

Leicester  
City Council

**CABINET**

**26th April 2004**

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## **ALTERNATIVE MANAGEMENT FOR CULTURAL SERVICES**

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### **Report of the Corporate Director of Regeneration and Culture**

#### **1. PURPOSE OF THE REPORT**

- 1.1 This report seeks Cabinet agreement to endorse the work undertaken by the Cabinet Sub Group on alternative management to date and seeks Cabinet agreement to further work being done to develop the options and implications for the Council in greater detail. That work will inform a further paper to Cabinet in the autumn prior to a decision to proceed, or not, with alternative management of cultural services. This paper further recommends that an overseeing project board and two project teams are set up to carry out that work.

#### **2. SUMMARY**

- 2.1 Alternative management is the transfer of services from direct Council provision to its management on behalf of the Council by another provider. Alternative management is being considered at this time because Members have indicated that they want to see an improvement in the quality and sustainability of cultural services offered in Leicester while reducing, where possible, costs in the service. Cultural Services budgets have been significantly reduced over the past decade and though the Council has made considerable investment in those services in the current budget process, this alone will not be enough to ensure the long-term viability of the service. Alternative management may bring investment to the service while reducing the Council's medium to long term financial commitment significantly. The need to consider the potential of alternative management was acknowledged in all the best value service reviews of cultural services undertaken from 2001 to 2003. The table below summarises the benefits and disadvantages of alternative management in general.

Table 1

	Pro		Con
1	Can create savings to the council	1	Distances the Council from the management and control of key services
2	Can bring in investment not available to the Council	2	Complex set up arrangements requiring expertise and expense
3	Can include community representatives in governance, depending on model	3	May have negative effects on central support staff and budgets
4	Could grow to include other Council services in future, along with providing services for other Councils	4	May be difficult to attract and retain competent board members
5	Enhanced opportunities to improve quality of services and their long term sustainability, provided a proportion of gains made are reinvested	5	Staff and Unions may see Alternative Management employment as less favourable
		6	Requires rigorous monitoring and reporting

- 2.2 Essentially there are three broad options. These are:
- direct management, as now, i.e. Retain the status quo
  - outsourcing to another provider, either commercial or not for profit
  - transfer services to a new not-for-profit organisation established by the Council to provide Leicester's cultural services
- 2.3 Retaining the status quo would create a shortfall of £450,000 in the Department's revenue budget strategy from 2005/06. That shortfall would have to be addressed by further service reduction and/or service closure.
- 2.4 The Cabinet Sub Group came to the conclusion that commercial outsourcing was inappropriate because it failed to maximise savings and risked the Council's continuing direction of cultural provision. Additionally there was no evidence from a soft market test that there were interested commercial or not-for-profit organisations with the right expertise and experience to deliver the full range of Leicester's cultural services. The position in respect of commercial outsourcing is further explored in Paragraph 3.4 in the supporting information. ***The Cabinet Sub Group did not recommend that the Council pursue commercial outsourcing***

2.5 The Cabinet Sub group on alternative management considered over 30 different options. These are summarised in the supporting information to this report (paras 3.1 to 3.9). The sub group recommended two alternative management options for further exploration (All cultural services, and sports & leisure centres alone).

2.6 Each of the options has a number of advantages and disadvantages. These are detailed in section 3 of the supporting report, but in summary are:

Table 2

		Pro	Con
1	Sports Services alone	<ul style="list-style-type: none"> <li>• Savings of 450K per year (NNDR &amp; VAT)</li> <li>• Council's VAT position marginally improved</li> <li>• Potential for long term sustainability of service</li> </ul>	<ul style="list-style-type: none"> <li>• Higher support costs</li> <li>• Potential negative impact on retained services and support staff</li> </ul>
2	All cultural services	<ul style="list-style-type: none"> <li>• Savings of between £210K &amp; £509K per year (NNDR &amp; VAT)</li> <li>• Council's VAT position substantially improved</li> <li>• Potential for long term sustainability of services</li> </ul>	<ul style="list-style-type: none"> <li>• Potential negative impact on retained services and support staff</li> </ul>

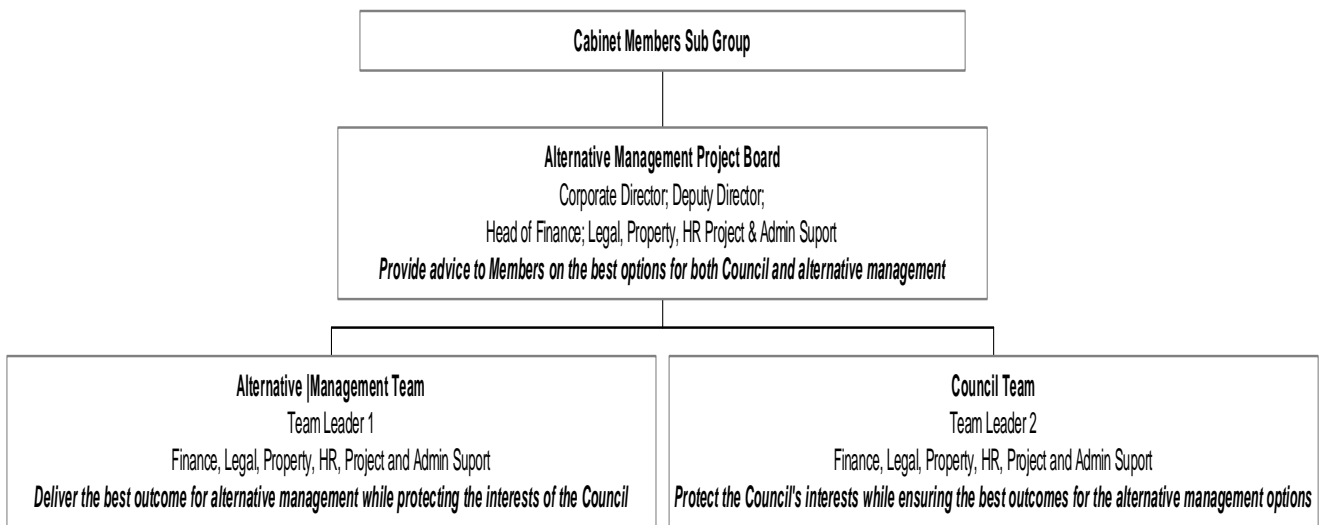
2.7 A fuller exploration of the advantages and disadvantages of the different alternative management options are identified in Section 3 of the supporting information. Officers have developed indicative business plans for each option.

