

# CABINET

## Consideration of a Cultural Services – Trust (Not for Profit Distributing Organisation) 11<sup>th</sup> December 2007

### Report of Head of Cultural Services

PURPOSE OF REPORT				
Consideration of a Cultural Services – Trust (Not for Profit Distributing Organisation).				
Key Decision	X	Non-Key Decision	Referral from Cabinet Member	
Date Included in Forward Plan	December 2007			
This report is public				

#### RECOMMENDATION OF COUNCILLOR MAIA WHITELEGG

1. That Cabinet supports the principle of establishing a Not for Profit Distributing Organisation (NPDO/Trust) for Cultural Services, on the basis as outlined in this report.
2. That Officers draw up the full project planning documentation for establishing a Trust, covering the issues set out in section 4.3 of this report, for subsequent approval by Cabinet.
3. That the estimated implementation costs of establishing a Trust be considered as part of the 2008/09 budget process, and that its establishment be included in the Cabinet's draft priorities, for incorporation into the draft Corporate Plan for consideration by Council.

#### 1.0 Introduction

- 1.1 Although Lancaster City Council did in 2002 [minute 275 (02/03) refers] give consideration and rejected the option of a Not-for-Profit Distributing Organisation [NPDO]/Trust delivery model for the operation and management of Salt Ayre Sports Centre, this report presents the case for a "Whole Service" – i.e., a Cultural Services Trust.
- 1.2 Part of the argument against Salt Ayre Sports Centre not being recommended for "transfer" to an NPDO/Trust at that time was based on the issue of scale, in that the size of the function was too small to offer clear advantages (financially and/or strategically) to the Council.

1.3 However, within the context of the Council's Medium Term Financial Strategy (MTFS), the Comprehensive Spending Review (CSR), the Government's Agenda of Improved & Innovative Service Delivery Models, and the Comprehensive Performance Assessment (CPA), Cabinet is asked to give consideration to establishing a Not-for-Profit Distributing Organisation [NPDO]/Trust delivery model for a generic Cultural Services function. Since 2002 many Councils across the Country have successfully evaluated NPDO/Trusts for a range of Leisure Services.

**2.0 What is a Not for Profit Distributing Organisation (NPDO), also commonly referred to as a Trust?**

2.1 An NPDO/Trust is another way of providing the Cultural Services currently delivered by Lancaster City Council. Although there are different NPDO/Trust structures, the most common type is a company limited by guarantee, either with or without charitable status. This means that as a non-profit making organisation any operating surpluses would be reinvested back into Cultural Services. NPDO/Trusts are independent charitable businesses managed by a board of Trustees. Lancaster City Council would continue to own all its Cultural facilities. An agreement between the NPDO/Trust and the Council would clearly set out what the NPDO/Trust is expected to achieve and the funding provided from the Council to carry this out.

2.2 The broad principles that emerged from the work undertaken as part of the NPDO/Trust feasibility study for Salt Ayre Sports Centre still apply;-

<b>Potential Advantages/Opportunities</b>	<b>Potential Disadvantages/Risks</b>
<ul style="list-style-type: none"> <li>• Single purpose organisation with a focus on the functions that make up Cultural Services.</li> <li>• Taxation savings -National Non-Domestic Rates (NDR) can be reinvested in the service when required.</li> <li>• Generally improves a Council's overall position in relation to partial exemption threshold for VAT.</li> <li>• Freedom from local government framework and decision making.</li> <li>• A partnership approach to investment.</li> <li>• Engagement with the local community through local representation.</li> <li>• As a smaller-scale operation staff can be more involved in the development of the service.</li> <li>• Trustees with business expertise.</li> <li>• Links to the community through direct representation on the board.</li> </ul>	<ul style="list-style-type: none"> <li>• Difficulty in leveraging in sufficient external capital.</li> <li>• Potential for links to be lost to other Council services.</li> <li>• Dependency on attracting and retaining quality trustees/directors.</li> <li>• Set up costs can be significant.</li> <li>• Limited additional management capacity as generally same management and staff retained initially.</li> <li>• Risk of trust failure rest with the Council.</li> <li>• Annual grants restrict long-term planning.</li> <li>• Small trusts have limited ability to make support cost savings.</li> <li>• Overheads of Council's central services, not transferable to Trust, spread over fewer services (unless removed by the Council).</li> </ul>
<p style="text-align: right; font-size: small;">Source: Based on Audit Commission June 2006 and previous work undertaken by Lawrence Graham</p>	

