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**Report of: Executive Manager Community Services**

**Relevant Portfolio Holder: Councillor A Fowler**

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**SUBJECT: WEST LANCASHIRE COMMUNITY LEISURE TRUST, CHARITABLE STATUS.**

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The following wards are affected: Borough wide interest

## **1.0 PURPOSE OF THE REPORT**

1.1 Following a presentation at the October Executive O&S committee from West Lancashire Community Leisure Trust, Executive Overview and Scrutiny requested an update regarding progress towards the trust being registered with the charities commission.

## **2.0 RECOMMENDATIONS**

2.1 That members support the decision of the trustees of West Lancashire Community Leisure limited to submit an application to the Charities Commission for charitable registration.

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## **3.0 BACKGROUND**

3.1 West Lancashire Community Leisure Trust is a partnership arrangement between the Council, the Trust Board and Serco Leisure Limited. The trust commenced operation of five of the Council's sports facilities, two swimming pools and three dry sports centres, on the 1st January 2005.

- 3.2 The trust operates under a Memorandum and Articles of Association and is registered as a company with Companies House. The trust operates as a non-profit distributing organisation (NPDO) with charitable objectives.
- 3.3 The trust operates with a board of nine trustees, one of whom is nominated by the Borough Council.
- 3.4 The trust partnership agreement does not place a requirement on West Lancashire Community Leisure to seek Charitable registration. The decision to seek charitable registration is for the trustees.

#### **4.0 CURRENT POSITION**

- 4.1 West Lancashire Community Leisure operates in a company framework as a non-profit distributing organisation, NPDO. The memorandum and articles of association have been compiled and mirror the requirements of a registered charity with the companies not for profit distributing status being suitable for registration.
- 4.2 It was not possible to pre register the leisure trust as a charity prior to its first year of operation due to its partnership approach with an external operations provider, together with concerns from the charities commission regarding ongoing links and grant support from the Council, advice from the charities commission indicated that the trust should operate for a period of at least twelve months and could apply after the first year of operation and when first year audited accounts were available.
- 4.3 The trustee's initial aims were to apply for charitable registration after the first year's accounts and annual report were available.
- 4.4 The application had to be made by the trust and not the Council; Council officers were available to assist the trust in the application process.
- 4.5 Complications arose in relation to the anticipated timescale for the application to proceed, the lease agreements for the leisure trust sites were not completed in the time frame anticipated. While the trust operated facilities under a licence to occupy, the completed lease agreements were required in order to show independence from the Council otherwise the application for charitable registration would have been rejected.
- 4.6 In addition to the delay in the completion of the lease documents, additional concerns were being expressed both to and by the charities commission regarding the proliferation of leisure trusts around the country.
- 4.7 The charities commission received representation from the Sports and Recreation Trusts Association SPORTA, which was critical of the third party arrangements, similar to the West Lancashire partnership, and the new type of trust models which involved private leisure operators, they branded this type of trust a SHAM trust in their literature and representation.

- 4.8 The charities commission strengthen their assessment of leisure trust applications as a result of representation from within the industry, which was in addition to their own concerns and perceptions regarding local authorities creating trusts as a tax avoidance measure whilst retaining day-to-day control.

## **5.0 ISSUES**

- 5.1 A number of trusts around the country have had their applications for charities commission registration rejected.
- 5.2 While some applications were rejected due to the structure and governance arrangements of the organisation the principal reason for rejection for applications from previously local authority operated facilities, was the ongoing influence of the local authority over the day-to-day operation and restrictions for development.
- 5.3 The charities commission are examining applications in detail, particularly the relationships and influence provided by the local authority and representation on the trust board, West Lancashire leisure trust operators with one Council representative which is less than the 20% restriction which is required by the charities commission registration.
- 5.4 The influence for the private partner is also subject to assessment for undue influence, the issues regarding the identity, direction and decision making for the trust is examined along with the employment status of staff employed in the organisation.
- 5.5 The staff employed by West Lancashire Community Leisure Trust have joint employer contacts, West Lancashire Community Leisure limited and Serco Leisure limited.

## **6.0 PROGRESS TOWARDS CHARITABLE REGISTRATION**

- 6.1 The trust partners Serco Leisure have presented information to the chairs of trusts at an annual trust chairman's meeting. The topic of charitable registration and options has been discussed at the last two meetings, with presentations from specialist advisors and Solicitors.
- 6.2 One option, which was presented to the Chairs group, was to consider registering the company as an Industrial and Provident Society (IPS). This option was presented to the West Lancashire Trustees board with an outline of the advantages provided by transferring to an IPS.
- 6.3 West Lancashire Leisure Trustees considered the information and requested further details regarding this option, which appeared to provide some advantages for leisure trusts. Approximately 30% of leisure trusts have taken the IPS option, which allows both for charitable and non-charitable registration.
- 6.4 The Leisure trustees have rejected the IPS option in favour of remaining as an NPDO and commit towards seeking charitable registration.

- 6.5 The leisure trust in the neighbouring local authority of South Ribble, which also commenced operation as an NPDO in 2005 and has Serco leisure as the trust partner are also considering the charitable registration option.
- 6.6 The chairman of West Lancashire Leisure trust has agreed to a joint meeting with the chair of South Ribble leisure trust to share experience and discuss the process of pursuing charitable registration, with a desire for West Lancashire leisure to seek registration within the next twelve months.
- 6.7 The issue of joint employment contracts for staff is not seen as a obstacle for registration, however this is being considered and if required then the trustees and Serco Leisure have agreed that employment contracts could be altered to a single employer, West Lancashire Community Leisure Limited, with guarantees and security provided from Serco Leisure.

## **7.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 7.1 The trust has an agreement, from the 1<sup>st</sup> January 2005, for the operation of the service for 15 years and three months. The aims of the trust are to provide recreational facilities for the residents of West Lancashire, which are encompassed within the aims, and aspirations of the Council's Community Strategy.

## **8.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 8.1 There are no financial implications for the Council as a result of this report.

## **9.0 RISK ASSESSMENT**

- 9.1 The principal risk associated with the trust partnership is if one or other of the partners cannot sustain their contractual relationship and pull out of the contract or go into receivership/liquidation, the option to pursue charitable registration status does not alter or change this level of risk.

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### **Background Documents**

None

### **Equality Impact Assessment**

\*There is no evidence from an initial assessment of an adverse impact on equality in relation to the equality target groups.

### **Appendices**

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