2.8 An independent consultant (Price, Waterhouse Coopers) was employed to give an independent assessment of the business case for alternative management, and to review the work on business planning undertaken to date. Their view is "that there are 2 levels at which the Council will need to satisfy itself on the integrity of the information provided in order to endorse the decision to mandate the further development of the Not For Profit Distributing Organisation (NPDO) option through detailed business plan preparation etc, i.e.:

- That the outcome of the options appraisal was robust and appropriate to meeting the Council's current objectives and aspirations for cultural services.
- That the information provided in the report is sufficient to allow the decision to proceed recognising all risks, benefits and outcomes for the Council and the NPDO going forward."

2.9 If Members decide to create an NPDO or transfer services to an existing NPDO to provide cultural services in Leicester you will need to be re-assured that doing so is neutral to advantageous for the staff involved; that the impact on the staff and budgets of the rest of the Council is understood and considered; that the contracts and leases with the NPDO are robust and effective; and that all the financial and operational implications of making this radical change to service delivery are made apparent and understood. An outline of some of these issues is detailed in sections 5 and 6 of the Supporting Information, but their exploration and realisation will form the bulk of the work of the project teams over the coming year.

2.9 If Cabinet agree to support the further work needed to develop the options, officers recommend that a Project Board and 2 project teams are set up, in line with corporate guidelines. Each of the two project teams will be tasked to deliver the best outcomes for the Council, the people of Leicester and alternative management, but with a different emphasis between the teams. The diagram below shows the make up and responsibility lines of the teams. The transfer process could cost up to £100,000 and this has been included in the 2004/05 budget strategy. The diagram below indicates how those teams will report.



### 3. RECOMMENDATIONS

3.1 Cabinet are recommended to:

- 1 Endorse the work undertaken to date by the Cabinet Sub-Group on Alternative Management

- 2 Endorse the view of the Cabinet Sub Group that commercial outsourcing is not a viable option, for the reasons outlined in paragraph 3.4 of the supporting information,
- 3 Ask the Cabinet Sub Group on Alternative Management to oversee further work on the development of the Status Quo, Non-Commercial Partnerships and the Creation of a Not for Profit Distributing Organisation (NPDO) and the services and facilities which might be included within such arrangement,
- 4 Establish a Project Board and Teams, in line with corporate guidelines and as described in paragraph 4.15 of the Supporting Information, to carry out that further work including
  - Detailed analysis of the options
  - The proposed contractual framework
  - Detailed 10 year Business Plans
  - Commissioning and monitoring arrangements
  - Legal, structural and governance frameworks
- 5 Receive a further report, no later than October 2004, to enable Cabinet to make a final and informed decision on the options, the services it would wish to see included in those options, and the contractual and legal relationship between the Council and any agreed option

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 There are two levels at which the Council will need to satisfy itself on the integrity of the information provided, i.e.
- 4.2 That the outcome of the options appraisal was robust and appropriate to meeting the Council's current objectives and aspirations for cultural services;
- 4.3 That the information provided in the report is sufficient to allow the decision to proceed recognising all of the risks, benefits and outcomes for the Council and the NPDO going forward
- 4.4 Further detail will be required on the level of cost retained by the Council to assess the overall value for money impact on the Council as well as for the NPDO.

## 5. LEGAL IMPLICATIONS

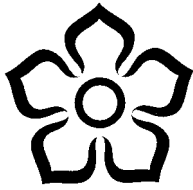
- 5.1 Specialist legal advice will be required to establish the legal form of the required vehicle. This may result in complex transactions and processes and appropriate financial provision needs to be made to support this. Full legal implications are included in section 9.2 of the supporting information.
- 5.2 The Council is responsible for parks by-laws and licensing of markets and issues relating to the application of these responsibilities would need to be fully explored as part of the implementation process if Members agree to a Cultural Services NPDO that includes parks and could also include markets.

## 6. REPORT AUTHOR

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## DECISION STATUS

<b>Key Decision</b>	<b>No</b>
<b>Reason</b>	<b>N/A</b>
<b>Appeared in Forward Plan</b>	<b>No</b>
<b>Executive or Council Decision</b>	<b>Executive (Cabinet)</b>



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**WARDS AFFECTED: City Wide**

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### **SUPPORTING INFORMATION**

#### **1. Background**

- 1.1 On 13th October 2003, a report to Cabinet asked Members to note that officers were exploring options for the alternative management of some or all Cultural Services. Cabinet were asked to consider setting up a Cabinet Sub Group to oversee that work.
- 1.2 This report brings to Cabinet the fruits of that work. A Cabinet Sub group of Members (Cllrs. Mugglestone, Scuplak and Sandringham) worked with officers to explore the merits of over 30 different arrangements for the alternative management of Cultural Services. That group narrowed down the possibilities using the criteria set out below:
  - Demonstrates best value in service delivery.
  - Minimises service reductions and disruption.
  - Increases opportunities for achieving external funding.
  - Creates a long-term sustainable future for cultural services in Leicester.
  - Brings services closer to the communities they serve.

1.3 This paper asks Members to authorise a more detailed exploration of the options. A further report will be brought to Cabinet in the autumn to enable Members to take a decision on the option that provides the best value for the Council and people of Leicester, the services that should be included in the option, and the structural, legal, governance and regulatory frameworks that should manage the relationship between the Council and any alternative management option.

**2. What is alternative management, and why are we considering it?**

2.1 Alternative Management is a portmanteau phrase covering a range of different ways of delivering existing services, from partnerships to commercial operations. Alternative management of Cultural Services means that the Council would no longer provide these services directly, but would contract with another organisation or number of organisations, to provide services on the Council's behalf.

2.2 For the purposes of this report, Alternative Management is defined as the transfer of services to one or more Not-for-Profit Distributing Organisations (NPDO's) to manage Cultural Services on behalf of Leicester City Council. An NPDO can take a number of different forms, but all share the characteristic of being in business for the benefit of the service and service users. Any financial surplus created by an NPDO and any profit from trading arms can be re-invested into the service, and/or reduce the Council's contribution for the provision of those services. The characteristics of an NPDO are further explored in Section 5 of this report.

