

Report To: Council

Date of Meeting: 30th May 2019

Lead Member / Officer: Cllr Bobby Feely & Cllr Julian Thompson-Hill

Report Author: Graham Boase

Title: Implementation of an Alternative Delivery Model (ADM) for various leisure related activities/functions

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### **1. What is the report about?**

To consider the draft Business Case and associated information for the implementation of a Leisure related Council owned, not for profit Local Authority Trading Company limited by guarantee (LATC).

### **2. What is the reason for making this report?**

To seek Council's view in respect of the draft Business Case (Appendix A) for establishing a Local Authority Trading Company (LATC), for a range of previously agreed "in scope" leisure related activities/functions. Please note that elements of the business case have been redacted where there was either a commercial interest or where individuals could be identified.

### **3. What are the Recommendations?**

That Council:-

- 3.1 Support the final Business Case for the Project
- 3.2 Support the establishment of a not for profit Local Authority Trading Company limited by Guarantee, (LATC).
- 3.3 Support the appointment of the Corporate Director: Economy and Public Realm to the Board of the LATC.
- 3.4 Support the retention of the current name 'Denbighshire Leisure' for the LATC.
- 3.5 That Council confirms that it has read, understood and taken account of the Well-being Impact Assessment, (Appendix B, Ref no 564), as part of its consideration.

### **4. Report details**

- 4.1 The Strategic Case sets out the challenge of the current financial climate, and the potential for the Council to make savings (initially via NNDR relief and VAT exemptions), alongside future external trading opportunities. Whilst the consideration of an ADM of this type is a new initiative for the Council, many other Councils throughout the UK are already using similar ADM's to deliver a range of functions.

Throughout the development of this project, Officers have benefitted from the knowledge and lessons learnt by other Councils, within North Wales. Appendix C provides details of other alternative delivery model companies established, and some of the lessons learnt.

- 4.2 An assessment process was undertaken to determine the scope of the project, and the Project Board used a scoring matrix to inform this process. The in scope facilities and functions include the 7 x Municipal Leisure Centres, Prestatyn Nova, SC2, Rhyl Pavilion Theatre, Rhyl Events Arena and events function, North Wales Bowls, Rhyl Town Hall, Ruthin Craft Centre, Llangollen Pavilion, Operations and Business support for Leisure, Commercial Catering (1891, SC2, Café R), and Strategic Leisure. Based on the current staffing lists there are approx. 244 staff members who are within the scope of the project. In 2018/19 the Council subsidy in respect of the in scope facilities functions and activities was circa £3m. A detailed breakdown, including analysis of revenue contributions funding borrowing, is included within Appendix 4E of the Business Case, which is within Appendix A of this report.
- 4.3 Of the “in scope” functions, Strategic Leisure has generated most discussion. Both Lead Members have clearly expressed their preference for Strategic Leisure to remain “in scope”. The Strategic Leisure function is detailed within the Strategic case of the Business case (Appendix A), at pages 15 & 16, where further details can be found regarding the ten key areas of activity that it delivers. The inclusion of Strategic Leisure within the LATC enables the provision of a broad and cohesive Leisure/ community well- being offer with ease of access for all residents. From an organisational perspective its inclusion facilitates staffing arrangements, enables knowledge and expertise to be shared across the service, provides one brand with multiple points of access to services, and enables staff to direct customers to additional activities in other locations, which they may enjoy and/or benefit from.
- 4.4 The introduction of change to both those functions “within scope” and the rearrangement of those functions “out of scope” across the wider Council management structure is not without issues/risks. These issues/risks will be carefully managed through the implementation phase of the project. Whilst the benefits of the project are primarily related to financial savings, emphasis has also been placed on capturing the wider benefits for the Council, and maintaining the quality of the service provision.
- 4.5 The Commercial Case provides a detailed overview regarding the selection of a delivery model which would facilitate the identified savings and protect the Council’s interests. At the start of the process this involved an initial high level appraisal which considered a range of options; these were subjected to a detailed legal analysis which suggested that an LATC would be the most appropriate model for the Council.
- 4.6 Within the ‘umbrella term’ of LATC there are a number of variations/different types of LATC, and the recommendation for the Council is a ‘not for profit’ LATC limited by guarantee, that is wholly owned by the Council. This form of LATC is considered the most appropriate to enable the savings associated with NNDR and VAT to be realised, whilst providing a level of control to protect the Council’s interests. It also allows the LATC freedom to trade elsewhere, and potentially generate a proportion of its income from sources other than the Council.

