Meeting	Cabinet
Date	3rd of October 2017
Title	Establishing a Council Controlled Company
Author	Sioned Williams, Head of Economy & Communities
Member	Councillor Craig ab Iago
Purpose	Present the business case and recommendation to establish a Council Controlled Company in order to provide leisure facilities within the County.

1 The decision sought

1.1 To recommend that the Full Council approves the business case to establish a Gwynedd Council controlled Company to undertake the provision of leisure facilities.

1.2 To recommend that the Full Council approves the establishment of a Gwynedd Council controlled Company, in accordance with the format outlined within the business case, to undertake the provision of leisure facilities.

1.3 Subject to the approval of the business case, agree to release one off funds of £165k to establish the Company.

2 Introduction

2.1 The report before you today outlines the basis for recommending the establishment of a Council Controlled Company to provide leisure facilities within the County.

2.2 In December 2014 the Full Council approved a series of savings targets including £1.05m of savings to be realised by 2018/19 through implementing changes within the service. The service has realised approximately £800k of savings and are confident of achieving a further £100k, but finding the remaining £150k without impacting the level of service is proving difficult.

2.3 This recommendation provides an opportunity to achieve the necessary efficiency savings without impacting citizens. If we do not take any action, and taking into account the serious financial situation facing local government, it's likely that we would have to rationalise a number of leisure facilities, or significantly increase fees.

2.4 On the 26th of September the Education and Economy Committee scrutinised the business case. Due to the timing of this meeting the Committee's comments will be presented during the meeting of the Cabinet.

3 Background

3.1 On the 1st of November the Cabinet commissioned a piece of work to look at possible business models for providing a leisure services. The commission's aim was to identify significant savings whilst providing the same or better services to citizens.

3.2 The Communities Scrutiny Committee received a taste of the options that were being considered on the 24th of January and they noted that they would welcome seeing the business case in September 2017.

3.3 Over the last few months work has been carried out to identify the possible options and assess their advantages and any disadvantages. The following options were reviewed:

3.3.1 Do Nothing
3.3.2 Continue to provide the services ourselves and find more efficiency savings and/or income
3.3.3 Establish a new charity
3.3.4 Establish a Community Benefit Company
3.3.5 Establish a Community Benefit Society ('Staff Mutual')
3.3.6 Establish a Council Controlled Company
3.3.7 Establish a Local Authority Trading Company
3.3.8 Open market procurement
3.3.9 Transfer the service to another body

3.4 Legal advice was received on the models and, based on the risks involved with some of the options, 3 models were considered further which were Do Nothing, Open market procurement and establishing a Council Controlled Company. Officers are now of the opinion that they have sufficient information regarding the implications and risks to be able to recommend a model for the future.

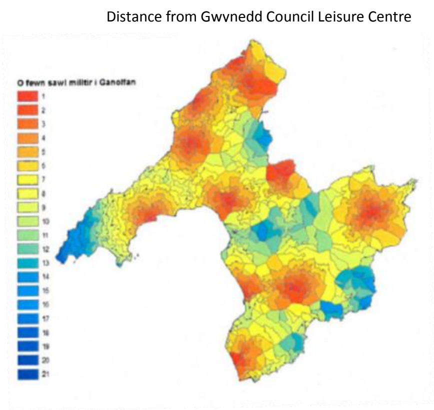
3.5 The purpose of this report is to outline the basis for recommending that a new Council controlled be established in order to ensure the continuation of current services.

3.6 Implementing the proposed model will allow the service to achieve the savings target that the Council approved in December 2014 as well as contributing further savings to the Financial Strategy.

4 The current situation

4.1 The Council provides 12 Leisure Centres across the County with approximately 17,000 members and 1.5 million visits a year.

4.2 The current provision means that 27% of Gwynedd's population live within a mile of a leisure centre and that no dwellings live more than 18 miles.

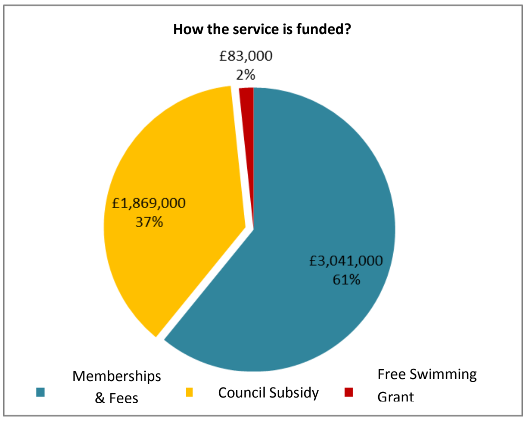


4.3 The current membership equates to almost 14% of the population of Gwynedd.

4.4 Of the 17,000 members, 55.4% are children from 0 to 16 years old, 27% are Adults aged between 24 to 60, and 9.3% are aged 65 and over.

