a minimum all of the main centres that provide community swimming pools need to be included in the trust model in order to provide the trust with a critical mass of trading activities, and the Council should avoid a situation where there is a mixed model of provision for the main facilities as this will impact negatively on critical mass, service coordination and partner engagement.

9.36 On this basis, section 10 identifies the implementation plan for a local charitable trust.

10. Implementation Plan

10.1 The preferred option identified in section 9 of this report is the establishment of a new charitable trust, focused on delivering services in Cheshire East.

10.2 The trust route offers flexibility for future delivery of the planned Lifestyle Hubs, as it will be considerably more straight-forward to amend the arrangements with the trust to take into account the new centres, compared to the complex change mechanisms associated with a contract with a private provider. It also offers a clear opportunity for phasing of service transfer, with a suggested phasing set out below. The intention of the phased approach is to balance service quality and integration with the need to create a sustainable business model for the trust.

- Phase One
  - Leisure Facilities (including the Business Support team)
  - Sport and Play Development
- Future Phases (depending on ‘readiness’ to transfer and trust sustainability)
  - Arts and Cultural Services
  - Greenspaces
  - Community Halls.

10.3 The rationale for a phase one containing leisure facilities and development services is to maintain the cross-working and integration that is essential to supporting the work of the development services, both in the facilities and their outreach work, and to protect the non-statutory development service from further cuts. However, care should be taken not to jeopardise service coordination by partial / ad hoc transfers – in particular, the main facilities should be retained as a single ‘group’ to ensure a coordinated service across the Borough.

10.4 The Arts and Cultural services include a number of elements that are already contracted out, including Archives & Local Studies (to CWAC), Lyceum Theatre (to HQ Theatres) and Knutsford Cinema (to Curzon Cinemas), given this commissioning role within that element of the service we would suggest that this remains with the Council, to be managed as part of the overall commissioning of both leisure (via the trust) and cultural services – this should maximise use of performance management resources within the Council.

10.5 Green spaces currently includes parks and open spaces, countryside and public rights of way. A number of these elements are statutory services and therefore may be best retained within the Council in the short-term. However, there are clear links between health and physical activity and use of outdoor spaces, which provides a strategic synergy for future integration into the trust. However, given the complexities of managing the asset changes in leisure initially, we would be concerned about the ability of the trust to also manage the diverse activities of the green spaces services in the short-term as well.

10.6 Community Halls could benefit in the medium-term from the asset management skills to be developed within the trust, however, further consideration will need to be given to whether more local asset transfers are better suited to these small community facilities, compared to inclusion in an overarching trust vehicle.

10.7 The estimated total cost of the implementation of the trust, covering technical, financial, legal and leisure consultants, based on recent examples from other trusts, is believed to be in the region of £200-250k over the next 12-18 months. This will cover:

- Drawing up of legal agreements between the Council and the trust;
- In-depth financial and business planning;
- Consultancy costs relating to the project management of the trust set-up;
- Costs associated with the recruitment of trustees and senior management;
- Initial senior management and staff costs;
- Contracts and leases;
- Procurement;
- Establishing a trust as a legal entity in its own right; and
- Communications.

10.8 The remainder of this section sets out firstly an overview of the financial implications and then a more detailed implementation plan for the trust set up, with the aim of achieving a 'go live' date of 1st April 2014.

Financial implications

10.9 In order to understand the financial implications of the trust set up compared to current budgets, we have modelled the following scenario:

- Leisure Facilities transfer from 1st April 2014;
- Sport & Play Development transfers from 1st April 2014;
- Business Support team transfers from 1st April 2014;
- Set up costs of £200,000 incurred in 2013/14 to facilitate transfer;
- Asset stock changes are as follows:
  - Congleton LC – transferred to the trust
  - Wilmslow LC – transferred to the trust
  - Macclesfield LC – transferred to the trust

– Knutsford LC – transferred to the trust

– Middlewich LC – transfer to the trust

– Holmes Chapel LC – transfer to the trust

– Poynton LC – transfer to the trust

– Crewe Pool – transferred to the trust, but replaced by new Lifestyle Centre in 2016

– Shavington LC – transferred to the trust

– Sir William Stanier School LC – management transferred to the trust, but replaced by new Lifestyle Centre in 2016

– Victoria Centre / Cumberland Arena – transferred to the trust, but replaced by new Lifestyle Centre in 2016

– Nantwich Pool – transferred to the trust

– Barony Park Sports Complex – transferred to the trust

– Alsager LC – transferred to the trust

– Sandbach LC – transferred to the trust

- Trust senior management overhead of £250,000 from year 1, covering Chief Executive and Finance Director. Assume that Operations director post is a transfer from CEC existing management costs; and would also include Leisure facilites management as recommened earlier in the report.

