



COUNCIL EXECUTIVE

SHARED SERVICES DELIVERY (CULTURE) - FUTURE MANAGEMENT OF SPORTS, LEISURE AND CULTURAL FACILITIES AND FUNCTIONS

REPORT BY DEPUTE CHIEF EXECUTIVE

A. PURPOSE OF REPORT

This report seeks to:

1. Update members on developments relating to proposals for modernised trust model arrangements in West Lothian.
2. Obtain Council Executive approval of the recommendations detailed below, to allow for proposals for the future management of certain sports, leisure and cultural facilities and functions to be further developed and implemented.

B. RECOMMENDATION

It is recommended that Council Executive:

1. Notes the intention of West Lothian Leisure (WLL) to convert to a Company Limited by Guarantee, with the council as Sole Member, by 1 August 2016.
2. Notes the external legal advice received that it would be competent for the council to transfer the management of facilities and functions to the converted WLL.
3. Notes the high-level options appraisal undertaken and agrees the relative merits of the option for the council to transfer the management of facilities and functions to the converted WLL, as summarised in Appendix 1.
4. Agrees that, in view of the external legal advice received and the options appraisal undertaken, proposals to transfer the management of the facilities and functions detailed in Appendix 2 to the converted WLL, be explored in detail and developed by council officers for the purposes of discussion with the Board of the converted WLL.
5. Notes that, in the event of any transfer of functions to the converted WLL, staff considered to be assigned to those functions would also transfer, under the terms of the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations.

6. Notes the statutory consultation requirements under the TUPE Regulations as summarised in Section D.3. and agrees that, in addition to these requirements, in the event of any such transfer, individual members of staff affected by the proposals would be kept informed about matters relevant to any transfer and what these would mean for them.
7. Agrees the high-level remit for development of the transfer proposals and the key outcomes for their implementation, as detailed at Section D.4.
8. Agrees that the transfer proposals must ensure that the fees, charges and concessions, agreed by the council for the period up to and including financial year 2017/18, for the facilities and functions detailed in Appendix 2, be maintained by the converted WLL up to and including financial year 2017/18.
9. Agrees to delegate authority to the Chief Executive to implement the transfer of the management of all or part of the facilities and functions listed in Appendix 2 to the converted WLL by 1 April 2017, following development of the transfer proposals in line with the high-level remit and key outcomes, and their formal acceptance by the Board of the converted WLL.
10. Agrees that regular progress updates on the above matters be reported to the Culture and Leisure PDSP and WLL Advisory Committee, as appropriate.

C. SUMMARY OF IMPLICATIONS

I Council Values	<ul style="list-style-type: none"> • Focusing on customer need. • Being honest, open and accountable. • Providing equality of opportunities. • Developing employees. • Making best use of our resources. • Working in partnership.
II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)	Legal considerations included in Sections D.2 and D.3 of this report.
III Implications for Scheme of Delegations to Officers	The scheme of delegation will be amended in accordance with recommendation 8 in Section B of this report.
IV Impact on performance and performance indicators	None.
V Relevance to Single Outcome Agreement	SOA4 – We live in resilient, cohesive and safe communities. SOA7 - We live longer, healthier lives and have reduced health inequalities.

- VI Resources (Financial, Staffing and Property)** Scottish Government grant funding is not sufficient to meet the increasing costs and demands for council services. As a result, the council has to deliver £20.955 million of budget saving measures in 2016/17 and 2017/18 to ensure that the council can achieve a balanced revenue budget position for these years.
- £532,000 of savings must be delivered through modernised trust model arrangements by 1 April 2017, as agreed by the council on 29 January 2015 as part of the three-year revenue budget strategy for 2015/16 to 2017/18.
- VII Consideration at PDSP** To be considered by Partnership and Resources Policy Development and Scrutiny Panel on 17 June 2016.
- A verbal update will be provided at the meeting.
- VIII Other consultations** Legal Services.
Human Resources.
Finance and Property Services.
Education and Planning Services.
Operational Services.

D TERMS OF REPORT

D.1 Introduction

WLL was set-up in 1998 as an Industrial and Provident Society (IPS), under the Industrial and Provident Societies Act 1965, to provide sports and leisure facilities and activities to the communities of West Lothian. It is currently governed by the Co-operative and Community Benefit Societies Act 2014, which repealed the 1965 Act.

WLL has charitable status as granted by HM Revenue and Customs in Scotland and is listed on the Scottish Charity Register, which is overseen by the Office of the Scottish Charity Regulator (OSCR). It operates as a not for profit distributing organisation in that any surplus generated, other than reserves, is available to re-invest in the facilities to benefit the West Lothian community.

