

**REPORT TO:** LEISURE AND ARTS SERVICES COMMITTEE -16 JANUARY 2006  
POLICY AND RESOURCES COMMITTEE - 16 JANUARY 2006

**REPORT ON:** SWIMMING AND LEISURE FACILITIES: ESTABLISHING A LEISURE COMPANY WITH CHARITABLE STATUS

**REPORT BY:** DIRECTOR OF LEISURE AND COMMUNITIES  
ASSISTANT CHIEF EXECUTIVE (MANAGEMENT)  
DEPUTY CHIEF EXECUTIVE (FINANCE)

**REPORT NO:** 72-2006

**1 PURPOSE OF REPORT**

- 1.1 To outline proposals to investigate the feasibility of establishing a Leisure Company to operate swimming and leisure facilities currently operated by the City Council and the implications of the proposed arrangements for the Council.

**2 RECOMMENDATIONS**

It is recommended that members:-

- 2.1 Instruct officers to investigate the feasibility of forming a Leisure Company with charitable status, if possible, to be known as Dundee Leisure Limited or similar and once established, subject to committee approval the management and operation of Olympia Leisure Centre, Lochee Swimming and Leisure Centre, Dundee International Sports Centre, Lynch Sports Centre and Douglas Sports Centre to be transferred to Dundee Leisure Limited.
- 2.2 Agree to the nomination of six Directors from Dundee City Council to the Board of Directors of Dundee Leisure Limited being two members from the Administration and two members from the opposition parties plus two officers from the Leisure and Communities and Finance Departments.
- In addition to the Council Directors to agree two Directors from the Local Sports Council, two Directors from the Dundee City Disability Sport, two Directors from user groups (one each representing wet sports/dry sports) to be appointed annually at a general meeting, and one Director from the Chamber of Commerce be invited to go on to the Board of the Company. Total number of Board members to be 13.
- 2.3 Agree to nominate the Convener of Leisure and Arts as a Board Member and as Chair of the Company as part of the representation from Dundee City Council.
- 2.4 Agree to the City Council nominating the Leisure and Communities Department's Head of Parks, Sports and Leisure as Managing Director and the Depute Chief Executive (Finance) as Finance Director of the new Leisure Company to assist in the good management of the company for the benefit of the public.
- 2.5 Authorise the Depute Chief Executive (Finance) and Depute Chief Executive (Support Services) to appoint financial and legal advisors to take forward the proposals and to draw up Articles and Memorandum for the new Leisure Company as soon as possible and gain charitable status from the Inland Revenue.
- 2.6 Remit the Chief Executive to finalise a lease and management agreement and to negotiate their agreement with Dundee Leisure Limited on the basis of the terms outlined in this report and other such terms as are necessary to protect the interests of the Council and report back to Committee with the details of the benefits to the Council. This to include approval of the lease by the Scottish Ministers and approval from **sportscotland** in respect of the transfer of Dundee International Sports Centre in view of previous sports lottery funds awarded.
- 2.7 Agree that relevant Department's of the City Council enter into Service Level Agreements to facilitate the transfer of the Leisure Centres Section of the Leisure & Communities Department

to Dundee Leisure Limited. The Service Level Agreement to include provision for consultation and agreement on budgets and charging policy.

- 2.8 Agree that Dundee Leisure Limited should take earliest operational and management responsibility for the facilities following completion of all legal formalities to conclude the transfer.
- 2.9 Agree to transfer, on their existing terms and conditions of employment, the staff presently providing the Leisure Centres Service all under TUPE conditions including job evaluation under single status. As the lease may only run for 5 years it is intended that all permanent employees transferred will be able to return to the Council's employment at the end of 5 years if the lease is not renewed.
- 2.10 Agree that Dundee Leisure Limited be given full support to achieve admission to the Tayside Pension Fund as an admitted body.
- 2.11 Authorise a payment of a management fee in 2006/07 equivalent to the approved Revenue Budget deficits for these facilities adjusted for the savings calculated in Appendix A and agree, in principle, that the said management fee be adjusted in line with increases in the Leisure and Communities budget in future years.
- 2.11 Note that 100% Non Domestic Rates relief to Dundee Leisure Limited is expected to be granted.

### **3 FINANCIAL IMPLICATIONS**

- 3.1 The implementation of these proposals will result in a full year revenue saving estimated at approximately £640,000. As detailed in Appendix A, after allowing for a contingency provision to meet any potential shortfall in the full year saving from a delayed operational start date of the Leisure Company.
- 3.2 All external and internal repairs will remain the responsibility of Dundee City Council and the grant to be paid to Dundee Leisure Limited will reflect this. The grant due based on the approved 2005/06 Revenue Budget is approximately £0.680m.
- 3.3 The appointment of financial and legal advisors to create the company will incur professional fees estimated at £20,000 which will require to be funded from the 2005/06 General Contingency provision.