2.3 Cultural Services' budgets have been significantly reduced over the last ten years. A comparison of controllable budgets for 1993/94 and 2003/04 shows budget reductions in real terms over the last 10 years of 48% for Parks & Open Spaces and of 45% for Sports Services.

2.4 The Council has been exploring the possibilities of alternative management for some time. In 2001, the Best Value reviews for both Sports and Arts recommended that the Council should research alternative management for all Cultural Services to see if it offered opportunities for these services. Following those recommendations, in the autumn of 2001, Leonie Cowen and Associates (a specialist consultant) were engaged by the then Arts and Leisure Department to undertake a strategic options review for the Council. Their reports of September 2002 and a subsequent update in July 2003 have been placed in the Members Library.

2.5 The Best Value reviews of Museums & Heritage Services and Environmental Services in 2003 both acknowledged the work being undertaken to explore the opportunities offered by alternative management. The Libraries Best Value review of 2002 also identified the possibilities of alternative management for the Library Service, but the work to take the exploration forward was not pursued when the service transferred to the Education and Lifelong Learning Department.



- 2.6 Alternative management provides the City Council with an opportunity to continue to deliver a wide range of cultural services in a more cost effective way. It opens up the possibility of greater inward investment into those services, and can bring the services closer to their customers through new ways of management and governance.
- 2.7 Research conducted by Loughborough University with 54 local authorities in 2002 identified that 70% of those authorities were either delivering services through alternative means (trusts or commercial partners) or were setting up or developing options as a result of Best Value Reviews.
- 2.8 Eleven of the respondents who were delivering services by alternative means contributed to a more detailed survey that showed that:
- All respondents reported increased usage of between 3 & 5% following transfer.
  - All reported increasing income (see examples in paragraph 2.9).
  - 7 reported major refurbishment and/or new build of facilities.
  - 5 of the trusts were growing their business and trading more widely.
- 2.9 There are some undoubted success stories from authorities who have developed alternative management arrangements for some or all cultural services, for example:
- A London borough established an NPDO over 10 years ago. That NPDO now runs 34 leisure centres for 5 London boroughs. Their income has increased from £3m in 1995 to £22m in 2002. The originating council's subsidy has reduced from £2.4m per annum in 1990/91 to £1m in 2002/03. The NPDO has a social inclusion policy, with 100,000 leisure passes in use. They recently established a partnership with the local health trust to support a health improvement programme. In 2003/04 they financed the development of two new facilities. They identify a number of key success factors:
    - Faster, more flexible decision making than is possible under Council control.
    - Freedom from local authority bureaucracy has enabled a more entrepreneurial approach, leading to new partnership opportunities being developed
    - Much more active customer involvement than was achievable by council managed services.
    - Positive cash flow management
  - A Scottish Council increased income by 14% since services were transferred to an NPDO, in six years they saved the Council £5m, have invested an extra £4m in services and created a £0.5m reserve.

- A Council in the South East increased turnover from £4m to £7m in the 3 years since the NPDO was formed.
- A Council in the South East began trading as an NPDO in January 2000. All the NPDO's board members have been drawn from the local community. At the same time as Council support has been reduced by £20,000 each year, the NPDO has reversed the spiral of decline they were experiencing under Council control, they have raised funds to build new facilities, carried out major refurbishments to others and have made major investments in IT – none of which they believe could have been achieved if they had still been part of the Council. Income has increased from less than £2m per annum at transfer to £3.5m in 2003/04. They have established a number of concessionary schemes for carers, foster families, children leaving care and young offenders, they have established outreach services in care homes, elite sports schemes and offer a wider range of cultural events. They have been able to introduce free swimming for senior citizens and established a free transport scheme in the school summer holidays. User surveys show increased levels of customer satisfaction. Staff morale and motivation has also improved considerably:
  - Turnover of staff is now 10%, which is significantly less than it was before transfer, is less than within their Council now or within comparable commercial operators.
  - Sickness absence is reduced from 9.8% at transfer to 7.8% in 2003.

They identify the following success factors:

- Can be more responsive to community needs because decision making is quicker.
- A positive partnership with a Council which is keen for the NPDO to succeed. The Council and NPDO are agreed that there are no disadvantages in this arrangement.
- The Council could make greater reductions in the financial support given to the trust, but chooses to keep this at relatively modest levels to allow the NPDO to develop and flourish.

2.10 However there are undoubtedly some less positive experiences and lessons to be learnt. For instance:

- A Council in the North West sought a commercial contractor for its services, prompting council officers and trade unions to work together to set up an NPDO to bid for the contract. The contract was awarded in 2001 jointly to the NPDO and a commercial partner. A very tense relationship developed between the NPDO and the Council, with much mistrust and cynicism. From the start the Council allowed continued use of the IT and payroll

systems, but everything else was cut off, the NPDO subsequently withdrew from the IT arrangement because the Council was charging too much.

- A Council in the South West retained 100% of the NNDR and VAT savings and reduced the grant to the NPDO by 10% in each of the three years it has been established. The Council retained landlord responsibilities but made maintenance of the NPDO's facilities a low priority and two years after transfer a pool roof failed. The Chief Executive of the NPDO said "If the Council continues to reduce our grant and ignore their landlord responsibilities, then we will face service cuts and a reduction in standards
- The NPDO in the South of England was established in 2001, with, they now acknowledged, not enough time and not the best professional advice. This meant that major changes to both the contract with the Council and to the board of directors were required in the first year of operation.

2.11 Leicester City Council finds itself in a position of attempting to maintain cultural services with continuously diminishing resources. Local customers are increasingly intolerant of poor and under-resourced services, and their rising expectations have caused low satisfaction scores for services of local and regional value. Alternative management offers the Council the opportunity to create long term sustainability for its cultural services by entering into a partnership with an arms length organisation, able to access funding unavailable to the Council, relate directly to its customers, and trade freely. But we need to make sure that we choose the right options and the right model of organisation to maximise the financial benefit to both the Council and the NPDO.

### **3. The Options**

3.1 In December 2003, the Cabinet Members Alternative Management Sub-Group considered 30 alternative management options. It assessed each option against a set of agreed criteria:

A viable option will:

- Demonstrate best value in service delivery.
- Minimise service reductions and disruption.
- Increase opportunities for external funding.
- Create a long-term sustainable future for cultural services in Leicester.
- Bring services closer to the communities they serve.

