

# North Tyneside Council Report to Cabinet Date: 16 April 2012

## ITEM 6(f)(ii)(a)

Title: Community Based Trust  
Update and Trading  
Options

Portfolio(s): Leisure, Culture, Tourism  
and Safer Communities

Cabinet Member(s): Cllr Glynis Barrie

Report from Directorate: Community Services

Report Authors: Paul Hanson, Strategic Director Community Services

Wards affected: All

### PART 1

#### 1.1 Purpose

Following the agreement of the 2012/13 Budget and Council Plan and further work on the Community Based Trust Final Business Case, the purpose of this report is to seek Cabinet's approval to:

- Suspend work on developing a Community Based Trust; and
- Further explore the trading options available to the Council as outlined in the body of this report.

#### 1.2 Recommendations

It is recommended that Cabinet:

- 1) Approve the suspension of work on developing a Community Based Trust.
- 2) Authorise the Strategic Director for Community Services, in consultation with the Head of Cultural and Customer Services, the Cabinet Member for Leisure, Culture, Tourism and Safer Communities, the Strategic Director for Finance and Resources and the Head of Legal, Governance and Commercial Services to develop options for a trading structure for a range of the Council's activities and services, for Cabinet's future consideration.

#### 1.3 Forward Plan

This report does not feature on the Forward Plan as the decision to receive this report was taken on 28 March 2012 at an Extraordinary Cabinet meeting. The Elected Mayor has agreed that this report should be brought to Cabinet on 16 April 2012 and the agenda for that Cabinet meeting should be amended accordingly.

## 1.4 Council Plan and Policy Framework

This report relates to Priorities 1.1 and 4.2 of the 2012 -15 Council Strategic Plan.

## 1.5 Information

### 1.5.1 Background

Cabinet agreed at its meeting on 14 November 2011 that the initial principle of exploring the alternative delivery model of a Community Based Trust for Cultural and Customer Services should be endorsed. Following this, Cabinet received a report in December 2011 which outlined plans for the recruitment of a Board of Trustees, the creation of a Community Based Trust and the subsequent procurement of Cultural and Leisure Services.

At its meeting on 12 December 2011, Cabinet agreed that a Board of Trustees should be recruited, a Community Based Trust created and a procurement exercise undertaken. A Final Business Case regarding the delivery of Cultural and Leisure services was to be reviewed at Cabinet in July 2012 prior to final approval of the award of the contract and the transfer of staff and services.

The anticipated benefits of delivering services via a Community Based Trust were identified as:

- Protecting and delivering sustainable, tax efficient and commercially agile services;
- Attracting / engaging with community and business expertise to help improve services and secure future investment;
- Delivering savings for the Council Change Efficiency and Improvement Programme (CEIP); and
- Allowing the Council to retain responsibility for property and assets.

### 1.5.2 Subsequent Progress

Following Cabinet on 12 December 2011, consultation continued with stakeholders, users and staff and governance arrangements for commissioning and bidding teams were developed. The recruitment of Trustees commenced, an open evening for interested applicants and pre interview stakeholder and staff information gathering events were held and Trustee interviews began.

### 1.5.3 Development of the Business Case

The decision to go ahead with the recommendations in the December 2011 Cabinet Report was based on the early analysis that suggested delivering Cultural and Leisure services via a Community Based Trust could bring the Council over £1m National Non Domestic Rates (“NNDR”) and VAT savings. It was anticipated that £0.550m of these savings would contribute to the CEIP and the remainder would help address other pressures such as set up and utility costs, service pressures, repairs and maintenance and support costs.

As Cabinet will be aware, there was a degree of caution over the actual amount of savings which could be achieved given the uncertainty around the changes to NNDR legislation and potential pension costs / liabilities. The Final Business Case was to have

included details of the financial benefits to the Council. This Final Business Case was to be considered by Cabinet in July 2012 before the decision to transfer facilities and services was taken.

The delivery of services via a Community Based Trust was expected to involve the TUPE transfer of approximately 800 Council employees to that Trust. The Best Value Pension Direction requires that such staff are able to continue accessing the Local Government Pension Scheme or a broadly comparable scheme. In order for a Community Based Trust to comply with these regulations it would need to acquire Admitted Body Status and enable staff to continue as members of the Local Government Scheme. The Tyne and Wear Pension Fund was therefore asked to commission actuarial advice regarding the employee contributions a Community Based Trust would be obliged to pay.

The actuarial advice was received on 20 February 2012 and concluded that the Community Based Trust's contribution rate would rise from the 14.3% currently paid by the Council to 20.1%. Whilst delivery of services through a Community Based Trust would still deliver non financial benefits, the increase in contribution rate would result in more than £0.450 m of additional pension costs. In reality, this meant that the increased pension costs would reduce the CEI saving arising from a Trust model. It has therefore become clear the financial benefits of delivering Cultural and Leisure services via a Community Based Trust are less than those which were originally underpinning Cabinet's decision in December 2011.