### **4 LOCAL AGENDA 21 IMPLICATIONS**

None.

### **5 EQUAL OPPORTUNITIES IMPLICATIONS**

- 5.1 The proposals in this report are consistent with the Council's Equal Opportunities Policy.

### **6 LEISURE COMPANY WITH CHARITABLE STATUS**

- 6.1 Dundee City Council recognises the importance of providing high quality provision for people to participate in recreation, sporting, cultural and social activities. It has many facilities that are used to further its aims of providing a service that will enhance public health, social and recreational well-being and social inclusion. To further these aims Dundee City Council intends to create a Leisure Company, with charitable status, that would be able to provide the quality of service deserved by the residents of Dundee and be viable as a business unit which in turn would result in maintaining the high quality of service provided to the public by the City Council. A considerable number of other local authorities currently successfully operate Leisure and Sports facilities through a Leisure Company.
- 6.2 The day to day management and operation of the Council's Sports and Leisure facilities would be transferred to the Leisure Company. Due to the fact that the company would have charitable recognition it would qualify for 80% mandatory plus 20% discretionary Non Domestic Rates relief of approximately £431,460 per annum (there will be a grant cost of

£21,573 per annum to the City Council being 25% of the cost of the discretionary relief which equates to 5% of the total relief).

- 6.3 In order to allow Dundee Leisure Company to operate from the existing Council Sports and Leisure Facilities and to qualify for Non Domestic Rates relief, the Council would be required to lease these facilities to the Leisure Company.

A sale or outright transfer is not recommended as, if this were the case, at the end of the arrangement the transferred assets would be deemed charitable assets which would be transferred by the Court to another charitable body with similar aims and objectives to Dundee Leisure Limited.

Initially the 5 properties to be leased to Dundee Leisure Limited are:-

- (1) Olympia Leisure Centre
- (2) Lochee Swimming & Leisure Centre
- (3) Dundee International Sports Centre
- (4) Lynch Sports Centre
- (5) Douglas Sports Centre

It is proposed that the Council would continue to own the premises operated by the Leisure Company and lease these to Dundee Leisure Limited. The City Council would retain responsibility for all expenditure on repairs and maintenance. This is to ensure all Health and Safety repairs and maintenance are funded appropriately and arrangements are in place to ensure that repairs and maintenance expenditure is closely monitored. Initially a lease, on this basis, would be entered into for a period of 25 years with a mutual option to break and a review at the end of each 5 year period.

The Lease would set out the rights and obligations of the parties as regards access to, use, repair, maintenance and insurance of the properties and the property services to be provided by each party. This would include a requirement that Dundee Leisure Limited continued to provide the present level of access and programmes at Dundee International Sports Centre for Morgan Academy. The Council would continue to insure the premises. Dundee Leisure Limited will, however, require to arrange insurance cover for a range of risks including employers and public liability, directors and officers, personal accident and motor. The total net additional premiums for which are estimated at £50,000. This additional cost has been included in the savings calculation in Appendix A. Olympia Leisure Centre is due to be demolished in due course as part of the development of the Waterfront. This is not expected to be within the initial term of the lease i.e. 5 years. At a later stage the Council will determine whether the Leisure Company or the Council will build the replacement facility.

- 6.4 The nature of the payment made to Dundee Leisure Limited by the City Council in terms of the management agreement would be a fee for the provision of recreational and sporting services. This would allow a net overall VAT savings of £341,471 per annum as compared with the Council's VAT costs which at present is 15p in every pound of income. The Company would be liable for irrecoverable VAT which is calculated at £50,302. As most of its income would be exempt from VAT the company would be unable to reclaim all of the VAT it pays on purchases.

Advice would be required from the Council's Tax Advisers in regards to any refurbishments or new build works due to the Council's own tax exemption position. The Lease and Management agreements would need to be worded appropriately to take this into consideration. The charitable status of the company would exempt it from Corporation Tax in relation to its charitable activities.

- 6.5 By having charitable status, the company would be exempt from the climate change levy. This relates to Electricity and Gas and would generate a saving of approximately £34,200 per annum.
- 6.6 It is possible that a Leisure Company may be eligible for additional sources of funding including Lottery and European grants for development and expansion of services which are not presently available to the City Council.