- Support services continue to be purchased from CEC in years 1-3, whilst CEC is realigning internal departments to account for the changes. Following this, a budget of 5% of income is set aside to fund purchase of support services externally.

10.10 We understand that this is currently the preferred asset realignment option, subject to further consultation and assessment and negotiation with the schools / community groups around asset transfers. It also provides the trust with a critical mass of facilities and services on which to develop a sustainable long-term business model.

10.11 Further to this, the Council will need to ensure backlog maintenance and condition survey works are undertaken prior to transfer, in order to provide the trust with a good stock of facilities on which to develop a sustainable business model. Transferring assets in need of investment will immediately jeopardise the financial sustainability of the trust.

10.12 In relation to repairs and maintenance, we assume that the Council will want to grant an FRI lease to the trust for each property (excluding dual use sites), such that the trust needs to set aside a sinking fund for building maintenance and lifecycle costs as well as day to day maintenance and planned preventative maintenance. In order to facilitate this, condition surveys of all buildings will be required to allow the trust to assess its liabilities. In relation to the dual use sites, we have assumed the school / Council will retain existing major lifecycle responsibilities given the integrated nature of the buildings on most sites.

10.13 Table 10.1 identifies the summary financial implications compared to existing budgets. This is derived from the baselines presented in section 7 of this report and updated for the asset changes noted above. We understand from consultation that there is potential for changes to the terms and conditions of staff (effectively reversing the enhancements offered in the last two years) which could have a £750,000 pa impact, but this is uncertain and therefore not included in the modelling.

Table 10.1 - Financial Implications of New Trust

Current Annual Net Direct Cost (In-House – Leisure + Sport & Play Development)	£4,141,342
Average Annual Net Direct Cost over 25 Years as a result of planned facility changes listed above (New Trust - Leisure + Sport & Play Development)	£2,694,279
Average annual benefit to the Council	**£1,447,063**
Current 25 Year Net Present Cost (In-House – Leisure + Sport & Play Development)	£65,947,432
25 Year Net Present Cost as a result of planned facility changes listed above (New Trust - Leisure + Sport & Play Development)	£41,696,889
25 Year Net Present Cost reduction as a result of planned facility changes listed above (New Trust - Leisure + Sport & Play Development)	**£24,250,543**

10.14 It can be seen from the table that there is a significant benefit, both annually and over a 25 year period, in setting up a new trust and carrying out the proposed asset changes. It could generate a benefit on the net present cost in the region of £24m over 25 years. The financial analysis does not include any further service transfers (arts and culture / green space etc.) as this will require more specific modelling of the implications for each service area, particularly in light of the potential negative impact that the additional services could have on the financial savings able to be generated through VAT efficiencies. In any event, we would note that the new trust should be given a period of at least 3-5 years to ensure the base leisure services are 'bedded in' and the trust has the opportunity to develop a sustainable financial position.

10.15 We have assumed that the Council will retain the costs currently associated with the Leisure and Cultural Service Manager as this post will be critical to monitoring the services delivered by the trust and ensuring the Council is receiving value for money.

Implementation process

10.16 Figure 10.1 overleaf provides a summary programme of tasks and timescales. It should be noted that, to achieve the deadline of April 2014, a number of tasks will need to be twin tracked and an urgent start is required following approval of the way forward.

10.17 In addition, the Council should be mindful of the following issues:

- The need for a programme of on-going capital investment, or a robust sinking fund, to ensure quality of facility provision is maintained in the short and medium term. This will need to be allied to the asset improvement and rationalisation programme required to deliver the Lifestyle Centre plans;

- The cashflow implications of any transfer or procurement process – the Council will need to fund the upfront costs of transfer, which could be in excess of £200k. Also, the internal resource implications of managing the process will impact on day-to-day activities and may mean resources need to be diverted from other Council activities to manage the process or external resources will need to be brought in;

- A number of shorter-term leases / contracts exist, particularly in relation to health & fitness equipment. These contracts / leases will need to be determined early or transferred to the new trust and should form part of the initial legal assessment to understand the implications.

