

**REPORT TO: CHIEF EXECUTIVE**

**REPORT ON: FORMATION OF A CHARITABLE ORGANISATION TO MANAGE LEISURE AND CULTURE FACILITIES IN DUNDEE**

**REPORT BY: DIRECTOR OF LEISURE AND COMMUNITIES  
DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**REPORT NO: -2010**

## **1 PURPOSE OF REPORT**

- 1.1 To outline proposals for the investigation of the feasibility of establishing a Leisure and Culture Company to operate leisure and cultural facilities owned by the City Council and the implications of the proposed arrangements for the Council.

## **2 RECOMMENDATIONS**

It is recommended that members:

- 2.1 Instruct officers to investigate the feasibility of forming a charitable organisation to manage the Leisure and Culture facilities, which will enable Dundee City Council to progress its "Changing for the Future" agenda and deliver a proposed saving for 2011/12,
- 2.2 Instruct the Director of Leisure & Communities and the Depute Chief Executive (Support Services) to prepare appropriate leases for those properties set out in Appendix 1 of this report. This would include the facilities currently leased to Dundee Leisure Limited.
- 2.3 Instruct the Director of Leisure & Communities and the Depute Chief Executive (Support Services) to develop a management agreement for the management and operation of facilities which would be transferred to the new Special Purpose Vehicle (SPV).
- 2.4 Agree to the City Council nominating the Director of Leisure and Communities as Managing Director and the Director of Finance as Finance Director of the new SPV to assist in the good management of the company for the benefit of the public.
- 2.5 Authorise the Director of Finance and Depute Chief Executive (Support Services) to appoint financial and legal advisors to take forward the proposals to secure a new SPV and gain charitable status from the Office of the Scottish Charity Regulator.
- 2.6 Remit to the Depute Chief Executive to begin discussions with Dundee Leisure regarding their existing structure, Leases and Management Agreements. The purpose would be to facilitate the renewal of Dundee Leisure within the new SPV.
- 2.7 Agree that relevant Department's of the City Council enter into Service Level Agreements to facilitate the provision of services to the new SPV. The Service Level Agreements to include provision for consultation and agreement on budgets and charging policy.
- 2.8 Agree that the new SPV should take earliest operational and management responsibility for the facilities following completion of all legal formalities to conclude the transfer.
- 2.9 Agree to transfer, on their existing terms and conditions of employment, the staff presently providing the Leisure & Sports Services, Library & Information Services, Cultural Services and staff whose posts are 100% dedicated to the support of transferred services all under TUPE conditions including job evaluation under single status.
- 2.10 Agree that the new SPV be given full support to achieve admission to the Tayside Pension Fund as an admitted body.
- 2.11 Note that ,subject to confirmation of charitable status, 100% Non Domestic Rates relief to Leisure and Culture Dundee is expected to be granted for all buildings (with the exception of the Caird Hall which will only receive 80% mandatory relief due to the presence of a licensed bar).

### **3 FINANCIAL IMPLICATIONS**

- 3.1 The implementation of these proposals will result in an estimated saving to the Council of £401,000 in the financial year 2011/12. This is a prudent estimate taking into account savings from Non Domestic Rates relief partly offset by additional costs of Insurance, Legal and Audit fees and irrecoverable VAT.
- 3.2 All external and internal repairs will remain the responsibility of Dundee City Council. The management fee will be based on the approved 2011/12 Revenue Budget. Subject to approval a detailed budget will be brought forward for approval.
- 3.3 The appointment of financial and legal advisors to create the company will incur professional fees which will require to be funded from General Fund balances. Authorisation is sought to incur expenditure of up to £50,000 for this purpose, however the level of expenditure on these advisors is not expected to reach this limit.

### **4 SUSTAINABILITY POLICY IMPLICATIONS**

- 4.1 If these recommendations are accepted this would help to ensure that library and cultural facilities are sustained into the future.
- 4.2 Free access to library and museum services is an important educational requirement and integral to the Council's Anti-Poverty Strategy. If the recommendations are accepted this will ensure that free access to library and cultural services continue within the city.

### **5 EQUALITY IMPACT ASSESSMENT**

- 5.1 This will be available on the Council's website when this report is brought forward to the Policy & Resources Committee for approval.

