



Report of the Director of City Development

Executive Board

Date: 16 July 2008

Subject: LEEDS SPORTS TRUST - UPDATE

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| Electoral Wards Affected: All |
| <input type="checkbox"/> Ward Members consulted (referred to in report) |

| |
|---|
| Specific Implications For: |
| Equality and Diversity <input type="checkbox"/> |
| Community Cohesion <input type="checkbox"/> |
| Narrowing the Gap <input type="checkbox"/> |

Eligible for Call In

Not Eligible for Call In
(Details contained in the report)

EXECUTIVE SUMMARY

This report has been prepared to appraise Members of the current position with regard to development of the proposed Sports Trust and to discuss options for moving forward.

The paper reviews the original rationale for the option of establishing a Trust to manage the Council's Sports and Active Recreation Service. Whilst significant progress has been made, it is also the case that as the proposal has been progressed, a number of unforeseen risks and issues have emerged; these include issues of governance, the difficulties of developing a management agreement acceptable to all parties and reduced financial benefits.

However and more significantly, the service is now facing a number of challenges, many emanating from the economic downturn which has had a significant impact upon income levels. This resulted in the service significantly overspending last year, and the early months of this year has seen a continuation of these downward trends, with additional financial pressures resulting from projected energy increases during the year.

Given the unstable environment that now faces the service; the report concludes that the time is neither right nor current circumstances conducive to the establishment of a successful Trust. Moreover, the paper recognises that it would be wrong to pass the issues which the service now faces onto what would be a newly established Trust and that the Council itself is better placed to deal with them.

The Sport and Active Recreation Service is a vitally important service, and it is therefore crucial that plans are developed in the short and medium term to deal with the challenges it

faces, and to ensure that in the longer term it is able to provide a sustainable and successful service.

1.0 PURPOSE OF THIS REPORT

- 1.1 This report has been prepared for Members of the Executive Board to appraise them of the current position with regard to development of the proposed Sports Trust and discuss options for moving forward.
- 1.2 The paper:
- a) reviews the initial rationale for determining that a Sports Trust was the appropriate way forward for the Council's Sports and Active Recreation Service, in terms of service improvement and investment requirements;
 - b) an update on current progress;
 - c) considers a number of issues and risks that Members need to be aware of in considering whether the Sports Trust model is still the appropriate way forward;
 - d) identifies an alternative approach to secure service improvement and investment should Members be of the view that circumstances have changed to such an extent that the Sports Trust model can no longer be supported.

2.0 BACKGROUND INFORMATION

- 2.1 The proposal to establish the Leeds Sports Trust as an independent, charitable company limited by guarantee originated from an appraisal of future service delivery options undertaken in 2005. This appraisal was undertaken by the legal firm Lawrence Graham and highlighted a range of advantages as well as the likelihood of annual savings in terms of National Non Domestic Rates (NNDR) and VAT.
- 2.2 A report was submitted to the Executive Board in March 2006 who agreed, in principle, to the development of a non profit distributing organisation for the Sport and Active Recreation Service, and that all savings accruing from the establishment of a trust should be reinvested back into the trust and the service. This was followed in October 2006 by a further report to the Executive Board which proposed that the Trust should take the form of a charitable company limited by guarantee. That paper also recognised the need for a clear separation of roles by March 2007 to ensure that there were clear lines of responsibility and accountability for both the emerging Trust and the Council. A target date of the 1 April 2008 was set for the establishment of the Trust.
- 2.3 In February 2007, a report was submitted to the Executive Board setting out proposed governance arrangements for the Leeds Sports Trust. These included the appointment of a chair of the Shadow Trust and the role of the project board.
- 2.4 In the autumn of 2007, officers realised that it would not be possible to complete the Trust arrangements for April 2008, principally due to the number of issues still outstanding between the Council and the Shadow Trust, and, therefore, the timescale was revised to aim for a commencement date of October 2008.
- 2.5 In terms of the rationale and benefits of the Trust model, previous reports have identified the following:

2.6 Financial Benefits

- 2.6.1 A key driver behind the Sports Trust proposal is the potential to generate savings, which then can be re-invested into the service. Provided that the Trust obtains charitable status from the Charity Commission it will be able to receive both mandatory and discretionary relief on its NNDR in addition to there being VAT benefits.
- 2.6.2 The VAT savings result from the fact that the Trust will be governed by different regulations to those that apply to the City Council. A positive consequence of establishing the Trust is that the Trust will be exempt from paying VAT on sports admission charges. The down-side of its new status is that the Trust will only be able to recover a percentage of the VAT it incurs on third party expenditure, whereas the Council is currently able to recover all the VAT it incurs. The percentage rate at which the Trust will recover VAT is called its "recovery rate" and is governed by a complex formula that can fluctuate depending upon a number of factors. By the Trust receiving a large "chunk" of taxable income, in the form of the management fee paid by the Council, the Trust's recovery rate could be approximately 50% and this is the figure used to calculate the estimated net VAT gain.
- 2.6.3 However, this is dependent upon how HM Revenues and Customs' view the money paid over from the Council to the Trust. HM Revenues and Customs must deem this payment to be a taxable management fee and not a non-taxable grant or deficit funding, and this will require the approval of HM Revenues and Customs.
- 2.6.4 Therefore, whilst the NNDR savings can be predicted with a high degree of certainty, the VAT savings are more volatile in nature as the actual level of savings will be determined by the way in which the Trust is managed and the level of income it generates once it is independently established.
- 2.6.5 When the Trust model was initially proposed, the annual net saving was anticipated to be £1,164k per annum, which took account of the anticipated savings on NNDR and VAT and would have provided for potential capital investment of £11m. It must, however, be appreciated that the original anticipated savings scenario, did not represent the absolute final case in terms of the savings achievable. Rather it gave an indication of the improved position that may be achievable once the Trust is up and running.
- 2.6.6 Having now being able to undertake a more detailed analysis of the financial benefits and offset the additional costs that are likely to arise, the current net financial benefit is estimated to be £764k per annum. Annual savings at this level would provide for a one-off investment in the service of around £7.5m through prudential borrowing.

2.7 Non financial benefits

- 2.7.1 The Sports Trust is a business model that has been established in a number of other authorities with approximately 100 trusts currently in operation. In addition, to the financial benefits, a number of other benefits have previously been identified, however, many of these are more difficult to quantify in regard to real tangible benefits. These include:
- a) Greater transparency of responsibility;
 - b) Increased accountability for costs and income;

- c) Faster decision making;
- d) Increased community involvement;
- e) Ability to meet the developing needs of customers;
- f) Single focus for Sport and Active Recreation Services, and;
- g) Trustees may bring in new skills.

2.7.2 This report does not consider the above issues in any detail, other than to comment that with the exception of g), which plainly is an added benefit of a Trust model, it is debatable whether a Trust model is indeed required to deliver the service benefits identified in a) to f). The contrary view might be that these issues apply to any service and should be a standard set of aims and objectives for any service improvement activity, whether undertaken in-house or by any other means.

2.8 Therefore, in terms of benefits, the key one is financial, supported by the bringing of additional leadership capacity through a Board of Trustees.

3.0 MAIN ISSUES

3.1 Since October 2006, the project has developed on a number of fronts:

- a) The project has been managed by a Project Board which includes both service and corporate representatives;
- b) The company has been established, although at this time charitable status has not been applied for;
- c) There are currently seven Directors/Trustees in place. It will be governed by at least 10 and not more than 16 Directors/Trustees, of whom three can be appointed by the Council, although as of yet, the Council has not nominated its Directors/Trustee representatives;
- d) The Head of Sport and Active Recreation has been designated as Interim Chief Executive and a Finance Director has been appointed, and;
- e) The Leisure Scrutiny Board has commenced a review of the proposal.

3.2 The memorandum and articles for the charity have been drawn up. The proposed Charity would be established for public benefit, primarily for the community and visitors to Leeds City and the surrounding areas for the following purposes:

- a) to provide or assist in the provision of facilities for sport and recreation and other ancillary leisure time activities in the interests of social welfare, such facilities being provided to the public at large save that special facilities may be provided to the persons who by reason of their youth, age, infirmity or disability, poverty or social or economic circumstances may have need of special facilities and services; and/or
- b) to promote and preserve good health, education and the development of physical mental and spiritual capacities through community participation in healthy recreation; and/or
- c) such other charitable purposes beneficial to the community consistent with (a) and (b) above as the trustees shall in their absolute discretion determine