WLL is responsible for the strategic and operational management of key sport and leisure facilities which it leases from the council. These facilities provide a strong infrastructure of community leisure centres, swimming pools, sports halls, outdoor sports pitches, health and fitness centres for sport and physical activity, and centres of excellence for sports development and events.

The council is WLL's key funding partner and, as such, there are agreements and joint plans in place between the organisations covering areas such as core outcomes, actions, resources, proposed measures of success/improvement and key targets to be met. WLL is a Community Planning Partnership member and also works with NHS Lothian, West Lothian Health and Social Care Partnership, sportscotland and sports governing bodies.

Earlier this year, WLL agreed in principle that it would convert its legal model from an IPS to a Company Limited by Guarantee. In March 2016, the Council Executive agreed

that the council would become Sole Member of WLL in the event of such a conversion, having been asked by WLL Board to consider this.

The targeted date for conversion of WLL to a Company Limited by Guarantee, with the council as Sole Member, is 1 August 2016. In line with the decision of the Council Executive in March 2016, the work required to implement such a conversion is underway. The necessary agreements/arrangements between WLL and the council are being considered and Articles of Association for the converted WLL, which will include its charitable objects, are also being developed. WLL advise that it is in close dialogue with OSCR in relation to its plan to convert legal model, given that the converted WLL will be listed on the Scottish Charity Register.

D.2 Options for modernised trust model arrangements

In line with the revenue budget decisions taken by the council in January 2015 and February 2016, £750,000 of savings have been agreed across sports, leisure and cultural services in financial years 2016/17 and 2017/18. These savings, which will be delivered through a combination of workforce management measures and changes to activities, do not directly relate to the responsibilities of WLL or its current funding agreement with the council.

The council has agreed that a further £532,000 of savings must be delivered through modernised trust model arrangements. As such, an option appraisal was undertaken to review and score the following high-level options for such arrangements:

- Option 1 - Do nothing.
- Option 2 - Transfer management of certain sports, leisure and cultural facilities and functions to a new trust.
- Option 3 - Transfer management of certain sports, leisure and cultural facilities and functions to the converted WLL.

Each option assumes that WLL continues to manage its existing portfolio of facilities and functions.

The options appraisal was based on criteria from Audit Scotland and took into consideration the experiences of other local authority areas where, in recent years, trust models have been modernised and their remits widened. It also factored in previous independent reviews of cultural, leisure and sports provision by external specialists and insight from senior officers. Each option was scored against the likelihood that it would lead to the following objectives being achieved:

- Maximise the likelihood that people in West Lothian live longer, healthier lives and have reduced health inequalities (Single Outcome Agreement priorities 4 and 7).
- Increase participation in sports, leisure and cultural activities in West Lothian.
- Maximise community use of sports, leisure and cultural facilities in West Lothian.
- Reduce the cost of managing and delivering sports, leisure and cultural facilities and functions in West Lothian.

A table summarising the option appraisal exercise is included at Appendix 1 to this report. The scoring indicates that the option most likely to lead to these objectives being

met is Option 3 'Transfer management of certain sports, leisure and cultural facilities and functions to the converted WLL'. The relative merits of this option can be summarised as follows:

- WLL's record of continuous improvement in growing participation, increasing its customer base, maximising community use of assets under its control, achieving high levels of customer/staff satisfaction and driving income generation, would provide an increased likelihood of improvements in key performance and benchmarking indicators.
- WLL has an established approach to financial and business planning, with strong existing links to council financial planning processes and officers. It also has well established internal/external financial auditing processes and is already subject to best value monitoring.
- WLL is one of the highest performing trusts in Scotland in terms of its management fee as a percentage of incoming resources.
- WLL has a proven business model with strong and effective processes, data systems, customer information/trend analysis, market knowledge and use of technology/social media. This option would increase the scope for better coordination of approaches to facility availability/demand, pricing and concessions.
- WLL and the council have robust and well-established governance, scrutiny and monitoring arrangements in place, which have been positively endorsed by Audit Scotland. This option means that such arrangements would be less resource intensive for the council than compared to Option 2.
- WLL is already engaged in the mechanism for setting strategic priorities for area and it has well established relationships with local community planning partners and national governing bodies.
- WLL has established and tested policies on HR, health and safety and facility operations, and there would be improved accountability from having facility management more centralised e.g. statutory compliance.
- The single trust option would avoid the duplication of management and board structures.

