

20 March 2013		ITEM: 7
Children's Services Overview and Scrutiny Committee		
Alternative Delivery Model – Grangewaters Outdoor Education Centre		
Report of: Sue Green, Strategic Leader Early Years, Families and Communities		
Wards and communities affected: All	Key Decision: No	
Accountable Head of Service: Carmel Littleton - Head of Learning and Universal Outcomes		
Accountable Director: Jo Olsson – Corporate Director of People Services		
This report is Public		
Purpose of Report: To update members on the development of recommendations for alternative delivery models and make recommendations on the next phase of the project.		

EXECUTIVE SUMMARY

The Localism Act 2011 provides the authority for Councils to explore alternative ways of delivering services in partnership with the local community. Grangewaters Outdoor Education Centre is now in a more stable financial position supporting the exploration of alternative delivery models to secure services and attract external funding. An initial analysis of the options has been completed and officers are now in a position to complete a detailed appraisal in order to make recommendations to Cabinet.

1. RECOMMENDATIONS:

- 1.1 That a detailed appraisal of alternative delivery models to run Grangewaters Outdoor Education Centre is completed.**
- 1.2 That a task and finish group is established including members of Overview and Scrutiny committee to consider the following options:**
 - **Social Enterprise / Community Interest Company**
 - **Charitable Trust**
 - **Retain service in local authority**
 - **Commission service out**
- 1.3 That full recommendations be presented to this committee in September 2013 prior to proceeding to Cabinet approval.**

2. INTRODUCTION AND BACKGROUND:

- 2.1 Changes to both funding and powers of local authorities have meant there is a need to consider alternative models of delivery in order to secure some services on a long term basis and reduce the cost of these to the Council.
- 2.2 The Localism Act 2011 provides the authority for Councils to appoint a relevant body to provide services on behalf of the local authority. This report seeks to update members on the work undertaken by officers to date and makes proposals on the work needed prior to final recommendations being made to Cabinet in respect of an alternative delivery model for certain services in the Learning and Universal Outcomes Service.
- 2.3 Permission to explore this was given by Cabinet in January 2011 with the following recommendations agreed:
- That Cabinet gives agreement to the Head of Universal Learning Outcomes to begin the process of exploring a model of delivering Services (outside of the Council) by way of a charitable organisation and make recommendations on these for approval
 - That work to identify a suitable legal structure (to serve as a vehicle for the transfer of assets and services from the public sector) to the local Communities, commences through the current Learning and Universal Outcomes Service
 - That approval to consider services that should be commissioned to the charitable organisation (or commissioned out to an external partner) be given
 - That a further paper outlining the key options and detailed cost options be presented at a future meeting.
- 2.4 Since that time officers have been working to secure services on a traded basis and have also been exploring the different models of delivery and the legal and delivery implications of these.

3. ISSUES, OPTIONS AND ANALYSIS OF OPTIONS:

- 3.1 In considering an alternative model of delivery we have focussed on the need to enhance service provision whilst reducing costs to the Council. As budgetary provision reduces further this will also be a way of protecting services for the local community.
- 3.2 One of the key services where we have been working to develop it as a sustainable unit has been the Grangewaters Outdoor Education Centre. This centre provides a range of experiences for children and young people to develop skills and experience in an outdoor environment through the provision of activities such as climbing, canoeing, cycling. These are used to develop social and emotional skills and confidence as well as developing key

curriculum skills by integrating wider learning opportunities with the outdoor experience.

