APPENDIX A – GLOSSARY OF KEY TERMS

Term	Definition
ANOG	Assessing Needs and Opportunities Guidance
BRRS	Business Rates Retention Scheme
CAT	Community Asset Transfer
CCG	Clinical Commissioning Group
CCT	Compulsory Competitive Tendering
CIC	Community Interest Company
CIO	Charitable Incorporated Organisation
CIMSPA	Chartered Institute for the Management of Sport and Physical Activity
CLG	Company Limited by Guarantee
ECJ	European Court of Justice
EU	European Union
EUR	Euro
HMRC	Her Majesty's Revenue and Customs
IPS	Industrial and Provident Society
JV	Joint Venture
LA	Local Authority
LACC	Local Authority Controlled Company
NNDR	National Non-Domestic Rates
NPDO	Not for Profit Distributing Organisation
OJEU	Official Journal of the European Union
PPS	Playing Pitch Strategy
SDLT	Stamp Duty Land Tax
TUPE	Transfer of Undertakings (Protection of Employment) Regulations 2006
UK	United Kingdom
VAT	Value Added Tax

APPENDIX B – CASE STUDIES

1. HARTLEPOOL BOROUGH COUNCIL IN-HOUSE MANAGEMENT
2. REDCAR AND CLEVELAND BOROUGH COUNCIL OUTSOURCED MANAGEMENT
3. HINCKLEY & BOSWORTH BOROUGH COUNCIL OUTSOURCED MANAGEMENT
4. CENTRAL BEDFORDSHIRE COUNCIL OUTSOURCED MANAGEMENT
5. CHESHIRE EAST COUNCIL NEW TRUST
6. BROXTOWE BOROUGH COUNCIL LOCAL AUTHORITY TRADING COMPANY
7. SUNDERLAND CITY COUNCIL JOINT VENTURE PARTNERSHIP
8. NEWCASTLE CITY COUNCIL ASSET TRANSFER
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APPENDIX B HARTLEPOOL BOROUGH COUNCIL IN-HOUSE MANAGEMENT

INTRODUCTION

Hartlepool Borough Council operates three leisure facilities on an in-house basis; Mill House Leisure Centre, Headland Sports Hall and Brierton Sports Centre. In 2012/13 the Council was faced with a budget reduction requirement of 40% over 4 years until 2015/16. The sport and recreation service, whilst highly valued, was subject to increasing pressure as a non-statutory service and so the Council developed a facilities strategy and undertook an options appraisal process.

Description

The Council took a two-pronged approach to this challenge. Firstly, it made significant revenue savings through improving each sites' efficiency and increasing income generation. This generated the required revenue savings but it was clear that further savings were required from 2015/16 onwards. At the same time, to ensure the Council had a clear understanding of the leisure facilities required to meet the needs of its residents both now and in the future it developed an indoor sports facilities strategy in 2012/13. Working with Sport England and utilising the Facilities Planning Model, it identified that its three existing leisure facilities were in good geographical locations but required investment. The challenge the Council was facing was how to realise the required investment and make the additional required revenue budget savings. To identify the best way of addressing this challenge, the Council undertook an options appraisal for the future delivery of its leisure service.

Outcomes and impact

The options appraisal examined the current performance of the in-house service and assessed the local market share and latent demand to understand the potential for further improvements. It concluded that there were minimal opportunities for further efficiencies but some opportunities for increased income generation existed and that the fiscal benefits of an externalised charitable model in relation to VAT and NNDR were minimal for these facilities. In light of these findings, the Council took a decision that the identified savings could be made by the in-house team and there was not a significant benefit to changing the management model. Although the risks involved with this were acknowledged, it was felt that the freedom and flexibility resulting from retaining the service in-house would be worth the risks.

The Council decided to retain the service in-house and developed a strategy for achieving its aims which involved (amongst other things):

- Creating two new posts two drive additional income and improve efficiency - a business development manager and an e-marketing post.
- Making staffing expenditure savings through natural wastage by recycling roles and responsibilities rather than redundancies.
- Adding a boom into Mill House Leisure Centre to turn an L-shaped pool into 3 separate swimming pools to improve programming flexibility and income generation.
- Move the services into the Council's Public Health Department, embedding core services such as the GP Referral team and sport & activity participation teams with Health Improvement services.
- Widening the breadth of services offered to include recreation grounds, links to wider physical activity schemes and taking on the management of an outdoor activity centre;
- Pooling section 106 funds to realise the required investments for a new swimming pool for Brierton and a new leisure facility to replace Mill House LC.

APPENDIX B HARTLEPOOL BOROUGH COUNCIL IN-HOUSE MANAGEMENT

The Council has to date achieved its required revenue savings target and has made it's learn to swim school and the outdoor activity centre operate at a cost neutral position. This continues to be the case.

A third generation pitch has been added to one of the leisure centre sites as a result of a £600k grant from the Football Foundation and the Council still continues to work towards the development of other facilities. This is embedded in the overall Hartlepool Vision for the redevelopment of core areas of the town including new leisure centre provision as part of the main shopping centre redevelopment.

Learning

Some key learning points from this project included:

- The outcome of an options appraisal is not inevitable – if the in-house team widens the breadth of services it can offer ('don't put all your eggs in one basket'), keeps an open mind and believes in itself then it is possible to achieve its goals without changing the management model.
- In-house teams should recognise what their staff have achieved and have faith in what they can still achieve. The team should believe in their products and services and the difference they can make to people's lives.

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APPENDIX B REDCAR AND CLEVELAND BOROUGH COUNCIL OUTSOURCED MANAGEMENT

INTRODUCTION

Redcar and Cleveland Borough Council had a contract with a leisure trust (Tees Valley Leisure) for the management of 5 leisure centres in the Borough which was due to expire in 2013. The management of the five facilities was costing over £1m per annum and the Council required revenue budget reductions (a minimum saving of circa £400k per annum), improved value for money and investment into its facilities to be delivered beyond 2013.

Description

The Council carried out a facilities strategy and options appraisal to identify its future needs and how best to achieve its aims. The options appraisal examined the potential of closing facilities to make efficiencies but the Council decided that it did not wish to close any facilities but would replace the ageing Redcar Leisure Centre with a new facility.

The Council considered its management options and decided that it could not extend the agreement with Tees Valley Leisure again after several short term extensions so would procure a new 20 year contract for the management of the facilities from April 2013. The bidders were charged with helping deliver the Council's vision for leisure which involved generating operational improvements and revenue savings through investment into the existing facility stock.

The main investment project for the development of the new Redcar & Cleveland Leisure and Community Heart to replace Redcar Leisure Centre was procured via a separate design and build contract but the future operator would be managing the new site.

Outcomes and impact

The Council undertook a procurement process utilising the OJEU competitive dialogue procedure. It resulted in the appointment of SLM to operate the facilities for a 20 year period.

The new contract exceeded the Council's required budget savings target and provided significant capital investment into new fitness facilities, reception, changing rooms and backlog maintenance. The Council also managed to transfer a number of operating risks to SLM although the Council retained the risk on utilities tariff increases and structural lifecycle responsibility on the buildings.

In the first year an immediate 12% increase in visitor throughput was generated as a result of the investment and improvements to the service and this trend continued in year 2 with further increases in throughput across all sites. SLM also took on the delivery of the exercise referral scheme previously operated as an in-house service by the Council at significant cost.

APPENDIX B REDCAR AND CLEVELAND BOROUGH COUNCIL OUTSOURCED MANAGEMENT

Other benefits included:

- the introduction of an apprenticeship scheme.
- joint public health initiatives on drugs and alcohol rehabilitation.
- free use of leisure facilities for looked after children.
- the introduction of free adult and child swimming lessons funded through public health.
- sponsoring of local sports clubs.
- funding for sports development programmes.

