

TRAFFORD COUNCIL

Report to: Overview and Scrutiny Committee
Date: 16th March 2016
Report of: Paul Helsby, Programme Assurance Lead

Report Title:

Provision of Leisure within Trafford

Summary

This report sets out the Council's approach to managing and developing the provision of leisure services in the borough following the creation of the Council's Community Interest Company which commenced trading on 1st October 2015.

Recommendation(s)

To note progress to date in setting up Trafford Leisure Community Interest Company Ltd and the context and next steps relating to the company including the development of a Leisure Strategy for the borough.

Contact person for access to background papers and further information:

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Background Papers:

1. Report of the Executive Member for Communities and Partnerships - Trafford Leisure Services.

Background

Trafford Leisure Trust, a separate legal entity, operated leisure services in the borough under contract to the Council for approximately 12 years. This contract ended on 30th September 2015 and the Council were given notice by the Trust that they intended to cease trading beyond this date.

The Council took the decision to create a wholly owned company to provide leisure services. Trafford Leisure Community Interest Company (CIC) Ltd was formed in September 2015 and commenced trading on 1st October 2015. The staff transferred from the outgoing Leisure Trust and a new Board of Directors was appointed by the

Council to provide governance and leadership to the company on behalf of the Council.

The CIC model ensured that the new company retained many of the benefits enjoyed by the outgoing Trust; particularly the VAT and business rate relief status remained unchanged thus keeping the cost of accessing services as low as possible for residents of Trafford. By wholly owning the company, it also provided the Council with the opportunity to take time to fully assess all the options for investment into the facilities and the future management arrangements. This approach avoided the need to rush into a procurement process and make hasty decisions about facilities, services and the workforce that could be more fully considered over time.

Community Interest Companies are Limited Companies, designed primarily for social enterprises that want to use their profits and assets to benefit a defined community. Upon formation, the Company Articles of Association had to satisfy the "community interest test" and must continue to do so during the lifetime of the company. Compliance with the test is overseen by the Regulator of Community Interest Companies.

The Council is the sole shareholder and discharges its responsibilities through the Board of Directors it has appointed. Along with complying with specific CIC regulations, the Directors are responsible for general compliance with company law.

The Council previously took a decision to remove the annual management fee amounting to £452k. Part of this was paid to the outgoing Trust for the period to 30th September 2015 with the last part year portion paid to the new CIC when it commenced trading. The Council will no longer provide this fee to the CIC, which means that they must meet all operating costs from the revenue that it generates from service users beyond 31st March 2016.

The CIC has now been trading for almost six months and is operating to the interim business plan established when the company was formed. It is now putting in place measures to deliver a combination of savings and revenue generation to address the financial shortfall related to the removal of the Management Fee. The Council has undertaken to support the company, in the short-term, to cover any cash flow implications given that the new company has limited working capital, which will need to be built up over time. This support would only be provided on the basis of an interest bearing loan.

Leisure Strategy

Now the company has been set up and stabilised, Council officers have commenced work on the preparation of a Leisure Strategy for the borough which will form the basis of future provision across the range of sporting clubs and associations whilst also taking into account the future provision of leisure centres and thus the facilities that are operated by the CIC.

As part of this work, a full supply and demand analysis is being undertaken to ensure that there is a robust understanding of any gaps in provision to meet the typical demand of the Trafford population as set out in Sport England's criteria and methodology.

The Leisure Strategy will also set out the long term requirements from its built leisure facilities which the CIC currently operate. In conjunction with this a commercial

prospectus will be developed that establishes the level of investment required and the revenue stream enhancements that could fund the investment sustainably. This process will also establish whether or not the CIC has long-term viability.

The Council is also required to produce a Playing Pitch Strategy (PPS) in consultation with the various sports governing bodies and Sport England. Many of the clubs and associations that operate from Council owned premises do so under short term hire agreements or longer term leasehold arrangements that may be due to expire. It is important for these clubs and for the Council to develop a coherent strategy that pulls together the various current arrangements and funding streams. This will enable the Council to set out a context for the future provision of sport and leisure facilities so that, wherever possible, the Council can provide security of tenure in full sight of all the options, financial implications and demand for facilities, that then allows these associations and clubs to develop sustainable plans together with any investment proposals they may seek from the relevant governing bodies and Sport England.

Timescales

The Leisure Strategy is likely to be completed by April 2016 and will then be subject to consultation more broadly where there are specific opportunities or implications.

The Commercial Prospectus will be completed within the same timeframe as the Leisure Strategy providing the Council with an understanding of the potential investment required for each of its leisure centres and the operating revenues that may be generated to support the investment. Alternative opportunities for generating an investment fund will also be explored.