4.5 The service's gross spend is almost £5m per annum (excluding central re-charges) but it attracts £3.1m of income primarily from membership and entrance fees. The Council therefore subsidises the service by £1.9m per annum. Since 2014/15 this subsidy has reduced by £900k, which equates to a reduction of 33%.

4.6 Back in December 2014 the Council requested the service save approximately £1.05m between 2015 and 2018. As in previous years the service has responded by trying to ensure as little impact as possible on the people of Gwynedd through the introduction of new efficiency measures to reduce costs and increasing income by attracting new members.



4.7 To date, the service has achieved £800k of the target of £1.05m but finding the remaining sum is proving difficult within the timetable and current delivery model. If the proposed plan is approved the service will have achieved the savings target of £1.05m and additional savings (approximately £400k) will be available for the current Financial Strategy.

5 Why change?

5.1 It's important to acknowledge that the case for change is not a reflection of the service's performance; it's a reflection of the unprecedented financial pressure on local government.

5.2 The case for changing our delivery model is based on the conclusion that the service cannot find the necessary savings without closing a number of leisure centres or increase membership and entrance fees on significant scale. Work has therefore been done to assess if there is a feasible and acceptable model which can achieve savings whilst providing the same or better service.

5.3 Members will be aware that our financial planning forecasts that this financial pressure is likely to continue over the next 3 years with even the optimistic scenario requiring £11.8m by 2020/21, and the worst scenario requiring £24m. Taking into account that the Council has already achieved £31m over the last 4 years, including £5m worth of service cuts, it's likely that finding more savings without impacting the people of Gwynedd will be even more difficult.

5.4 Over the last 3 years the Leisure Service have reduced the net spend by 33% by increasing income through attracting new members and achieving a series of efficiency measures to reduce spend.

5.5 Bearing in mind also that our leisure facilities are ageing; some of the buildings were built in the 1960s. It's only natural for repairs and maintenance costs to increase on these types of buildings but it's imperative that we continue to invest to ensure that the offer continues to be attractive to citizens. If we don't keep up with changes and new user requirements there is a real danger that we won't achieve our purpose of supporting and inspiring the people of Gwynedd to live a healthy life.

5.6 This work aligns closely to the Wellbeing of Future Generations Act as we attempt to implement the best model for 'ensuring a modern, fit for purpose service, inclusive and sustainable service that supports and inspires the people of Gwynedd to live a healthy life.

5.7 In light of the financial pressure and the uncertainty that this creates in terms of the sustainability of services there is an increasing pattern where authorities are considering whether there are more resilient models of providing services. One of the main attractions in relation to leisure services is that some bodies are eligible for tax relief which in turn releases savings and/or funds to re-invest in services.

5.8 The service currently spends over £0.5m a year in non-domestic taxes; transferring the service to a body that is eligible for tax relief would therefore lead to significant savings in the cost of the provision. Critically, this in theory, would not impair the level and standard of service currently offered to citizens.

5.9 The implications of this are that the Council would be commissioning another body to provide services on its behalf. The business case has assessed the exact implications of the different delivery models and have evaluate them against the following criteria:

1) The same or better service at a reduced cost of at least £500k by 2019.
2) Access to alternative forms of funding
3) Ability to promote and safeguard the Welsh language within the leisure and sport sector in Gwynedd
4) More efficient use of Council subsidy against spending objectives
5) Flexibility to respond to new challenges
6) Maximise contribution towards the Council's strategic objectives.

6 Summary of the evaluation

6.1 The appendices that accompany the business case detail the options that were considered.

6.2 Following initial work it was concluded that further work should concentrate on validating the business case for establishing a Council Controlled Company and to benchmark that option against that of continuing to provide the service internally or the option of procuring an external provider (“outsourcing”).

6.3 This initial conclusion was based on the models that satisfy the criteria and that officers therefore concentrate their time on the options that are most likely to achieve the objectives.