Learning

The key learning points from the Council are as follows:

- Understanding the need to utilise external expertise from advisors experienced in leisure procurement to assist with the process and lead bidder negotiations.
- Taking up references and carrying out site visits to existing facilities run by the bidders helped the Council to understand how the operators performed on the ground in other areas.
- Utilising a competitive dialogue approach allowed the Council to talk through the bidders' solutions and discuss ideas to ensure that the final solution was tailored to the Council's requirements.
- It is important to keep an open mind on what the best solution might be and draw on the expertise of the operators in the market and external experts to advise the Council.
- To set a clear evaluation criteria to ensure the award is made to the bid which best fits the Councils aims and objectives. It must recognise and reward bidders' innovation and ability to provide value for money. Gaining expert advice in this area is crucial.
- Closely managing the handover process between two operators is extremely important and is crucial to ensure that there is minimal negative impact on customers.
- Having an open, honest, two way partnership approach in place with the operator is key to ensuring that the relationship is successful on an on-going basis.

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APPENDIX B HINCKLEY & BOSWORTH BOROUGH COUNCIL OUTSOURCED MANAGEMENT

OVERVIEW

Hinckley & Bosworth Borough Council owns one leisure facility, Hinckley Leisure Centre. The original facility, dating from 1975, was under outsourced management via an agreement that was due to expire in 2015 and the facility was in need of redevelopment. The Council used a procurement process to identify a preferred partner to deliver a new replacement facility utilising a design, build, operate and maintain contract.

Approach

The Council had a long-term contractual relationship with its previous operator that had been extended in 2010 for 5 years until 2015. This delivered c£0.5m of front of house investment however the Council had been considering the need to replace the ageing facility for a number of years.

To identify the preferred way forward, the Council carried out an options appraisal on the future of the facility. The Council worked with Sport England to identify whether the facility should be refurbished or rebuilt in the town centre or out of town. The decision was taken to rebuild the facility in the town centre but on a new site (the site of the Council's old offices). Good access/transport links, the ability to keep the existing centre open during construction (business continuity) and the leisure centre's impact on the economic wellbeing of the town centre were key factors in making this decision.

It was decided that the Council would procure an external partner to help deliver the new facility through a design, build, operate and maintain (DBOM) process. As the Council was already partnered with an external operator, it did not believe that there was sufficient scale or return on investment to justify the risks involved with establishing an alternative charitable operating vehicle or bringing the service back in-house. In addition, the Council only had £7.1m of capital funding available and required the bidders to provide additional capital if required or provide additional revenue savings to fund prudential borrowing for capital beyond the £7.1m limit.

Outcomes and impact

A competitive dialogue procurement process was undertaken that resulted in Places for People Leisure Ltd (PFP) being selected to deliver the new facility via a 20-year contract, in partnership with Roberts Limbrick Architect and Pellikaan who designed and built the facility. The costs of the procurement process were shared with Oadby and Wigston Borough Council via a joint procurement although each Council awarded separate contracts.

PFP was appointed to operate the existing facility from 1st April 2015 for one year until the new facility was ready to be opened. This allowed PFP the chance to sell memberships during the interim period whilst the new facility was being developed. The Contract has resulted in a new £15m facility and a positive surplus annual Management Fee payment from PFP to the Council. The additional capital funds required beyond the £7.1m limit was funded from prudential borrowing financed by the revenue savings generated from the surplus Management Fee being paid by PFP to the Council.

APPENDIX B HINCKLEY & BOSWORTH BOROUGH COUNCIL OUTSOURCED MANAGEMENT

The revenue savings for the Council are significant compared to its previous contract and additional risk has been transferred through the full transfer of lifecycle risk to PFP. In addition, throughput and participation are projected to grow significantly. The Council has also taken up office space within the new leisure centre for its leisure and CYP teams. This allows greater interaction and joint working between the Council and PFP.

Learning

Key learning points include:

- Having a clear strategy in place setting vision for new Leisure Centre – e.g. the project was included this in the Corporate Plan and Cultural Service Strategy and in the Area Action Plan for Town Centre.
- Utilise external consultants at an early stage to ensure that the Council benefits from expert advice and an independent opinion early on in the options appraisal process.
- Consulting with the public over high level options, providing clear mandate to retain the new facility in town centre.
- Consideration of lead-in times should be factored into all decisions – it took 2 years from commencing the project to Financial Close of the project.
- Upfront planning is crucial – do not wait until ageing facilities are falling down before considering future options and taking decisions.
- Strong dialogue with existing users and key stakeholders is important – this project would have benefitted from greater upfront dialogue with swimming clubs and the ASA as design modifications were later required to ensure that the facility met all requirements.
- Following a competitive dialogue process for a complex procurement process was a major positive for the Council as it allowed them to fully engage with bidders in the market and negotiate positions to ensure maximum risk transfer and value for money was achieved.

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APPENDIX B CENTRAL BEDFORDSHIRE COUNCIL OUTSOURCED MANAGEMENT

OVERVIEW

After becoming a unitary authority in 2009, Central Bedfordshire Council's four leisure facilities were operated by two separate contractors – an external trust organisation (Stevenage Leisure) and a private management contractor (Leisure Connection). Both Contracts were running successfully at zero cost to the Council but Stevenage Leisure's contract was due to expire in 2014 and the Council was aiming to deliver further budget cuts and ensure its contract delivered across wider agendas than purely leisure.

Approach

The Council initially carried out a thorough review of the service it needed to provide. It has invested significantly in its leisure facilities over recent years and was planning to open a new facility in Flitwick but needed to make financial and service improvements. The Council engaged with a number of key partners early on in the process to ensure that the leisure management contract delivered the whole Council's outcomes not just leisure.

The sport and leisure team held a series of workshops and follow up meetings with several Council departments including Economic Regeneration, Public Health, Social Services both Adult and Child, Community Physical Activity, Bedfordshire Sport, Community Safety, Sustainability (Carbon Reduction) and senior politicians. These discussions sought to understand what the different departments would like the leisure contract to deliver on their behalf, for example, local apprenticeships and GP referrals. This led to the development of required outcomes for the leisure contract that were reflected in an outcomes scorecard within the Services Specification issued as part of the procurement process and signed up to within the contractual agreement for the new leisure management contract. This process raised an awareness within the Council of the wider outcomes that the leisure contract can assist in achieving and ensured that the contract sought to deliver against all the Council's key priorities not just the leisure objectives.

Condition surveys were also carried out to ensure that the Bidders had a full understanding of the liabilities associated with the facilities. External consultants were employed to ensure that the Council's requirements were clear and the specification and KPI scorecard were drafted to ensure the maximum outcomes would be achieved from the contract and not just for leisure but Public Health and other areas also.

Outcomes and impact

Following a procurement process, the Contract was retained by Stevenage Leisure. The new Contract produced average cost saving per year over the 7 years contract of circa £431k and a suite of contracting documents linking both leisure strategy and Public Health strategic outcomes together. The outcomes scorecard includes a number of specific health related outcomes and the leisure team and Contractor have worked with Public Health to consider how these outcomes should be assessed.

APPENDIX B CENTRAL BEDFORDSHIRE COUNCIL OUTSOURCED MANAGEMENT

Learning

A key learning point is that the leisure management contract can be used to deliver the whole Council's outcomes and not just leisure outcomes. To achieve this, when writing a specification as many other departments as possible should be involved as commissioners might not be aware of what outcomes they can assist other commissioners across the Council in achieving. Other key learning points from the process were that the Council used its prudential borrowing ability to finance investments into the centres at a lower cost that the external contractors could provide and that detailed condition surveys being available is crucial to ensure that risk is minimised in the contract and the maintenance of the assets is accurately provided for.

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APPENDIX B CHESHIRE EAST COUNCIL NEW TRUST

OVERVIEW

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.

The Council took 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 resulted in a need to review the future leisure, cultural and green space management options across a wide geographical area and ensure that the management vehicle was fit for purpose to manage the variety of facilities in existence.