- 3.3 It was always recognized that there were a number of risks involved in establishing a Trust not least the approval of the charity commission and in this instance HM Revenues and Customs. As the proposal has progressed, a number of further and to some instances unforeseen risks and issues have emerged.
- 3.4 The Agreement for Lease would be the central legal document outlining the relationship between the City Council and the Trust. The agreement has been the subject of much negotiation between officers and the Trust and both parties have sought external legal advice on a version of the agreement at the beginning of the year.
- 3.5 The Agreement has been produced to secure the joint understanding of both parties, the Trust will, inevitably, be an independent body. Council officers throughout their negotiations with the Trust have been ever mindful of protecting the Council's best interests, but at the same time it has had to be recognised that the Agreement for Lease has to be negotiated with the Trust, and inevitably a balance has to be drawn between the Council's requirements and the Trust managing the operational delivery and meeting its charitable objectives in order for the Trust to gain charitable status.
- 3.6 Following external legal advice by both the Trust's and the Council's legal advisers, a number of issues have been raised. Whilst many of these have been dealt with, there remain some important issues for which agreement has not been reached at this time. One such issue related to external legal advice that the Council received, that it may wish to consider alternative governance structures in order to support the external monitoring of the board's performance. This included the option of the Council acting as the Trust's sole member, or one of a group of members. Other outstanding issues in terms of the Agreement for Lease revolve around the Trust reviewing the allocation of risk contained in the agreement and seeking from the Council a number of indemnities around a number of potential issues/costs, in respect to staffing, PFI centre's and termination costs
- 3.7 The Trust in looking to review the allocation of risk have clearly become conscious as has the Council, of the changes in the economic climate that has occurred over the last 6 to 12 months, The Sport and Active Recreation Service has seen a significant downturn in its income, which in 2007/08 resulted in a shortfall of £500k, and the early months of 2008/09 have seen a continuation of these downward trends. The current economic climate is uncertain and many commentators are predicting further economic pressures which are seeing price increases on essential goods and services, particularly energy costs. This will inevitably impact on the cost of providing sports related facilities as well as reducing the amount that customers have to spend on non-essential purchase, including sport provision. Therefore, the service is likely to see continued pressure on its cost base, as well as reducing income, with customers having less available to spend. It also the case that the response of private sector sport providers to the economic downturn, will likely provide further competition to the Sport and Active Recreation Service.

4.0 IMPLICATIONS FOR COUNCIL POLICY AND GOVERNANCE

- 4.1 The establishment of a Trust to manage the Council's Sports and Active Recreation Service would have implications for the policy governance of the service. Through an Agreement for Lease the Council would be able to set down service delivery requirements and standards, but nevertheless, a Sports Trust would be an independent body and in accordance with Charity legislation would be required to pursue its stated charitable objectives.

5.0 LEGAL AND RESOURCE IMPLICATIONS

- 5.1 As identified earlier one of the main drivers of the proposal to establish a Trust to manage the Council's Sports and Active Recreation service was the potential to generate savings in terms of NNDR and VAT, which would then be available to fund investment in the service. As identified at para 2.6.6 above the net savings is less than originally anticipated, although still significant.
- 5.2 The Sport service is facing a particularly challenging time at the moment, and in the year 2007/08, income targets were underachieved by £500K, with the possibility that this could become £750k to £1.0m by the end of 2008/09, coupled with the potential for significant increases in the price of energy that the service uses.
- 5.3 The cost incurred in developing the Trust option to date is £ 337,530, and much of the work will be of value in informing the future proposals for the Service, and also, if a decision is taken at some future point to explore the Trust model again.

6.0 CONCLUSIONS

Considering the issues detailed above, whilst there is still a fairly significant financial benefit to be gained from a Trust model, this benefit is far less than originally anticipated and when weighed against the risks, particularly those relating to economic impact and the loss of control in responding to service and financial pressures, then the arguments in favour of proceeding with the Trust at this time are indeed marginal.

- 6.2 Given the unstable environment that now faces the service, it is suggested that it would not be appropriate to pass these issues onto what would be a newly established Trust and that the Council itself is better placed to deal with these challenges, although the Trust model is still an option which the Council would consider in the future.
- 6.3 The Council operates 22 sports and leisure centres across the city. Whilst Morley and Armley leisure centres are being rebuilt over the next two years using PFI credits, and the Council has submitted an expression of interest for a new centre at Holt Park, also to be funded by PFI credits, the investment requirements of the rest of the estate is significant. If it is decided not to proceed with the development of the Trust at this time, then whilst there are many other options open to the authority to support service improvement, it is recommended that, confirmation be provided that for the medium term, the service will remain a part of the Council, but that officers be requested to consider in more detail alternative options to support transformation and improvement. Indeed, this is a major aspect of the Council's new Business Plan and would, inevitably, be influenced by further work in this regard. Moreover, there is a clear need to develop proposals to deal with the financial challenges that the service is facing. To this end it is proposed that a further report be submitted to the September meeting of the Executive Board bringing forward initial proposals
- 6.4 Clearly a decision not to proceed with the Sport Trust at this stage will be disappointing, particularly to the staff of the service who have worked on the project and the Directors/Trustees who have voluntarily put themselves forward. It is likely that much of the work that has been done to date in order to establish a Trust for the Sports and Active Recreation will be of value, especially if a decision is taken at some future point to explore the Trust model again. As such it is appropriate that

the thanks of the Council to the Directors/Trustees is recorded and that the continuing commitment of the staff of the service is recognised.

7.0 RECOMMENDATIONS

7.1 Members of the Executive Board are asked to:

- a) agree not to proceed with the development of a Trust to manage the Council's Sports and Active Recreation Service
- b) request that further work be undertaken and reports brought forward for consideration by the Board as to medium and long term options to address the challenges faced by the service as presented in this report.