### **6 BACKGROUND**

- 6.1 Dundee City Council recognises the importance of providing high quality provision for people to participate in recreation, sporting, cultural and social activities (including those provided by its libraries and cultural facilities). It has many facilities that are used to further its aims of providing a service that will enhance public health, social and recreational well-being and social inclusion. To further these aims Dundee City Council intends to create a new SPV, with charitable status, that would be able to manage and operate these facilities to the quality expected by the residents of Dundee and be viable as a business unit which in turn would result in maintaining the high quality of facilities to the public by Dundee Leisure and the City Council's Leisure & Communities Department. A considerable number of other local authorities currently successfully operate culture and leisure facilities through arms-length organisations with charitable status.
- 6.2 The day to day management and operation of the Council's leisure and culture facilities would be transferred to the new charitable organisation. It would qualify for 80% mandatory plus 20% discretionary Non Domestic Rates relief (with the exception of the Caird Hall bar).
- 6.3 In order to allow the new SPV to operate from the existing buildings and to qualify for Non Domestic Rates relief, the Council would be required to lease these facilities to the new SPV.
- 6.4 Leasing will ensure the Council continues to own properties and can impose conditions on their use. (Appendix 1)

- 6.5 The City Council would retain responsibility for all expenditure on property repairs and maintenance. This is to ensure all Health and Safety repairs and maintenance are funded appropriately and arrangements are in place to ensure that repairs and maintenance expenditure is closely monitored. Initially the leases, on this basis, would be entered into for a period of 20 years with a mutual option to break and a review at the end of each five year period.
- 6.6 The leases would set out the rights and obligations of the parties as regards access to, use, repair, maintenance and insurance of the properties and the property services to be provided by each party. The Council would continue to insure the premises. The new SPV will, however, require to arrange insurance cover for a range of risks including employers and public liability, directors and officers, personal accident and motor. The total net additional premiums for this are estimated at £50,000. This additional cost will be included in the detailed budget which will follow in the next report.
- 6.7 The nature of the payment made to the new SPV by the City Council in terms of the management agreement would be a fee for the provision of leisure, sport, culture, library and heritage services. This would allow a net overall VAT savings as compared with the Council's VAT costs which at present is 20p in every pound of income. The Company would be liable for irrecoverable VAT, a detailed assessment of which will require to be incorporated into the budget report. As most of its income would be exempt from VAT the company would be unable to reclaim all of the VAT it pays on purchases.
- 6.8 The charitable status of the company would exempt it from Corporation Tax in relation to its charitable activities.
- 6.9 It is possible that the new SPV may be eligible for additional sources of funding including Lottery and European grants for development and expansion of services which are not presently available to the City Council. As a charitable organisation it would also be able to receive charitable funds, legacies and endowments.
- 6.10 There are certain additional start up costs which the new SPV would incur for financial and legal advice. This is estimated at £50,000 which the Council could fund from General Contingencies Fund. The company would have to have its own auditor and its own legal representatives. These costs are currently estimated at £9,000 per annum and would be met from the new SPV's administration budget.
- 6.11 Certain non-fixed items of sports and other equipment would be made available to the SPV as would current stock for resale. The Management Agreement would contain a provision entitling the Council to purchase any equipment purchased by the organisation back at market value in the event of the termination of the agreement or lease. The new SPV would be able to join Scotland Excel and avail themselves of any purchasing benefits that might accrue through bulk buying supplies with the Council.
- 6.12 Under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 1982 (TUPE) all transferring employees would transfer to the new SPV on their existing terms and conditions of employment.
- 6.13 The Management Agreements would require that the current high level of performance would be maintained and, where possible, improved.
- 6.14 The Council would also require that the new SPV would offer equivalent conditions of service to staff appointed after the transfer of services as that given to transferring staff
- 6.15 Employees transferred will be able to use all the Council support services as was the case with the establishment of Dundee Leisure.