The Council also recognised the need to invest in the leisure stock to meet customer expectations and address lifecycle issues across a number of sites.

Approach

The Council appointed professional advisors to undertake a management options appraisal of the whole leisure service, including leisure facilities, sports development and cultural/arts provision. The work included extensive financial and operational analysis, assessment of non-financial benefits and risks and recommendation of preferred options for future service provision.

The final recommendation identified a phased approach, transferring a number of elements to a charitable trust but retaining other elements in-house in the short term, with a view to potential longer-term amalgamation into a wider leisure and culture trust vehicle. There was also the outsourcing of two cultural venues to private sector partners, taking advantage of the wider market expertise in theatre and cinema management.

Everybody Sport & Recreation was set up in 2014, an independent non-profit distributing organisation (NPDO) with charitable status (Registered Charity No. 1156084). The trust is responsible for delivering:

- 15 leisure facilities including the new Holmes Chapel Community Centre and Crewe Lifestyle Centre;
- Everybody Options concessionary discount programme;
- Leisure development service including key programmes such as: Talented Athlete Support Scheme, Volunteer Programme, Club & Coach Development, Bikeability;
- Everybody Academy – specialist leisure training provider delivering a range of training and development opportunities including volunteering, apprenticeships and work placements;
- Taste for Life Catering – onsite café's in local Everybody leisure centres in Cheshire East, business and event catering as well as children's party catering;
- Everybody Healthy – a range of health and wellbeing programmes and initiatives to support people in our communities.

APPENDIX B CHESHIRE EAST COUNCIL NEW TRUST

Outcomes and impact

Everybody Sport and Recreation Ltd has had three very successful years of operation.

The trust has delivered significant financial savings to the Council (50%+ reduction in subsidy compared to previous in-house delivery model, saving the Council over £5m in the first three years of trading), in addition to managing transition of services to a new Lifestyle Centre in Crewe, and developing a new fitness gym and community centre in Holmes Chapel.

Key Performance Indicators reported to the Council, covering participation, volunteering, development activities and facilities management, have all seen targets exceeded. Participation has increased by 13% over the first three years against a target of 1% per annum. Customer and employee satisfaction measures have both also increased over this period. Further to this, the development of the Everybody Academy is now delivering positive workforce development impacts and local training for residents of Cheshire East.

In addition to core service delivery, the trust has developed the Everybody Academy, delivering training and development opportunities, and the Taste for Life brand and service, delivering high quality food and beverage, aligned with the overall aims of the trust.

More recently, the trust has been successful in winning a number of health-related contracts, covering a range of health and wellbeing programmes and initiatives to support people in the local communities. It has also won its first commercial tender to manage a new leisure facility and has taken its subsidiary catering company 'taste for life' outside the Cheshire East borders.

Learning

The speed of set up created challenges for officers in managing both 'business as usual' and the transition to the new organisation. Of key importance for authorities considering future transitions is the need to identify a core project team to manage the transition, alongside early appointment of the shadow board to provide some clarity of focus and ownership for the new organisation as decisions are made.

In relation to service delivery, the approach of bedding in core services, before seeking to expand the offer, is an approach that is recommended to other authorities, allowing the trust to understand the core business and provide a solid foundation.

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APPENDIX B BROXTOWE BOROUGH COUNCIL LOCAL AUTHORITY TRADING COMPANY

INTRODUCTION

Broxtowe Borough Council has developed a wholly owned trading company for leisure and cultural services, called Liberty Leisure. In response to both funding cuts and the development of a leisure facilities strategy, Broxtowe Borough Council decided to create a wholly owned trading company to deliver its leisure and cultural services portfolio. This case study explains the practical application of the process of creating and transferring services to a local authority trading company following a management options appraisal.

Description

Following the development of a facilities strategy, the Council commissioned a desktop evaluation of alternative management options. The outcome of this was to select the creation of a wholly owned Local Authority Trading Company, using the Teckal exemptions.

This option was selected as it provided the best option for the Council in achieving the necessary fiscal savings but still retaining the control, direction, and ethos and ultimately allow the Council to benefit from future improvements in financial terms.

Having taken the decision, it was necessary to undertake a significant amount of work, most of which was not easily referenced in the industry as so few Leisure Teckal Companies existed. The Council engaged three specialist firms to help with the major element, incorporating business planning, marketing and legal expertise.

The costs for the development of the new company should not be underestimated - the total costs were estimated to be circa £100,000.

The timescale from decision to implementation was over 12 months to put in place all the necessary elements.

Outcomes and impact

The development of the Trading Company has resulted in a step change in the attitude of staff. Increasingly they are thinking in a more business orientated fashion, focussing on both the financial and customer service elements.

The creation of a fully costed 5-year budget programme has been both a great challenge and a breath of fresh air. Rather than simply looking at an annual budget setting exercise, the organisation has a clear picture of what its revenue budgets are for the next 5 years and this will allow it to improve the forward planning process and to schedule developments, changes and any reductions in a planned and orderly manner. The projected financial benefits in the first year are in excess of £100,000. This estimate is conservative and the expectations are to increase this to around £250,000 per annum.

APPENDIX B BROXTOWE BOROUGH COUNCIL LOCAL AUTHORITY TRADING COMPANY

Learning

The absolute key learning point was to have produced a detailed project plan. So many unexpected things occurred which, whilst they could not have been predicted, in fact were quite problematic.

The engagement of both internal and external supports should have been more extensive and much earlier. Everyone, particularly in internally have their own workload and do not necessarily see this task as key in their own list of priorities.

The support of professional colleagues across a wide range of disciplines is vital if the project is to be a success. Finance, legal HR, ICT are all key internal partners and necessary for the success of the project.

Do not underestimate how slowly some things happen e.g. it took over two months to simply open a bank account. Equally don't underestimate some of the costs, the Council's supplier of financial software quoted over £50,000 to facilitate separate arrangements for the company.

The authority is looking to develop further "Teckal" companies so the learning experience will be invaluable.

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APPENDIX B SUNDERLAND CITY COUNCIL JOINT VENTURE PARTNERSHIP

OVERVIEW

Sunderland City Council's aim is to enhance the conditions and opportunities for more people to become more active, more often and promote an overall direction of travel for building participation in physical activity, sport and leisure.

Within the context of this aim, the Council wanted to review the arrangements associated with the future management and operation of 9 city leisure facilities.

Since 2004 Sunderland's vision was to create an "Activecity" where, "everyone in Sunderland will have affordable access to quality sport and physical activity opportunities to improve their health and wellbeing at first class, community facilities throughout the city."

Since 2004, the Council together with its partners have invested over £70m of capital resource in new and replacement sport and leisure facilities to contribute to meeting the objectives of improving health outcomes, by encouraging and supporting increased participation in sport and physical activity.

In 2014 a city wide approach to an active Sunderland was adopted to improve levels of activity and to maximise the impact that physical activity can have in Sunderland. Creating, enabling and providing opportunities for people to be active and more active will be supported and underpinned by the work of key stakeholders in the city, including the JV partner.

This approach will inform the future development of activity in Sunderland, underpinning all action planning, investment and the design and delivery of services. Ultimately it will enable the partners within the city to make a real and positive impact on quality of life in the city by achieving a range of outcomes for Sunderland's residents and communities.

The challenge continuing to face the Council is to create the conditions for more people to become more active more often, given regular participation in physical activity and sport is proven to contribute to better physical and mental health and wellbeing, skills development and levels of attainment.

This challenge is against the backdrop of reducing budgets to Local Authorities for the delivery of public services.

Description

The approach included firstly an initial options appraisal, followed secondly by a more detailed soft market testing exercise. During these two stages the Project Team developed an outline business case (OBC) that explored the extent to which the Council's objectives could be fulfilled and which delivery structure was most appropriate to achieve these objectives.