- 4.7 The LATC would be overseen by a Board, the composition of which needs to be balanced to provide the Council with an adequate level of control, and ensure that the LATC has the expertise, business acumen and support that it requires to be successful in a commercial environment. It is considered that the LATC Board comprises 7 voting members which could include the Corporate Director: Economy and Public Realm, the relevant Lead Member with responsibilities for Leisure, Chair of a Scrutiny Committee, or the Chair of Corporate Governance, a further DCC Member, the Managing Director of the LATC and the Finance Director (accountancy post for the LATC), and one external non- executive Director. It is also proposed that the Council establish its own Strategic Governance Board to challenge the workings of the LATC Board. This would be in addition to the Council's established reporting mechanisms of CET, Cabinet, Council, Scrutiny, Corporate Governance etc.
- 4.8 To enable an LATC to be established as a legal entity, it needs to have one 'living' Director and a name, hence the recommendation that Council approve the appointment of the Corporate Director: Economy and Public Realm, and the name to facilitate the progression of the project. This provides time for the Council's Recruitment Panel to review the other appointments with a view to them making a recommendation to Council in respect of the LATC Board, and Cabinet in respect of the Strategic Governance Board.
- 4.9 The Council will contract the LATC to carry out the in scope leisure related services on its behalf. It is planned that the LATC would be given a 10 year contract to give it some future surety, with a planning cycle and mechanism whereby the level of Council subsidy and the outcomes/benefits that the Council wishes to prioritise through the service delivery, are agreed each year. In this way the LATC can be challenged to find savings in the same way as other Council departments, to respond to future financial pressures. Equally should the LATC generate additional net income from trading outside the Council contract, this will provide an opportunity to reduce the Council subsidy, or reinvest income in the facilities, or a mixture of both.
- 4.10 The contract between the LATC and the Council will be managed in house, using a similar form of contract management as that used for the Civica contract. The Heads of Terms for the contract are included within Appendix D.
- 4.11 The buildings/grounds currently used for the delivery of the in scope Leisure services will be leased to the LATC on peppercorn rents for a 10 year period and these will be back to back with the contract. Provision will be made within the leases to protect the existing SLA's with schools, and maintain the current access to the building for elections, emergency requirements etc. Likewise access will be maintained to the Registrar's office within Rhyl Town Hall. The leases will specify the maintenance responsibility of the Council and the LATC, and routine inspection visits will be included. These arrangements will broadly reflect the existing arrangements between Leisure Services and Property and Asset Services, including Council decision making processes around Capital (e.g. Asset Management Group, SIG, Cabinet, Council etc).
- 4.12 The existing ICT infrastructure, service and support will be extended to the LATC. There may be extra costs associated with licence fees if the LATC is unable to benefit from the Council's existing preferential rates.