- 6.7 There are certain additional start up costs which a Leisure Company would incur for financial and legal advice. This is estimated at £20,000 which the Council could fund from General Contingencies Fund. The company would have to have its own auditor and its own legal representatives. These costs are currently estimated at £5,000 per annum and would be met from the Leisure Company's administration budget.
- 6.8 Certain non-fixed items of sports and other equipment would be made available to Dundee Leisure Limited as would stock for resale. The Management Agreement would contain a provision entitling the Council to purchase any equipment purchased by the Company back at market value in the event of the termination of the agreement or lease. Dundee Leisure Limited would be able to join the Authorities Buying Consortium and avail themselves of any purchasing benefits that might accrue through bulk buying supplies with the Council.
- 6.9 Under the terms of the Transfer of Undertakings (Protection of Employment) Regulations 1982 (TUPE) all transferring employees would transfer to Dundee Leisure Limited on their existing terms and conditions of employment. The minimum number of staff would be transferred as is required to run a successful Leisure Company. In total there are 118 fulltime equivalent staff members scheduled to transfer to Dundee Leisure Limited. In the event that the total service or any element of it is transferred back to the Council, under current legislation TUPE would apply.

Members of the Committee will be aware that staff identified to be transferred have been successful under the Council's Management in providing an excellent service. Currently, swimming and leisure provision operated by Dundee City Council has achieved national recognition through the QUEST Leisure Industry Award Scheme. Staff and management have also achieved Investors in People status (IIP). The department has also achieved Scottish Tourist Board (now Visit Scotland) ratings for all its facilities. Where these ratings have been achieved, it will be expected that externally validated quality schemes will be maintained. The Management Agreements would require that this high level of performance would be maintained and where possible improved.

The staff to be transferred include the Leisure Centres Manager. Given his experience in operating leisure and sporting facilities it is recommended that he be appointed as Manager of Dundee Leisure Limited.

The Council would also require that Dundee Leisure Limited would offer similar conditions of service to staff appointed after the transfer of services as that given to transferring staff. Implicit in this is the desire of the Council not to create an organisation with a two tier structure and the Council would ensure that the Business Plan of Dundee Leisure Limited would reflect this desire. Any current permanent staff transferred to the Company would be able to return to employment with the Council in the event that the agreement or lease is terminated.

A provision for employees transferred to be able to use all the Council support services will be examined.

- 6.10 It is the intention that the pension rights that have applied to Council employees under the Local Government Pension Scheme would continue to apply to transferring employees post transfer to Dundee Leisure Limited to protect their accrued and future pension benefits. It is intended that Dundee Leisure Limited would become an admitted body under the Local Government Pension Scheme.
- 6.11 The Leisure Centres Section presently benefits from a range of support services. To assist Dundee Leisure Limited in the transition period from Council Management to independent management of the service, it is intended that the Council offer to provide a number of services to Dundee Leisure Limited at no cost. A Service Level Agreement would be put in place for each service.

Potential Services Include:

- (a) Financial services such as payroll, accounts payable, accounting and budgeting, VAT administration, internal audit, accounts receivable, cash collection/banking.
- (b) Citizen Account/Leisure Active Card development.

- (c) Information Technology Services.
- (d) Personnel Services
- (e) Legal Services
- (f) Administration, Training and Property Services
- (g) Marketing and Design
- (h) Grounds Maintenance
- (i) Passport Scheme
- (j) Emergency Rest Centre

Where Service Level Agreements are entered into it is recommended that, in the first instance, they should operate for 12 months and thereafter continue subject to 6 months notice of termination by either side.

- 6.12 Responsibility for the Leisureactive Scheme will also transfer to Dundee Leisure Limited. There are currently 2,720 members. The income, net of costs associated with running the Scheme will be retained by the Leisure Company. Costs will be defined within a service level agreement and subject to annual monitoring. The Leisure Company would also be required to continue to provide concession rates as per the Council's current charging guidelines to support its Equality Policies.
- 6.13 The Finance Committee of 14 June 1999, Article IV approved a report by the Director of Finance outlining the requirements of the Accounts Commission/COSLA Code of Guidance for Funding External Bodies and Following the Public Pound. In terms of the establishment of a Leisure Company it would be necessary to enter into a formal Management Agreement with the City Council covering a range of issues including Leisure Outputs, Health and Safety and Equal Opportunities Policies, Accounting, Report and Audit requirements, Financial and Performance Monitoring. A report would be submitted to the Leisure & Arts Services Committee (at least annually) covering desired outputs performance and financial information.