6.4 It’s not as straightforward as saying that one model will provide a better or worse service to citizens but it’s fair to say that some models are likely to provide a better fit in terms of the Council’s priorities, policies, strategies and principles. A rather simple example of this is outsourcing to a private operator which could mean that a commercial and financial ethos could come at the expense of social objectives. For example, there would be a natural expectation, at some point, for any financial surplus be distributed as private profit instead of the local community.

6.5 The table below summarises the evaluation of the options:

Key Criteria	Future Delivery Options		
	Option 1: In House	Option 5: Externalisation	Option 6: GC Controlled Company
Same or better service at a reduced cost	*		
Better access to alternative funding			
Ability to promote and safeguard the Welsh language within the sport and leisure sector in Gwynedd			
More efficient use of Council subsidy against spending objectives			
Flexibility to adapt and meet new challenges			
Maximise contribution towards Gwynedd Council’s strategic objectives			

KEY: GREEN = MEETS THE CRITERIA, AMBR = PARTLY MEETS CRITERIA, RED = FAILS TO MEET

6.6 The evaluation of options within the business case concludes that the service cannot achieve the necessary savings by remaining ‘in-house’ (Option 1) without closing some leisure centres or increase service fees on a significant scale (~20% plus) which could impact usage.

6.7 The option of outsourcing (Option 5) is most likely to achieve the most savings, on the assumption that there are interested providers within the market. The majority of the savings would derive from tax relief but it’s likely that there would be more of a drive to increase income and reduce spends also.

6.8 However, the option of outsourcing would mean a significant change and the Council's control would be significantly less compared to the other options. Despite prejudicing the market to some extent, there is more of a cultural risk with that direction, predominantly regarding the Welsh language and to some of the Council's other policies and principles.

6.9 From the options, establishing a Council Controlled Company (Option 6) involves the least amount of change. This options provides an opportunity to achieve tax savings of £585k per annum from the first year in operation whilst keeping the service's identity, culture and core principles.

6.10 The Council would be the sole owner of the Company and a management board would be appointed by the Council to manage the Company; in the short term users and citizens shouldn't see a difference in the provision but, in the future, the natural aim would be to develop and improve the service continuously.

6.11 Its estimated that annual net savings of £585k could be achieved but a one off figure of between £170k and £240k should be allocated in order to establish the Company over a period of 9 months.

6.12 Assuming therefore that the Council does not wish to close centres and cut services then remaining 'in-house' is not a viable option for the future. Of the available models the options of a Council Controlled Company strikes the best balance in terms of achieving the necessary savings and keeping the service's current identity.

7 Outline of how the Company would look and work

7.1 Company formation

7.1.1 Its intended the Company be limited by guarantee with the Council being the sole owner (i.e the only shareholder)

7.1.2 The Council would create the Company's articles and memorandum of association which will be based on a philanthropic and not for profit purpose.

7.1.3 The Council will appoint a Board of Directors (on a voluntary basis) who will be responsible for delivery within the Company's constitution. The Board will consist of 5 to 7 directors; it's likely that they will be a combination of elected members and Council Officers.

7.1.4 Its possible to introduce other layers of governance including for example an Advisory Board or Stakeholder Boards.

7.1.5 The Board of Directors will appoint and employ a Managing Director for the Company; that person will be responsible for the day to day management of the Company.

7.2 The Council's control over the Company

7.2.1 The Council will commission the service through a service contract which will specify the exact services and outcomes the Company will be required to deliver services for a fee (i.e. a similar sum to the current net subsidy minus the identified savings). The contract will address the Council's expectations for the level of service and detail on matters such as:

i) The payment made to the Company for providing the service
ii) Minimum service provision
iii) Structure of fees
iv) Language Policy
v) Performance Standards
vi) Quality standards

7.2.2 The Council will lease the leisure centres to the Company on a 'peppercorn' basis. The lease will detail both the Council and Company's responsibilities in relation to use of the buildings including any limitations or exclusions.

7.2.3 In accordance with the business case, the intention would be to have a 10 year contract. The contract will include specific mechanisms for any variations, whether that be in relation to service changes or the value of the contract for example, and it would of course include the ability to terminate the contract.

7.2.4 The council would form the Company's constitution which details the rules for running the Company. Operational management would be in the hands of the Directors, who have responsibilities over the Company in accordance with Company Law. However, as noted above, in addition to a shareholder role the service contract will ensure the Council has control over the services that are to be provided.

7.2.5 The Company would be required to report on its performance, similar to a Council department. The Council would additionally approve the Company's annual business plan, which details the activities, developments and outcomes over the year or years to come.