In addition to the options appraisal exercise and investigations into comparative approaches successfully implemented in other local authority areas, council officers have obtained external legal advice around the three options. In summary, the advice is that it is competent for the council to transfer the management of additional facilities and functions to the converted WLL. As part of this process it will be necessary to comply with procurement and state aid requirements.

D.3 Scope of proposed transfer

Appendix 2 details those sports, leisure and cultural facilities and functions which officers consider, as a minimum, could be transferred to the converted WLL for management through the modernised trust model arrangements. The scope has been refined to include facilities and functions which fit strategically and operationally with WLL's current remit or which are within the remit of comparator trusts in other local authority areas.

In terms of the facilities listed, formal legal arrangements would require to be made to ensure their effective transfer. Such arrangements are being explored currently and would be effected in the most appropriate manner identified. It should be noted that certain facilities are subject to PPP arrangements which would be instructive of what could reasonably be achieved by way of transfer and, indeed, the means by which transfer may be achieved.

In terms of the functions which are proposed for transfer, if agreed, any employee considered to be assigned to these functions would undergo a transfer to the converted WLL, which would be governed by the TUPE Regulations. Legal advice confirms that TUPE would apply in such circumstances. As such, appropriate and meaningful consultation would require to be undertaken with representatives of employees who may be affected by any transfer. It is recommended that, in addition to these requirements, in the event of any such transfer, individual members of staff affected by the proposals would be kept informed about matters relevant to any transfer and what these would mean for them.

Any such consultation and provision of information could only take place after detailed proposals had been developed and agreed for implementation. During the development process officers would progress work to identify all employees who were potentially affected by any transfer, including those who were considered to be assigned to a function likely to transfer.

It should be noted that any employees displaced as a result of the aforementioned £750,000 of efficiency measures, which will be delivered through a combination of workforce management measures and changes to activities, and which do not relate to any transfer, would not be in scope for transfer as they would not be considered to be assigned to a transferring function.

D.4 Development and implementation of transfer proposals

If agreed, it will be necessary for officers to develop a detailed set of transfer proposals covering the facilities and functions listed. In turn, the transfer proposals would require to be the subject of consideration by the Board of the converted WLL.

Such transfer proposals would need to include consideration and identification of details relating to financial settlement, in terms of the annual payment to be made by the council to the converted WLL for management of the agreed facilities and functions. It is considered that any such financial settlement would require to reflect the revenue budget reduction of £532,000 for 2017/18 associated with these facilities and functions, which was agreed by the council as part of its current revenue budget strategy.

It is recommended that the high-level remit for development of the transfer proposals should be to seek to ensure a more joined-up provision of sport, leisure and cultural facilities and functions in West Lothian, whilst seeking optimum operational and financial efficiency. Furthermore, it is recommended that the key outcomes for implementation of the proposals should be in line with the objectives detailed in section D.2. - namely that:

- People in West Lothian live longer, healthier lives and have reduced health inequalities (Single Outcome Agreement priorities 4 and 7).
- Participation in sports, leisure and cultural activities in West Lothian increases.
- Community use of sports, leisure and cultural facilities in West Lothian increases.

- The cost of managing and delivering sports, leisure and cultural facilities and functions in West Lothian is reduced.

It is further recommended that any such transfer proposals must ensure that the fees, charges and concessions, which have been agreed by the council for the period up to and including financial year 2017/18, for the facilities and functions detailed in Appendix 2, be maintained by the converted WLL up to and including financial year 2017/18.

In order to progress with the matters defined in this report in as efficient manner as possible, subject to their agreement, and acknowledging the detailed dialogue and negotiations which would be required between senior officers in both organisations in the coming months to facilitate any transfer, it is recommended that the Chief Executive be delegated authority to implement the transfer of the management of all or part of the facilities and functions listed in Appendix 2 to the converted WLL by 1 April 2017, following acceptance of the proposals by its Board.

E. CONCLUSION

The report seeks to facilitate key decisions from elected members with a view to developing and implementing proposals to transfer the management of certain sports, leisure and cultural service to the converted WLL.

Aside from the customer, operational and organisational benefits associated with such a transfer, which are detailed in Appendix 1 and section D.2., there is also a financial imperative to progress the implementation of any transfer in advance of 1 April 2017.

If that milestone is not achieved, other budget reduction measures would require to be developed and implemented in order to deliver the savings agreed by the council as part of the three-year revenue budget strategy for 2015/16 to 2017/18.

Officers are minded that approval of the recommendations in Section B of this report will help to strengthen further the partnership between the council and WLL, for the benefit of West Lothian's communities.

F. BACKGROUND REFERENCES

None

Appendices/Attachments: 2

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