Figure 10.1 - Implementation Plan

TASKS	May	June	July	August	Sept	Oct	Nov	Dec	Jan-14	Feb	Mar	Apr-14
PROJECT MANAGEMENT & ADMIN												
Confirm scope of trust												
Establish Project Directory												
Mobilisation of Council sub-project teams												
Appointment of external advisors												
Development of risk register												
FINANCE												
Review initial calculations and produce draft 5 year operational business plan for each facility & service area												
review & incorporate central cost implications												
review and incorporate NNDR implications												
review and incorporate operational implications												
review and incorporate VAT implications												
Finalise draft 5 year operational business plans for each facility & service area									X			
Prepare Council Transitional Plan												
VAT position												
Review Council's VAT position												
Confirmation of VAT savings calculation												
Finalise VAT implications-document review-VAT efficiency												
Prepare for VAT registration												
Customs and Excise agreement to documents												
PERSONNEL												

Prepare list of potential transferees												
Identify potential impact of central support services												
Confirm pension implications and progress with application for Admitted Body Status												
Employment law analysis - terms and conditions of employment												
Analyse impact on current staffing - individual re-deployment requirements												
Communication												
Consultation with Trade Unions and Staff in accordance with Consultation strategy												
Update with staff on Cabinet decision, progress and timescales												
Initial staff briefings in relation to TUPE and pensions												
Consultation on TUPE, supporting the TUPE transfer & facilitating admission to pension fund												
Consultation with existing partners and agencies												
Consultation with stakeholders												
Trust Board												
Draft job descriptions/person specifications												
Place advertisement												
Evaluation of applications												
Confirm appointment of Board Members												
Establish potential consultative board												
Train board members												
Chief Executive												
Draft job description/ person specification												
Agree job descriptions/ person specifications												
Place advertisement												
Confirm appointment of Chief Executive						X						

Establish Senior Management Structure												
Draft job descriptions/person specifications												
Agree job descriptions / person specifications												
Place advertisement												
Evaluation of applications												
Confirm appointment of Senior Management Team												
Senior Management Team take up their posts									X			
OPERATIONS & SERVICES												
Operational Specification - Draft Version												
Development of trust strategic & operational business plan												
Develop draft handover plan to incorporate												
internal and external accounting system												
risk assessments												
h&s policies												
normal and emergency operating procedures												
staff welfare policies												
Discussion with contractors/suppliers/third parties to be assigned												
LEGAL & PROPERTY												
Property Issues												
Identify and agree schedule of properties and leases/ licenses												
Identify who is in occupation at each facility & details												
Prepare and agree site plans												
Draft & agree detailed description of each property use												
Prepare particulars for each property												
Disposal of Property - Place Advertisement												

Consider Objections							■	■				
Identify whether any land is public open space					■	■						
Provide schedule of landlord/ tenant responsibilities						■	■	■				
Agree section 123 valuation								■				
Confirm requirements of scope of condition surveys			■	■								
Condition survey of all facilities-detail depending on share of risk					■	■	■					
Assets												
Investigate title on all sites				■	■							
Draft & agree leases for all relevant properties						■	■	■	■			
Execute leases for all relevant properties												■
Compilation of list of equipment to be transferred							■	■				
Compilation of list of contracts to be assigned/retained							■	■				
Trust Structure												
Confirm Trust Board structure			■	■								
Obtain approval for trust structure & board membership					■							
Legal Issues												
Consider likely terms of transfer				■	■	■						
Confirm terms of transfer for Project Board					■	■						
Prepare Schedule of Documentation Requirements						■						
Appoint external legal advisors to the trust					■	■						
Prepare transfer documentation												
Partnership Agreement-Draft Version							■	■	■			
Property Documents - Leases-Draft Version								■	■			
Confirm admitted body status procedure								■	■	■	■	
Provide list of transferees and contribution levels									■	■		
Instruct actuaries to report on assessment of fund & whether requirement for Bond									■	■	■	

Incorporate trust												
Draft Memorandum & Articles of Association												
Company Forms completed												
Submit application for registration												
Gain charitable status											XXX	
Service Commencement												XXXX

10.18 As identified in figure 10.1, there are a considerable amount of tasks to be undertaken in a short period of time, meaning that a dedicated project management resource, at least 2-3 days per week, is likely to be required to manage the various work streams and coordinate activities amongst the sub-groups.

10.19 Within the ‘property’ work stream, the legal work on leases will need to include consideration of future dual use arrangements, as a number of the existing agreements expire in the next 5 years so will need to be renegotiated.

10.20 It is worth noting that the timetable does not allow any contingency and requires tasks to be twin-tracked given the limited time available. Should any of the key deadlines be missed, then the transfer may need to be delayed by 6-12 months.

Further information

10.21 Further information on the contents of this report can be obtained from Andy Farr, FMG Consulting, on 07971 837 531 or andyfarr@fmgconsulting.co.uk or Damien Adams, FMG Consulting, on 07917 615 425 or damienadams@fmgconsulting.co.uk.