- 3.3 Over the last 12 months, in line with the move to targeted services, Grangewaters has been particularly successful in working with young people with limited engagement in education for whom an alternative curriculum means that they can achieve accredited learning outcomes. Good examples of this are the work with the Pupil Referral Unit (PRU) and the Troubled Families Team. The centre is also developing as an environmental centre with young people gaining an understanding of land management techniques and work with local community groups to also support access to the centre whilst maintaining the land.
- 3.4 Work to develop the centre on a more secure financial basis has been at the forefront of delivery with the introduction of a clear fee structure to support delivery of activities. The centre had previously received a grant from the Local Authority to deliver services and now is only supported through management and administration support along with key maintenance required on the Local Authority owned buildings.
- 3.5 To develop an alternative delivery model consideration has been given to the following:
- Establishing the strategic need
 - Establishing the range of resources available
 - Considering the delivery models available
- 3.6 Strategic Need
- 3.6.1 As resources reduce the need to target services on those most in need of support increases, there is also the need to identify services that can no longer be funded. Whilst Grangewaters targets services to a group of young people with significant needs, there is no funding available to support this delivery. Strategically, the development of an alternative delivery model for Grangewaters supports the move to community led solutions and ownership along with the need to target resources to those most in need of support.
- 3.7 Resource Availability
- 3.7.1 Currently Grangewaters do not receive funding towards their direct running costs, support is provided through management and backroom support functions such as finance and administration. All activities offered are charged and fee income is received from local authority run services such as the PRU and also from external organisations. This brings the benefit of retaining resources in the local area, providing employment and facilities for the community.
- 3.7.2 Much work has been undertaken with the centre to bring them to a sounder financial footing over the last 12 months and whilst they are not yet generating a significant profit they do now cover their front line running costs. It is this crucial activity that has extended the time taken to report back to members as

without the move towards a commercial charging basis, a new organisation would be unsustainable. Officers acknowledge that this is an ongoing development and work will continue in the next financial year to further improve this situation.

3.8 Delivery Models

3.8.1 There are a wide range of alternative delivery models available and these are summarised in appendix one. A working group undertook some research into these models and identified a shortlist for further exploration of:

- An Unincorporated Association
- A Cooperative/Industrial & Provident Society/Mutual (for Community Benefit)
- A Social Enterprise / Community Interest Company
- A Charitable Trust

3.8.2 A brief overview of the key points for each model is shown below:

3.8.2.1 Unincorporated Association:

HM Revenue and Customs stipulates that although the term ‘unincorporated association’ is not defined in the Taxes Acts it can be described as an association of individuals formed for a particular purpose, but having no distinct legal personality with the following characteristics:

- It is not a legal entity,
- It is an organisation of persons or bodies with an identifiable membership (possibly changing),
- It has a membership who are bound together for a common purpose by an identifiable constitution or rules (which may be written or oral),
- It is an organisation where the form of association is not one which is recognised in law as being something else (for example, an incorporated body or a partnership),
- It must have an existence distinct from those persons who would be regarded as its members,
- The tie between the persons need not be a legally enforceable contract.

Advantages:

- Can trade and carry on commercial activities
- Simple to set up
- Simple to dissolve.
- No obligation to make their affairs public. However, those providing funds / grants will often request information such as annual accounts and names/contact details of management committee members as a condition of funding.

Disadvantages:

- It is not a body corporate and does not have a separate legal existence from its individual members, accordingly it can neither sue nor be sued other than through its officers and members.

- Members have unlimited liability for the association.
- Although unincorporated associations can trade, they are ineligible to apply for funding aimed at more regulated organisations, such as charities
- Lack of accountability to the public as an unincorporated association does not have to file accounts and other information with Companies House. Neither is it registered with or regulated by either Companies House or the Financial Services Authority. Also, they do not have to submit annual returns.
- Unincorporated associations are not subject to any reliable and consistent set of rules concerning formation, administration and governance.
- Ownership of trademarks, copyrights and other intellectual property can be complicated as members may disagree over ownership rights in the property.
- Assets -Land and investments cannot be held other than in the name of officers or trustees.

Recommendation:

- Not recommended as a suitable model for the development of Grangewaters due to the complex nature of the business and the need to protect the assets.

3.8.2.2 Cooperative/Industrial & Provident Society/Mutual (for Community Benefit):

A business model owned and operated by a group of individuals for the benefit of a specific community.

- Eligible for charitable status and tax exemptions
- Limited liability for members
- Governed by 'Rules'
- Has the ability to trade
- Direct links between community and control of organisation
- Can own property and trade in its own right
- One member, one vote
- Assets can be protected by an 'Asset lock'

Advantages:

- Can achieve charitable status and tax exemptions
- Direct links between community and control of organisation
- Public accountability (public accounts are subject to public scrutiny)

Disadvantages:

- Difficulty in managing & communicating to large quorum of members
- Rules are deemed to be not as flexible as a limited company (FSA)
- Relatively expensive & bureaucratic model to use

Recommendation:

- Not recommended as a suitable model due to the lack of flexibility.