- 6.16 It is the intention that the pension rights that have applied to Council and Dundee Leisure staff under the Local Government Pension Scheme would continue to apply to transferring employees post transfer to the new SPV to protect their accrued and future pension benefits. It is intended that the new SPV would become an admitted body under the Local Government Pension Scheme.
- 6.17 Dundee Leisure presently benefits from a range of support services. To assist the new SPV it is intended that the Council continues to offer to provide a number of services to the new SPV at no cost, these will include:
- (a) Financial services such as payroll, accounts payable, accounting and budgeting, VAT administration, internal audit, accounts receivable, cash collection/banking.
  - (b) Citizen Account development.
  - (c) Information Technology Services.
  - (d) Personnel Services
  - (e) Administration, Training and Property Services
  - (f) Grounds Maintenance
  - (g) Corporate booking system
  - (h) Courier service
  - (i) Health & Safety
- A Service Level Agreement would be put in place for each service.
- 6.18 Where Service Level Agreements are entered into it is recommended that these should be subject to six months' notice of termination by either side.
- 6.19 Access agreements currently in place for use of pitches, PPP schools, school lets etc would continue on the current basis.
- 6.20 Responsibility for the LeisureActive Scheme, Marketing & Design, clerical and admin support will also transfer to the new SPV. The new SPV would also be required to continue to provide concession rates as per the Council's current charging guidelines to support its equality policies.
- 6.21 The Finance Committee of 14 June 1999, Article IV approved a report by the Director of Finance outlining the requirements of the Accounts Commission/COSLA Code of Guidance for Funding External Bodies and Following the Public Pound. In terms of the establishment of the SPV, it would be necessary to enter into a formal Management Agreement with the City Council covering a range of issues including Outputs, Health and Safety and Equality & Diversity Policies, Accounting, Report and Audit requirements, Financial and Performance Monitoring. A report would be submitted to the Leisure, Arts and Communities Committee (at least annually) covering desired outputs performance and financial information.
- 6.22 This would be the main mechanism defining the relationship between the new SPV and the Council. The payment of an annual management fee would be made by the City Council upon production of outline plans for the expected income and expenditure, the services, improvements and other expenditure plus the level of financial commitment agreed between the Council and the new SPV. Dundee City Council would agree the terms of each year's Business Plan prior to the commencement of the financial year.
- 6.23 A management fee equivalent to the 2011/12 approved revenue budget deficits for these facilities, adjusted for the savings and also adjusted in line with Leisure and Communities Department's budgets for an initial period of five years would be reviewed annually to reflect developments. The SPV would be heavily reliant on the Council's payment for its income and this would ensure the Council retains influence over the delivery of the service and related costs and thus achieve its aims and objectives. However the Management Agreement would include provision for any complaints into the operation of the facilities to be investigated by the Chief Executive of Dundee City Council to ensure that users of the facility will continue to have the support of Dundee City Council.
- 6.24 The new Special Purpose Vehicle would be responsible for the operation of community access to sports programmes in PPP schools and community swimming. The Active Schools section of the Education Department and the Sports Development section of Leisure & Communities will integrate and transfer to the new SPV.

- 6.25 The approved budget for 2011/12 for the provision of the services transferring to the new SPV would be the basis of the proposed Management Agreement.

## 7 PRINCIPLES

- 7.1 It is intended that the establishment of a charitable organisation to take forward leisure and cultural opportunities within the city will build on the success Dundee has already established through the Leisure & Communities Department and will maintain a "family" of services which relate, in the broadest sense, to community wellbeing.
- 7.2 The object of the establishment of the new SPV is to create a more efficient delivery vehicle which will yield financial benefits to the City Council and which may also offer greater flexibility than might be possible under local authority management.
- 7.3 The ownership of the public assets, resources and facilities will be retained by Dundee City Council with the new SPV solely responsible for their programming and operation.
- 7.4 Many of the facilities which would be operated by the new SPV have their origins in philanthropy. By securing their future as charitable resources, the City Council will maximise the potential for external funding and community engagement in their future direction.

## 8 OPTIONS FOR LEISURE AND CULTURAL FACILITIES IN DUNDEE

An options appraisal has been carried out to establish the most appropriate arrangements for the future management of operation of leisure and cultural facilities in Dundee:

### 8.1 Option 1 - In-House

The Council would continue to provide library and cultural facilities in-house. All facilities would provide free access to the public with the exception of the Caird Hall and sports facilities. The cost to the Council would be failing to achieve the saving of £401,000. The leisure and cultural facilities provide a first class service to the people of Dundee but there is a requirement to make substantial savings which makes the current position unsustainable.