- 4.13 Whilst the implementation of an LATC will enable the Council to make savings on NNDR and VAT, there are also costs associated with the delivery of the 'in scope' leisure activities /functions through a separate legal entity. The economic case compares the financial costs and benefits of the introduction of an LATC as compared with the existing, ('do nothing') model.
- 4.14 The savings are estimated at £1,107k. The NNDR advice received suggests that there would be 90% relief on NNDR which equates to a saving of a £623k. The VAT savings based on the advice received to date will be a minimum of £284k, and further advice is being sought in respect of the potential for VAT savings associated with a 'cultural exemption', and to review the opportunities relative to SC2. When the company is established it will have to meet its own pay and other cost inflation, and in 2020/21 this is in the region of £200k. The expectation is that the LATC will continue to meet these inflationary costs in future years.
- 4.15 The NNDR savings noted within 4.14 are net of the Business Improvement District (BID) Levy on the 'in scope' facilities within Rhyl as they all meet the criteria and will pay the levy of circa 2% on the rateable value of the premises. Likewise should other Business Improvement Districts be established, in scope facilities within those areas will be liable to pay the full BID levy due.
- 4.16 There are a number of known ongoing revenue costs that the LATC and/or the Council will incur should the LATC be established, and these are estimated at £304k. The additional costs reflect the need for an accountancy post for the LATC, Directors costs for insurance cover and remuneration for any independent Directors on the LATC Board, contract management costs, external audit costs, staffing costs associated with the allocation of the remaining Facilities Assets and Housing Service to other service areas, reduction in dual use income due to NNDR relief, potential increase in pension's liabilities and software licence costs, and a risk contingency of £150k.
- 4.17 Based on the savings and costs outlined above the net annual saving in year 1 is estimated at £800k. There will be a one off project cost of circa £200k for the implementation of the project and this is associated with project management and legal costs; this cost has been amended to reflect the recent more detailed project planning work that is being undertaken. The majority of the project work will, where possible, be completed using in house resources to minimise the cost.
- 4.18 The "in scope" functions currently benefit from the Council's central support services in terms of financial management, HR, and legal, among others, and it is intended that for a period of at least 3 years, the current arrangements will be maintained for the LATC where possible, which will limit the exposure to additional cost for services, and aid with a smooth transition. This arrangement will need to be reviewed by the Council and the LATC after 3 years.
- 4.19 Within the Financial Case the existing level of subsidy for the in scope facilities, functions and activities based on 2018/19 budgets is stated at circa £3m, and after an adjustment for the savings noted in 4.13 and any other changes agreed as part of the 2020/21 budget process, this will form the basis of the value of services that the Council will contract from the LATC. It is absolutely clear that the LATC will be required

to contribute to the Council's budget process each year, in the same way as the functions "in scope" have done in previous years.

- 4.20 Details regarding the project delivery can be found within the Management Case. The project work has been divided into 2 distinct phases. Phase 1 is the pre - implementation stage and will provide an opportunity to follow up on any outstanding advice, and time to carry out the detailed project plan, which will provide a sense check of the revenue savings that can be achieved through the implementation of the LATC, and will provide more surety of the one off project implementation cost. When the Phase 1 works are satisfactorily completed, the project will seek authorisation to proceed from Cabinet. During phase 2, the implementation phase, work includes the establishment of the LATC, preparation of the specification and contract for the services to be provided by the LATC, the mobilisation of staff and resources, and the mobilisation of the residual staffing arrangements.
- 4.21 As part of the mobilisation phase, the 'in scope' staff will be transferred to the LATC under TUPE regulations. The LATC will have admitted body status into the Local Pension Scheme which will mean that there will be no change to the transferring staff's pension scheme. As the LATC would be wholly owned by the Council, legally the LATC and the Council would be seen as part of the same group, and therefore the staff within each need to have equal terms and conditions; this "status quo" will need to be maintained for as long as the delivery model remains the LATC.
- 4.22 The transition from the existing service arrangements to an LATC, may require an interim staffing arrangement to be put in place, to advance any work required on behalf of the LATC, before any staff are formally transferred. Further to a decision to proceed with the project, the LATC will be established and some key personnel will initially be transferred to the LATC to act on behalf of the company, and prepare for the go live date in April 2020, when the remainder of the staff will formally transfer.
- 4.23 When the Head of FAH Service formally transfers to the LATC, the residual services and staff from within FAHS will be allocated to the remaining Heads of Service. If the implementation of the LATC does not go ahead, then the Services will remain unchanged.
- 4.24 The indicative timescales for the project are as follows:-
- Council's consideration of the Business Case/other approvals as stated in this report, May 2019
  - Cabinet approval at the end of phase 1 June/July 2019
  - Establishment of the LATC July/August 2019
  - Commence preparation of specification and contract August 2019
  - Transfer of key staff and start of mobilisation phase September 2019
  - Transfer of residual staff September 2019
  - Formal appointment of remaining LATC Board Members September/October 2019
  - Establishment of the Strategic Governance Board November 2019
  - LATC commences trading April 2020.