A strategic review was undertaken of the potential delivery options in light of the Council's objectives. The various delivery options were considered in relation to this and considered along with high level 'pros' and 'cons' of each option, including the strengths, weaknesses, opportunities and threats.

It was concluded that an Equity Joint Venture (JV) provided the most appropriate delivery structure for achieving the Council's objectives.

APPENDIX B SUNDERLAND CITY COUNCIL JOINT VENTURE PARTNERSHIP

The Council was seeking a long term 50/50 JV partner and supported this approach by deciding to award a long-term leasehold for its leisure centres, to encourage capital investment in the facilities. It should be noted that the JV partner is solely responsible for the operational delivery of the service.

The Council undertook an OJEU procurement process for the appointment of a partner to establish a corporate joint venture with the Council for the management and operation of the city's leisure facilities using the competitive dialogue process.

The process involved the Council's Project Team which comprised of representatives from the Sport and Leisure Service, Transformational Change Team, Finance, Law and Governance, Corporate Procurement, Human Resources and Property Services, in conjunction with the Council's external advisers, providing legal, technical and financial advice.

The Council evaluated bids against financial and qualitative criteria to identify the most economically advantageous bid. Internal project team costs were incurred, together with costs incurred through engagement with the Council's external advisers.

The procurement process commenced in November 2013 and following a shortlisting exercise through a number of stages, three bidders submitted solutions at the Invitation to Continue Dialogue (ITCD) stage. The three bidders produced a detailed Corporate Business Plan and following detailed evaluation of the three bidders' ITCD solutions, one bidder was subsequently deselected.

The remaining two bidders went through to the Invitation to the Submit Final Tenders (ITSFT) stage and submitted their final tenders on 12th December 2014.

A decision to appoint, Sports and Leisure Management (SLM) as the preferred partner was made by the Council's Cabinet on 11th February 2015. The operational transfer to SLM went 'live' on 1 June 2015.

Project support and co-ordination was provided throughout the process by the Council's Transformational Change Team. This involved ensuring ongoing communication across the Project Board to move the process along, management of actions, issues and risks in addition to pulling together the final Cabinet Report to gain approval for the Leisure Joint Venture.

Outcomes and impact

The detailed and robust evaluation process for the JV partner procurement demonstrated that SLM had submitted the most economically advantageous bid.

Whist the JV partnership is still at an early stage, it is anticipated that the appointment of SLM as the Preferred Bidder and the subsequent establishment of the JV will:

- enable the Council to retain an on-going interest in the facilities, through its involvement with the JV.
- facilitate continued investment in the leisure facilities.
- significantly increase the levels of participation in physical activity thereby contributing to the wellbeing of the city (this will be subject to ongoing monitoring).
- deliver financial savings to the Council.

APPENDIX B SPORT AND LEISURE FACILITIES JOINT VENTURE PARTNERSHIP - SUNDERLAND CITY COUNCIL

In appointing a JV partner it is anticipated that the following issues will be important areas for development and improvement moving forward:

- to impact on the greatest number of people (children and adults);
- to support people in communities that are benefitting least from the opportunities that being physically active brings;
- to provide universal access to an appropriate provision of sport and leisure facilities and support sporting excellence;
- to increase participation and usage of leisure facilities across the City; and
- to reduce the financial cost to the Council of the leisure complexes.

Delivering an overall strategic approach to increasing participation will require engagement with not only SLM, but a range of city partners to:

- support better community engagement – to enable more informal opportunities to be active such as by working with local community organisations to increase programmes of activity and increasing the use of the natural and built environment to encourage participation
- enable more structured opportunities in localities – through working with local sports clubs and teams to support them in fundraising, governance and developing programmes which will contribute to their sustainability
- ensure arrangements are in place to sustain appropriate levels of facility provision – including work with schools, the private sector and other providers to maximise access and participation opportunities

In overall terms, the new arrangements will deliver an improved financial position for the City Council by reducing the operating subsidy required over the short to medium term. Additional investment will also be levered in to the Joint Venture to further develop facilities and increase the capacity and opportunities for residents to participate in sport and physical activity.

Learning

- The importance of thinking through how any new or novel project could be delivered contractually in advance of the process and testing the market appetite for a new model – as if the Council hadn't invested a lot of time and energy into this beforehand then the process could have become very protracted.
- The importance of independent sector advice.
- The importance of having a core project team that meet and communicate continuously throughout the process. Also, ensure the availability of appropriate project staff with in house financial, legal and technical support in place, ideally the same staff identified throughout the timespan of the project.
- Ensure detailed scrutiny of budget lines whilst procurement process is underway to understand final budget position in relation to any potential buy back of services and also clarity around areas/boundaries of responsibility. If services are not bought back consider what the impact this has on the Council after transfer date.
- Ensure sufficient time is built into project for final completion and collation of legal documents – building in sufficient time for external legal teams to complete paperwork.
- Create a mechanism to update all elected members and key stakeholders throughout the process and continue beyond transfer. Investing time in this will make the transition to the new operator a clearer journey for elected members in particular.
- Decide prior to transfer date what exactly is to be communicated to the public about the nature the partnership – make it clear. This will assist in ensuring customers have a clear understanding of the new arrangements and this can be supported by relevant scripts for customer service staff in the event that the public contact the council.

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APPENDIX B NEWCASTLE CITY COUNCIL ASSET TRANSFER

OVERVIEW

Due to Government funding reductions, Newcastle City Council's leisure services were at risk of closure. In 2013 the Council took the decision to make three of its leisure facilities (Eldon Leisure, Gosforth Pool and Outer West Pool) available for asset transfer to an external organisation via a competitive tendering process with the aim of removing its subsidy for the operation of the facilities.

Description

In 2012 The Council developed and consulted on its draft budget for 2013-16 under the strapline 'fair choices for tough times'. The Council needed to make £90m of cuts over the three year period. Newcastle is well served by sports and leisure centres, but the required cuts made the network of five public pools and seven leisure centres impossible to sustain.

Following an internal options appraisal process, the Council decided that the best way to make the required savings and still protect the provision of the service was by transferring three of its best performing facilities to an external organisation to manage. The decision was taken to offer Eldon Leisure, Gosforth Pool and Outer West Pool as an asset transfer property transaction with the aim of removing the Council's revenue subsidy.

A competitive tendering process was commenced in June 2013 which stipulated that the three assets would be transferred on long-leases with the requirement that they continue to be used for leisure and sporting purposes and that equitable public access was maintained. Property leases were developed but with no significant service requirements or contractual provisions. The Council allocated a capital fund for stipulated lifecycle maintenance items that could be drawn down against by the eventual operator over the first 5 years of the lease if and when required. A large pensions bond was also required (which the Council acted as guarantor for during the first six months of the lease term). All other on-going income and expenditure risks were to be the responsibility of the eventual operator.

Following the receipt of eleven submissions, the Council evaluated the bids and selected North Country Leisure (NCL) as its preferred bidder.

Outcomes and impact

NCL was granted leases for the three facilities for 99 years (Gosforth and Outer West pools) and 67 years (Eldon leisure – reduced lease to tie in with shopping centre lease). Each lease has a break clause after 5 years however the three leases cannot be broken individually. As part of the agreement, NCL has invested £3m into income generating areas of the facilities including a ten pin bowling alley, high ropes facility and new health and fitness facilities. It is also paying the Council an annual rental payment based on peppercorn rent which has enabled the leisure department to contribute towards the Council's overall budget reduction targets whilst also protecting the long-term provision of the remaining community leisure facilities.

A second phase of procurement has recently been undertaken on a full concessions basis and subsequently all remaining facilities were transferred in December 2015 except Elswick pool which has been mothballed with a view to investigate asset transfer to the local community.