3.8.2.3 Social Enterprise / Community Interest Company:

A business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community; A Community Interest Company is a legal form that a social enterprise can take and these are companies that exist to provide benefits to a community or specific section of the community, typically they will be:

- Driven by a social or environmental purpose
- Social enterprise is a concept, not an entity and a common legal entity is a community interest company (CIC)
- Many social enterprises have charitable status. It is only possible to gain this status if the purposes of your organisation are exclusively charitable and are for the public benefit.
- Opportunity to be community led
- Assets can be protected by an 'Asset lock'

Advantages:

- Flexible company form
- Can be developed with charitable status
- Limitation of risk
- Clear ownership structure / governance
- Ability to be community led by a range of stakeholders
- Public accountability
- Recognition of financial institutions and investors

Disadvantages:

- the ability to borrow money could present a risk

Recommendation

- That further detailed exploration of this model is undertaken.

3.8.2.4 Charitable Trust:

A legal organisation which can be set up by anyone who has decided that they want to set aside some of their assets or income for 'charitable causes' (see legal considerations)

Charitable Trusts can be registered as companies and receive money tax-free using gift aid or through 'payroll giving'.

The basic model needs:

- A donor or 'settlor' (which may be a person or business);
- Trustees;
- Charitable purposes
- A trust deed.

Charitable trusts are not allowed to be run for profit, nor can they have purposes that are not charitable (unless these are ancillary to the charitable purpose).

Advantages:

- Tax benefits
- Ability to apply for grant funding
- Provision of volunteering opportunities and community involvement
- Assets remain in the control of the Council

Disadvantages:

- Uncertainty regarding grants and funding
- Limitations regarding Council representation

Recommendation:

- That further detailed exploration of this model is undertaken.

3.9 Next Steps

It is proposed that we now move towards a full options appraisal on an alternative delivery model for the Grangewaters Outdoor Education Centre through the development of a task and finish group including members of this committee. Full recommendations will then be presented to this committee in September 2013 prior to proceeding to Cabinet approval.

The proposal is that the following options are considered:

- Social Enterprise / Community Interest Company
- Charitable Trust
- Retain service in local authority
- Commission service out

4. REASONS FOR RECOMMENDATION:

- 4.1 This recommendation is made to secure delivery of the Grangewaters Outdoor Education Centre for the future and to support the Council's priorities within the provision made in the Localism Act 2011

5. CONSULTATION (including Overview and Scrutiny, if applicable)

- 5.1 An initial stakeholder event was held in November 2011 as we were commencing this work, a follow up event will be held prior to making final recommendations to Cabinet. In addition the recommendations will be presented to this committee prior to making them to Cabinet.

6. IMPACT ON CORPORATE POLICIES, PRIORITIES, PERFORMANCE AND COMMUNITY IMPACT

- 6.1 The following corporate priorities are supported through this proposal:
- create a place for learning and opportunity.

- build pride, responsibility and respect to create safer communities
- improve health and wellbeing
- protect and promote our clean and green environment

7. IMPLICATIONS

7.1 Financial

Implications verified by: **Michael Jones**
Telephone and email: **01375 652772**
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There are no financial implications at this stage, however full financial consideration should be included in the options appraisal process.

7.2 Legal

Implications verified by: **Vanessa Wilder**
Telephone and email: **01375 652834**
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The Localism Act 2011 gives provision for a relevant body (as defined in the Act) to provide services on behalf of the local authority. There are no legal implications at this stage however full legal consideration should be included in the appraisal process.

7.3 Diversity and Equality

Implications verified by: **Samson DeAlyn**
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Moving towards improved community ownership and delivery supports the priority to build pride, responsibility and respect to create safer communities. The options appraisal should include a full equality impact assessment to ensure that the maximum benefit is gained from this development and that there is no adverse impact to and particular group.

7.4 Other implications (where significant) – i.e. Section 17, Risk Assessment, Health Impact Assessment, Sustainability, IT, Environmental

None

BACKGROUND PAPERS USED IN PREPARING THIS REPORT (include their location and identify whether any are exempt or protected by copyright):

- None

APPENDICES TO THIS REPORT:

- Appendix One - An overview of legal structures

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Appendix One

LEGAL STRUCTURES FOR SOCIAL ENTERPRISE AT A GLANCE

This is a rough guide to the legal structures most commonly associated with social enterprise. For more information on them, see the websites listed below. For more general information about business structures, including other options such as partnerships and limited liability partnerships, see <http://www.businesslink.gov.uk>. However, there are a variety of legal requirements associated with setting up the structures described below and you should consider seeking professional advice before your organisation adopts any one of them.