7.2.6 Ultimately however the Council retains control as it can appoint or remove the Board of Directors and/or change the Company's constitution.

7.3 Impact on users and services

7.3.1 The Council would ask the Company to provide the same services as currently offered, except where the Company can identify any improvements to the service.

7.3.2 Essentially, service users should not see any real difference, especially in the short term.

7.4 Impact on the workforce

7.4.1 Staff who currently work for the service would transfer to the Company's employment and they would receive the same terms and conditions as they currently receive. It's unlikely that any support staff from central services would be eligible for transfer.

7.4.2 TUPE regulations will protect the workforce's terms and conditions and the Company cannot change these for reasons relating to the transfer itself. The Company would be required to be a member of the Local Government Pension fund as they will be required to ensure a comparable pension scheme for TUPE transferees.

7.4.3 In relation to any new appointments by the Company the Code of Practice on Workforce Matters 2014 by Welsh Government ensures that new workers, in general, dot not receive less favourable terms and conditions compared to staff that have transferred.

7.4.4 Since the Cabinet's decision to look at this area, staff and the Trade Unions have received regular newsletters along with a series of meetings to share information and answer any questions. To date, meetings have been positive with an open and supportive attitude towards the recommendation of establishing a Company.

7.5 Procurement implications

7.5.1 The business case is based on a Council Controlled Company that also meet the Teckal exemption criteria. Teckal derives from a European Case which is now established within legislation which means, subject to specific criteria, the Council can award a contract directly the Company without an open market procurement.

7.5.2 There are two main parts to the criteria; the Council's control over the Company must be similar to the control that it has over one of its departments and that at least 80% of its turnover comes from the Council. The recommended option satisfies those requirements.

7.6 Financial and Taxation implications

7.6.1 The savings from this model derive from non-domestic rates and VAT exemptions; these exemptions are available to bodies that have a philanthropic and not for profit purpose. At this moment, local authorities are not eligible.

7.6.2 The Council would achieve those savings by adjusting the contract value to reflect those savings to the Company, but there will additionally be variation clauses within the contract. Its estimated that the subsidy (i.e net spend) will reduce from £1.869m to £1.282m by 2019/20.

7.6.3 The Council will not transfer any significant capital financial risk as part of the contract or leases and will only transfer limited revenue risk, especially in the early years. The contract will identify this in detail.

7.6.4 In relation to new income streams then this is likely to be limited to any income that can be attracted within the Teckal limits. Furthermore, it's likely that the most efficient means of borrowing would be through Council, as the Company would not own its assets.

7.6.5 There will be one off costs associated with establishing the Company. These would be mainly legal costs associated with establishing the constitution and governance arrangements, prepare service contracts and leases, TUPE process etc. It's estimated that the one off set-up costs could be between £170k and £240k, but every effort will be made in order to minimize costs.

7.6.6 Following recent re-structuring the department can contribute £50k to the Company start-up costs in addition to addressing a marginal increase of £49k in operational expenditure, which would otherwise need to be deducted from the savings. .

7.6.7 By implementing this model the department will have achieved the remainder of the savings targets (£150k) that the Council approved back in December 2014. This would also leave a contribution of £435k to the current financial strategy and the specific assumption of £526k that was to derive from implementing and alternative delivery model.

7.6.8 The following annual savings profile is anticipated:

	2017/18	2018/19	2019/20	2020/21	Total
Permanent Net Savings Profile	£0	£146,804	£440,411	£0	£587,214

7.7 Property implications

7.7.1 The Council would lease the buildings for a peppercorn rent and the leases will terminate when the service contract terminates. The leases will specify the Council's and Company's responsibilities with further detail in the contract. These could include for example, commitments to invest and performance requirements on both parties. At the end of the contract any property, including equipment, would return to the Council

7.7.2 The majority of buildings repairs and maintenance responsibilities would remain the responsibility of the Council due to VAT implications.

7.8 Impact on central support services

7.8.1 The Company would be expected to buy back central support services from the Council for the foreseeable future; this is on the basis that the central costs are fixed and that the transfer would not be of sufficient size to achieve any Council savings.

7.8.2 The services will be provided through a service contract which specifies the services to be provided.

7.9 Culture

7.9.1 One of the attractions of the proposed model is that it allows us to protect the identity of the service and the things that the people of Gwynedd value about the service.