APPENDIX B NEWCASTLE CITY COUNCIL ASSET TRANSFER

Learning

Key learning points/issues to consider when carrying out this type of process are as follows:

- It can be difficult to include some of the required contractual provisions within what is essentially a property lease. For example, the Council had to put in place separate side-agreements for data protection and pensions provisions as such issues are not normally covered within a property transaction.
- The process allowed lots of negotiation and relative freedom to build a partnership with the eventual successful bidder which may not have been as easy to develop following a traditional contractual relationship and utilising a EU procurement procedure. Developing a good partnership approach and positive relationship between both sides is key to making the agreement a success.
- Following an asset transfer process could also be implemented relatively quickly as the Council did not need to follow full EU procurement procedure regulations. The time from advertising the opportunity to NCL starting to operate the facilities was one year (including start-up/handover period).
- The process was carried out by internal officers but when unforeseen issues arose that needed to be addressed in short timescales and internal resource was not available, the Council utilised external legal support.
- In hindsight the Council may have reconsidered the mix of properties to be offered for asset transfer as it was left to operate a number of remaining high subsidy leisure facilities following the asset transfer. These have been the subject of a procurement process to identify an operator for a concession contract. If a phased approach was to be used it would be a mix of high and low subsidy facilities within in each package to share the risk.

The overall result has been the protection of valued community assets for public access and significant revenue savings for the Council.

Organisation contacts

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APPENDIX B MENDIP DISTRICT COUNCIL ASSET TRANSFER

OVERVIEW

The Council's leisure facilities were operated under a management contract with a leisure operator, which was due to expire at the end of May 2015. Leisure cost the Council approximately £825,000 per year, which was not sustainable in the current and future financial climate. In addition to this, the cost of keeping the Council's leisure facilities operational for users was estimated to be at least £6.5m over the following 15 years (not including improvements). The Council needed to make significant financial savings so needed to find new, innovative ways to deliver services to local people. The Council had an estimated £20m budget gap associated with leisure over the following 15 years due mainly to revenue and maintenance costs.

Description

The Council could not legally extend the previous agreement with the operator. To identify the best way forward it carried out an options appraisal with the aim of identifying a solution to retain leisure provision whilst achieving the required budget savings. It was clear from this exercise that a traditional leisure contract would not deliver either the revenue reductions or capital investment the Council sought. Accordingly, the Council established a Leisure Transformation Board with the objective of finding a financially sustainable future for leisure facilities, in order to contribute to the health and wellbeing of the people of Mendip. This Board examined a raft of options and determined the most likely solution to deliver its objective was via a commercial property route with a package which sought to stimulate maximum market interest. The package sought to secure future leisure provision in the District; to transform the Council's leisure facilities estate by third party investment; to reduce annual revenue expenditure associated with leisure and to put in place new arrangements for its future operations.

Following the decision to undertake an asset transfer, in December 2013 the Council invited expressions of interest from commercial and not-for-profit organisations to take over the operation of five of the Council's Leisure Centres and facilities on medium to long leases.

The in-house team, with support from commercial property advisors and external legal advisors were commissioned to prepare the marketing, property and tender documentation. The Council approached the market with some key commercial terms. These terms were designed to attract bids that would meet the Council's objectives and secure investment.

The transaction structure comprised leases and a concession contract in relation to each of the facilities. The transaction structure was such that by its nature the existing EU procurement regime did not fully apply, although best consideration requirements pursuant to the Local Government Act 1972 were relevant.

The leases offered to the market were repairing and insuring leases; the Council would not underwrite capital investment; nor guarantee any financial risk in respect of the leases. The facilities could be used for any use falling within Use Class D2(e) of the Town and Country Planning (Use Classes) Order 1987 being use as a swimming bath, skating rink, gymnasium, or area for other indoor or outdoor sports or recreations (not involving motorised vehicles or firearms), use for community and sport related educational uses, and all ancillary and associated uses. Any proposals for a change of use that may arise in the future would have to be agreed by the Council.

The service concession contract permitted the operator to utilise the premises efficiently, but by its very nature only limited controls could be exerted; for example there can be no direct control over policy or programming. To this end the service concession in the programme only stipulated that covered swimming must be provided; discounted charges would apply to children and schools swimming; discounted charges for use of all facilities by members of the military would be in accordance with the Defence Discount Scheme. There was also a requirement that no changes in current leisure provision could take place within the initial 12 months, thus ensuring full public consultation involving the Council and the preferred bidder prior to any potential changes in provision. Thereafter, the range of leisure services as determined by the operator could be operated on an open access basis.

APPENDIX B MENDIP DISTRICT COUNCIL ASSET TRANSFER

On the basis of these key commercial terms interested parties were invited to submit proposals for the transfer of the leisure facilities, with the benefit of a concession contract.

Bids were received from a range of operators including property developers, commercial leisure operators and not for profit leisure operators.

Outcomes and impact

Following a two-stage bid process, the leisure trust Fusion Lifestyle Limited was appointed as the preferred bidder on the basis of a 50-year lease. Fusion confirmed that from year 4 onwards no subsidy would be required until lease expiry; that no utilities subsidy would be required from transfer of the facilities; and that it would accept backlog maintenance liabilities. Fusion will also invest millions in enhancing the current leisure facilities estate. This will save the Council up to £814,000 from the leisure budgets in a full operational year and avoid unbudgeted additional operational cost pressures. Projecting forward for the next 15 years this Programme is estimated to save the Council £20,000,000 in terms of revenue and capital expenditure.

Learning

The stark context of the Council's position provided the impetus for innovation. The Council was faced with the prospect of either making a success of the innovative approach to deliver the services through the asset transfer, or potentially managing the phased closure of most, if not all, of the leisure centres. This resulted in the creation of an opportunity focused Leisure Transformation Team with a commitment to innovation. The ambitious deadlines ensure momentum. The Team was led by a Sponsor sitting at Corporate Management level with the authority to make decisions on any issues which arose during the course of the project; due to the commercial nature of the transaction, this was key. There was cross political support both for the ambition and the approach. Whilst the stark context was unique, the key points regarding empowerment; an opportunity rather than a risk based approach; and political engagement are now applied across all corporate projects.

The project team members were not ring fenced to the Programme and it was only due to individual Officers personal dedication and sacrifices that the project was a success. It would thus be strongly recommended to an organisation embarking on a similar approach to create a dedicated transformation team.

As the project had a high risk of not delivering the objectives of the Leisure Transformation Board, a contingency plan was developed in parallel.

Key learning points:

- The project team discovered that a solution that seemed highly improbable at the start turned into a viable reality, hence an encouragement to innovative and creative thinking. Not to be discouraged when people say "it can't be done."
- Need to have full political support from the beginning.
- Need to have a close-knit team committed to work hard to overcome obstacles and pursue the project to a successful conclusion.
- The team benefited from the services of an excellent lawyer who understood and embraced the ambition of the project and its drivers.
- There is appetite in the private sector to form partnerships and work with innovatively thinking councils. Councils need to broadcast their ideas in the right places to get the attention of the likely participants.

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APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

This appendix provides a summary of some of the high-level advantages and disadvantages of each potential delivery option. It is not an exhaustive list but provides an indication of the typical strengths and weaknesses associated with the different options. The issues flagged should be considered in light of local circumstances and priorities when carrying out an Options Appraisal.

It is acknowledged that advantages and disadvantages can be viewed differently from different perspectives. For the avoidance of doubt, this document is produced from a politically neutral perspective for an intended audience at local authority senior officer and Member level.