In addition, a viable option will maximise benefit to the Council as a whole.

3.2 The 30 options were grouped into the following six headings:

- Whole or multi service options
- Commercial options
- Regional options
- Single service options
- Dual service options
- Partnership options

3.3 **Whole or multi service options**

The Cabinet Sub Group considered that a whole service option with or without the markets service is a viable option. They considered other combinations, but thought that they were less desirable; mainly because of the impact they would have on residual services.

3.4 **Commercial options**

The Cabinet Sub Group did not think commercial outsourcing was appropriate for the following reasons:

- Many of our services would not be attractive to the commercial sector without heavy subsidy. This would result in residual services needing to continue to be managed by the Council, but with higher overhead costs.
- NNDR savings would not be achievable by a commercial operator
- Commercial deals might result in short-term benefits, to set against longer-term losses.
- The Project survey conducted in 2003 established that the public do not want to see Leicester's cultural services under commercial management.
- There is strong staff and union opposition to this option.
- The services might be provided for the benefit of shareholders, who might be considered before investment in services.
- A soft market exercise revealed no commercial operators with the right experience and size to manage the portfolio of Council cultural services.

The details of this marketing exercise, and that referred to in the next paragraph contain sensitive commercial information, but have been placed in the Members area for your information.

3.5 **Partnership with an existing not for profit organisation**

A soft market testing exercise has been carried out to see whether any existing NPDO's would be interested in tendering for the management and operation of cultural services. There are very few cultural based trusts of an equivalent size to Leicester and consequently there would be added risks if a small, less well established organisation was to be contracted to manage services on behalf of the Council. Of the trusts we have contacted, the majority work only within their own boundary.

There is one well established trust based in London who do provide services for other local authorities, but their policy is to restrict their operations to within the M25 area

### 3.6 **Regional Options**

The group considered the potential of forming partnerships with other councils and organisations in the region, either for one organisation to take the lead on delivering services on behalf of the partnership, or to jointly establish an NPDO to deliver specific services. It was agreed these were not viable options because:

- Extensive negotiation would be required, with no guarantees of success, meaning the potential for savings could not be achieved in the foreseeable future.
- We would lose a Leicester focus.

### 3.7 **Single service options**

The only single service that is financially viable as a stand-alone unit is Sports Services. This option is included in the report.

### 3.8 **Dual service options**

The group considered linking two services together, but only dual service combinations that include sports meet the viability criteria. The sub group agreed these options were less advantageous than the whole service or sports alone options

### 3.9 **Partnership options**

The group assessed a number of partnership options, but did not think them viable because:

- Extensive negotiation would be required, with no guarantees of success, meaning the potential for savings could not be achieved in the foreseeable future.
- Some partnership options could lead to a reduction of Leicester focus.
- But, some partnership options could be possible as long-term developments.

3.10 A copy of the analysis of all the options has been placed in the Members' Library. The Cabinet Members Sub-Group agreed that there were two options that met all the viability criteria set out in paragraph 3.1 above. The Members of the Cabinet Sub Group asked officers to explore those two options in more detail. The options are:

- A Cultural Services Not for Profit Distributing Organisation (NPDO)
- A Sports Services and Leisure Centres NPDO.

3.11 The following tables give an indication of the advantages and disadvantages of the status quo and two NPDO options.

3.12 Table 1  
Status Quo

	Pro		Con
1	No implementation costs; budget saving of £100,000 in 2004/05.	1	No NNDR or VAT savings
2	Political influence and control are unchanged.	2	Savings of £450,000 pa from 2005/06 required to balance the revenue budget strategy
3	No additional contract monitoring arrangements required	3	The Council's 5% partial VAT exemption position could be at risk
4	Financial impact on corporate budgets known	4	Limited scope for new investment or growth
5	Potential to wait until a better option or opportunity arises	5	Council remains wholly responsible for repairs and maintenance of facilities
6	Council retains flexibility to change use of Cultural Services facilities		

Note: The NPDO options could include a new organisation established by the Council or a partnership with an existing NPDO. Whilst there are some differences between these 2 approaches, the main advantages and disadvantages are broadly similar. The options will be explored in more detail as part of the further work on the report

3.13 Table 2

Sports Services and Leisure Centres Only

	Pro		Con
1	First year NNDR savings of £300,000 pa.	1	The financial costs of setting up a smaller NDPO are disproportionate in comparison with other options
2	VAT savings of £150,000 pa	2	Contract monitoring arrangements will need to be established without any resources to do so
3	The Council's partial VAT exemption position is marginally improved by 0.1%	3	Staff may perceive employment in an NPDO as less secure, although experience elsewhere does not justify the perception
4	Can trade freely, although opportunities will be more limited than for a larger more diverse organisation	4	Any City Councillors who are members of the NPDO's board must represent the interests of board. This may lead to potential conflicts of interest
5	Capable of achieving inward investment	5	Board members may not be skilled, or capable enough to give leadership to the NPDO
6	Has opportunities to fundraise from sources not open to the City Council	6	The Department's management structure may need to be reviewed as there may not be sufficient mass to justify a stand alone division
7	Enhanced opportunities to improve quality of services and their long term sustainability, provided a proportion of gains made are reinvested	7	Support Service costs will increase because the level of transferring support would be insufficient for the needs of a stand alone NPDO. Some but not all support could be bought from the Council, but this may financially disadvantage the NPDO.
		8	The impact on support services would be complex as parts of posts could be required to transfer if Council and the NPDO choose not to buy support services from the Council
		9	Sports alone will be a relatively small organisation, so there would be loss of economies of scale

3.14 Table 3

## All Cultural Services

	Pro		Con
1	First year NNDR/ VAT savings of £504,000 pa.	1	Financial costs in setting up the new arrangements. These are estimated at £100,000 and are identified in the CS&NR budget strategy
2	VAT disbenefit depending on which services included	2	Rigorous contract monitoring arrangements need to be established
3	The Council's partial VAT exemption position is improved by 1.3% depending on which services included	3	Staff may perceive employment in an NPDO as less secure, although experience elsewhere does not justify the perception
4	Can trade freely	4	Any City Councillors who are members of the NPDO's board must represent the interests of board. This may lead to potential conflicts of interest
5	Capable of achieving inward investment	5	Board members may not be skilled, or capable enough to give leadership to the NPDO
6	Has opportunities to fundraise from sources not open to the City Council	6	May have adverse effects on central support staffing and budgets
7	Enhanced opportunities to improve quality of services and their long term sustainability, provided a proportion of gains made are reinvested		