### 8.2 Option 2 - A New Separate Cultural Organisation

To create a new SPV with charitable status obtained from the Office of the Scottish Charitable Regulator (OSCR) the charity would meet the charity test under Section 7 of the Charities Investments (Scotland) Act 2005 in that it could be held to include the advancement of the arts, heritage, cultural science and also the advancement of education. The charity would be small in nature and would have little or no income generation other than that provided by the new City Council. Within Dundee City Council's arms length family there would then be an additional fourth charitable organisations and this is not considered desirable as it could lead to confusions between roles and in particular with Dundee Leisure. It is considered that this option is not desirable as it would not provide the new cultural organisation with the scale it requires to carry out its operation efficiently and to ensure that the free public libraries and council facilities continue within the city.

### 8.3 Option 3 - A new charitable organisation incorporating the facilities already leases to Dundee Leisure and obtain the appropriate charitable status from the Office of the Scottish Charitable Regulator.

This option gives the new SPV the economies of scale required to make the necessary efficiencies and savings and also avail themselves of new business opportunities.

All of the sports and cultural facilities can meet the charity test as specified by OSCR. The new body may be a charitable company registered by guarantee. Indeed, Dundee Leisure is such an organisation. However, in April 2010 the Scottish Government introduced a Scottish Charitable Incorporated Organisation (SCIO).

A Limited Liability Partnership (L.L.P.) has been explored. However, as a partnership can only exist for profit this vehicle is not recommended as the tenant of our facilities as it would not obtain charitable status or rates relief.

In discussions with our legal and financial advisers it will be determined whether a Charitable Company Limited by guarantee or a new SCIO is the preferred vehicle.

Whilst there is a requirement from OSCR that a charitable organisation be independent from the City Council, the Council clearly has an interest in ensuring that the services continue and that facilities are not in any way lost. Other Councils have created limited liability partnerships (L.L.P.s) which are controlled by the local authority and which can assist in helping to drive forward organisations for the benefit of the community and can direct all the new charitable and other arms length organisations.

In considering any new arms length organisations, its structure and its makeup, the procurement rules which Dundee City Council must follow are an important consideration. The exact nature of the new SPV or organisations cannot be determined until the Council has obtained the appropriate legal and financial advice to ensure:

- (1) maximisation of financial savings to the Council;
- (2) protection for the staff being transferred.

#### **8.4 Conclusion**

Option 1 is not sustainable. Option 2 leaves any new cultural organisations vulnerable as it will not achieve economies of scale nor generate any additional income. Option 3 is recommended but the exact nature of the new SPV will need to be confirmed following detailed legal, financial and tax advice.

#### **8.5 Advisors**

External Legal and Financial Advisor would be appointed to advise on the establishment of the new SPV. It is proposed that the Director of Finance, Director of Leisure & Communities and Depute Chief Executive (Support Services) are authorised to appoint the Legal and Financial Advisors.

### **9 CONSULTATIONS**

The Chief Executive, Assistant Chief Executive and Director of Finance have been consulted on the contents of this report.

Subject to approval, the Board of Dundee Leisure will also be consulted on these proposals and their continuing role in their implementation.

Staff and trade unions have been advised of this proposal and will be consulted in detail on implementation.

### **10 BACKGROUND PAPERS**

None

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**20 DECEMBER 2010**

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DEPUTE CHIEF EXECUTIVE (SUPPORT SERVICES)**

**20 DECEMBER 2010**

**Leisure & Cultural Properties and Facilities to be operated by a new Charitable Organisation**

**Cultural Facilities**

- The McManus: Dundee's Art Gallery and Museum
- Caird Hall
- Mills Observatory
- Barrack Street Collection Unit
- Broughty Castle
- The Burgh Hall
- Baxter Park Pavilion
- Camperdown House
- St Mary's Tower (The Steeple)

**Libraries**

- Ardler Library
- Arthurstone Library
- Blackness Library
- Broughty Ferry Library
- Central Library
- Charleston Library
- Coldside Library
- Douglas Library
- Fintry Library
- Hub Library
- Kirkton Library
- Lochee Library
- Menzieshill Library
- Whitfield Library

**Leisure Facilities** (subject to the agreement of Dundee Leisure)

- Olympia Swim Centre
- Dundee International Sports Centre
- Lynch Sports Centre
- Douglas Sports Centre
- Lochee Swimming Pool
- McTaggart Sports Centre

**Other Leisure Facilities**

- Camperdown and Caird Park Golf Courses
- Camperdown Wildlife Centre and Visitor Centre
- Caird Park Stadium, Velodrome and sporting facilities
- Baxter Park Centre