This would be the main mechanism defining the relationship between the Company and the Council. The payment of an annual management fee would be made by the City Council upon production of outline plans for the expected income and expenditure, the services, improvements and other expenditure plus the level of financial commitment agreed between the Council and the Company. Dundee Leisure Limited and Dundee City Council would agree the terms of each year's Business Plan prior to the commencement of the financial year.

A management fee equivalent to the 2005/06 approved revenue budget deficits for these facilities, adjusted for the savings calculated at Appendix A and also adjusted in line with Leisure and Communities Department's budgets for an initial period of 5 years would be reviewed annually to reflect development in swimming and leisure facilities. Dundee Leisure Limited would be heavily reliant on the Council's payment for its income and this would ensure the Council retains influence over the delivery of the service and related costs and thus achieve its aims and objectives. However the Management Agreement would include provision for any complaints into the operation of the facilities to be investigated by the Chief Executive of Dundee City Council to ensure that users of the facility will continue to have the support of Dundee City Council.

- 6.14 Dundee Leisure Limited would be responsible for the operation of community access to sports programmes in PPP schools and community swimming.
- 6.15 In the event that the Council would wish to bring the operation of the Sports and Leisure facilities back in house, there would be an exit strategy developed to regulate how this would happen.
- 6.16 The approved budget for 2006/07 for the provision of the services transferring to the Leisure Company would be the basis of the proposed Management Agreement. A paper detailing the revenue budget for 2005/06 is attached at Appendix A. The Management Agreement payment payable for 2006/07 would be calculated pro-rata to the operational start date of the Leisure Company.

## **7. ESTABLISHING DUNDEE LEISURE LIMITED**

### **7.1 Leisure Company Organisation**

It is proposed that a Management Board be established consisting of a maximum number of 13 directors.

### **7.2 Advisors**

External Legal and Financial Advisor would be appointed to draw up the Articles of Association for Dundee Leisure Limited, register the Company and gain charitable status from the Inland Revenue. It is proposed that the Depute Chief Executive (Finance) and Depute Chief Executive (Support Services) are authorised to appoint the Legal and Financial Advisors.

## **8 CONSULTATIONS**

The Chief Executive and Depute Chief Executive (Support Services) have been consulted on the contents of this report.

## **9 BACKGROUND PAPERS**

None

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9 January 2006

<b>DUNDEE CITY COUNCIL</b>		Appendix A	
<b>Leisure and Arts Department - Leisure Trusts</b>			
<u>Analysis - 2005/06 Budget</u>			
<b>EXPENDITURE</b>		<b>DCC</b>	<b>Trust</b>
		<b>£</b>	<b>£</b>
Staff Costs		2,411,929	2,411,929
Rates		431,460	0
Insurance		35,440	35,440
Repairs		0	0
Parks DSO		0	0
Cleaning		31,160	31,160
Water		129,690	129,690
Energy		394,832	360,632
Boiler Leasing		37,686	37,686
Equipment Purchase		13,164	13,164
Stock Purchases		32,907	32,907
Uniforms		6,784	6,784
Chemicals		34,931	34,931
Stationery & Printing		1,013	1,013
Other Supplies & Services		103,061	103,061
Telephones		16,504	16,504
Corporate Insurance		0	50,000
Dept Administration		0	0
Central Administration		0	0
Vat Cost		0	50,302
		<b>3,680,561</b>	<b>3,315,203</b>
<b>INCOME</b>			
Total "Playing" Income		(1,951,263)	(2,292,734)
Restaurant		(6,000)	(6,000)
Education		(143,603)	(143,603)
Amusements/Machines		(5,125)	(5,125)
Sale of Goods		(49,098)	(49,098)
Other Income		(28,290)	(28,290)
Tayside Health Board		(56,000)	(56,000)
Car Park		(52,531)	(52,531)
Management Fee		0	(680,284)
Telephones		(1,538)	(1,538)
		<b>(342,185)</b>	<b>(1,022,469)</b>
<b>NET EXPEND/(SURPLUS)</b>		<b>1,387,113</b>	<b>0</b>
<b>N.B.</b>			
It is estimated that the unrecoverable VAT on expenditure is:-			76%
The Trust surplus will result in a reduction in the Management fee.			
Repairs, Central Support and Departmental Admin to be provided free of charge.			
Rates		431,460	
5% NRDI Cost	-	21,573	
Income		341,471	
Climate Change		34,200	
Corporate Insurance (Net Additional Cost)	-	50,000	
VAT	-	<u>50,302</u>	
		685,256	
Contingency	-	<u>45,256</u>	
		<u>640,000</u>	