3.15 There are some examples of successful management of sports and arts facilities, parks and museums by local community organisations. While some individuals believe they can do a better job than the Council in running their local leisure centre, few are also willing to take on the responsibility for health and safety, payroll, risk management, industrial relations, and the corporate and individual financial risk of being responsible for complex buildings. The recent prosecution in Cumbria of an arts centre manager, and the responsible Council, for corporate manslaughter following an outbreak of legionnaire's disease has raised the risk for managers and governing bodies. For local management of facilities to have any chance of success, long-term community development is needed. The greatest chance of success for such locally managed facilities is where the facility has grown from a strong locally identified and locally championed community need, rather than being imposed on them. The Council would not be acting



responsibly if it passed onerous responsibilities to a community not ready to accept all the implications of governance and management.

- 3.16 However, an NPDO can develop better working relations and partnerships with user and interest groups to bid for funding in partnership, and give communities a greater say in the management and operation of facilities. Area Committees can form the basis for growing community support for locally managed facilities in the future, and in the short to medium term can act as a scrutiny and influence body for their local facilities. Community representatives can serve on the Board of the NPDO and so be involved in the governance of the NPDO, without taking sole responsibility for it. In future years, as the capacity of community organisations develops and increases, the potential to establish subsidiary companies within a broader cultural portfolio can be developed.

#### 4. **The Business Case for Alternative Management**

- 4.1 The business case for alternative management is predicated on a complex balance between advantage to the Council and advantage to the NPDO, and ultimately to its future customers and the people of Leicester.

#### 4.2 **Increased Usage and income**

The Loughborough University survey shows that alternative management delivers increased usage and income. 10 year indicative business plans have been prepared by officers using the experience of authorities in the Loughborough study to predict income increases of between 1.5 and 2.5% pa.

- 4.3 An NPDO can access new investment through a range of grants available to voluntary, charitable or non-profit making organisations, but not available to Local Authorities. For instance:

- Lottery funds:
  - The **Community Fund** provides lottery funding for large, medium and strategic projects which target children and young people, disabled people and their carers, black and minority ethnic communities, refugees and asylum seekers, older people and their carers, and people in areas disadvantaged by social and economic change.
  - The **Heritage Lottery Fund** offers a number of grant-giving programmes which are not available to statutory organisations, for example the Local Heritage Initiative offers grants of up to £25K to help local groups care for their local landscape, landmarks, tradition and culture. The **Football Foundation** offers a range of funding opportunities to support coaching schemes, volunteer training programmes and social inclusion projects.

- The **Home Office Active Community Unit** provides grants to voluntary and community organisations to support crime reduction in the community and help community led enterprise.
- Sport England's new **Active England Fund** is a joint New Opportunities Fund and Sport England community sport investment programme which has been established to create and support sustainable, innovative, multi-activity environments in areas of social, sport and health deprivation.
- **Living Places** provides funds to community groups for improvements to community based public spaces. Grants awarded between £1,000 and £100,000.
- The **Esmée Fairbairn Foundation** provides funds to registered charities to improve the quality of life for communities. Funds totalling £24.6m distributed for arts, heritage, education, environment and social development.

4.4. The Council can benefit from the NPDO's ability to increase income and investment by reducing its grant to the NPDO over time. However, it will be in the Council's longer-term advantage to ensure that the NPDO continues to receive a level of grant that will provide sufficient incentives for the NPDO to continue raising its income and investment.

#### 4.5 **National Non Domestic Rates**

Local Authorities pay national non-domestic rates, (NNDR), which are redistributed nationally. NPDO's established with charitable objects are able to achieve significant NNDR savings. Initially the NPDO will reduce its liability for NNDR by 75% of the qualifying NNDR bill. If the NPDO subsequently gets charitable status, then it will further reduce its bills by 5%. The 3 year budget strategy agreed by Council in February 2004 presumes NNDR savings to the Council by implementing alternative management at £450K from 2005/6.

#### 4.6 **VAT**

To maximise the VAT benefits of alternative management to the Council, it is essential that the most tax efficient arrangements are established. On this basis, significant savings can be achieved for sports and the VAT inefficiencies for other services can be minimised.

4.7 In the short term the NNDR and VAT savings achievable by alternative management provide the bulk of the benefit to the Council and, in the short term, it is clear that the Sports Service and Leisure Centres option provides a substantial saving as its NNDR and VAT benefits are proportionately higher. However, if a longer-term view is taken, there is considerable scope for the whole service option to achieve additional income from fees and charges, fund raising and sponsorship and to reduce support costs over a longer time period. Because their turnover is significantly greater than for Sports alone, the indicative savings that they can achieve are estimated to be significantly greater than Sports alone can achieve over the same time period. However, further work is needed to demonstrate this.

#### **4.8 Hidden costs and impact on central and other departmental budgets**

Support costs allocated to cultural services currently amount to 37% of direct costs. The main components of central support costs are:

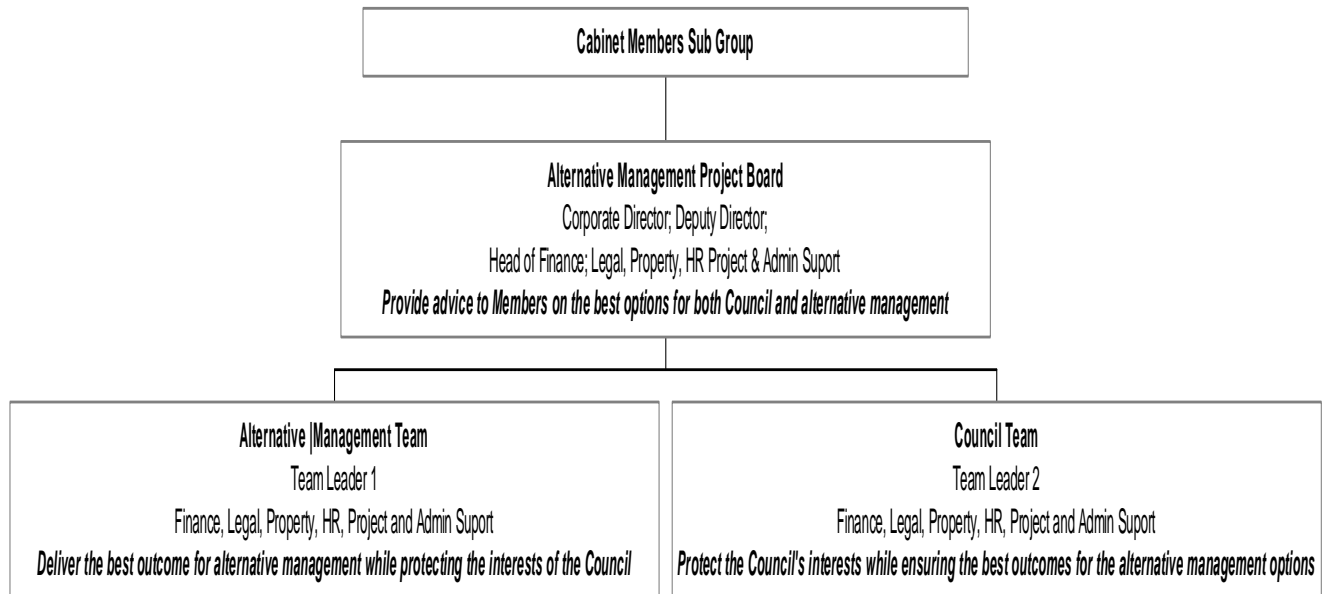
- Central Maintenance Fund
- Departmental Management and Support Costs
- Property Management and related services
- Office Accommodation
- Corporate and central support charges including Financial Services and Audit

4.9 If the Council agrees alternative management for some or all cultural services, then during the implementation phase, all budgets will need to be disaggregated and decisions made about the provider of each service which the NPDO will require, both in the short term and the longer term. These decisions will need to strike the right balance of allowing the NPDO sufficient freedom and flexibility from Council control, without impacting significantly on the overall efficiency and fixed costs of the Council. Overall, the impact for a cultural NPDO should be neutral, as the organisation will be large enough to have its own economies of scale. Disaggregation issues may be more complex for a smaller sports NPDO, unless the organisation continues to purchase a wider range of services from the Council. The principle in all cases should be that the NPDO manages the disaggregated budget, even if services are bought back from the Council. For example, it is desirable that at some stage the NPDO will be physically separate from the Council, accommodated in a separate administrative building; this may be achievable by April 2005, when the NPDO is expected to become operational, or it may take place at some future date. In either case, the NPDO should have the cost of office accommodation disaggregated to it, which, so long as the Council's accommodation is occupied, the funds will be repaid to the Council. From the date alternate accommodation is occupied by the NPDO, the accommodation costs will be available to pay for the new accommodation. One decision will also lead to others, for example, so long as the NPDO occupies a Council administration building, it naturally follows that the NPDO will continue to use the Council's IT network, this would not be appropriate when the NPDO transfers to other premises and at this point it will need to establish an independent IT infrastructure.

4.10 While Officers and the Members of the Alternative Management Cabinet Sub Group consider the advantages of alternative management outweigh the disadvantages, it is important that the negative implications and potential risks of this course of action are fully understood.

- 4.11 The main reason for investigating alternative management options is to create a long-term sustainable future for cultural services in Leicester. The achievement of additional savings in future years will be dependant on a number of factors including the Council's overall financial position; the level of financial support provided by the Council; the level of reinvestment required to maintain sustainable services; and the overall performance of the NPDO.
- 4.12 The level of savings to the Council will be dependant on all the factors outlined above. Consequently it is difficult to make anything other than cautious projections at this stage. However in the absence of major service or financial reductions due to external factors and, provided the NPDO continues to develop in partnership with the Council, there is every reason to expect that the quality of customer services will improve through reinvestment and increased external funding and that the level of financial support provided by the Council will reduce over time. If Members agree the recommendations in respect of the NPDO route more detailed business plans and projections will be developed to Members at a later date prior to the establishment of any NPDO to run cultural services on behalf of the Council.
- 4.13 A further factor to consider is that given a significant proportion of the financial savings achieved relate to NNDR, the proportion is higher for sports alone, therefore, should the government at some point in the future change business rates back to a local responsibility, the main part of the financial advantage of a sports NDPO is lost, whereas a cultural NPDO should remain financially viable and could continue to make savings for the Council, albeit at a reduced level.
- 4.14 The work undertaken to date and the draft indicative business plans were externally reviewed by Price Waterhouse Coopers to ensure that all the issues relevant to making an informed decision on the way forward were available to Cabinet. PWC concluded "that there are 2 levels at which the Council will need to satisfy itself on the integrity of the information provided in order to endorse the decision to mandate the further development of the NPDO option through detailed business plan preparation etc, i.e.:
- That the outcome of the options appraisal was robust and appropriate to meeting the Council's current objectives and aspirations for cultural services.
  - That the information provided in the report is sufficient to allow the decision to proceed recognising all risks, benefits and outcomes for the Council and the NPDO going forward."
- 4.15 If Cabinet agree to support the further work needed to develop the options, it is recommended that a Project Board and Teams be established, in line with corporate guidelines. It should be noted that the transfer process could cost up to £100,000 and this has been

included in the 2004/05 budget strategy. The diagram below indicates how those teams will report.



The brief for the Alternative Management Project Board will be to provide the best possible cultural services at the least risk to the Council by ensuring that alternative management of cultural services is a reality by 1/4/05.

The brief for the alternative management team will be to create a sustainable alternative management structure for Cultural Services by 1/4/05 that is capable of delivering savings and/or re-investment in services whilst at the same time protecting the interests of the Council. The brief for the Council team will be to review the risks, benefits and outcomes for the Council as a whole and to create the support and monitoring function that will protect the Council's interests whilst making sure the alternative management arrangement is sustainable in the long term

## 5. Control and Ownership

- 5.1 There are some risks associated with the authority transferring its services to an alternative management organisation. Some organisations, or Leicester citizens, may see the transfer as an abdication of democratic control. Officers and the Cabinet Sub Group believe that this will not be the case, and the contract between the alternative management organisation and the Council will give a clear and transparent relationship between the operation of Cultural Services, their outputs and outcomes and the strategic direction of the Council.
- 5.2 In directly managed services, as at present, political control is through the Council's corporate plan and the budget process. Direct day to day management, within the parameters set by the Council, is delegated to officers.