IN-HOUSE MANAGEMENT – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
The local authority retains complete strategic and day to day control of services	The local authority misses out on potential revenue savings from NNDR relief and VAT (see text box)
The local authority retains professional and operational expertise of services' management and staff	The local authority retains liability for the operational performance of the services
Workforce remain within the local government framework and pension scheme (as appropriate)	The local authority retains liability for the capital maintenance costs associated with the facilities and any capital funding requirements
Continues to share 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 (unless bringing a service back in-house)	Limited access to the benefits of developing new opportunities and from economies of scale and also to the wider knowledge gained by other operators for innovation and development
	Misses the opportunity for savings within the local authority's central support function

CHANGES TO VAT EXEMPTIONS ON SPORTING SERVICES

The supply of sporting services is currently exempt from VAT if those services are provided by an eligible body (essentially a non-profit making body that is not subject to commercial influence). The UK makes a distinction between non-profit making bodes (e.g. a charity) and those governed by public law (e.g. a local authority). In July 2017 the London Borough of Ealing won a case against HMRC at the European Court of Justice claiming that its supplies of sporting services should also be exempt from VAT. The court found that HMRC's differentiation between non-profit making bodies and public bodies is not compliant with EU VAT law. This should mean that in future, local authorities' supply of sporting services (e.g. gym membership income) is also exempt from VAT and that local authorities delivering via an in-house management team will have overpaid previous output VAT. The potential impact of this is that there will no longer be a net income benefit simply from different VAT treatment associated with a move from in-house management to externalised management, although this may also impact on the ability of local authorities to recover VAT on their expenditure and the implications for capital expenditure will need to be carefully considered in the wider context of the local authority's VAT position. This guidance document will be updated as and when the UK implementation of the ruling and the impact of it is confirmed.

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

OUTSOURCED MANAGEMENT – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Operator likely to optimise opportunities for income generation and economies of scale against social outcomes	The local authority loses direct control over the services and manages through a lease and contract
Broader expertise and experience of the operator	Operator may prioritise commercial rather than social objectives e.g. profit (unless stipulated in the contract)
Access to capital finance to provide investment into facilities and services (noting potential for introducing this in the contract)	Potential loss of community focus (unless stipulated in the contract)
The local authority can enter into a long-term contract with performance guarantees	Staff are transferred to the private contractor under TUPE, although pension benefits may be comparable only (unless Admitted Body Status required in the contract)
The local authority has greater certainty of cost in relation to the on-going revenue subsidy or surpluses made	Capital finance typically more expensive than that provided by the public sector
Potential benefits from additional external funding opportunities (if utilising NPDO/charitable structure)	May be reduced or no access to NNDR and VAT benefits if not utilising a charitable structure
Can access NNDR and VAT benefits (if using a charitable/ NPDO structure) although NNDR savings limited by the new Business Rates Retention Scheme and generally require charitable status for full benefit	Requirement to procure any contract in accordance with EU procurement law
The local authority has the opportunity to make savings in its central support costs	

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

NEW ORGANISATION –TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Management team are likely to understand the business, demographics and market together with the opportunities that this provides	The local authority loses direct control of the services and facilities and it uses the contract and lease as a control mechanism
Potential for increased community and staff involvement in the management of services	Staff are transferred to the new NPDO under TUPE, although pension benefits may be comparable only (unless Admitted Body Status is stipulated by the Council)
Operational risks transferred to the NPDO	Capital finance can be more expensive than that provided by the public sector (although they may be financed from prudential borrowing subject to State Aid)
Benefits of having a single-issue focus for the management team	Lengthy and complex NPDO set-up and transfer process
May access VAT and NNDR benefits if structured correctly	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 and need to comply generally with charity law
	Cannot fully recover VAT on expenditure which can increase the cost associated with funding capital investment

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

LOCAL AUTHORITY CONTROLLED COMPANY – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Local authority retains ownership of the Company	Limited expansion of the business to create economies of scale
It may be a NPDO and obtain the fiscal benefits associated with VAT and NNDR	Limited opportunity to mitigate operational risks (due to one contract/client)
Operational risks can be transferred to the new company	May have difficulty raising capital finance in the early years
Staff may transfer under the TUPE regulations to the new company, keeping their terms and conditions	Council loses direct control of the day to day operation of the business.
Council are represented on the Board of the Company to ensure Council's strategic outcomes are delivered	May impact on social values or outcomes linked to the Council's objectives – need to specify in service specification
Allows entrepreneurial spirit within the Company from being unlocked from local authority processes	Requirement to comply with the rules on "in-house" contract awards under the Public Contracts Regulations 2015
Brings a commercialism to the service	Cannot fully recover VAT on expenditure which can increase the cost associated with funding capital investment
Can partner with other local authorities to provide joint services	
Management team very likely to understand the business and local market and the opportunities this provides	

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

JOINT VENTURE COMPANY – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Provides a local authority with the opportunity to gain new capacity and expertise	Can be complex to procure and establish and have significant time and cost implications
Allow a local authority to work with another in a related business (economies of scale) or to share new technological knowledge	There is an imbalance in levels of expertise, investment or assets brought into the venture by the different partners which causes issues between the parties or employees.
Provides the local authority with access to greater resources, including specialised staff and technology	Different cultures and management styles result in poor integration and co-operation.
Local authority may share the land, building or operating risks with a venture partner	The partners don't provide enough leadership and support in the early stages of the venture
Allows the local authority to enter businesses or functions that previously presented high cost barriers to entry (e.g. waste incinerator)	The local authority must share in the risks and liabilities associated with the Joint Venture
Ability to gaining access to expertise without the need to hire more employees	Local authority loses direct control over the assets and service
Benefits of having a single-issue focus for the management team with greater financial and managerial autonomy	Partners can potentially have different objectives for the joint venture
May access VAT and NNDR benefits if the company is structured correctly	Staff may transfer under TUPE, although pension benefits may be comparable only (unless Admitted Body Status is stipulated by the Council)
	Potential requirement to procure any partner in accordance with EU procurement law

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

COMMUNITY ASSET TRANSFER – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Empowerment and involvement of local communities in shaping and managing their local facilities	The Organisation taking over the asset may be inexperienced and struggle to cope with the management responsibility
Catalysts for skills development/volunteering opportunities /job creation/business development	Fluctuations in income and expenditure may be difficult to sustain for the organisation operating the asset
Promote 'community anchors' and resilience in deprived neighbourhoods through the provision of space/ opportunities for local enterprise activity	Quality of the asset and service is not within the local authority's control and may be compromised
A potential reduction in the 'burden' of an under-used or unused asset, thereby making long-term revenue savings e.g. a local authority transferring a pavilion or changing rooms to a local sports club, thus reducing costs for the local authority and providing an asset for the club	The organisation may have limited access to capital to invest in the facility and may require a dowry from the local authority
Potential 'Rent-back' schemes to local authority service providers, thus providing rental income to the transferee and/or creating mutually beneficial co-location of services on one site	Business case may not be accurate and the on-going operation may not be sustainable – just transferring the cost of operation from the local authority to the external organisation
Financial leverage. The process of transfer can enable access to external money, much of it from sources not available to the local authority	Potential lack of skills, experience and capacity in the organisation could jeopardise its operation
Opportunities to improve the asset, grow participation in sport and increase usage	
Opportunities for the organisation to improve management capacity and generate additional revenues	

APPENDIX C – DELIVERY OPTIONS – ADVANTAGES AND DISADVANTAGES

COMMERCIAL ASSET TRANSFER – TYPICAL ADVANTAGES AND DISADVANTAGES

Advantages	Disadvantages
Local authority receives a capital receipt	Local authority has reduced 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 (unless built into the agreement)
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 (if leisure use retained)	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 under TUPE, although pension benefits may be comparable only (as the commercial provider may not become an admitted body within the local government pension scheme)
	Potential total loss of leisure facilities unless restricted through the lease covenants

APPENDIX D – ORGANISATIONAL STRUCTURES

This appendix provides more detail on the option for local authorities of establishing a new organisation to manage their facilities and services. There are many forms which the organisation could take including, but not limited to, the following:

- Unincorporated Charitable NPDO;
- Co-operative or Community Benefit Society;
- Company Limited by Guarantee (GLG);
- Charitable Incorporated Organisation (CIO);
- Community Interest Company (CIC);
- Local Authority Controlled Company (LACC);
- Joint Venture Company (JV).