7.9.2 The Council will be delegating operational management to the Company. The Board of Directors will be required to protect the interests of the Company which could mean the Company taking a more commercial view on some aspects of the business. This empowers the Company to achieve the specified outcomes as it sees best but the proposed model also provides transparency and an element of control on how those outcomes are to be achieved.

8 Equality assessment

8.1 When evaluating the options consideration was given to the relevance of equality responsibilities and each equality group (protected characteristics).

8.2 The full equality assessment can be found in Appendix 1. The aim of the proposal is to 'Ensure a modern, fit for purpose, inclusive and sustainable service that inspires and supports the people of Gwynedd to live a healthy life' and the proposed model provides every opportunity to achieve that.

8.3 If the recommendation is approved the assessment will be re-visited to verify any conclusions and assumptions made to ensure compliance with the Act.

9 Proposed implementation timetable

9 .1Subject to the Cabinet's approval today the Full Council will consider the business case at its meeting on the 5th of October. Approving the business case at that meeting will allow the service to implement decisively and without delay and to therefore make a significant contribution towards the Financial Strategy.

9.2 If the recommendation is approved in October this year the Company could be operational in the 3rd quarter of 2018/19.

9.3 From October onwards work would begin to create the necessary legal documentation, develop and verity the Company's accounts along with the creation of a business plan. Before the Company is operational and staff are transferred the Company will be required to present its business plan for the approval of the Council. It's recommend that specialist consultants are appointed to support this work.

10 Legal

10.1 The right to create a company derives from the wellbeing power in the Local Government Act 2000 section 2(1) allows the Council to form a company if it is of the opinion that it is likely to promote or improve the economic, social or environmental wellbeing of the area.

10.2 In the attached appendices, the external consultants refer to a Court case being considered. By now the decision in London *Borough of Ealing –v- HMRC* has been given by the European Court of Justice. How this decision is applied and impacts on the VAT situation will not be clear until such time as HMRC has decided on its response to the findings and / or any relevant VAT appeals. As a result, Officers will need to keep this situation under review and will commission further work to ensure that the Council has the best advice on the matter. However, given the wider financial context it is considered that that the current position does not justify suspending the recommendations.

11 Conclusions and recommendations

11.1 This work highlights the scale of financial savings that the service has achieved over the last few years whilst ensuring the least possible impact on the people of Gwynedd.

11.2 One of the main conclusions from this work is that it cannot identify the necessary savings without transferring the provision or close a number of centres.

11.3 From the available options, establishing a Council controlled Company is the option that strikes the best balance in terms of achieving savings and protecting the current culture and principles. This option also allows the Council to keep an element of control and influence within this essential sector. Implementing this option also addresses our responsibilities under the Wellbeing of Future Generations Act (Wales) 2015 in terms of supporting the service's sustainability and the provision for the people of Gwynedd. In doing this it supports the Council's long term objectives across a range of strategic priorities.

11.4 It's recommended that the Cabinet approve the business case and associated investment and to recommend that the Full Council do the same at its meeting on the 5th of October and to therefore approve the establishment of a Council controlled Company in accordance with the form outlined within the business case.

12 Appendices – exempt documents

12.1 Appendix 1 – Equality Impact Assessment

12.2 EXEMPT - Appendix 2 – Main report and appendices

View of the Local Member:

Not relevant

Views of the Statutory Officers:

Monitoring Officer:

The report has been the subject of input by specialist external solicitors as well as from the Legal Service. Clearly there are a number of issues being addressed from a governance perspective which will need to be developed if the Business Case is approved. Detailed legal input will continue as part of the management of the project. The report and the Appendices weigh up the relevant considerations in a detailed and appropriate manner. The model and commissioning arrangements recommended will allow the Council to have a relatively strong element of risk management as project moves forward. From a propriety perspective I am satisfied therefore that the proposal is appropriately recommended.

Head of Finance:

As the report explains, a robust business case shows that establishing a Council controlled company would realise savings, whilst also protecting key interests and values. I believe that “Option 6” (Controlled Company) is viable, sustainable and legal, and relevant experiences were researched. In addition, appropriate input and consideration by taxation experts, legal etc. was made where relevant. I therefore support the decision sought so that implementation may start decisively and without delay in order for the expected savings to be realised as soon as possible. There are of course risks with a venture of this nature but I am satisfied that a detailed analysis was undertaken to establish a business plan. If the Cabinet decides to proceed to establish a new company, Finance officers will continue to work closely and continuously with the relevant departments in order to ensure that the financial risks are mitigated as much as possible, so that the new company is established on solid foundations and that the Council’s interests are protected.