2.3 However, when the "advantages" are applied to the whole Cultural Services remit, which includes the former Leisure Services, the former Arts & Events Service and Museum Services there is a size and scale that makes such an option feasible to the Council, both strategically and financially. There is also the option to include, either at

the same time or at a later date, the transfer of Williamson Park Company (future management arrangements to be considered at their January Board meeting), additional service functions such as Tourism Services and parts of the sports related Grounds Maintenance function, and Youth and Community Services (the latter subject to negotiations with Lancashire County Council).

- 2.4 The majority of the functional areas that make up Lancaster City Council's current Cultural Services (Sport, Recreation, Leisure, Community Development, Arts & Events, and Museums) are discretionary. As the Council attempts to balance and prioritises its functional resources (including year-on-year reductions in its Revenue Budget), inevitably attention focuses on "cuts" and "savings", but at a time when the Cultural Services' outcomes increasingly feature in the Community Strategy and Local Strategic Partnership Agenda (e.g., Crime & Disorder, Health & Well-being, Community Regeneration/Sustainability, Social Enterprise, etc.).
- 2.5 Coupled with the above, the Council has a portfolio of facilities that require on-going maintenance and refurbishment, which are currently being managed through a limited mix of Capital and Revenue allocations. In the long term, because of competing priorities and investment needs, it is likely that such a position is unsustainable.
- 2.6 Although the NPDO/Trust option is not the only alternative delivery model for Cultural Services, an increasing number of Councils are evaluating such an option, as opposed to the commercial "contract" management model – similar to Compulsory Competitive Tendering (CCT). The advantages of NPDO/Trust over commercial contract are:-
- Social objectives
  - Social Enterprise Organisation
  - "Partnership" Model – Strategic Enabler – Clarity of Roles between the Council and the Trust
  - Links to the LSP Community Strategy
  - Better incentives for parties to work together

### **3.0 What is happening elsewhere in the North West?**

- 3.1 An increasing number of local authorities in the North West are either operating or evaluating NPDO/Trust arrangements. Nationally, more than a hundred local authorities have established Cultural and/or Leisure NPDO/Trusts. Prior to the May 2007 local government elections, Officers and three Elected Members from Lancaster City Council visited a number of Cultural and/or Leisure Trusts (including;- Wigan, Pendle and Rossendale). One of the largest Cultural Services Trusts in the country is in Wigan. Wigan Metropolitan Borough Council transferred its Cultural Services (Sports and Leisure, Arts, Museums, Archives, Libraries, and Youth and Community Services) to Wigan Leisure Cultural Trust in 2003 and the Trust has now been operating successfully for more than four years. However, in meeting with key Officers and Elected Members from both Wigan Metropolitan Borough Council and the Wigan Leisure & Cultural Services Trust, both stated their opinion that their success is based on their on-going "partnership", that forms part of their Memorandum of Understanding (supported by a "Concordat" signed by the Leader of the Wigan Metropolitan Borough Council and the Chair of the Wigan Cultural & Leisure Services Trust).
- 3.2 Furthermore, Wigan Borough Council and the Wigan Leisure & Cultural Services Trust, believe that the success of the transfer was built on;-

- Communication
- Consultation
- Shared Vision via “Concordat”
- Clear Rationale leading to Strategic, Financial & Service Improvements

3.3 Wigan Borough Council and the Wigan Leisure & Cultural Board’s evaluation of its operation are;-

- A re-energised service
- Better able to take tough decisions (e.g. investment and/or closures, etc)
- Different organisational culture – compared to Council Committee
- Clear organisational and business “Vision” - clarity of social objectives of the Trust
- Specific expertise of Board Members
- External Funding

3.4 The arrangement between Wigan Borough Council and the Wigan Leisure & Cultural Services Trust for the first two years of operation was that the Trust “bought-in” the Council’s Central Services. However, it was acknowledged by both parties that the Trust could/would have an “opt out” after year three. However, with the phasing of such an agreement the Council has been able to manage the impact. Furthermore, the relationship at Wigan is such that the Trust and the Council have since transferred other Leisure/Culture related operational functions i.e., grounds maintenance for playing pitches and parks directly to the Trust. The Trust in turn has established a series of Community Land Management Agreements for a number of their Parks, via the Trust arrangement (which in turn involves local community and voluntary groups).