As explained in the main guidance document, these structures are the legal form of the organisation and could all be characterised under the terms of 'social enterprises' or 'mutuals'. These are not the only organisational structures available but are likely to be the most appropriate forms to be utilised for the sport and leisure sector. The following text provides a brief overview of each option.

Unincorporated NPDO

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.

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.

Co-operative or Community Benefit Society

Formerly Industrial and Provident Societies (IPS), these are now governed by the Co-operative and Community Benefit Act 2014 and a registered society is an organisation which has registered after the 1st August 2014 under the Act or was immediately before this date, registered as a company under the Industrial and Provident Societies Act 1965. An IPS is run either as:

- A co-operative; or
- For the benefit of the community.

A co-operative society is run by and for the benefit of its members, and the majority of surplus profits are retained within the society in order to maintain it. Accordingly, the main object of a co-operative society is not to make money, but to finance its own growth in order to benefit its members as a direct result of their participation in the business.

An IPS run for the benefit of the community exists to provide services to people other than its own members. In order to register with this remit, the organisation in question must be run primarily for the benefit of the community at large, rather than for the members of the society. Profits must also be re-invested into the organisation, rather than being distributed to members, and the business must demonstrate that there are 'special reasons' why it should be registered as an IPS rather than a company under the Companies Act.

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. It does not need to register with the Charity Commission.

Under the IPS, each member has only one vote which can impact on the decision-making process albeit the day to day operation of the IPS is usually directed by a board. 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.

This structure obtains the benefits of NNDR relief and VAT treatment where it is formed for charitable purposes. It has been used with considerable success in developing community ownership of sports teams and enterprises within both amateur and professional sport, particularly where community fund raising initiatives have arisen.

APPENDIX D – ORGANISATIONAL STRUCTURES

Public Service Mutual

There are many forms of mutual, including major employee-owned businesses like John Lewis or building societies such as Nationwide which are fully or majority owned by their employees (known as members). But a mutual can also be co-operatives or social enterprises.

A public service mutual cannot however be a charity as a charity must be independent and so not controlled by staff. A Mutual is not a legal form in itself, as being a mutual is about employee control and how an organisation is managed. There is no one legal form that a public service mutual must take. The most common are "Co-operatives" or "Community Interest Companies" – companies that are set up if they are run for the benefit of the local community. However, the Public Contracts Regulations 2015 state that a Public Service Mutual can now only operate for a maximum period of three years before a service is required to be tendered in the open market.

Company Limited by Guarantee (CLG)

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.

The members of the company have limited personal 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 more flexibility when compared to other NPDO models and they are able to change their rules to meet the needs of the business.

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

Charitable Incorporated Organisation (CIO)

The CIO is a relatively 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.

The CIO is a 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;
- 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.

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. 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.

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

APPENDIX D – ORGANISATIONAL STRUCTURES

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.

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.

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.

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.

The 'newness' of the model also makes this a less common route for service delivery in the leisure and culture field. As with other forms, however, consideration of obtaining appropriate insurance cover for those in positions of authority within any organisation is important.

Community Interest Company

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.

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).

The 'Community Interest Test' 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".

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 - that is, once the route is gone down it "locks" the asset for future generations.

APPENDIX D – ORGANISATIONAL STRUCTURES

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).

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.

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.

Local Authority Controlled Company

An alternative structure that is becoming increasingly popular for local authorities is the Local Authority Controlled Company ("LACC").

Local Authorities may, subject to certain statutory limitations, establish a trading corporate vehicle and undertake socio-economic and/or commercial activities. The principal powers are:

- Section 1 of the Localism Act 2011 ("2011 Act") - the nature of this general power of competence ("GPC") is well-known and gives local authorities the "power to do anything that individuals generally may do" (i.e. local authorities are to be taken to have all the powers of a natural person). However, this power is subject to various restrictions (most notably, a local authority may only act for a commercial purpose through a company);
- Section 95(1) of the Local Government Act 2003 ("Section 95") – is a parallel power to the GPC and enables local authorities "to do for a commercial purpose anything which they are authorised to do for the purpose of carrying on any of their ordinary functions"; provided this is done through a company (Section 95(4)).

In simple terms, if it can be demonstrated that the primary purpose of the relevant activity is socio-economic and not commercial then, provided there are no other relevant statutory restrictions, the local authority may establish the proposed venture as a Limited Liability Partnership (LLP) and benefit from the tax transparency that brings. If, however, the proposed activity is primarily commercial, then the local authority will be required to undertake the activity through a limited company.

APPENDIX D – ORGANISATIONAL STRUCTURES

An LACC is to all intents and purposes like any other company in terms of structure and operation. It requires a Board of Directors, a purpose (set out in its' memorandum and articles of association) and policies as to how it will operate particularly with regard to how it will utilise any funds generated.

Prior to setting up such a company it is imperative that a detailed business case is prepared to set out the rationale for the creation of the LACC, why it is recommended, objectives, resources required and financial prospects. It is also essential to ensure that setting up the company is within the powers of the local authority to do so.

This approach was first used over 20 years ago it has become increasingly popular of late as local authorities seek innovative ways of combatting declining budgets and explore means to secure and capture long term revenue streams which can be further re-invested into services or into the local authority. The overriding purpose is often to drive efficiencies; ring fence the provision of services and associated risk through a separate legal entity; and secure a long-term revenue stream.

Whilst local authorities are governed by what the statutory provisions allow, it is also important to take into account other general principles:

- The extent to which the LACC may be structured to comply with the "in-house" or Teckal exemption which would entitle the local authority to treat the LACC as though it were an in-house department (for the purposes of directly awarding contracts for works and services);
- To ensure that in setting the LACC is consistent with State Aid requirements such that any funding or benefit provided to the LACC does not, in simple terms, amount to a subsidy and distort competition.

It should be noted that in order to make use of the "in-house" or Teckal exemption against having to follow detailed procurement processes it is absolutely critical to adhere to the guidance given or, if in breach, the exemption will not apply.

Significant consideration should always be given prior to embarking on a course of action of what the objectives are and whether an LACC is the best option. Overall there is a need to balance the opportunity of relative commercial freedom, protecting any investment made and the precise objectives set by the local authority. Factors that should be considered include:

- The tax implications (e.g. VAT, Corporation tax and Income tax, SDLT etc.);
- A code of conduct for directors and also the matters to be reserved for the decision of the shareholder/s of the business (which would normally be the local authority/authorities);
- What impact it will have on public resources and what support is needed in the initial phase of the business;
- Employment implications of either transferring staff into the entity or providing them to it by way of contract or alternative secondment arrangement.

The advantages of the LACC structure include:

- It enables a local authority to ring fence certain aspects of its business in a separate legal entity – it is the LACC not the local authority that then assumes liabilities arising from that business (albeit some form of local authority guarantee/ underwrite may be required, initially at least);
- The ability to generate and retain a long-term revenue stream through dividend/profit;
- Local authorities can come together jointly under such an initiative to combine services and resources;
- A local authority has flexibility to shape the business to suit it's needs – for example by not placing permanent staff within the LACC but instead contracting with the LACC to provide services to it (subject to Teckal considerations);
- An LACC is able to generate a certain amount of profits/turnover by contracting with third parties other than the local authority (provided this complies with the rules of the "in-house" or Teckal exemption).

The disadvantages associated with such a structure are less obvious and rooted in ensuring that considerable work is done at the outset to comply with the stringent tests outlined to enable it to function properly. For example, assessment of how the business will survive and prosper as well as how to meet any funding requirements. Irrespective of the benefits, it must be clear that:

- The entity is not being given an unfair advantage and is operating on a level playing field with commercial entities in the sector;
- The entity should be structured on a sustainable basis and underpinned by a robust business plan.

APPENDIX D – ORGANISATIONAL STRUCTURES

Joint Venture

A joint venture in this context is when a local authority and an external partner enter into an agreement to develop a new entity to (develop and) manage the facilities (for a limited period of time). The local authority and the external partner usually have equal representation within the joint venture vehicle that is created and exercise joint control, having equal responsibility for the assets and associated income, liabilities, profits etc.