- 5.3 A cultural NPDO would, if Members decide to pursue that route, be set up to share the goals of the Council's corporate plan, and be controlled through a contract setting out the outcomes and outputs the Council wishes the NPDO to deliver. The Council would monitor that contract and produce regular reports on the NPDO's performance
- 5.4 The Council can choose to be directly involved in the leadership of the NPDO by nominating Councillors to up to 20% of the board positions (though the Council nominees must act in the best interests of the NPDO). This combination of dual control and influence gives the Council substantial control of the scope and direction of Cultural Services in Leicester.
- 5.5 The nature and content of the contract will be developed during the next phase, and will be brought to Members for agreement. The contract will seek to demonstrate the right balance between control by the Council and giving the NPDO sufficient freedom to develop to its full potential
- 5.6 The NPDO will have a management board made up of individuals reflecting the make up of Leicester's communities, with the right skills and experience, recruited through an appointment process. The recent recruitment of the Haymarket Theatre Board may act as a useful learning opportunity. The appropriate number of board members will be determined in the next phase of work, but between 8 and 15 is usual for such bodies.
- 5.7 Officers currently intend that the Council retains ownership of all the facilities transferred to the NPDO. Long-term lease arrangements will be established for those facilities. The nature of the landlord, tenant arrangements will need to be determined during the next phase and will be included in the contract the Council will have with the NPDO.
- 5.8 If Members decide to pursue the NPDO route, the contract will also set out the performance of the NPDO in respect of existing PSA, BVPI and other targets; equalities issues; environmental impact; compliance with council policies and strategies and relationships with partners.

## **6 STAFF**

- 6.1 If Cabinet supports alternative management for some or all Cultural Services, then TUPE (Transfer of Undertakings Protection of Employment Regulations) legislation will apply and all permanent and casual staff employed within the transferring services will transfer with their work.
- 6.2 The situation will be more complex for departmental and central support staff and decisions will first need to be made about each support function, to determine both in the short and long term, whether the NPDO will buy the service from the Council, take the money and buy the service elsewhere or take the staff and carry out the function

itself. A balance will need to be reached when making these decisions between giving the NPDO sufficient freedoms and flexibilities, while maintaining as far as possible economies of scale for both the Council and the NPDO. Where the decision is reached that requires support staff to transfer to the NPDO, selection procedures will be developed in consultation with staff groups and the trade unions. This will be looked at in more detail as part of the work described in Para 4.15 above

- 6.3 Legislation requires that staff transfer from Council employment to the new employer on their current terms and conditions. A long-standing concern of staff groups and their trade unions, dating from the times of Compulsory Competitive Tendering (CCT), has been the new employers ability to reduce those terms and conditions after the transfer has taken place. To provide additional protection, new TUPE legislation will require the new employer to maintain terms and conditions, which are not necessarily the same, but are no less favourable than the terms and conditions at transfer. To avoid a two tier workforce being developed, this new legislation will also apply to staff joining the NPDO at a later date.
- 6.4 There may be some transferring staff who do not fall within a strict application of the TUPE legislation, for example if only part of their job has transferred. The statutory guidance on Best Value issued in 2003 indicates that the principles of TUPE should be applied, even when there is no legal obligation to do so.
- 6.5 To provide additional reassurance to staff, an employment protocol will be developed which sets out principles the new employer will keep to. The protocol could for example confirm that TUPE will be permanently maintained for all employees and that trade unions will be recognised.
- 6.6 Consultation with staff groups has already indicated that remaining within the Leicestershire Local Government Superannuation scheme is an important consideration for them. The Chief Finance Officer does not anticipate that there will be difficulties ensuring this for transferring staff, but it may not be possible to secure agreement that new staff who subsequently join the NPDO can join the local government pension scheme; if this proves to be the case, the NPDO will be required to provide alternative pension arrangements for its new employees.

## **7. FINANCIAL, LEGAL AND OTHER IMPLICATIONS**

### **7.1 Financial Implications**

Included in summary report

## **7.2 Legal Implications**

- 7.2.1 Specialist legal advice will be required to establish the required vehicle. This may result in complex transactions and processes and appropriate financial provision needs to be made to support this.
- 7.2.2 The report contains a description of some forms of 'vehicle' with the recommendation being made for a company limited by guarantee set up by the Council. This form has the advantage of being well known to the market and commercially acceptable. In my opinion there are real disadvantages of the IPS and Unincorporated Association option. There are further options which should be considered, namely an over-arching trust or a form of joint venture, particularly with a private sector partner.
- 7.2.3 Even if a charitable company limited by guarantee is chosen further work will need to be done as to the most effective company structure. This is certainly a case for establishing trading arms, which in turn covenant their net profits to the parent (charitable) company. This would protect the charitable status of the charitable company and may have tax advantages.
- 7.2.4 The Council has power to contract with another person (this would include a company) for the provision of or making available assets and/or services for the purpose of, or in connection with, the discharge of its function. In this case the Council's functions for entertainment, arts, sports and leisure are set out respectively in section 145 of the Local Government Act 1972 and section 19 of the Local Government (Miscellaneous Provisions) Act 1976, those for the museums are set out in the Public Libraries and Museums Act 1964, markets under the Food Act 1984 and by charter, allotments under the Small Holdings and Allotments Act 1908 (as amended).
- 7.2.5 Those sections would also enable the Council to incur costs in launching such contract and, in the case of arts/entertainment are probably wide enough to encompass participation in the company itself. The other provisions are not so widely drawn but in theory the power of 'well being' would enable participation. This power has to be exercised with regard to the Council's Community Strategy which it must adopt under Section 4 of the Local Government Act 2000. I am advised that the Leicester City Council community strategy is the document entitled the 'Community Plan' and therefore reference should be made to this document.
- 7.2.6 The Council is responsible for parks by-laws and the licensing of markets and would remain the market authority under the Food Act. Issues relating to the application of these responsibilities will be explored further.