Legal structure	Summary: most typical features	Ownership, governance and constitution	Is it a legal person distinct from those who own and/or run it?	Can its activities benefit those who own and/or run it?	Assets 'locked in' for community benefit?	Can it be a charity and get charitable status tax benefits?	Differences in the law as it applies in Scotland or Northern Ireland?
Unincorporated association	Informal; no general regulation of this structure; need to make own rules.	Nobody owns - governed according to own rules.	No, which can create problems for contracts, holding property and liability of members.	Depends on own rules.	Would need bespoke drafting to achieve this.	Yes, if it meets the criteria for being a charity.	No specific differences.
Trust	A way of holding assets so as to separate legal ownership from economic interest.	Assets owned by trustees and managed in interests of beneficiaries on the terms of the trust.	No, which means the trustees are personally liable.	Not usually. Trustees/directors can only benefit if trust, court or Charity Commission give permission.	Yes, if trust established for community benefit.	Yes, if it meets the criteria for being a charity.	No, subject to differences between English and Scots trust law.
Limited company (other than Community Interest Company) www.companieshouse.gov.uk	Most frequently adopted corporate legal structure; can be adapted to suit most purposes.	Directors manage business on behalf of members. Considerable flexibility over internal rules.	Yes, members' liability limited to amount unpaid on shares or by guarantee	Yes, but no dividends etc to members if it is a company limited by guarantee.	Would need bespoke drafting in articles, which could be amended by members.	Yes, if it meets the criteria for being a charity.	Scotland: no. Northern Ireland: separate but similar legislation.
Community interest company (CIC) www.cicregulator.gov.uk	An effective limited company structure for social enterprise with secure 'asset lock' and focus on community benefit.	As for other limited companies, but subject to additional regulation to ensure community benefits.	Yes, members' liability limited to amount unpaid on shares or by guarantee.	Yes, but must benefit the wider community. Can pay limited dividends to private investors and directors can be paid.	Yes, through standard provisions which all CICs must include in their constitutions.	No, but can become a charity if it ceases to be a CIC.	Scotland: no. Northern Ireland: legislation not yet in place.

<p>Industrial & Provident Society (IPS) (Co-operative)</p> <p>http://www.fsa.gov.uk/pages/doing/small_firms/msr/societies/index.shtml</p>	<p>For bona fide co-operatives that serve members' interests by trading with them or otherwise supplying them with goods or services.</p>	<p>Committee / officers manage on behalf of members. One member, one vote (regardless of size of respective shareholdings).</p>	<p>Yes, members liability limited to amount unpaid on shares.</p>	<p>Yes, but should do so mostly by members trading with society, using its facilities etc, not as a result of shareholdings.</p>	<p>Would need bespoke drafting in articles, which could be amended by members.</p>	<p>No, would have to be constituted as community benefit type of IPS.</p>	<p>Scotland: no. Northern Ireland: separate but similar legislation.</p>
<p>Industrial & Provident Society (IPS) (Community Benefit Society (BenComm))</p>	<p>Benefit community other than just own members and have special reason not to be companies.</p>	<p>Like Co-op type, but new legislation provides option of more secure form of 'asset lock'.</p>	<p>Yes, members liability limited to amount unpaid on shares.</p>	<p>Must primarily benefit non-members - 'asset lock' applies.</p>	<p>Yes, asset lock only survives dissolution if new statutory form of asset lock adopted.</p>	<p>Yes, if it meets the criteria for being a charity.</p>	<p>Scotland: no. Northern Ireland: legislation not yet in place.</p>
<p>Charitable Incorporated Organisation</p> <p>http://www.charity-commission.gov.uk/registration/charcio.asp</p>	<p>First ready-made corporate structure specifically designed for charities.</p>	<p>Similar to company but with different terminology, eg 'charity trustee' instead of 'director'.</p>	<p>Yes, members either have no liability or limited liability.</p>	<p>Members are not permitted to benefit and charity trustees are only able to benefit if constitution, court or Charity Commission give permission.</p>	<p>Yes.</p>	<p>Cannot be anything but a charity, and must meet the criteria for being a charity.</p>	<p>Scotland: separate but similar legislation and regulator. Northern Ireland: legislation not yet in place.</p>