The Playing Pitch Strategy is subject to consultation with Sport England and the Governing Bodies for each of the major sports. Officers are currently assessing the status of the work produced to date in preparation for the commencement of the consultation process. The approach to this is set nationally by Sport England and requires close adherence to their methodology. Whilst work is underway the timescales for completion of this are currently being assessed.

Financial Impact:	The development of the leisure Strategy will set out the investment requirements for the leisure infrastructure and the revenue/capital implications that may flow from implementation.
Legal Impact:	Under Section 111 of the Local Government Act 1972, the Council has the power: " <i>to do anything (whether or not involving the expenditure, borrowing or lending of money or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions.</i> " This power permits authorities to participate in and even establish separate entities, provided the particular action is not prohibited in any other enactment, and the authority is of the opinion that doing so will improve the discharge of the particular function. Section 1 of the Localism Act 2011 contains a

general power of competence and provides that "A local authority has power to do anything that individuals generally may do".

Section 95 of the Local Government Act 2003 permits local authorities to do, for a commercial purpose, anything that they are empowered to do by statute, as long as they do so through a company. The section contains an implied power to establish and participate in a company.

The 2009 Trading Order England requires the Council to prepare a business case supporting the exercise of its power under Section 95 before trading starts.

The CIC is subject to rules on controlled, influenced, regulated and minority interest companies in Part V of the Local Government and Housing Act 1989 and the Local Authorities (Companies) Order

The main consequences of the CIC being controlled or influenced are contained in the 1995 Order:-

(a) All relevant documents must state that the CIC is controlled or influenced by the Council and the Council must be named.

(b) There are limits on the allowances payable to directors of the CIC.

(c) Regulated companies are bound by the restrictions on publication of information imposed by Section 2 of the Local Government Act 1986. This means that they are prohibited from publishing party political material.

(d) Directors of regulated companies must be removed if they become disqualified from membership of a local authority.

(e) Requirements would be imposed relating to the provision of information to the Council's auditor and members and of financial information to the Council.

(f) Controlled companies that are not arms' length companies must allow for public inspection of the minutes of any general meeting for four years after the meeting, unless disclosure would be in breach of any statutory requirement or obligation owed to any individual.

(g) Any financial commitments entered into by the CIC, will have to be included in any assessment of the Council's finances under the prudential framework for capital investment by local government.

The directors are subject to the directors' duties as set out in the Companies Act 2006:

(a) Act within powers

(b) Promote the success of the company

(c) Exercise independent judgement

	<p>(d) Exercise reasonable skill, care and diligence (e) Avoid conflicts of interest (f) Not accept benefits from third parties (g) Declare interest in any proposed transaction or arrangement with the company.</p> <p>The Council is also required to have in place a Playing Pitch Strategy which can act as an enabler to clubs and associations that wish to attract investment funding from their governing bodies or Sport England. It is therefore essential that the PPS is endorsed by Sport England and the sports bodies as it is usually a condition of the funding.</p>
Human Resources Impact:	The Council has formally appointed Company Directors to oversee the business. The employees of the Trust transferred to the CIC on 1 st October maintaining their existing terms and conditions.
Asset Management Impact:	The Council has responsibility for the maintenance and repair of the leisure centres and many of the playing pitches in the borough. Opportunities to mitigate the exposure to maintenance costs will be explored through the process of developing the Leisure Strategy and the Playing Pitch Strategy.
E-Government Impact:	N/A
Risk Management Impact:	<p>The CIC has developed an interim business plan that provides the assurance to the Council that the business will be viable in the short term. The Commercial Prospectus will provide insight in to the longer term viability of the CIC and the ability to generate investment into the physical infrastructure of the leisure centres.</p> <p>Assets have remained in the ownership of the Council but passed to the CIC for the purpose of delivering The Contract. They are passed in their existing condition (<i>see Health and Safety implications</i>). The future investment options will determine whether or not this is the best long-term option for the Council.</p>
Health and Safety Impact:	The Council has copies of Health and Safety compliance information for all premises from the Leisure Trust at the point of transfer. An audit of that information was undertaken and an asset management plan is being put in place to ensure that the facilities meet health and safety requirements.

	The Council may also have residual health and safety implication for many of the playing pitches and this will be managed and wherever possible mitigated through any future asset transfer process.
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Consultation

Each Local Authority is required to have a published Playing Pitch Strategy. It is a technical requirement that the main sports governing bodies and Sport England must be consulted during its production. Each governing body act in the interests of the clubs affiliated to them and specifically consults them as required during the process of providing feedback to the Council.

Consultation on the Leisure Strategy will be undertaken as appropriate based on the recommended outcomes contained with the draft document.

Reasons for Recommendation(s)

This report is for information only.