- 7.2.7 Further work needs to be done to produce a business plan and indicative budget. Unless a lead private partner is sought it is unlikely that the Company will be able to function without the Council giving financial guarantees (for example to meet revenue losses). There will obviously be financial implications in the giving of such a guarantee.
- 7.2.8 The report draws heavily on advice as to VAT and NNDR savings. Care needs to be taken here as, in structures involving linked transactions, it is easy to generate, in particular a liability for irrecoverable VAT. The NNDR savings are predicated on the basis that the company will retain particular objectives and status. The report does address the potential for a change in the rules.
- 7.2.9 The Council's participation in the company is proposed to be limited so that the company is not regulated. This means that the Council will be unable to control the majority of votes and must remain below 20% in terms of representation on the Board of Directors. The main implication in terms of breaching these criteria is that the company's capital finance and credit transactions would have to be met by provision in the Council's budget, albeit that the new 'prudential' rules may be less onerous than the previous rules on credit cover. (these rules also apply to an IPS).
- 7.2.10 Further work needs to be done to ensure that no problems are caused by the rules on EU procurement (it is unlikely that these will apply if the basic purpose of the transaction is a transfer of assets together with a grant, but would apply if there was contract for services) and the rules on state aid.
- 7.2.11 Directors (and even more so trustees) would owe their first duty to the Company/Trust and not to the Council and a unified approach cannot be guaranteed except as this can be translated into enforceable contractual obligations.
- 7.2.12 The Directors of the Company may incur personal liability in a number of ways and for non commercial, voluntary or community based organisations this is always a disincentive to involvement. The Council's present insurance arrangements would not cover Council members/officers who became Directors and I advise that further consideration be given to this, and to an appropriate indemnity.
- 7.2.13 In terms of responsibility for buildings, their structure and exterior, including legislative changes affecting the operation of these sorts of premises, the Council could only realistically transfer responsibility for these through freehold disposal or long lease to a tenant with a sufficient 'covenant' for these responsibilities. Consideration needs to be given as to the implications (and how they may be addressed) of any failure to maintain the buildings. The report proposes that facilities are transferred on a long lease basis, landlord and tenant

responsibilities to be further worked up. This could include provision on reverter if properties ever became surplus.

7.2.14 The Council could provide services at cost to the transferee. This could be done in two ways, firstly if the transferee was to become a 'public body' under the Local Authorities (Goods and Services) Act 1970 or, for well being purposes, under the Local Government Act 2002.

7.2.15 The report correctly identifies that a transfer of staff under TUPE (Transfer of Undertakings Protection of Employment Regulations) will apply. This means that employees directly affected will transfer to the 'new' provider on their current terms and conditions, including a requirement for the new provider to establish a broadly equivalent pension provision. It is of course possible that some staff may be affected but may not strictly fall within the protection of TUPE. The statutory guidance on Best Value, issued last year, indicates that the Council should ensure that the principles of TUPE apply, even though they may not do so in the particular circumstances as a strict matter of law. The implications of this, either in terms of transferring contracts of employment or redundancies arising would include legal and financial implications. The statutory guidance incorporates a code of practice which would apply to new joiners to the outsourced provider and is designed to secure that, overall, the terms and conditions upon which they would be engaged, are no less favourable than the transferred staff and they must be offered reasonable pension provision. The Council would be expected to monitor compliance with this Code and enforce the obligations on the new provider.

7.2.16 In terms on pension provision it is increasingly difficult to find new schemes that would be certifiable by the Government Actuaries Department as broadly equivalent to the Local Government Pension Scheme. The new provider would be able to join the Local Government Pension Scheme but it is likely that the Council would be asked to guarantee the employers contributions. There would also be a concern that decisions made by the new body on early retirement or enhanced salaries could cause strain on the pension fund which may have implications for the Council as the Fund's actuaries review future years employer's contributions.

### 7.3 Other Implications.

OTHER IMPLICATIONS	YES/NO	PARAGRAPH WITHIN PAPERS	REFERENCES SUPPORTING
Equal Opportunities	YES	5.8	
Policy	YES	The purpose of this report is to ensure that Cultural Services are able to deliver best value.	

Sustainable and Environmental	YES	5.8
Crime and Disorder	NO	There are no specific crime and disorder implications in this report
Human Rights Act	NO	There are no specific Human Rights Act implications in this report.
Older People on Low Income	YES	5.8

#### 7.4 Risk Assessment Matrix

No	Risk	Likelihood	Severity	Control Actions
1	Required level of financial savings not achieved	Low	High	Choose the optimum model
2	Delay in transferring services to alternative management	Medium	Medium	Ensure teams is supported and resourced
3	Lack of relevant skills amongst trustees and management	Low	Medium	Training needs of staff to be identified. Appointment of specialist skills; notably legal and financial and recruitment of trustees with a range of skills
4	Loss of direct control of Cultural Services by the Council	Low	High	The right contract and monitoring procedures.
5	Staff Opposition to transfer	Medium	Low	Regular consultation and communication to staff and early clarity on protection of terms and conditions
6	Public Opposition to transfer	Medium	Low	Communications plan worked up and implemented
7	NPDO does not perform against business plan	Low	High	Work in partnership with the Council. Ensure legal structure is capable of managing risk in an effective way.
8	Change in legislation having an adverse impact on NNDR and/or VAT situation	Low	Medium	There is no significant action the Council can take to influence this

**8. Background Papers - Local Government Act 1972**

Strategic Review of Alternative Management Options for the Delivery of Cultural Services.

Leonie Cowen and Associates.

Reports dated September 2002 and July 2003

Report to Cabinet October 2003

**9. Consultations**

Consultation on the contents of this report has taken place with:

Consultee	Date Consulted
Head of Legal Services (J. Bunting)	18 <sup>th</sup> March 2004
Head of Property (L. Cave)	18 <sup>th</sup> March 2004
Chief Finance Officer (M. Noble)	18 <sup>th</sup> March 2004
Trade Unions (Unison & GMB)	19 <sup>th</sup> March 2004
Corporate Directors Board	6 <sup>th</sup> April 2004
Cabinet Sub Group on alternative management	

In addition, Departmental staff at all levels, who may be affected by the potential changes have been briefed on the reasons why alternative management is being considered and the possible implications for them.

**REPORT AUTHOR**

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