Further project approvals will be required as the project progresses and these are identified within Appendix E.

**5. How does the decision contribute to the Corporate Priorities?**

5.1 The decision will not impact adversely on the Corporate Priorities, as the LATC will be contracted by the Council to provide the existing services associated with the in scope activities/functions.

**6. What will it cost and how will it affect other services?**

6.1 There is a one off project cost of circa £100k if the implementation of an LATC is approved. The business case has calculated that a net revenue saving of £800k will be achieved in year 1.

**7. What are the main conclusions of the Well-being Impact Assessment (WIA)?**

7.1 The WIA was carried out by a multidisciplinary group of officers representing Leisure, HR, Finance, Business Support, Support Services, Community Wellbeing, Corporate Property, Strategic Planning & Performance and Project Management.

7.2 Overall the impact of the project was assessed as neutral, reflecting that at this stage the consideration is about an alternative way of delivering a defined set of activities/functions, it is not about delivering different or alternative activities/functions.

**8 What consultations have been carried out with Scrutiny and others?**

8.1 External consultation

- Discussion with legal and VAT experts who are providing expertise to the project.
- Other local authorities who have established ADMC's for their lessons learnt.
- Welsh Audit Office for advice
- 'Local Partnerships' an external organisation who have provided guidance in respect of the process.
- Rhyl Town Council in respect of their interest within SC2.
- Trade Unions in respect of the impacts on staff.
- Arts Council for Wales in respect of grant funding

8.2 Internal Consultation

- Cabinet Briefing, Cabinet, Members Budget Workshop where the Project has been shared informally, and a Member Workshop specifically about the ADM.
- All MAGs
- Reports to SLT in respect of the Project Brief, and the restructuring of services required should the project be approved.
- Staff briefings which included face to face information sharing with all Managers within FAHS, a written staff briefing to all leisure related staff, and Middle Managers across the Council, face to face staff briefings with all leisure staff, and formal consultation with all staff affected by any restructuring of services.

**9. Chief Finance Officer Statement**

- 9.1 There is an opportunity to make significant savings by delivering the facilities highlighted through a different legal structure. As the Council continues to have to manage growing pressures with reducing resources, the creation of a local authority controlled company to operate the facilities and services highlighted, provides the vehicle to generate a level of savings without having to cut services. The report sets out the estimated savings and costs associated with the decision.
- 9.2 There is an expectation from the Budget Board that a new ADM will continue to contribute to the Council's savings agenda and this will have to be reflected in future business plans. The proposed company model provides a legal structure that allows for commercial growth to be considered, which if successful, may contribute to the savings agenda and help to reduce the level of financial support from the council.

## **10. What risks are there and is there anything we can do to reduce them?**

- 10.1 There are risks associated with the implementation of the LATC and these are included within the business case. An analysis of the risks is included within Appendix F. The key risks are:-
- Changes in National Legislation in the future could prevent the anticipated business rate savings from being fully realised.
  - The VAT savings cannot be fully achieved through a non for profit LATC model and/or charitable status is required for those to be fully realised, which increases the regulated regime and associated cost.
  - There are unforeseen additional one-off or on-going costs with the establishment of the LATC not have not been taken into account at the implementation stage.
  - The ADM is not as financially successful as hoped and any resultant additional costs fall back on the Council to fund and/or the Company is unable to make the adequate reinvestment into its day to day business activities due to lack of funds.

## **11. Power to make the Decision**

s2 Local Government Act 2000

s95 Local Government Act 2003

Local Government (Best Value Authorities)(Power to Trade)(Wales) Order 2006