#### **4.0 Proposal Details**

4.1 As Lancaster City Council has previously given consideration and rejected a single facility (Salt Ayre Sports Centre) Not-for-Profit Distributing Organisation [NPDO]/Trust delivery model, this report seeks to determine whether Cabinet wishes Officers to investigate and evaluate the implications relating to the Not for Profit Distributing Organisation (NPDO/Trust) option for the whole of Cultural Services.

4.2 From the lessons learnt following the rejection of the Salt Ayre Sports Centre Trust appraisal, and from visiting other sites such as Wigan, it is proposed that if Cabinet are supportive of 4.1 above, Officers would initially focus on planning the project in detail, for future consideration and approval. In particular, the documentation would set out clearly the full scope and objectives of setting up an NPDO/Trust. Furthermore, the work would also firm up the resources needed to progress the project. This would go forward as part of Cabinet’s budget and planning proposals; if these are ultimately approved, the project would then go ahead. This approach would ensure that focus is maintained on agreeing up front the key objectives and issues to be addressed in setting up a Cultural Services NPDO/Trust.

4.3 The key issues to be addressed in planning the project are set out below Many of these are based on the Audit Commission Study “*Public sport and recreation services*” June 2006, and previous work undertaken by Lawrence Graham;-

- Determining the scope of the Cultural Services NPDO/Trust, and the timescales for transfer of services to the Trust.

- Determining the objective and performance targets/ measures for the Trust
- Determining its governance and reporting arrangements.
- Determining the financial objectives both for the Council, and those under which the Trust would operate. This would include;-
  - Evaluating the impact to the Council of the remaining Central Support Services and options of how to deal with them, including the apportionment of central and support service charges.
  - Appraising the Landlord and Tenant relationship options between the NPDO/Trust and the Council, in terms of;- Length of Agreement and Lease, responsibilities for condition surveys and maintenance, as well as refurbishment and development responsibilities.
  - Determining the use of NNDR/VAT Savings. The Council will need to determine what, if any, proportion of any NNDR/VAT savings that the NPDO/Trust retains. Some local authorities allow all such savings to be wholly retained by the NNDR/Trust to deal with on-going maintenance, future investment requirements and service improvements, etc. Other local authorities because of pressures on corporate budgets and the need for efficiency savings take up a significant part, or all, of the NNDR/VAT savings (despite the fact that taxation savings cannot be set against Gershon targets), which results in little or no investment in the NPDO/Trust’s facilities and services.
  - Determining the level and profile of any Partnership Fee (Management Fee) against the achievement of the performance measures set by the Council. This will include delivery against current business plans, service objectives, Council objectives/priorities and any national or local indicators. Mechanism for receipt of any Partnership Fee would be based on satisfactory performance of the NPDO as agreed with the Council.
  - Determining any other financial objectives attached to the Trust.
- Determining the accurate cost to Lancaster City Council of setting up a Cultural Services NPDO/Trust. The costs of setting up a NPDO/Trust are estimated, for a Council comparable to Lancaster City Council, at between £40,000 to £50,000.

4.4 Wherever possible, such objectives or issues would be determined prior to the project itself starting, but it must be recognised that some aspects could only be addressed as the project progressed. Where this is the case, the planning stage would make this clear, and provide for appropriate decision-making along the way.

4.5 Should Cabinet wish to pursue the Cultural Services Trust option, then funding would need to be allocated in order to progress the project. The amount referred to above reflects the existing in-house knowledge and expertise as a result of the work previously undertaken with regards to the Salt Ayre Sports Centre NPDO/Trust appraisal. The estimate is not the full cost, as it is assumed that some of the work would be undertaken by existing staff, seconded to the project. Furthermore, more work is needed to firm up this estimate.