A local authority's power to establish a Joint Venture is a complex area. It is essential that prior to considering doing so it takes specialist legal advice. In giving such advice, consideration will need to be taken of the activities that the JV is intending to undertake and the level of control by the local authority (raising potential State Aid issues).

The joint venture vehicle will be independent and separate from the day to day business of the local authority and can take several structures including companies limited by shares, companies limited by guarantee, industrial and provident societies and many others.

The legal structure of the joint venture vehicle is a complex area and requires expert legal advice to ensure the most appropriate form is taken up by the local authority. Treasury guidance for public sector bodies on Joint Ventures is available from https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/225321/06_joint_venture_guidance.pdf. In setting up a joint venture, the local authority will need to consider whether that process is subject to the Public Contracts Regulations 2015, and if it is then procuring the joint venture partner in accordance with those rules. A joint venture will more than likely be caught by the procurement rules if it will ultimately deliver works, services or supplies back to the local authority.

A joint venture structure is a partnership of sorts where risk and reward are shared. If a local authority is looking to secure a defined solution with limited scope for growth and change and where risk transfer, rather than risk sharing, is the priority, then a joint venture is probably not the most suitable solution. Under this scenario, a more straight forward contracting arrangement with the types of organisations described previously in this document is probably more suitable.

Joint ventures are however suitable where there is a long-term programme of service delivery and investment with potential for exploiting commercial opportunities and capturing long-term value though a separate entity with specifically defined objectives. Often, the parties will bring different skills, assets and contributions to the Joint Venture, in this context with the local authority often contributing the leisure assets and the external partner providing the operational, commercial and financial expertise.

Whilst a simple concept, when land and properties are being transferred to a Joint Venture, there are many issues to be considered including the value of the land, accounting treatment, VAT, disposal strategies, implications for a local authority's wider policies and responsibilities etc.

With regards to the staff that work within the facilities, entering into a joint venture will likely see them move across under the Transfer of Undertakings and Protection of Employment Regulations (TUPE). There are other options that can be considered for JVs depending on the circumstances and nature of the JV including secondment from the local authority to the JV (for example, of managers) and/or resignation and reemployment by the JV (although rights such as continuous employment may still be protected). As with all such situations, at the outset it will be important to have a clear rationale for the project, a communications plan and to have considered all legal issues.

Funding for JVs can be raised through issue of shares, debt and grants although initial funding is likely to be required from the partners as the JV will have no track record to enable borrowing unless debt can be secured against the assets. If the local authority is providing the assets, it is reasonable to expect the external partner to provide the initial equity for the JV. Any local authority involvement will necessitate consideration of any State Aid issues.

When setting up a Joint Venture, both parties need to carefully consider the long-term viability of the business and the balance of the risks and rewards. A strong business case is crucial for the sustainability of the venture.

Agreeing an exit strategy is a necessary part of setting up a Joint Venture. Each party must be clear on the intended length of term of the Joint Venture, its goals and objectives, how the parties will achieve a return on investment and how they will protect their investment if another party wishes to exit or fails to perform their obligations. This is an extremely complex area and will form part of a detailed Joint Venture Agreement entered into by the parties that sets out the key commercial and legal terms and conditions.

APPENDIX E EXAMPLE LEISURE MANAGEMENT OPTIONS APPRAISAL BRIEF CONTENTS

1. INTRODUCTION, BACKGROUND AND CONTEXT

The Council should include a suitable introduction that sets out the background to the area, the Council, the service and the aims and objectives for the study.

2. SCOPE

The Council should clearly state which services and facilities are in-scope for the study e.g. leisure centres, external sports facilities, sports development, parks, cultural facilities etc.

3. SPECIFICATION

The Brief should set out a clear specification that the Council requires to be delivered through the options appraisal. An example specification for a management options appraisal is set out below.

4. TIMESCALES

The timetable which the Council expects the successful bidder to complete the work within should be clearly stated.

5. BUDGET

The Council may wish to set out its maximum budget for the project to give bidders an understanding of the Council's expectations and available resource. This is optional but will help bidders to tailor their proposals to the Council's budget.

6. SUBMISSION REQUIREMENTS

The format in which the Council wishes to receive submissions should be made clear to bidders. This could be left to the discretion of the bidders or could be stipulated by the Council including specific questions/issues they wish to see addressed in the bidders' submissions, word/page limits, number of hard/soft copies, where to submit bids to and by what deadline etc.

7. EVALUATION

The Council should clearly set out how the bids will be evaluated including as a minimum the evaluation weightings between quality and price and whether an interview will be required.

8. CONTACT DETAILS

Contact details for an appropriate Council point of contact who will be able to deal with any bidder queries should be provided.

APPENDIX E EXAMPLE LEISURE MANAGEMENT OPTIONS APPRAISAL BRIEF CONTENTS

EXAMPLE SPECIFICATION

Objectives

The council is seeking advice and recommendations in the following key areas:

- Overview of current service:
  - Strengths and weaknesses of the current service.
  - Financial and non-financial review of the services/ facilities.
  - The viability of the current service in light of the Council's stated aspirations.
  - The likely impact on customers, facilities and the Council of retaining the current delivery option.

- Identification of potential delivery options:
  - Identify the models available in the market and how they fit with the Council's Vision and Principles.
  - Identify the strengths and weaknesses of these models.
  - Provide examples/case studies.

- Advice regarding the service mix/structure:
  - Assess whether all areas for consideration can be included in one option.
  - Assess whether there is merit in splitting some aspects/ functions into different options.

- Analysis of the potential delivery options, including:
  - Financial analysis (revenue, capital, set-up costs etc.).
  - Impact on Council central services.
  - HR implications (Impact on staff, TUPE etc.).
  - Risk analysis.
  - Impact on service quality.
  - Impact on Council control.
  - Legal and procurement issues.
  - Implementation timescales.

- Evaluation of the options covering both financial and non-financial criteria.

Outputs

The Council needs to consider the comparative merits and relative risks associated with the options and advice requested above.

All outputs will therefore include an evaluation of risks and benefits of each option which will include:

- Key benefits of each option.
- Control and influence over strategic decision making.
- Potential impact of political constraints.
- Potential to contribute to the Council's Vision and Principles for the service.
- Potential to contribute to the Council's wider policies and strategies including Health & Wellbeing, Sustainable Community Strategy etc.
- Impact on directly employed staff - terms and conditions/ development opportunities (TUPE, Pensions, Equalities, potential liability for any redundancies).
- Impact on Council support services.
- Operating risks regarding income and expenditure.
- Potential to raise capital finances to invest in facilities and services.
- Ownership, maintenance, development and investment liabilities.
- Income or subsidy impact on Council finances (aim to reduce/remove current subsidies).
- Likely timescale and cost to implement.

The appraisal outputs are to be:

- Draft report for discussion with management team.
- Final detailed report with supporting evidence.
- Summary report/slideshow for presentation to elected members, partners, stakeholders and staff groups – paper and digital copies.
- Presentation to Senior Managers and Elected members with Q&A session.

OUTCOMES

The options appraisal will enable the Council to make robust informed decisions, based on data, regarding how it will approach the delivery of its sport and physical activity service into the medium and long term.

The Council is seeking a best-fit long-term option to support the delivery of the strategic vision and principles which is based on:

- The demands and needs of current and potential customers, now and into the future, taken from the facility planning work (if available).
- The long-term investment needs for maintenance, refurbishment and development associated with the current operational facilities, taken from the facility condition surveys and facility planning studies (if available).
- The opportunity to maximise participation from all sectors of the community, now and into the future, through appropriate programming of, and investment into, the activities offered.
- The potential to consider innovative delivery models.
- A reduction in the level of (or removal of) annual subsidy supporting the service from Council budgets.