In light of the reduced financial benefits of delivering services via a Community Based Trust, Cabinet may wish to explore alternative delivery models for Cultural and Leisure services, which could provide opportunities to reduce costs, generate savings, maximise income and / or identify new income streams as well as protecting frontline services.

In addition Cabinet may wish to explore trading options available to the Council more generally in respect of the provision of a range of Council activities and/or services.

#### 1.5.4 Trading Powers

Over time, local authorities' powers to trade have been significantly extended as legislation has developed. The specific trading powers available to local authorities, and any key restrictions associated with each, are set out below. There are a number of models/options which could present the Council with opportunities to trade in the high quality services it already provides. The options could be opened up wider than just Cultural and Leisure services, and developed to provide opportunities for greater commercial activity and build upon the broad range of services which the Council delivers to both North Tyneside residents and partners.

With Cabinet's agreement, these options could be explored in greater detail to ascertain which would provide the maximum benefits and flexibilities to the Council.

#### 1.5.5 Contract with another Public Body

The Local Authorities (Goods and Services Act) 1970 allows local authorities to enter into agreements to supply goods and materials, and/or provide administrative, professional or technical services, to other public bodies. Under this power the Council could, for instance, enter into an agreement to manage facilities for another public body and could negotiate payment for those services. There are some restrictions to the exercise of this power e.g. it does not extend to allowing the Council to construct buildings and the

Council would only be able to enter into short (not long-term) term leases for any buildings used.

#### 1.5.6 Council Provision of Recreational (Cultural and Leisure) Services

Section 19 of the Local Government (Miscellaneous Provisions) Act 1976 allows local authorities to provide recreational facilities both within and outside its boundaries, either with or without charge for the use of such facilities. This legislation means that the Council could itself set up and run certain recreational/cultural facilities within another borough.

#### 1.5.7 Creating a Trading Company

The Local Government Act 2003 sections 95 and 96 allow local authorities to establish a company which can *trade (for profit)* in a range of Council function-related areas (rather than in relation to discretionary functions). Under these provisions the company could be wholly owned by the Council, could deliver services for private or other public bodies (including the Council), and any profits generated could be returned in full to the Council.

Sections 93 and 94 of the same Act allow local authorities to *charge for* discretionary services (charging in this context meaning the recouping of costs only). Discretionary services are those which an authority has the power, but not the duty, to provide.

The charging and trading powers are separate and may be exercised separately. As indicated, the essential difference between charging and trading in the context of these powers is that charging for discretionary services is limited to cost recovery, whereas trading permits the making of a profit.

Further to this, the Local Government (Best Value Authorities) (Power to trade) Order 2009, incorporates a safeguarding mechanism for local authorities when preparing to trade for profit. The 2009 Act requires that, prior to trading, a business case is prepared supporting the exercise of the section 95 trading power. The local authority must approve the business case which must indicate the objectives of the business, the investment and other resources required to achieve those objectives, any risks the business may face and how significant those risks are and the expected financial results for the business together with any other relevant outcomes that the business is expected to achieve. The 2009 Act further prohibits local authorities from subsidising the trading activities of the company. This is important to avoid state aid restrictions.

#### 1.5.8 Creating a Community Interest Company

The Local Government Act 2003 also allows local authorities to establish a Community Interest Company ("CIC"), which is type of company set up in order to benefit the community. Delivering services through a CIC encourages community involvement in shaping services. Such a company is able to trade and make a profit, provided that profit is used for community benefit. It would be regulated by both Companies House and the CIC regulator. A CIC could potentially access additional funding sources which would not be available to the local authority.

#### 1.5.9 The Localism Act 2011

The Localism Act 2011 provides local authorities with a general power of competence, replacing the former well-being power (under the Local Government Act 2000) with a much wide-ranging power designed to allow local authorities to be more innovative and

entrepreneurial in undertaking their functions. The Act provides local authorities with the power to do anything that individuals may generally do, provided such activity does not breach any other legislation. The Act requires that:

- Any trading activity must be conducted through a company or a social enterprise vehicle;
- A local authority must not charge for a service it is required by law to provide; and
- Local authorities must at all times abide by the principles of reasonableness when deciding to exercise the power to trade.

#### 1.5.10 Current Trading

The Council currently trades in or charges for a range of goods and services. Examples of services provided to residents and other bodies include:

- Management of some beaches for Northumberland County Council;
- North Tyneside Council's Services to Schools;
- CCTV monitoring for Morpeth;
- Winter gritting for local businesses;
- Residual waste sales from grounds maintenance (mulch);
- Fleet services; and
- Waste collections for local businesses.