## **5.0 Details of Consultation**

- 5.1 As this report could potentially involve a significant Policy decision, pending the initial decision of Cabinet, no consultation has been undertaken to-date. In the event that Cabinet recommend Officers to investigate and evaluate a Not for Profit Distributing Organisation (NPDO/Trust) option for the whole of Cultural Services, that process would include consultation with the public, staff and Trade Unions.

## **6.0 Options and Options Analysis (including risk assessment)**

- 6.1 In summary, the basic options are:

**Option 1:** Not to consider the setting up of a Cultural Services NPDO / Trust, or

**Option 2:** To support the principle, and take it forward as part of the 2008/09 budget and planning process. In support of this, officers would focus on planning the project.

The context for undertaking an appraisal of a Cultural Services NPDO/Trust is set out in paragraph 1.3, which takes into account factors such as Council's Medium Term Financial Strategy (MTFS), the Comprehensive Spending Review (CSR), the Government's Agenda of Improved & Innovative Service Delivery Models, and the Comprehensive Performance Assessment (CPA). An outline risk assessment of the Trust Option is also included in section 2.2. If Members choose to take this option forward, then the project planning work to be undertaken would expand on this, and also take account of the latest information arising in terms of the Council's financial forecasts, and its planned objectives.

- 6.2 The decision as to whether Officers should investigate and evaluate a Not for Profit Distributing Organisation (NPDO/Trust) option for the whole of Cultural Services is for Cabinet to determine initially, subject to the budget and planning process. However, should Members choose not to take forward that option, consideration would still need to be given to ensuring value for money is being achieved under current arrangements, addressing the Audit Commission's agenda of continual improvement, and responding to the need to evaluate alternative delivery models.

## **7.0 Officer Preferred Option (and comments)**

- 7.1 That Cabinet supports the principle of establishing a Not for Profit Distributing Organisation (NPDO/Trust) for Cultural Services, on the basis as outlined in this report, for consideration as part of the 2008/09 budget process, and that Officers progress work on planning such a project.

## **8.0 Conclusion**

- 8.1 This report does not commit Cabinet to establishing a Cultural Services NPDO/Trust, but rather to considering key issues, as part of and prior to any final decision.

## **RELATIONSHIP TO POLICY FRAMEWORK**

Dependant on Cabinet's decision this report could potentially involve a significant Policy impact in terms of the Council's Corporate objectives, including Health and Well Being, Community Engagement and Improving Council Services.

## **CONCLUSION OF IMPACT ASSESSMENT**

**(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)**

Dependant on Cabinet's decision this report could potentially involve a significant Policy impact in terms of Community Engagement and Involvement.

## **FINANCIAL IMPLICATIONS**

As outlined above, it is currently estimated that undertaking the project work to support the implementation of an NPDO/Trust for Cultural Services would cost around £40-50,000, although this estimate needs refining and reviewing. If Cabinet were to support this option, it is recommended that this be considered as part of the current budget and planning process.

In terms of the longer term impact, the proposals provide for the financial objectives of setting up a Trust to be determined from the outset of the project, if at all possible. Until these have been agreed, therefore, the financial implications cannot be assessed.

## **SECTION 151 OFFICER'S COMMENTS**

Irrespective of which option is taken forward, the provision of cultural services requires a significant level of investment by the Council, in both revenue and capital terms. As such, Members are advised to consider the affordability of providing such services in the medium to long term, as well as the value for money aspects. With regard to affordability, this should also be taken into account in determining the scope and financial objectives of any potential Trust. (i.e. if Members were to consider a significant change in the level of services provided, this may well influence whether a NPDO/Trust is appropriate, and/or the scope of any such potential Trust.) That said, the recommendations allow time for the Council to develop its medium term financial forecasts, as part of the current budget exercise. The updated forecasts could then be used to inform the scope of any NPDO/Trust project.

## **LEGAL IMPLICATIONS**

There are no legal implications directly arising from this report but should a decision be made to pursue an evaluation exercise it is appropriate that Legal Services should be consulted on the creation of an NPDO/Trust.

## **MONITORING OFFICER'S COMMENTS**

The Monitoring Officer has been consulted and has no further comments at this stage.

## **BACKGROUND PAPERS**

None.

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