#### 1.5.11 Opportunities to Trade

There are a range of ways in which the Council could expand the services it currently delivers to generate income. An outline of some examples are given below.

##### Consultancy Services

The Council has expertise in a range of areas which could be exploited via a consultancy offer. Potential opportunities could include sports and events management, facilities management, carbon reduction, and garden and landscape design services to other public and private organisations and individuals.

##### Shared Services

North Tyneside Council delivers a range of services at a high quality and at low cost. The Council could expand this and create new opportunities for shared services with other public and private organisations.

##### Grounds and Environmental Services

There are a range of ways in which Environmental Services could be provided to residents and businesses in North Tyneside beyond the current offer. This could potentially include further grounds and garden maintenance services, street cleansing, green burials, fleet and security services, and commercial waste services.

##### North Tyneside Services to Schools

A comprehensive offer of services to schools has been developed. Whilst some of these services (e.g. catering) are currently traded with schools outside of the borough the potential to increase the range and depth of this trading exists.

## Housing and Letting Services

Opportunities may exist to develop expanded housing and letting services. This could include setting up a letting agency to provide services on behalf of private landlords, creating a social enterprise around a handyman service or gardening services, and extending the Furniture Scheme to potentially offer a wider range of services to homeowners, tenants and residents.

### **1.6 Decision Options**

#### Option 1

To approve recommendation 1, the suspension of work on developing a Community Based Trust;

and

To approve recommendation 2, to authorise the development of options for a trading structure for a range of the Council's activities.

#### Option 2

To approve recommendation 1, the suspension of work on developing a Community Based Trust;

and **not**

To approve recommendation 2, to authorise the development of options for a trading structure for a range of the Council's activities.

### **1.6 Reasons for Recommended Option**

Option 1 is recommended for the following reasons:

Whilst delivery of services through a Community Based Trust would still deliver some financial and non financial benefits, the rise in pension contribution rates would mean that the majority of the savings identified as part of the CEIP would not be available and therefore the Business Case for a Community Based Trust has been substantially weakened.

A range of other trading options exist for the Council. Exploring these options could identify savings and/or income opportunities, as well as (in the case of Cultural and Leisure services) the non financial benefits associated with the provision of services through a Community Based Trust.

### **1.7 Appendices**

None.

## **1.8 Contact Officers**

Paul Hanson, Strategic Director Community Services. Tel: (0191) 6437000.  
Paul Gowans, Head of Cultural and Customer Services. Tel: (0191) 6437401.  
Gayle Taylor, Senior Manager (Major Projects). Tel: (0191) 6437452.  
James Roff, Partnerships Manager. Tel: (0191) 6435857.  
Sarah Heslop, Legal Services Team Manager, Commercial Team. Tel: (0191) 6435456.  
Jon Ritchie, Head of Finance. Tel: (0191) 6435800.  
Alison Campbell, Financial Business Manager. Tel: (0191) 6437038.

## **1.9 Background Information**

- Report to Cabinet 14 November 2011: Options Appraisal for an Alternative Delivery Model for Cultural and Customer Services; and
- Report to Cabinet 12 December 2011: Community Based Trust – Procurement and Board Composition.

## **PART 2 – COMPLIANCE WITH PRINCIPLES OF DECISION MAKING**

### **2.1 Finance and other Resources**

The Budget agreed on 1 March 2012 identified £0.250m growth for 2012/13 to effectively remove the CEIP saving with regard to the Community Based Trust for that year. The longer term financial implications will be built into an updated financial plan for 2013/14 onwards. Cabinet will consider this in due course as the budget for that year is developed. Other than the above there are no other immediate direct financial implications in approving the principles of this report other than in internal officer time.

### **2.2 Legal**

The key principles associated with local authorities' powers to trade are set out in the body of the report. There are no other legal implications directly arising from this report.

Legal advice will be sought when appraising any options and the legal implications identified. Any legal implications arising from the options appraisal will be included in a subsequent report to Cabinet.

### **2.3 Consultation/Community Engagement**

There are no implications relating to consultation and community engagement directly arising from of this report.

### **2.4 Human Rights**

There are no implications relating to human rights directly arising from this report.

### **2.5 Equalities and Diversity**

There are no implications relating to equalities and diversity directly arising from this report.

## 2.6 Risk Management

There are no risk implications directly arising from this report.

## 2.7 Crime and Disorder

There are no implications relating to crime and disorder directly arising from this report.

## 2.8 Environment and Sustainability

There are no implications relating to environment and sustainability directly arising from this report.

### PART 3 - SIGN OFF

- Strategic Director(s)  X
- Mayor/Cabinet Member(s)  X
- Chief Finance Officer  X
- Monitoring Officer  X
- Strategic Manager for Policy and Partnerships  X